

# SENATE BILL REPORT

## SB 5645

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As Reported By Senate Committee On:  
Natural Resources, Energy & Water, March 5, 2003

**Title:** An act relating to implementing the federal permit requirements for municipal separate storm sewer system permits.

**Brief Description:** Implementing the federal permit requirements for municipal separate storm sewer system permits.

**Sponsors:** Senators Swecker, Doumit, Finkbeiner, Morton, Prentice, Johnson, Schmidt, Honeyford and Haugen.

**Brief History:**

**Committee Activity:** Natural Resources, Energy & Water: 2/19/03, 3/5/03 [DPS].

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### SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

**Majority Report:** That Substitute Senate Bill No. 5645 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Hale, Hargrove, Honeyford and Oke.

**Staff:** Evan Sheffels (786-7486)

**Background:** The Clean Water Act (CWA) prohibits the discharge of pollutants from a point source into the waters of the United States, except as permitted under the terms of the National Pollutant Discharge Elimination System (NPDES). The federal Environmental Protection Agency (EPA) has delegated NPDES permitting authority to the Washington State Department of Ecology (DOE). Washington water pollution laws also regulate the discharge of pollutants to state waters or to the ground.

Storm sewers are defined as point sources subject to NPDES requirements under the CWA. Phase I of the NPDES municipal separate storm sewer system (MS4s) permit program regulates cities and counties exceeding a population of 100,000 and currently applies to six local governments in Washington (Seattle, Tacoma, and portions of Clark, Pierce, King, and Snohomish Counties). Phase I also applies to Washington State Department of Transportation facilities within those jurisdictions, certain industries, and construction sites covering five or more acres. Over the past 13 years, these municipalities have developed and implemented Phase I storm water management programs.

Federal rules for Phase II storm water regulation were adopted in 1999. Over 100 counties and cities across the state will be required to apply for Phase II permits, which will also be required where construction sites will disturb between one and five acres. Entities subject to Phase II requirements, which includes most MS4 systems located within "census defined urbanized areas," must apply for an NPDES permit by March 2003. To date, permitting

requirements and procedures have not been established, though DOE has developed an MS4 Phase II permit application. Phase II programs are to be fully implemented by March, 2008.

DOE establishes annual fees to cover federal and state discharge permit expenses.

**Summary of Substitute Bill:** A legislative intent section provides direction to the Department of Ecology (DOE) regarding Phase II, establishes a stakeholder draft permit process for western Washington Phase II permit development, and recognizes the existing eastern Washington process for Phase II permits in that area.

Language from the federal NPDES minimum requirements is included. Maximum extent practicable (MEP) is defined as the use of technically sound and financially responsible nonnumeric criteria to reduce storm water discharges through the implementation of best management practices.

A western Washington permit development advisory group is established, and group membership is identified. The group is required to address certain issues and assist DOE in drafting permits for western Washington. DOE is directed to use the eastern Washington advisory group for advice on the list of issues and for assistance in drafting permits for eastern Washington.

The advisory groups are required to make recommendations and report to the Legislature within nine months of the legislation's effective date. This includes recommendations to the Legislature regarding whether permit elements that would exceed federal requirements are feasible, necessary and cost-effective. The advisory group sections and the reporting requirements section expire on June 30, 2005. Emergency and severability clauses are added.

**Substitute Bill Compared to Original Bill:** The substitute bill establishes permit drafting advisory groups for eastern and western Washington and directs these groups to consider a list of issues and report recommendations to the Legislature, including recommendations on the feasibility, necessity and cost-effectiveness of permit elements that exceed federal requirements. This replaces the original bill's provisions that included: a presumption of compliance with water quality standards when best management practices are utilized to the maximum extent practicable, a prohibition against DOE imposition of requirements that exceed federal CWA requirements, limited liability protections for municipalities, and a process for watershed based permits. Also, under the original bill DOE could not impose fees or require program documentation with the initial application.

**Appropriation:** None.

**Fiscal Note:** Available on original bill.

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

**Testimony For:** Original bill: NPDES permits can be prohibitively expensive. We need to give cities and counties a break from unfunded mandates. Cities and counties have no money to help us put these programs together. It is not appropriate to make cash strapped jurisdictions go beyond the federal requirements when they clearly can't afford it. APA provisions require the benefits to outweigh the costs.

**Testimony Against:** Original bill: Storm water is the leading cause of water pollution in urban areas. One-third of polluted water bodies have storm water as a significant pollution source. Shellfish growers need output based regulations that assure clean water so growing areas will be protected. It is not appropriate to make federal minimums a ceiling. Oil and grease off of roads and pesticides off of lawns end up in the storm sewer system, and result in toxicity in our water bodies. It appears that the bill will shift costs that should be born by phase IIs onto phase I businesses and jurisdictions. This bill does not create a TMDL compliant storm water program when 303d listed water bodies are involved. Monitoring needs to be utilized. The only fair way to go is with fees. A stakeholder process is needed to sort out issues. Now you understand why phase I entities have been arguing with DOE the past ten years.

**Testified:** Megan White, Dept. of Ecology (concerns); Robin Downey, Pacific Coast Shellfish Growers Association (concerns); Sue Joerger, Puget Sound Keeper Alliance (con); Bruce Wishart, People for Puget Sound (con); Dennis Ritter, City of Lacey (pro); Bruce Wulkan, Puget Sound Action Team (pro w/changes); Daryl Grigsby, King County (pro w/changes); Dave Williams, AWC (pro); Melvin Oleson, Boeing (con); Tim Ramsaur, Pierce County (con); Grant Nelson, AWB (con); Paul Parker, WA St. Assn. of Counties (pro); Willy O'Neil, AGC (concerns).