SENATE BILL REPORT
ESSB 6415

As Passed Senate, February 16, 2004

Title: An act relating to conditioning industrial and construction storm water general discharge permits.

Brief Description: Concerning the conditioning of industrial and construction storm water general discharge permits.

Sponsors: Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton, Doumit, Hewitt, Hargrove, Honeyford, T. Sheldon, Hale, Murray and Stevens).

Brief History:
Committee Activity: Natural Resources, Energy & Water: 1/30/04, 2/5/04 [DPS-WM, DNP].
Passed Senate: 2/16/04, 33-13.

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 6415 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: Do not pass.
Signed by Senators Fraser and Regala.

Staff: Evan Sheffels (786-7486)

Background: A combination of federal, state, and local laws govern storm water management in Washington. The water quality implications of storm water runoff are addressed in the federal Clean Water Act. State water pollution control statutes also regulate water quality aspects of storm water management.

As required under the Clean Water Act, the U.S. Environmental Protection Agency developed Phase I of the NPDES (National Pollution Discharge Elimination System) Storm Water Program in 1990. In addition to large municipal storm water systems, the Phase I program requires certain categories of industrial activity and construction activity that disturbs more than five acres to obtain permits. The Phase II Final Rule extended NPDES permit requirements to construction activity disturbing between one and five acres.

In addition to NPDES permit responsibilities, the Department of Ecology (DOE) administers a state program regulating discharges from certain commercial or industrial operations to ground or to publicly-owned treatment plants. Washington statute requires all pollution dischargers to use all known, available, and reasonable treatment methods to prevent and

control water pollution. Annual permit fees must be established to fully recover but not exceed permit program expenses, including permit processing, monitoring, compliance, evaluation, inspection, and overhead costs.

Though a number of legal disputes surrounding these permit requirements have recently been settled or dismissed, at least three major issues--regarding compliance schedules, mixing zones and permit modifications--remain under appeal in the courts.

Summary of Bill: General (industrial and construction) storm water permittees are given a presumption of compliance with water quality standards if they comply with narrative effluent standards designed to satisfy federal Clean Water Act requirements and if they comply with on-site pollution control best management practices (BMPs), as indicated in approved manuals. A site inspection demonstrating a lack of compliance removes the presumption of compliance.

Numeric discharge limits may only be applied when general storm water discharges are subject to certain industry-specific or completed TMDL-based standards, or when Ecology has determined--with notice and after accounting for existing pollution controls, variability, and mixing or dilution in receiving waters--that a reasonable potential to cause or contribute to a violation of water quality standards exists, and nonnumeric BMPs will not be effective in achieving state water quality standards. Where a reasonable potential to cause or contribute to a violation of applicable water quality standards determination is made, the permittee must take, and document, all necessary actions to ensure compliance in the future.

Inspection and technical assistance procedures are established. Receiving water sampling may not be a permit requirement unless it can be conducted without endangering permittee employee health and safety. The act expires January 1, 2015. The act is null and void without funding.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Storm water administration should be effective, efficient, enforceable, and legally binding. PCHB decisions in Washington have resulted in the most restrictive general storm water permits in the nation. Taking a few samples from highly variable storm water is not a good way to indicate true water quality threats. To a large extent the substitute bill is based on EPA's own Sector General Permit for Industrial Storm Water. This is an attempt to provide the state policy guidance on misunderstood issues. The intent is to be consistent with EPA requirements.

Testimony Against: The state must be able to enforce based on water quality standards, in addition to end of pipe performance. The substitute does not appear to meet minimum federal standards. The substitute's language is broad, vague, and ill-defined. Settlement on these issues is the preferred approach. Concerned about process for compliance timelines and requirements that Ecology set discharge standards equivalent to current discharge. Concerned that this might shift liability burdens onto municipalities with MS4 storm water requirements.

Testified: PRO: Grant Nelson, Assn. WA Business; Mel Oleson, Boeing; Kris Holm, Water Resources NW; Ken Johnson, Weyerhaeuser; Llewellyn Matthews, NW Pulp and Paper Assn.; Ed Thorpe, Coalition for Clean Water (pro w/comments); Gary Smith, Ind. Bus. Assn. (on substitute); CON: Tom Eaton, EPA; Dick Wallace, WA Ecology; Bill Taylor, Pacific Coast Shellfish Growers' Assn.; Bruce Wishart, People For Puget Sound; Sue Joerger, Puget Soundkeeper Alliance; Loren Stern, DNR (concerns); Paul Parker, WA St. Assn. of Counties (comments).

House Amendment(s): In accordance with federal Clean Water Act requirements, DOE is required to include pollutant specific, water quality-based effluent limitations in construction and industrial storm water general permits if there is a reasonable potential to cause or contribute to a state water quality standard excursion. Both technological and water quality-based effluent limitations may be expressed in terms that are narrative or numerical, or a combination of both. General permits must include specified adaptive management mechanisms.

A preference for the use of narrative effluent limitations is established and conditioned. General storm water permittees are given a presumption of compliance with water quality standards if they meet all permit conditions and fully implement all applicable on-site pollution control best management practices (BMPs) as contained in, or demonstrably equivalent to practices contained in, DOE approved technical manuals. Demonstrated site specific discharge violations remove the presumption of compliance.

Numeric limits apply when specified effluent discharges are subject to certain industry-specific limitations, to limitations based on a completed total maximum daily load analysis (or other pollution control measure), or to limitations based on a DOE determination that a reasonable potential to cause or contribute to a violation of water quality standards exists and nonnumeric BMPs will not be effective in achieving state water quality standards. For existing discharges to 303(d) impaired waters, DOE must provide a report to the Legislature (by September 2008) specifying how the department will implement general industrial storm water permit modifications (that must be made by May of 2009) to require permittee compliance with numeric effluent limitations.

DOE must conduct compliance inspections and sampling, without notice whenever practicable. DOE may provide notice that a permittee's discharge causes or has the reasonable potential to cause or contribute to a water quality standard violation. A permittee issued such notice must take, and document, all actions necessary to ensure that future discharges do not cause or contribute to such a violation. DOE may terminate coverage under a general permit and issue an alternative permit when violations recur or remain. Enforcement under the federal Clean Water Act for the underlying violation is not precluded.

Follow-up inspections are to be conducted based on specified criteria and timelines. The department is directed to take additional actions necessary to ensure compliance with state and federal water quality requirements, though this is not to be construed to limit the department's enforcement discretion. DOE must report to the Legislature on the effectiveness of permit monitoring.

DOE may only authorize mixing zones that comply with applicable laws and regulations. Receiving water sampling may only be a permit requirement if it can be conducted without endangering the health and safety of permittee employees.

In accordance with the Administrative Procedure Act, and after taking specified factors into account, DOE is authorized to establish general industrial and construction storm water permit fees to fund specified activities required by statute. DOE must issue a detailed biennial accounting related to such permit fees. The act expires January 1, 2015. The act is null and void without funding.