

HOUSE BILL REPORT

HB 1689

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to implementing the federal permit requirements for municipal separate storm sewer system permits.

Brief Description: Implementing the federal permit requirements for municipal separate storm sewer system permits.

Sponsors: Representatives Linville, Schoesler, Cooper, Chandler, Holmquist and Hatfield.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/18/03, 3/4/03 [DPS].

Brief Summary of Substitute Bill

- Specifies legislative intent to provide direction to the Department of Ecology (DOE) and to municipalities regarding the development and implementation of Phase II of the National Pollutant Discharge Elimination System (NPDES) permit program in Washington.
- Requires the DOE to establish a western Washington permit development advisory group to assist the DOE in drafting Phase II permits for western Washington and to use the existing storm water advisory group in eastern Washington for drafting Phase II permits for eastern Washington.
- Includes a list of issues the two advisory groups must consider and on which they must make recommendations to the DOE.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

Minority Report: Do not pass. Signed by 2 members: Representatives Holmquist, Assistant Ranking Minority Member; and Kristiansen, Assistant Ranking Minority

Member.

Staff: Caroleen Dineen (786-7156).

Background:

A combination of federal, state, and local laws govern storm water management in Washington. At the federal level, the water quality implications of storm water runoff are addressed in the Federal Clean Water Act. The state water pollution control statutes also regulate water quality aspects of storm water management. Local regulations addressing storm water management arise from local governments' responsibilities under federal and state law to manage storm water and from local governments' authority under state law to construct and operate storm water management systems.

Federal Water Pollution Control Law

Clean Water Act Requirements

The Federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA defines "pollutant" to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods.

The CWA requires states to adopt water quality standards to protect fish and other aquatic life as well as humans using water for recreation, drinking water, and fishing. Water quality standards are rules specifying the desired water quality to be achieved or maintained and protecting existing water quality from degradation.

The CWA also establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. "Point sources" are defined generally as discernable, discrete, and confined conveyances from which pollutant discharges can or do occur. Storm water is identified as a point source of pollution in the CWA. NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters.

A NPDES permit places limits on the quantity and concentrations of contaminants that may be discharged. NPDES permits may require wastewater treatment or impose operating or other conditions, including monitoring, reporting, and spill prevention planning. NPDES permits are valid for five years but may be renewed.

The United States Environmental Protection Agency (EPA) may delegate authority to states to issue NPDES permits and administers the NPDES program in nondelegated states. The Washington Department of Ecology (DOE) has been delegated NPDES

permit authority.

Storm water “ Phase II NPDES Permits

The Federal CWA and implementing EPA storm water regulations established two phases for NPDES permits to control storm water discharges from various entities. Phase I permits were issued to cover storm water discharges from certain industries, construction sites involving five or more acres, and municipalities operating municipal separate storm sewer systems (MS4s) with a population greater than 100,000. Public entities covered under Phase I include King County, Pierce County, Snohomish County, Clark County, City of Seattle, City of Tacoma, and the Washington State Department of Transportation facilities in the named jurisdictions.

Phase II NPDES permits will be required for construction sites disturbing between one and five acres. Phase II permits also are required for municipalities operating MS4s that do not meet the Phase I criteria, are located in "census defined urbanized areas," and meet certain criteria.

Under the federal regulations, Phase II communities are required to apply for a storm water permit by March 2003. The DOE has informed potential Phase II jurisdictions that it will not have a NPDES permit for MS4s (MS4 permit) available by the March 2003 deadline. However, the DOE has developed a MS4 permit application for Phase II jurisdictions.

State Water Pollution Control Law

Washington's Pollution Disclosure Act of 1971 requires all pollution dischargers to use all known, available, and reasonable methods of wastewater treatment before discharge to prevent pollution. In addition to its NPDES permit responsibilities, the DOE administers a state program for discharge of pollutants to state waters. State permits are required for anyone who discharges waste materials from a commercial or industrial operation to ground or to publicly-owned treatment plants. State permits are also required for municipalities that discharge to ground.

The DOE issues both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers) in the state and NPDES permit programs. Annual permit fees must be established to fully recover but not exceed expenses of the program, including permit processing, monitoring, compliance, evaluation, inspection, and program overhead costs.

Local Storm water Programs

Local governments may be subject to storm water management regulations through both the federal NPDES permit program and state pollution discharge permits. Local

governments also regulate storm water management within their jurisdictions through local storm water programs. Further, local governments operate storm water control utilities, for which they may impose rates and charges on utility customers.

Summary of Substitute Bill:

The Department of Ecology (DOE) is required to establish a western Washington permit development advisory group and to use its existing eastern Washington storm water management manual advisory group to assist it with development of permits for Phase II jurisdictions required to obtain National Pollutant Discharge Elimination System (NPDES) permits under the Federal Clean Water Act. Within nine months of enactment, the advisory groups must address a list of issues and make recommendations to the DOE regarding these issues. The issues include the:

- types of discharges being regulated;
- areas being regulated;
- issuance of permits on a watershed basis;
- integration of Phase I and Phase II permit requirements;
- application of permits to ground water discharges;
- level of effort required to satisfy federal Phase II permit requirements;
- protection of shellfish areas;
- use of land use planning and existing plans and regulations as a best management practice for storm water management and to protect water quality; and
- potential funding sources for implementing permit requirements.

The advisory groups also must assist the DOE in drafting the Phase II permits for western Washington. The advisory groups provisions expire June 30, 2005.

Legislative intent is specified to provide legislative direction to the DOE and to municipalities regarding the development and implementation of Phase II of the NPDES permit program in Washington.

Substitute Bill Compared to Original Bill:

The substitute replaces all provisions of the original bill with the requirement for the DOE to establish the western Washington advisory group and to use its eastern Washington advisory group to assist it with development of the Phase II NPDES permits. The substitute also specifies the list of issues these advisory groups must consider and replaces the original intent section with the intent to provide legislative direction on Phase II permit development and implementation.

Appropriation: None.

Fiscal Note: Requested on February 13, 2003.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Phase II of the NPDES permit program covers 13 counties and more than 90 cities. Many local governments have already developed programs or are in the process of developing programs. Local governments do not have discretionary resources to implement storm water programs. The Legislature needs to give direction on what the Phase II permit program will look like.

Numeric standards should really be addressed at the federal level. The bill recognizes the complexity of applying numeric standards to storm water. The permit programs should be focused on preventing harm. Incentives are the best approach for long-term success.

The bill directs the DOE to base the federal permit program on federal requirements. The permits developed by the DOE should track the federal minimum requirements as closely as possible to minimize the impacts on local government budgets and ratepayers to the extent possible. The bill allows smaller jurisdictions to come into compliance with permit requirements within five years.

(Pro with changes) The definitions of "maximum extent practicable" and "best management practices" create new ambiguities regarding financial responsibility. These definitions need to be revised. The bill should allow permits to be customized to address geographical differences, and the state should be allowed to have different conditions than federal law. The bill needs to address the DOE's storm water management manual; it is the simplest way for jurisdictions to meet the federal minimum requirements.

(Concerns) The DOE agrees with the basic direction that state programs meet federal requirements but has concerns about the bill. The bill should address performance expectations. The "maximum extent practicable" definition differs from federal requirements and is vague and unclear. The bill's treatment of Phase I and Phase II as the same may conflict with federal law. The bill locks in the application and program requirements in rule and raises concerns about the appeals process.

Testimony Against: The bill would end any meaningful regulation of municipal storm water. A recent newspaper article demonstrated that storm water is the most significant water quality problem in western Washington. A recent Ninth Circuit decision emphasizes that states need to review local programs to ensure compliance with federal standards.

The bill makes the federal minimum control measures a ceiling for Phase I and Phase II of the NPDES permit program, and the Federal Clean Water Act allows states to go

beyond these minimums. The federal requirements are vague.

The bill also rolls back state water pollution control laws and allows the DOE to authorize discharges that violate water quality standards. Further, the bill prevents the DOE from requiring programmatic activity. The bill does not address integration of requirements for Phase I and Phase II jurisdictions.

Best management practices are not de facto water quality standards. The bill replaces water quality standards with best management practices, which are not well defined. There is a lot of vague language in the bill.

The shellfish growing industry's biggest challenges relate to water quality. The best management practices approach in the bill will not protect shellfish growing areas. Numeric criteria must be applied. Many local governments are not stepping up to address storm water management. A voluntary approach will not work.

Phase II requirements need to be implemented. The bill should be narrowed to Phase II. The permit development should include a time line and funding from the Legislature.

Testified: (In support) Paul Parker, Washington State Association of Counties; Jeff Monson, Whatcom County; Daryl Grigsby, King County; Dave Williams, Association of Washington Cities; Dennis Ritter, City of Lacey; and Dick McKinley, City of Bellingham.

(Pro with changes) Bruce Wulkan, Puget Sound Action Team.

(Concerns) Megan White, Washington Department of Ecology; Willy O'Neil, Associated General Contractors; and Robin Downey, Pacific Coast Shellfish Growers Association.

(Opposed) Sue Joerger, Puget Soundkeeper Alliance; Carl Weimer, Re Sources; Bruce Wishart, People for Puget Sound; Tim Ramsaur, Pierce County; and Grant Nelson, Association of Washington Business.