
**Economic Development,
Agriculture & Trade Committee**

HJM 4016

Brief Description: Petitioning for modifications to the federal Clean Water Act's citizen suit provisions.

Sponsors: Representatives Kretz, Ahern, Haler, Holmquist, Kristiansen, Serben, Newhouse and Orcutt.

Brief Summary of Bill

- Requests amendments to the federal Clean Water Act's citizen suit provision related to standing, disclosure, and compliance.

Hearing Date: 3/11/05

Staff: Caroleen Dineen (786-7156).

Background:

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. The CWA defines "pollutant" broadly to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods. The CWA prohibits any discharge of a pollutant into navigable waters that does not comply with the specific requirements of this federal law. The United States Environmental Protection Agency (EPA) implements the CWA.

The CWA imposes numerous requirements to be implemented at the state level. First, states are required to adopt water quality standards for surface waters to protect fish and other aquatic life. The state's water quality standards are the basis upon which other aspects of the state's water pollution protection program are designed or evaluated. Second, states must periodically assess the water quality of their water bodies by preparing a state-wide assessment of the health of the state's water bodies (the "305(b) report") and a list of the specific water bodies (or segments) that do not meet the state water quality standards (the "303(d) list"). Third, states must develop water cleanup plans (known as "total maximum daily loads" or "TMDLs") for all water bodies on their 303(d) lists to address the pollutants that do not meet state water quality standards and to restore water quality to the impaired water body. Fourth, states must decide whether to issue water quality certifications to applicants for a federal license or permit regarding compliance with federal CWA requirements for discharges to navigable waters associated with the activity.

The CWA also establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. NPDES permits are required for anyone who discharges wastewater (and stormwater for specified dischargers) to surface waters or who has a significant potential to impact surface waters. The EPA can delegate its NPDES permit authority to states and has delegated this authority to the Washington Department of Ecology (DOE) for this state.

The CWA specifies enforcement provisions for both federal and state governments. The CWA also includes a citizen suit provision, which allows any citizen with legal standing to file an action against a government entity or a private discharger for alleged violations of certain CWA requirements. An organization may file suit under this CWA provision based on its representation of individual organization members. The plaintiff in a citizen suit must provide 60 days' notice to the defendant government or discharger before filing an action. The court may award litigation costs, including attorney fees, to a prevailing or substantially prevailing party in this type of action.

Summary of Bill:

The Legislature requests that the United States Congress and the President amend the CWA's citizen suit provision to protect small jurisdictions from significant financial and legal liabilities by:

- requiring plaintiff organizations that assert representational standing to demonstrate a real and substantial connection to the area affected by the defendant's challenged activity;
- requiring plaintiff organizations to identify the members whose interests are the basis for standing the organization asserts; and
- recognizing good faith compliance efforts by small jurisdictions and providing them a meaningful opportunity to remedy compliance problems before damages and attorney fees are awarded against them.

The Legislature identifies concerns about citizen suits filed by large advocacy organizations and the basis upon which legal standing is asserted in these actions. The Legislature also specifies a concern about the lack of recognition for good faith compliance efforts and the lack of opportunity to remedy problems before a citizen suit is filed. Further, the Legislature notes the effect of legal costs and financial liability for damages and attorney fee awards on small jurisdictions in Washington.

Appropriation: None.

Fiscal Note: Not requested.