

# HOUSE BILL REPORT

## HB 2237

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**As Passed House:**

April 14, 2003

**Title:** An act relating to water discharge fees.

**Brief Description:** Concerning water discharge fees.

**Sponsors:** By Representatives Linville, Chandler and Fromhold.

**Brief History:**

**Committee Activity:**

Appropriations: 4/3/03, 4/5/03 [DP].

**Floor Activity:**

Passed House: 4/14/03, 92-0.

**Brief Summary of Bill**

- Extends for two years the permit fee limitation for discharge permits for application of aquatic pesticides.

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass. Signed by 27 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Conway, Cox, DeBolt, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke, Sump and Talcott.

**Staff:** Patricia Linehan (786-7178).

**Background:**

Federal and State Discharge Permits

The federal Clean Water Act (CWA) establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. The NPDES permits are required for anyone who discharges wastewater to surface waters, or who has a significant potential to impact surface waters.

Washington's Department of Ecology (DOE) has been delegated authority by the United States Environmental Protection Agency (EPA) to administer NPDES permits. The DOE also administers state discharge permits. A wastewater discharge permit places limits on the quantity and concentrations of contaminants that may be discharged and may require wastewater treatment or impose operating or other conditions. 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 the NPDES permit programs.

The DOE establishes annual fees for issuing and administering state and NPDES discharge permits. Fees must be based on factors relating to the complexity of permit issuance and compliance and must be established to fully recover, but not exceed expenses of the program.

#### Aquatic Pesticides

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

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.

#### *Headwaters, Inc. v. Talent Irrigation District*

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 the 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 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.

#### Department of Ecology Permit Development

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. Aquatic pesticide permits were developed for:

- Fish Management;
- Irrigation Systems;
- Mosquito Larva Control;
- Noxious Weed Control;
- Nuisance Plant and Algae Control; and
- Oyster Growers .

Legislation was enacted in 2002 to establish a maximum discharge permit fee of \$300 for any permit fee and costs required solely as a result of the Ninth Circuit Court of Appeals' decision in *Headwaters, Inc. v. Talent Irrigation District*. The cap expires June 30, 2003.

Initiative 601, adopted by the voters in 1993, requires prior legislative approval before an agency may increase fees in excess of the fiscal growth factor. The fiscal growth factor is a three-year rolling average of population growth plus inflation.

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**Summary of Bill:**

The \$300 maximum discharge permit fee for discharge permits that were developed by the DOE after the Ninth Circuit Court of Appeals decision in 2001 is extended until June 30, 2005.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** None.

**Testimony Against:** None.

**Testified:** None.