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SENATE BILL 6722

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State of Washington 57th Legislature

2002 Regular Session

By Senators T. Sheldon, Winsley and Rasmussen

Read first time 01/29/2002. Referred to Committee on Ways & Means.

1 AN ACT Relating to mitigating the effects of the aquatic herbicide  
2 general permit required as a result of a recent federal court decision;  
3 amending RCW 90.48.465; creating a new section; and declaring an  
4 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 herbicides to irrigation  
11 canals. This duty is also extended to other individuals and  
12 organizations that apply herbicides 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 general permit now required by the department of ecology as a  
16 result of the federal decision is unfairly burdensome to the affected  
17 individuals and organizations. The legislature intends to reduce the  
18 burden of the 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 and the cost of implementing  
12 permit conditions such as monitoring, required solely as a result of  
13 the federal court of appeals decision in *Headwaters, Inc. v. Talent*  
14 *Irrigation District*, 243 F.3rd 526 (9th Cir. 2001), is limited to a  
15 maximum fee of three hundred dollars. The department may transfer up  
16 to two hundred thousand dollars per fiscal biennium from the state  
17 toxics control account to recover fully any other costs of developing,  
18 implementing, and monitoring the general permit program established as  
19 a result of the *Talent* decision.

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

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

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

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