

---

ENGROSSED SUBSTITUTE HOUSE BILL 1689

---

State of Washington

58th Legislature

2003 Regular Session

**By** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Schoesler, Cooper, Chandler, Holmquist and Hatfield)

READ FIRST TIME 03/05/03.

1       AN ACT Relating to implementing the federal permit requirements for  
2 municipal separate storm sewer system permits; adding new sections to  
3 chapter 90.48 RCW; creating new sections; providing an expiration date;  
4 and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6       NEW SECTION.   **Sec. 1.**   INTENT.   (1) The legislature finds that the  
7 federal clean water act (33 U.S.C. Sec. 1251 et seq.) required large  
8 counties and cities in Washington to obtain municipal separate storm  
9 sewer system permits under phase one of the national pollutant  
10 discharge elimination system permit program.   The legislature also  
11 finds that under phase two of this program, many other counties and  
12 cities in Washington will be required to obtain permits for their  
13 systems.   The legislature recognizes that the department, as the state  
14 agency delegated authority to administer the federal permit program in  
15 Washington, is responsible for renewal of the phase one permits and  
16 issuance of the phase two permits.   The legislature also recognizes  
17 that the department must determine whether it is in the state's  
18 interest to integrate these two permit programs and, if so, how to  
19 accomplish the integration.

1 (2) The legislature acknowledges and encourages the appropriate use  
2 of flexibility in storm water management. The legislature finds that  
3 storm water management must satisfy state and federal water quality  
4 requirements while also providing state and local agencies, development  
5 interests, and others with a flexible set of tools and alternatives  
6 that can help ensure cost-effective storm water management.

7 (3) The legislature finds that significant fragmentation in  
8 authority exists among local, state, and federal agencies in managing  
9 storm water and that these agencies can better coordinate standards,  
10 practices, and approaches for managing storm water. The legislature  
11 believes state agencies and local governments and, where appropriate,  
12 federal and tribal governments should identify streamlining  
13 opportunities to address and improve coordination of storm water  
14 management authority exercised by local, state, and federal  
15 jurisdictions.

16 (4) The legislature further finds that the federal permit programs  
17 and the state water pollution control laws provide numerous  
18 environmental and public health benefits to the citizens of Washington  
19 and to the state. The legislature also finds that storm water runoff  
20 can cause or increase pollution in our state's waters. The legislature  
21 further finds that failure to prevent and control pollution discharges,  
22 including those associated with storm water runoff, can damage public  
23 health and industries, such as shellfish production, for which water  
24 quality is a critical component of their existence.

25 (5) The legislature also finds that implementing these programs  
26 involves great effort and significant costs for municipalities. The  
27 legislature recognizes that under federal law, municipalities required  
28 to obtain permits under phase two of the national pollutant discharge  
29 elimination system have up to five years after permit issuance to  
30 develop and implement the permit requirements. The legislature finds  
31 that as these permits are being developed, the department needs to  
32 identify mechanisms by which the state can best achieve environmental  
33 benefits from storm water management and satisfy the federal clean  
34 water act permit requirements in the most cost-effective manner to  
35 address the impacts on municipalities in implementing these permit  
36 programs.

37 (6) The legislature finds that coordinated permit programs and

1 cooperative storm water management programs between and among local  
2 governments may reduce costs and enhance program effectiveness.

3 (7) The legislature finds that a municipal separate storm sewer  
4 system faces different challenges than other types of storm sewer  
5 systems. The legislature recognizes the difficulty of predicting and  
6 sampling storm water pollutants in these systems. The legislature also  
7 recognizes the problems inherent in identifying the sources of and  
8 controlling the introduction of pollutants that may contribute to the  
9 contamination of storm water discharged through municipal separate  
10 storm sewer systems. Further, the legislature finds that municipal  
11 separate storm sewer systems have distinct characteristics that must be  
12 considered when the department develops permit programs to control  
13 storm water runoff, including that these systems may:

14 (a) Consist of complex, widely dispersed conveyance networks that  
15 drain public roads and other key elements of infrastructure;

16 (b) Include numerous inlets and outfalls that can be difficult to  
17 locate and maintain;

18 (c) Receive large volumes of diffuse storm water on an intermittent  
19 and unpredictable basis; and

20 (d) Receive storm water that has been polluted from a variety of  
21 sources.

22 (8) The legislature recognizes that in 2001 the department  
23 developed a storm water management manual for western Washington. The  
24 legislature also recognizes that the department has established a  
25 stakeholder process in eastern Washington to develop a storm water  
26 manual for that area of the state. The legislature finds that issues  
27 associated with storm water management in eastern Washington are  
28 significantly different from those in western Washington. The  
29 legislature also finds that the federal phase two permits developed by  
30 the department must recognize these differences.

31 (9) The legislature intends to:

32 (a) Provide direction to the department and to municipalities  
33 regarding the development and implementation of phase two of the  
34 federal clean water act's national pollutant discharge elimination  
35 system permit program in Washington;

36 (b) Recognize the eastern Washington stakeholder process for  
37 developing a storm water manual and direct the department to work

1 within that process when implementing the phase two program in eastern  
2 Washington; and

3 (c) Establish a stakeholder process to assist the department in  
4 identifying and addressing issues related to developing and  
5 implementing the federal national pollutant discharge elimination  
6 system permit programs in western Washington and to advise and assist  
7 the department as it drafts these permits.

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

10 STANDARDS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS. (1)  
11 In accordance with federal and state law, permits for municipal  
12 separate storm sewer systems shall require the development,  
13 implementation, and enforcement of storm water management programs  
14 designed to reduce the discharge of pollutants to the maximum extent  
15 practicable, to protect water quality, and to satisfy the appropriate  
16 water quality requirements of the federal clean water act and this  
17 chapter. Permits issued to municipalities subject to federal  
18 regulations implementing phase two of the national pollutant discharge  
19 elimination system permit program shall include the following minimum  
20 control measures established according to the federal regulations  
21 implementing the federal national pollutant discharge elimination  
22 system permit program:

- 23 (a) Public education and outreach on storm water impacts;
- 24 (b) Public involvement and participation;
- 25 (c) Illicit discharge detection and elimination;
- 26 (d) Construction site runoff control;
- 27 (e) Postconstruction storm water management in new development and  
28 redevelopment;

29 (f) Pollution prevention/good housekeeping for municipal  
30 operations, including:

31 (i) Compliance with any more stringent effluent limitations that  
32 modify or are in addition to the federal minimum control measures based  
33 on an approved total maximum daily load (TMDL) or equivalent analysis;  
34 and

35 (ii) Evaluation of program compliance, the appropriateness of  
36 identified best management practices, and progress toward achieving  
37 identified measurable goals; and

1 (g) Appropriate recordkeeping and reporting requirements.

2 (2) For municipal separate storm sewer system permits, the  
3 reduction of pollutants to the maximum extent practicable (MEP) shall  
4 be equivalent to all known available and reasonable methods of  
5 prevention control and treatment (AKART). In interpreting and  
6 implementing these standards with respect to municipal separate storm  
7 sewer system permits, the department shall consider:

8 (a) Factors such as on-site practicability analysis, innovations,  
9 incentives for alternative storm water management strategies, and  
10 retrofit strategies for existing impervious surfaces within project  
11 boundaries; and

12 (b) Whether the probable benefits are greater than the probable  
13 costs, in a manner similar to that required for adoption of significant  
14 legislative rules according to RCW 34.05.328(1)(c).

15 (3) For the purposes of this section, narrative effluent  
16 limitations requiring the implementation of best management practices  
17 are generally the most appropriate form of effluent limitations when  
18 designed to satisfy the requirements of subsection (1) of this section.

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

21 WATERSHED-BASED PERMITS. The department is encouraged to consider  
22 the development and issuance of permits for municipal separate storm  
23 sewer systems on a watershed basis. In determining whether to issue a  
24 general permit for municipal separate storm sewer systems by watershed,  
25 the department should consider the:

26 (1) Physical interconnections between and among municipal separate  
27 storm sewer systems;

28 (2) Location of discharges from municipalities required to obtain  
29 permits under phase two of the federal national pollutant discharge  
30 elimination system permit program relative to discharges from  
31 municipalities permitted and operating under phase one of the federal  
32 permit system;

33 (3) Potential for integrating municipalities permitted and  
34 operating under phase one of the federal national pollutant discharge  
35 elimination system permit program and those that will obtain permits  
36 and implement permit requirements under phase two of the federal permit  
37 system; and

1 (4) Relationships between and among municipalities and the  
2 potential to encourage and facilitate cooperative and cost-efficient  
3 programs for storm water management.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.48 RCW  
5 to read as follows:

6 INTERLOCAL COOPERATION. Local governments are encouraged to  
7 cooperate with each other, share resources and coordinate actions to  
8 develop and implement programs and activities to satisfy the  
9 requirements of permits issued to them according to this chapter. This  
10 section shall not be interpreted as a requirement for local  
11 governments. Nothing in this section shall be construed to alter or  
12 create exemptions to the requirements of chapter 39.04 RCW.

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

15 WESTERN WASHINGTON PERMIT DEVELOPMENT ADVISORY GROUP. (1) The  
16 department shall establish a permit development advisory group for  
17 western Washington to advise and assist the department regarding  
18 permits for municipal separate storm sewer systems. The advisory group  
19 shall work within a facilitated process according to subsection (5) of  
20 this section to review the issues identified in section 7 of this act  
21 and to make recommendations and submit reports to the legislature  
22 according to sections 7 and 8 of this act. The permit development  
23 advisory group shall:

24 (a) Review and address the issues specified in section 7 of this  
25 act and any other issues regarding municipal separate storm sewer  
26 systems for which the department requests advice and assistance; and

27 (b) Advise and assist the department in drafting a permit or  
28 permits for municipal separate storm sewer systems in western  
29 Washington as required by federal regulations implementing phase two of  
30 the national pollutant discharge elimination system permit program  
31 under the federal clean water act (33 U.S.C. Sec. 1251 et seq.).

32 (2) The permit development advisory group may include up to  
33 eighteen members selected according to this subsection and any members  
34 electing to participate as provided in subsections (3) and (4) of this  
35 section. The permit development advisory group shall include a  
36 representative from the department of transportation and from the Puget

1 Sound action team. In addition, the permit development advisory group  
2 shall include at least one representative of each of the following  
3 interests, selected by the associations representing those interests:

4 (a) Counties and cities that have obtained and are operating under  
5 a municipal separate storm sewer system permit issued under phase one  
6 of the federal national pollutant discharge elimination system permit  
7 program;

8 (b) Counties and cities that will be required to obtain a municipal  
9 separate storm sewer system permit issued under phase two of the  
10 federal national pollutant discharge elimination system permit program;

11 (c) General contractors;

12 (d) Ports;

13 (e) Realtors;

14 (f) Residential contractors;

15 (g) Business;

16 (h) Shellfish growers;

17 (i) Agricultural and timber organizations; and

18 (j) Environmental organizations.

19 (3) The department shall invite and encourage members of the  
20 legislature with interest in storm water management to participate in  
21 the permit development advisory group. Legislative members who do  
22 participate shall be reimbursed for travel expenses as provided in RCW  
23 44.04.120.

24 (4) The department shall invite and encourage representatives of  
25 appropriate federal agencies and representatives of tribes located in  
26 western Washington to participate in the permit development advisory  
27 group.

28 (5)(a) No later than ten days after the effective date of this act,  
29 the agencies and interests identified in subsection (2) of this section  
30 shall submit to the department the names of their representatives for  
31 the permit development advisory group. The department shall schedule  
32 the first meeting of the permit development advisory group to occur no  
33 later than thirty days after the effective date of this act.

34 (b) At its first meeting the permit development advisory group  
35 shall establish an executive committee with a minimum of three and a  
36 maximum of five members. The executive committee shall include  
37 representatives of local government, business associations, and  
38 environmental organizations. The executive committee shall advise and

1 assist the department to develop a request for proposals for a  
2 facilitator to work with and facilitate the advisory group's review of  
3 the issues identified in section 7 of this act and to develop  
4 recommendations and submit reports to the legislature according to  
5 sections 7 and 8 of this act. The executive committee also shall  
6 review the responses to the request for proposals and select the  
7 facilitator. The department and the executive committee shall work  
8 expeditiously to select a facilitator who can begin working with the  
9 permit development advisory group by June 1, 2003.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.48 RCW  
11 to read as follows:

12 EASTERN WASHINGTON PERMIT DEVELOPMENT. (1) The department shall  
13 develop a municipal separate storm sewer system permit or permits that  
14 addresses the issues and needs of municipalities operating these  
15 systems in eastern Washington. The department shall use the advisory  
16 group it has established in eastern Washington to develop a storm water  
17 management manual to advise and assist the department regarding permits  
18 for municipal separate storm sewer systems to be issued in eastern  
19 Washington. The eastern Washington advisory group shall:

20 (a) Review and address the issues specified in section 7 of this  
21 act as they pertain to eastern Washington and any other issues  
22 regarding municipal separate storm sewer systems for which the  
23 department requests advice and assistance; and

24 (b) Assist and advise the department in drafting a permit or  
25 permits for municipal separate storm sewer systems in eastern  
26 Washington as required by federal regulations implementing phase two of  
27 the national pollutant discharge elimination system permit program  
28 under the federal clean water act (33 U.S.C. Sec. 1251 et seq.).

29 (2) The department shall invite and encourage representatives of  
30 the department of transportation, department of fish and wildlife,  
31 business associations, general and residential contractors,  
32 environmental organizations, appropriate federal agencies, and  
33 representatives of tribes located in eastern Washington to participate  
34 in the permit development advisory group.

35 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.48 RCW  
36 to read as follows:



1 PERMIT DEVELOPMENT ISSUES. (1) No later than March 1, 2004, the  
2 permit development advisory group for western Washington established in  
3 section 5 of this act and the eastern Washington storm water management  
4 group identified in section 6 of this act shall review and make  
5 recommendations to the department regarding the development of permits  
6 for municipal separate storm sewer systems. Issues considered by these  
7 groups shall include the:

8 (a) Types of discharges being regulated under these permits;

9 (b) Areas being regulated by these permits under phases one and two  
10 of the federal national pollutant discharge elimination system permit  
11 program as they relate to municipal borders;

12 (c) Issuance of these permits on a watershed basis;

13 (d) Coordination of permits and permit requirements for phase one  
14 and phase two of the federal national pollutant discharge elimination  
15 system permit program;

16 (e) Application of these permits to ground water discharges;

17 (f) Level of effort required of municipalities to satisfy federal  
18 requirements regarding:

19 (i) Public education and outreach;

20 (ii) Public participation and public involvement;

21 (iii) Illicit discharge detection and elimination;

22 (iv) Construction site runoff control;

23 (v) Postconstruction runoff control;

24 (vi) Pollution prevention and good housekeeping, including  
25 implementation of applicable total maximum daily loads and program  
26 evaluation and reporting;

27 (g) Protection for shellfish areas;

28 (h) The use of land use planning and existing land use plans and  
29 regulations as a best management practice for storm water management  
30 and to protect water quality; and

31 (i) Potential funding sources for implementation of permit  
32 requirements.

33 (2) During the development of permits according to this chapter,  
34 the permit development advisory group for western Washington  
35 established in section 5 of this act and the eastern Washington  
36 advisory group identified in section 6 of this act shall advise and  
37 assist the department to develop a menu of best management practices as

1 required under the federal clean water act (33 U.S.C. Sec. 1251 et  
2 seq.). These groups also shall review and provide advice and  
3 assistance on the draft permits as they are developed.

4 (3) In addition, these groups shall consider the requirements of  
5 federal and state water pollution control laws and identify whether the  
6 elements of these permits are required by federal law, by state law, or  
7 by both federal and state law. These groups shall consider the costs  
8 and benefits associated with each permit element not required under  
9 federal law and make recommendations to the legislature regarding these  
10 elements.

11 (4) These groups shall coordinate efforts with the transportation  
12 permit efficiency and accountability committee established by RCW  
13 47.06C.030. These groups also shall build upon the 2000 storm water  
14 advisory committee report to the legislature. In addition, these  
15 groups shall determine and make recommendations regarding whether the  
16 probable benefits of the permits developed according to this chapter  
17 are greater than the probable costs in a manner similar to that  
18 required for adoption of significant legislative rules according to RCW  
19 34.05.328(1)(c).

20 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.48 RCW  
21 to read as follows:

22 REPORTS TO THE LEGISLATURE. (1) No later than December 1, 2003,  
23 the department shall submit a progress report regarding the work of the  
24 western Washington permit development advisory group established in  
25 section 5 of this act and the eastern Washington advisory group  
26 identified in section 6 of this act to the appropriate committees of  
27 the legislature.

28 (2) The department shall submit a report regarding the  
29 recommendations of the western Washington permit development advisory  
30 group established in section 5 of this act and the eastern Washington  
31 advisory group identified in section 6 of this act to the appropriate  
32 committees of the legislature. In reporting on these groups' progress,  
33 the department shall identify the recommendations made by these groups,  
34 list the issues upon which the members of these groups were not able to  
35 reach agreement, and reflect the comments of all members of these  
36 groups. The department also shall identify any legislative

1 recommendations from these groups or from the department based on the  
2 work of these groups.

3 (3) After the permits are developed according to the process  
4 specified in sections 5 and 6 of this act, the department shall submit  
5 a final report to the appropriate committees of the legislature  
6 regarding these permits and the work of the advisory groups. The  
7 department also shall identify any legislative recommendations from  
8 these groups or from the department based on the work of these groups.

9 NEW SECTION. **Sec. 9.** EXPIRATION. Sections 5 through 8 of this  
10 act expire June 30, 2006.

11 NEW SECTION. **Sec. 10.** CAPTIONS. As used in this act, captions  
12 constitute no part of the law.

13 NEW SECTION. **Sec. 11.** SEVERABILITY. If any provision of this act  
14 or its application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 12.** EMERGENCY. This act is necessary for the  
18 immediate preservation of the public peace, health, or safety, or  
19 support of the state government and its existing public institutions,  
20 and takes effect immediately.

--- END ---