

FINAL BILL REPORT

EHB 2469

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Synopsis as Enacted

Brief Description: Regarding boatyard storm water treatment systems.

Sponsors: Representatives Upthegrove, Angel, Takko and Asay.

House Committee on Local Government
Senate Committee on Environment

Background:

Shoreline Management Act.

The Shoreline Management Act of 1971 (SMA) governs uses of state shorelines and involves a cooperative regulatory approach between local governments and the state. At the local level, the SMA regulations are developed in city and county shoreline master programs (master programs) that regulate land use activities in shoreline areas of the state. At the state level, the Department of Ecology (DOE) is charged with reviewing the locally-adopted master programs and approving those that comply with statutory provisions and agency guidelines governing their adoption.

Development may not be undertaken on shorelines of the state unless it is consistent with the SMA, applicable rules, and the pertinent master program. Persons seeking to undertake a substantial development on the shoreline generally must obtain a permit from the applicable local government. While the SMA specifies standards for cities and counties to review and approve permit applications, the administration of the permit system is performed exclusively by the local government. Local governments, however, must notify the DOE of all SMA permit decisions, and permit requests for variances and conditional uses must be submitted to, and determined by, the DOE.

The SMA exempts certain remedial actions under the Model Toxics Control Act (MTCA) by the DOE and others from the procedural requirements of the SMA. The exemption requirements, however, obligate the DOE to ensure that the remedial actions comply with the SMA's substantive requirements. While neither "procedural" nor "substantive" is defined in the SMA, the DOE has indicated that it considers 'procedural requirements' to be actions necessary to implement the SMA and 'substantive requirements' to be regulations and standards adopted in master programs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Model Toxics Control Act.

The MTCA defines and supports hazardous waste site cleanup activities and toxics control programs in Washington. As stated in the MTCA, its two-fold primary purpose is to raise sufficient funds to clean up all hazardous waste sites, and to prevent the creation of future hazards resulting from the improper disposal of toxic substances into the state's land and waters. The MTCA, which is administered and enforced by the DOE, requires liable parties to clean up sites contaminated with hazardous materials.

National Pollutant Discharge Elimination System Permits.

The federal Clean Water Act (CWA) sets effluent limitations for discharges of pollutants. "Pollutant" is defined in the CWA to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods. The DOE is delegated authority under the CWA by the United States Environmental Protection Agency and is responsible for implementing all federal and state water pollution control laws and regulations.

The CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. "Point sources" are defined generally as discernible, discrete, and confined conveyances from which pollutant discharges can or do occur. The NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. The NPDES permits also are required for storm water discharges from certain industries, construction sites of specified sizes, and municipalities operating municipal separate storm sewer systems that meet specified criteria.

In state and NPDES permit programs, the DOE issues both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers). These permits include limits on the quantity and concentrations of contaminants that may be discharged. These permits also may require wastewater treatment or impose operating or other conditions.

Summary:

Remedial actions conducted at a facility or by the DOE pursuant to the MTCA are exempt from requirements to obtain a substantial development permit, conditional use permit, or a variance, rather than being exempt from the procedural requirements of the SMA.

The installation of site improvements for storm water treatment in an existing boatyard facility to comply with a NPDES storm water general permit is exempt from requirements to obtain a substantial development permit, conditional use permit, or a variance under the SMA. The DOE is obligated to ensure that the installation of the site improvements complies with the substantive requirements of the SMA through the review of engineering reports, site plans, and other installation-related documents.

Votes on Final Passage:

House	97	0	
Senate	49	0	(Senate amended)

House 96 0 (House concurred)

Effective: June 7, 2012