

SENATE BILL REPORT

2SHB 2867

As Reported By Senate Committee On:
Environment, Energy & Water, February 28, 2002
Ways & Means, March 4, 2002

Title: An act relating to mitigating the effects of the aquatic pesticide national pollutant discharge elimination system permit required as a result of a recent federal court decision.

Brief Description: Mitigating the effects of the aquatic pesticide national pollutant discharge elimination system permit required as the result of a recent court decision.

Sponsors: House Committee on Agriculture & Ecology (originally sponsored by Representatives Fromhold, Ogden, McMorris, Grant, Haigh and Delvin).

Brief History:

Committee Activity: Environment, Energy & Water: 2/26/02, 2/28/02 [DPA-WM].
Ways & Means: 3/4/02 [DPA (EEW)].

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Hale, Honeyford, Jacobsen, Keiser and Morton.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Environment, Energy & Water.
Signed by Senators Brown, Chair; Regala, Vice Chair; Fairley, Vice Chair; Fraser, Hewitt, Honeyford, Kline, Kohl-Welles, Long, Parlette, Poulsen, Rasmussen, Roach, Rossi, B. Sheldon, Snyder, Spanel, Thibaudeau, Winsley and Zarelli.

Staff: Richard Ramsey (786-7412)

Background: Current law requires that the Department of Ecology set fees for National Pollutant Discharge Elimination System (NPDES) permits so as to recover the cost of the permit program. NPDES permits are required for discharge of wastes to waters of the state. Activities subject to the cost recovery include, for example, processing permit applications, monitoring, inspection, compliance, and agency overhead associated with these activities.

A recent federal court decision, *Headwaters, Inc. v. Talent Irrigation District* (9th Cir. 2001), requires applicators of herbicides to irrigation canals to obtain an NPDES permit. This requirement has been extended to other individuals and organizations that apply pesticides to waters of the state.

Summary of Amended Bill: A maximum National Discharge Elimination Permit System (NPDES) permit fee of \$300 is established until June 30, 2003, for any individual or general permits required as a result of the Ninth Circuit of Appeals' decision in *Headwaters, Inc. v. Talent Irrigation District*. These permits may be required only if, and as long as, such permits are required under federal law.

Amended Bill Compared to Second Substitute Bill: The fee cap only lasts until June 30, 2003. The provisions concerning federal law are clarified.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The *Talent* decision affected a number of entities across the state, including irrigation districts, lake management districts, mosquito districts, the state for spartina control, and oyster growers. The National Pollution Discharge Elimination System (NPDES) was never envisioned to cover these types of entities. Oyster growers already have to jump through a number of hoops in order to farm in an estuary and do not need an additional permit requirement.

This bill is a good approach for what many expect may be a short-lived situation while we wait for changes at the federal level.

These permit costs are duplicative and will not provide any increased environmental benefits. Lake management districts face expensive permits.

Testimony Against: DOE is currently required by statute to charge fees in order to fully recover its costs. The use of funds from the water quality permit account will have the effect of shifting the cost of these permits to other permittees. The permittees will receive less services once the surplus in this account is gone.

Testified: PRO: Jim Thompson, Grant County Mosquito Control; Heather Hansen, WA Friends of Farms and Forests; Mike Schwisow, WA State Water Resources Assn.; Bill Dewey, Taylor Shellfish Co.; Tony McNabb, Aquatech NRX; CON: Dave Peeler; Dept. of Ecology; Ed Thorpe, Comm. for Clean Water, Sewer Utilities (concerns).