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HOUSE BILL 1937

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State of Washington

69th Legislature

2025 Regular Session

By Representative Fey

Read first time 02/11/25. Referred to Committee on Environment & Energy.

1 AN ACT Relating to establishing a presumption of compliance for  
2 entities covered under the state's industrial stormwater general  
3 permit under certain circumstances; adding a new section to chapter  
4 90.48 RCW; creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) The department of ecology has the jurisdiction to control and  
8 prevent the pollution of streams, lakes, rivers, ponds, inland  
9 waters, salt waters, water courses, and other surface and underground  
10 waters of the state of Washington.

11 (b) The department of ecology's authority is derived from the  
12 federal clean water act as well as chapter 90.48 RCW.

13 (c) Prior legislation acknowledged that the federal clean water  
14 act (33 U.S.C. Sec. 1251 et seq.) requires certain larger industrial  
15 facilities to obtain stormwater permits under the national pollutant  
16 discharge elimination system permit program, and additionally, that  
17 the department of ecology continues to use general permits to permit  
18 categories of dischargers, including stormwater associated with  
19 industrial activities.

20 (d) In 2004, the legislature required the department of ecology  
21 to use an adaptive management approach to permitting stormwater

1 discharges. This approach was intended to satisfy state and federal  
2 water quality requirements while also providing for flexibility in  
3 meeting such requirements to help ensure cost-effective stormwater  
4 management. The department of ecology used adaptive management to  
5 meet state and federal requirements, adopting in the industrial  
6 stormwater general permit water quality-based effluent limits that  
7 require escalating levels of source control and treatment best  
8 management practices.

9 (e) The legislature, in former RCW 90.48.555, set out a  
10 presumption of compliance with water quality standards for  
11 dischargers under the construction and industrial stormwater general  
12 permits. This presumption was adopted after recognizing that the  
13 nature of stormwater presents unique challenges and difficulties in  
14 meeting the permitting requirements under the federal clean water act  
15 (33 U.S.C. Sec. 1251 et seq.) including compliance with technology  
16 and water quality-based standards.

17 (f) The presumption of compliance in the industrial stormwater  
18 general permit applies only to the department of ecology. As a  
19 consequence, a regulated entity is subject to third-party enforcement  
20 actions and litigation, even when a regulated entity has implemented  
21 the department of ecology's water quality-based adaptive management  
22 steps, obtained the department of ecology's approval of a treatment  
23 response, and entered an agreed order with the department of ecology.

24 (g) Stormwater sampling at marine transportation facilities can  
25 in some circumstances pose unique challenges. The department of  
26 ecology adopted a waiver mechanism in the industrial stormwater  
27 general permit to evaluate feasibility issues, including safety  
28 concerns, associated with sampling. The department of ecology has not  
29 developed standards for complete waiver applications or standards for  
30 granting waivers. Waiver approvals may be appealed and the permit's  
31 sampling requirement remains in effect in the absence of a valid  
32 permit modification.

33 (h) Regulated entities, and their employees, should not be  
34 coerced into performing potentially unsafe work due to the threat of  
35 litigation.

36 (2) It is the intent of the legislature to mitigate potential  
37 adverse impacts associated with the implementation of the updated  
38 industrial stormwater general permit. Those adverse impacts include,  
39 but are not limited to: The threat of third-party litigation, the  
40 health and safety of employees of regulated entities, and adverse

1 impacts on business competitiveness including the loss of jobs and  
2 tax revenue to competing states and counties. Furthermore, it is the  
3 intent of the legislature to ensure that regulated entities can focus  
4 their finite resources on reduction of environmental impact while  
5 participating in corrective actions as opposed to utilizing resources  
6 defending against enforcement actions.

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

9 (1) Compliance by industrial stormwater general permit holders  
10 with water quality standards shall be presumed, unless discharge  
11 monitoring data or other site-specific information demonstrates that  
12 a discharge causes or contributes to violation of water quality  
13 standards, when the permittee is:

14 (a) In full compliance with all permit conditions, including  
15 planning, sampling, monitoring, reporting, and recordkeeping  
16 conditions and associated deadlines; and

17 (b) Fully implementing stormwater best management practices  
18 contained in stormwater technical manuals approved by the department,  
19 or practices that are demonstrably equivalent to practices contained  
20 in stormwater technical manuals approved by the department, including  
21 the proper selection, implementation, and maintenance of all  
22 applicable and appropriate best management practices for on-site  
23 pollution control.

24 (2) A permittee is again presumed in compliance with a  
25 requirement to meet water quality standards when the permittee  
26 notifies the department in writing within 30 days of becoming aware,  
27 based on credible site-specific information that a discharge from the  
28 facility caused or contributed to a potential violation of water  
29 quality standards in the receiving water. In the written notification  
30 provided under this subsection, the permittee shall, at a minimum,  
31 identify the source of the site-specific information, describe the  
32 nature and extent of the potential violation in the receiving water,  
33 explain the reasons why the discharge is believed to have caused or  
34 contributed to the problem, and the steps taken by the permittee to  
35 address the issue following specific corrective action in accordance  
36 with the industrial stormwater general permit and applicable  
37 deadlines. For ongoing or continuing discharges, a single written  
38 notification to the department fulfills this requirement.

1 (3) In the event that the department determines, based on a  
2 notification provided by the permittee or through any other means,  
3 that additional actions are required, the department must notify the  
4 permittee in writing that the presumption of compliance will resume  
5 following specific corrective action in accordance with the  
6 industrial stormwater general permit and applicable deadlines,  
7 unless:

8 (a) The department also determines that the potential violation  
9 of water quality standards is already being addressed by a total  
10 maximum daily load or other enforceable water quality cleanup plan;  
11 or

12 (b) The department concludes the permittee's discharges will be  
13 addressed through the implementation of other permit requirements.

14 (4) Stormwater sampling at transportation facilities is not  
15 required until the department has determined that the sampling  
16 provisions in the industrial stormwater general permit can be  
17 satisfied without endangering the health and safety of persons  
18 conducting the sampling. In evaluating a sampling waiver application  
19 the department shall determine, among other factors, whether the  
20 sampling provisions in the industrial stormwater general permit can  
21 be satisfied without endangering the health and safety of persons  
22 conducting the sampling and modify those requirements as necessary to  
23 ensure health and safety. In no event shall stormwater sampling be  
24 required while a waiver authorized under the industrial stormwater  
25 general permit is under department consideration or appeal.

26 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of  
28 the state government and its existing public institutions, and takes  
29 effect immediately.

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