
**Agriculture & Natural
Resources Committee**

HB 1876

Brief Description: Protecting water quality.

Sponsors: Representatives Linville, Jarrett, Murray, Schoesler, Conway, Anderson, Kenney, Cairnes, Sommers, McIntire, Dunshee, Haigh, Chase and Tom.

Brief Summary of Bill

- Mandates that the Department of Ecology (DOE) require the use of the Synthetic Precipitation Leaching Procedure (SPLP) to determine the chemical suitability of potential fill material in all water quality certifications when the certification or an administrative order authorizes the placement of more than two million cubic yards of fill material, some or all of which will be placed in state waters.
- Applies this requirement retroactively to all water quality certifications and administrative orders issued by the DOE that authorized the placement of more than two million cubic yards of fill material when placement is not substantially completed by June 1, 2003.
- Specifies this requirement does not apply to any water quality certifications and orders authorizing the placement of fill material dredged from the waters of the United States.

Hearing Date: 2/21/03

Staff: Caroleen Dineen (786-7156).

Background:

General Framework

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate discharge of pollutants into navigable waters. "Pollutant" is defined in the CWA to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods. "Navigable waters" is defined in the CWA to include: (1) navigable waters and their tributaries; (2) interstate waters; (3) oceans out to 200

miles; and (4) intrastate waters if used for recreation by interstate travelers or if used for commercial fishing or industrial activities related to interstate commerce.

The CWA sets technology-based effluent limitations for discharges to navigable waters and authorizes federal grants to finance sewage treatment systems improvements. The CWA also requires states to adopt water quality standards, which are rules specifying the desired water quality to be achieved or maintained and protecting existing water quality from degradation. Finally, the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters.

The United States Environmental Protection Agency (EPA) implements the CWA. The EPA may delegate authority to states. The Washington Department of Ecology (DOE) has been delegated CWA authority by the EPA.

Washington's state Pollution Disclosure Act of 1971 requires pollution dischargers to use all known, available, and reasonable methods of wastewater treatment before discharge to prevent pollution. In addition to its NPDES permit responsibilities, the DOE 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.

Water Quality Certifications

As part of its delegated authority under the federal CWA, the Department of Ecology (DOE) reviews requests for water quality certifications. Applicants for a federal license or permit must provide the federal licensing or permitting agency a DOE certification that any discharge to navigable waters associated with the licensed or permitted activity will comply with federal CWA requirements. Federal law requires the DOE to establish procedures for public notice of all certification applications and, to the extent the DOE deems appropriate, for public hearings related to the applications. The DOE has adopted regulations regarding notice and public hearing on applications for water quality certifications.

Pollution Control Hearings Board

The Pollution Control Hearings Board (PCHB) is a quasi-judicial state agency with three members appointed by the Governor for six-year terms. The PCHB is authorized to hear and decide appeals of certain orders and decisions of the Department of Ecology (DOE), local and regional air and pollution control authorities, local conservation districts, and local health departments. The DOE's decisions on water quality certifications may be appealed to the PCHB.

Any person who has received notice of a denial of a petition, a notice of determination, or an order of the DOE may appeal to the PCHB. The statutes governing the PCHB and the implementing administrative regulations specify the procedures for the filing of appeals with the PCHB and the conduct of proceedings at the PCHB.

PCHB decisions may be appealed to superior court within thirty days after the final decision

has been communicated to the parties. The Director of the DOE has the same right of review of a PCHB decision as does any other person.

Recent PCHB Water Quality Certification Decision

As part of the permitting process for its proposal to construct a new runway at SeaTac Airport, the Port of Seattle is required to obtain a permit from the U.S. Army Corps of Engineers to fill all or portions of 50 wetlands, a project which will involve more than 20 million cubic yards of fill material. A prerequisite to this permit under the federal CWA is the issuance of a water quality certification by the DOE. After several years of permit issues and processes and an appeal of an earlier certification, the DOE issued a final water quality certification for the fill project on September 21, 2001.

The Airport Communities Coalition and others pursued an appeal of the September 2001 certification to the PCHB. *Airport Communities Coalition v. Department of Ecology*, PCHB No. 01-160 (Findings of Fact, Conclusions of Law, and Order issued August 12, 2002). The PCHB affirmed the DOE's water quality certification as modified by numerous conditions imposed by the PCHB.

As part of the appeal, the PCHB considered whether the Synthetic Precipitation Leaching Procedure (SPLP) should be used to assess the potential impact to water quality from placement of imported fill material. The SPLP is one of a variety of procedures and methods referenced in soil cleanup regulations adopted by the DOE according to authority in the Model Toxics Control Act (MTCA). *See* WAC 173-340-747(7). SPLP is used in a process to determine the concentration of particular soil constituents. The PCHB noted concerns about the SPLP procedure's ability to detect contaminants of concern at regulated levels and expressed concern about the intended use of the SPLP process. The PCHB modified the DOE's water quality certification to specify SPLP should not be used to allow importation of fill above the MTCA fill criteria.

The PCHB's decision has been appealed to superior court.

Summary of Bill:

The Department of Ecology (DOE) must require that the chemical suitability of potential fill material be determined through the use of a leaching test of the type specified in WAC 173-340-747(7) as enacted on January 1, 2003, in all water quality certifications when the certification or an administrative order authorizes the placement of more than two million cubic yards of fill material, some or all of which will be placed in state waters. This requirement must be retroactively applied to all water quality certifications and administrative orders issued by the DOE that authorized the placement of more than two million cubic yards of fill material for which placement is not substantially completed by June 1, 2003. This requirement does not apply to any water quality certifications and orders authorizing the placement of fill material dredged from the waters of the United States.

Appropriation: None.

Fiscal Note: Not Requested.

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