

**SENATE BILL REPORT**

**SB 6178**

**AS REPORTED BY COMMITTEE ON ECOLOGY & PARKS, FEBRUARY 4, 1994**

**Brief Description:** Authorizing changes in the wastewater discharge permit program.

**SPONSORS:** Senator Talmadge

**SENATE COMMITTEE ON ECOLOGY & PARKS**

**Majority Report:** That Substitute Senate Bill No. 6178 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chairman; Deccio, Moore, Sutherland and Talmadge.

**Staff:** Cathy Baker (786-7708)

**Hearing Dates:** January 26, 1994; February 4, 1994

**BACKGROUND:**

All facilities which discharge effluent through a point source to state waters are required to obtain a permit from the Department of Ecology. The state has also been delegated the administration of the National Pollutant Discharge Elimination System (NPDES), which requires permits for point source discharges to surface waters. Ecology administers a total of approximately 1200 permits, of which 800 are NPDES permits and the balance are "state-only" permits. At present, about one-third of these permits are expired, and the holders of these permits continue to operate under the provisions of the expired permits. Administrative rules adopted by the department specify procedures for permit processing, public participation, monitoring requirements, data reporting, facility inspections, and permit modifications.

Permits for industrial facilities include technology-based standards ("all known available and reasonable methods of treatment"), water-quality based standards, and compliance monitoring and reporting requirements, among other conditions. NPDES permits are classified as "major" or "minor" based on flow, pollutant loadings, potential public health impacts, and water quality factors. There are approximately 93 "major" dischargers currently permitted within the state.

The department is required by agreement with the U.S. Environmental Protection Agency (EPA) to conduct at least one compliance inspection per year on all major dischargers. The department has a stated goal of conducting at least one inspection per year for other permitted facilities as well (i.e., minor dischargers and state-only permits). There are two main types of inspections: "Class I" inspections which involve a visual inspection of the facility, and an

examination of records and discharge monitoring reports. Class I inspections may or may not involve collection of effluent samples. "Class II" inspections include all the elements of a Class I inspection plus effluent sampling and analysis to determine compliance with effluent limitations and permit requirements. Based on department estimates, approximately 300 Class I or Class II inspections are conducted each year.

Administration of the permit program is funded through fees paid by the permittees, generally based upon the volume of the discharge and the relative workload required by the department to manage the permits. Existing law authorizes the department to fully recover the costs incurred in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, and reviewing plans and documents related to the operation of the permittees.

Privatization of NPDES program administration has been implemented on a limited basis in other states and at the federal level. The state of New Jersey recently began a program allowing certain permittees to prepare the first draft of their NPDES permit. According to agency staff, the objective of the program is to develop a more cooperative relationship with permittees, thereby bringing about faster permit reviews and fewer contested permits. New Jersey has also recently awarded a contract to a private vendor for preparation of some NPDES permits, in an effort to reduce their permit backlog. The EPA has also allowed some permittees to prepare their own draft NPDES permit, in states where NPDES programs have not been delegated. Since 1978, EPA has also used a private contractor to conduct some compliance inspections in various regions.

**SUMMARY:**

A finding is made that the water quality of the state and the administrative efficiency of the Department of Ecology's wastewater discharge permit program will benefit from privatization of many program functions. A finding is also made that privatization is intended to improve the efficiency of permit processing and to increase the frequency of permit compliance assurance activities. Such privatization is not intended to affect the authority of the department to bring enforcement actions.

For a two-year period beginning July 1, 1994, the department may allow persons applying for a wastewater discharge permit to prepare their own draft permit. The department shall establish criteria for types of applicants that will be eligible to participate in the program. The department shall also develop a list of approved contractors with whom applicants may contract for draft permit preparation. Applicable permit fees are to be reduced in proportion to the reduction in the department's workload resulting from enhanced permit preparation by the applicant. The draft permit shall

be submitted to the department for final approval. By July 1, 1995, the department shall provide an interim report to the Legislature evaluating the effectiveness of the program. A final report is to be submitted by July 1, 1996.

For a two-year period beginning July 1, 1994, the department shall conduct a pilot program to test the feasibility and effectiveness of using personal services contracts for conducting annual compliance inspections required under the Federal Clean Water Act. As part of the program, the department shall use contractors for no less than 25 percent of annual compliance inspections required under federal law for major dischargers. Any contract for conducting compliance inspections under the program shall (1) include terms to protect the confidentiality of information obtained during such inspections; and (2) contain provisions preventing conflicts of interest by the contractor. The department shall provide an interim and a final report to the Legislature evaluating the effectiveness of the pilot program.

**EFFECT OF PROPOSED SUBSTITUTE:**

Applicants are authorized to prepare both a draft permit and the accompanying "fact sheet" required by federal regulations.

The department is to consider applicants' compliance history in establishing criteria for those applicants eligible to participate, and is to develop guidelines specifying elements of a complete draft permit and fact sheet.

The department is to document cost and time savings from draft permit preparation by applicants and shall reflect these savings in the next revision of permit fees for such applicants.

The department is to contract for 25 percent of the annual inspections for different categories of industrial permittees, including minor dischargers.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested January 17, 1994

**TESTIMONY FOR:**

Allowing permittees to prepare their own draft permit will help improve efficiency in permit processing. Contracting out compliance inspections has been done successfully by other regulatory entities.

**TESTIMONY AGAINST:**

Allowing private contractors to assist with permit preparation and inspections will lead to conflicts of interest. These are regulatory functions which should be handled by government.

**TESTIFIED:** Kris Backes, Association of WA Business (pro); Bill Fritz, WA Food Processors (pro); Bruce Wishart, Sierra Club (con); Naki Stevens, People for Puget Sound; Linda Crerar, Mike Llewellyn, Department of Ecology