

2 **2SHB 2867** - S COMM AMD

3 By Committee on Environment, Energy & Water

4 ADOPTED 03/08/02

5 Strike everything after the enacting clause and insert the
6 following:

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 burdensome to the affected individuals and organizations.
19 The legislature intends to temporarily reduce the burden of the federal
20 decision on those individuals and organizations.

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

23 (1) The department shall establish annual fees to collect expenses
24 for issuing and administering each class of permits under RCW
25 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be
26 established by rule (~~within one year of March 1, 1989, and thereafter~~
27 ~~the fee schedule shall~~) and be adjusted no more often than once every
28 two years. This fee schedule shall apply to all permits, regardless of
29 date of issuance, and fees shall be assessed prospectively. All fees
30 charged shall be based on factors relating to the complexity of permit
31 issuance and compliance and may be based on pollutant loading and
32 toxicity and be designed to encourage recycling and the reduction of
33 the quantity of pollutants. Fees shall be established in amounts to
34 fully recover and not to exceed expenses incurred by the department in
35 processing permit applications and modifications, monitoring and

1 evaluating compliance with permits, conducting inspections, securing
2 laboratory analysis of samples taken during inspections, reviewing
3 plans and documents directly related to operations of permittees,
4 overseeing performance of delegated pretreatment programs, and
5 supporting the overhead expenses that are directly related to these
6 activities.

7 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.
8 Sec. 1362, for all domestic wastewater facility permits issued under
9 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of
10 fifteen cents per month per residence or residential equivalent
11 contributing to the municipality's wastewater system. (~~The department
12 shall adopt by rule a schedule of credits for any municipality engaging
13 in a comprehensive monitoring program beyond the requirements imposed
14 by the department, with the credits available for five years from March
15 1, 1989, and with the total amount of all credits not to exceed fifty
16 thousand dollars in the five year period.~~)

17 (3) The department shall ensure that indirect dischargers do not
18 pay twice for the administrative expense of a permit. Accordingly,
19 administrative expenses for permits issued by a municipality under RCW
20 90.48.165 are not recoverable by the department.

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

25 (5) The fee for an individual permit issued for a dairy farm as
26 defined under chapter 90.64 RCW shall be fifty cents per animal unit up
27 to (~~one thousand one hundred sixty seven dollars for fiscal year 1998
28 and~~) one thousand two hundred fourteen dollars for fiscal year 1999.
29 The fee for a general permit issued for a dairy farm as defined under
30 chapter 90.64 RCW shall be fifty cents per animal unit up to (~~eight
31 hundred seventeen dollars for fiscal year 1998 and~~) eight hundred
32 fifty dollars for fiscal year 1999. Thereafter, these fees may rise in
33 accordance with the fiscal growth factor as provided in chapter 43.135
34 RCW.

35 (6) The fee for a general permit or an individual permit developed
36 solely as a result of the federal court of appeals decision in
37 *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir.
38 2001) is limited, until June 30, 2003, to a maximum of three hundred

1 dollars. The department shall require such permits only if, and as
2 long as, these permits are required under federal law.

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

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

13 NEW SECTION. Sec. 3. This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and takes effect
16 immediately."

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20 On page 1, line 3 of the title, after "decision;" strike the
21 remainder of the title and insert "amending RCW 90.48.465; creating a
22 new section; and declaring an emergency."

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