
HOUSE BILL 1806

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

Read first time 02/02/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to construction and industrial storm water general
2 permits; amending RCW 90.48.555; and providing an expiration date.

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

4 **Sec. 1.** RCW 90.48.555 and 2009 c 449 s 1 are each amended to read
5 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:

- 1 (a) Numeric effluent limitations;
2 (b) Narrative effluent limitations; or
3 (c) A combination of numeric and narrative effluent discharge
4 limitations.

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

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

12 (b) State developed, industry-specific performance-based numeric
13 effluent limitations;

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

16 (d) A determination by the department that:

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

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

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

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

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

28 (c) As appropriate, the dilution of the storm water in the
29 receiving waters.

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

37 (6) Compliance with water quality standards shall be presumed,

1 unless discharge monitoring data or other site specific information
2 demonstrates that a discharge causes or contributes to violation of
3 water quality standards, when the permittee is:

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

7 (b)(i) Fully implementing adaptive storm water (~~(best management)~~)
8 mechanisms, including practices contained in storm water technical
9 manuals approved by the department, or practices that are demonstrably
10 equivalent to practices contained in storm water technical manuals
11 approved by the department, including the proper selection,
12 implementation, and maintenance of all applicable and appropriate best
13 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 with
34 appropriately derived numeric water quality-based effluent limitations
35 for existing discharges to water bodies listed as impaired according to
36 33 U.S.C. Sec. 1313(d) (Sec. 303(d) of the federal clean water act, 33
37 U.S.C. Sec. 1251 et seq.).

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

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

11 (i) Any compliance schedule provided by the department must require
12 compliance as soon as possible, and must require compliance by no later
13 than twenty-four months, or two complete wet seasons, after the
14 effective date of the industrial storm water general permit. For
15 purposes of this subsection (7)(c)(i), "wet seasons" means October 1st
16 through June 30th.

17 (ii) The department shall post on its web site the name, location,
18 industrial storm water permit number, and the reason for requesting a
19 compliance schedule for each permittee who requests a compliance
20 schedule according to this subsection (7)(c). The department shall
21 post this information no later than thirty days after receiving a
22 permittee's request for a compliance schedule under this subsection
23 (7)(c). The department shall also prepare a list of organizations and
24 individuals seeking to be notified when such requests for compliance
25 schedules are made, and notify them within thirty days after receiving
26 a permittee's request for a compliance schedule. Notification under
27 this subsection may be accomplished electronically.

28 (d) The department shall report to the appropriate committees of
29 the legislature specifying how the appropriately derived numeric
30 effluent limitation in (a) of this subsection would be implemented.
31 The report shall identify the number of dischargers to impaired water
32 bodies and provide an assessment of anticipated compliance with the
33 appropriately derived numeric effluent limitation established by (a) of
34 this subsection.

35 (8)((~~a~~)) Construction and industrial storm water general permits
36 issued by the department shall include an enforceable adaptive
37 (~~management~~) storm water mechanism using benchmarks and action levels
38 as goals, that includes (~~appropriate monitoring, evaluation, and~~

1 reporting. ~~The adaptive management mechanism shall include elements~~
2 ~~designed to result in permit compliance and shall include, at a~~
3 ~~minimum, the following elements:~~

4 ~~(i) An adaptive management indicator, such as monitoring~~
5 ~~benchmarks;~~

6 ~~(ii) Monitoring;~~

7 ~~(iii) Review and revisions to the storm water pollution prevention~~
8 ~~plan;~~

9 ~~(iv) Documentation of remedial actions taken; and~~

10 ~~(v) Reporting to the department.~~

11 ~~(b) Construction and industrial storm water general permits issued~~
12 ~~by the department also shall include the timing and mechanisms for~~
13 ~~implementation of treatment best management practices)):~~

14 (a) Appropriate monitoring;

15 (b) Evaluation review and revisions to the storm water pollution
16 prevention plan;

17 (c) Reporting;

18 (d) Documentation of remedial actions taken; and

19 (e) Timelines for implementing storm water pollution prevention
20 plan revisions in as short a period as practical.

21 (9)(a) Construction and industrial storm water discharges
22 authorized under general permits must ((not cause or have the
23 reasonable potential to cause or contribute to a violation of)) be
24 controlled as necessary to meet an applicable water quality standard.
25 Where a discharge has already been authorized under a national
26 pollutant discharge elimination system storm water permit and it is
27 later determined ((to cause or have the reasonable potential to cause
28 or contribute to the violation of an applicable water quality
29 standard)) that the necessary controls have not met applicable water
30 quality standards, the department may notify the permittee ((of such a
31 violation)) that they will not be renewed under the next release of the
32 general permit unless corrective actions under (b)(i) of this
33 subsection are successful.

34 ~~((+10)) (b) Once notified by the department ((of a determination~~
35 ~~of reasonable potential to cause or contribute to the violation of an~~
36 ~~applicable water quality standard)), the permittee must:~~

37 (i) Take all necessary actions to ensure future discharges do not

1 cause or contribute to the violation of a water quality standard
2 (~~and~~);

3 (ii) Document those actions in the storm water pollution prevention
4 plan; and (~~a report timely submitted to the department. If violations~~
5 ~~remain or recur,~~)

6 (iii) Submit a timely report to the department on actions taken and
7 expected results.

8 (c) If controls remain ineffective, the department may issue an
9 appropriately derived effluent limit, or coverage under the
10 construction or industrial storm water general permits may be
11 terminated by the department, and:

12 (i) An alternative special or general permit may be issued: or

13 (ii) An individual permit may be issued.

14 (d) Compliance with the requirements of this subsection does not
15 preclude any enforcement activity provided by the federal clean water
16 act, 33 U.S.C. Sec. 1251 et seq., for the underlying violation.

17 (~~(11)~~) (10) Receiving water sampling shall not be a requirement
18 of an industrial or construction storm water general permit except to
19 the extent that it can be conducted without endangering the health and
20 safety of persons conducting the sampling.

21 (~~(12)~~) (11) The department may authorize mixing zones only in
22 compliance with and after making determinations mandated by the
23 procedural and substantive requirements of applicable laws and
24 regulations.

25 (12) The department shall, subject to the availability of amounts
26 appropriated for this specific purpose, provide to the legislature a
27 comprehensive risk based storm water regulatory plan that, at a
28 minimum, details:

29 (a) Goals and objectives for storm water integration among the
30 existing permits, including:

31 (i) A list of priority waterbodies for storm water pollution
32 control;

33 (ii) A description of scientific information that will be collected
34 to support permit development;

35 (iii) A description of data collection approaches that demonstrate
36 improvements in water quality;

37 (iv) Appropriate metrics to demonstrate improvement in the state's
38 water quality from storm water permitting activities; and

1 (v) A schedule to implement the primary actions in the storm water
2 regulatory plan; and

3 (b) A sustainable funding mechanism with options beyond fees.

4 (13) The department is directed to conduct a survey based on
5 standard industrial classification/North American industrial
6 classification system primary and secondary codes of all potential
7 industrial storm water general permit permittees who do not already
8 have coverage. Those permittees determined to need an industrial storm
9 water general permit must be given fifty-nine days to seek coverage
10 from date of notification by the department without being subject to
11 department enforcement for failure to submit a notice of intent. New
12 permittees must have their permit fees prorated through the permit
13 period from date of notification.

14 (14)(a) A general permittee may apply to the director for:

15 (i) The development of an appropriately derived numeric limit of
16 effluent for one or more parameters applicable to the permittees
17 industrial storm water general permit;

18 (ii) Coverage under an applicable special general permit; or

19 (iii) An individual permit.

20 (b) The director shall make a determination on the application and
21 provide a response within ninety days from application. The director's
22 decision is a final agency action, subject to appeal. The permittee's
23 existing general permit remains in effect during this period unless the
24 permittee has previously been notified of termination.

25 (15) The definitions in this subsection apply throughout this
26 section unless the context clearly requires otherwise.

27 (a) "Adaptive storm water mechanisms" means an iterative process by
28 which the permittee uses available data to identify best practices or
29 engineering practices to determine those additional actions necessarily
30 designed to result in permit compliance.

31 (b) "Appropriately derived numeric limit" means a process in which
32 the department considers the data associated with the storm water
33 discharge and receiving water to determine at what level or if the
34 storm water discharge is routinely creating a risk of the receiving
35 water exceeding water quality standards. The data considered will, at
36 a minimum, consist of:

37 (i) Parameter discharge mass to receiving water from storm water;

38 (ii) Discharge variability;

1 (iii) Receiving water characteristics affecting water quality for
2 the parameter of concern; and
3 (iv) Mitigating factors, such as dissolved carbon, hardness, ligand
4 bonding, mixing zones, and natural background as applicable.
5 (A) The department may utilize commonly recognized modeling
6 techniques to determine appropriately derived limits.
7 (B) Where it would be extremely difficult to show a direct
8 relationship between storm water discharges and impairments, the
9 department may substitute technology-based limits established for
10 benchmarks for that parameter in lieu of water quality-based limits.
11 The department may not use surrogates for establishing effluent limits
12 unless a direct algorithmic connection can be demonstrated between the
13 surrogate and parameter of concern.
14 (c) "Benchmark" means a parameter specific technology-based value
15 representing the expected discharge levels for the best available
16 technology economically achievable.
17 (i) The department shall use stakeholder reviewed scientific,
18 engineering, and economic data in setting a benchmark value.
19 (ii) Exceeding the benchmark value is not a violation of effluent
20 limits.
21 (iii) Exceeding the benchmark value is not an indication of
22 exceeding water quality standards.
23 (iv) The department may establish action levels that denote
24 statistically derived ranges of expectation for compliance with
25 benchmarks.
26 (16) This section expires January 1, 2015.

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