
**Agriculture & Ecology
Committee**

HB 2531

Brief Description: Combating the spread of Eurasian water milfoil.

Sponsors: Representatives Eickmeyer, Haigh, Jackley, Rockefeller and Lantz.

Brief Summary of Bill

- Allows public or private individuals or entities who received a permit, license, or other form of permission from the Department of Ecology (DOE) in 2001 for application of an aquatic herbicide to combat Eurasian water milfoil to conduct the same application in 2002 without applying for or receiving additional permits, licenses, or permissions.
- Prohibits the DOE from charging a fee for permits or licenses issued for the use of aquatic herbicides to combat Eurasian water milfoil in lakes, ponds, or other freshwater bodies.

Hearing Date: 1/31/02

Staff: Caroleen Dineen (786-7156).

Background:

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate discharge of pollutants into navigable waters. The CWA prohibits the discharge of pollutants in toxic amounts. The CWA also establishes the National Pollution Discharge Elimination System (NPDES) for issuing permits for wastewater discharges to surface waters.

In 1973 Washington was delegated authority by the United States Environmental Protection Agency (EPA) to administer NPDES permits. The Department of Ecology (DOE) administers state discharge permits and is the designated state water pollution control agency for NPDES permit administration. State permits are required for anyone who discharges waste materials from a commercial or industrial operation to ground or to publicly-owned treatment plants. State permits are also required for municipalities that discharge to ground.

NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. The DOE issues both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers) in the state and NPDES permit programs.

A wastewater discharge permit places limits on the quantity and concentrations of contaminants that may be discharged. Permits may require wastewater treatment or impose operating or other conditions, including monitoring, reporting, and spill prevention planning. Permits in Washington are grouped into Water Quality Management Areas (WQMA), and every five years permits in a WQMA are subject to review and renewal.

The federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates pesticide use, sales, and labeling. FIFRA requires that all pesticides and herbicides sold in the United States be registered with the EPA. The EPA has authority under FIFRA to approve the label under which the product is marketed. The EPA also has authority for enforcement under FIFRA.

The Ninth Circuit Court of Appeals (Ninth Circuit) is a federal appellate court with jurisdiction over cases filed in federal district courts in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. In March 2001 the Ninth Circuit determined the registration and labeling requirements of FIFRA did not preclude the need for a NPDES permit under the CWA. *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526 (2001). In the *Talent* case, an Oregon irrigation district's direct application of Magnacide H, an aquatic herbicide, to an irrigation canal without a NPDES permit was challenged after dead fish were found in a creek downstream from the canal's leaking waste gate. The Ninth Circuit concluded in *Talent* that the herbicide application met the four-part test for establishing a violation of the CWA's NPDES permit requirement: a showing that a defendant (1) discharged (2) a pollutant (3) to navigable waters (4) from a point source. Further, the Ninth Circuit determined in *Talent* that the EPA-approved label on the herbicide did not eliminate the irrigation district's obligation to obtain a NPDES permit.

Aquatic pesticides are chemicals that kill, attract, repel, or control the growth of aquatic pests. The DOE issues administrative orders for short-term water quality standards modifications when pesticides are applied in or near waterways. Government entities are authorized to use the pesticide 2,4-D to treat an initial infestation of Eurasian water milfoil. If the entity complies with the pesticide label requirements and notifies lake residents of the intended pesticide use, the entity is exempt from the requirement of obtaining short-term water quality modification from the DOE, although a process is specified in statute for notice to other state agencies that may impose restrictions on the application. The DOE may prohibit the use of aquatic 2,4-D if it exceeds the standard for dioxin established by EPA.

In October 2001 the DOE issued notice of development of NPDES permits for the use of aquatic pesticides in lakes, rivers, and estuaries in this state. Permits are being developed for:

- aquatic plant management in irrigation ditches;
- mosquito larva control in still waters;
- aquatic plant management in lakes and streams;

- burrowing shrimp control on oyster beds;
- noxious emergent plant management in wetlands and shorelines;
- nuisance plant management in ditch banks and mitigated wetlands; and
- fish management in lakes.

Summary of Bill:

A public or private individual or entity who received a permit, license, or other form of permission from the Department of Ecology (DOE) in 2001 for the application of an aquatic herbicide to combat Eurasian water milfoil is allowed to conduct the same application in the 2002 calendar year without applying for or receiving additional permits, licenses, or permissions. An applicator of aquatic herbicides applying the herbicide in 2002 may not be held in violation if the application is in compliance with the 2001 permit, license, or permission.

Permits or licenses issued for the use of aquatic herbicides to combat Eurasian water milfoil in lakes, ponds, or other freshwater bodies may not carry a fee paid by the applicator of the herbicide or the applicant for the license or permit.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.