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**Agriculture & Natural  
Resources Committee**

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**SSB 5787**

**Brief Description:** Protecting water quality.

**Sponsors:** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton, Prentice, Hale, Jacobsen, Kohl-Welles, Hewitt, Doumit and Horn).

**Brief Summary of Substitute Bill**

- Allows the Department of Ecology (DOE) to require the use of the Synthetic Precipitation Leaching Procedure (SPLP) in water quality certifications to assess the potential impact to water quality from the importation of fill material.
- Ratifies and approves any requirement to use the SPLP in a water quality certification for work not completed by June 1, 2003.

**Hearing Date:** 4/1/03

**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 pollutant discharges into navigable waters. The CWA defines "pollutant" to include a variety of materials that may be discharged through human activities, construction or industrial processes, or other methods.

The CWA sets technology-based effluent limitations for discharges to navigable waters. 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 and may delegate its authority to states. The Washington Department of Ecology (DOE) has been delegated CWA authority by the EPA.

### Water Quality Certifications

As part of its delegated authority under the federal CWA, the 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.

### 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 DOE, local and regional air and pollution control authorities, local conservation districts, and local health departments. 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 DOE's decisions on water quality certifications may be appealed to the PCHB.

PCHB decisions may be appealed to superior court within 30 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 Seattle-Tacoma International Airport, the Port of Seattle needs a permit from the U.S. Army Corps of Engineers to fill all or portions of 50 wetlands. This project will involve more than 20 million cubic yards of fill material. 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 but imposed numerous conditions on it.

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 numeric fill criteria. The PCHB's decision has been appealed, and is currently pending before the Washington Supreme Court.

**Summary of Bill:**

The DOE may require in any water quality certification involving the importation of fill material that the suitability of potential fill material be evaluated using a valid and reliable leaching test, including but not limited to Method 1312 from the United States Environmental Protection Agency Publication SW-846 (Synthetic Precipitation Leaching Procedure, or SPLP). The Legislature ratifies and approves as a valid and reliable method for determining soil constituent concentrations in fill material any requirement to use this test imposed by the DOE in a water quality certification or administrative order issued prior to the effective date of these provisions. This ratification and approval applies to work not completed by June 1, 2003.

These provisions do not constitute legislative intent to limit in any way the DOE's authority under the state water pollution control statutes.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.