

# HOUSE BILL REPORT

## HB 2651

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### As Passed Legislature

**Title:** An act relating to changing the numeric limit for bacterial contamination for industrial storm water permittees with discharges to water bodies listed as impaired to a narrative limit.

**Brief Description:** Changing the numeric limit for bacterial contamination for industrial storm water permittees with discharges to water bodies listed as impaired to a narrative limit.

**Sponsors:** Representatives Springer, Chandler, Blake, Upthegrove and Wilcox; by request of Department of Ecology.

#### **Brief History:**

##### **Committee Activity:**

Environment: 1/26/12, 1/27/12 [DP].

##### **Floor Activity:**

Passed House: 2/10/12, 97-0.

Passed Senate: 2/29/12, 48-0.

Passed Legislature.

#### **Brief Summary of Bill**

- Requires the industrial stormwater general permit issued by the Department of Ecology to include nonnumeric, narrative effluent limitations for permittees with discharges to water bodies listed as impaired for bacteria by July 1, 2012.
- Adds an expiration date of January 1, 2015, for the section of law that applies to the construction and industrial stormwater general permits issued by the Department of Ecology.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** Do pass. Signed by 12 members: Representatives Upthegrove, Chair; Tharinger, Vice Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Hansen, Jinkins, Morris, Nealey, Pearson, Pollet, Shea and Wylie.

**Minority Report:** Do not pass. Signed by 1 member: Representative Taylor.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Anna Jackson (786-7194).

**Background:**

Clean Water Act.

The Washington Department of Ecology (Ecology) administers a state program for discharge of pollutants to state waters. State permits are required for anyone who discharges waste materials from a commercial or industrial operation to ground or to publicly owned treatment plants. State permits are also required for municipalities that discharge to ground.

The federal Clean Water Act (CWA) prohibits the discharge of pollutants in toxic amounts. Stormwater is a pollutant under the CWA. The CWA also establishes the National Pollution Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. The NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. Ecology has been delegated the authority by the United States Environmental Protection Agency (EPA) to administer NPDES permits.

In the state and NPDES permit programs, Ecology issues both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers). These permits include limits on the quantity and concentrations of contaminants that may be discharged. These permits also may require wastewater treatment or impose operating or other conditions.

Industrial Stormwater General Permits.

One type of general permit Ecology issues is the industrial stormwater general permit. This permit implements state and federal regulations that require industrial facilities to control stormwater using Best Management Practices to prevent water pollution. The statewide permit covers more than 1,200 facilities that discharge stormwater associated with industrial activity into surface waters and storm drains. Business types that need this permit include lumber, paper, printing, chemicals, petroleum, leather, manufacturing, metals, landfills, transportation, mills, and food.

Ecology currently requires many businesses that are permitted under the industrial stormwater general permit to ensure that their stormwater runoff complies with strict numeric limits for bacteria, if their stormwater runoff goes to an "impaired" water body that already has bacteria pollution. A water body is designated as impaired if Ecology has data showing that the water quality standards have been violated for one or more pollutants, and there is no total maximum daily load or pollution control plan. Total maximum daily loads are required for water bodies designated as impaired, and these water bodies are added to a federal list of impaired water bodies under the federal CWA rule 303(d).

**Summary of Bill:**

By July 1, 2012, the industrial stormwater general permit must require permittees with discharges to water bodies listed as impaired for bacteria to comply with nonnumeric, narrative effluent limitations.

An expiration date of January 1, 2015, is added for the section of law that applies to the construction and industrial stormwater general permits [RCW 90.48.555].

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is agency request legislation from Ecology to deal with some ambiguities around the industrial stormwater general permit, especially as it applies to airports and some industrial sites. This bill attempts to create an industrial stormwater monitoring system that is not as rigid as it currently is in order to deal with special circumstances that arise on these types of sites. The bill still gives Ecology the ability to monitor bacteria in the water as well.

During the 2009 legislative session, the House passed House Bill 2222, which required industrial stormwater general permits to have a numeric limit. No one anticipated these limits would affect industries because most industries do not generate bacteria as part of their process. However, 75-80 industrial facilities are having difficulty meeting these numeric standards. There is a lot of "background noise" on these facilities—birds, rodents, and other small animals—that get on facilities and leave bacteria that runs off as stormwater, and which make it difficult for facilities to meet the numeric limit for bacteria. In this bill, Ecology would like to change the numeric standard to a narrative one; essentially, removing the number but still requiring industries to apply best management practices and conduct monitoring. Approximately 1,200 businesses are covered under this permit, and approximately 91 of those discharge to impaired water bodies. Ecology anticipates that eventually all 91 of these facilities may have difficulty meeting the current numeric standards. This bill represents a good fix to the problem. It does not change any other standards—only those for bacteria—and helps address stormwater pollution in the long run.

The Association of Washington Business has worked with Ecology in developing this bill and appreciates Ecology's efforts to bring it forward. Approximately 75-80 of the facilities covered by the industrial stormwater general permit are currently struggling to meet the numeric standards for fecal coliform. Fecal coliform is intended to represent human contamination, and the problem here is birds. Fecal coliform is unlike other pollutants in that a single cell can multiply to millions in a treatment system. A 2010 Environmental Protection Agency study showed that bacteria are as likely to increase as decrease, so effective treatment systems require the addition of chemicals like ozone or chlorine to achieve treatment, or tend to be unreliable in their effectiveness. The numeric bacteria limit is an unintended consequence of Ecology's desire to control other chemical pollutants like copper and zinc. Narrative standards are allowed under state law, and make sense in this

situation where a numeric limitation is not feasible. Switching to a narrative standard will protect human health and the environment while helping industry comply with these regulations.

This is an important piece of legislation. The manufacturing industry learned approximately six months ago what would be required under the numeric limitations, and realized how difficult it would be to meet these standards. The impact of the prior legislation establishing numeric limits for fecal coliform for many businesses is exposure to civil liability for not meeting standards for a substance that they have no ability to control. This bill is not a perfect one, but a big step in the right direction. It is in everyone's best interest to have companies investing in their employees and their facilities rather than paying fines on activities that they do not have control over, and that they do not generate.

(Opposed) None.

**Persons Testifying:** Representative Springer, prime sponsor; Don Seeberger, Washington State Department of Ecology; Courtney Barnes, Association of Washington Business; and Dave Gering, Manufacturing Industrial Counsel.

**Persons Signed In To Testify But Not Testifying:** None.