

ESHB 2222 - S COMM AMD

By Committee on Environment, Water & Energy

ADOPTED AND ENGROSSED 04/14/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 90.48.555 and 2004 c 225 s 2 are each amended to read
4 as follows:

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

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

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

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

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

- 28 (a) Numeric effluent limitations established in federally adopted,
29 industry-specific effluent guidelines;

1 (b) State developed, industry-specific performance-based numeric
2 effluent limitations;

3 (c) Numeric effluent limitations based on a completed total maximum
4 daily load analysis or other pollution control measures; or

5 (d) A determination by the department that:

6 (i) The discharges covered under either the construction or
7 industrial storm water general permits have a reasonable potential to
8 cause or contribute to violation of state water quality standards; and

9 (ii) Effluent limitations based on nonnumeric best management
10 practices are not effective in achieving compliance with state water
11 quality standards.

12 (4) In making a determination under subsection (3)(d) of this
13 section, the department shall use procedures that account for:

14 (a) Existing controls on point and nonpoint sources of pollution;

15 (b) The variability of the pollutant or pollutant parameter in the
16 storm water discharge; and

17 (c) As appropriate, the dilution of the storm water in the
18 receiving waters.

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

26 (6) Compliance with water quality standards shall be presumed,
27 unless discharge monitoring data or other site specific information
28 demonstrates that a discharge causes or contributes to violation of
29 water quality standards, when the permittee is:

30 (a) In full compliance with all permit conditions, including
31 planning, sampling, monitoring, reporting, and recordkeeping
32 conditions; and

33 (b)(i) Fully implementing storm water best management practices
34 contained in storm water technical manuals approved by the department,
35 or practices that are demonstrably equivalent to practices contained in
36 storm water technical manuals approved by the department, including the
37 proper selection, implementation, and maintenance of all applicable and
38 appropriate best management practices for on-site pollution control.

1 (ii) For the purposes of this section, "demonstrably equivalent"
2 means that the technical basis for the selection of all storm water
3 best management practices are documented within a storm water pollution
4 prevention plan. The storm water pollution prevention plan must
5 document:

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

8 (B) The pollutant removal performance expected from the practices
9 selected;

10 (C) The technical basis supporting the performance claims for the
11 practices selected, including any available existing data concerning
12 field performance of the practices selected;

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

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

19 (7)(a) By November 1, 2009, the department shall modify or reissue
20 the industrial storm water general permit to require compliance ((by
21 May 1, 2009,)) with appropriately derived numeric water quality-based
22 effluent limitations for existing discharges to water bodies listed as
23 impaired according to 33 U.S.C. Sec. 1313(d) (Sec. 303(d) of the
24 federal clean water act, 33 U.S.C. Sec. 1251 et seq.).

25 (b) ((No later than September 1, 2008,)) The industrial storm water
26 general permit must require permittees to comply with appropriately
27 derived numeric water quality-based effluent limitations in the permit,
28 as described in (a) of this subsection, by no later than six months
29 after the effective date of the modified or reissued industrial storm
30 water general permit.

31 (c) For permittees that the department determines are unable to
32 comply with the numeric water quality-based effluent limitations
33 required by (a) of this subsection, within the timeline established in
34 (b) of this subsection, the department shall establish a compliance
35 schedule as follows:

36 (i) Any compliance schedule provided by the department must require
37 compliance as soon as possible, and must require compliance by no later
38 than twenty-four months, or two complete wet seasons, after the

1 effective date of the industrial storm water general permit. For
2 purposes of this subsection (7)(c)(i), "wet seasons" means October 1st
3 through June 30th.

4 (ii) The department shall post on its web site the name, location,
5 industrial storm water permit number, and the reason for requesting a
6 compliance schedule for each permittee who requests a compliance
7 schedule according to this subsection (7)(c). The department shall
8 post this information no later than thirty days after receiving a
9 permittee's request for a compliance schedule under this subsection
10 (7)(c). The department shall also prepare a list of organizations and
11 individuals seeking to be notified when such requests for compliance
12 schedules are made, and notify them within thirty days after receiving
13 a permittee's request for a compliance schedule. Notification under
14 this subsection may be accomplished electronically.

15 (d) The department shall report to the appropriate committees of
16 the legislature specifying how the numeric effluent limitation in (a)
17 of this subsection would be implemented. The report shall identify the
18 number of dischargers to impaired water bodies and provide an
19 assessment of anticipated compliance with the numeric effluent
20 limitation established by (a) of this subsection.

21 (8)(a) Construction and industrial storm water general permits
22 issued by the department shall include an enforceable adaptive
23 management mechanism that includes appropriate monitoring, evaluation,
24 and reporting. The adaptive management mechanism shall include
25 elements designed to result in permit compliance and shall include, at
26 a minimum, the following elements:

27 (i) An adaptive management indicator, such as monitoring
28 benchmarks;

29 (ii) Monitoring;

30 (iii) Review and revisions to the storm water pollution prevention
31 plan;

32 (iv) Documentation of remedial actions taken; and

33 (v) Reporting to the department.

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

37 (9) Construction and industrial storm water discharges authorized
38 under general permits must not cause or have the reasonable potential

1 to cause or contribute to a violation of an applicable water quality
2 standard. Where a discharge has already been authorized under a
3 national pollutant discharge elimination system storm water permit and
4 it is later determined to cause or have the reasonable potential to
5 cause or contribute to the violation of an applicable water quality
6 standard, the department may notify the permittee of such a violation.

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

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

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

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

29 (1) As funding to do so becomes available, the department shall
30 create a storm water technical resource center in partnership with a
31 university, nonprofit organization, or other public or private entity
32 to provide tools for storm water management. The center shall use its
33 authority to support the duties listed in this subsection through
34 research, development, technology demonstration, technology transfer,
35 education, outreach, recognition, and training programs. The center
36 may:

37 (a) Review and evaluate emerging storm water technologies;

1 (b) Research and develop innovative and cost-effective technical
2 solutions to remove pollutants from runoff and to reduce or eliminate
3 storm water discharges;

4 (c) Conduct pilot projects to test technical solutions;

5 (d) Serve as a clearinghouse and outreach center for information on
6 storm water technology;

7 (e) Assist in the development of storm water control methods to
8 better protect water quality, including source control, product
9 substitution, pollution prevention, and storm water treatment;

10 (f) Coordinate with federal, state, and local agencies and private
11 organizations in administering programs related to storm water control
12 measures; and

13 (g) Collaborate with existing storm water outreach programs.

14 (2) The department shall consult with an advisory committee in the
15 development of the storm water technical resource center. The advisory
16 committee must include representatives from relevant state agencies,
17 local governments, the business community, the environmental community,
18 tribes, and the building and development industry.

19 (3) The department, in consultation with the storm water technical
20 resource center advisory committee, shall identify a funding strategy
21 for funding the storm water technical resource center.

22 (4) The department shall encourage all interested parties to help
23 and support the technical resource center with in-kind services.

24 (5) The department shall prepare and submit a biennial progress
25 report to the legislature.

26 NEW SECTION. **Sec. 3.** Section 1 of this act expires January 1,
27 2015."

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28 On page 1, line 2 of the title, after "permits;" strike the
29 remainder of the title and insert "amending RCW 90.48.555; adding a new

1 section to chapter 90.48 RCW; and providing an expiration date."

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