
ENGROSSED SUBSTITUTE HOUSE BILL 2222

State of Washington

61st Legislature

2009 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake, Kretz, Short, Eddy, Smith, Takko, Hinkle, Hudgins, Springer, Herrera, Morris, Warnick, Williams, and Chandler)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to conditioning industrial storm water general
2 discharge permits; amending RCW 90.48.555; adding new sections to
3 chapter 90.48 RCW; and providing an expiration date.

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

5 **Sec. 1.** RCW 90.48.555 and 2004 c 225 s 2 are each amended to read
6 as follows:

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

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

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

3 (a) Numeric effluent limitations;

4 (b) Narrative effluent limitations; or

5 (c) A combination of numeric and narrative effluent discharge
6 limitations.

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

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

14 (b) State developed, industry-specific performance-based numeric
15 effluent limitations;

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

18 (d) A determination by the department that:

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

22 (ii) Effluent limitations based on nonnumeric best management
23 practices are not effective in achieving compliance with state water
24 quality standards.

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

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

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

30 (c) As appropriate, the dilution of the storm water in the
31 receiving waters.

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

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

5 (a) In full compliance with all permit conditions, including
6 planning, sampling, monitoring, reporting, and recordkeeping
7 conditions; and

8 (b)(i) Fully implementing storm water best management practices
9 contained in storm water technical manuals approved by the department,
10 or practices that are demonstrably equivalent to practices contained in
11 storm water technical manuals approved by the department, including the
12 proper selection, implementation, and maintenance of all applicable and
13 appropriate best management practices for on-site pollution control.

14 (ii) For the purposes of this section, "demonstrably equivalent"
15 means that the technical basis for the selection of all storm water
16 best management practices are documented within a storm water pollution
17 prevention plan. The storm water pollution prevention plan must
18 document:

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

21 (B) The pollutant removal performance expected from the practices
22 selected;

23 (C) The technical basis supporting the performance claims for the
24 practices selected, including any available existing data concerning
25 field performance of the practices selected;

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

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

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

1 (b) (~~No later than September 1, 2008,~~) The industrial storm water
2 general permit must require permittees to comply with appropriately
3 derived numeric water quality-based effluent limitations in the permit,
4 as described in (a) of this subsection, by no later than six months
5 after the effective date of the industrial storm water general permit.

6 (c) For permittees that the department determines are unable to
7 comply with numeric water quality-based effluent limitations required
8 by (a) of this subsection, within the timeline established in (b) of
9 this subsection, the department shall establish a compliance schedule.

10 (i) A compliance schedule provided by the department must require
11 compliance as soon as possible, but no later than eighteen months after
12 the effective date of the industrial storm water general permit.

13 (ii) The department shall post the compliance schedule on the
14 department's web site prior to issuing the compliance schedule.

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 (13) The industrial storm water general permit must include a
28 provision to allow an entity subject to coverage by the permit to apply
29 for an individual storm water permit or coverage under another
30 alternative permit as provided in the industrial storm water general
31 permit.

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

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

1 By July 1, 2010, the department shall implement a technical
2 assistance program as provided by RCW 43.05.030, 43.05.040, 43.05.050,
3 43.05.060, and 43.05.070. The department shall seek input from
4 stakeholders prior to establishing the technical assistance program and
5 periodically thereafter in an effort to maximize the effectiveness of
6 the technical assistance program. The department shall also seek input
7 from stakeholders to help identify resources needed to implement the
8 department's technical assistance program.

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

11 (1) The provisions of this section apply to the construction and
12 industrial storm water general permits issued by the department
13 pursuant to the federal clean water act, 33 U.S.C. Sec. 1251 et seq.,
14 and this chapter.

15 (2) By June 30, 2010, the department shall develop a long-term
16 compliance assessment and enforcement plan for the construction and
17 industrial storm water general permits in accordance with RCW
18 90.48.560. The plan must:

19 (a) Be developed with the assistance of a stakeholder advisory
20 committee with representatives of at least industrial and construction
21 permittees, nongovernmental organizations, affected agencies, tribes,
22 and local governments. The department may establish separate
23 stakeholder committees for the industrial storm water general permit
24 and the construction storm water general permit.

25 (b) Contain provisions to identify entities required to be covered
26 by the permits that are not covered and maximize the number of
27 facilities covered by the permit that are required to be covered by the
28 permit by June 30, 2011.

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

31 (1) The department shall create a storm water technical resource
32 center in partnership with a university, nonprofit organization, or
33 other public or private entity to provide tools for storm water
34 management. The center shall use its authority to support the duties
35 listed in this subsection through research, development, technology

1 demonstration, technology transfer, education, outreach, recognition,
2 and training programs. The center may:

- 3 (a) Review and evaluate emerging storm water technologies;
 - 4 (b) Research and develop innovative and cost-effective technical
5 solutions to remove pollutants from runoff and to reduce or eliminate
6 storm water discharges;
 - 7 (c) Conduct pilot projects to test technical solutions;
 - 8 (d) Serve as a clearinghouse and outreach center for information on
9 storm water technology;
 - 10 (e) Assist in the development of storm water control methods to
11 better protect water quality, including source control, product
12 substitution, pollution prevention, and storm water treatment;
 - 13 (f) Coordinate with federal, state, and local agencies and private
14 organizations in administering programs related to storm water control
15 measures; and
 - 16 (g) Collaborate with existing storm water outreach programs.
- 17 (2) The department shall consult with an advisory committee in the
18 development of the storm water technical resource center. The advisory
19 committee must include representatives from relevant state agencies,
20 local governments, the business community, the environmental community,
21 tribes, and the building and development industry.
- 22 (3) The department, in consultation with the storm water technical
23 resource center advisory committee, shall identify a funding strategy
24 for funding the storm water technical resource center.
- 25 (4) The department shall encourage all interested parties to help
26 and support the technical resource center with in-kind services.
- 27 (5) The department shall prepare and submit a biennial progress
28 report to the legislature.

29 NEW SECTION. **Sec. 5.** Section 1 of this act expires January 1,
30 2015.

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