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**Agriculture & Natural  
Resources Committee**

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**HB 1892**

**Brief Description:** Limiting the department of ecology's review authority.

**Sponsors:** Representatives Schual-Berke, Upthegrove and Miloscia.

**Brief Summary of Bill**

- Prohibits the Director of the Department of Ecology from appealing Pollution Control Hearings Boards decisions on water quality certifications.

**Hearing Date:** 2/21/03

**Staff:** Caroleen Dineen (786-7156).

**Background:**

*Federal and State Water Pollution Control Laws*

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.

### **Summary of Bill:**

The Director of the Department of Ecology (DOE) has no right to seek review of a decision of the Pollution Control Hearings Board (PCHB) that is based on the DOE's decision related to a certification required by the federal Clean Water Act. The Director's right to seek review of other types of PCHB decisions is not affected.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

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