

**AQUATIC NOXIOUS WEED CONTROL
GENERAL PERMIT**

**Addendum to the Fact Sheet
Appendix D: Response to Comments**

December 21, 2016

SUMMARY OF MAJOR PERMIT CHANGES

In finalizing this permit, the Washington State Department of Ecology (Ecology) considered all of the public comments received during the public comment period, including comments received during oral testimony at the webinar and public hearing held in Lacey, Washington on October 27, 2016.

This is a summary of the changes made to the Aquatic Noxious Weed Control General Permit (permit) in response to the public comments received between September 21, 2016 and November 4, 2016.

COMMENTS AND RESPONSES

Ecology published a draft Aquatic Noxious Weed Control General Permit on September 21, 2016 for public comment. The public comment period ended November 4, 2016 at 5PM. During the comment period, Ecology conducted one webinar, public workshop, and hearing in Lacey, Washington. Ecology also accepted public comments via comment form on the permit website, letter, and email.

Ecology considered all comments in preparing the final permit. The Addendum to the Fact Sheet Appendix D: Response to Comments documents Ecology's response to each commenter and any changes to the permit that resulted from the comment. Ecology received comments from six (6) commenters during the public comment period. Each comment is numbered. The comment number that corresponds to each commenter is given in Table 1. These numbers allow the commenter to find Ecology's response to their comments. Comments may be summarized; full text of all comments received by Ecology can be found at:

http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/noxious/noxious_index.html.

In addition to the changes identified in the response to comments below, Ecology also updated the list of adjuvants approved for use on aquatic sites by the Washington State Department of Agriculture (Special Condition S4.B.4). Clarification was added to ensure that the Permittee and Limited Agents are aware that management of the class C noxious weed *Zostera japonica* is managed under the *Zostera japonica* Management on Commercial Clam Beds in Willapa Bay NPDES General Permit (Special Condition S1).

This response to comment document is broken into two sections:

[Section 1](#) Table of Commenters

[Section 2](#) Comments on the Permit

SECTION 1: TABLE OF COMMENTERS AND COMMENT NUMBERS

Table 1: Commenters

Commenter Name	Affiliation	Comment Number(s)
Dodie Needham	Interested Party	1
Steve Richmond	Puget Creek Watershed Alliance	2
Ben Peterson	King County Noxious Weed Control Program	3, 4, 5, and 6
David Heimer	Washington Department of Fish and Wildlife	7, 8, 9, and 10
Chad Phillips	Washington State Department of Agriculture	11 and 12
Melissa Malott	Citizens for a Healthy Bay	13, 14, and 15

SECTION 2: COMMENTS ON THE PERMIT

Comment #1: How about enlisting convicts to go through and pull the noxious weeds instead of adding more toxic burden to our planet, our animals, our water, and our people.

Response: Thank you for your comment. Neither this permit or the Department of Ecology direct individuals or entities to use herbicides when managing noxious weeds. However, if the Permittee or Limited Agent choose to use an herbicide when managing noxious weeds up to the water's edge, this permit is in place to protect water quality.

Ecology does not direct noxious weed control efforts and as a result coordinating the work of convicts to assist in noxious weed control efforts is out of our authority. Individuals and entities conducting noxious weed removal are free to pursue the use of convict labor to address noxious weed removal.

Comment #2: Thank you for your efforts, and for reaching out. It is my view that the permit process and reporting is inadequate and ineffective, given that the private sector may apply/misapply perhaps greater pesticide quantities, without a permit, than licensed applicators. Therefore, the punitive fines hanging over applicators heads is discriminatory. A risk management approach might be more effective, less intrusive, and more flexible to respond to the spread of invasives that for some species is growing almost exponentially. We have a very short window to nip problems in the bud to save money, time, and prevent ungettable infestations of ivy and holly

into regional forests. The paperwork of ECA permits and SEPA reviews criminalizes yardwork and discourages voluntary restoration... the resulting neglect of invasives may be a greater threat than overzealous removal. I suggest that you measure pesticide runoff and attach a price/tax to the products sold commensurate with health and environmental risks. At the same time, offer annual property tax breaks or bundled utility fee reductions in exchange for tree/vegetative cover, stormwater management, habitat quality (control of invasives), soil health, in which an environmental rating could be optionally exploited by homeowners and property managers.

Response: Thank you for your comment. The Environmental Protection Agency (EPA) delegated National Pollutant Discharge Elimination System (NPDES) permitting authority in Washington State to the Department of Ecology (Ecology). NPDES permits are required to discharge pesticides to waters of the state to protect water quality. Please see the Factsheet accompanying the draft permit for a review of the legal decisions that led to the requirement for NPDES permitting of pesticide discharge to water. The Washington State Department of Agriculture (WSDA) regulates the use of pesticides in Washington State through the Pesticide Control Act (Chapter 15.58 RCW) and the Pesticide Application Act (Chapter 17.21 RCW). Noxious weed control requirements are set through the Washington State Noxious Weed Control Board. The tax and tax break structure suggested is out of the scope of Ecology's NPDES permitting authority.

Pesticide applicators conducting treatments that do not require a pesticide applicators license or NPDES permit must comply with the pesticide product Federal Insecticide, Fungicide and Rodenticide (FIFRA) label. WSDA may enforce on label violations under RCW 15.58.150(2)(c). Compliance with FIFRA label law is required for both licensed and unlicensed applicators. NPDES permits are required when a pesticide discharge will occur in or around waters of the state. Application of aquatic labeled pesticides under an NPDES permit requires a pesticide applicators license with aquatic endorsement.

The Aquatic Noxious Weed Control NPDES General Permit is issued to WSDA as the permittee. Individuals or entities that would like to conduct noxious weed control up to the water's edge may apply as a Limited Agent under the WSDA permit coverage. Under this permitting structure WSDA pays the permitting fee, conducts monitoring, complies with SEPA requirements and coordinates reporting. This structure greatly reduces the regulatory burden of noxious weed control on Limited Agents. Ecology recognizes that noxious weeds pose a threat to our waters and forests and has implemented this Limited Agent permitting structure to reduce barriers to noxious weed control adjacent to waters of the state.

Comment #3: In S3.B.1 it would be great if "a licensed pesticide applicator, with the appropriate WSDA License and certification,.. " was more specific. I think it would be more useful to spell out that an "Aquatic Endorsement" is necessary.

Response: Ecology agrees that this suggestion would provide clarity.

Change: Special Condition S3.B.1. will be changed to read:

1. A licensed pesticide applicator, with the appropriate WSDA license and aquatic endorsement, has direct supervision responsibilities for the use of pesticides during application.

Comment #4: The text in S3.D. seems like a good addition.

Response: Thank you for your comment. Please also see the response to comment #7.

Comment #5: In Appendix A-Definitions under the definition for "Licensed pesticide applicator" it would be great if the need for the "aquatic endorsement" was listed as a requirement for the applicator.

Response: Ecology agrees that the term "aquatic endorsement" needs to be clarified and defined.

Change: This definition of "aquatic endorsement" has been added to Appendix A-Definitions.

Aquatic Endorsement: All aquatic pesticides are classified as "restricted-use" in Washington State and therefore a WSDA pesticide applicators license and aquatic endorsement are required for application of aquatically labelled pesticides. See also *Licensed Pesticide Applicator*.

Comment #6: On the updated Shoreline Posting Templates, it would be good to change the text to "There are no swimming, fishing, or recreational restrictions". Adding "fishing" would be good because I have gotten questions about that in the past by people fishing near where I applied herbicide and the sign doesn't make it clear that is the case.

Response: Fishing does generally fall under recreational restrictions, however, Ecology agrees that this clarification would be beneficial.

Change: Ecology has added fishing, as suggested in the above comment, to the shoreline sign posting templates. Shoreline sign posting templates are located on the permit webpage: http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/noxious/noxious_index.html.

Comment #7: The language in S3.D. regarding the protection of native vegetation is too restrictive. Although a small amount of native vegetation may be unavoidably treated with the target weed, the surrounding native plants quickly recolonize the area at these sites. With the current language, more time would be spent preparing the site for treatment by searching and covering any non-target plants, than conducting control. In a worst case interpretation, an aerial spray of anything less than a 100% weed monoculture would be practically impossible if there were any native plants located in the infestation. My first suggestion is to use the 2012 permit

language for native plant protection, especially if there have been no specific complaints driving the language change. If that is not possible, my recommendation for a language change is: S3.D. In identified and/or emergent wetlands and other areas with native vegetation, the Permittee must make reasonable efforts to protect native plants when applying chemicals. When and where appropriate, methods of protecting native plants may include but are not limited to: Using a selective herbicide. Minimizing overspray. Using application techniques such as wicking or injection temporarily covering non-target vegetation.

Response: Thank you for the comment. Our intent in removing the words “reasonable effort” from S3.D in the draft permit was to make the permit clear and enforceable, since “reasonable effort” was not defined. We did not intend the proposed change to make the permit operationally impractical. Ecology recognizes that there are times, when using herbicides to treat noxious weeds, that there will be impacts to non-target plants. In many cases the benefits of removing the noxious weed outweighs the impact to the non-target plants.

The Environmental Protection Agency has delegated NPDES permitting authority in Washington State to Ecology. The state statute guiding NPDES general permit development, WAC 173-226, establishes a state general permit program applicable to the discharge of pollutants, to waters of the state. The state statute guiding water pollution control, RCW 90.48, is in place to prevent and control the pollution of waters of the state. This permit does not allow for the direct discharge of pesticides to waters of the state. The permit applies to treatment of shoreline and emergent noxious weeds where the only pesticide permitted to enter waters of the state is from incidental overspray. Addressing the protection of non-target plants when treating shoreline and emergent noxious weeds under permit coverage is not directly related to the prevention of pollutants entering waters of the state. Regulating pesticide discharge to non-target plants from the treatment of shoreline and emergent noxious weeds is outside of the scope of this NPDES general permit. Ecology will rely upon the pesticide products FIFRA label, for active ingredients approved under this permit, to direct Permittees in regards to reducing drift to avoid impacts to desirable plants.

Ecology will make the change indicated below.

Change:

Special Condition **S3.D - Protecting Native Vegetation** will be removed from the permit.

Comment #8: There are several emergent weeds that occur in salt marshes and marine shorelines that do not entirely fit the freshwater weed definition. Examples of these weeds include non-native cattail, non-native Phragmites, purple loosestrife, non-native beach grass and yellow flag iris. A new subsection should be added to accommodate this work. S5. NOTIFICATION AND POSTING REQUIREMENTS New subsection- Brackish Water Weed Notification and Posting Requirements For treatment of plants other than Spartina post according to S5.B.2.

Response: Ecology agrees that noxious weeds other than Spartina may be present in the marine or estuarine environments and that treatment may occur under coverage of this permit. The draft permit was not clear about how notification and postings should occur when

working on weeds other than Spartina in the marine/estuarine environment. Ecology has made the change indicated below.

Change: New Section S5.C - Marine, Estuarine and Brackish Water Weed Notification and Posting Requirements

1. For treatment of plants other than Spartina growing in the marine, estuarine or brackish water environment post according to S5.B.2.

Comment #9: Section S4.B.4. Please add the product Optima (Helena) to the Adjuvant Table.

Response: Ecology includes adjuvants in the permit based on the list of adjuvants approved for aquatic use received from the Washington State Department of Agriculture (WSDA). The most current list of aquatically approved adjuvants received from WSDA did not include the product Optima (Helena). More information on the requirements to register spray adjuvants in Washington State can be found at the following website:

<http://agr.wa.gov/pestfert/pesticides/productregistration.aspx#Adjuvants>.

Comment #10: Shoreline Posting Templates. Please create a combination posting template for Imazapyr and Glyphosate for freshwater and brackish water applications.

Response: Ecology has created the requested shoreline sign posting template as a new template section titled "POSTING TEMPLATE FOR TREATMENT OF WEEDS OTHER THAN SPARTINA IN THE MARINE ENVIRONMENT". Shoreline sign posting templates can be found on the permit webpage:

http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/noxious/noxious_index.html.

Comment #11: Section S5.B.2.b For clarity please add an "or" so that the section reads. Post according to special condition S5.B.2.a, or post the corners of the treatment area, or if treating an individual plant post sign at the treated plant.

Response: The intent of this section was that the Permittee post according to one of the three options provided. Ecology intended for the language to read as suggested and will make the change as proposed.

Change: S5.B.2.b will be changed to read:

- b. For ground-based treatments: Post according to special condition S5.B.2.a, or post the corners of the treatment area, or if treating an individual plant post a sign at the treated plant.

Comment #12: Section S5.B.2.d Please remove the requirement that signs be posted within 72 hours. Please utilize the language from the old permit "Post signs before starting treatment." This

will allow the cooperators the necessary time to install postings at larger sites where 72 hours would likely be insufficient.

Response: Ecology understands that for larger sites and sites where multiple cooperators are involved in conducting the treatment, 72 hours may not provide enough time to comply with the required notification and posting requirements in S5.B.2. We will make the change below to allow for the operational necessity of sign postings prior to 72 hour before treatment for large sites.

Change: d. When posting public access areas according to S5.B.2.a and b post signs prior to starting treatment. When posting the treatment area corners or individual plants according to S5.B.2.b post signs within 72 hours prior to starting treatment.

Comment#13: CHB supports the expanded language provided in S3. D “Protecting Native Vegetation,” which clarifies specific methods of protection.

Response: Thank you for your comment. Please see the responses to comment #7.

Comment #14: CHB supports requiring permittees to post signs by 72 hours prior to starting treatment, improving the requirements for the public notification process.

Response: Thank you for your comment. Please see the response to comment #12.

Comment #15: CHB suggests changing S5. B.2f to “... Post signs in the language(s) commonly used by the non-English speaking community.” This change will signify that it may often be necessary to post in more than one language for an affected community.

Response: We agree that there may be situations where treatments occur in communities where it is necessary to post signs in more than one language, other than English. The permit will be changed as indicated below.

Change:

S5.B.2.f will be changed to:

f. Post signs in English, and if it is known that a non-English speaking community commonly uses an area, post signs in the language(s) commonly used by the non-English speaking community.

S5.D.2.d.iii will be changed to:

iii. Post signs in English and the language(s), if other than English, commonly spoken by the community that uses the area.