

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2651

62nd Legislature
2012 Regular Session

Passed by the House February 10, 2012
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate February 29, 2012
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2651** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2651

Passed Legislature - 2012 Regular Session

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Springer, Chandler, Blake, Upthegrove, and Wilcox;
by request of Department of Ecology

Read first time 01/20/12. Referred to Committee on Environment.

1 AN ACT Relating to changing the numeric limit for bacterial
2 contamination for industrial storm water permittees with discharges to
3 water bodies listed as impaired to a narrative limit; amending RCW
4 90.48.555; and providing an expiration date.

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

6 **Sec. 1.** RCW 90.48.555 and 2009 c 449 s 1 are each amended to read
7 as follows:

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

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

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

3 (a) Numeric effluent limitations;

4 (b) Narrative effluent limitations; or

5 (c) A combination of numeric and narrative effluent discharge
6 limitations.

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

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

14 (b) State developed, industry-specific performance-based numeric
15 effluent limitations;

16 (c) Numeric effluent limitations based on a completed total maximum
17 daily load analysis or other pollution control measures; or

18 (d) A determination by the department that:

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

22 (ii) Effluent limitations based on nonnumeric best management
23 practices are not effective in achieving compliance with state water
24 quality standards.

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

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

28 (b) The variability of the pollutant or pollutant parameter in the
29 storm water discharge; and

30 (c) As appropriate, the dilution of the storm water in the
31 receiving waters.

32 (5) Narrative effluent limitations requiring both the
33 implementation of best management practices, when designed to satisfy
34 the technology and water quality-based requirements of the federal
35 clean water act, 33 U.S.C. Sec. 1251 et seq., and compliance with water
36 quality standards, shall be used for construction and industrial storm
37 water general permits, unless the provisions of subsection (3) of this
38 section apply.

1 (6) Compliance with water quality standards shall be presumed,
2 unless discharge monitoring data or other site specific information
3 demonstrates that a discharge causes or contributes to violation of
4 water quality standards, when the permittee is:

5 (a) In full compliance with all permit conditions, including
6 planning, sampling, monitoring, reporting, and recordkeeping
7 conditions; and

8 (b)(i) Fully implementing storm water best management practices
9 contained in storm water technical manuals approved by the department,
10 or practices that are demonstrably equivalent to practices contained in
11 storm water technical manuals approved by the department, including the
12 proper selection, implementation, and maintenance of all applicable and
13 appropriate best management practices for on-site pollution control.

14 (ii) For the purposes of this section, "demonstrably equivalent"
15 means that the technical basis for the selection of all storm water
16 best management practices are documented within a storm water pollution
17 prevention plan. The storm water pollution prevention plan must
18 document:

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

21 (B) The pollutant removal performance expected from the practices
22 selected;

23 (C) The technical basis supporting the performance claims for the
24 practices selected, including any available existing data concerning
25 field performance of the practices selected;

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

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

32 (7)(a) By November 1, 2009, except for discharges identified in (b)
33 of this subsection, the department shall modify or reissue the
34 industrial storm water general permit to require compliance with
35 appropriately derived numeric water quality-based effluent limitations
36 for existing discharges to water bodies listed as impaired according to
37 33 U.S.C. Sec. 1313(d) (Sec. 303(d) of the federal clean water act, 33
38 U.S.C. Sec. 1251 et seq.).

1 (b) For pollutants other than bacteria, the industrial storm water
2 general permit must require permittees to comply with appropriately
3 derived numeric water quality-based effluent limitations in the permit,
4 as described in (a) of this subsection, by no later than six months
5 after the effective date of the modified or reissued industrial storm
6 water general permit. By July 1, 2012, the industrial storm water
7 general permit must require permittees with discharges to water bodies
8 listed as impaired for bacteria to comply with nonnumeric, narrative
9 effluent limitations.

10 (c) For permittees that the department determines are unable to
11 comply with the numeric water quality-based effluent limitations
12 required by (a) of this subsection, within the timeline established in
13 (b) of this subsection, the department shall establish a compliance
14 schedule as follows:

15 (i) Any compliance schedule provided by the department must require
16 compliance as soon as possible, and must require compliance by no later
17 than twenty-four months, or two complete wet seasons, after the
18 effective date of the industrial storm water general permit. For
19 purposes of this subsection (7)(c)(i), "wet seasons" means October 1st
20 through June 30th.

21 (ii) The department shall post on its web site the name, location,
22 industrial storm water permit number, and the reason for requesting a
23 compliance schedule for each permittee who requests a compliance
24 schedule according to this subsection (7)(c). The department shall
25 post this information no later than thirty days after receiving a
26 permittee's request for a compliance schedule under this subsection
27 (7)(c). The department shall also prepare a list of organizations and
28 individuals seeking to be notified when such requests for compliance
29 schedules are made, and notify them within thirty days after receiving
30 a permittee's request for a compliance schedule. Notification under
31 this subsection may be accomplished electronically.

32 (d) The department shall report to the appropriate committees of
33 the legislature specifying how the numeric effluent limitation in (a)
34 of this subsection would be implemented. The report shall identify the
35 number of dischargers to impaired water bodies and provide an
36 assessment of anticipated compliance with the numeric effluent
37 limitation established by (a) of this subsection.

1 (8)(a) Construction and industrial storm water general permits
2 issued by the department shall include an enforceable adaptive
3 management mechanism that includes appropriate monitoring, evaluation,
4 and reporting. The adaptive management mechanism shall include
5 elements designed to result in permit compliance and shall include, at
6 a minimum, the following elements:

7 (i) An adaptive management indicator, such as monitoring
8 benchmarks;

9 (ii) Monitoring;

10 (iii) Review and revisions to the storm water pollution prevention
11 plan;

12 (iv) Documentation of remedial actions taken; and

13 (v) Reporting to the department.

14 (b) Construction and industrial storm water general permits issued
15 by the department also shall include the timing and mechanisms for
16 implementation of treatment best management practices.

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

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

1 (11) Receiving water sampling shall not be a requirement of an
2 industrial or construction storm water general permit except to the
3 extent that it can be conducted without endangering the health and
4 safety of persons conducting the sampling.

5 (12) The department may authorize mixing zones only in compliance
6 with and after making determinations mandated by the procedural and
7 substantive requirements of applicable laws and regulations.

8 NEW SECTION. **Sec. 2.** Section 1 of this act expires January 1,
9 2015.

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