

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6415

58th Legislature
2004 Regular Session

Passed by the Senate March 10, 2004
YEAS 49 NAYS 0

President of the Senate

Passed by the House March 9, 2004
YEAS 95 NAYS 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
**ENGROSSED SUBSTITUTE SENATE BILL
6415** as passed by the Senate and
the House of Representatives on
the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6415

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

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; adding new sections to chapter 90.48
3 RCW; creating new sections; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the federal
6 permit program under the federal clean water act, 33 U.S.C. Sec. 1251
7 et seq., and the state water pollution control laws provide numerous
8 environmental and public health benefits to the citizens of Washington
9 and to the state. The legislature also finds that failure to prevent
10 and control pollution discharges, including those associated with storm
11 water runoff, can degrade water quality and damage the environment,
12 public health, and industries dependent on clean water such as
13 shellfish production.

14 (2) The legislature finds the nature of storm water presents unique
15 challenges and difficulties in meeting the permitting requirements
16 under the federal clean water act, 33 U.S.C. Sec. 1251 et seq.,
17 including compliance with technology and water quality-based standards.

18 (3) The legislature finds that the federal clean water act, 33
19 U.S.C. Sec. 1251 et seq., requires certain larger construction sites

1 and industrial facilities to obtain storm water permits under the
2 national pollutant discharge elimination system permit program. The
3 legislature also finds that under phase two of this program, smaller
4 construction sites are also required to obtain storm water permits for
5 their discharges.

6 (4) The legislature finds the department of ecology has been using
7 general permits to permit categories of similar dischargers, including
8 storm water associated with industrial and construction activities.
9 The legislature also finds general permits must comply with all
10 applicable requirements of the federal clean water act, 33 U.S.C. Sec.
11 1251 et seq., and the state water pollution control act including
12 technology and water quality-based permitting requirements. The
13 legislature further finds general permits may not always be the best
14 solution for an individual discharger, especially when establishing
15 water quality-based permitting requirements.

16 (5) The legislature finds that where sources within a specific
17 category or subcategory of dischargers are subject to water
18 quality-based limits imposed under the federal clean water act, 33
19 U.S.C. Sec. 1251 et seq., the sources in that specific category or
20 subcategory must be subject to the same water quality-based limits.

21 (6) For this reason, the legislature encourages, to the extent
22 allowed under existing state and federal law, an adaptive management
23 approach to permitting storm water discharges.

24 (7) The legislature finds that storm water management must satisfy
25 state and federal water quality requirements while also providing for
26 flexibility in meeting such requirement to help ensure cost-effective
27 storm water management.

28 (8) The legislature finds that the permitting of new and existing
29 dischargers into waters listed under 33 U.S.C. Sec. 1313(d) (section
30 303(d) of the federal clean water act) presents specific challenges and
31 is subject to additional permitting restrictions under the federal
32 clean water act, 33 U.S.C. Sec. 1251 et seq.

33 (9) The legislature declares that general permits can be an
34 effective and efficient permitting mechanism for permitting large
35 numbers of similar dischargers.

36 (10) The legislature declares that an inspection and technical
37 assistance program for industrial and construction storm water general

1 permits is needed to ensure an effective permitting program. The
2 legislature also declares that such a program should be fully funded to
3 ensure its success.

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

6 The provisions of this section apply to the construction and
7 industrial storm water general permits issued by the department
8 pursuant to the federal clean water act, 33 U.S.C. Sec. 1251 et seq.,
9 and this chapter.

10 (1) Effluent limitations shall be included in construction and
11 industrial storm water general permits as required under the federal
12 clean water act, 33 U.S.C. Sec. 1251 et seq., and its implementing
13 regulations. In accordance with federal clean water act requirements,
14 pollutant specific, water quality-based effluent limitations shall be
15 included in construction and industrial storm water general permits if
16 there is a reasonable potential to cause or contribute to an excursion
17 of a state water quality standard.

18 (2) Subject to the provisions of this section, both technology and
19 water quality-based effluent limitations may be expressed as:

- 20 (a) Numeric effluent limitations;
21 (b) Narrative effluent limitations; or
22 (c) A combination of numeric and narrative effluent discharge
23 limitations.

24 (3) The department must condition storm water general permits for
25 industrial and construction activities issued under the national
26 pollutant discharge elimination system of the federal clean water act
27 to require compliance with numeric effluent discharge limits when such
28 discharges are subject to:

- 29 (a) Numeric effluent limitations established in federally adopted,
30 industry-specific effluent guidelines;
31 (b) State developed, industry-specific performance-based numeric
32 effluent limitations;
33 (c) Numeric effluent limitations based on a completed total maximum
34 daily load analysis or other pollution control measures; or
35 (d) A determination by the department that:
36 (i) The discharges covered under either the construction or

1 industrial storm water general permits have a reasonable potential to
2 cause or contribute to violation of state water quality standards; and
3 (ii) Effluent limitations based on nonnumeric best management
4 practices are not effective in achieving compliance with state water
5 quality standards.

6 (4) In making a determination under subsection (3)(d) of this
7 section, the department shall use procedures that account for:
8 (a) Existing controls on point and nonpoint sources of pollution;
9 (b) The variability of the pollutant or pollutant parameter in the
10 storm water discharge; and
11 (c) As appropriate, the dilution of the storm water in the
12 receiving waters.

13 (5) Narrative effluent limitations requiring both the
14 implementation of best management practices, when designed to satisfy
15 the technology and water quality-based requirements of the federal
16 clean water act, 33 U.S.C. Sec. 1251 et seq., and compliance with water
17 quality standards, shall be used for construction and industrial storm
18 water general permits, unless the provisions of subsection (3) of this
19 section apply.

20 (6) Compliance with water quality standards shall be presumed,
21 unless discharge monitoring data or other site specific information
22 demonstrates that a discharge causes or contributes to violation of
23 water quality standards, when the permittee is:
24 (a) In full compliance with all permit conditions, including
25 planning, sampling, monitoring, reporting, and recordkeeping
26 conditions; and
27 (b)(i) Fully implementing storm water best management practices
28 contained in storm water technical manuals approved by the department,
29 or practices that are demonstrably equivalent to practices contained in
30 storm water technical manuals approved by the department, including the
31 proper selection, implementation, and maintenance of all applicable and
32 appropriate best management practices for on-site pollution control.

33 (ii) For the purposes of this section, "demonstrably equivalent"
34 means that the technical basis for the selection of all storm water
35 best management practices are documented within a storm water pollution
36 prevention plan. The storm water pollution prevention plan must
37 document:

1 (A) The method and reasons for choosing the storm water best
2 management practices selected;

3 (B) The pollutant removal performance expected from the practices
4 selected;

5 (C) The technical basis supporting the performance claims for the
6 practices selected, including any available existing data concerning
7 field performance of the practices selected;

8 (D) An assessment of how the selected practices will comply with
9 state water quality standards; and

10 (E) An assessment of how the selected practices will satisfy both
11 applicable federal technology-based treatment requirements and state
12 requirements to use all known, available, and reasonable methods of
13 prevention, control, and treatment.

14 (7)(a) The department shall modify the industrial storm water
15 general permit to require compliance by May 1, 2009, with appropriately
16 derived numeric water quality-based effluent limitations for existing
17 discharges to water bodies listed as impaired according to 33 U.S.C.
18 Sec. 1313(d) (Sec. 303(d) of the federal clean water act, 33 U.S.C.
19 Sec. 1251 et seq.).

20 (b) No later than September 1, 2008, the department shall report to
21 the appropriate committees of the legislature specifying how the
22 numeric effluent limitation in (a) of this subsection would be
23 implemented. The report shall identify the number of dischargers to
24 impaired water bodies and provide an assessment of anticipated
25 compliance with the numeric effluent limitation established by (a) of
26 this subsection.

27 (8)(a) Construction and industrial storm water general permits
28 issued by the department shall include an enforceable adaptive
29 management mechanism that includes appropriate monitoring, evaluation,
30 and reporting. The adaptive management mechanism shall include
31 elements designed to result in permit compliance and shall include, at
32 a minimum, the following elements:

33 (i) An adaptive management indicator, such as monitoring
34 benchmarks;

35 (ii) Monitoring;

36 (iii) Review and revisions to the storm water pollution prevention
37 plan;

38 (iv) Documentation of remedial actions taken; and

1 (v) Reporting to the department.

2 (b) Construction and industrial storm water general permits issued
3 by the department also shall include the timing and mechanisms for
4 implementation of treatment best management practices.

5 (9) Construction and industrial storm water discharges authorized
6 under general permits must not cause or have the reasonable potential
7 to cause or contribute to a violation of an applicable water quality
8 standard. Where a discharge has already been authorized under a
9 national pollutant discharge elimination system storm water permit and
10 it is later determined to cause or have the reasonable potential to
11 cause or contribute to the violation of an applicable water quality
12 standard, the department may notify the permittee of such a violation.

13 (10) Once notified by the department of a determination of
14 reasonable potential to cause or contribute to the violation of an
15 applicable water quality standard, the permittee must take all
16 necessary actions to ensure future discharges do not cause or
17 contribute to the violation of a water quality standard and document
18 those actions in the storm water pollution prevention plan and a report
19 timely submitted to the department. If violations remain or recur,
20 coverage under the construction or industrial storm water general
21 permits may be terminated by the department, and an alternative general
22 permit or individual permit may be issued. Compliance with the
23 requirements of this subsection does not preclude any enforcement
24 activity provided by the federal clean water act, 33 U.S.C. Sec. 1251
25 et seq., for the underlying violation.

26 (11) Receiving water sampling shall not be a requirement of an
27 industrial or construction storm water general permit except to the
28 extent that it can be conducted without endangering the health and
29 safety of persons conducting the sampling.

30 (12) The department may authorize mixing zones only in compliance
31 with and after making determinations mandated by the procedural and
32 substantive requirements of applicable laws and regulations.

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

35 The provisions of this section apply to the construction and
36 industrial storm water general permits issued by the department

1 pursuant to the federal clean water act, 33 U.S.C. Sec. 1251 et seq.,
2 and this chapter.

3 (1) By January 1, 2005, the department shall initiate an inspection
4 and compliance program for all permittees covered under the
5 construction and industrial storm water general permits. The program
6 shall include, but may not be limited to, the:

7 (a) Provision of compliance assistance and survey for evidence of
8 permit violations and violations of water quality standards;

9 (b) Identification of corrective actions for actual or imminent
10 discharges that violate or could violate the state's water quality
11 standards;

12 (c) Monitoring of the development and implementation of storm water
13 pollution prevention plans and storm water monitoring plans;

14 (d) Identification of dischargers who would benefit from follow-up
15 inspection or compliance assistance programs; and

16 (e) Collection and analysis of discharge and receiving water
17 samples whenever practicable and when deemed appropriate by the
18 department, and other evaluation of discharges to determine the
19 potential for causing or contributing to violations of water quality
20 standards.

21 (2) The department's inspections under this section shall be
22 conducted without prior notice to permittees whenever practicable.

23 (3) Follow-up inspections shall be conducted by the department to
24 ensure that corrective and other actions as identified in the course of
25 initial inspections are being carried out. The department shall also
26 take such additional actions as are necessary to ensure compliance with
27 state and federal water quality requirements, provided that all
28 permittees must be inspected once within two years of the start of this
29 program and each permittee must be inspected at least once each permit
30 cycle thereafter.

31 (4) Permittees must be prioritized for inspection based on the
32 development of criteria that include, but are not limited to, the
33 following factors:

34 (a) Compliance history, including submittal or nonsubmittal of
35 discharge monitoring reports;

36 (b) Monitoring results in relationship to permit benchmarks; and

37 (c) Discharge to impaired waters of the state.

1 (5) Nothing in this section shall be construed to limit the
2 department's enforcement discretion.

3 NEW SECTION. **Sec. 4.** No later than December 31, 2006, the
4 department of ecology shall submit a report to the appropriate
5 committees of the legislature regarding methods to improve the
6 effectiveness of permit monitoring requirements in construction and
7 industrial storm water general permits. The department of ecology
8 shall study and evaluate how monitoring requirements could be improved
9 to determine the effectiveness of storm water best management practices
10 and compliance with state water quality standards. In this study the
11 department also shall evaluate monitoring requirements that are
12 necessary for determining compliance or noncompliance with state water
13 quality standards and shall evaluate the feasibility of including such
14 monitoring in future permits. When conducting this study, the
15 department shall consult with experts in the fields of monitoring,
16 storm water management, and water quality, and when necessary the
17 department shall conduct field work to evaluate the practicality and
18 usefulness of alternative monitoring proposals.

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

21 (1) The department shall establish permit fees for construction and
22 industrial storm water general permits as necessary to fund the
23 provisions of sections 2 and 3 of this act. When calculating
24 appropriate fee amounts, the department shall take into consideration
25 differences between large and small businesses and the economic impacts
26 caused by permit fees on those businesses. Fees established under this
27 section shall be adopted in accordance with chapter 34.05 RCW.

28 (2) In its biennial discharge fees progress report required by RCW
29 90.48.465, the department shall include a detailed accounting regarding
30 the method used to establish permit fees, the amount of permit fees
31 collected, and the expenditure of permit fees. The detailed accounting
32 shall include data on inspections conducted and the staff hired to
33 implement the provisions of sections 2 and 3 of this act.

34 NEW SECTION. **Sec. 6.** If any portion of sections 2 and 3 of this

1 act are found to be in conflict with the federal clean water act, that
2 portion alone is void.

3 NEW SECTION. **Sec. 7.** This act expires January 1, 2015.

4 NEW SECTION. **Sec. 8.** If specific funding for the purposes of this
5 act, referencing this act by bill or chapter number, is not provided by
6 June 30, 2004, in the omnibus appropriations act, this act is null and
7 void.

--- END ---