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FACT SHEET FOR THE STATE OF WASHINGTON AQUATIC NOXIOUS WEED MANAGEMENT NPDES GENERAL PERMIT

OCTOBER 5, 2011

SUMMARY

This fact sheet is a companion document to the National Pollutant Discharge Elimination System (NPDES) ***General permit*** for management of aquatic ***noxious weeds*** and ***quarantine list plants***. It explains the nature of the proposed ***discharge***, the Washington State Department of Ecology's (Ecology) decisions on limiting ***pollutants*** in the receiving water, and the regulatory and technical basis for these decisions.

The Aquatic Noxious Weed Management General Permit (permit) regulates the use of ***pesticides*** and other products applied to manage Washington state listed noxious weeds and Washington state quarantine-listed weeds where pesticides or other products may ***indirectly*** enter the ***surface waters of the state*** of Washington. The permit covers all marine and freshwater activities that result in a discharge of ***herbicides***, ***adjuvants***, and ***marker dyes*** (collectively chemicals) indirectly into streams, rivers, estuaries, marine areas, ***wetlands***, along lake shorelines, and other wet areas. The permit also covers the treatment of noxious- and quarantine-listed vegetation for roadside/ditch bank management activities where chemicals may indirectly enter the water. The permit covers only the chemical management of plants. Project proponents may need other permits if they conduct weed management activities using manual, mechanical, or biological methods.

Since the *Headwaters, Inc. v. Talent Irrigation District* Ninth Circuit Court decision, Ecology has maintained that to discharge chemicals to waters of the state, coverage under an NPDES permit is required. Ecology has issued general and individual NPDES permits for discharges of aquatic pesticides and other chemicals since 2002. The Sixth Circuit Court recently ruled in *National Cotton Council et al. v. The Environmental Protection Agency (EPA)* that the discharge of pesticides and their residues to waters of the state requires NPDES coverage. This decision means that NPDES permitting is now required for all aquatic pesticide applications throughout the United States. EPA has developed a draft general NPDES permit for this purpose and the EPA permit will become effective October 2011. In Washington, the EPA permit will cover aquatic pesticide applications on federal and Tribal Lands.

Ecology may change the proposed terms, limits, and conditions contained in the draft permit, subsequent to written public comments it receives and testimony provided at public hearings. The draft permit does not authorize a violation of surface water quality standards or the violation of any other applicable local, state, or federal laws or regulations. Ecology may require any person seeking coverage under this permit to obtain coverage under an ***individual permit*** instead.

Ecology will consider any person who applies chemicals to surface waters of the state without coverage under this general permit, another applicable general permit, an applicable individual permit, or a ***state experimental use permit*** to be operating without a discharge permit and subject to potential enforcement action.

Ecology proposes to issue this general permit so that dischargers operating under coverage of this permit will comply with the ***Federal Clean Water Act*** and with the Washington Water Pollution Act chapter 90.48.080 Revised Code of Washington (RCW). The ***Permittee*** must monitor (depending on the type of chemical application), notify the public and affected residents

and businesses, post signs at treatment sites with ***public access***, and provide annual treatment and monitoring reports to Ecology.

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INTRODUCTION

This fact sheet is a companion document to the draft revised Aquatic Noxious Weed Management General Permit (permit) and provides the legal and technical basis for permit reissuance (required in Washington Administrative Code (WAC 173-226-110). Since 2001, and based on *Headwaters v. Talent Irrigation District*, the Washington State Department of Ecology (Ecology) has maintained that the discharge of pesticides to waters of the state requires coverage under a National Pollutant Discharge Elimination System (NPDES) permit.

The current permit, which expires February 2013, has covered discharges of herbicides, adjuvants, and marker dyes to surface waters of the state of Washington since 2008. Ecology proposes to issue an updated permit to continue to allow the use of these products for controlling aquatic noxious- and quarantine-listed weeds.

Ecology determined it was appropriate to issue a general permit for aquatic noxious weed management because:

- Noxious weed management activities have a statewide scope.
- These activities are similar at different sites.

Ecology may still require individual permits where a proposed activity requires additional guidance, or when an individual Permittee requests an individual permit and Ecology agrees to develop and issue one.

This permit helps Ecology:

- Mitigate and condition the use of chemicals that may enter the aquatic environment.
- Track pesticide rates and use locations.
- Ensure that notifications and postings occur in areas where the public or local residents may access the treated areas.

This fact sheet explains the nature of the proposed discharges, Ecology's decisions on limiting the pollutants in the receiving water, and the regulatory and technical basis for these decisions. WAC 173-226-130 specifies public notice of the draft permit, public hearings, comment periods, and public notice of issuance before Ecology can issue the general permit. This fact sheet, application for coverage, and draft permit are available for review (see Appendix A - Public Involvement - for more detail on public notice procedures).

After the public comment period closes, Ecology will summarize and respond to substantive comments. These comments may cause Ecology to revise some of the permit language and requirements. The summary and response to comments will become part of the file for this permit and parties submitting comments will receive a copy of Ecology's response. Ecology will **not** revise the original fact sheet after it publishes the public notice. Appendix D (Response to Comments) will summarize comments and the resultant changes to the permit.

The text of this Fact Sheet contains words or phrases, which are formatted in ***bold and italics*** when first used in the document. These words or phrases are defined in Appendix A.

AQUATIC PESTICIDE LEGAL HISTORY

The Federal Clean Water Act (CWA)

The Federal Clean Water Act [CWA, 1972, and later modifications (1977, 1981, and 1987)], established water quality goals for navigable (surface) waters of the United States. One of the mechanisms for achieving the goals of the Clean Water Act is the NPDES system of permits, which the United States Environmental Protection Agency (EPA) administers. The EPA has delegated responsibility for administering the NPDES permit program to the State of Washington. EPA delegated authority to Ecology based on chapter 90.48 RCW that defines Ecology's authority and obligations in administering the NPDES permit program. Ecology does not have the authority to issue NPDES permits to federal facilities or to facilities on Tribal Lands.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

The following excerpt is from the EPA 2010 NPDES Pesticides General Permit Fact Sheet:

> *EPA regulates the sale, distribution, and use of pesticides in the U.S. under the statutory framework of the Federal Insecticide, Fungicide, and Rodenticide Act of 1979, to ensure that when used in conformance with the label, pesticides will not pose unreasonable risks to human health and the environment. All new pesticides must undergo a registration procedure under FIFRA during which EPA assesses a variety of potential human health and environmental effects associated with use of the product. Under FIFRA, EPA is required to consider the effects of pesticides on the environment by determining, among other things, whether a pesticide will perform its intended function without unreasonable adverse effects on the environment, and whether when used in accordance with widespread and commonly recognized practice [the pesticide] will not generally cause unreasonable adverse effects on the environment.* 7 U.S.C. 136a(c)(5).
>
> *In performing this analysis, EPA examines the ingredients of a pesticide, the intended type of application site and directions for use, and supporting scientific studies for human health and environmental effects and exposures. The applicant for registration of the pesticide must provide specific data from tests done according to EPA guidelines.*
>
> *When EPA approves a pesticide for a particular use, the Agency imposes restrictions through labeling requirements governing such use. The restrictions are intended to ensure that the pesticide serves an intended purpose and avoids unreasonable adverse effects. It is illegal under Section 12(a)(2)(G) of FIFRA to use a registered pesticide in a manner inconsistent with its labeling. States have primary authority under FIFRA to enforce "use" violations, but both the States and EPA have ample authority to prosecute pesticide misuse when it occurs.*
>
> *After a pesticide has been registered, changes in science, public policy, and pesticide use practices will occur over time. FIFRA, as amended by the Food Quality Protection Act of*

1996, mandates a registration review program, under which [EPA] periodically reevaluates pesticides to make sure that as the ability to assess risk evolves and as policies and practices change, all registered pesticides continue to meet the statutory standard of no unreasonable adverse effects to human health or the environment. [EPA] is implementing the registration review program pursuant to Section 3(g) of FIFRA and will review each registered pesticide every 15 years to determine whether it continues to meet the FIFRA standard for registration. Information on this program is provided at http://www.epa.gov/oppsrrd1/registration_review/.

FIFRA, as administered by the EPA and the Washington State Department of Agriculture (WSDA), requires that all persons that apply pesticides classified as restricted use be certified according to the provisions of the act, or that they work under the direct supervision of a certified ***applicator***. Commercial and public applicators must demonstrate a practical knowledge of the principles and practices of pest control and safe use of pesticides, which they accomplish by means of a "core" examination. In addition, applicators using or supervising the use of any restricted use pesticides purposefully applied to standing or running water (excluding applicators engaged in public health related activities) must pass an additional exam to demonstrate competency as described in the code of federal regulations as follows:

Aquatic applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. Applicants in this category must demonstrate practical knowledge of the principals of limited area application (40 CFR 171.4).

Any person wishing to apply pesticides to waters of the state must obtain an aquatic pesticide applicator license from the Washington State Department of Agriculture, or operate under the supervision of a licensed applicator. See www.agr.wa.gov/PestFert/LicensingEd/Licensing.htm for information on Washington State licensing requirements and testing.

Headwaters, Inc. v. Talent Irrigation District

In May 1996, as part of routine vegetation management, the Talent Irrigation District (TID) in southern Oregon applied the pesticide acrolein to a system of irrigation canals. Acrolein-treated water discharged into a fish-bearing creek causing a fish kill. Subsequently, Headwaters, Inc. and Oregon Natural Resources Council filed a Clean Water Act citizen suit against the TID for applying a pesticide into a system of irrigation canals without an NPDES permit.

The Ninth Circuit Court in *Headwaters, Inc. v. Talent Irrigation District* found that the applicator should have obtained coverage under an NPDES permit prior to application of aquatic pesticides to an irrigation canal. The decision addressed residues and other products of aquatic pesticides.

Reversing a district court's opinion, the Ninth Circuit Court held that application of the pesticide in compliance with the FIFRA labeling requirements did not exempt TID from having to obtain an NPDES permit and that the irrigation ditches were "waters of the United States" under the CWA (March 12, 2001).

Based on the TID court decision, Ecology determined that all pesticide applications to state surface waters required coverage under NPDES permits. Ecology issued its first NPDES general permits for pesticide applications to Washington's surface waters in 2002. Prior to 2001, Ecology regulated the application of aquatic pesticides to most surface waters by issuing administrative orders (called Short-Term Modifications of Water Quality Standards) to Washington-state licensed applicators. Since the Talent decision, there have been further court challenges about the applicability of NPDES permits to aquatic pesticide application as discussed below in this section of the Fact Sheet.

League of Wilderness Defenders et al. v. Forsgren

In the 1970's the Douglas fir tussock moth defoliated approximately 700,000 acres of Douglas fir in Idaho, Oregon, and Washington. In response to this outbreak, the United States Forest Service (USFS) developed a system to predict tussock moth outbreaks and control them via aerial spraying of insecticides. Based on its warning system, the USFS predicted an outbreak in 2000-2002 and designed a spraying program.

In 2002, the League of Wilderness Defenders et al. filed suit against the USFS for failing to obtain a NPDES permit under the Clean Water Act for the application of insecticides directly above surface waters. The USFS argued that any discharge of insecticides was nonpoint pollution and that the discharges fell under federal exemptions (40 CFR 122.3) for silviculture activities.

The Ninth Circuit Court reversed a district court's opinion upon appeal. It held that aerial spraying (from an aircraft fitted with tanks) directly to, and over, surface water is a point source of pollution and requires an NPDES permit.

Fairhust v. Hagener

The Montana Department of Fish, Wildlife, and Parks (Department) began a ten-year program to reintroduce threatened native westslope cutthroat trout into Cherry Creek. The Department used antimycin-A, a piscicide, to remove nonnative trout from Cherry Creek over several years, after which they planned to reintroduce native trout.

The Department was sued under the citizen suit provision of the CWA for failing to obtain an NPDES permit before applying antimycin-A to surface waters. During summary judgment, the district court decided in favor of the Department. On appeal, the Ninth Circuit court affirmed the district court's opinion. The Ninth Circuit opined that:

> *A chemical pesticide applied intentionally, in accordance with a FIFRA label, and with no residue or unintended effect is not "waste", and thus not a "pollutant" for the purposes of the Clean Water Act. Because the Department's application of antimycin-A to Cherry Creek was intentional, FIFRA compliant, and without residue or unintended*

effect, the discharged chemical was not a pollutant and the Department was not required to obtain a NPDES permit.

Neither the Court nor the EPA offered any guidance regarding which pesticide applications would result in no residue or unintended effect.

Northwest Aquatic Ecosystems v. Ecology, Washington Toxics Coalition

In February 2006, the Pollution Control Hearings Board (PCHB) issued a final order in Case #05-101, *Northwest Aquatic Ecosystems v. Ecology, Washington Toxics Coalition*. This case focused on a number of issues, one of which was whether an NPDES permit is required for the use of federally registered pesticides since the Ninth Circuit Court ruled in *Fairhurst v. Hagener*.

The PCHB ruled on summary judgment that the *Fairhurst* decision does not provide a blanket exemption for the application of aquatic pesticides. Pesticides must meet identified conditions before Ecology can consider it outside the category of a pollutant under the CWA. The pesticide must:

(1) Be applied for a beneficial purpose.
(2) Be applied in compliance with FIFRA.
(3) Produce no pesticide residue.
(4) Produce no unintended effects (Fairhurst, 422 F.3d at 1150).

Northwest Aquatic Ecosystems failed to provide any evidence specifically addressing how the use of the aquatic herbicides diquat and endothall on the proposed sites would meet the four conditions identified in *Fairhurst.* In the absence of such evidence, *Fairhurst* provided no basis for the PCHB to conclude that an NPDES permit is not required for the proposed pesticide applications.

EPA Final Rule

In November 2006, EPA issued a final rule under the CWA entitled *Application of Pesticides to Waters of the United States in Accordance with FIFRA.* This rule replaced a draft interpretive statement EPA issued in 2003 concerning the use of pesticides in or around waters of the United States. The rule states that any pesticide meant for use in or near water, applied in accordance with the FIFRA label, is not a pollutant under the CWA. Therefore, such applications are not subject to NPDES permitting.

After EPA issued the rule, Ecology met with stakeholders to seek input on how it should regulate the use of aquatic pesticides. Ecology also provided the public with a three-week comment period. Stakeholders affiliated with each of the seven affected permits (Mosquito, Noxious Weeds, Aquatic Plant and Algae, Irrigation, Oyster Growers, Fish Management, and Invasive Moth) commented. The consensus of these stakeholders was that Ecology should continue to issue joint NPDES/state waste permits to regulate aquatic pesticide applications.

To apply a pesticide to the water, state law requires the applicator to obtain a short-term modification of the water quality standards from Ecology. Ecology issued short-term modifications using an administrative order until 2001, when this process was challenged, Currently, the only legal vehicle for implementing a short-term modification is a permit. State

law defines only two types of permits for surface water discharges: NPDES (federal) and State Waste Discharge (state).

Because of stakeholder consensus and the need for a permit to implement short-term modifications, Ecology decided that Washington would continue to use NPDES permits as the legal vehicle to regulate the use of aquatic pesticides in and around Washington state waters. Ecology believes that these permits provide the best protection of water quality, human health, and the environment.

National Cotton Council et al. v. EPA

In November 2006, EPA issued a final rule under the CWA that determined that pesticides applied in accordance with the FIFRA label are exempt from NPDES permitting requirements. Petitioners filed for review of EPA's final rule in 11 of the 12 federal circuit courts that are able to hear regulatory arguments. The federal courts combined the petitions into one case within the Sixth Circuit Court.

The Sixth Circuit Court made several findings. First, it agreed with the Ninth Circuit (*Fairhurst v. Hagener*) that if a chemical pesticide is intentionally applied to water for a beneficial purpose, and leaves no waste or residue after performing its intended purpose, the discharge would not require an NPDES permit.

Second, the Court found excess pesticides and residues that make their way into waters during and after any pesticide application constitute wastes under the CWA and must have NPDES permit coverage before discharge occurs.

Finally, the Sixth Court determined that because EPA's final rule exempted discharges that the plain reading of the CWA includes as requiring an NPDES permit, the rule could not stand.

After a later motion, the Sixth Circuit granted EPA a stay on the effective date of this ruling for 24 months to allow the agency to develop an NPDES permit for aquatic pesticide discharges. EPA is currently developing a general permit for the discharge of pesticides to manage aquatic plants, ***invasive*** species, larval and aerial mosquito control, and other aquatic pesticide uses. EPA originally intended to issue the general permit by December 2010. EPA received a further extension from the court and now intends to issue the permit by October 2011. In Washington, EPA's general permit will cover aquatic pesticide activities conducted on federal lands and Tribal lands. The state regulates aquatic pesticide application to all other lands/waters.

LEGAL BASIS FOR MANAGING AQUATIC PLANTS AND ALGAE IN WASHINGTON

RCW 90.48.445 Aquatic Noxious Weed Control - Water quality Permits

In 1991, the Washington State Legislature directed Ecology to issue or approve water quality permits for use by federal, state, and local government agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws. The legislature also specified that the issuance of these

permits were subject only to compliance with federal and state pesticide label requirements, FIFRA requirements, the ***Washington Pesticide Control Act***, the Washington Pesticide Application Act, and the State Environmental Policy Act (SEPA) (with some exceptions for *Spartina* projects).

The Legislature further stated that Ecology may not use this permit authority to otherwise condition or burden weed control efforts and that permits are effective for five years, unless the applicant requests a shorter duration.

RCW 90.48.447 Aquatic Plant Management Program

Excerpts from the notes, findings, and purpose of this 1999 statute state:

> *The legislature finds that the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by the invasion of nuisance and noxious aquatic weeds. Once established, these nuisance and noxious aquatic weeds can colonize the shallow shorelines and other areas of lakes with dense surface vegetation mats that degrade water quality, pose a threat to swimmers, and restrict use of lakes. Algae can generate health and safety conditions dangerous to fish, wildlife, and humans. The current environmental impact statement is causing difficulty in responding to environmentally damaging weed and algae problems. Many commercially available herbicides have been demonstrated to be effective in controlling nuisance and noxious aquatic weeds and algae and do not pose a risk to the environment or public health. The purpose of this act is to allow the use of commercially available herbicides that have been approved by the environmental protection agency and the department of agriculture and subject to rigorous evaluation by the department of ecology through an environmental impact statement for the aquatic plant management program*. [1999 c 255 § 1.]

RCW 17.10 Noxious Weeds – Control Boards

RCW 17.10 is Washington's primary noxious weed law and it holds landowners responsible for controlling noxious weeds on their property. Its purpose is to *limit economic loss and adverse effects to Washington's agricultural, natural, and human resources due to the presence and spread of noxious weeds on all terrestrial and aquatic areas of the state*.

Chapter 16.750 WAC State Noxious Weed List and Schedule of Monetary Penalties

This rule sets out Washington's Noxious Weed List, which the State Noxious Weed Control Board updates each year. It organizes noxious weeds by classification. Class A noxious weeds are ***non-native*** species that are limited in distribution in Washington. State law requires that landowners eradicate these weeds. Class B noxious weeds are non-native species that are either absent from or limited in distribution in some portions of the state, but very abundant in other areas. The goal is to contain the plants where they are already widespread and prevent their spread into new areas. The law requires control and prevention of all reproductive propagules (cuttings, seeds, tuber, etc.) in areas where Class B weeds are designated for control. Class C noxious weeds are non-native plants that are already widespread in Washington. Counties can choose to enforce control or they can educate residents about controlling Class C noxious weeds.

There are many species of aquatic and wetland plants on the state noxious weed list (e.g., purple loosestrife, yellow flag iris, *Spartina*, *Phragmites*, etc.). Sometimes, terrestrial noxious weeds can grow in wet areas or along riparian corridors where herbicide treatments may also enter the water (e.g. knotweeds, some species of thistle, blackberry, butterfly bush, etc.). Species listed as noxious weeds on the state list are or were present in Washington.

Chapter 16.752 WAC Noxious Weed Control

This rule establishes a wetland and aquatic weed quarantine. It prohibits the transport, sale, or distribution of specific plant species within the state of Washington. Many plants on the quarantine list are present in Washington, while others pose a threat to Washington, but are not currently in the state (e.g., water chestnut - *Trapa natans*).

BIOLOGICAL BACKGROUND - AQUATIC NOXIOUS WEEDS

Noxious weeds are not native to Washington and are not desirable plants for Washington ecosystems. Many noxious weeds originate from other continents although some aquatic noxious weeds in Washington are native to the east coast of North America. Introduction pathways include the aquarium and nursery industry, internet trading, boats, and boat trailers. Because noxious weeds are often introduced without the diseases and insects that keep them in control in their new habitat, they can spread rapidly, destroying native plant and animal habitat, reducing species diversity, damaging recreational opportunities, lowering property values, and clogging waterways. In recognition of the economic and ecological threats caused by noxious weeds, Washington State has enacted laws to control their introduction and spread (chapter 17.10 RCW – Noxious Weeds – Control Boards, chapter 16-750 WAC – State Noxious Weed List and Schedule of Monetary Penalties, chapter 16-752 WAC – Noxious Weed Control (Quarantine). Landowners may be legally obligated to eradicate or control noxious weeds, depending on their classification and distribution within the state.

Aquatic herbicide application is often needed to manage freshwater noxious weeds. The impacts of these species are significant and pervasive and they have profound impacts on species diversity, habitat, water quality, recreation, water supply, drinking water, flood control, safety, and health. Aquatic herbicides are often the most effective tools to remove these plants and restore the ecosystem.

Additional Information Sources about Aquatic Plants and Noxious Weeds

- *An Aquatic Plant Identification Manual for Washington's Aquatic Plants*: www.ecy.wa.gov/programs/wq/plants/plantid2/index.html
- *Advantages and Disadvantages of Aquatic Plant Management Techniques*: www.aquatics.org/pubs/madsen2.htm
- *Nonnative, Invasive Freshwater Plants*: www.ecy.wa.gov/programs/wq/plants/weeds/index.html
- *Washington State Noxious Weed Control Board*: www.nwcb.wa.gov/
- *Washington Invasive Species Council*: www.rco.wa.gov/invasive_species/default.htm.

- *United States Department of Agriculture's National Invasive Species Information Center*: www.invasivespeciesinfo.gov/aquatics/controlplans.shtml#aqan.
- *USGS – NAS – Nonindigenous Aquatic Species Information Resource*: http://nas.er.usgs.gov/.

REGULATORY INFORMATION

Regulatory Pollution Reduction Requirements

Federal and state regulations require that effluent limits in an NPDES permit must be either technology-or-water-quality-based.

- Technology-based limitations are based upon the methods available to treat specific pollutants. Technology-based limits are set by EPA and published as a regulation or Ecology develops the limit on a case-by-case basis (40 CFR 125.3, and chapter 173-220 WAC).
- Water quality-based limits are calculated so that the effluent will comply with the Surface Water Quality Standards (chapter 173-201A WAC), Ground Water Standards (chapter 173-200 WAC), Sediment Quality Standards (chapter 173-204 WAC) or the National Toxics Rule (40 CFR 131.36).
- Ecology must apply the more stringent of these limits to each parameter of concern. These limits are described below.

Technology-Based Water Quality Protection Requirements

Sections 301, 302, 306, and 307 of the CWA establish discharge standards, prohibitions, and limits based on pollution control technologies. These technology-based limits are *best practical control technology* (BPT), *best available technology economically achievable* (BAT), and *best conventional pollutant control technology economically achievable* (BCT). Permit writers may also determine compliance with BPT/BAT/BCT using their *best professional judgment* (BPJ). EPA has stated that for pesticide application to water (in its draft aquatic pesticide NPDES general permit) that technology-based requirements are Best Management Practices (BMPs); not numeric limits.

Washington has similar technology-based limits that are described as ***all known, available, and reasonable methods of control, prevention, and treatment* (*AKART*)** methods. State law refers to AKART under RCW 90.48.010, 90.48.520, 90.52.040, and 90.54.020. The federal technology-based limits and AKART are similar but not equivalent. Ecology may establish AKART:

- For an industrial category or for an individual permit on a case-by-case basis.
- That is more stringent than federal regulations.
- That includes BMP's such as prevention and control methods (e.g., waste minimization, waste/source reduction, or reduction in total contaminant releases to the environment).

Ecology and EPA concur that AKART may be equivalent to BPJ determinations.

Historically, EPA has regulated the pesticide application industry under FIFRA. EPA developed label use requirements to regulate the use of pesticides. EPA also requires the pesticide manufacturer to register each pesticide, provide evidence that the pesticide will work as promised, and minimize unacceptable environmental harm.

The Pesticide Management Division of the Washington State Department of Agriculture (WSDA) ensures that applicators use pesticides legally and safely in Washington. WSDA registers pesticides for use in Washington (in addition to EPA registration); licenses pesticide applicators, dealers and consultants; investigates complaints; maintains a registry of pesticide sensitive individuals; and administers a waste pesticide collection program. These duties are performed under the authority of the Washington Pesticide Control Act (chapter 15.58 RCW), the Washington Pesticide Application Act (chapter 17.21 RCW), the General Pesticide Rules (chapter16-228 WAC), the Worker Protection Standard (chapter 16-233 WAC) and a number of pesticide and/or county specific regulations (http://agr.wa.gov/PestFert/Pesticides/default.htm).

The standards for environmental protection are different between the CWA and FIFRA. Because of the *National Cotton Council, et al. v. EPA* court decision, in 2011, EPA will regulate the application of aquatic pesticides under a general NPDES permit. EPA is currently developing a general NPDES permit for non-delegated states, federal lands, and Tribal lands. EPA expects all delegated states to develop their own NPDES permits for aquatic pesticide application to comply with the federal court decision. To comply with the *National Cotton Council, et al. v. EPA* court decision, by October 2011, all aquatic pesticide applications in the United States must occur under NPDES permits.

Because of the *Headwaters Inc. v. Talent Irrigation District* decision, Ecology has regulated aquatic pesticide application under NPDES permits since 2002. It is Ecology's intent that reissuing the permit will authorize aquatic noxious weed management in a manner that complies with all federal and state requirements.

All wastewater discharge permits issued by Ecology must incorporate requirements to implement reasonable prevention, treatment, and control of pollutants. Ecology acknowledges that applicators could treat the pollutants addressed in this permit only with great difficulty due to the diffuse nature and low concentrations that exist after the pesticides have become waste. The *Headwater, Inc. v. Talent* ruling established that aquatic pesticides become waste in the water after the pesticide has performed its intended action and the target organisms are controlled or if excess pesticide is present during treatment.

Integrated Pest Management (IPM)

After the *National Cotton Council et al. v. EPA* decision, the Sixth Circuit Court allowed EPA 24 months to develop a general NPDES permit for aquatic pesticide use and later granted an extension of a further six months to finalize the permit. In its draft permit, EPA regards IPM as meeting technology-based-effluent-limits for aquatic pesticide application. EPA anticipates having all Permittees applying for coverage under its general permit implement basic IPM practices. EPA's draft permit requires a subset of Permittees to implement *Pesticide Discharge Management Plans* that include comprehensive IPM practices.

EPA expects dischargers to keep these written plans on site and make them available to state or federal inspectors on request. EPA requires that any state-issued aquatic pesticide NPDES permits be at least as stringent as the EPA-administered aquatic pesticide general permit.

The draft reissuance of Ecology's permit requires that the Permittee develop or revise a ***Discharge Management Plan*** *(DMP)*. For freshwater noxious weeds, Ecology considers that an existing plan prepared for the noxious weed permit - *Integrated Pest Management Plan for Freshwater Emergent Noxious- and Quarantine-Listed Weeds* - is equivalent to a DMP. However, the Permittee must update the plan and any addendums to the plan to keep the document current.

Experimental Use Permits

Entities operating under WSDA-issued experimental use permits (WSEUP) do not need coverage under this permit. WSDA requires WSEUP for all research experiments involving pesticides that are not federally registered or for uses not allowed on the pesticide label. WSDA experimental use permits limit the amount of an experimental use pesticide that a Permittee can use for testing purposes. WSDA grants experimental use permits for gathering data in support of registration under FIFRA Section (3) or Section 24(c). In many situations, only a state WSEUP is required for the use of an experimental pesticide.

When a proponent conducts a small-scale test on more than one surface acre of water per pest, it must obtain a federal experimental use permit in addition to a state experimental use permit. Any person may apply to the EPA for a federal experimental use permit for pesticides and these permits are usually valid for only one year. Applicants holding a federal experimental use permit must also apply for and obtain a state experimental use permit before initiating any shipment of the pesticide to Washington. Ecology requires coverage under the Aquatic Noxious Weed Management Permit for applicants operating under a federal experimental use permit.

Water Quality-Based Requirements

Surface Water Quality-Based Effluent Limits

The Washington State Surface Water Quality Standards (chapter 173-201A WAC) were designed to protect existing water quality and preserve the ***beneficial uses*** of Washington's surface waters. Waste discharge permits must include conditions that ensure the discharge will meet established surface water quality standards (WAC 173-201A-510). Water quality-based effluent limits may be based on an individual waste load allocation or on a waste load allocation developed during a basin-wide total maximum daily loading study (TMDL).

Ecology conditions NPDES and waste discharge permits in such a manner that authorized discharges meet water quality standards. The characteristic beneficial uses of surface waters include, but are not limited to, the following: domestic, industrial and agricultural water supply; stock watering; the spawning, rearing, migration and harvesting of fish; the spawning, rearing and harvesting of shellfish; wildlife habitat; recreation (primary contact, sport fishing, boating, and aesthetic enjoyment of nature); commerce; aesthetics and navigation.

Numeric Criteria for the Protection of Aquatic Life and Recreation

Numeric water quality criteria are published in the Water Quality Standards for Surface Waters (chapter 173-201A WAC). They specify the levels of pollutants allowed in receiving water to protect aquatic life and recreation in and on the water. Ecology uses numeric criteria along with chemical and physical data for the wastewater and receiving water to derive effluent limits in the

discharge permit. When surface water quality-based limits are more stringent or potentially more stringent than technology-based limits, the discharge must meet the water quality-based limits.

The EPA has published 91 numeric water quality criteria for the protection of human health that are applicable to dischargers in Washington State (40 CFR 131.36). EPA designed these criteria to protect humans from exposure to pollutants linked to cancer and other diseases, based on consuming fish and shellfish and drinking contaminated surface waters. The Water Quality Standards also include radionuclide criteria to protect humans from the effects of radioactive substances.

Narrative Criteria

Narrative water quality criteria (e.g. WAC 173-201A-240(1); 2006) limit the toxic, radioactive, or other deleterious material concentrations that may be discharged to levels below those which have the potential to:

- Adversely affect designated water uses.
- Cause acute or chronic toxicity to biota.
- Impair aesthetic values
- Adversely affect human heath

Narrative criteria are statements that describe the desired water quality goal, such as waters being "free from" pollutants such as oil and scum, color and odor, and other substances that can harm people and fish. These criteria are used for pollutants for which numeric criteria are difficult to specify, such as those that offend the senses (e.g., color and odor). Narrative criteria protect the specific designated uses of all freshwaters (WAC 173-201-A-200, 2006) and of all marine waters (WAC 173-201A-210; 2006) in the State of Washington.

Antidegradation Analysis and Antidegradation Plan

The following narrative represents Ecology's antidegradation analysis and antidegradation plan for the Aquatic Noxious Weed Management General Permit. The purpose of Washington's Antidegradation Policy (WAC 173-201A-300-330; 2006) is to:

- Restore and maintain the highest possible quality of the surface waters of Washington.
- Describe situations under which water quality may be lowered from its current condition.
- Apply to human activities that are likely to have an impact on the water quality of surface water.
- Ensure that all human activities likely to contribute to a lowering of water quality, at a minimum, apply AKART.
- Apply three Tiers of protection (described below) for surface waters of the state.

Tier I ensures existing and designated uses are maintained and protected and applies to all waters and all sources of pollution. Tier II ensures that dischargers do not degrade waters of a higher quality than the criteria assigned unless such lowering of water quality is necessary and in the overriding public interest. Tier II applies only to a specific list of polluting activities. Tier III prevents the degradation of waters formally listed as "outstanding resource waters" and applies to all sources of pollution.

WAC 173-201A-320(6) describes how Ecology implements Tier I and II antidegradation in general permits. All Permittees covered under the general permit must comply with the provisions of Tier 1. Ecology determined that the permit does not cover discharges to Tier III waters.

Under state law, the use of herbicides is in the public interest.

> *Many commercially available herbicides have been demonstrated to be effective in controlling nuisance and noxious aquatic weeds and algae and do not pose a risk to the environment or public health. The purpose of this act is to allow the use of commercially available herbicides that have been approved by the environmental protection agency and the department of agriculture and subject to rigorous evaluation by the department of ecology through an environmental impact statement for the aquatic plant management program (RCW 90.48.447).*

See also the Biological Background Section for information about how noxious weeds affect beneficial uses of water bodies.

The water quality standards at WAC 173-201A-320(6) describe how Ecology should conduct an antidegradation Tier II analysis when it issues NPDES general permits. This section of the rule requires Ecology to:

Use the information collected, from implementation of the permit, to revise the permit or program requirements.

- Ecology revised the proposed permit based on feedback from Permittees, parties affected by the permit, internal staff, and government agencies. Ecology will further revise the draft permit based on a formal public comment period and testimony received at the public hearing.
- Ecology used herbicide residue monitoring information from its aquatic pesticide permits and from its grant program to revise permit requirements. Permittees collected (and continue to collect) information about herbicide persistence, mobility, efficacy, and impacts to non-target plants after treatment conducted in Washington waters under Ecology's NPDES permits. Ecology has made monitoring information available at www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/noxious/monitoring_data/monitoring_index.html
- Ecology may modify the permit if monitoring data show significant adverse impacts to water quality through the continued use of a specific pesticide or application method or if EPA fails to reregister a pesticide for aquatic use. In addition, the permit requires immediate reporting of any adverse impacts from treatment to fauna or humans. Ecology investigates these reports and determines if the treatment caused or contributed to the problem.
- Based on permitting needs to protect salmon and amphibians from direct and indirect (sub-lethal) effects of aquatic herbicides, Ecology funded several research projects at the University of Washington to study sub-lethal impacts on these organisms from the use of 2,4-D, diquat, fluridone, and triclopyr under Ecology's permit program. Sub-lethal impacts

include interference with smoltification, olfaction changes, and avoidance behaviors that could for example lead to increased predation.

- To meet permitting needs and to determine herbicide efficacies on the eradication of state-listed noxious weeds, Ecology has funded and published several research studies that include evaluating the impacts of aquatic herbicides on non-target native plant species. See www.ecy.wa.gov/programs/eap/lakes/aquaticplants/index.html# annualsurvey for an overview of the Ecology's special research projects.

Review and refine management and control programs in cycles not to exceed five years or the period of permit reissuance.

- The current Aquatic Noxious Weed Management permit issued in 2008 expires in 2013. Ecology plans to reissue the Aquatic Noxious Weed Management Permit in 2012. The 2012 permit will expire in 2017. Permit reissuance includes a public involvement process as described below.
- Ecology spends about a year prior to permit expiration soliciting input from users and affected parties, rewriting and revising permit conditions, and reviewing relevant data before soliciting public comment on the permit and accompanying documents and finalizing the proposed new version of the permit.

Include a plan that describes how Ecology will obtain and use information to ensure full compliance with water quality standards. Ecology must develop and document the plan in advance of permit or program approval.

- The information in the Fact Sheet and in the antidegradation section of this Fact Sheet constitute Ecology's antidegradation plan for the Aquatic Noxious Weed Management General Permit. This is despite language in Ecology's guidance document implementing Tier II antidegradation requirements that indicates such a plan may not be required. Ecology *Supplementary Guidance Implementing the Tier II Antidegradation Rules* dated July 18, 2005 (www.ecy.wa.gov/programs/wq/swqs/antideg-tier2-guidance.pdf). A Tier II analysis is not required in association with activities regulated under a short-term modification (WAC 173-201A-410) such as what would occur with construction and maintenance activities or the periodic use of herbicides to control noxious aquatic weeds.
- None of the chemicals allowed for use in the permit are chemicals of concern or listed on the ***303(d)*** list of impaired water bodies as a cause of impairment. Although copper sulfate and chelated coppers are registered algaecides and herbicides (and there are water bodies on the 303(d) list for copper impairment), Ecology discontinued the use of copper compounds for these uses in Washington lakes in 2002. Never the less, Ecology understands that the use of chemicals in 303(d)-listed water bodies for dissolved oxygen and phosphorus has the potential to cause further impairment to these water bodies. Ecology addresses this in the proposed permit by prohibiting further impairment of any 303(d)-listed water body. In addition, this permit only allows the indirect treatment of water. This means that any herbicide application to water is through spray drift or by herbicide dripping off sprayed foliage into the water. Monitoring from previous permit shows that only small amounts of herbicide enter the water from indirect application. These amounts are too small to affect ***submersed*** vegetation and create problems with dissolved oxygen or phosphorus.
- Ecology requires WSDA to update the *Integrated Pest Management Plan for Freshwater Emergent Noxious- and Quarantine-Listed Weeds.*

Short-Term Water Quality Modification Provisions
The short-term water quality modification provision of the draft permit allows the authorized discharges to cause a temporary diminishment of some designated beneficial uses while it alters the water body to remove aquatic noxious weeds. The conditions of this permit constitute the requirements of a short-term water quality modification.

A short-term exceedance only applies to short lived (hours or days) impairments, but short-term exceedances may occur periodically throughout the five-year permit term. Short-term exceedances may also extend over the five-year life span of the permit (long-term exceedance) provided the Permittee satisfies the requirements of WAC 173-201A-410.

Washington's Water Quality Standards include 91 numeric health-based criteria that Ecology must consider when writing NPDES permits. The EPA established these criteria in 1992 in its National Toxics Rule (40 CFR 121.36). Ecology has determined that the Permittee's discharge does not contain chemicals of concern based on existing data or knowledge.

Sediment Quality Standards

The aquatic sediment standards (chapter 173-204 WAC) protect aquatic biota and human health. Under these standards, Ecology may require a Permittee to evaluate the potential for the discharge to cause a violation of sediment standards (WAC 173-204-400). Obtain additional information about sediments at the Aquatic Lands Cleanup Unit website www.ecy.wa.gov/programs/tcp/smu/sediment.html

Ecology has determined through a review of the discharger characteristics and effluent characteristics that this discharge has no reasonable potential to violate the Sediment Management Standards.

Ground Water Quality Standards

The Ground Water Quality Standards, (chapter 173-200 WAC), protect beneficial uses of ground water. Permits issued by Ecology must not allow violations of those standards. This permit does not allow the use of any pesticides expected to contaminate groundwater. In the event there are additional concerns, Ecology can issue orders requiring groundwater monitoring for different pesticides under this permit.

SEPA Compliance

In 1980, Ecology completed an Environmental Impact Statement (EIS) for statewide program guidance in the issuance of administrative orders called *short-term modifications of water quality standards* for herbicides and algaecides used in aquatic plant and algae control. In 1992, Ecology updated and supplemented the EIS with the *Final Supplemental Environmental Impact Statement* (SEIS) *for the Aquatic Plant Management Program*.

In 1993, the Washington State Departments of Agriculture, Ecology, Fisheries, Natural Resources, Wildlife, and the Noxious Weed Control Board collaborated to develop an environmental impact statement for noxious emergent plant species in Washington. This EIS focused on cordgrass (*Spartina* spp.), purple loosestrife (*Lythrum salicaria*), garden loosestrife

(*Lysimachia vulgaris*), giant hogweed (*Heracleum mantegazzianum*), and indigobush (*Amorpha fruticosa*). The agencies chose these species to represent the variety of noxious emergent plants in Washington. The agencies felt that any management plan for their control would also apply to most other emergent species not directly addressed in the plan.

In 2001, Ecology updated its SEIS to evaluate new aquatic herbicides. In 2002, Ecology added a *Final SEIS for Diquat Dibromide* as a supplement to the 1980 EIS. In 2003, WSDA issued an ecological risk assessment for imazapyr to control *Spartina* spp. in Washington estuaries. In 2004, Ecology added a *Final SEIS for Triclopyr*. In 2009, WSDA issued a human health and freshwater ecological risk assessment for imazapyr. In 2012, Ecology plans to issue an addendum to the *2001 Final SEIS for Freshwater Aquatic Plant Management* to include the ***active ingredients*** penoxsulam, bispyribac-sodium, carfentrazone-ethyl, flumioxazin, and imazamox.

Because of the Talent Irrigation District decision in the Ninth Circuit Court, Ecology issued its first NPDES permits for aquatic pesticides in 2002. These permits replaced the administrative orders that Ecology used to regulate aquatic pesticide application.

Endangered and Sensitive Species

EPA has implemented an Endangered Species Protection Program (ESPP) to identify all pesticides that may cause adverse impacts on threatened/endangered species and to implement measures that will mitigate these impacts. When the ESPP identifies an adverse impact, it requires use restrictions to protect these species at the county level. EPA will specify these use restrictions on the product label or by distributing a county-specific Endangered Species Protection Bulletin. Bulletins are enforceable under FIFRA. General Condition G9 of the Aquatic Noxious Weed Management Permit requires the Permittee to comply with all applicable federal regulations. See www.epa.gov/espp/frequent-ques.htm for more information.

The Fish and Wildlife Service and National Marine Fisheries Service are involved in EPA's processes to protect listed species and designated critical habitat in several ways: by consulting with EPA on specific endangered species concerns; by issuing Biological Opinions on certain species; or other ways, as necessary. For details on how EPA evaluates the potential risks from pesticides to listed species and consults with the Services, see their risk assessment process web page at www.epa.gov/espp/litstatus/riskasses.htm.

Responsibility to Comply with Other Requirements

Ecology has established, and will enforce, limits and conditions in the permit for the discharge of aquatic herbicides registered for use by the EPA and the WSDA. EPA and WSDA will enforce the use, storage, and disposal requirements expressed on pesticide labels. The Permittee must comply with the pesticide label requirements (FIFRA) and all of the conditions of this general permit. The permit does not supersede or preempt federal or state label requirements or any other applicable laws and regulations.

SPECIAL CONDITIONS

S1. PERMIT COVERAGE

This permit is a reissuance of the Aquatic Noxious Weed Control Permit - WAG-993000 that expires February 15, 2013. The proposed permit will replace the current permit.

Activities Covered under This Permit

All entities that participate in aquatic noxious weed control activities that result in a discharge of pollutants to waters of the state must obtain coverage under a permit as required by Washington laws and regulations (chapters 90.48.080, 90.48.160, 90.48.260 RCW and chapter 173-201A WAC). Herbicides, adjuvants, and marker dyes are potential pollutants, and therefore require a discharge permit before application to Washington State surface waters.

This permit regulates the use of the above products for indirect application of herbicides for the management of noxious weeds and quarantine-listed weeds and other non-native, invasive plants as specified by Ecology, WSDA, the Invasive Species Council, or the State Noxious Weed Control Board. Applicants with projects targeting submersed and ***floating-leaved*** noxious weeds or quarantine-listed weeds in lakes or rivers must obtain coverage under the Aquatic Plant and Algae Management Permit and **may not** obtain coverage under this permit for these ***in-water treatments***. Permittees with in-water projects may also include the indirect treatment of noxious- and quarantine-listed weeds along any lake or river shoreline in their Aquatic Plant and Algae Management permit coverage if they wish. This eliminates the need to have coverage under two permits for chemical treatment in and along the shorelines of a single water body for noxious weeds. Other types of noxious weed treatments can occur under the Noxious Aquatic Weed Management permit (shoreline treatments, riparian corridors, wetland treatments, treatments in wet areas, and *Spartina* treatment on tidelands).

Geographic Area Covered

The permit applies to the indirect application of chemicals for noxious weeds where chemicals may enter surface waters anywhere in the state of Washington where Ecology has regulatory authority. Surface waters include lakes, rivers, ponds, streams, inland waters, wetlands, brackish waters, estuaries, tidelands, and all other surface waters and watercourses within the jurisdiction of the state of Washington (RCW 90.48.020, WAC 173-201A-020, and WAC 173-226-030). Noxious weeds have the potential to occur in or near virtually any aquatic or semi-aquatic site in Washington State. However, Ecology does not have jurisdiction over federal or Tribal lands and EPA has not delegated regulatory authority to Ecology to issue NPDES permits on federal and Tribal lands.

Activities Excluded From Coverage Under This Permit

Ecology considers some limited pesticide treatments to have very low potential for impact (such as herbicide treatments around small constructed water bodies that do not drain for two weeks following treatment). Requiring permit coverage from these dischargers would be a burden that would result in little environmental value for either Ecology or the dischargers.

Ecology has determined not to issue coverage for ***detention and retention ponds*** if:

- Ecology regulates the discharge under another permit (such as industrial or municipal stormwater permits) and the permit allows chemical treatment.
- There is no discharge to surface waters during and within two weeks of treatment.

Ecology has determined not to issue coverage for ***constructed water bodies*** or ***upland farm ponds*** if:
- The water bodies are five acres or less in surface area, and
- There is no discharge to surface waters during and within two weeks of treatment.

Ecology has determined not issue coverage for any constructed water body ten acres or less in surface area if:
- The water body is under single ownership with no public access, and
- There is no discharge to surface waters during and within two weeks of treatment.

Ecology has determined not to issue coverage for seasonally dry *wetlands* if:
- The wetland is dry at the time of treatment and for two weeks following treatment, and
- The chemical will not be biologically available when water inundates the treated area.

Ecology believes that a two-week no discharge time provides sufficient time to prevent possible discharge to surface waters when outflow begins after treatment. Ecology believes that if dischargers met these conditions, the treatment poses no potential to violate the Water Quality Standards for Surface Waters of the State of Washington (chapter 173-201A WAC).

S2. APPLICATION FOR COVERAGE

Who May Obtain Permit Coverage
A definition of "Permittee" is not provided in chapter 90.48 RCW, chapters 173-216, 173-220, or 173-226 WAC, nor is one provided in 40 CFR 122 (EPA NPDES Permit Program) or State NPDES Permit Programs. Based upon the usage of Permittee in federal and Washington State law, Ecology takes the term "Permittee" to mean the person or entity that discharges or controls the discharge of pollutants to waters of the state (surface or ground) and holds permit coverage allowing that specific discharge.

For the Aquatic Noxious Weed Management Permit, Ecology has established that the Permittee is any government entity, private applicator, or non-governmental organization conducting noxious weed control. When the weed is covered under the authority of a program at WSDA, individuals, governments, and non-governmental organizations may contract with WSDA operating as "***limited agents***" under its coverage. "Limited agents" must follow all permit conditions and provisions.

How to Obtain Coverage
Permittees that plan to continue coverage under the revised permit must apply to Ecology to extend their coverage at least180 days before the current permit expires ("Limited agents" operating under WSDA coverage are not Permittees). WSDA is a Permittee. Ecology will consider any Permittee that does not reapply as a new applicant. ***New applicants*** must submit a

complete application for permit coverage a minimum of 60 days before applying pesticides that result in discharge to waters of the state.

The new permit applicant must submit a complete application including a ***Notice of Intent*** (NOI). An official who has signature authority (WAC 173-226-200) for the entity applying for permit coverage must sign all documents. Ecology must receive the complete application for permit coverage on or before the publication date of the public notice the permit applicant posted in a newspaper of general circulation (WAC 173-226-130). Ecology considers a newspaper of general circulation as the major newspaper publication for a region.

When Ecology receives the new applicant's complete application before public notice it can review the application and communicate necessary changes on application documents. Communication (prior to publishing public notice) about document changes can save the applicant money by identifying any necessary changes before the applicant publishes and sends out the public notice.

The public has the opportunity to comment on the permit application and the proposed coverage during the 30 days after publication of the second public notice (public comment period). Ecology will consider comments about the applicability of the permit to the proposed activity received during this period. If Ecology receives no substantive comments, it will issue permit coverage on the 61st day following receipt of a complete application. The public has the right to appeal any coverage decision.

How to Terminate Permit Coverage

Ecology plans to issue the permit for a period of five years, starting on the effective date of the permit (WAC 173-226-330). Coverage will last from the date of coverage to the date of permit expiration, which will be up to five years, unless the Permittee terminates coverage by submitting a notice of termination. If the Permittee does not terminate coverage, the Permittee will continue to incur an annual permit fee. "Limited agents" do not pay annual permit fees because they are not Permittees.

S3. DISCHARGE LIMITS

Compliance with Standards

See also the section "Technology-Based Water Quality Protection Requirements" for a discussion about AKART. Ecology also believes that implementing WSDA's *Integrated Pest Management Plan for Freshwater Emergent Noxious- and Quarantine-Listed Weeds* will help meet AKART. Ecology based the planning requirements on:

- A similar planning requirement in EPA's draft NPDES permit for aquatic pesticide application. In its draft permit, EPA considers Integrated Pest Management (IPM) to meet technology-based standards.
- Integrated Pest Management Law (chapter 17.15 RCW).
- Washington's Water Quality Standards (WAC 173-201A-110).
- Similar planning requirements in the Aquatic Plant and Algae Management NPDES permit that allows treatment of in-water noxious weeds.

Temporary Exceedance of Water Quality Standards
In 2006, Ecology updated the Water Quality Standards for Surface Waters of the State of Washington (chapter 173-201A WAC). Ecology proposes to change the limits in the 2012 permit to reflect these changes. The standards allow a temporary exceedance of water quality standards for up to five years (the term of a general permit) provided the Permittee has followed certain guidelines. WAC 173-201A-410(2) requires that for Ecology to extend the exceedance for up to five years, and not limit it to hours or days, the Permittee must develop and implement an IPM plan. The Permittee must develop the plan following the Administrative Procedures Act for public involvement (chapter 34.05 RCW) and must complete a State Environmental Policy Act (chapter 43.21C RCW and chapter 197-11 WAC) review of the proposed activity. Permittees who do not meet these requirements must ensure that the short-term exceedance of water quality standards is limited to only hours or days. Ecology may also request updated plans and addendums to existing plans. The permit calls for WSDA to update its existing integrated pest management plan for freshwater emergent noxious- and quarantine-listed weeds. However, Ecology believes that any activities conducted under the Aquatic Noxious Weed Management permit are unlikely to exceed the Water Quality Standards for more than hours or days.

Application Requirements
Under state laws, only Washington-licensed applicators with an aquatic endorsement or applicators under direct supervision of a licensed applicator may apply pesticides to water. The permit requires that all applicators use appropriate application methods, have training in application techniques, and that trained personnel calibrate the application equipment.

Impaired Water bodies
Ecology periodically reviews water quality data to determine if water bodies meet criteria. Section 303(d) of the CWA requires that waters not meeting criteria undergo an evaluation of the cause and amount of the contaminant. Ecology publishes Total Maximum Daily Load (TMDL) reports, which may establish limits on the amounts of pollutants contributors may discharge. The permit does not allow any further impairment to water bodies listed on the 303(d) list. However, Ecology believes that further impairment of listed water bodies is unlikely under this permit, because the management activities conducted do not occur in the water. Noxious weeds dying from treatment along the shoreline are unlikely to cause low oxygen conditions or the release of phosphorus directly to the water.

Sensitive, Threatened, or Endangered Plants and Priority Habitats and Species
Currently, no state law protects ***sensitive, threatened, or endangered plant*** species (rare plants) in Washington. However, many federal and state land-management agencies have policies to protect rare plants. In 1982, the state legislature recognized the need for a systematic and objective approach to protect those features of natural ecosystems most at risk and created the Natural Heritage Program within the Department of Natural Resources to assume this task (RCW 79.70.060). In addition, local jurisdictions may provide protection for rare species and high quality ecosystems through ordinances, regulations, and permitting requirements. This permit does not authorize Permittees to cause permanent harm to these plant populations and priority species. It requires the Permittee to take every care to minimize harm to native plant species while treating noxious weeds. In many instances, removing noxious weeds will restore habitat and enhance species diversity and that activity by itself will tend to protect rare populations of plants and animals.

Wetland Treatments
When treating noxious weeds in identified wetlands, the permit requires the applicator to make reasonable efforts to minimize impacts to the native wetland plants when using aquatic herbicides. Reasonable efforts many include:

- Using a selective herbicide.
- Minimizing overspray by using application techniques such as wicking or injection.
- Temporarily covering non-target vegetation.

Discharge Management Plans
The WSDA *Integrated Pest Management Plan for Freshwater Emergent Noxious- and Quarantine-Listed Weeds* covers the discharge of chemicals to manage freshwater noxious weeds and incorporates the principles of ***integrated pest management*** (IPM). It is equivalent to a Discharge Management Plan (DMP). Integrated pest management is AKART for this permit. EPA requires the development of a DMP in its draft NPDES permit for aquatic pesticide application and state permits must not be less stringent than federal permits.

S4. The APPLICATION OF PRODUCTS

Prohibited Discharges
RCW 90.48.080 states that

> *It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep, or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department.*

Ecology prohibits treatment that causes oxygen depletion to the point of stress or lethality to aquatic biota from plant die-off, unintended impacts to water quality or biota, or the mortality of aquatic vertebrates. This permit does not allow any ***direct application of pesticides to water***. Any in-water treatments occur under the Aquatic Plant and Algae Management Permit. Ecology believes that any indirect treatments allowed by the Aquatic Noxious Weed Management permit would be very unlikely to cause any of the above impacts to aquatic biota from shoreline or wetland treatments.

Authorized *Discharges*
This permit allows the use of the chemicals identified in the permit. Ecology authorizes these discharges in accordance with WAC 173-201A-410 and chapter 90.48 RCW. EPA regulates these active ingredients under FIFRA.

The Permittee must comply with pesticide label requirements and all applicable permit conditions. **Coverage under this general permit does not supersede or preempt federal or state label requirements or any other applicable laws and regulations**. It is the responsibility of the Permittee to determine if there are other applicable requirements pertaining to this activity and to comply with these requirements. General permit condition G9 reminds the Permittee of this fact. The permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights. People

treating under this permit must obtain proper permissions to access and treat on private land (see chapter 17.10.160 right of entry).

Active Ingredients: The permit allows for and conditions the use of nine federally registered active ingredients. Ecology permitted the use of four of these active ingredients under the previous Aquatic Noxious Weed Permit. Ecology added five new active ingredients, imazamox, penoxsulam, bispyribac-sodium, carfentrazone –ethyl, and flumioxazin, all EPA reduced risk pesticides to the reissued permit. Ecology removed several active ingredients from the reissued permit, because they are not used for indirect applications. These include fluridone, endothall, diquat, and the butoxyethyl ester of 2,4-D (granular). The 2,4-D amine is allowed for indirect applications.

The active ingredients have undergone review by Ecology or WSDA prior to approval (see www.ecy.wa.gov/programs/wq/pesticides/seis/risk_assess.html). Ecology determined that, if used according to the EPA label and in compliance with the conditions of this general permit, these active ingredients would not violate water quality standards. By approving active ingredients rather than trademarked products, Ecology will not need to conduct additional review for each new brand released onto the market.

The Fact Sheet sets out a process for the approval of new active ingredients for use under the permit. The process is as follows:

1. EPA and WSDA have approved the herbicide for the specific use.

2. The petitioner must conduct a risk assessment for each chemical not specifically allowed for use under this permit. They must submit the risk assessment to Ecology for review and approval. This risk assessment must address Washington State concerns as it evaluates the active ingredient; independent of the risk assessment performed by EPA during the registration process. The risk assessment must:

    a. Be prepared by a ***qualified toxicologist***.

    b. Include, at a minimum:

        i. Qualifications of the toxicologist(s) who prepared the risk assessment.

        ii. Verification that the product will meet the specified general conditions and prohibitions of this permit.

        iii. Information about human health effects from the product, acquired since the issuance of EPA's most recent risk assessment on the active ingredient.

        iv. A summary and assessment of the peer-reviewed literature concerning the product since the issuance of EPA's most recent risk assessment.

v. All available environmental and ecological information about the product and its environmental fate and effects.

vi. Mitigation measures for the use of the product.

3. After Ecology's approval of the risk assessment, Ecology will conduct public notification in the state register and make the notification available for posting on Ecology's website.

4. Based on any additional valid scientific information provided during the public comment period, Ecology may either grant, condition, or deny approval for the use of the new product. At the conclusion of the comment period, Ecology may choose to modify the permit to allow the use of the new product.

Adjuvants: The permit provides for the use of specific adjuvants listed in Table 2 in the Aquatic Noxious Weed Management permit. Applicators use adjuvants to increase the effectiveness of a pesticide (e.g., extenders, penetrants, spreaders, stickers, surfactants) or to modify the characteristics of a tank mix (e.g., acidifiers, defoaming agents, drift control agents).

WSDA registers all adjuvants prior to distribution in Washington State. WSDA only registers adjuvants for aquatic use if the registrant can demonstrate that the proposed use will not adversely affect desirable aquatic species. WSDA requires data on aquatic acute toxicity of the adjuvant to fish and aquatic invertebrates (WAC 16-228-1400(3)(e)).

An adjuvant must meet the following criteria before WSDA will register it for aquatic use in Washington. The adjuvant or adjuvant formulation must:

- Meet all requirements for the registration of a food/feed use spray adjuvant in Washington.
- Be either slightly toxic or practically non-toxic to freshwater fish.
- Be moderately toxic, slightly toxic, or practically non-toxic to aquatic invertebrates.
- Contain less than 10 percent alkylphenol ethoxylates (including alkylphenol ethoxylate phosphate esters).
- Not contain any alkyl amine ethoxylates (including tallow amine ethoxylates).

WSDA may register spray adjuvants for aquatic use that do not meet one or more of the above criteria if the registrant provides data which demonstrates that the proposed use will not adversely affect desirable aquatic species, or limits aquatic use to non-fish-bearing waters only. These criteria do not apply to adjuvants permitted for use under an experimental use permit issued by WSDA.

In the future, Ecology may add adjuvants to the permit after both Ecology and WSDA approval and after completing SEPA review. To allow the use of a newly approved adjuvant, Ecology must modify the permit.

Marker Dyes: The permit allows the use of marker dyes. Applicators use marker dyes to distinguish treated areas from untreated areas when applying herbicide to manage ***emergent vegetation***. Marker dyes help keep applicators from over applying herbicides. Marker dyes do not have any herbicidal activity by themselves and EPA does not label them as pesticides.

Experimental Use
EPA regulates federal EUP's under section 5(f) of FIFRA and WSDA regulates both state and federal EUP's under RCW 15.58.405(3). Entities operating under a state EUP do not need coverage under the Aquatic Noxious Weed Management Permit because state EUP's are limited in acreage. However, entities operating under a federal EUP must obtain permit coverage. Federal EUP's typically allow treatment of up to several hundred acres. The permit allows entities operating under a federal EUP to use chemicals/products not listed in the permit so long as their use is solely for research and monitoring.

General Application Restrictions
Ecology requires the Permittee to avoid treating in a highly populated or residential area on weekends and Memorial Day, the 4th of July, and Labor Day unless it has the prior consent of the property owners. This condition limits any re-entry restrictions that may occur to the property owner through an herbicide treatment during a period of higher use, unless the property owner consents to the treatment.

S5. NOTIFICATION AND POSTING REQUIREMENTS

Ecology Notification Requirements for *Adverse Incidents* or Chemical Spills
WAC 173-226-080 (1)(d) states that a discharge of any pollutant more frequently or at a level in excess of that authorized is a permit violation. Ecology requires that if a Permittee violates permit conditions, it must take steps to stop the activity, minimize any violations, and report those violations to Ecology. For pesticide applications authorized in the permit, applicators must report violations to the Aquatic Pesticide Permit Manager and the Regional Spills Hotline (ERTS Hotline) within 24 hours. This allows Ecology to determine if more action is necessary to mitigate the permit violation.

Notification and Posting Requirements
The requirement of public posting and business and residential notification in the proposed permit is consistent with the posting and notification requirements in the previous Aquatic Noxious Weed Management permits, the Aquatic Plant and Algae Management permits, and (prior to the NPDES permitting program), requirements in aquatic pesticide administrative orders. Other aquatic pesticide NPDES permits issued by Ecology require various levels of public notification. Ecology considered input from interested parties and Permittees when developing posting and notification requirements. In some cases, Ecology based the public notification requirements on FIFRA label requirements. In all other cases, Ecology based the requirements on its BPJ and the public's right-to-know.

The intent of notification is to make people aware of those activities taking place that have the possibility of affecting them. The public has the right to know about possible chemical exposure so they can make informed decisions about limiting their exposure. Notification and posting alerts them to areas where treatment has occurred and allows them to make those choices. For indirect treatments that may occur along public shorelines or in wetlands, signage delineates treated sites and provides the public with re-entry times into the treated areas. Where noxious weeds occur sporadically, applicators may consider flagging the treated plant(s). Some companies make flagging material that says "noxious weed". Flagging may better delineate

treated plants than signs only. This is important when treating in parks or other areas with high human usage.

S6. MONITORING REQUIREMENTS

RCW 90.48.260 gives Ecology the authority to establish inspection, monitoring, entry, and reporting requirements. WAC 173-220-210 gives Ecology the authority to require monitoring of treated waters to determine the effects of discharges on surface waters of the state. Permittees must record the amount of pesticides they use at each site, report the pounds or gallons used of each active ingredient applied, and the amount of acreage treated to Ecology in an annual report. WSDA requires that their "limited agents" prepare an annual report with this same information.

Because the acreage of *Spartina* in Washington is now less than ten acres, Ecology will no longer require monitoring after *Spartina* treatments. See the Spartina monitoring plans and monitoring results from earlier permits at www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/noxious/noxious_index.html.

Freshwater Emergent Plant Monitoring

No monitoring is required for freshwater emergent projects using the herbicides glyphosate, imazapyr, 2,4-D, or triclopyr. Monitoring conducted under previous permits shows that little to none of these herbicides enters and persists in waters adjacent to indirect applications of these chemicals. See the freshwater treatment monitoring plans and monitoring results at www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/noxious/noxious_index.html.

The Permittee must monitor a subset of treatments when using imazamox, bispyribac-sodium, penoxsulam, flumioxazin, carfentrazone-ethyl for emergent plant treatment. The Permittee may request reduced or no monitoring if this monitoring shows little to no adverse environmental impacts from the treatments.

S7. Analytical Procedures

With the exception of certain parameters (pH, temperature, alkalinity), Ecology requires that all monitoring data be analyzed and prepared by a laboratory registered or accredited for the active ingredient under the provisions of chapter 173-50 WAC, *Accreditation of Environmental Laboratories*. Some laboratories can analyze for some herbicides using enzyme linked immunosorbent assay (ELISA) methods. Ecology will allow ELISA methods to substitute for an EPA method.

S8. REPORTING AND RECORDKEEPING

Section S8 of the permit contains specific conditions based on Ecology's authority to specify any appropriate reporting and recordkeeping requirements to prevent and control waste discharges (WAC 173-226-090).

Annual Treatment/Monitoring Reports

Permittees meet part of their reporting requirements through annual treatment reporting. Permittees must submit their annual treatment report to Ecology by February 1 of each year. The annual report summarizes the amount of each chemical (gallons or pounds of each active ingredient) used during the course of each treatment season per coverage. Reporting allows

Ecology to track how much pesticide Permittees use in Washington for a specific use. Annual reporting also allows Ecology to determine if aquatic pesticide use in Washington lakes is increasing or decreasing and summarizes the results of herbicide residue monitoring and efficacy monitoring. WSDA sets the reporting times for its "limited agents".

Records Retention
Ecology based this permit condition on its authority to specify any appropriate reporting and recordkeeping requirements to prevent and control waste discharges (WAC 173-226-090). Applicators must keep all records and documents required by this permit for five years. If there is any unresolved litigation regarding the discharge of pollutants by the Permittee, they must extend the period of record retention through the course of the litigation (WAC 173-226-090).

S9. SPILL PREVENTION AND CONTROL

WAC 173-226-070 allows Ecology to place permit conditions to prevent or control pollutant discharges from runoff, spillage or leaks, sludge or waste disposal, or materials handling or storage. It also allows Ecology to require the use of BMPs that includes schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. The Permittee must be prepared to mitigate for any potential spills and, in the event of a spill, perform the necessary cleanup, and notify the appropriate Ecology regional office (see RCW 90.48.080, and WAC 173-226-070).

S10. APPENDICES

GENERAL CONDITIONS

Ecology bases the General Conditions on state and federal law and regulations.

Duty to Reapply

All NPDES permits require the Permittee to reapply for coverage 180 days prior to the expiration date of the general permit in accordance with 40 CFR 122.21 (d), 40 CFR 122.41(b), and WAC 183-226-220(2).

Permit Issuance Procedures

Permit Modifications
Ecology may modify this permit to impose new or modified numerical limits, if necessary to meet Water Quality Standards for Surface Waters, Sediment Quality Standards, or Water Quality Standards for Ground Waters. Ecology would base any modifications on new information obtained from sources such as inspections, effluent monitoring, or Ecology-approved engineering reports. Ecology may also modify this permit because of new or amended state or federal regulations.

Recommendation for Permit Issuance

The general permit meets all statutory requirements for authorizing a wastewater discharge, including those limitations and conditions believed necessary to control toxics, protect human health, aquatic life, and the beneficial uses of waters of the State of Washington. Ecology proposes to issue this general permit for five (5) years.

Appendix A: Glossary

All definitions listed below are for use in the context of this permit only.

303(d): Section 303(d) of the federal Clean Water Act requires states to develop a list of polluted water bodies every two years. For each of those water bodies, the law requires states to develop Total Maximum Daily Loads (TMDLs). A TMDL is the amount of pollutant loading that can occur in a given water body (river, marine water, wetland, stream, or lake) and still meet water quality standards.

Active ingredient: The ingredient(s) in a pesticide product that provides the pesticidal effects.

Adjuvant: An additive, such as a surfactant, that enhances the effectiveness of the primary chemical (active ingredient).

All known, available, and reasonable methods of pollution control, prevention, and treatment (*AKART*): A technology-based approach to limiting pollutants from discharges. Described in chapters 90.48 and 90.54 RCW and chapters 173-201A, 173-204, 173-216 and 173-220 WAC.

Applicator: The person that discharges the chemical to a water body. Applicators are required to be licensed to apply registered pesticides.

Beneficial uses: See WAC 173-201A-200.

Constructed water body: A man-made water body created in an area that was not part of a previously existing watercourse, such as a pond, stream, wetland, etc.

Date of receipt (for the purposes of a permit appeal): Five business days after the date of mailing; or the date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing (RCW 43.21B.001(2)).

Detention or retention ponds: Man-made water bodies specifically constructed to manage stormwater. Detention ponds are generally dry until a significant storm event. Retention (wet) ponds are designed to have a permanent pool of water and gradually release stormwater through an outlet.

Direct application of pesticides to water: The purposeful application of chemicals into surface waters of the state to manage the growth of submersed plants such as Eurasian watermilfoil where the intent is to add herbicides to the water to kill the plant. Herbicide application for plants such as fragrant water lily that grows in shallow water requires coverage under the Aquatic Plant and Algae Management permit rather than the Noxious Aquatic Weed Management permit because significant amounts of herbicide may directly enter the water through its treatment.

Discharge: The addition of any pollutant to a water of the state.

Emergent vegetation: Aquatic plants that generally have their roots in the water, but the rest of the plant is above water (e.g., cattails, bulrush).

Federal Clean Water Act: EPA regulations that establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.

Federal Insecticide, Fungicide, and Rodenticide Act (*FIFRA*)**:** A set of EPA regulations that establishes uniform pesticide product labeling, use restrictions, and review of new pesticides.

Floating-leaved: Plants that are rooted in the sediment but have leaves floating on the water's surface (e.g., water lilies).

General Permit: A permit that covers multiple discharges of a point source category within a designated geographical area, in lieu of individual permits being issued to each discharger.

Herbicide: Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed or other higher plant (see chapter 17.21.020 RCW).

Indirectly: The purposeful application of a chemical to a weed where there may be inadvertent and incidental overspray or dripping of chemical from the plant into waters of the state. The applicator does not intentionally add the chemical to the water to treat the plant (as occurs during in-water treatments for submersed plants such as Eurasian watermilfoil). Indirect application to water may occur into adjacent water bodies or wetlands, particularly when treating plants where the roots may be submerged and the foliage is above water. An example is the control of knotweeds along riparian corridors – the applicator applies herbicide to the plant, but there may be some inadvertent overspray into the water or the herbicide can drip from the plant into the stream.

Individual permit: A discharge permit specific to a single point source or facility.

Integrated Pest Management Plan: An ecologically based strategy for pest control that incorporates monitoring, biological, physical, and chemical controls in order to manage pests with the least possible hazard to humans, environment, and property. IPM considers all available control actions, including no action. Pesticide use is only one control action.

Invasive: Tending to spread and then dominate the area by out competing other plants. Some non-native species can become invasive when introduced outside of their native range.

In-water treatments: The application of an aquatic herbicide to the water to control the growth of mainly submersed plants. In-water treatment also includes controlling plants, like fragrant water

lily that grows in shallow water where treatment can result in significant quantities of herbicide directly entering the water.

Licensed pesticide applicator: Any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director of WSDA to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators only.

Limited Agent: When the weed being controlled is covered under the authority of a program at WSDA, individuals, governments, and non-governmental organizations may contract with WSDA and operate under the WSDA coverage. These entities are known as "limited agents" and must follow all permit conditions and provisions.

Marker dyes: Colorants that are sprayed onto the targeted weed along with the herbicide. Marker dyes allow better targeting of herbicide sprays since treated and untreated areas are more clearly seen by the applicator.

New applicants: An entity that proposes to discharge pesticide into waters of the state, but does not already have coverage under the Aquatic Noxious Weed Management permit for the proposed treatment.

Non-native: A plant living outside of its natural or historical range of distribution. Plants considered non-native were not present in Washington prior to European settlement. Most non-native plants are not noxious weeds.

Notice of Intent (NOI): An application to obtain coverage under an NPDES permit.

Noxious weed: A legal term defined in chapter 17.10 RCW that means a non-native plant that when established is highly destructive, competitive, or difficult to control by cultural or chemical practices. The Washington State Noxious Weed Control Board maintains a legal list of noxious weeds (see chapter 16.750 WAC for the current list of noxious weeds).

Permittee: An entity that has obtained coverage under the permit from Ecology.

Pesticide: WAC 15.58.030 (31) "Pesticide" means, but is not limited to:

> a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;
>
> b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

c) Any spray adjuvant.

Pollutant: Means any substance discharged that would alter the chemical, physical, thermal, biological, or radiological integrity of the waters of the state or would be likely to create and nuisance or renders such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to any legitimate beneficial use, or to any animal life, either terrestrial or aquatic. Pollutants include, but are not limited to the following: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, pH, temperature, total suspended solids, turbidity, color, biological oxygen demand, total dissolved solids, toxicity, odor, and industrial, municipal, and agricultural waste.

Public access: Identified legal passage to any of the public waters of the State, assuring that members of the public have access to and use of public waters for recreational or other purposes. Public access areas include public- or community-provided swimming beaches, picnic areas, docks, marinas, and boat launches at state or local parks and private resorts.

Qualified toxicologist: A person with a Ph.D in toxicology or in a health or ecological science with an emphasis in toxicology, or a person with a Master's degree in toxicology or a related science with an emphasis in toxicology, who is working in the field of toxicology.

Quarantine-listed weeds: Plants listed on the WSDA Quarantine list as identified in chapter 16.750 WAC.

Sensitive, threatened, or endangered plants:

Sensitive: Any species that is vulnerable or declining and could become endangered or threatened in the state without active management or removal of threats.

Threatened: Any species likely to become endangered in Washington within the foreseeable future if factors contributing to its population decline or habitat degradation or loss continue.

Endangered: Any species in danger of becoming extinct or extirpated from Washington within the foreseeable future if factors contributing to its decline continue. Populations of these species are at critically low levels or their habitats have been degraded or depleted to a significant degree.

State experimental use permit: A permit issued by WSDA allowing use of pesticides that are not registered, or for experiments involving uses not allowed by the pesticide label. Aquatic applications are limited to one acre or less in size.

Submersed: Underwater. Submersed plants generally always remain under water, although many submersed species produce above-water flowers (e.g., pondweeds, milfoil).

Surface waters of the state: All waters defined as "waters of the United States" in 40 CRF 122.2 within the geographic boundaries of the state of Washington. All waters defined in RCW

90.48.020. This includes lakes, rivers, ponds, streams, inland waters, and all other fresh or brackish surface waters and watercourses within the jurisdiction of the state of Washington. Also includes drainages to surface waters.

Upland farm pond: Private farm ponds created from upland sites that did not incorporate natural water bodies (WAC 173-201A-260(3)(f)).

Washington Pesticide Control Act: Chapter 15.58 RCW.

Wetland: Any area inundated with water sometime during the growing season, and identified as a wetland by a local, state, or federal agency.

In the absence of other definitions set forth herein, the definitions set forth in 40 CFR Part 403.3 or in chapter 90.48 RCW apply.

APPENDIX B: PUBLIC INVOLVEMENT INFORMATION

All comments about the proposed permit must be received or postmarked by 5 p.m. on November 18, 2011 to be considered.

Ecology has tentatively determined to issue the Aquatic Noxious Weed Management General permit for aquatic plant control activities as identified in Special Condition S1. Permit Coverage.

Ecology will publish a Public Notice of Draft (PNOD) on October 5, 2011 in the Washington State Register. The PNOD informs the public that the draft permit and fact sheet are available for review and comment.

Ecology will also email the notice to those identified as interested parties.

Copies of the draft general permit, fact sheet, and related documents are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. weekdays, by appointment, at the Ecology offices listed below, may be obtained from Ecology's website, or by contacting Ecology by mail, phone, fax, or email.

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

Ecology Headquarters Building Address:
300 Desmond Drive
Lacey, WA 98503

Contact Ecology:

Department of Ecology
Water Quality Program
Attn: Aquatic Noxious Weed Permit Writer
P.O. Box 47600
Olympia, WA 98504-7600

Kathy Hamel
Email: Kathy.Hamel@ecy.wa.gov
Phone: 360-407-6562
Fax: 360-407-6426

Submitting Written and Oral Comments
Ecology will accept written comments on the draft Aquatic Noxious Weed Management General permit, Fact Sheet, and draft Supplemental Environmental Impact Statement on five active ingredients. Ecology will also accept oral comments at the public hearing on November 10, 2011 at the Lacey Timberland Library, 500 College Street SE, Lacey, WA starting at 1:30 p.m.

Comments should reference specific text when possible. Comments may address the following:

- Technical issues,
- Accuracy and completeness of information,
- Adequacy of environmental protection and permit conditions,

- Any other concern that would result from the issuance of this permit.

Ecology prefers comments be submitted by email to: Kathy.Hamel@ecy.wa.gov

Ecology must receive written comments (via email or postmarked November 18, 2011) no later than 5:00 p.m. on November 18, 2011.

Submit written, hard copy comments to:

Kathy Hamel
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

You may also provide oral comments by testifying at the public hearing.

Public Hearing and Workshop
Ecology will hold a public hearing and workshop on the draft general permit at the locations below. The hearing provides an opportunity for people to give formal oral testimony and comments on the draft permit. The workshop held immediately prior to the public hearing will explain the special conditions of the Aquatic Noxious Weed Management General permit.

Hearing and Workshop

November 10, 2011
Lacey Timberland Library,
1:30 pm
500 College Street SE
Lacey, WA 98503

Issuing the Final Permit
Ecology will issue the final permit after it receives and considers all public comments. Ecology expects to issue the new general permit by February 2012. It will be effective one month after the issuance date.

For further information, contact Permit Writer, Kathy Hamel, at Ecology, by phone at 360-407-6562, by email at mailto:Kathy.Hamel@ecy.wa.gov, or by writing to Ecology at the Olympia address listed above.

APPENDIX C: YOUR RIGHT TO APPEAL

You have a right to appeal this permit to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of the final permit. The appeal process is governed by chapter 43.21B RCW and chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2) (also see glossary).

To appeal you must do the following within 30 days of receipt of this permit:

- File your appeal and a copy of this permit with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this permit on Ecology in paper form - by mail or in person (see addresses below). E-mail is not accepted.

You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 **Pollution Control Hearings Board** 1111 Israel RD SW STE 301 Tumwater, WA 98501	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 **Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

APPENDIX D: RESPONSE TO COMMENTS

Look for the Response to Comments document on the Noxious Aquatic Weed Management general permit web page.