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**SENATE BILL 5712**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senators Boehnke, Slatter, and Nobles

AN ACT Relating to establishing a presumption of compliance for entities covered under the state's industrial stormwater general permit under certain circumstances; adding a new section to chapter 90.48 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) The department of ecology has the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington.

(b) The department of ecology's authority is derived from the federal clean water act as well as chapter 90.48 RCW.

(c) Prior legislation acknowledged that the federal clean water act (33 U.S.C. Sec. 1251 et seq.) requires certain larger industrial facilities to obtain stormwater permits under the national pollutant discharge elimination system permit program, and additionally, that the department of ecology continues to use general permits to permit categories of dischargers, including stormwater associated with industrial activities.

(d) In 2004, the legislature required the department of ecology to use an adaptive management approach to permitting stormwater discharges. This approach was intended to satisfy state and federal water quality requirements while also providing for flexibility in meeting such requirements to help ensure cost-effective stormwater management. The department of ecology used adaptive management to meet state and federal requirements, adopting in the industrial stormwater general permit water quality-based effluent limits that require escalating levels of source control and treatment best management practices.

(e) The legislature, in former RCW 90.48.555, set out a presumption of compliance with water quality standards for dischargers under the construction and industrial stormwater general permits. This presumption was adopted after recognizing that the nature of stormwater presents unique challenges and difficulties in meeting the permitting requirements under the federal clean water act (33 U.S.C. Sec. 1251 et seq.) including compliance with technology and water quality-based standards.

(f) The presumption of compliance in the industrial stormwater general permit applies only to the department of ecology. As a consequence, a regulated entity is subject to third-party enforcement actions and litigation, even when a regulated entity has implemented the department of ecology's water quality-based adaptive management steps, obtained the department of ecology's approval of a treatment response, and entered an agreed order with the department of ecology.

(g) Stormwater sampling at marine transportation facilities can in some circumstances pose unique challenges. The department of ecology adopted a waiver mechanism in the industrial stormwater general permit to evaluate feasibility issues, including safety concerns, associated with sampling. The department of ecology has not developed standards for complete waiver applications or standards for granting waivers. Waiver approvals may be appealed and the permit's sampling requirement remains in effect in the absence of a valid permit modification.

(h) Regulated entities, and their employees, should not be coerced into performing potentially unsafe work due to the threat of litigation.

(2) It is the intent of the legislature to mitigate potential adverse impacts associated with the implementation of the updated industrial stormwater general permit. Those adverse impacts include, but are not limited to: The threat of third-party litigation, the health and safety of employees of regulated entities, and adverse impacts on business competitiveness including the loss of jobs and tax revenue to competing states and counties. Furthermore, it is the intent of the legislature to ensure that regulated entities can focus their finite resources on reduction of environmental impact while participating in corrective actions as opposed to utilizing resources defending against enforcement actions.

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

(1) Compliance by industrial stormwater general permit holders with water quality standards shall be presumed, unless discharge monitoring data or other site-specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the permittee is:

(a) In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions and associated deadlines; and

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

(2) A permittee is again presumed in compliance with a requirement to meet water quality standards when the permittee notifies the department in writing within 30 days of becoming aware, based on credible site-specific information that a discharge from the facility caused or contributed to a potential violation of water quality standards in the receiving water. In the written notification provided under this subsection, the permittee shall, at a minimum, identify the source of the site-specific information, describe the nature and extent of the potential violation in the receiving water, explain the reasons why the discharge is believed to have caused or contributed to the problem, and the steps taken by the permittee to address the issue following specific corrective action in accordance with the industrial stormwater general permit and applicable deadlines. For ongoing or continuing discharges, a single written notification to the department fulfills this requirement.

(3) In the event that the department determines, based on a notification provided by the permittee or through any other means, that additional actions are required, the department must notify the permittee in writing that the presumption of compliance will resume following specific corrective action in accordance with the industrial stormwater general permit and applicable deadlines, unless:

(a) The department also determines that the potential violation of water quality standards is already being addressed by a total maximum daily load or other enforceable water quality cleanup plan; or

(b) The department concludes the permittee's discharges will be addressed through the implementation of other permit requirements.

(4) Stormwater sampling at transportation facilities is not required until the department has determined that the sampling provisions in the industrial stormwater general permit can be satisfied without endangering the health and safety of persons conducting the sampling. In evaluating a sampling waiver application the department shall determine, among other factors, whether the sampling provisions in the industrial stormwater general permit can be satisfied without endangering the health and safety of persons conducting the sampling and modify those requirements as necessary to ensure health and safety. In no event shall stormwater sampling be required while a waiver authorized under the industrial stormwater general permit is under department consideration or appeal.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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