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**SUBSTITUTE SENATE BILL 6415**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton, Doumit, Hewitt, Hargrove, Honeyford, T. Sheldon, Hale, Murray and Stevens)

READ FIRST TIME 02/09/04.

1       AN ACT Relating to conditioning industrial and construction storm  
2 water general discharge permits; and adding a new section to chapter  
3 90.48 RCW.

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

5       NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48 RCW  
6 to read as follows:

7       (1) The department is authorized to issue storm water general  
8 permits for industrial and construction dischargers under the national  
9 pollution discharge elimination system of the federal clean water act  
10 if such permits are required to comply with federal standards or are  
11 necessary for the effective implementation of this chapter, unless  
12 otherwise exempted in (c) of this subsection. The department shall use  
13 discretion in developing, implementing, and enforcing the industrial  
14 and construction storm water general permits in accordance with the  
15 provisions of this section:

16       (a) The department shall use narrative effluent discharge limits in  
17 establishing permittee compliance conditions in the permit unless  
18 subject to conditions of (c) of this subsection.

1 (b) Compliance with narrative effluent discharge limits is presumed  
2 when the permittee has satisfied permit requirements, including:

3 (i) Permit conditions for planning, sampling, monitoring,  
4 reporting, and recordkeeping; and

5 (ii) Implementation, adaptive management, and maintenance of best  
6 management practices for on-site pollution control sufficient to  
7 satisfy federal and state technology standards.

8 (c) The following are exempt from the provisions of this section:

9 (i) Federally mandated industry specific effluent guidelines;

10 (ii) State developed industry specific and/or performance based  
11 permits;

12 (iii) Effluent discharge standards based on a completed total  
13 maximum daily load analysis or other pollution control measures; or

14 (iv) Completed demonstration of reasonable potential to cause or  
15 contribute to violation of water quality standards.

16 (2) The department may require reporting of discharge sampling,  
17 discharge visual monitoring, and periodic permittee evaluation of best  
18 management practices, for as long as deemed necessary, to determine  
19 their effectiveness in managing pollutants in storm water.

20 (3)(a) The permittee must not be causing or have the reasonable  
21 potential to cause or contribute to a violation of water quality  
22 standard. Where a discharge has already been authorized under a  
23 national pollution discharge elimination system storm water permit and  
24 it is later determined to cause or have the reasonable potential to  
25 cause or contribute to the violation of an applicable water quality  
26 standard, the department must notify the permittee of such a violation.  
27 In making that determination, the department shall use the information  
28 submitted by permittees to ascertain if additional permittee sampling  
29 of their discharges is required to support a determination of a  
30 reasonable potential to cause a violation of an applicable water  
31 quality standard in the receiving water. Priority must be given to  
32 determinations for discharges to waterbodies considered impaired under  
33 section 303d or section 305b of the federal clean water act, 33 U.S.C.  
34 Sec. 1251 et seq. The department is authorized to issue an order  
35 requiring additional sampling of permittee's discharge in support of  
36 this determination. The type, quantity, and duration of sampling must  
37 consider: (i) Methods and tools available to the department for making  
38 a reasonable determination of potential to pollute; (ii) seasonality

1 issues associated with the discharges and receiving waters; and (iii)  
2 data quality consistency with current department policy for  
3 identification of impaired waters. Data quantity must be consistent  
4 with department or United States environmental protection agency  
5 guidelines, whichever are more stringent, to provide statistically  
6 valid results for the reasonable potential determination.

7 (b) During the data collection phase, if the department determines  
8 a need for an effluent discharge limitation, it must be set equivalent  
9 to the current discharge, provided:

10 (i) The conditions of subsection (1)(b) of this section are  
11 satisfied; and

12 (ii) The discharge does not pose an immediate threat to public  
13 health or the environment.

14 (4) Once notified by the department that a determination of  
15 reasonable potential to cause or contribute to the violation of the  
16 applicable water quality standard, the permittee must take all  
17 necessary actions to ensure future discharges do not cause or  
18 contribute to the violation of a water quality standard and document  
19 those actions in the storm water pollution prevention plan. If  
20 violations remain or reoccur, then the department can issue an order  
21 with numeric limits based on the reasonable potential analysis, or  
22 coverage under this permit may be terminated by the department and an  
23 alternative general permit or individual permit may be issued.

24 (a) If an order is issued, then storm water discharges identified  
25 in this subsection are required to achieve compliance with effluent  
26 discharge standards within the shortest time practicable and conform to  
27 the compliance schedule of chapter 173-201A WAC as it existed on the  
28 effective date of this section.

29 (b) In determining the shortest time practicable, the department  
30 should, at a minimum, consider technical feasibility, fiscal  
31 capability, permitting requirements, and other pollution control  
32 activities.

33 (5) Interim mixing zones shall be issued to all permittees who  
34 provide department requested mixing zone information on the notice of  
35 intent under the mixing zone provision of chapter 173-201A WAC except  
36 for pollutants identified as causing impairment in the receiving  
37 waterbody.

1 (a) The interim mixing zones shall remain in effect until the  
2 department:

3 (i) Issues an expanded mixing zone for storm water to the  
4 permittee;

5 (ii) Resizes the permittee's interim mixing zone; or  
6 (iii) Revokes the permittee's interim mixing zone.

7 (b) The department may request additional information to support an  
8 expanded mixing zone, revocation of a mixing zone, or resizing of an  
9 interim mixing zone, subject to the provisions of subsection (7) of  
10 this section when:

11 (i) Review of initial mixing zone information provided indicates a  
12 concern;

13 (ii) A site inspection identifies a concern; or  
14 (iii) A permittee requests a storm water expanded mixing zone.

15 (c) Prior to an interim mixing zone being revoked or resized, the  
16 department shall take measures to provide the permittee with an  
17 opportunity to:

18 (i) Correct the problems identified with the mixing zone;  
19 (ii) Conduct studies as necessary to support an alternative mixing  
20 zone; or  
21 (iii) Make physical and operational changes as necessary to meet  
22 applicable discharge standards under the permit for a facility without  
23 a mixing zone.

24 (6) Any storm water technical assistance program within the  
25 department must be operated independently of inspection or enforcement  
26 programs. Technical assistance personnel shall only take enforcement  
27 action when there is an imminent threat to public health or the  
28 environment. Technical assistance will only be provided to permittees  
29 who request assistance.

30 (7)(a) In consideration of the health and safety of the general  
31 permittee and their employees, in-stream sampling is not a requirement  
32 of an industrial or construction general permit, except:

33 (i) Under an order to collect data to support a reasonable  
34 potential analysis; or  
35 (ii) Under an order to collect data to support a revision to the  
36 interim mixing zone.

37 (b) The department is authorized to use fees collected in

1 conjunction with storm water permits to support necessary storm  
2 water-related ambient monitoring, subject to budgetary approval by the  
3 legislature.

4 (8) An industrial or construction storm water general permittee is  
5 only liable for that portion of storm water-borne pollution or storm  
6 water flow that originates from facilities owned or operated by the  
7 permittee.

8 (9) Upon application by the permittee who requires a mixing zone,  
9 compliance schedule, or is subject to a total maximum daily load or  
10 other pollution control measure, the department shall issue an  
11 individual permit in lieu of coverage under a general permit within  
12 twelve months.

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