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**Agriculture & Natural Resources  
Committee**

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**HB 1106**

**Brief Description:** Regulating water pollution discharges from motorized mineral prospecting activities.

**Sponsors:** Representatives Tarleton, Gregerson and Pollet.

**Brief Summary of Bill**

- Directs the Department of Ecology to issue a National Pollutant Discharge Elimination System general permit that applies to small scale motorized mining.
- Places certain restrictions on the scope of the permit, including restrictions based on equipment and restrictions based on closures or selective fishing requirements set by the Department of Fish and Wildlife.

**Hearing Date:** 1/17/17

**Staff:** Robert Hatfield (786-7117).

**Background:**

Water Pollution Regulation in Washington State under Federal and State Laws.

The federal Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES), which regulates discharges of pollutants to surface waters. In Washington, NPDES permitting authority is delegated to the state, allowing the Department of Ecology (Ecology) to issue NPDES permits. In addition to delegated NPDES permitting authority, state law provides Ecology with parallel authority to regulate discharges to state waters, which includes a more expansive scope of waters than are covered under the federal Clean Water Act, including groundwater. For waste discharges to waters, Ecology typically issues a state waste discharge permit for discharges to groundwater, while a joint federal NPDES and state discharge permit is issued under dual authority for discharges to surface waters. Wastewater discharge permits place

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limits on the quantity and type of contaminants that may be discharged. Permits may require wastewater treatment or impose other operating conditions, including monitoring, reporting, and spill prevention planning. The NPDES and state waste discharge permits are valid for five years.

Certain discharges, including discharges by federal facilities and discharges to waters located on tribal lands, are subject to federal Clean Water Act jurisdiction under United States Environmental Protection Agency implementation, but are not subject to the parallel state water quality laws.

In the state and NPDES permit programs, Ecology issues both individual permits, for specific activities or facilities, and general permits, for categories of similar dischargers. Categories of general permit recipients include industrial and municipal stormwater dischargers, boatyards, sand and gravel operations, fresh fruit packing, and water treatment plants.

#### Hydraulic Project Approvals.

A person must obtain a hydraulic project approval (HPA) prior to commencing any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic project approvals are issued by the Department of Fish and Wildlife (DFW) to ensure the proper protection of fish life. To receive an HPA, the applicant must provide certain information to the DFW. This information includes general plans for the overall project and complete plans for the proper protection of fish life. Until June 30, 2017, most applicants for an HPA are required to pay a \$150 application fee.

Certain activities are exempt from the application fee requirement. These include, for example, projects located above the ordinary high water line, certain noxious weed control projects, mineral prospecting and mining projects, HPAs related to forest practices hydraulic projects, and HPAs occurring on farm or agricultural land.

#### Gold and Fish Pamphlet.

Small scale prospecting and mining activities are not required to be permitted by the DFW with an individual HPA. Instead, the DFW maintains rules for small scale prospecting and mining that are published in the "Gold and Fish Pamphlet." These rules describe small scale prospecting and mining activities that may be lawfully engaged in so long as the prospector complies with the terms of the Gold and Fish Pamphlet.

Small scale prospecting is defined as discovering and recovering minerals using pans, non-motorized sluice boxes, concentrators, and mini-rocker boxes.

#### State Regulation of Commercial and Recreational Fisheries.

The DFW also has responsibility for regulating commercial and recreational fisheries.

Management tools used by the DFW to carry out these responsibilities include the imposition of:

- selective fishing requirements, which call for the avoidance of catch of non-target species or stocks, or when encountered, the release of those fish alive and unharmed; and
- closed areas and closed times within which fishing is restricted.

**Summary of Bill:**

Ecology must issue an NPDES general permit that applies to small scale motorized mining. Small scale motorized mining is defined as motorized mining that is subject to rules adopted by the DFW for small scale prospecting and mining activities.

Ecology shall set certain restrictions on small scale motorized mining, including at such times and locations as are subject to a closure or selective fishing requirement set by the DFW. Coverage under the permit is not available to mining activities that use an intake nozzle greater than five inches in diameter or an engine that exceeds 15 horsepower.

Applicants under the general permit must provide information about the time and place of the applicant's prospecting activities, including the specific location within an individual waterbody.

Ecology shall encourage the Environmental Protection Agency to establish similar permit conditions for those waters physically located within the state but outside of state regulatory jurisdiction.

The requirement to obtain coverage under an NPDES general permit is in addition to, and does not alter, the requirement to comply with the DFW's Gold and Fish Pamphlet rules for small scale prospecting and mining.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.