
HOUSE BILL 2858

State of Washington

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By Representatives B. Sullivan and Buck

Read first time 01/16/2006. Referred to Committee on Economic Development, Agriculture & Trade.

1 AN ACT Relating to storm water discharges; amending RCW 90.48.260
2 and 90.48.555; adding a new section to chapter 90.48 RCW; and providing
3 an expiration date.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48 RCW
6 to read as follows:

7 (1) For storm water discharges associated with small construction
8 activity as identified in 40 C.F.R. 122.26(b)(15), the department may
9 include conditions that incorporate by reference qualified local
10 erosion and sediment control program requirements in construction storm
11 water general permits. A qualified local erosion and sediment control
12 program, at a minimum, must require construction site operators to:

13 (a) Implement appropriate erosion and sediment control best
14 management practices;

15 (b) Control at the construction site waste that may cause adverse
16 impacts to water quality, such as discarded building materials,
17 concrete truck washout, chemicals, litter, and sanitary waste;

18 (c) Develop and implement a storm water pollution prevention plan;
19 and

1 (d) Submit for review and approval by the qualified local program
2 a site plan that incorporates consideration of potential water quality
3 impacts.

4 (2) By December 1, 2006, the department shall publish an
5 interpretive or policy statement in the Washington State Register that
6 establishes the procedures and minimum requirements for recognition of
7 qualified local erosion and sediment control programs. Prior to the
8 publication of the interpretive or policy statement in the Washington
9 State Register, the department shall provide opportunity for public
10 review and comment on the proposed criteria and procedures for
11 qualified local erosion and sediment control programs.

12 (3)(a) A local government may apply in writing to the department to
13 be recognized as administering a qualified local erosion and sediment
14 control program. The department shall review and determine whether the
15 local erosion and sediment control program is operated and conducted in
16 a manner consistent with the minimum requirements for local erosion and
17 sediment control programs.

18 (b) If the department determines that the local erosion and
19 sediment control program is operated and conducted in a manner
20 consistent with the minimum requirements for local erosion and sediment
21 control programs, the department shall approve or approve with
22 conditions the local program as a qualified local program under this
23 section and incorporate the approved program by reference in the
24 department's construction storm water general permit.

25 (c) If the department determines that the local erosion and
26 sediment control program is not operated and conducted in a manner
27 consistent with the minimum requirements for local erosion and sediment
28 control programs, it may not approve the local program as a qualified
29 local program under this section.

30 (d)(i) The department may revoke recognition of a qualified local
31 erosion and sediment control program if the department determines the
32 local erosion and sediment control program is not implemented in a
33 manner consistent with the minimum requirements established by the
34 department for qualified local erosion and sediment control programs.

35 (ii) If the department revokes recognition of a qualified local
36 erosion and sediment control program, the local program shall
37 immediately notify all construction sites covered by the local erosion
38 and sediment control program that the local program has been revoked

1 and that the construction site must comply with all applicable
2 provisions of the department's construction storm water general permit
3 and must pay permit fees pursuant to RCW 90.48.465.

4 (4) A qualified local erosion and sediment control program shall
5 provide an opportunity for public review and comment of at least thirty
6 days on an application by a construction site operator for approval by
7 the qualified local program. The program may combine the public review
8 and comment period with other public review and comment periods
9 provided by the local government.

10 (5) The following actions under this section are appealable to the
11 pollution control hearings board under chapter 43.21B RCW:

12 (a) The department's decision to approve or approve with conditions
13 and incorporate a qualified local erosion and sediment control program
14 into the department's construction storm water general permit;

15 (b) The department's decision to deny approval of a local erosion
16 and sediment control program under this section;

17 (c) The department's determination of whether the minimum
18 requirements of a qualified local erosion and sediment control program
19 meet applicable requirements of the federal clean water act;

20 (d) The department's decision to revoke a qualified local erosion
21 and sediment control program; and

22 (e) The qualified local program's decision to approve, condition,
23 or deny an application by a construction site operator.

24 (6) The provisions of RCW 90.48.170 and 90.48.465 are not
25 applicable to a construction site operator with storm water discharges
26 associated with small construction activity as identified in 40 C.F.R.
27 122.26(b)(15) and that are located in areas with qualified local
28 erosion and sediment control programs if the construction site operator
29 is in full compliance with the requirements of a qualified local
30 erosion and sediment control program approved by the department.

31 **Sec. 2.** RCW 90.48.260 and 2003 c 325 s 7 are each amended to read
32 as follows:

33 The department of ecology is hereby designated as the State Water
34 Pollution Control Agency for all purposes of the federal clean water
35 act as it exists on February 4, 1987, and is hereby authorized to
36 participate fully in the programs of the act as well as to take all
37 action necessary to secure to the state the benefits and to meet the

1 requirements of that act. With regard to the national estuary program
2 established by section 320 of that act, the department shall exercise
3 its responsibility jointly with the Puget Sound (~~water quality~~
4 ~~authority~~) action team. The department of ecology may delegate its
5 authority under this chapter, including its national pollutant
6 discharge elimination permit system authority and duties regarding
7 animal feeding operations and concentrated animal feeding operations,
8 to the department of agriculture through a memorandum of understanding.
9 Until any such delegation receives federal approval, the department of
10 agriculture's adoption or issuance of animal feeding operation and
11 concentrated animal feeding operation rules, permits, programs, and
12 directives pertaining to water quality shall be accomplished after
13 reaching agreement with the director of the department of ecology.
14 Adoption or issuance and implementation shall be accomplished so that
15 compliance with such animal feeding operation and concentrated animal
16 feeding operation rules, permits, programs, and directives will achieve
17 compliance with all federal and state water pollution control laws.
18 The powers granted herein include, among others, and notwithstanding
19 any other provisions of chapter 90.48 RCW or otherwise, the following:

20 (1) Complete authority to establish and administer a comprehensive
21 state point source waste discharge or pollution discharge elimination
22 permit program which will enable the department to qualify for full
23 participation in any national waste discharge or pollution discharge
24 elimination permit system and will allow the department to be the sole
25 agency issuing permits required by such national system operating in
26 the state of Washington subject to the provisions of RCW 90.48.262(2)
27 and section 1 of this act. Program elements authorized herein may
28 include, but are not limited to: (a) Effluent treatment and limitation
29 requirements together with timing requirements related thereto; (b)
30 applicable receiving water quality standards requirements; (c)
31 requirements of standards of performance for new sources; (d)
32 pretreatment requirements; (e) termination and modification of permits
33 for cause; (f) requirements for public notices and opportunities for
34 public hearings; (g) appropriate relationships with the secretary of
35 the army in the administration of his responsibilities which relate to
36 anchorage and navigation, with the administrator of the environmental
37 protection agency in the performance of his duties, and with other
38 governmental officials under the federal clean water act; (h)

1 requirements for inspection, monitoring, entry, and reporting; (i)
2 enforcement of the program through penalties, emergency powers, and
3 criminal sanctions; (j) a continuing planning process; and (k) user
4 charges.

5 (2) The power to establish and administer state programs in a
6 manner which will (~~insure~~) ensure the procurement of moneys, whether
7 in the form of grants, loans, or otherwise; to assist in the
8 construction, operation, and maintenance of various water pollution
9 control facilities and works; and the administering of various state
10 water pollution control management, regulatory, and enforcement
11 programs.

12 (3) The power to develop and implement appropriate programs
13 pertaining to continuing planning processes, area-wide waste treatment
14 management plans, and basin planning.

15 The governor shall have authority to perform those actions required
16 of him or her by the federal clean water act.

17 **Sec. 3.** RCW 90.48.555 and 2004 c 225 s 2 are each amended to read
18 as follows:

19 The provisions of this section apply to the construction and
20 industrial storm water general permits issued by the department and to
21 construction permits issued by a qualified local program pursuant to
22 the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and this
23 chapter.

24 (1) Effluent limitations shall be included in construction and
25 industrial storm water general permits and in construction permits
26 issued by a qualified local program as required under the federal clean
27 water act, 33 U.S.C. Sec. 1251 et seq., and its implementing
28 regulations. In accordance with federal clean water act requirements,
29 pollutant specific, water quality-based effluent limitations shall be
30 included in construction and industrial storm water general permits and
31 in construction permits issued by a qualified local program if there is
32 a reasonable potential to cause or contribute to an excursion of a
33 state water quality standard.

34 (2) Subject to the provisions of this section, both technology and
35 water quality-based effluent limitations may be expressed as:

- 36 (a) Numeric effluent limitations;
- 37 (b) Narrative effluent limitations; or

1 (c) A combination of numeric and narrative effluent discharge
2 limitations.

3 (3) The department must condition storm water general permits for
4 industrial and construction activities issued under the national
5 pollutant discharge elimination system of the federal clean water act
6 and a qualified local program must condition construction permits to
7 require compliance with numeric effluent discharge limits when such
8 discharges are subject to:

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

11 (b) State developed, industry-specific performance-based numeric
12 effluent limitations;

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

15 (d) A determination by the department or a qualified local program
16 that:

17 (i) The discharges covered under either the construction or
18 industrial storm water general permits or a construction permit issued
19 by a qualified local program have a reasonable potential to cause or
20 contribute to violation of state water quality standards; and

21 (ii) Effluent limitations based on nonnumeric best management
22 practices are not effective in achieving compliance with state water
23 quality standards.

24 (4) In making a determination under subsection (3)(d) of this
25 section, the department or a qualified local program shall use
26 procedures that account for:

27 (a) Existing controls on point and nonpoint sources of pollution;

28 (b) The variability of the pollutant or pollutant parameter in the
29 storm water discharge; and

30 (c) As appropriate, the dilution of the storm water in the
31 receiving waters.

32 (5) Narrative effluent limitations requiring both the
33 implementation of best management practices, when designed to satisfy
34 the technology and water quality-based requirements of the federal
35 clean water act, 33 U.S.C. Sec. 1251 et seq., and compliance with water
36 quality standards, shall be used for construction and industrial storm
37 water general permits and for construction permits issued by a

1 qualified local program, unless the provisions of subsection (3) of
2 this section apply.

3 (6) Compliance with water quality standards shall be presumed,
4 unless discharge monitoring data or other site specific information
5 demonstrates that a discharge causes or contributes to violation of
6 water quality standards, when the permittee is:

7 (a) In full compliance with all permit conditions, including
8 planning, sampling, monitoring, reporting, and recordkeeping
9 conditions; and

10 (b)(i) Fully implementing storm water best management practices
11 contained in storm water technical manuals approved by the department
12 or a qualified local program, or practices that are demonstrably
13 equivalent to practices contained in storm water technical manuals
14 approved by the department or the qualified local program, including
15 the proper selection, implementation, and maintenance of all applicable
16 and appropriate best management practices for on-site pollution
17 control.

18 (ii) For the purposes of this section, "demonstrably equivalent"
19 means that the technical basis for the selection of all storm water
20 best management practices are documented within a storm water pollution
21 prevention plan. The storm water pollution prevention plan must
22 document:

23 (A) The method and reasons for choosing the storm water best
24 management practices selected;

25 (B) The pollutant removal performance expected from the practices
26 selected;

27 (C) The technical basis supporting the performance claims for the
28 practices selected, including any available existing data concerning
29 field performance of the practices selected;

30 (D) An assessment of how the selected practices will comply with
31 state water quality standards; and

32 (E) An assessment of how the selected practices will satisfy both
33 applicable federal technology-based treatment requirements and state
34 requirements to use all known, available, and reasonable methods of
35 prevention, control, and treatment.

36 (7)(a) The department shall modify the industrial storm water
37 general permit to require compliance by May 1, 2009, with appropriately
38 derived numeric water quality-based effluent limitations for existing

1 discharges to water bodies listed as impaired according to 33 U.S.C.
2 Sec. 1313(d) (Sec. 303(d) of the federal clean water act, 33 U.S.C.
3 Sec. 1251 et seq.).

4 (b) No later than September 1, 2008, the department shall report to
5 the appropriate committees of the legislature specifying how the
6 numeric effluent limitation in (a) of this subsection would be
7 implemented. The report shall identify the number of dischargers to
8 impaired water bodies and provide an assessment of anticipated
9 compliance with the numeric effluent limitation established by (a) of
10 this subsection.

11 (8)(a) Construction and industrial storm water general permits
12 issued by the department and construction permits issued by a qualified
13 local program shall include an enforceable adaptive management
14 mechanism that includes appropriate monitoring, evaluation, and
15 reporting. The adaptive management mechanism shall include elements
16 designed to result in permit compliance and shall include, at a
17 minimum, the following elements:

18 (i) An adaptive management indicator, such as monitoring
19 benchmarks;

20 (ii) Monitoring;

21 (iii) Review and revisions to the storm water pollution prevention
22 plan;

23 (iv) Documentation of remedial actions taken; and

24 (v) Reporting to the department or the qualified local program, as
25 appropriate.

26 (b) Construction and industrial storm water general permits issued
27 by the department and construction permits issued by a qualified local
28 program also shall include the timing and mechanisms for implementation
29 of treatment best management practices.

30 (9) Construction and industrial storm water discharges authorized
31 under general permits or under construction permits issued by a
32 qualified local program must not cause or have the reasonable potential
33 to cause or contribute to a violation of an applicable water quality
34 standard. Where a discharge has already been authorized under a
35 national pollutant discharge elimination system storm water permit and
36 it is later determined to cause or have the reasonable potential to
37 cause or contribute to the violation of an applicable water quality

1 standard, the department or qualified local program may notify the
2 permittee of such a violation.

3 (10) Once notified by the department or qualified local program of
4 a determination of reasonable potential to cause or contribute to the
5 violation of an applicable water quality standard, the permittee must
6 take all necessary actions to ensure future discharges do not cause or
7 contribute to the violation of a water quality standard and document
8 those actions in the storm water pollution prevention plan and a report
9 timely submitted to the department or qualified local program. If
10 violations remain or recur, coverage under the construction or
11 industrial storm water general permits may be terminated by the
12 department, and an alternative general permit or individual permit may
13 be issued. Compliance with the requirements of this subsection does
14 not preclude any enforcement activity provided by the federal clean
15 water act, 33 U.S.C. Sec. 1251 et seq., for the underlying violation.

16 (11) Receiving water sampling shall not be a requirement of an
17 industrial or construction storm water general permit except to the
18 extent that it can be conducted without endangering the health and
19 safety of persons conducting the sampling.

20 (12) The department may authorize mixing zones only in compliance
21 with and after making determinations mandated by the procedural and
22 substantive requirements of applicable laws and regulations.

23 NEW SECTION. **Sec. 4.** Section 3 of this act expires January 1,
24 2015.

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