

ESSB 6415 - H AMD 1180

By Representative Linville

ADOPTED 03/09/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the federal
4 permit program under the federal clean water act, 33 U.S.C. Sec. 1251
5 et seq., and the state water pollution control laws provide numerous
6 environmental and public health benefits to the citizens of Washington
7 and to the state. The legislature also finds that failure to prevent
8 and control pollution discharges, including those associated with storm
9 water runoff, can degrade water quality and damage the environment,
10 public health, and industries dependent on clean water such as
11 shellfish production.

12 (2) The legislature finds the nature of storm water presents unique
13 challenges and difficulties in meeting the permitting requirements
14 under the federal clean water act, 33 U.S.C. Sec. 1251 et seq.,
15 including compliance with technology and water quality-based standards.

16 (3) The legislature finds that the federal clean water act, 33
17 U.S.C. Sec. 1251 et seq., requires certain larger construction sites
18 and industrial facilities to obtain storm water permits under the
19 national pollutant discharge elimination system permit program. The
20 legislature also finds that under phase two of this program, smaller
21 construction sites are also required to obtain storm water permits for
22 their discharges.

23 (4) The legislature finds the department of ecology has been using
24 general permits to permit categories of similar dischargers, including
25 storm water associated with industrial and construction activities.
26 The legislature also finds general permits must comply with all
27 applicable requirements of the federal clean water act, 33 U.S.C. Sec.
28 1251 et seq., and the state water pollution control act including
29 technology and water quality-based permitting requirements. The
30 legislature further finds general permits may not always be the best

1 solution for an individual discharger, especially when establishing
2 water quality-based permitting requirements.

3 (5) The legislature finds that where sources within a specific
4 category or subcategory of dischargers are subject to water
5 quality-based limits imposed under the federal clean water act, 33
6 U.S.C. Sec. 1251 et seq., the sources in that specific category or
7 subcategory must be subject to the same water quality-based limits.

8 (6) For this reason, the legislature encourages, to the extent
9 allowed under existing state and federal law, an adaptive management
10 approach to permitting storm water discharges.

11 (7) The legislature finds that storm water management must satisfy
12 state and federal water quality requirements while also providing for
13 flexibility in meeting such requirement to help ensure cost-effective
14 storm water management.

15 (8) The legislature finds that the permitting of new and existing
16 dischargers into waters listed under 33 U.S.C. Sec. 1313(d) (section
17 303(d) of the federal clean water act) presents specific challenges and
18 is subject to additional permitting restrictions under the federal
19 clean water act, 33 U.S.C. Sec. 1251 et seq.

20 (9) The legislature declares that general permits can be an
21 effective and efficient permitting mechanism for permitting large
22 numbers of similar dischargers.

23 (10) The legislature declares that an inspection and technical
24 assistance program for industrial and construction storm water general
25 permits is needed to ensure an effective permitting program. The
26 legislature also declares that such a program should be fully funded to
27 ensure its success.

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

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

34 (1) Effluent limitations shall be included in construction and
35 industrial storm water general permits as required under the federal
36 clean water act, 33 U.S.C. Sec. 1251 et seq., and its implementing
37 regulations. In accordance with federal clean water act requirements,
38 pollutant specific, water quality-based effluent limitations shall be

1 included in construction and industrial storm water general permits if
2 there is a reasonable potential to cause or contribute to an excursion
3 of a state water quality standard.

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

6 (a) Numeric effluent limitations;

7 (b) Narrative effluent limitations; or

8 (c) A combination of numeric and narrative effluent discharge
9 limitations.

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

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

17 (b) State developed, industry-specific performance-based numeric
18 effluent limitations;

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

21 (d) A determination by the department that:

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

25 (ii) Effluent limitations based on nonnumeric best management
26 practices are not effective in achieving compliance with state water
27 quality standards.

28 (4) In making a determination under subsection (3)(d) of this
29 section, the department shall use procedures that account for:

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

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

33 (c) As appropriate, the dilution of the storm water in the
34 receiving waters.

35 (5) Narrative effluent limitations requiring both the
36 implementation of best management practices, when designed to satisfy
37 the technology and water quality-based requirements of the federal
38 clean water act, 33 U.S.C. Sec. 1251 et seq., and compliance with water

1 quality standards, shall be used for construction and industrial storm
2 water general permits, unless the provisions of subsection (3) of this
3 section apply.

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

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

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

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

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

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

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

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

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

35 (7)(a) The department shall modify the industrial storm water
36 general permit to require compliance by May 1, 2009, with appropriately
37 derived numeric water quality-based effluent limitations for existing
38 discharges to water bodies listed as impaired according to 33 U.S.C.

1 Sec. 1313(d) (Sec. 303(d) of the federal clean water act, 33 U.S.C.
2 Sec. 1251 et seq.).

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

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

16 (i) An adaptive management indicator, such as monitoring
17 benchmarks;

18 (ii) Monitoring;

19 (iii) Review and revisions to the storm water pollution prevention
20 plan;

21 (iv) Documentation of remedial actions taken; and

22 (v) Reporting to the department.

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

26 (9) Construction and industrial storm water discharges authorized
27 under general permits must not cause or have the reasonable potential
28 to cause or contribute to a violation of an applicable water quality
29 standard. Where a discharge has already been authorized under a
30 national pollutant discharge elimination system storm water permit and
31 it is later determined to cause or have the reasonable potential to
32 cause or contribute to the violation of an applicable water quality
33 standard, the department may notify the permittee of such a violation.

34 (10) Once notified by the department of a determination of
35 reasonable potential to cause or contribute to the violation of an
36 applicable water quality standard, the permittee must take all
37 necessary actions to ensure future discharges do not cause or
38 contribute to the violation of a water quality standard and document
39 those actions in the storm water pollution prevention plan and a report

1 timely submitted to the department. If violations remain or recur,
2 coverage under the construction or industrial storm water general
3 permits may be terminated by the department, and an alternative general
4 permit or individual permit may be issued. Compliance with the
5 requirements of this subsection does not preclude any enforcement
6 activity provided by the federal clean water act, 33 U.S.C. Sec. 1251
7 et seq., for the underlying violation.

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

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

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.48 RCW
16 to read as follows:

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

21 (1) By January 1, 2005, the department shall initiate an inspection
22 and compliance program for all permittees covered under the
23 construction and industrial storm water general permits. The program
24 shall include, but may not be limited to, the:

25 (a) Provision of compliance assistance and survey for evidence of
26 permit violations and violations of water quality standards;

27 (b) Identification of corrective actions for actual or imminent
28 discharges that violate or could violate the state's water quality
29 standards;

30 (c) Monitoring of the development and implementation of storm water
31 pollution prevention plans and storm water monitoring plans;

32 (d) Identification of dischargers who would benefit from follow-up
33 inspection or compliance assistance programs; and

34 (e) Collection and analysis of discharge and receiving water
35 samples whenever practicable and when deemed appropriate by the
36 department, and other evaluation of discharges to determine the
37 potential for causing or contributing to violations of water quality
38 standards.

1 (2) The department's inspections under this section shall be
2 conducted without prior notice to permittees whenever practicable.

3 (3) Follow-up inspections shall be conducted by the department to
4 ensure that corrective and other actions as identified in the course of
5 initial inspections are being carried out. The department shall also
6 take such additional actions as are necessary to ensure compliance with
7 state and federal water quality requirements, provided that all
8 permittees must be inspected once within two years of the start of this
9 program and each permittee must be inspected at least once each permit
10 cycle thereafter.

11 (4) Permittees must be prioritized for inspection based on the
12 development of criteria that include, but are not limited to, the
13 following factors:

14 (a) Compliance history, including submittal or nonsubmittal of
15 discharge monitoring reports;

16 (b) Monitoring results in relationship to permit benchmarks; and

17 (c) Discharge to impaired waters of the state.

18 (5) Nothing in this section shall be construed to limit the
19 department's enforcement discretion.

20 NEW SECTION. **Sec. 4.** No later than December 31, 2006, the
21 department of ecology shall submit a report to the appropriate
22 committees of the legislature regarding methods to improve the
23 effectiveness of permit monitoring requirements in construction and
24 industrial storm water general permits. The department of ecology
25 shall study and evaluate how monitoring requirements could be improved
26 to determine the effectiveness of storm water best management practices
27 and compliance with state water quality standards. In this study the
28 department also shall evaluate monitoring requirements that are
29 necessary for determining compliance or noncompliance with state water
30 quality standards and shall evaluate the feasibility of including such
31 monitoring in future permits. When conducting this study, the
32 department shall consult with experts in the fields of monitoring,
33 storm water management, and water quality, and when necessary the
34 department shall conduct field work to evaluate the practicality and
35 usefulness of alternative monitoring proposals.

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

1 (1) The department shall establish permit fees for construction and
2 industrial storm water general permits as necessary to fund the
3 provisions of sections 2 and 3 of this act. When calculating
4 appropriate fee amounts, the department shall take into consideration
5 differences between large and small businesses and the economic impacts
6 caused by permit fees on those businesses. Fees established under this
7 section shall be adopted in accordance with chapter 34.05 RCW.

8 (2) In its biennial discharge fees progress report required by RCW
9 90.48.465, the department shall include a detailed accounting regarding
10 the method used to establish permit fees, the amount of permit fees
11 collected, and the expenditure of permit fees. The detailed accounting
12 shall include data on inspections conducted and the staff hired to
13 implement the provisions of sections 2 and 3 of this act.

14 NEW SECTION. **Sec. 6.** If any portion of sections 2 and 3 of this
15 act are found to be in conflict with the federal clean water act, that
16 portion alone is void.

17 NEW SECTION. **Sec. 7.** This act expires January 1, 2015.

18 NEW SECTION. **Sec. 8.** If specific funding for the purposes of this
19 act, referencing this act by bill or chapter number, is not provided by
20 June 30, 2004, in the omnibus appropriations act, this act is null and
21 void."

22 Correct the title.

EFFECT: The striking amendment makes the following changes:

Presumption of Compliance: Requires full compliance with all permit conditions and full implementation of all applicable and appropriate best management practices either contained in Department of Ecology (DOE) approved storm water technical manuals or demonstrably equivalent to those practices. Defines "demonstrably equivalent" for best management practices other than those included in the DOE manuals.

Sec. 303(d) Listed Waters: Requires the DOE to modify the industrial storm water general permit to require compliance by May 1, 2009, with appropriately derived numeric effluent limitations for existing discharges to Sec. 303(d) listed waters. Requires the DOE to report to the appropriate legislative committees regarding the implementation of numeric effluent limitations.

Adaptive Management: Requires the DOE to include an adaptive management mechanism in construction and industrial storm water general permits and specifies the mandatory adaptive management elements.

Water Quality Standards Violations: Adds requirement for permittees to provide a timely report to the DOE regarding actions to ensure discharges do not cause or contribute to a water quality standard violation after receiving a notice from the DOE. Allows the DOE to terminate a general permit and issue an alternative or individual permit if violations remain or recur. Specifies these provisions do not preclude enforcement activities authorized under the federal Clean Water Act.

Mixing Zones: Specifies the DOE may authorize mixing zones only in compliance with and after making determinations mandated by applicable laws and regulations.

Inspection Program: Focuses program on inspection and compliance and revises elements of inspection program to incorporate consideration of storm water monitoring plans and actions to identify and address water quality violations. Specifies DOE is to conduct inspections without prior notice whenever practicable. Revises provisions regarding follow-up inspections to focus on compliance and to require inspection of each permittee at least once each permit cycle. Specifies these provisions do not limit the DOE's enforcement discretion.

Monitoring Report: Requires the DOE to report to the appropriate legislative committees by December 31, 2006, regarding methods to improve effectiveness of permit monitoring requirements. Specifies requirements for the DOE study conducted for this report.

Permit Fees: Allows the DOE to establish permit fees for construction and industrial storm water general permits as necessary to fund these provisions (other than the monitoring study and report). Specifies factors the DOE must consider in calculating these permit fees and requires permit fees to be adopted according to the Administrative Procedure Act. Requires the DOE to include in its biennial discharge fees progress report a detailed accounting related to permit fees for industrial and construction storm water general permits.

Legislative Findings: Adds legislative findings regarding: (1) Challenges and restrictions associated with permitting new and existing discharges into Sec. 303(d) listed waters; and (2) water quality degradation and environmental damage resulting from failure to prevent and control storm water pollution discharges.

Other Changes: Adds provisions referencing technology and water quality-based effluent limitations in construction and industrial storm water general discharge permits. Includes numerous technical revisions.

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