
ENGROSSED SUBSTITUTE SENATE BILL 6415

State of Washington

58th Legislature

2004 Regular Session

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

READ FIRST TIME 02/09/04.

1 AN ACT Relating to conditioning industrial and construction storm
2 water general discharge permits; adding new sections to chapter 90.48
3 RCW; creating new sections; and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the federal
6 permit program under the federal clean water act and the state water
7 pollution control laws provide numerous environmental and public health
8 benefits to the citizens of Washington and to the state. Failure to
9 prevent and control pollution discharges, including those associated
10 with storm water runoff, can damage the public health and industries
11 dependent on clean water such as shellfish production.

12 (2) The legislature finds the nature of storm water presents unique
13 challenges and difficulties in meeting the permitting requirements
14 under the federal clean water act, including compliance with technology
15 and water quality-based standards.

16 (3) The legislature finds that the federal clean water act requires
17 certain larger construction sites and industrial facilities to obtain
18 storm water permits under the national pollutant discharge elimination

1 system permit program. The legislature also finds that under phase two
2 of this program, smaller construction sites are also required to obtain
3 storm water permits for their discharges.

4 (4) The legislature finds the department of ecology has been using
5 general permits to permit categories of similar dischargers, including
6 storm water associated with industrial and construction activities.
7 The legislature finds general permits must comply with all applicable
8 requirements of the federal clean water act and the state water
9 pollution control act including technology and water quality-based
10 permitting requirements. The legislature further finds general permits
11 may not always be the best solution for an individual discharger,
12 especially when establishing water quality-based permitting
13 requirements.

14 (5) The legislature finds that where sources within a specific
15 category or subcategory of dischargers are subject to water
16 quality-based requirements imposed under the federal clean water act,
17 the sources in that specific category or subcategory must be subject to
18 the same water quality-based requirements.

19 (6) For this reason, the legislature encourages, to the extent
20 allowed under existing state and federal law, an adaptive management
21 approach to permitting storm water discharges.

22 (7) The legislature further finds that storm water management must
23 satisfy state and federal water quality requirements while also
24 providing for flexibility in meeting such requirement to help ensure
25 cost-effective storm water management.

26 (8) The legislature declares that general permits can be an
27 effective and efficient permitting mechanism for permitting large
28 numbers of similar dischargers.

29 (9) The legislature further declares that an inspection and
30 technical assistance program for industrial and construction storm
31 water general permits is needed to ensure an effective permitting
32 program. Such a program should be fully funded to ensure its success.

33 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48 RCW
34 to read as follows:

35 (1) Effluent limitations shall be included in construction and
36 industrial storm water general permits as required under the federal
37 clean water act and implementing regulations. In accordance with

1 federal clean water act requirements, effluent limitations must be
2 included in construction and industrial storm water general permits if
3 there is a reasonable potential to cause or contribute to an excursion
4 of a state water quality standard.

5 (2) Subject to the provisions of this section, effluent limitations
6 may be expressed as (a) numeric effluent limitations; (b) narrative
7 effluent limitations; or (c) a combination of numeric and narrative
8 effluent discharge limitations.

9 (3) The department may only condition storm water general permits
10 for industrial and construction activities issued under the national
11 pollutant discharge elimination system of the federal clean water act
12 to require compliance with numeric effluent discharge limits when such
13 discharges are subject to:

14 (a) Numeric effluent limitations established in federally adopted,
15 industry-specific effluent guidelines;

16 (b) State developed, industry-specific performance-based numeric
17 effluent limitations;

18 (c) Numeric effluent limitations based on a completed total maximum
19 daily load analysis or other pollution control measures; or

20 (d) A determination by the department that the discharges covered
21 under either the construction or industrial storm water general permits
22 have (i) a reasonable potential to cause or contribute to violation of
23 state water quality standards; and (ii) a determination by the
24 department that effluent limitations based on nonnumeric best
25 management practices are not effective in achieving compliance with
26 state water quality standards.

27 (4) In making a determination under subsection (3)(d) of this
28 section, the department shall use procedures that account for (a)
29 existing controls on point and nonpoint sources of pollution; (b) the
30 variability of the pollutant or pollutant parameter in the storm water
31 runoff; and (c) as appropriate, the dilution of the storm water in the
32 receiving waters.

33 (5) Narrative effluent limitations requiring the implementation of
34 best management practices, when designed to satisfy technology and
35 water quality-based requirements of the federal clean water act, shall
36 be used for construction and industrial storm water general permits,
37 unless the provisions of subsection (3) of this section apply.

1 (6) Compliance with water quality standards shall be presumed,
2 unless site specific information demonstrates otherwise, when the
3 permittee is:

4 (a) In compliance with permit conditions for planning, sampling,
5 monitoring, reporting, and recordkeeping; and

6 (b) Following storm water management practices, or practices that
7 are demonstrably equivalent to practices contained in storm water
8 technical manuals approved by the department, including the proper
9 selection, implementation, and maintenance of appropriate best
10 management practices for on-site pollution control.

11 (7) Existing discharges to receiving waters listed under section
12 303(d) of the federal clean water act shall be conditioned on an
13 interim effluent discharge limit based on compliance with all
14 requirements of a permit including implementation of best management
15 practices for a period of ten years or until a completed total maximum
16 daily load is adopted by the department, whichever is earlier.

17 (8) Permittees covered under the construction and industrial storm
18 water general permits must not cause or have the reasonable potential
19 to cause or contribute to a violation of an applicable water quality
20 standard. Where a discharge has already been authorized under a
21 national pollutant discharge elimination system storm water permit and
22 it is later determined to cause or have the reasonable potential to
23 cause or contribute to the violation of an applicable water quality
24 standard, the department must notify the permittee of such a violation.

25 (9) Once notified by the department that a determination of
26 reasonable potential to cause or contribute to the violation of an
27 applicable water quality standard, the permittee must take all
28 necessary actions to ensure future discharges do not cause or
29 contribute to the violation of a water quality standard and document
30 those actions in the storm water pollution prevention plan.

31 (10) Receiving water sampling shall not be a requirement of an
32 industrial or construction storm water general permit unless it can be
33 conducted without endangering the health and safety of a permittee and
34 its employees.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.48 RCW
36 to read as follows:

1 (1) By January 1, 2005, the department shall initiate an inspection
2 program of all permittees covered under the construction and industrial
3 storm water general permits. The purpose of the inspections is to:

4 (a) Provide technical assistance and survey for evidence of permit
5 violations;

6 (b) Identify corrective actions for actual or imminent discharges
7 that violate or could violate the state's water quality standards;

8 (c) Monitor the development and implementation of storm water
9 pollution prevention plans; and

10 (d) Identify dischargers who would benefit from follow-up technical
11 assistance programs.

12 (2) Follow-up inspections shall be conducted by the department to
13 ensure that corrective and other actions as identified in the course of
14 initial inspections are being carried out. The department shall also
15 conduct such additional inspections as are necessary to ensure
16 compliance with state and federal water quality requirements, provided
17 that all permittees must be inspected once within two years of the
18 start of this program.

19 (3) Permittees must be prioritized for inspection based on the
20 development of criteria that include, but are not limited to, the
21 following factors:

22 (a) Historical compliance history, including submittal or
23 nonsubmittal of discharge monitoring reports;

24 (b) Monitoring results in relationship to permit benchmarks; and

25 (c) Discharge to impaired waters of the state.

26 NEW SECTION. **Sec. 4.** If any portion of sections 2 and 3 of this
27 act are found to be in conflict with the federal clean water act, that
28 portion alone is void.

29 NEW SECTION. **Sec. 5.** This act expires January 1, 2015.

30 NEW SECTION. **Sec. 6.** If specific funding for the purposes of this
31 act, referencing this act by bill or chapter number, is not provided by
32 June 30, 2004, in the omnibus appropriations act, this act is null and
33 void.

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