

**AQUATIC PLANT AND ALGAE MANAGEMENT GENERAL PERMIT
PERMIT MODIFICATION**

FACT SHEET ADDENDUM

APPENDIX A: RESPONSE TO COMMENTS

**National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge
General Permit**

April 4, 2012

Introduction

The Washington State Department of Ecology (Ecology) issued draft proposed modifications to the Aquatic Plant and Algae Management General Permit (permit), proposed modifications to the draft Notice of Intent (NOI), and a Fact Sheet Addendum explaining the permit modifications on February 1, 2012. Ecology filed public notice of the proposed modifications and a public hearing date with the Washington State Register on January 17, 2012 (published February 1, 2012 - WSR 12-03-098). Ecology made these documents available on its website and sent the notice to state and federal agencies, tribes, permit holders, and interested parties. Ecology held a public hearing and workshop about the proposed modifications to the permit and NOI on March 5 in Lacey, Washington. The public comment period closed at 5:00 pm on March 7, 2012.

Ecology received written comments from one person, Cathy Backlund, an interested party (Haven Lake) during the public comment period. There was no testimony at the public hearing and workshop. Ecology considered all comments in preparing the final permit and NOI. The Response to Comments documents Ecology's response to these comments. Ecology did not make any changes to the permit or NOI in response to the comments.

The comments are taken verbatim from the comments provided by Ms. Backlund. The comments and Ecology's response to each comment follows:

Comments about the Permit and NOI Modifications

Comment 1:

<p>NOI</p> <p>V. Project Type (check applicable)</p>	<p>Ecology may condition permit coverage to mitigate for rare plants and for salmon, steelhead, bull trout, or other sensitive species or habitats based on consultation with Department of Natural Resources Natural Heritage Program staff and Department of Fish and Wildlife Timing Windows.</p>	<p>Add other agencies:</p> <p>“consultation with DNR, WDFW and/or other State agencies or organizations.”</p> <p>Remove the words “Timing Windows.”</p> <p><i>This would clarify that any necessary entity may be contacted for information such as County, Puget Sound Partnership, Watershed Stewards, Limnologist, or HCSEG and that mitigations can be placed notwithstanding of timing windows and protect areas such as sensitive habitats. The goal is to protect the environment, our waterways and human health when using chemicals.</i></p>
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Commenter - Cathy Backlund

Response: Ecology did not modify Section V – Project Type in the revised NOI. As stated in the public notification, Ecology will only accept comments on the modifications. The rest of the permit/NOI language is not open for review or comment at this time. However, Ecology is not limited by NOI language to only consult with the Washington State Department of Fish and Wildlife (WDFW) and the Washington State Department of Natural Resources. The permit manager uses professional judgment and discretion in consulting with other applicable local, state, and federal agencies when determining appropriate mitigation to protect sensitive species and priority habitats before issuing permit coverage.

Comment 2:

<p>NOI</p> <p>VI. Waterbody Information</p>	<p>Treatment Timing Windows:</p> <p>The use of chemicals in a waterbody may be affected by Treatment Timing Windows. The default Treatment Timing Window for all waterbodies is July 15 to October 31 (dates inclusive) unless otherwise specified in the Treatment Timing Window table here: http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/aquatic_plants/permitdocs/wdfwtiming.pdf.</p> <p>Timing Windows may be changed if requested by the applicant, and WDFW agrees based on their review of available information. Ecology defers to WDFW's expertise in this area.</p> <p>Do you want to request a timing window change? Yes/No</p> <p>Proposed Treatment Timing Window:</p>	<p>Replace "by the applicant" with "as described in the permit"</p> <p>Add: If you and the Sponsor are requesting a timing window change, then please submit signed documentation from both parties showing:</p> <ol style="list-style-type: none"> 1. Reason for request 2. How request is protecting the public, environment and waterways 3. Provide DMP along with detailed map of areas most affected/unaffected with request for timing window change for review of overall treatment plan <p><i>This would ensure that Permittee and Sponsor support and understand request for timing window change, that all documentation is signed by both parties as required in the permit, and that State agencies have the necessary information and maps to ensure environmental protection and laws are upheld.</i></p>
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Commenter - Cathy Backlund

Response: The applicant is the discharger of the pesticide. The sponsor (typically the client and the decision-maker that hires the discharger) must also sign the NOI and a statement that says, "... based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." Therefore, Ecology concludes that both the sponsor and the applicant have read the information in the NOI and both agree with the decision to request a change in the treatment timing window for that water body.

The applicant and sponsor are required to submit a Discharge Management Plan (DMP) along with the NOI. Both sign the DMP. In many cases, WDFW has not established timing windows for the water body because new coverages often occur in water bodies

with no treatment history. Default timing assumes the presence of salmon and for many water bodies that is not the case. Requesting a timing change merely allows WDFW the opportunity to review the priority species and habitat status of the water body to determine an appropriate specific timing window. It is up to WDFW to determine a timing window that is protective of the priority species and habitat of that particular water body. Ecology relies on the experience and professional judgment of WDFW's fishery and habitat biologists to determine appropriate timing for each treated water body. Ecology does not see a need to require additional justification from the applicant and sponsor to request a review of the timing window.

Comment 3:

<p>Permit</p> <p>S4. THE APPLICATION OF PRODUCTS</p> <p>B. Authorized Discharges</p>	<p>4. The Permittee may apply the following listed active ingredients that are labeled for use on aquatic sites:</p>	<p>“Additional information about each chemical use can be found at the following websites:”</p> <p>SEIS (link to website)</p> <p>Chemical Label (link to website)</p> <p>MSDS (link to website)</p> <p><i>Along with the new chemicals being added to the list, websites for additional information would be helpful to learn more about each chemical and the effects/cautions that are needed to protect the environment</i></p>
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Commenter - Cathy Backlund

Response: Ecology does not consider the permit an appropriate document to include the type of information proposed in the comment above. The permit sets conditions and circumstances under which a discharge may occur. The information suggested in the above comment is better provided in permit supporting documents. For example, in the Fact Sheet Addendum, there is a link to Ecology’s Environmental Impact Statement Addendum for the active ingredients, penoxsulam, bispyribac-sodium, flumioxazin, carfentrazone-ethyl, and imazamox. In the Fact Sheet issued in 2011, there is a link to Ecology's website where readers can review Ecology's chemical risk assessments and aquatic plant management Environmental Impact Statements. Ecology's DMP template provides links to manuals/articles that provide information about various control methods, including chemical controls. These manuals/articles discuss the advantages and disadvantages of each method.

Comment 4:

<p>Permit Table 3: Specific Restrictions on the Application of Herbicides and Algaecides for Control and Eradication Projects</p>	<p>Include columns in table of “Expected Results” “Advantages” & “Disadvantages”</p> <p><i>With the new chemicals added to the list, these additional columns in the table would make it easier to see at a glance what each chemical is supposed to do, whether it is a contact or systemic herbicide and the advantages and disadvantages of each chemical.</i></p>
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Commenter - Cathy Backlund

Response: Table 3 provides specific restrictions on the application of herbicides and algaecides for control and eradication projects. This table is not the appropriate place to provide the sort of information proposed in the above comment. See also the response to comment 3.