
OLR Bill Analysis

sHB 5344 (as amended by House "B")*

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

SUMMARY:

This bill provides a framework for allowing qualified professionals to certify compliance with stormwater and waste water discharge general permits if doing so would not violate the federal Water Pollution Control or the Safe Drinking Water acts.

Under current law, the Department of Energy and Environmental Protection (DEEP) commissioner issues general and individual permits for activities that cause (1) polluted rain water and melted snow to run off into rivers, lakes, and other water bodies and (2) waste water to discharge into them. He issues general permits for activities that affect the environment in similar ways, basing his approval on whether they comply with specified requirements. He also issues individual permits for activities that potentially affect the environment in unique or diffused ways, thus requiring more in-depth reviews.

The bill permits the DEEP commissioner to require a certification by a qualified professional when issuing a general permit. When he does, the bill:

1. requires the permit to specify the professional's required qualifications,
2. specifies the grounds for rejecting a certification,
3. requires professionals to notify DEEP and the permittee of any information that could affect a certification,
4. allows the commissioner to audit certifications,

5. specifies the actions he can take when a certification fails to meet the permit's requirements, and
6. requires the commissioner to assess the extent to which professionally certified permits meet permit requirements and report his findings to the legislature.

*House Amendment "B" allows professionals to certify waste water general permits in addition to stormwater general permits and makes many minor changes to the framework for using qualified professionals to certify these permits, including:

1. requiring the DEEP commissioner to explain why a license is not necessary for certifying a permit,
2. specifying that a professional's obligation to notify the commissioner and permittee about certain information applies to information obtained during and after a certification,
3. revamping the reporting requirement, and
4. authorizing the commissioner to require permittees to obtain individual permits if a certification violates a permit's requirements.

EFFECTIVE DATE: Upon passage

CONDITIONS FOR USING PROFESSIONALS

Professional Qualifications

If the DEEP commissioner allows a professional to certify compliance with a stormwater or waste water discharge general permit, the permit must specify the conditions and criteria the professional must meet. These include:

1. the professional's qualifications, including relevant education, training, experience, credentials, and licenses;
2. the information that the professional must review or the inspections he or she must make to certify compliance; and

3. the certification-related documents he or she must retain.

If the permit does not require the professional to be licensed, the commissioner must explain the reasons for not doing so in a publicly available fact sheet or similar document. He must produce this document when he first proposes to allow a professional to certify the permit.

Although the bill allows the commissioner to have unlicensed professionals certify general permits, it does not exempt them from other laws requiring professional or occupational licenses.

Impartiality

The permit must also specify the criteria for ensuring that a professional has no connection with the permitted activity or project and no financial stake in it beyond compensation for his or her services.

Certification

The permit must specify the standards or requirements a project or activity must meet for a professional to affirm that it complies with the permit. It must also specify the terms of a statement the professional must sign when certifying an activity's compliance with the permit. The terms must include any conditions that must be met before the professional can sign the statement.

Other Information

The permit must specify any other information or conditions the commissioner deems necessary to certify the activity's compliance with the permit. Lastly, it may indicate if certification is needed when the permittee is a government agency.

PROFESSIONALS' OBLIGATIONS

The bill expressly requires professionals to ensure that each certification meets the general permit's requirements.

It also obligates professionals to notify the commissioner and the permittee in writing if they learn certain information significantly affecting a permit's certification. The information could be something a professional learns or obtains before or after certifying the permit. The professional must notify the commissioner and the permittee within 15 days after learning the information.

ENFORCEMENT

Grounds for Rejection

The bill requires the commissioner to accept the certification unless he (1) is auditing the certification process (see below) or (2) has reason to believe the professional did not satisfy the bill's requirements.

Enforcement Powers

The bill specifies the steps the commissioner may take if a professional fails to (1) comply with the permit, including its professional qualification requirements; (2) cooperate with DEEP; or (3) provide the information requested by the commissioner during an audit of the certification process. In such cases, the commissioner may deny the permit's registration or revoke, suspend, or modify the actions it authorizes, including suspending or modifying an approved registration or requiring the permittee to obtain an individual permit.

The commissioner can do these things even if the permittee was (1) unaware that the certification did not comply with the permit's requirements or (2) not involved in developing, preparing, or reviewing the certification or any information on which it was based.

The bill allows the commissioner to take any disciplinary action against the professional, in addition to any penalty or sanction the law imposes, for not complying with the permit's requirements. If the law requires the professional to maintain a license, the commissioner can refer the professional to the appropriate licensing board or department for disciplinary action, issue a reprimand or warning to the professional, or temporarily or permanently prohibit him or her from submitting certifications for stormwater or waste water general permits.

AUDITING

Scope

The bill allows the commissioner to audit completed certifications. When doing so, he can request in writing any information he needs from the professional or the permittee to conduct the audit, including information supporting the certification and documenting the professional's qualifications.

As part of the audit, the commissioner can have another qualified professional independently verify the information supporting the certification. This professional must also meet the professional qualifications specified in the permit and have no financial stake in the activity or project other than being compensated for his or her services. Further, the professional must have played no role in certifying the permit or be employed by the professional who initially certified it. The commissioner must charge the permittee for this independent certification.

The commissioner can also charge the permittee for the reasonable costs of conducting the audit if the professional certified an activity that violates any general permit requirement, including the professional qualifications.

Compliance Report

As a goal, the bill requires the commissioner to audit at least 10% of the certifications. It also requires him to report specific information based on these audits by January 1, 2014. The report, which must be submitted electronically to the Commerce and Environment committees, must indicate the number of certifications that were submitted, number that were partially or fully audited, number found out of compliance, and steps taken to bring about or maintain compliance.

The report must present DEEP's conclusions about the extent to which the audited certifications complied with the permit's requirements and any recommendations regarding the use of professionals to certify general permits.

BACKGROUND

General and Individual Permits

The difference between general and individual permits reflects differences in how permitted activities affect the environment. Some activities are very common and occur frequently, such as paving parking lots and driveways, and their environmental effects are known and predictable. Other activities, such as discharging water used to clean machine parts into a stream, occur less frequently, and their environmental effects vary depending on unique factors and circumstances.

Although both types of activities require regulatory permits, it takes less time to approve general permits because they can be reviewed based on predetermined criteria and standards. The opposite is true for individual permits because they involve activities whose impacts are not readily apparent. In these cases, the permitting agency must review the activity to identify the potential impacts before it can issue the permit.

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 18 Nay 0 (03/22/2012)