



General Assembly

Amendment

February Session, 2012

LCO No. 3457

HB0534403457HDO

Offered by:

REP. BERGER, 73rd Dist.
REP. CAMILLO, 151st Dist.
SEN. LEBEAU, 3rd Dist.
SEN. FRANTZ, 36th Dist.
REP. SERRA, 33rd Dist.

To: Subst. House Bill No. 5344

File No. 311

Cal. No. 252

**"AN ACT CONCERNING STREAMLINING THE STATE'S
STORMWATER GENERAL PERMITTING PROCESS."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 22a-430b of the general statutes is repealed and
4 the following is substituted in lieu thereof (*Effective from passage*):

5 (a) (1) The Commissioner of Energy and Environmental Protection
6 may issue a general permit for a category or categories of discharges
7 regulated pursuant to section 22a-430, except for a discharge covered
8 by an individual permit. The general permit may regulate, within a
9 geographical area: [(1)] (A) A category of discharges which involve the
10 same or substantially similar types of operations, involve the same
11 type of wastes, require the same effluent limitations, operating

12 conditions or standards, and require the same or similar monitoring
13 and which in the opinion of the commissioner are more appropriately
14 controlled under a general permit; [(2)] (B) stormwater discharges; or
15 [(3)] (C) a category of discharges not requiring a permit under the
16 federal Water Pollution Control Act. Any person or municipality
17 conducting an activity covered by a general permit shall not be
18 required to apply for or obtain an individual permit pursuant to
19 section 22a-430, except as provided in subsection (c) of this section. The
20 general permit may require that any person or municipality initiating,
21 creating, originating or maintaining any discharge into the waters of
22 the state under the general permit shall register such discharge with
23 the commissioner before the general permit becomes effective as to
24 such discharge. Registration shall be on a form prescribed by the
25 commissioner.

26 (2) When issuing a general permit pursuant to this section, the
27 commissioner may require the submission of a certification made by a
28 qualified professional that the requirements of such general permit
29 have been met. Any general permit requiring such certification shall
30 specify: (A) The qualifications necessary to define a qualified
31 professional. Such qualifications may include education, training,
32 experience or the attainment of a credential or license that such
33 qualified professional must have obtained. If such qualifications do not
34 require a license, the commissioner shall describe the rationale for such
35 qualifications in a publically available fact sheet or similar document
36 when proposing the issuance of the applicable general permit
37 pursuant to subsection (b) of this section; (B) the criteria to ensure that
38 a qualified professional is independent and does not have a conflict of
39 interest in making a certification, provided reasonable compensation
40 for services rendered in making a certification shall not be deemed a
41 conflict of interest; (C) the information to be reviewed or inspections to
42 be conducted by such qualified professional as a basis for making a
43 certification; (D) documents that shall be retained in connection with a
44 certification; (E) the standards or requirements for an activity or project
45 that a qualified professional must affirmatively determine have been

46 met; (F) the terms of a statement to be signed by such qualified
47 professional, including any conditions necessary for providing such
48 statement; (G) any other information or condition deemed necessary
49 by the commissioner regarding a certification; and (H) whether the
50 submission of a certification shall be required when the person seeking
51 coverage under the general permit is a governmental entity, including
52 a federal, state or municipal entity. Nothing in this section shall
53 authorize a qualified professional to engage in any profession or
54 occupation requiring a license under any other provision of the general
55 statutes without such license. The commissioner shall not require such
56 certification if such certification would violate the federal Water
57 Pollution Control Act or the federal Safe Drinking Water Act.

58 (b) Notwithstanding the provisions of chapter 54, a general permit
59 shall be issued, renewed, modified, revoked or suspended in
60 accordance with the standards and procedures specified for an
61 individual permit, in accordance with section 22a-430 and any
62 regulations adopted thereunder, except that (1) summary suspension
63 may be ordered in accordance with subsection (c) of section 4-182; (2)
64 any proposed or final general permit and notice thereof may address
65 persons or municipalities which are or may be covered by the general
66 permit as a group, describe the facilities which are or may be covered
67 by the general permit in general terms; and (3) upon issuance of a
68 proposed or final general permit, the commissioner shall publish
69 notice thereof in a newspaper of substantial circulation in the affected
70 area. General permits shall be issued for a term specified by the permit
71 and such terms shall be consistent with the federal Water Pollution
72 Control Act and shall be subject to the provisions of section 22a-431.
73 Such permits shall: [(1)] (A) Describe the category of discharge
74 regulated by the general permit; [(2)] (B) specify the manner, nature
75 and volume of discharge; [(3)] (C) require proper operation and
76 maintenance of any pollution abatement facility required by such
77 permit; and [(4)] (D) be subject to such other requirements and
78 restriction as the commissioner deems necessary to fully comply with
79 the purposes of this chapter, the federal Water Pollution Control Act

80 and the federal Safe Drinking Water Act. Any construction or
81 modification of a pollution abatement facility or disposal system which
82 is undertaken pursuant to and in accordance with a general permit
83 shall not require submission of plans and specifications to or approval
84 by the commissioner, unless required pursuant to the terms of the
85 general permit.

86 (c) Subsequent to the issuance of a general permit, the commissioner
87 may require a person or municipality initiating, creating, originating or
88 maintaining any discharge which is or may be authorized by a general
89 permit to obtain an individual permit pursuant to section 22a-430 if the
90 commissioner determines that an individual permit would better
91 protect the waters of the state from pollution. The commissioner may
92 require an individual permit under this subsection in cases including,
93 but not limited to the following: (1) When the discharger is not in
94 compliance with the conditions in the general permit; (2) when a
95 change has occurred in the availability of a demonstrated technology
96 or practice for the control or abatement of pollution applicable to the
97 discharge; (3) when effluent limitations and conditions are
98 promulgated by the United States Environmental Protection Agency or
99 established by the commissioner under section 22a-430 for discharges
100 covered by the general permit; (4) when a water quality management
101 plan containing requirements applicable to such discharges is
102 approved by the United States Environmental Protection Agency; (5)
103 when circumstances have changed since the issuance of the general
104 permit so that the discharger is no longer appropriately controlled
105 under the general permit, or a temporary or permanent reduction or
106 elimination of the authorized discharge is necessary; (6) when the
107 discharge is a significant contributor of pollution, provided that in
108 making this determination, the commissioner may consider the
109 location of the discharge with respect to waters of the state, the size of
110 the discharge, the quantity and nature of the pollution discharged to
111 waters of the state, cumulative impacts of discharges covered by the
112 general permit and other relevant factors; or (7) when the requirements
113 of subsection (a) of this section are not met. The commissioner may

114 require an individual permit under this subsection only if the affected
115 person or municipality has been notified in writing that a permit
116 application is required. The notice shall include a brief statement of the
117 reasons for the commissioner's decision, an application form, a
118 statement setting forth a time for the person or municipality to file the
119 application, and a statement that on the effective date of the individual
120 permit the general permit as it applies to the individual permittee shall
121 automatically terminate. The commissioner may grant additional time
122 upon the request of the applicant. If the affected person or
123 municipality does not submit a complete application for an individual
124 permit within the time frame set forth in the commissioner's notice or
125 as extended by the commissioner in writing, then the general permit as
126 it applies to the affected person or municipality shall automatically
127 terminate. Any interested person or municipality may petition the
128 commissioner to take action under this subsection.

129 (d) (1) A qualified professional shall ensure that any certification
130 submitted pursuant to this section complies with the general permit
131 that requires such certification. Compliance with a general permit shall
132 include any matter specified in such permit pursuant to subdivision (2)
133 of subsection (a) of this section. The commissioner shall accept a
134 certification when submitted with a registration for a general permit,
135 unless (A) the certification is the subject of an audit pursuant to
136 subsection (e) of this subsection; or (B) the commissioner has reason to
137 believe that the certification does not comply with the requirements of
138 the general permit, including any matter specified in the general
139 permit pursuant to subdivision (2) of subsection (a) of this section.

140 (2) Any qualified professional who makes a certification pursuant to
141 this section shall promptly notify, in writing, the commissioner and the
142 person who would obtain or has obtained coverage under the general
143 permit based upon such certification if, during the normal course of a
144 qualified professional's practice, such professional learns, or should
145 have learned, of information that would significantly affect or prevent
146 such professional's decision to have made such certification. Such
147 notification shall be made not later than fifteen days after a qualified

148 professional learns of such information and shall identify the
149 certification and the reasons such qualified professional is submitting
150 notice pursuant to this subdivision.

151 (e) The commissioner may audit any certification made by a
152 qualified professional pursuant to this section. As part of such audit,
153 the commissioner may request any information the commissioner
154 deems necessary to conduct such audit from either the person who
155 would obtain or has obtained coverage under the general permit based
156 upon such certification or the qualified professional making the
157 certification. In addition, the commissioner may require independent
158 verification of all or any part of a certification made by a qualified
159 professional. Such independent verification shall be performed by a
160 different qualified professional who: (1) Meets the requirements for a
161 qualified professional specified in the general permit; (2) does not have
162 a conflict of interest, provided reasonable compensation for providing
163 independent verification shall not constitute a conflict of interest; (3)
164 did not engage in any activities associated with the development,
165 preparation or review of any information on which the certification is
166 based; and (4) is not under the same employ of the person who
167 developed, prepared or reviewed any of the information on which the
168 certification is based. Such independent verification shall be at the
169 expense of the person who seeks or has obtained coverage under a
170 general permit. If an audit undertaken by the commissioner pursuant
171 to this subsection reveals that a certification was made in violation of
172 any requirement of the general permit, including any matter specified
173 in the general permit pursuant to subdivision (2) of subsection (a) of
174 this section, the commissioner may charge, and the person who would
175 obtain or has obtained coverage under the general permit based upon
176 such certification shall pay, for the reasonable costs of conducting such
177 audit.

178 (f) The commissioner shall have a goal of auditing ten per cent of
179 the certifications submitted with a general permit pursuant to this
180 section. The commissioner shall, not later than January 1, 2014, submit
181 a report, in accordance with the provisions of section 11-4a, to the joint

182 standing committees of the General Assembly having cognizance of
183 matters relating to commerce and the environment. Such report shall
184 include (1) the total number of certifications submitted; (2) the number
185 of certifications subject to partial or full audit; (3) the number of
186 certifications found not to be in compliance with the general permit; (4)
187 where necessary, the actions taken to bring about or maintain
188 compliance with the general permit; (5) whether any conclusions can
189 be drawn from the audits regarding levels of compliance of the
190 certification with applicable requirements and, if so, any such
191 conclusions; and (6) any additional recommendations regarding the
192 use of certifications in general permits. Such report may be submitted
193 electronically.

194 (g) Notwithstanding the acceptance of a certification pursuant to the
195 provisions of subdivision (1) of subsection (e) of this section, if, after
196 acceptance, the commissioner finds that a certification does not comply
197 with the requirements of the general permit, including any matter
198 specified in the general permit pursuant to subdivision (2) of
199 subsection (a) of this section, or if the qualified professional that made
200 a certification fails to cooperate or provide information requested by
201 the commissioner pursuant to subsection (f) of this section, the
202 commissioner may (1) deny a registration seeking coverage under a
203 general permit, (2) revoke, suspend or modify any approval issued by
204 the commissioner under a general permit, including the approval of
205 any registration for coverage under a general permit, or (3) require a
206 the person who would obtain or has obtained coverage under the
207 general permit based upon such certification to obtain an individual
208 permit, pursuant to subsection (c) of this section. The commissioner
209 may take such action even if the person who would obtain or has
210 obtained coverage under the general permit based upon such
211 certification had no involvement in the development, preparation or
212 review of the certification submitted pursuant to this section, or any of
213 the information on which a certification was based, or was unaware
214 that the certification was not in compliance with the requirements of
215 the general permit, including any matter specified in the general

216 permit pursuant to subdivision (2) of subsection (a) of this section. In
 217 addition to any other penalty or sanction provided for by law,
 218 disciplinary action may be taken against a qualified professional for a
 219 certification that does not comply with the requirements of a general
 220 permit, including any matter specified in the general permit pursuant
 221 to subdivision (2) of subsection (a) of this section. For any qualified
 222 professional required to maintain in effect a license or credential under
 223 any provision of law, the commissioner may (A) make a referral for
 224 disciplinary action against such qualified professional to any board,
 225 commission or department overseeing such professional; (B) issue a
 226 reprimand or warning to such qualified professional; or (C) prohibit,
 227 either temporarily or permanently, such professional from making a
 228 certification submitted pursuant to this section.

229 [(d)] (h) The commissioner may adopt regulations in accordance
 230 with the provisions of chapter 54 to carry out the purposes of this
 231 section."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	22a-430b