

House Bill Analysis

HB 3056

HOUSE AGRICULTURE AND ECOLOGY COMMITTEE

February 3, 2000

Authorizes planning groups under chapter 80.82 RCW to develop water cleanup plans

BACKGROUND:

Section 303(d) of the federal Clean Water Act requires states to identify those waters that do not meet water quality standards after taking into account technology-based reductions of pollutant discharge. The list of such waters is known as the "303(d)" list. For waters identified on the 303(d) list, the state must establish total maximum daily loads (TMDLs) that will ensure attainment of water quality standards. A TMDL is a quantitative analysis that defines the maximum amount of a pollutant that can be discharged into a water body from all combined sources.

A number of citizen suits were brought against the Environmental Protection Agency (EPA) beginning in the mid-1980s alleging that the EPA was not requiring the development of 303(d) lists, or that such lists were inadequate. In Washington, lists have been developed every two years, as required, since at least 1988. A citizen suit was brought against the EPA in Washington in 1991, as well as in other northwest states, alleging the state's 303(d) lists were inadequate. In January of 1998, the Washington case was settled through negotiations between the EPA, the Department of Ecology (DOE), and the plaintiff. The settlement that was agreed to calls for the DOE to develop over 1,500 TMDLs on 666 water segments identified on the 1996 list in a 15-year period. A TMDL is required for each exceedence of a water quality standard, and there may be multiple exceedences in the same location.

The EPA is currently revising its rules regarding development of the 303(d) list and TMDLs, but the basic framework is established by law. The EPA issued proposed rules last that provide direction for listing waters and developing TMDLs. The comment period ended on January 20, 2000. The rules are based on the premise that both point and nonpoint sources are subject to TMDL requirements.

Of concern to many people is whether TMDLs should apply to nonpoint sources. House Bill

2171 introduced in the House of Representatives in 1999 developed a process of other pollution controls,— that are designed to control nonpoint sources of pollutants. The bill directed that these controls be implemented on a segment-by-segment basis in watersheds, and that adaptive management be used (that is, monitoring and adjustment of practices as necessary) to lead to attainment of water quality standards.

Many different approaches exist with regard to cleaning up water bodies:

- TMDLs, which include analysis, enforcement mechanisms, and implementation plans;
- analytical approaches, such as watershed analysis and watershed characterization;
- programmatic approaches, such as stormwater management plans, dairy nutrient management plans, or the forests and fish module; and
- geographic approaches, such as watershed management plans, or habitat conservation plans with water quality elements.

The Department of Ecology has adopted a nonpoint source management plan. The plan is a compilation of all of the activities currently undertaken in the state to address nonpoint sources of water quality impairment and includes recommendations for enhancement in certain areas. This plan is an update required under section 319 of the Clean Water Act and section 6217 of the Coastal Zone Management Act Reauthorization Amendments of 1990, and is being submitted to EPA and NOAA respectively. Approval of this plan by these agencies means Washington will receive a total of approximately \$6.6 million per year for implementation. EPA has said in the preamble to their draft TMDL rule that the plan, commonly known as the 319 Plan,— is what they intend to rely on for implementation of TMDLs by nonpoint sources.

SUMMARY:

It is the policy of the state of Washington to ensure the attainment of water quality standards and restore the ability of the state's waters to provide multiple benefits as defined in RCW 90.54.020. It is also the preference of the state that water quality standards be attained through control measures intended to prevent discharge of pollutants, rather than through a system of allocation of loads and wasteloads.

New definitions are provided and old definitions are reformatted, but not changed. A water cleanup plan is defined as a water resource inventory area (WRIA) plan that is intended to lead to the attainment of water quality standards within a WRIA.

A listing process is described for water quality limited segments. The data used for listing and delisting must be of the same high level of rigor and accuracy. The effect of listing is that no permit may be issued to a new source or discharger if the discharge would cause or contribute to a violation of water quality standards.

Existing law on watershed planning is amended to allow water quality planning. A water cleanup plan is intended to serve as a means of addressing the requirements for TMDLs for nonpoint sources.

Water cleanup plans include many of the elements of a TMDL, except for allocation. A water cleanup plan must include:

- The existing elements identified under chapter 90.82 RCW;
- The new planning elements required here; and
- Any total maximum daily loads developed for point sources.

Total maximum daily loads must be developed when the listing of a water body is caused by one or more point sources, or a combination of one or more point sources and one or more nonpoint sources of pollutants. In developing total maximum daily loads, allocations for nonpoint sources must be assigned to categories of nonpoint source, to tributaries, or to subbasins within a WRIA.

Finally, the department is required to investigate, develop, and implement a procedure for effluent trading.