

SENATE BILL REPORT

SB 6415

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 5, 2004

Title: An act relating to conditioning storm water general discharge permits.

Brief Description: Concerning storm water general discharge permits.

Sponsors: Senators Morton, Doumit, Hewitt, Hargrove, Honeyford, T. Sheldon, Hale, Murray and Stevens.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 1/30/04, 2/5/04 [DPS-WM, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 6415 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Hale, Hargrove, Honeyford and Oke.

Minority Report: Do not pass.

Signed by Senators Fraser and Regala.

Staff: Evan Sheffels (786-7486)

Background: A combination of federal, state, and local laws govern storm water management in Washington. The water quality implications of storm water runoff are addressed in the federal Clean Water Act. State water pollution control statutes also regulate water quality aspects of storm water management.

As required under the Clean Water Act, the U.S. Environmental Protection Agency developed Phase I of the NPDES (National Pollution Discharge Elimination System) Storm Water Program in 1990. In addition to large municipal storm water systems, the Phase I program requires certain categories of industrial activity and construction activity that disturbs more than five acres to obtain permits. The Phase II Final Rule extended NPDES permit requirements to construction activity disturbing between one and five acres.

In addition to NPDES permit responsibilities, the Department of Ecology (DOE) administers a state program regulating discharges from certain commercial or industrial operations to ground or to publicly-owned treatment plants. Washington statute requires all pollution dischargers to use all known, available, and reasonable treatment methods to prevent and control water pollution. Annual permit fees must be established to fully recover but not exceed permit program expenses, including permit processing, monitoring, compliance, evaluation, inspection, and overhead costs.

Though a number of legal disputes surrounding these permit requirements have recently been settled or dismissed, at least three major issues--regarding compliance schedules, mixing zones and permit modifications--remain under appeal in the courts.

Summary of Substitute Bill: DOE is authorized to issue storm water general NPDES permits for industrial and construction dischargers if such permits are required to comply with federal standards and the state water pollution control act, unless an exemption applies. DOE is to use discretion in developing, implementing and enforcing general permits.

For most storm water general NPDES permittees, meeting narrative effluent discharge limits and other designated permit requirements and best management practices is presumed to constitute compliance with state and federal discharge standards. Such discharges must not pose immediate threat to public health or the environment. Numerical discharge limits may apply for certain industry specific or TMDL-based standards, or if DOE has determined, according to a designated process, that a reasonable potential to cause or contribute to water quality standard violations exists. Priority attention is directed toward discharges to impaired water bodies. Limitations for the setting of discharge limits during the data collection phase are established. DOE may require discharge monitoring, sampling and BMP evaluation as necessary to determine BMP effectiveness in removing pollutants.

Compliance time line and interim mixing zone procedures are provided. Permittees may not be required to perform instream monitoring. With legislative approval Ecology may collect fees to support necessary ambient monitoring. Permittees are only liable for flows originating from their facilities. A 12-month limit is set for DOE to issue an individual permit in lieu of a general permit in certain mixing zone, compliance schedule, or TMDL-related contexts.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Storm water administration should be effective, efficient, enforceable, and legally binding. PCHB decisions in Washington have resulted in the most restrictive general storm water permits in the nation. Taking a few samples from highly variable storm water is not a good way to indicate true water quality threats. To a large extent the substitute bill is based on EPA's own Sector General Permit for Industrial Storm Water. This is an attempt to provide the state policy guidance on misunderstood issues. The intent is to be consistent with EPA requirements.

Testimony Against: The state must be able to enforce based on water quality standards, in addition to end of pipe performance. The substitute does not appear to meet minimum federal standards. The substitute's language is broad, vague, and ill-defined. Settlement on these issues is the preferred approach. Concerned about process for compliance timelines and requirements that Ecology set discharge standards equivalent to current discharge. Concerned that this might shift liability burdens onto municipalities with MS4 storm water requirements.

Testified: PRO: Grant Nelson, Assn. WA Businesses; Mel Oleson, Boeing; Kris Holm, Water Resources NW; Ken Johnson, Weyerhaeuser; Llewellyn Matthews, NW Pulp and Paper Assn.; Ed Thorpe, Coalition for Clean Water (pro w/comments); Gary Smith, Ind. Bus. Assn. (on substitute); CON: Tom Eaton, EPA; Dick Wallace, WA Ecology; Bill Taylor, Pacific Coast Shellfish Growers' Assn. Bruce Wishart, People For Puget Sound; Sue Joyce, Puget Soundkeeper Alliance; Loren Stern, DNR (concerns); Paul Parker, WA St. Assn. of Counties (comments).