
SUBSTITUTE HOUSE BILL 2867

State of Washington

57th Legislature

2002 Regular Session

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

Read first time . Referred to Committee on .

1 AN ACT Relating to mitigating the effects of the aquatic pesticide
2 national pollutant discharge elimination system permit required as a
3 result of a recent federal court decision; amending RCW 90.48.465;
4 creating a new section; making an appropriation; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that the recent
8 federal court of appeals decision in *Headwaters, Inc. v. Talent*
9 *Irrigation District*, 243 F.3rd 526 (9th Cir. 2001) imposes a duty to
10 obtain a national pollutant discharge elimination system permit under
11 the clean water act for the application of pesticides to irrigation
12 canals. This duty is also extended to other individuals and
13 organizations that apply pesticides to other waters, where no duty
14 existed before the *Talent* decision.

15 The legislature finds that the costs associated with the issuance
16 of the national pollutant discharge elimination system permit now
17 required by the department of ecology as a result of the federal
18 decision is unfairly burdensome to the affected individuals and

1 organizations. The legislature intends to reduce the burden of the
2 federal decision on those individuals and organizations.

3 **Sec. 2.** RCW 90.48.465 and 1998 c 262 s 16 are each amended to read
4 as follows:

5 (1) The department shall establish annual fees to collect expenses
6 for issuing and administering each class of permits under RCW
7 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be
8 established by rule (~~within one year of March 1, 1989, and thereafter~~
9 ~~the fee schedule shall~~) and be adjusted no more often than once every
10 two years. This fee schedule shall apply to all permits, regardless of
11 date of issuance, and fees shall be assessed prospectively. All fees
12 charged shall be based on factors relating to the complexity of permit
13 issuance and compliance and may be based on pollutant loading and
14 toxicity and be designed to encourage recycling and the reduction of
15 the quantity of pollutants. Fees shall be established in amounts to
16 fully recover and not to exceed expenses incurred by the department in
17 processing permit applications and modifications, monitoring and
18 evaluating compliance with permits, conducting inspections, securing
19 laboratory analysis of samples taken during inspections, reviewing
20 plans and documents directly related to operations of permittees,
21 overseeing performance of delegated pretreatment programs, and
22 supporting the overhead expenses that are directly related to these
23 activities.

24 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.
25 Sec. 1362, for all domestic wastewater facility permits issued under
26 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of
27 fifteen cents per month per residence or residential equivalent
28 contributing to the municipality's wastewater system. (~~The department~~
29 ~~shall adopt by rule a schedule of credits for any municipality engaging~~
30 ~~in a comprehensive monitoring program beyond the requirements imposed~~
31 ~~by the department, with the credits available for five years from March~~
32 ~~1, 1989, and with the total amount of all credits not to exceed fifty~~
33 ~~thousand dollars in the five year period.))~~

34 (3) The department shall ensure that indirect dischargers do not
35 pay twice for the administrative expense of a permit. Accordingly,
36 administrative expenses for permits issued by a municipality under RCW
37 90.48.165 are not recoverable by the department.

1 (4) In establishing fees, the department shall consider the
2 economic impact of fees on small dischargers and the economic impact of
3 fees on public entities required to obtain permits for storm water
4 runoff and shall provide appropriate adjustments.

5 (5) The fee for an individual permit issued for a dairy farm as
6 defined under chapter 90.64 RCW shall be fifty cents per animal unit up
7 to (~~one thousand one hundred sixty seven dollars for fiscal year 1998~~
8 ~~and~~) one thousand two hundred fourteen dollars for fiscal year 1999.
9 The fee for a general permit issued for a dairy farm as defined under
10 chapter 90.64 RCW shall be fifty cents per animal unit up to (~~eight~~
11 ~~hundred seventeen dollars for fiscal year 1998 and~~) eight hundred
12 fifty dollars for fiscal year 1999. Thereafter, these fees may rise in
13 accordance with the fiscal growth factor as provided in chapter 43.135
14 RCW.

15 (6) The fee for a general permit or an individual permit required
16 solely as a result of the federal court of appeals decision in
17 *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir.
18 2001) is limited to a maximum of three hundred dollars. Such a permit
19 is required only if, and as long as, the United States environmental
20 protection agency requires such a permit as a result of the court's
21 decision in states that have not been delegated permit authority under
22 the federal clean water act (33 U.S.C. Sec. 1251 et seq.).

23 (7) All fees collected under this section shall be deposited in the
24 water quality permit account hereby created in the state treasury.
25 Moneys in the account may be appropriated only for purposes of
26 administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

27 (~~(7) Beginning with the biennium ending June 30, 1997,~~) (8) The
28 department shall present a biennial progress report on the use of
29 moneys from the account to the legislature. The report will be due
30 December 31st of odd-numbered years. The report shall consist of
31 information on fees collected, actual expenses incurred, and
32 anticipated expenses for the current and following fiscal years.

33 NEW SECTION. Sec. 3. The sum of two hundred thousand dollars, or
34 as much thereof as may be necessary, is appropriated to the department
35 of ecology for the biennium ending June 30, 2003, from the water
36 quality permit account for the purposes of developing and administering
37 the permit program described in section 2(6) of this act.

1 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

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