
**Agriculture & Natural Resources
Committee**

HB 1806

Brief Description: Concerning construction and industrial storm water general permits.

Sponsors: Representatives Takko, Short, Morris, Blake, Smith, McCune, Rodne, Dunshee, Haler, Shea, Zeiger, Kristiansen, Fagan, Eddy, Ahern, Jacks, Bailey, Armstrong, Angel, Rolfes and Johnson.

Brief Summary of Bill

- Modifies certain requirements of the construction and industrial storm water general permits relating to adaptive management and water quality standards.
- Requires the Department of Ecology to provide a comprehensive risk-based storm water regulatory plan to the Legislature and conduct a survey of potential industrial storm water general permittees who do not already have coverage under the general permit.

Hearing Date: 2/15/11

Staff: Courtney Barnes (786-7194).

Background:

Discharge Permits.

The Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. "Point sources" are defined generally as discernable, discrete, and confined conveyances from which pollutant discharges can or do occur. A NPDES permit is required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A wastewater discharge permit places limits on the quantity and concentrations of contaminants that may be discharged. Permits may require wastewater treatment or impose operating or other conditions, including monitoring, reporting, and spill prevention planning. A NPDES permit is valid for five years but may be renewed.

In addition to its NPDES permit responsibilities, the Department of Ecology (DOE) administers a state program for discharge of pollutants into state waters. State permits are required for anyone who discharges waste materials from a commercial or industrial operation to ground or to publicly-owned treatment plants.

The DOE issues both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers) in the state and NPDES permit programs. Activities covered by NPDES permits include construction activities, industrial operations, storm water discharges, and application of aquatic pesticides.

Storm Water Permits.

The federal CWA was amended in 1987 to classify storm water discharges from certain industries and municipalities as point sources of pollution requiring NPDES permits. The EPA storm water regulations implementing this federal law requirement established two phases for the storm water permit program: Phase I and Phase II.

Under state law, requirements are specified in statute for the issuance of general storm water discharge permits for industrial and construction activities. Among other requirements, the general permits must have an enforceable adaptive management mechanism and discharges must not cause or have the reasonable potential to cause or contribute to a violation of an applicable water quality standard.

Adaptive Management.

Construction and industrial storm water general discharge permits must include an enforceable adaptive management mechanism. The adaptive management mechanism must include appropriate monitoring, evaluation, and reporting. The minimum adaptive management elements are:

- an adaptive management indicator, such as monitoring benchmarks;
- monitoring;
- review of and revisions to the storm water pollution prevention plan;
- documentation of remedial actions taken; and
- reporting to the DOE.

These permits also must include the timing and mechanisms for implementation of treatment best management practices.

Water Quality Standards.

Construction and industrial storm water discharges must not cause or have the reasonable potential to cause or contribute to a violation of an applicable water quality standard. When an authorized permit discharge is later found to cause or have the reasonable potential to cause or

contribute to a violation, the DOE may notify the permittee. Once notified, the permittee must take all necessary actions to ensure that future discharges do not cause or contribute to the violation of the water quality standard. The permittee also must document those actions in its storm water pollution prevention plan in a report timely submitted to the DOE. If violations remain or recur, the DOE may terminate the general permit and issue an alternative general permit or an individual permit.

Summary of Bill:

Adaptive Storm Water Mechanisms.

Construction and industrial storm water general discharge permits issued by the DOE must include an enforceable adaptive storm water mechanism using benchmarks and action levels as goals that include:

- appropriate monitoring;
- evaluation review and revisions to the storm water pollutions prevention plan;
- reporting;
- documentation of remedial actions taken; and
- timelines for implementing storm water pollution prevention plan revisions in as short a period as practical.

Water Quality Standards.

Construction and industrial storm water discharges authorized under general permits must be controlled as necessary to meet an applicable water quality standard. Where a discharge has already been authorized under a NPDES permit and it is later determined that the necessary controls have not met applicable water quality standards, the DOE may notify the permittee that they will not be renewed under the next release of the general permit unless corrective actions are successful.

Once notified by the DOE, the permittee must:

- take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard;
- document those actions in the storm water pollution prevention plan; and
- submit a timely report to the DOE on actions taken and expected results.

If controls remain ineffective, the DOE may issue an appropriately derived effluent limit, or coverage under the construction or industrial storm water general permits may be terminated by the DOE, and: (a) an alternative special or general permit may be issued; or (b) an individual permit may be issued.

Storm Water Regulatory Plan.

The DOE is required to provide a comprehensive risk-based storm water regulatory plan to the Legislature. At a minimum, the plan must detail goals and objectives for storm water integration among the existing permits, and a sustainable funding mechanism with options beyond fees.

Survey of Industrial Storm Water Permittees.

The DOE must conduct a survey based on standard industrial classification/ North American classification system primary and secondary codes of all potential industrial storm water general permittees who do not already have coverage. Permittees who need an industrial storm water general permit must be given 59 days to seek coverage from the date of notification by the DOE without being subject to DOE enforcement for failure to submit a notice of intent. New permittees must have their permit fees prorated through the permit period from the date of notification.

General Permittee Applicants.

A general permittee may apply to the Director of the DOE for:

- the development of an appropriately derived numeric limit of effluent for one or more parameters applicable to the industrial storm water general permit;
- coverage under an applicable special general permit; or
- an individual permit.

The Director is required to make a determination on the application and provide a response within 90 days from application.

Other.

The bill adds definitions for the following terms:

- adaptive storm water mechanisms;
- appropriately derived numeric limit; and
- benchmark.

The bill modifies certain reporting requirements by the DOE to the Legislature.

Appropriation: None.

Fiscal Note: 2/3/11.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.