

## **Aquatic Invasive Species Management General Permit Tier II Antidegradation Plan**

### **Background:**

Federal regulations (40 CFR 131.12) and the Water Quality Standards for Surface Waters of the State of Washington (WAC 173-201A-300, 310, 320, 330) establish a water quality antidegradation program. The federally-mandated program establishes three tiers of protection for water quality. These three tiers function to:

- Protect existing and designated in-stream uses.
- Limit the conditions under which water of a quality higher than the state standards can be degraded.
- Provide a means to set the very best waters of the state aside from future sources of degradation entirely.

WAC 173-201A-320 contains the Tier II antidegradation provisions for the state's surface water quality standards (<http://apps.leg.wa.gov/WAC/default.aspx?dispo=true&cite=173-201A-320>). A Tier II analysis is required when new or expanded actions are expected to cause a measurable change in the quality of a receiving water that is of a higher quality than the criterion designated for that waterbody in the water quality standards (WAC 173-201A-320(1). WAC 173-201A-320(3) defines a measureable change as specific reductions in water quality, and defines "new or expanded actions" as "human actions that occur or are regulated for the first time."

All applicants for coverage under the Aquatic Invasive Species Management Permit (Permit) have "the potential to cause a measurable change in the physical, chemical, or biological quality of a waterbody" and meet the definition of a "new or expanded action." Therefore, Ecology has prepared this Antidegradation Plan to comply with the Tier II antidegradation rule (WAC 173-201A-320). Ecology prepared this plan 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 (<http://www.ecy.wa.gov/programs/wq/swqs/antideg-tier2-guidance.pdf>) states: "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 plants." This Permit allows the use of a number of chemicals for the management of invasive aquatic animal species and invasive marine algae (analogous to noxious weeds) and incorporates a short-term modification of Water Quality Standards.

### **Formal Adaptive Process to Comply with WAC 173-201A-320(6):**

WAC 173-201A-320(6) states that "the antidegradation requirements of this section can be considered met for general permits and programs that have a formal process to select, develop, adopt, and refine control practices for protecting water quality and meeting the intent of this section. This adaptive process must:

1. "Ensure that information is developed and used expeditiously to revise permit or program requirements.

2. Review and refine management and control programs in cycles not to exceed five years or the period of permit reissuance.
3. Include a plan that describes how information will be obtained and used to ensure full compliance with this chapter. The plan must be developed and documented in advance of permit or program approval under this section."

### **Permit Development Process**

Ecology used a formal process to develop the Permit. In addition, Ecology developed a Non-project Environmental Impact Statement to analyze reasonable alternatives for aquatic invasive species management, the probable significant adverse and beneficial environmental impacts of these alternatives, and their relation to existing policies, rules, and regulations. Ecology plans to reissue the permit on a five-year cycle. The permit development process includes selecting, developing, adopting, and refining control practices to protect water quality and meet the intent of WAC 173-201A-320. All National Pollutant Discharge Elimination System (NPDES) permits, including this Permit, are effective for a fixed term not to exceed five years (40 CFR 122.25). When Ecology reissues the Permit, it will evaluate the chemicals allowed for use and the permit conditions to determine if it should incorporate additional or more stringent requirements<sup>1</sup>.

Ecology's evaluation includes a review of any new information or practices to eradicate or control freshwater and marine nonnative, invasive animal species and nonnative, invasive marine algae. Ecology may incorporate these new practices into the Permit as permit conditions or mitigations. This approach works to reduce the discharge of pollutants incrementally during each successive new five-year permit cycle. Sources of information include, but are not limited to:

- **Public comments and testimony** provided during the public comment period on the draft permit. Ecology encourages the public to share what is working and what is not. Ecology uses this formal public process to review and refine invasive species management requirements in each successive permit.
- **Literature review** of peer-reviewed scientific journal articles as well as government reports, and other information sources pertaining to the management of fresh and marine nonnative invasive animals and invasive marine algae.
- **Monitoring information** collected under the Permit monitoring requirements. Ecology requires that Permittees monitor specific parameters associated with each chemical and report this information to Ecology on an annual basis. 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.

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<sup>1</sup> Federal rules mandate that reissued or renewed permits be at least as stringent as the previous five-year permit cycle [40 CFR 122.44 (1)(2)]

- **Reported impacts** from treatment to non-target flora and fauna, or humans. Ecology investigates these reports and determines if the treatment caused or contributed to the problem.
- **Adaptive plans.** The Permit requires the Permittee to develop or adopt an Ecology-approved adaptive management plan that incorporates integrated pest management principles. Ecology's Non-project Environmental Impact Statement for Aquatic Invasive Species Control prepared to comply with SEPA (State Environmental Policy Act) guidelines for Permit issuance further outlines the principles of adaptive management for Permittees.

### **Public Notice of the General Permit**

Since Ecology has chosen to address Tier II antidegradation in accordance with WAC 173-201A-320 (6), Ecology will not perform site-specific analyses of each "new or expanded action" proposed for coverage under the permit. However, applicants for new coverages must publish requests for coverage under the permit.

Public notices must include:

- A statement that the applicant is seeking coverage under the Aquatic Invasive Species Management General Permit.
- The name, address, and phone number of the applicant.
- The statement: "Any person desiring to present their views to the Department of Ecology regarding this application shall do so in writing within 30 days of the last date of publication of this notice. Comments must be submitted to the Department of Ecology. Any person interested in the Department's action on the application may notify the Department of their interest within 30 days of the last date of publication of this notice."

Additionally, for any treatments that affect shoreline residents and businesses, Permittees must send public notice to waterfront residences and businesses within one-quarter mile along the shoreline from any proposed treatment sites 10-21 days before treatment.