

SSB 6415 - S AMD 705

By Senators Morton, Doumit

ADOPTED 02/16/2004

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 and the state water
5 pollution control laws provide numerous environmental and public health
6 benefits to the citizens of Washington and to the state. Failure to
7 prevent and control pollution discharges, including those associated
8 with storm water runoff, can damage the public health and industries
9 dependent on clean water such as shellfish production.

10 (2) The legislature finds the nature of storm water presents unique
11 challenges and difficulties in meeting the permitting requirements
12 under the federal clean water act, including compliance with technology
13 and water quality-based standards.

14 (3) The legislature finds that the federal clean water act requires
15 certain larger construction sites and industrial facilities to obtain
16 storm water permits under the national pollutant discharge elimination
17 system permit program. The legislature also finds that under phase two
18 of this program, smaller construction sites are also required to obtain
19 storm water permits for their discharges.

20 (4) The legislature finds the department of ecology has been using
21 general permits to permit categories of similar dischargers, including
22 storm water associated with industrial and construction activities.
23 The legislature finds general permits must comply with all applicable
24 requirements of the federal clean water act and the state water
25 pollution control act including technology and water quality-based
26 permitting requirements. The legislature further finds general permits
27 may not always be the best solution for an individual discharger,
28 especially when establishing water quality-based permitting
29 requirements.

1 (5) The legislature finds that where sources within a specific
2 category or subcategory of dischargers are subject to water
3 quality-based requirements imposed under the federal clean water act,
4 the sources in that specific category or subcategory must be subject to
5 the same water quality-based requirements.

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

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

13 (8) The legislature declares that general permits can be an
14 effective and efficient permitting mechanism for permitting large
15 numbers of similar dischargers.

16 (9) The legislature further declares that an inspection and
17 technical assistance program for industrial and construction storm
18 water general permits is needed to ensure an effective permitting
19 program. Such a program should be fully funded to ensure its success.

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

22 (1) Effluent limitations shall be included in construction and
23 industrial storm water general permits as required under the federal
24 clean water act and implementing regulations. In accordance with
25 federal clean water act requirements, effluent limitations must be
26 included in construction and industrial storm water general permits if
27 there is a reasonable potential to cause or contribute to an excursion
28 of a state water quality standard.

29 (2) Subject to the provisions of this section, effluent limitations
30 may be expressed as (a) numeric effluent limitations; (b) narrative
31 effluent limitations; or (c) a combination of numeric and narrative
32 effluent discharge limitations.

33 (3) The department may only condition storm water general permits
34 for industrial and construction activities issued under the national
35 pollutant discharge elimination system of the federal clean water act

1 to require compliance with numeric effluent discharge limits when such
2 discharges are subject to:

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

5 (b) State developed, industry-specific performance-based numeric
6 effluent limitations;

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

9 (d) A determination by the department that the discharges covered
10 under either the construction or industrial storm water general permits
11 have (i) a reasonable potential to cause or contribute to violation of
12 state water quality standards; and (ii) a determination by the
13 department that effluent limitations based on nonnumeric best
14 management practices are not effective in achieving compliance with
15 state water quality standards.

16 (4) In making a determination under subsection (3)(d) of this
17 section, the department shall use procedures that account for (a)
18 existing controls on point and nonpoint sources of pollution; (b) the
19 variability of the pollutant or pollutant parameter in the storm water
20 runoff; and (c) as appropriate, the dilution of the storm water in the
21 receiving waters.

22 (5) Narrative effluent limitations requiring the implementation of
23 best management practices, when designed to satisfy technology and
24 water quality-based requirements of the federal clean water act, shall
25 be used for construction and industrial storm water general permits,
26 unless the provisions of subsection (3) of this section apply.

27 (6) Compliance with water quality standards shall be presumed,
28 unless site specific information demonstrates otherwise, when the
29 permittee is:

30 (a) In compliance with permit conditions for planning, sampling,
31 monitoring, reporting, and recordkeeping; and

32 (b) Following storm water management practices, or practices that
33 are demonstrably equivalent to practices contained in storm water
34 technical manuals approved by the department, including the proper
35 selection, implementation, and maintenance of appropriate best
36 management practices for on-site pollution control.

1 (7) Existing discharges to receiving waters listed under section
2 303(d) of the federal clean water act shall be conditioned on an
3 interim effluent discharge limit based on compliance with all
4 requirements of a permit including implementation of best management
5 practices for a period of ten years or until a completed total maximum
6 daily load is adopted by the department, whichever is earlier.

7 (8) Permittees covered under the construction and industrial storm
8 water general permits must not cause or have the reasonable potential
9 to cause or contribute to a violation of an applicable water quality
10 standard. Where a discharge has already been authorized under a
11 national pollutant discharge elimination system storm water permit and
12 it is later determined to cause or have the reasonable potential to
13 cause or contribute to the violation of an applicable water quality
14 standard, the department must notify the permittee of such a violation.

15 (9) Once notified by the department that a determination of
16 reasonable potential to cause or contribute to the violation of an
17 applicable water quality standard, the permittee must take all
18 necessary actions to ensure future discharges do not cause or
19 contribute to the violation of a water quality standard and document
20 those actions in the storm water pollution prevention plan.

21 (10) Receiving water sampling shall not be a requirement of an
22 industrial or construction storm water general permit unless it can be
23 conducted without endangering the health and safety of a permittee and
24 its employees.

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

27 (1) By January 1, 2005, the department shall initiate an inspection
28 program of all permittees covered under the construction and industrial
29 storm water general permits. The purpose of the inspections is to:

30 (a) Provide technical assistance and survey for evidence of permit
31 violations;

32 (b) Identify corrective actions for actual or imminent discharges
33 that violate or could violate the state's water quality standards;

34 (c) Monitor the development and implementation of storm water
35 pollution prevention plans; and

1 (d) Identify dischargers who would benefit from follow-up technical
2 assistance programs.

3 (2) 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 conduct such additional inspections as are necessary to ensure
7 compliance with state and federal water quality requirements, provided
8 that all permittees must be inspected once within two years of the
9 start of this program.

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

- 13 (a) Historical compliance history, including submittal or
14 nonsubmittal of discharge monitoring reports;
- 15 (b) Monitoring results in relationship to permit benchmarks; and
- 16 (c) Discharge to impaired waters of the state.

17 NEW SECTION. **Sec. 4.** If any portion of sections 2 and 3 of this
18 act are found to be in conflict with the federal clean water act, that
19 portion alone is void.

20 NEW SECTION. **Sec. 5.** This act expires January 1, 2015.

21 NEW SECTION. **Sec. 6.** If specific funding for the purposes of this
22 act, referencing this act by bill or chapter number, is not provided by
23 June 30, 2004, in the omnibus appropriations act, this act is null and
24 void."

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25 On page 1, line 2 of the title, after "permits;" strike the
26 remainder of the title and insert "adding new sections to chapter 90.48
27 RCW; creating new sections; and providing an expiration date."

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