

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 2222

Chapter 449, Laws of 2009

61st Legislature
2009 Regular Session

INDUSTRIAL STORM WATER GENERAL DISCHARGE PERMITS

EFFECTIVE DATE: 07/26/09

Passed by the House April 20, 2009
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 14, 2009
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 11, 2009, 3:05 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2222** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 11, 2009

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2222

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake, Kretz, Short, Eddy, Smith, Takko, Hinkle, Hudgins, Springer, Herrera, Morris, Warnick, Williams, and Chandler)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to conditioning industrial storm water general
2 discharge permits; amending RCW 90.48.555; adding a new section to
3 chapter 90.48 RCW; and providing an expiration date.

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

5 **Sec. 1.** RCW 90.48.555 and 2004 c 225 s 2 are each amended to read
6 as follows:

7 The provisions of this section apply to the construction and
8 industrial storm water general permits issued by the department
9 pursuant to the federal clean water act, 33 U.S.C. Sec. 1251 et seq.,
10 and this chapter.

11 (1) Effluent limitations shall be included in construction and
12 industrial storm water general permits as required under the federal
13 clean water act, 33 U.S.C. Sec. 1251 et seq., and its implementing
14 regulations. In accordance with federal clean water act requirements,
15 pollutant specific, water quality-based effluent limitations shall be
16 included in construction and industrial storm water general permits if
17 there is a reasonable potential to cause or contribute to an excursion
18 of a state water quality standard.

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

3 (a) Numeric effluent limitations;

4 (b) Narrative effluent limitations; or

5 (c) A combination of numeric and narrative effluent discharge
6 limitations.

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

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

14 (b) State developed, industry-specific performance-based numeric
15 effluent limitations;

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

18 (d) A determination by the department that:

19 (i) The discharges covered under either the construction or
20 industrial storm water general permits have a reasonable potential to
21 cause or contribute to violation of state water quality standards; and

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

25 (4) In making a determination under subsection (3)(d) of this
26 section, the department shall use 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, unless the provisions of subsection (3) of this
38 section apply.

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

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

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

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

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

21 (B) The pollutant removal performance expected from the practices
22 selected;

23 (C) The technical basis supporting the performance claims for the
24 practices selected, including any available existing data concerning
25 field performance of the practices selected;

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

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

32 (7)(a) By November 1, 2009, the department shall modify or reissue
33 the industrial storm water general permit to require compliance ((by
34 May 1, 2009,)) with appropriately derived numeric water quality-based
35 effluent limitations for existing discharges to water bodies listed as
36 impaired according to 33 U.S.C. Sec. 1313(d) (Sec. 303(d) of the
37 federal clean water act, 33 U.S.C. Sec. 1251 et seq.).

1 (b) ~~((No later than September 1, 2008,))~~ The industrial storm water
2 general permit must require permittees to comply with appropriately
3 derived numeric water quality-based effluent limitations in the permit,
4 as described in (a) of this subsection, by no later than six months
5 after the effective date of the modified or reissued industrial storm
6 water general permit.

7 (c) For permittees that the department determines are unable to
8 comply with the numeric water quality-based effluent limitations
9 required by (a) of this subsection, within the timeline established in
10 (b) of this subsection, the department shall establish a compliance
11 schedule as follows:

12 (i) Any compliance schedule provided by the department must require
13 compliance as soon as possible, and must require compliance by no later
14 than twenty-four months, or two complete wet seasons, after the
15 effective date of the industrial storm water general permit. For
16 purposes of this subsection (7)(c)(i), "wet seasons" means October 1st
17 through June 30th.

18 (ii) The department shall post on its web site the name, location,
19 industrial storm water permit number, and the reason for requesting a
20 compliance schedule for each permittee who requests a compliance
21 schedule according to this subsection (7)(c). The department shall
22 post this information no later than thirty days after receiving a
23 permittee's request for a compliance schedule under this subsection
24 (7)(c). The department shall also prepare a list of organizations and
25 individuals seeking to be notified when such requests for compliance
26 schedules are made, and notify them within thirty days after receiving
27 a permittee's request for a compliance schedule. Notification under
28 this subsection may be accomplished electronically.

29 (d) The department shall report to the appropriate committees of
30 the legislature specifying how the numeric effluent limitation in (a)
31 of this subsection would be implemented. The report shall identify the
32 number of dischargers to impaired water bodies and provide an
33 assessment of anticipated compliance with the numeric effluent
34 limitation established by (a) of this subsection.

35 (8)(a) Construction and industrial storm water general permits
36 issued by the department shall include an enforceable adaptive
37 management mechanism that includes appropriate monitoring, evaluation,

1 and reporting. The adaptive management mechanism shall include
2 elements designed to result in permit compliance and shall include, at
3 a minimum, the following elements:

4 (i) An adaptive management indicator, such as monitoring
5 benchmarks;

6 (ii) Monitoring;

7 (iii) Review and revisions to the storm water pollution prevention
8 plan;

9 (iv) Documentation of remedial actions taken; and

10 (v) Reporting to the department.

11 (b) Construction and industrial storm water general permits issued
12 by the department also shall include the timing and mechanisms for
13 implementation of treatment best management practices.

14 (9) Construction and industrial storm water discharges authorized
15 under general permits must not cause or have the reasonable potential
16 to cause or contribute to a violation of an applicable water quality
17 standard. Where a discharge has already been authorized under a
18 national pollutant discharge elimination system storm water permit and
19 it is later determined to cause or have the reasonable potential to
20 cause or contribute to the violation of an applicable water quality
21 standard, the department may notify the permittee of such a violation.

22 (10) Once notified by the department of a determination of
23 reasonable potential to cause or contribute to the violation of an
24 applicable water quality standard, the permittee must take all
25 necessary actions to ensure future discharges do not cause or
26 contribute to the violation of a water quality standard and document
27 those actions in the storm water pollution prevention plan and a report
28 timely submitted to the department. If violations remain or recur,
29 coverage under the construction or industrial storm water general
30 permits may be terminated by the department, and an alternative general
31 permit or individual permit may be issued. Compliance with the
32 requirements of this subsection does not preclude any enforcement
33 activity provided by the federal clean water act, 33 U.S.C. Sec. 1251
34 et seq., for the underlying violation.

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

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

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

6 (1) As funding to do so becomes available, the department shall
7 create a storm water technical resource center in partnership with a
8 university, nonprofit organization, or other public or private entity
9 to provide tools for storm water management. The center shall use its
10 authority to support the duties listed in this subsection through
11 research, development, technology demonstration, technology transfer,
12 education, outreach, recognition, and training programs. The center
13 may:

14 (a) Review and evaluate emerging storm water technologies;

15 (b) Research and develop innovative and cost-effective technical
16 solutions to remove pollutants from runoff and to reduce or eliminate
17 storm water discharges;

18 (c) Conduct pilot projects to test technical solutions;

19 (d) Serve as a clearinghouse and outreach center for information on
20 storm water technology;

21 (e) Assist in the development of storm water control methods to
22 better protect water quality, including source control, product
23 substitution, pollution prevention, and storm water treatment;

24 (f) Coordinate with federal, state, and local agencies and private
25 organizations in administering programs related to storm water control
26 measures; and

27 (g) Collaborate with existing storm water outreach programs.

28 (2) The department shall consult with an advisory committee in the
29 development of the storm water technical resource center. The advisory
30 committee must include representatives from relevant state agencies,
31 local governments, the business community, the environmental community,
32 tribes, and the building and development industry.

33 (3) The department, in consultation with the storm water technical
34 resource center advisory committee, shall identify a funding strategy
35 for funding the storm water technical resource center.

36 (4) The department shall encourage all interested parties to help
37 and support the technical resource center with in-kind services.

1 (5) The department shall prepare and submit a biennial progress
2 report to the legislature.

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

Passed by the House April 20, 2009.

Passed by the Senate April 14, 2009.

Approved by the Governor May 11, 2009.

Filed in Office of Secretary of State May 11, 2009.