
SECOND 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 02/09/2002. 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; and declaring an emergency.

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

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

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

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

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

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

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

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

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

11 (6) The fee for a general permit or an individual permit required
12 solely as a result of the federal court of appeals decision in
13 Headwaters, Inc. v. Talent Irrigation District, 243 F.3rd 526 (9th Cir.
14 2001) is limited to a maximum of three hundred dollars. Such a permit
15 is required only if, and as long as, the United States environmental
16 protection agency requires such a permit as a result of the court's
17 decision in states that have not been delegated permit authority under
18 the federal clean water act (33 U.S.C. Sec. 1251 et seq.).

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

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

29 NEW SECTION. Sec. 3. This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 immediately.

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