



General Assembly

February Session, 2012

**Amendment**

LCO No. 3602

**\*HB0534403602HDO\***

Offered by:

REP. BERGER, 73<sup>rd</sup> Dist.  
REP. CAMILLO, 151<sup>st</sup> Dist.  
SEN. LEBEAU, 3<sup>rd</sup> Dist.  
SEN. FRANTZ, 36<sup>th</sup> Dist.  
REP. SERRA, 33<sup>rd</sup> 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 Section 22a-430b of the general statutes is repealed and  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. Any general permit requiring such certification  
29 shall specify: (A) The qualifications necessary to define a qualified  
30 professional. Such qualifications may include education, training,  
31 experience or the attainment of a credential or license that such  
32 qualified professional must have obtained. If such qualifications do not  
33 require a license, the commissioner shall describe the rationale for such  
34 qualifications in a publicly available fact sheet or similar document  
35 when proposing the issuance of the applicable general permit  
36 pursuant to subsection (b) of this section; (B) the criteria to ensure that  
37 a qualified professional is independent and does not have a conflict of  
38 interest in making a certification, provided reasonable compensation  
39 for services rendered in making a certification shall not be deemed a  
40 conflict of interest; (C) the information to be reviewed or inspections to  
41 be conducted by such qualified professional as a basis for making a  
42 certification; (D) documents that shall be retained in connection with a  
43 certification; (E) the standards or requirements for an activity or project  
44 that a qualified professional must affirmatively determine have been  
45 met; (F) the terms of a statement to be signed by such qualified

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

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

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

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

114 subsection only if the affected person or municipality has been notified  
115 in writing that a permit application is required. The notice shall  
116 include a brief statement of the reasons for the commissioner's  
117 decision, an application form, a statement setting forth a time for the  
118 person or municipality to file the application, and a statement that on  
119 the effective date of the individual permit the general permit as it  
120 applies to the individual permittee shall automatically terminate. The  
121 commissioner may grant additional time upon the request of the  
122 applicant. If the affected person or municipality does not submit a  
123 complete application for an individual permit within the time frame  
124 set forth in the commissioner's notice or as extended by the  
125 commissioner in writing, then the general permit as it applies to the  
126 affected person or municipality shall automatically terminate. Any  
127 interested person or municipality may petition the commissioner to  
128 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 (e) 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 the  
206 person who would obtain or has obtained coverage under the general  
207 permit based upon such certification to obtain an individual permit,  
208 pursuant to subsection (c) of this section. The commissioner may take  
209 such action even if the person who would obtain or has obtained  
210 coverage under the general permit based upon such certification had  
211 no involvement in the development, preparation or review of the  
212 certification submitted pursuant to this section, or any of the  
213 information on which a certification was based, or was unaware that  
214 the certification was not in compliance with the requirements of the  
215 general permit, including any matter specified in the general permit

216 pursuant to subdivision (2) of subsection (a) of this section. In addition  
 217 to any other penalty or sanction provided for by law, disciplinary  
 218 action may be taken against a qualified professional for a certification  
 219 that does not comply with the requirements of a general permit,  
 220 including any matter specified in the general permit pursuant to  
 221 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