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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: AMS-4517.1/02

ATTY/TYPIST: SCG:ads

BRIEF DESCRIPTION:

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

3 By Committee on Environment, Energy & Water

4 ADOPTED AS AMENDED 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  
39 dollars. Such a permit is required only, and as long as, the

1 interpretation of this court decision is not overturned or modified by  
2 future court rulings, administrative rule making, or legislative  
3 action. In such a case the department shall take appropriate action to  
4 rescind or modify these permits.

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

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

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

19 **2SHB 2867** - S COMM AMD

20 By Committee on Environment, Energy & Water

21 ADOPTED 03/08/02

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

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