

SENATE BILL REPORT

HB 2716

As Reported By Senate Committee On:
Ecology & Parks, February 23, 1996

Title: An act relating to review of renewal of waste discharge permits.

Brief Description: Concerning waste discharge permits.

Sponsors: Representatives Chandler and Chappell.

Brief History:

Committee Activity: Ecology & Parks: 2/22/96, 2/23/96 [DPA, DNPA].

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass as amended.

Signed by Senators Fraser, Chair; Hochstatter, McAuliffe and Swecker.

Minority Report: Do not pass as amended.

Signed by Senator Fairley, Vice Chair.

Staff: Kari Guy (786-7437)

Background: The State Environmental Policy Act (SEPA) requires the Department of Ecology to adopt rules identifying categories of actions which are not to be considered major actions significantly affecting the environment. These categories of actions are exempt from the requirements of SEPA. Certain categorical exemptions are also provided in statute. The administrative rules must provide for certain circumstances where actions which are potentially categorically exempt require environmental review.

The Court of Appeals has held that agencies should consider likely environmental effects before applying the SEPA categorical exemptions. If a project has probable significant adverse environmental impacts, agencies should require full SEPA compliance even though the project would normally be exempt.

The SEPA rules provide a categorical exemption for the issuance, reissuance, or modification of a waste discharge permit that contains conditions no less stringent than federal effluent limitations and state rules. The exemption does not apply to new source discharges.

The Department of Ecology's use of this exemption was challenged by the Sierra Club Legal Defense Fund (SCLDF) in a 1991 appeal of wastewater discharge permits reissued for selected Washington pulp and paper mills. In 1995, the Thurston County Superior Court ruled that the SCLDF should have the opportunity for a hearing before the Pollution Control Hearings Board, to demonstrate that the permit issuance is a major action with significant, adverse environmental impact, and that the categorical exemption should not apply. This decision has been appealed to the state Supreme Court.

Concern has been expressed that this ruling will lead to challenges to the application of any categorical exemption created by rule by Ecology. Legislatively created categorical exemptions would not be affected by the court's ruling.

Summary of Amended Bill: A statutory exemption is created for the issuance, reissuance, or modification of a waste discharge permit that contains conditions no less stringent than federal effluent limitations and state rules. The exemption applies to existing discharges only. The exemption does not apply to the issuance of waste discharge permits for marine finfish rearing facilities.

The act is null and void if specific funding of \$19.6 million is not provided for the Department of Ecology wastewater discharge permit program.

Amended Bill Compared to Original Bill: Marine finfish rearing facilities are removed from the exemption. A null and void clause is added.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: There is extraordinary scrutiny of wastewater discharge permits at the state and federal levels, including multiple opportunities for public comment and appeal. SEPA duplicates the review process already in law. Continuing SEPA reviews would delay key environmental protection provisions of the permits.

Testimony Against: Most of the time SEPA review is not necessary, but SEPA provides a safety net for certain permits with significant impacts. SEPA provides an opportunity for environmental review, mitigation and citizen challenge of permits.

Testified: Llewellyn Matthews, NW Pulp and Paper Assn. (pro); Greg Sorlie, DOE (pro); Jeff Parsons, People for Puget Sound (con).