
**Agriculture & Natural
Resources Committee**

HB 1534

Brief Description: Clarifying the state's authority to regulate water pollution.

Sponsors: Representatives Condotta, Schoesler, Chandler, Clements, Newhouse, Armstrong and Holmquist.

Brief Summary of Bill

- Amends the definition of "pollution" in the state water pollution control statutes to exclude the exercise of a water right, claim, permit, or certificate granted under state law.
- Specifies for enforcement actions the Department of Ecology may rely only on authority statutes regarding surface waters, ground waters, and water rights to condition, limit, regulate, or control any claim, permit, or certificate to withdraw or divert water.

Hearing Date: 2/12/03

Staff: Caroleen Dineen (786-7156).

Background:

Federal Clean Water Act

While comprehensive federal water pollution legislation was first enacted in 1948, the modern framework for federal water pollution control law was enacted in 1972 as federal law amendments referred to as the Clean Water Act (CWA). The CWA sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate discharge of pollutants 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. "Navigable waters" is defined broadly in the CWA to include: (1) navigable waters and their tributaries; (2) interstate waters; (3) oceans out to 200 miles; and (4) intrastate waters if used for recreation by interstate travelers or if used for commercial fishing or industrial activities related to

interstate commerce.

The CWA set technology-based effluent limitations for discharges to navigable waters and authorized federal grants to finance sewage treatment systems improvements. The CWA also requires states to adopt water quality standards to protect fish, other aquatic life, and humans. Water quality standards specify the desired water quality to be achieved or maintained and protect existing water quality from degradation. The standards consist of: (1) designated uses, or desired uses of the water specific to each waterbody; (2) criteria necessary to protect designated uses (may be numeric or narrative limits); and (3) the Antidegradation Policy, establishing procedures to follow when considering regulating an activity that might affect a particular water body. States may adopt policies allowing adjustment of designated uses or criteria on a site-specific basis.

Finally, the CWA establishes the National Pollution 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. NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. These permits place limits on the quantity and concentrations of contaminants that may be discharged and may require wastewater treatment or impose other operating 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) implements the CWA. The 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 by the EPA.

State Water Pollution Control Law

Washington enacted state water pollution control law in the Pollution Disclosure Act of 1971. This state law requires all pollution dischargers to use all known, available, and reasonable methods of waste water treatment before discharge to prevent pollution. "Pollution" is defined for purposes of state law as contamination or alternation of the physical, chemical, or biological properties of any state waters. The definition includes changes in temperature, taste, color, turbidity, or odor of water or any discharge of liquid, gas, solid, radioactive, or other substances into water likely to create a nuisance or cause waters to jeopardize public health, safety, or welfare or injure beneficial uses or livestock, animals, birds, fish or other aquatic life.

In addition to its NPDES permit responsibilities, the DOE administers a state permit program for discharge of pollutants to state waters. State permits are required for: (1) anyone who discharges waste materials from a commercial or industrial operation to ground or to publicly-owned treatment plants; and (2) municipalities that discharge to ground. Both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers) are issued in the state and NPDES permit programs.

Oil and Hazardous Substance Spill Prevention and Response

The state enacted comprehensive oil and hazardous substance spill prevention and response legislation in 1991. In addition to other requirements, the Director of the DOE is authorized to supervise oil and hazardous substance spill prevention, abatement, response, containment, and cleanup efforts in the navigable waters of the state. The Director of the DOE also serves as the head of the state incident command system for a spill of oil or hazardous substances and must coordinate the response efforts of all state agencies and local emergency response personnel. Further, the DOE is required by statute to prepare and annually update a statewide master oil and hazardous substance spill prevention and contingency plan.

Enforcement Actions

The DOE may bring an action, including an action for injunctive relief, to enforce or implement statutes governing water pollution control (chapter 90.48 RCW) and oil and hazardous substance spill prevention and response (chapter 90.56 RCW).

Summary of Bill:

The definition of "pollution" for purposes of the state water pollution control statutes is amended to exclude exercise of a water right, claim, permit, or certificate granted under state law.

Statutory provisions authorizing the Washington Department of Ecology (DOE) to bring an action to enforce state water pollution law are amended. In any enforcement action, the DOE may rely only on authority granted in state statutes regarding surface waters, ground waters, and water rights (chapters 90.03, 90.14, and 90.44 RCW) to condition, limit, regulate, or control any claim, permit, or certificate to withdraw or divert water.

State policy is amended to specify that authority to regulate water pollution is based on powers granted in the state water pollution control statutes.

Appropriation: None.

Fiscal Note: Not Requested.

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