

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2651**

Chapter 110, Laws of 2012

62nd Legislature  
2012 Regular Session

INDUSTRIAL STORM WATER PERMITS--BACTERIA LIMITATIONS

EFFECTIVE DATE: 06/07/12

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

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

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

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved March 29, 2012, 1:42 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**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.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

March 29, 2012

**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.

Passed by the House February 10, 2012.

Passed by the Senate February 29, 2012.

Approved by the Governor March 29, 2012.

Filed in Office of Secretary of State March 29, 2012.