
HOUSE BILL 2222

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2009 Regular Session

By Representatives Blake, Kretz, Short, Eddy, Smith, Takko, Hinkle, Hudgins, Springer, Herrera, Morris, Warnick, Williams, and Chandler

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1 AN ACT Relating to conditioning industrial storm water general
2 discharge permits; amending RCW 90.48.555, 90.48.560, and 90.48.565;
3 creating a new section; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the federal
6 permit program under the federal clean water act, 33 U.S.C. Sec. 1251
7 et seq., and the state water pollution control laws provide numerous
8 environmental and public health benefits to the citizens of Washington
9 and to the state. The legislature also finds that failure to prevent
10 and control pollution discharges, including those associated with storm
11 water runoff, can degrade water quality and damage the environment,
12 public health, and industries dependent on clean water such as
13 shellfish production.

14 (2) The legislature finds that the nature of storm water presents
15 unique challenges and difficulties in meeting the permitting
16 requirements. That meeting these requirements is particularly
17 difficult in areas of heavy urbanization such as Puget Sound. That
18 storm water impacts have been identified by the Puget Sound partnership

1 action agenda and require storm water permitting to be a component of
2 a unified response.

3 **Sec. 2.** RCW 90.48.555 and 2004 c 225 s 2 are each amended to read
4 as follows:

5 The provisions of this section apply to the construction and
6 industrial storm water general permits issued by the department
7 pursuant to the federal clean water act, 33 U.S.C. Sec. 1251 et seq.,
8 and this chapter.

9 (1) Effluent limitations shall be included in construction and
10 industrial storm water general permits as required under the federal
11 clean water act, 33 U.S.C. Sec. 1251 et seq., and its implementing
12 regulations. In accordance with federal clean water act requirements,
13 pollutant specific, water quality-based effluent limitations shall be
14 included in construction and industrial storm water general permits if
15 there is a reasonable potential to cause or contribute to an excursion
16 of a state water quality standard.

17 (2) Subject to the provisions of this section, both technology and
18 water quality-based effluent limitations may be expressed as:

19 (a) Numeric effluent limitations;

20 (b) Narrative effluent limitations; or

21 (c) A combination of numeric and narrative effluent discharge
22 limitations.

23 (3) The department must condition storm water general permits for
24 industrial and construction activities issued under the national
25 pollutant discharge elimination system of the federal clean water act
26 to require compliance with numeric effluent discharge limits when such
27 discharges are subject to:

28 (a) Numeric effluent limitations established in federally adopted,
29 industry-specific effluent guidelines;

30 (b) State developed, industry-specific performance-based numeric
31 effluent limitations; or

32 (c) Numeric effluent limitations based on a completed total maximum
33 daily load analysis or other pollution control measures(~~(i) or~~

34 ~~(d) A determination by the department that:~~

35 ~~(i) The discharges covered under either the construction or~~
36 ~~industrial storm water general permits have a reasonable potential to~~
37 ~~cause or contribute to violation of state water quality standards; and~~

1 ~~(ii) Effluent limitations based on nonnumeric best management~~
2 ~~practices are not effective in achieving compliance with state water~~
3 ~~quality standards.~~

4 ~~(4) In making a determination under subsection (3)(d) of this~~
5 ~~section, the department shall use procedures that account for:~~

6 ~~(a) Existing controls on point and nonpoint sources of pollution;~~

7 ~~(b) The variability of the pollutant or pollutant parameter in the~~
8 ~~storm water discharge; and~~

9 ~~(c) As appropriate, the dilution of the storm water in the~~
10 ~~receiving waters)).~~

11 ~~((+5))~~ (4) Narrative effluent limitations requiring both the
12 implementation of best management practices, when designed to satisfy
13 the technology and water quality-based requirements of the federal
14 clean water act, 33 U.S.C. Sec. 1251 et seq., and compliance with water
15 quality standards, shall be used for construction and industrial storm
16 water general permits, unless the provisions of subsection (3) of this
17 section apply.

18 ~~((+6))~~ (5) Compliance with water quality standards shall be
19 presumed, unless discharge monitoring data or other site specific
20 information demonstrates that a discharge causes or contributes to
21 violation of water quality standards, when the permittee is:

22 (a) In full compliance with all permit conditions, including
23 planning, sampling, monitoring, reporting, and recordkeeping
24 conditions; and

25 (b)(i) Fully implementing storm water best management practices
26 contained in storm water technical manuals approved by the department,
27 or practices that are demonstrably equivalent to practices contained in
28 storm water technical manuals approved by the department, including the
29 proper selection, implementation, and maintenance of all applicable and
30 appropriate best management practices for on-site pollution control.

31 (ii) For the purposes of this section, "demonstrably equivalent"
32 means that the technical basis for the selection of all storm water
33 best management practices are documented within a storm water pollution
34 prevention plan. The storm water pollution prevention plan must
35 document:

36 (A) The method and reasons for choosing the storm water best
37 management practices selected;

1 (B) The pollutant removal performance expected from the practices
2 selected;

3 (C) The technical basis supporting the performance claims for the
4 practices selected, including any available existing data concerning
5 field performance of the practices selected;

6 (D) An assessment of how the selected practices will comply with
7 state water quality standards; and

8 (E) An assessment of how the selected practices will satisfy both
9 applicable federal technology-based treatment requirements and state
10 requirements to use all known, available, and reasonable methods of
11 prevention, control, and treatment.

12 ((+7)) (6)(a) The department shall modify the industrial storm
13 water general permit to require compliance by May 1, ((2009)) 2010,
14 with appropriately derived ((numeric)) water quality-based effluent
15 limitations for existing discharges to water bodies listed as impaired
16 according to 33 U.S.C. Sec. 1313(d) (Sec. 303(d) of the federal clean
17 water act, 33 U.S.C. Sec. 1251 et seq.).

18 (b) No later than September 1, 2008, the department shall report to
19 the appropriate committees of the legislature specifying how the
20 numeric effluent limitation in (a) of this subsection would be
21 implemented. The report shall identify the number of dischargers to
22 impaired water bodies and provide an assessment of anticipated
23 compliance with the numeric effluent limitation established by (a) of
24 this subsection.

25 ((+8)) (7)(a) Construction and industrial storm water general
26 permits issued by the department shall include an enforceable adaptive
27 management mechanism that includes appropriate monitoring, evaluation,
28 and reporting. The adaptive management mechanism shall include
29 elements designed to result in permit compliance and shall include, at
30 a minimum, the following elements:

31 (i) An adaptive management indicator, such as monitoring
32 benchmarks;

33 (ii) Monitoring;

34 (iii) Review and revisions to the storm water pollution prevention
35 plan;

36 (iv) Documentation of remedial actions taken; and

37 (v) Reporting to the department.

1 (b) Adaptive management indicators including numeric or narrative
2 benchmarks may not be used as:

3 (i) Substitutes or surrogates for state water quality standards; or

4 (ii) An indicator that a discharge is causing or contributing to a
5 violation of an applicable water quality standard.

6 (c) Permittees have the option of conducting a probabilistic
7 assessment of the need to implement additional storm water controls
8 using models approved by the department.

9 (d) Construction and industrial storm water general permits issued
10 by the department also shall include the timing and mechanisms for
11 implementation of treatment best management practices.

12 ~~((+9))~~ (8) Construction and industrial storm water discharges
13 authorized under general permits must not cause or have the reasonable
14 potential to cause or contribute to a violation of an applicable water
15 quality standard. Where a discharge has already been authorized under
16 a national pollutant discharge elimination system storm water permit
17 and it is later determined to cause or have the reasonable potential to
18 cause or contribute to the violation of an applicable water quality
19 standard, the department may notify the permittee of such a violation.

20 ~~((+10))~~ (9) Once notified by the department of a determination of
21 reasonable potential to cause or contribute to the violation of an
22 applicable water quality standard, the permittee must take all
23 necessary actions to ensure future discharges do not cause or
24 contribute to the violation of a water quality standard and document
25 those actions in the storm water pollution prevention plan and a report
26 timely submitted to the department. If violations remain or recur,
27 coverage under the construction or industrial storm water general
28 permits may be terminated by the department, and an alternative general
29 permit or individual permit may be issued. Compliance with the
30 requirements of this subsection does not preclude any enforcement
31 activity provided by the federal clean water act, 33 U.S.C. Sec. 1251
32 et seq., for the underlying violation.

33 ~~((+11))~~ (10) Receiving water sampling shall not be a requirement
34 of an industrial or construction storm water general permit except to
35 the extent that it can be conducted without endangering the health and
36 safety of persons conducting the sampling.

37 ~~((+12))~~ (11) The department may authorize mixing zones only in

1 compliance with and after making determinations mandated by the
2 procedural and substantive requirements of applicable laws and
3 regulations.

4 **Sec. 3.** RCW 90.48.560 and 2004 c 225 s 3 are each amended to read
5 as follows:

6 The provisions of this section apply to the construction and
7 industrial storm water general permits issued by the department
8 pursuant to the federal clean water act, 33 U.S.C. Sec. 1251 et seq.,
9 and this chapter.

10 (1) By January 1, 2005, the department shall initiate an inspection
11 and compliance program for all permittees covered under the
12 construction and industrial storm water general permits. The program
13 shall include, but may not be limited to, the:

14 (a) Provision of compliance assistance and survey for evidence of
15 permit violations and violations of water quality standards;

16 (b) Identification of corrective actions for actual or imminent
17 discharges that violate or could violate the state's water quality
18 standards;

19 (c) Monitoring of the development and implementation of storm water
20 pollution prevention plans and storm water monitoring plans;

21 (d) Identification of dischargers who would benefit from follow-up
22 inspection or compliance assistance programs; and

23 (e) Collection and analysis of discharge and receiving water
24 samples whenever practicable and when deemed appropriate by the
25 department, and other evaluation of discharges to determine the
26 potential for causing or contributing to violations of water quality
27 standards.

28 (2) The department's inspections under this section shall be
29 conducted without prior notice to permittees whenever practicable.

30 (3) Follow-up inspections:

31 (a) Shall be conducted by the department to ensure that corrective
32 and other actions as identified in the course of initial inspections
33 are being carried out(~~(. The department)~~);

34 (b) Shall also take such additional actions as are necessary to
35 ensure compliance with state and federal water quality requirements,
36 provided that all permittees must be inspected once within two years of

1 the start of this program and each permittee must be inspected at least
2 once each permit cycle thereafter; and

3 (c) Shall, whenever feasible, be conducted within sixty days of the
4 previous inspection.

5 (4) Permittees may request an inspection be conducted by the
6 department. The department will respond to the request within thirty
7 days.

8 (5) Permittees must be prioritized for inspection based on the
9 development of criteria that include, but are not limited to, the
10 following factors:

11 (a) Compliance history, including submittal or nonsubmittal of
12 discharge monitoring reports;

13 (b) Monitoring results in relationship to permit benchmarks; and

14 (c) Discharge to impaired waters of the state.

15 ((+5)) (6) Nothing in this section shall be construed to limit the
16 department's enforcement discretion.

17 **Sec. 4.** RCW 90.48.565 and 2004 c 225 s 5 are each amended to read
18 as follows:

19 (1) The department shall establish permit fees for construction and
20 industrial storm water general permits as necessary to fund the
21 provisions of RCW 90.48.555 and 90.48.560. When calculating
22 appropriate fee amounts, the department shall take into consideration
23 differences between large and small businesses and the economic impacts
24 caused by permit fees on those businesses. Fees established under this
25 section shall be adopted in accordance with chapter 34.05 RCW.

26 (2) In its biennial discharge fees progress report required by RCW
27 90.48.465, the department shall include a detailed accounting regarding
28 the method used to establish permit fees, the amount of permit fees
29 collected, and the expenditure of permit fees. The detailed accounting
30 shall include data on inspections conducted and the staff hired to
31 implement the provisions of RCW 90.48.555 and 90.48.560.

32 (3)(a) The department shall use a portion of the permit fees
33 collected for construction and industrial storm water general permits
34 as necessary to:

35 (i) Develop a uniform inspection program for the industrial and
36 construction general storm water permits. The program must provide for
37 training of department inspectors to ensure uniformity in inspections

1 across the state and equity in implementation. The department will
2 review and report on the current inspection program performance and
3 identify ways to increase efficiency and reduce costs including
4 improved timely feedback to permittees and improved oversight of the
5 regional programs within the department.

6 (ii) Develop a technical assistance program for permittees for the
7 industrial and construction storm water permits. The program must
8 include specific guidance to assist permittees in permit compliance.
9 The department will review and report on the current technical
10 assistance program and identify ways to increase effectiveness and
11 efficiency. The department shall encourage permittees to help fund and
12 support the program with in-kind services.

13 (b) The programs in (a)(i) and (ii) of this subsection must be
14 implemented no later than May 2010.

15 (4) The department must develop the uniform inspection program and
16 the technical assistance program in subsection (3)(a) of this section
17 in consultation with an advisory committee comprised of at least fifty
18 percent impacted permittees.

19 NEW SECTION. Sec. 5. Sections 1 through 3 of this act expire
20 January 1, 2015.

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