

**Aquatic Plant and Algae Management General Permit**

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

**February 16, 2011**

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## **Introduction**

This is a summary of the changes made to the Aquatic Plant and Algae Management General Permit (permit) in response to the public comments received between September 1, 2010 and October 15, 2010. In finalizing this permit and accompanying documents, the Washington State Department of Ecology (Ecology) considered all of the public comments received during the public comment period and comments received during oral testimony at the public hearing/workshop held in Lacey Washington on October 4, 2010 and in Spokane Washington on October 6, 2010.

Ecology published a draft Aquatic Plant and Algae Management General Permit and accompanying documents on September 1, 2010 for public comment. It made these draft documents available on Ecology's website. The public comment period ended October 15, 2010 at 5:00 PM. During the comment period, Ecology conducted a public hearing and workshop in Lacey and in Spokane. Ecology also accepted public comments via letter and email.

Ecology considered all comments in preparing the final permit. This Response to Comments documents Ecology's response to each commenter and any changes to the permit that resulted from the comments. Ecology received written comments from 39 people/entities during the public comment period and received oral testimony from two people at the public hearing in Lacey. No members of the public testified at the public hearing in Spokane. Each commenter is numbered in the order in which Ecology received their comments. This number allows the commenter to find Ecology's responses to their comments. Some comments addressed similar concerns about the draft permit.

The response to comments is broken into four sections:

1. General Comments about the permit
2. Comments on specific permit sections (sections that received no comments are omitted)
3. Comments on permit supporting documents
4. List of Commenters and Commenter numbers

## **Section 1. General Comments about the Permit**

**1. Comment:** *I think you have all done a great job in closing the loop holes that allowed things to occur on Haven Lake. The rewrite has covered so many areas that were ignored or not enforced in our situation. I know how much work was involved in collecting data, addressing issues, deciding how to rewrite and then putting the words on paper. You all are to be commended for your efforts! (Commenter #1, Gary Backland)*

**Response:** Comment noted.

**2. Comment:** *We generally support this permit program, aquatic herbicides are a necessary tool for the management of aquatic weed growth and we require a system to utilize these tools where appropriate. (Commenter #3 – Jon Roskill, Commenter #5 - Wayne Gruen, Commenter #7 - Michael J. Holmes)*

**Response:** Comment noted.

**3. Comment:** *This summer for the first time in over 15 years our lake is clear of the Asiatic milfoil which I believe was brought in by transient fishermen years ago. We tried importing white Amur, sterilized and permitted with no visible effect. One neighbor invested \$14,000 in a lake mowing machine and worked for years tirelessly to reduce the noxious weed, to no avail. Our fish were dying and the waterfowl and birds of prey were uninterested in our weed-choked lake.*

*AquaTechnex came in treated the lake per our permit and seems to have eradicated the Asiatic milfoil and left other flora and fauna intact. The fish are back as are the birds of prey. We enjoyed two resident osprey this summer and many visits by bald and golden eagles. We would appreciate any further streamlining of the permit process as I see this is a valid treatment process. (Commenter #4 - Paul Herbert)*

**Response:** Comment noted.

**4. Comment:** *The Lakemoor Community Club (a housing development of 285 homes) supports the following recommendations from the company that treats our lake (Ecology note: see the comments from commenter # 15 - Terry McNabb). We only treat our swim areas to protect the children swimming in our lake, control algae bloom and lily pad growth. We stock the lake with trout for the benefit of our residents. (Commenter #5 - Wayne Gruen)*

**Response:** Comment noted.

**5. Comment:** *Thank you for proposing to improve the regulation of pesticides getting into our water. It is not yet enough to eliminate the hazards of pesticides and other chemicals to people but it would appear to help. (Commenter #6 - H. James Rhodes)*

**Response:** Comment noted.

**6. Comment:** *Newport Shores is a waterfront/canal community in Bellevue Washington. Without treatment our canals would become clogged with nuisance weeds that would put people and equipment in harm's way. (Commenter #7 - Michael J. Holmes)*

**Response:** Comment noted.

**7. Comment:** *We are supportive of the permit program. Aquatic herbicides allow the management of our water bodies for the enjoyment of our members. We appreciate a system to allow the use of aquatic herbicides where such use is not harmful to other plants and animals. (Commenter #8 - Bill Neal)*

**Response:** Comment noted.

**8. Comment:** *We generally support this permit program, aquatic herbicides are a necessary tool for the management of aquatic weed growth, and we require a system to utilize these tools where appropriate. Lone Lake on Whidbey Island has been returned to a healthy state from being overgrown by the noxious weed Brazilian elodea. Without the use of Diquat (Ecology note: the lake group used the herbicide fluridone rather than diquat to eradicate Brazilian elodea from Lone Lake) the lake did not have a chance of being restored. The herbicide did not harm the fish. Property owners as well as fishermen and other recreational users are pleased with the outcome of the herbicide treatment. (Commenter #12 - Pat Clark)*

**Response:** Comment noted.

**9. Comment:** *In response to your draft aquatic weed NPDES permit currently out for public comment, many of our clients will not be responding simply because the permit appears to be a marked improvement over the current expiring permit. It provides an environmentally sound approach to a very controversial and emotional issue. Northwest Aquatic EcoSystems represent thousands of private lake property owners statewide.*

*Ecology has put forth an exceptional effort in identifying problem areas within the expiring NPDES permit requirements and has made changes to the new proposed permit that corrects most of the shortfalls. Historically Northwest Aquatic EcoSystems has challenged some of the permit requirements through appropriate channels. This draft permit meets the industry's needs and will probably require no such challenges. (Commenter # 25 - Douglas Dorling)*

**Response:** Comment noted.

**10. Comment:** *CDID #1 recognizes that aquatic herbicides are a necessary tool for the management of aquatic weed growth. CDID #1 utilizes mechanical and aquatic herbicide methods to control noxious weed growth in our ditch system. With over 35 miles of ditches to maintain a single method of treatment is not practical, effective or feasible.*

*Over the past several years, CDID #1 has experienced invasive weed growth in our extensive ditch system in spite of aggressive aquatic weed management efforts. This is due in part to the fragmentation that occurs during mechanical harvesting of the noxious weeds such as: Parrot Feather, Water Primrose, Brazilian Elodea, Eurasian Milfoil, Coontail (Ecology note: coontail is a native plant) and Fanwort.*

*In our experience, the most effective method for addressing noxious weed growth is aquatic herbicide treatment. Beginning in 2005 CDID #1 implemented an aggressive two-year aquatic herbicide treatment program followed by annual monitoring and spot treatment to a portion of our ditch system known as Ditch No. 6 West. Currently, this portion of the CDID #1 ditch system and the downstream pump station requires the least amount of attention during a high water event due to the success of this program.*

*The District's ability to integrate aquatic herbicide use in the battle to control noxious weed growth is a budgetary, environmental, and public safety issue. In our mission to provide flood control protection to the communities of Longview and West Kelso it is increasingly burdensome to manage noxious weed growth in our ditch system. Countless hours are spent each summer and fall harvesting noxious weeds from the ditches in preparation for the rainy season (see attached photograph illustrating the invasive weed growth).*

*The ditches of CDID #1 have a dual function, acting as a stormwater conveyance system and as a storage reservoir for intense rainfall. It is essential that all ditches of CDID #1 remain free of noxious aquatic weeds in order for stormwater to flow through the system. When the water level rises as a result of rain, aquatic weed matter interferes with the flow of stormwater and can cause flooding. During a storm event, it is necessary to man the pump stations around the clock to ensure the aquatic weed matter does not plug the screens and cause potential damage to the pumps.*

*We ask Ecology to fully consider the economic and public safety impacts of any new requirements, which would ultimately lead to increased costs. As with most other public agencies our budget is strained to the limit and any new cost would adversely impact the District's ability to manage noxious aquatic weeds. (Commentor #39 - Ray Caldwell and Judi Strayer)*

**Response:** Comment noted.

**11. Comment:** *I would like to thank the Department of Ecology and all that worked on the Aquatic Plant and Algae Management NPDES General Permit for addressing numerous issues with this permit. It appears that notification, applicant certification and management method review have been improved. However, this permit and process is still lacking necessary requirements to protect individuals and the environment. The following are my comments to improve these protections. (Commenter #35 - Richard Bruskrud)*

**Response:** Comment noted. Response to each specific comment from this commenter is included in the relevant permit sections.

**12. Comment:** *I was unable to find any penalty section of the rewrite that would address what will happen should this new permit process not be followed or there are oversights such as occurred on the Haven Lake application. Perhaps a checklist, signed by the person or group applying for the permit, that encompassed all these requirements, would at least define who would be responsible in case of a falsified application. (Commenter #1 - Gary Backland)*

**Response:** Ecology handles penalties as a separate process from permit issuance. Ecology's regional office inspectors and managers conduct all inspections and penalties using an inspection template and a penalty matrix that they follow. This includes a checklist. In the revised permit, the applicant (generally the commercial applicator) and the sponsor both must certify to Ecology that the information in the application is to the best of their knowledge and belief, true, accurate, and complete. There are significant penalties for knowingly submitting false information to Ecology. However, in the case of a sponsor hiring a commercial applicator for a treatment, Ecology would generally hold the Permittee (usually the commercial applicator) responsible in the case of a knowingly falsified application.

**13. Comment:** *In the past, the applicator has really been in charge of the permit, i.e., the group applying for a permit must do so with a contractor and should this group want to change contractors, they must have the approval of said applicator. In essence, the group is now hostage to the applicator. At present, the applicator must sign a release before a change can be made. It seems that a group should have free choice of whom they hire and if things don't work out, should be able to easily change applicators. Perhaps this area could be clarified as well. (Commenter #1 - Gary Backland)*

**Response:** For non-government sponsored projects, the sponsor hires a private licensed commercial applicator and the applicator applies for coverage under the permit at the sponsor's request. Ecology understands that typically the sponsor and the applicator enter into a contractual arrangement that spells out the responsibilities of each party. Depending on their contractual agreement, the sponsor may change applicators by requesting that its applicator transfer the permit coverage to another licensed applicator of the sponsor's choice. To Ecology's knowledge, no applicators have ever refused to transfer coverage to another company on request from the sponsor. It is not in the business interest of these companies to be uncooperative with their clients.

**14. Comment:** *The purpose of this letter is to provide comments about the proposed new permit scheme. I have represented a private individual in related matters for some time, and am familiar with the issues that have faced her and the lake where she lives. I have spent hundreds*

*of hours investigating, researching and analyzing those issues, including the actions and positions of the Department. The following constitutes my opinions based on that work.*

*My primary conclusion is that the current proposals change past practices by addressing some of the concerns that have been raised by my client and others, but essentially, they continue a system that is an abdication of the responsibilities of the Department to protect the environment, in many, many ways.*

*Generally, the scheme is to have applicants fill out a new version of the application form. Then, without any concern for the answers to the questions of the form, except a brief check, the application is approved and then, as your staffer recently announced in a public meeting, it is stuffed in a drawer. (Commenter #24 - Robert Wilson-Hoss, Hoss & Wilson-Hoss, LLP)*

**Response:** Ecology's permit manager carefully reviews the information in the application, the SEPA addendum or checklist, and any other supporting documentation. If information is incomplete or appears inaccurate, the permit manager will contact the applicant and ask for additional information or clarification. Rare plants, threatened or endangered species, and critical habitats trigger additional requirements as specified in the permit. Ecology works with the applicant to ensure that they understand and follow the permit requirements. Ecology keeps signed hard copies of the application and all supporting documents on file. These documents are available to the public through public disclosure.

**15. Comment:** *The application that I have been dealing with for my client is an excellent example. We have already provided the Department with a list of mistakes on the form, ranging from the misstatement that there are no other local laws that apply, to failing to identify critical plant and fish species correctly. The new application form will not prevent such mistakes if it is not carefully reviewed. (Commenter #24 - Robert Wilson-Hoss, Hoss & Wilson-Hoss, LLP)*

**Response:** The new Discharge Management Plan (DMP) requirement in the permit will help address these concerns since both the applicant and the sponsor must certify to Ecology that the information in the DMP is accurate. In addition, Ecology has provided links to websites in the DMP template that should allow the sponsor and the applicant/Permittee to access relevant information to answer questions accurately about the site and the project.

In the case of the Haven Lake permit application, during initial application review, Ecology's permit manager consulted the Washington State Department of Fish and Wildlife (WDFW) timing windows before issuing coverage. However, WDFW's information for Haven Lake was out of date. At one time salmon passage to Haven Lake was blocked, but the fish passage obstruction was later removed. WDFW likely

referenced old data when compiling the fish information for this water body. This was not a question of Ecology staff failing to review or verify information, but rather a mistake made by another agency in its information about a lake. Ecology relies on other agencies for this type of information and sometimes that information may be out of date.

**16. Comment:** *The process that is proposed fails to take into account such things as drift, which is well-known to the Department; wetlands issues; county codes; Tribal interests; and so on and on. Perhaps the biggest failure is the complete avoidance of any process that would adequately consider the authority of an applicant to do any treatment whatsoever on a lake or other body of water. (Commenter #24 - Robert Wilson-Hoss, Hoss & Wilson-Hoss, LLP)*

**Response:** The conditions and provisions of the permit account for dispersion of the chemical and wetlands. Ecology added some additional language to the permit to help address off-target movement of herbicide in flowing water situations (e.g., reservoirs). It is the responsibility of the Permittee to determine if laws, rules, or ordinances of other governments apply. Ecology has always considered that the sponsor would not have signed off on the commercial applicator applying for permit coverage unless it had the authority to administer the areas of the lake proposed for treatment. The reissued permit now requires the sponsor to certify that it has the authority to treat common areas of the lake (for non-individual treatments).

**17. Comment:** *As I understand it, the Department will process applications from lake management districts, other special purpose districts, some homeowners' associations, and "others." This displays, in my opinion, an appalling ignorance of real property law as it applies. This is particularly unfortunate because the Department has been provided a detailed analysis of related concerns, and has chosen to ignore it. It has not only not provided any rebuttal, it has just failed to respond at all. (Commenter #24 - Robert Wilson-Hoss, Hoss & Wilson-Hoss, LLP)*

**Response:** For 30 years, Ecology has accepted applications for permit coverage from lake groups under the assumption that these groups had authority to treat common areas of the lake; otherwise, these residents would not be "pooling" their finances and hiring a commercial applicator to treat. Ecology disagrees that it has failed to respond to this issue. In the reissued permit, Ecology now requires sponsors to certify that they have the authority to administer such treatment. This represents a significant change to the way that Ecology issues coverage and regulates herbicide treatments.

Ecology also disagrees with the commenter that it has failed to respond to concerns and issues voiced by Haven lake residents and others. Ecology has not ignored the concerns of these residents. Ecology has on file hundreds of written responses to inquiries from concerned citizens about this lake. Ecology made a number of significant changes in the reissued permit based on Haven Lake concerns. These include:

- Increasing notification requirements for applicants when applying for permit coverage. In addition to placing the public notice in a newspaper of general circulation, the applicant must also mail or deliver the public notice to all potentially affected water front residences or businesses (i.e., addresses transparency of the process by integrating appropriate stakeholders).
- Requiring that the sponsor certify that it has the authority to treat common areas of the water body for aquatic plant and algae management.
- Requiring detailed, site-specific information about projects where treated areas are five or more acres through the preparation of a DMP/SEPA addendum (i.e., redesigned SEPA Environmental Checklist specific to aquatic plant and algae management in lakes).
- Enhancing environmental protections by updating the WDFW timing windows to protect priority species and habitats in addition to salmon, steelhead, and bull trout that were included in the previous timing windows.
- Increasing protections for potable water intakes by requiring longer time intervals before resuming use or testing the intake water for chemical residues.

**18. Comment:** *There are, generally, only two sources of the right to apply chemicals to a lake for any purpose. One is by statutory grant of right. An example is Lake Management Districts. The Department also identifies other special use districts, and I suppose those might be such things as irrigation districts. So we know that if there is a statutory right for an individual or other entity to apply chemicals, then that should suffice for the Department's purposes. It is, of course, very simple to prove that right; the permit application should come with a discussion of the source of the right to treat.*

*The only other way for a non-public entity to have the right to treat is by having a recorded or case law-created interest in the real property in question. If a lake is nonnavigable, then the lake bed is owned by the owners in pie slices to the middle (as an example). They have recorded interests in their ownerships; case law tells us what that means to their relationship to ownership of the lake bed and plants growing on it. Each set of circumstances is different, but the basic rules are the same: if you have the right, you can prove that you have the right. If you can't prove it, you don't have it.*

*That's it. If a lawyer on behalf of a voluntary nonprofit association with no recorded or case law rights sends the Department a letter saying that the association has the right to treat, he or she is just plain wrong. Voluntary groups of people cannot just call themselves an association, incorporated or not, and assert control over something they have otherwise no legal right to control.*

*I have several association clients that do in fact own their lake beds. They have deeds and plat maps to prove that they do. Their applications should include a copy of the same so that the Department knows they are authorized to treat.*

*Any seasoned real property lawyer will tell you that a voluntary association of people who own property near a lake does not have the right to chemically treat the lake. That would be what a Lake Management District is for. (Commenter #24 - Robert Wilson-Hoss, Hoss & Wilson-Hoss, LLP)*

**Response:** Determining the authority to administer common areas of the lake is between the sponsor and its legal advisor. Ecology will accept signed certification statements from sponsors. Sponsors representing lake groups must certify: "I certify that I represent an entity that has authority to administer the common areas of the waterbody, or locations within the waterbody, for the purposes of aquatic plant and algae management. " Or "I certify that I represent a group that intends to form an entity that has authority to administer the common areas of the waterbody, or locations within the waterbody, for the purposes of aquatic plant and algae management."

**19. Comment:** *The Legislature has provided for Lake Management Districts. I have never understood why the Department is so committed to avoiding that statutory scheme. If an applicant wants to chemically treat a lake, and cannot prove the right to treat otherwise, then the Department needs to tell the applicant to form a Lake Management District. (Commenter #24 - Robert Wilson-Hoss, Hoss & Wilson-Hoss, LLP)*

**Response:** Ecology is supportive of lake groups forming Lake Management Districts, but does not believe that it has the regulatory authority to compel a group to form such a district. Ecology is so supportive of self-funding districts for lake groups, that it has made the formation of these districts a grant eligible cost under its Aquatic Weeds Management Fund grant program and encourages this activity. However, even under its grants program, Ecology cannot require people to form a district. Lake Management District formation is entirely up to a vote of the affected people and sometimes grant-funded districts do not pass or may not even reach the voting stage if parties cannot agree on issues.

**20. Comment:** *Part of the application asks if there are any other codes or regulations that apply. The Department knows, based on a formal opinion from the Mason County Prosecuting Attorney's Office, that yes, indeed, the Shoreline Management Plan, and Critical Area Resource Ordinances, do apply, and a permit process is required. The Department's process will not even question an applicant if the answer to the question on the application is that no, there are no such codes or regulations that apply. Every county has Shoreline Management Plans and Critical Area Resource Ordinances; this should be a primary concern in the review of the application.*

*It might take two days of staff time to call all County prosecutors and ask if there are any codes or regulations in that County that would apply, perhaps referring them to the opinion from Mason County for clarification of the context. It might take another couple of days to collect them in a computer folder. Then it would be a matter of about 15 seconds for Department staff to check, for each application. (Commenter #24 - Robert Wilson-Hoss, Hoss & Wilson-Hoss, LLP)*

**Response:** Ecology will not assume the potential liability of determining which ordinance, rule, or law may apply for each federal, state, or local jurisdiction, particularly if laws or rules change and Ecology is incorrect. It is also not Ecology's responsibility to enforce other government's laws, rules, or ordinances. Mason County has never informed Ecology that it requires a permit for lake treatment. Because of inquiries from Haven Lake residents about local permitting requirements, Ecology staff called Mason County to ask about county permits for aquatic herbicide application to lakes. County staff told Ecology on two separate occasions that Mason County did not require a permit for this activity. It can be very difficult to obtain accurate information about local government laws and ordinances, even when directly querying local government staff.

**21. Comment:** *Almost as egregious is the complete failure of the Department to provide for a system to enforce application permit conditions, or enforce against applications that were procured through either outright fraud or perhaps negligent misrepresentations. The information we have previously provided the Department takes apart a particular permit application item by item, showing a shocking lack of correct information, and no apparent authority for the applicant to treat. The Department's response was that it would take no action. (Commenter #24 - Robert Wilson-Hoss, Hoss & Wilson-Hoss, LLP)*

**Response:** Ecology carefully reviewed and evaluated the application in question after receiving a request from a Haven Lake resident to revoke the permit. The permit administrator/manager consulted with senior permitting staff about what constitutes grounds for permit revocation. The consensus was that it would be difficult for Ecology to prove fraud or even misrepresentation of the facts in the application. Therefore, the recommendation was that there were no legally defensible grounds for Ecology to revoke permit coverage for Haven Lake based on mistakes in the application.

**22. Comment:** *The net result of the Department's new proposal is the same as the net result of the Department's old system, with very few exceptions. Applications will be submitted by commercial applicators on behalf of their clients. The applications will not be reviewed except cursorily. They will be put in a drawer. No thought will ever be given to the possibility of revoking an approved application, no matter how egregious the issues.*

*As a general proposition, this is nothing but the farmer letting the fox guard the chicken house. Problem aquatic plants can be noxious, invasive, native, non-native, and/or nuisance plants. Each presents a different challenge, which has to be considered within a context. That context needs to start with an evaluation of, who wants to treat, and do they have a right to do so? Many other aspects need to be considered: scope of the problem; alternates to chemical treatment; what kinds of plants are targeted; wetlands; County codes and regulations; consequences to other plant, bird, fish and animal life, including in particular salmon; drift; and so on. There is no reason to think that this approach would unduly burden the process; rather, abdicating responsibility for undertaking this process is a direct and dangerous departure from the mission of the Department.*

*An area of my client's lake that was treated chemically two years ago was, before treatment, part of one of the healthiest lakes in the state within populated areas. It had healthy, co-existing and co-dependent plant, animal, fish and bird species. It is now a dead zone. If you don't believe me, go take a look. (Commenter #24 - Robert Wilson-Hoss, Hoss & Wilson-Hoss, LLP)*

**Response:** Comment noted.

**23. Comment:** *The Lower Hood Canal Watershed Coalition was first briefed on the concerns with the use of herbicides to control native plants in Haven Lake in Mason County at the Coalition meeting on March 1, 2010.*

*The Lower Hood Canal Watershed Coalition is composed of local residents, businesses and representatives from local, state and tribal agencies dedicated to restoring and maintaining the fresh and marine water quality in the lower Hood Canal watershed. Haven Lake is in the lower Hood Canal watershed and is connected to the Tahuya River.*

*Members of the Coalition have reviewed the current recommended changes to the Department of Ecology General Permit and permitting process proposed by Monica Harle (and reviewed by legal counsel) and provided to the Department of Ecology.*

*Members of the Coalition firmly support the Ms. Harle's recommendations to revise the permit for the control of native plants and share her concerns about the implementation (or lack of). (Commenter #30 - Robert Hager and Constance Ibsen)*

**Response:** Responses to Ms. Harle's comments will also reference Commenter #30.

**24. Comment:** *The Hood Canal Environmental Council has been a friend of Hood Canal and its watershed since 1969 and is herewith submitting comments to the "Draft general permit to cover aquatic plants and algae activity in the surface freshwaters of the state"*

*We have significant concerns regarding potential impacts to Hood Canal from pesticides and herbicides used within Hood Canal watershed lakes and streams to control native plants and*

*noxious weeds. All Hood Canal watershed freshwater lakes with outlets to streams eventually flow into Hood Canal itself. Any application of aquatic herbicides upstream could impact Hood Canal water quality or aquatic plant and animal life, including anadromous species.*

*Please see the attached document for our comments, as prepared by our Board member Monica Harle. (Commenter #34 - William Matchett)*

**Response:** All comments submitted by Ms. Harle will also reference commenter #34.

**25. Comment:** *How Will the Washington State Department of Ecology Scrutinize Application documents?*

*Example: A Comparison of the “original” permit application (2006) and a ‘reissuance’ application (2010) under the “draft general permit” regulations. What is actually happening today (October 15, 2010) regarding evaluating “Application Requests for Coverage”. Attached to these comments to Ecology are two “Application for Coverage” documents for applying herbicides to Haven Lake. One I dated September 2010 and one is dated Oct 2006. The actual “application” form for the Oct. 2006 document is located on pages 5, 6, 7, 8 of that entire document attachment.[Ecology Note: see the attachments at [http://www.ecy.wa.gov/programs/wq/pesticides/final\\_pesticide\\_permits/aquatic\\_plants/comment\\_s.html](http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/aquatic_plants/comment_s.html)]*

*Here is an excellent example of how Department of Ecology plans to implement “rigorous examination” of applications for coverage. Either Ecology wants to regulate herbicide applications or it doesn’t. Will Ecology check facts and compare information on the applications to information within the files on Haven Lake?*

*Yellow Flag, Class C noxious weed (not mandatory removal) Please compare the 2006 application form and the 2010 application form in the category titled “Plant and Chemical Information”. In the Sept. 2010 application form, glyphosate is listed for targeting “emergent noxious”. Ceratophyllum, Brasenia, Nymphae, listed on the 2006 application are no longer listed as “targeted plants”. Some specific information in the “targeted plant categories” seems to have been simply whited out. In plant surveys of Haven Lake conducted by Ecology from 1992 through 2009, there has only ever been one identified noxious weed, yellow flag iris, (class C, “patchy distribution”). Yellow flag or any noxious weed has never been the target for chemical applications to Haven lake. (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** Comment noted. An Ecology botanist reported the presence of reed canarygrass along the shoreline of Haven Lake. Reed canarygrass is also a Class C noxious weed.

**26. Comment:** *All supporting documents indicate chemicals targeting native elodea and native pondweed have been the only focus of attention and the target of chemical treatment in Haven Lake. (see “post chemical application” form from July 2008). Everyone knows there is not a noxious weed problem at Haven Lake, whatsoever. Noxious weeds have never been an issue. Nuisance native plants, potamogeton and elodea have been the entire focus of removal efforts.*

*The difference between stating on an application form that a group is intending to target “emergent noxious” and not saying that you are targeting “emergent noxious” is that you get to fall under the category of treating for noxious weeds which is 100% eradication. (Commenter # 33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** The commenter’s statement is incorrect. Ecology allows eradication only for state-listed noxious weeds or for aquatic species listed by the Washington Department of Agriculture (WSDA) on its quarantine list. Native plant removal projects are always control projects and therefore always subject to littoral zone limitations.

**27. Comment:** *Haven Lake does not have a wide range of “emergent noxious” weeds as suggested under this 2010 “renewal application form”. Haven Lake has small patches of yellow flag iris, a class C noxious weed found along the shore in minimal clumps. This class C noxious weed is not required to be removed. The population of that plant has remained relatively constant since being first identified by Ecology. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Comment noted. Haven Lake residents are fortunate that the yellow flag iris population is not expanding. Ecology has observed many lakes where this species has totally colonized the shoreline to the detriment of native emergent species. In non-lake associated wetlands, scientists have reported yellow flag iris displacing native rare plant species.

**28. Comment:** *The department of Ecology also has an extensive amount of information on Haven Lake’s “water body information” related to wetlands, outlet stream names which could and should be used to evaluate this ‘renewal’ application form, in addition to documentation of legal authority of “sponsoring organization” to treat the lakebed. The map of treatment area includes private lake bed property whose owners have not given permission for treatment.*

### **Overview**

*In March, 2010, I submitted a detailed paper to the Department of Ecology titled “Analysis and Recommended Changes to the Department of Ecology “General Permit” (2011 Aquatic Plant and Algae Management General Permit) and Permitting Process. That document examines legal problems, permitting concerns, and offers 5 categories of recommended changes to close*

*loopholes and prevent similar legal and environmental issues from occurring in the future. These are:*

- 1) Transparency of process; Integrating Appropriate Stakeholders*
- 2) Redesigned “SEPA Environmental Checklist” specific to chemical applications in lakes*
- 3) Addressing Chemical Drift; Chemical Label Information; Monitoring Responsibilities*
- 4) Revoking of Coverage; Beneficial Uses Protected by Law; Unintended Impacts and Effectiveness of Antidegradation Policy*
- 5) Oversight and Inspection Issues; “The Honor System”; Three different definitions by three agencies of “legal chemical applications” for the same body of water*

*Citizens, legislators, county authorities, other agencies and Department of Ecology staff all understand the serious need for “cleaning up” the legal issues, the compliance and enforcement issues, and environmental issues related to permitting under the rules outlined in the 2006, 5 year, statewide, Aquatic Plant and Algae Management Permit to apply chemicals to the Waters of Washington state. (I will refer to that as “the permit”)*

*Permitted Sponsors and chemical application activities at Haven Lake, for example, conducted under the 2006 “general permit” with the approval of Ecology, were subsequently found to be unlawful, found to violate health codes for drinking water, violated private property rights, WDFW regulations concerning % of viable habitat destroyed, violated Shoreline Management Act and Mason County regulations. The overall result of one such permit granted under the 2006 “general permit”, (Haven Lake diquat application for native plants), proved costly and time consuming to Ecology staff, private citizens and agencies, and whose likely environmental impacts related to salmon recovery, are ongoing.*

*Some of the new regulations added to the 2011 “draft general permit” have the potential to improve oversight, SEPA information, and if properly implemented will clarify to sponsors and permittees (chemical applicators) the need for a properly researched, balanced approach to aquatic plant management. Implementing these corrections to previous permit oversights and following up using mandatory enforcement procedures for all permit violations will be the only way these new regulations can have an effect.*

*This draft document, however, with vague sanction and enforcement policies, inadequate legal requirements of sponsors, minimal oversight of chemical applicator “management” activities won’t achieve the type of “control/management/oversight” mandated by the legislature and expected of Washington State Citizens.*

*Omissions, oversights, within this draft permit leave the door open to continuing violations of law. The Department of Ecology steps back and takes no responsibility for the effects of its own permitting policies which will yet again, for the next 5 years of the life of the permit, force private citizens, county enforcement and other organizations to reckon legally with so called “permitted activities”. Activities, some already deemed criminal and civil violations and*

*activities which, in my opinion threaten the health of Washington State Lakes, Salmon recovery efforts and the water quality of the Hood Canal, among other waterbodies.*

*The issues of concern address:*

- 1) Legislative Intent*
- 2) “Legal Authority” requirements*
- 3) Shutting out Legal Stakeholders*
- 4) Salmon Recovery and Chemical usage (see chemical persistence)*
- 5) Who’s in charge, exactly?*
- 6) DMP or SEPA Accuracy; Rollover-Reapply Issues; Piggyback Individual Lot Permits*
- 7) Dispersion – (Drift); Chemical Persistence and Pollutant Legalities; Wetlands*
- 8) Enforcement of Permit Violations*
- 9) Specific paragraph changes in the documents (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** Ecology carefully reviewed the March 2010 document from this commenter and incorporated many of the changes/suggestions in that document into the revised permit and accompanying documents. See also the response to comment #17. The revised permit is more stringent than the 2006 permit.

**29. Comment:** *Legislative Intent (page 12 Fact Sheet)*

*RCW 90.48.445 Aquatic Noxious weed control*

*RCW 90.48.447 Aquatic Plant Management Program “Environmental, recreational, and aesthetic values can be ‘threatened’ by native plants.”*

*I believe the intent RCW 90.48.447 is to “allow” an herbicide to be used for native plants subject to rigorous evaluation by the DOE, and not only through EIS. In my opinion, the law is not a mandate by the legislature requiring Ecology to issue an aquatic chemical permit to each and every Washington State lake if such a permit is applied for.*

*Right now, the DOE Water Quality Department will certainly grant a permit to use aquatic herbicides to any “legal sponsor” (and his “chemical applicator”) who moves to any lake within Washington State, procures a boat or wants to swim, if that person also considers the native plants growing in that lake to be a ‘nuisance’.*

*The presence of a wetland area, threatened species of fish or fowl, coho salmon rearing in the lake, rare plant, exceptional water quality, etc. make little difference to the Water Quality Department as they approved permits for “control of nuisance weeds.” (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology believes that the state legislature made it clear that it expects Ecology to issue permits or permit coverage to those groups experiencing aquatic plant or algae problems in their water bodies. Further, the Pollution Control Hearings Board (PCHB) in 1997 (PCHB 97-90) found that short term modifications are appropriate to “accommodate essential activities, respond to emergencies, or to otherwise protect the public interest.” WAC 173-201A-110. We held in *Allied Aquatics v. Department of Ecology*, PCHB 86-92, at 7, that maintaining recreational opportunities by control of aquatic plants was in the public interest under the terms of this regulation." See also comment # 41 and comment # 44.

Ecology does not regulate aquatic pesticide application using site-specific administrative orders as it did prior to the 2001 Talent Irrigation District decision in the Ninth Circuit Federal Court. Ecology has authority to regulate aquatic pesticides through state law and through the federal Clean Water Act (CWA) as the delegated authority in Washington. Ecology started regulating aquatic pesticides under the CWA in 2002. This was in response to a 2001 federal court decision (*Headwaters Inc. v. Talent Irrigation District*). A more recent federal court decision (2009) upheld the *Talent* decision (*National Cotton Council et al. v. Environmental Protection Agency*) and now all states must regulate aquatic pesticides under the CWA by April 2011.

There are only two kinds of permits allowed under the CWA; individual permits and general permits. An individual permit covers a specific discharge at a specific location and it is highly tailored to regulate the pollutants in the discharge. Developing individual permits can be a very time-consuming process for both the permit holder and for Ecology and can take 18 months to several years for each permit. Ecology currently has about 140 separate coverages under the Aquatic Plant and Algae Management Permit. Handled on a site-specific basis, Ecology would need to write and issue as many as 140 individual permits. Ecology simply does not have the time and staff resources to regulate aquatic herbicide use in lakes through the issuance of individual permits.

In 1979, the Environmental Protection Agency (EPA) created a class of permits called general permits. The EPA authorized Washington State to use the general permit approach in September 1989. Ecology uses this approach to regulate most aquatic pesticide applications to freshwater. EPA is also using a general permit to oversee aquatic pesticide application nationwide.

To develop a general permit, Ecology collects information about the chemicals and the discharge conditions from the targeted groups and other information sources and establishes permit requirements to regulate the discharge. In developing the general permit for lakes, Ecology incorporated all the special conditions that it used when issuing site-specific administrative orders. These conditions cover rare plants, threatened and

endangered species, critical habitats, more stringent use restrictions than some EPA labels, 303(d)-listed water bodies, etc. As a result, Washington has one of the most stringent permits and intense regulatory oversight of aquatic pesticide application in the nation. The draft federal EPA permit for aquatic pesticide application is far less stringent than Washington's aquatic pesticide permits.

A review of the comments received during this permit revision demonstrates that some people believe that Ecology over-regulates them because this permit includes requirements that do not apply equally to all or does not allow all products or activities. Others complain that this permit under-regulates them because, in their opinion, it does not require enough controls or notifications to address site-specific environmental issues. That is a disadvantage of a general permit.

While general permits reduce the time it takes to issue permit coverage to a discharger, they do not reduce the time it takes Ecology staff to process reports, answer questions, conduct site inspections, provide technical assistance, or take enforcement actions. Individual attention to a specific discharger is the same whether that discharger has an individual permit or coverage under a general permit. Ecology conducts inspections for most dischargers annually. Ecology places its priority on investigating complaints, and focuses attention on sites of greater environmental significance (i.e., larger water bodies, sites with rare plants or animals, etc.). Targeting the highest-risk sites provides a manageable approach to assuring environmental protection under general permits.

While general permits do not fit every discharger perfectly, collectively they provide broad environmental protection. They provide a practical approach to regulating a large number of dischargers at a relatively reasonable cost. In these difficult financial times, Ecology needs to maximize its resources while still providing environmental protections.

**30. Comment:** *The language in RCW 90.48.445 (Ecology cannot burden weed control efforts) clearly is aimed at noxious weed control which is time sensitive, and often required by law to be removed, depending on which classification of noxious weed. This language found in RCW 90.48.445 was not intended to be blended together with the language of RCW 90.48.447, which concerns the removal of native plants. Ecology has been intermixing the language of each of the two distinct codes and has repeatedly told property owners and concerned citizens and agencies that the legislature has directed Ecology to “not burden efforts to treat native plants.” (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology has **never** told property owners, concerned citizens, and agencies that the legislature has directed it to "not burden efforts" to treat native plants. Ecology referred to these two state laws at the public workshops/hearings for the Aquatic Plant and Algae Permit to demonstrate state legislative intent concerning chemical treatment of

aquatic plants (noxious and nuisance) and that Ecology acts under legislative direction. Ecology understands these are separate laws and does not "blend them together".

To provide some permitting history, Ecology preferred to regulate chemical use for noxious weeds separately from native nuisance plants. When Ecology first developed its aquatic pesticide NPDES permitting program, all noxious weed herbicide treatments occurred under its Aquatic Noxious Weed Permit and all nuisance native plant treatments occurred under its Aquatic Nuisance Plant Permit. Ecology streamlined the regulatory requirements under the Aquatic Noxious Weed Permit to lessen the administrative burden on noxious weed management while still affording environmental and human health protections. However, because of a lawsuit settlement agreement, Ecology agreed to develop a new permit that included the regulation of both native nuisance aquatic plants and in-lake noxious weeds such as Eurasian watermilfoil. This new permit became the Aquatic Plant and Algae Permit. Rather than streamlining the new permit for noxious weed management, project proponents for noxious weed projects must comply with the more rigorous oversight imposed by Ecology for native nuisance plant projects. This imposes a regulatory and administrative burden on noxious weed management efforts in lakes that they did not have before while not lessening them for native nuisance plant control.

**31. Comment:** *“Environmental” threat, not pleasure boating, is the first category of concern in RCW 90.48.447 where aquatic herbicides may be effective for managing an “invasion of native plants”. It looks like the legislature was concerned for the environment, itself. Ecology should “rigorously evaluate” (per language in RCW 90.48.447) each DMP /SEPA accompanying the application for a five year aquatic herbicide permit and not consider the two related RCW’s to be a mandate for blanket permit approval simply because it was requested.*

*The law directs Ecology to do what is in the best interest of the public. Aquatic chemicals can destroy or degrade salmon habitat by either dispersion or direct application and therefore, it is not always in the “public’s interest” to use aquatic chemicals to remove native plants when there are alternative methods available. Recreation, listed in RCW 90.48.447 can and does apply to salmon restoration, and therefore salmon habitat in lakes, not just to the obvious forms of recreation such as waterskiing, etc.*

*A good example of the broader use of the term “Recreation” within Washington State, is the following article. “\$27.5 million was awarded to the Washington State Recreation and Conservation Office for Salmon restoration.” [www.thegovmonitor.com](http://www.thegovmonitor.com) [http://www.thegovmonitor.com/world\\_news/united\\_states/washington-receives-27-5-million-for-salmon-recovery-efforts-39291.html/print/](http://www.thegovmonitor.com/world_news/united_states/washington-receives-27-5-million-for-salmon-recovery-efforts-39291.html/print/) (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Below is the findings and purpose of the RCW referred to by the commenters. The legislature states that both nuisance and noxious weeds can degrade the environment as well as restricting recreation and posing a safety hazard to swimmers. The legislature clearly intended for Ecology to allow the use of herbicides and algaecides to manage both nuisance and noxious aquatic plants and algae.

**Findings -- Purpose -- 1999 c 255:** "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.]

**32. Comment:** *Nothing about chemical coverage and usage on a lake is a "private matter", because applying those chemicals into the common waterway takes place in a very, very public setting. The results of a chemical application to everyone's water way can have the following effects:*

- 1) close the lake to all citizen's usage (not just "sponsors")
- 2) cut off domestic water supply to homes (not just "sponsors")
- 3) destroy or degrade salmon habitat and or heron / eagle habitat
- 4) result in aquatic chemicals drifting into waterfront areas and lakebed areas owned by "non sponsors" whose presence is unwanted
- 5) impact wetlands
- 6) impact shorelines governed by county shoreline codes
- 7) impact salmon and lakes bound by treaty rights
- 8) impact (ESA listed) steelhead, endangered Turtle species, salmon rearing

*Haven Lake SEPA information and subsequent July 16, 2008 chemical application related issues, overlooked by "sponsors" were subsequently managed by "non sponsor" citizens and lakefront property owners (stakeholders)*

*Their valuable input as "stakeholders" include the following:*

- 1) informing Ecology, Permittee and "sponsors" of historic and current coho salmon usage of the lake (related to impending chemical application)
- 2) informing Ecology of private lakebed ownership and lack of authority of the "sponsor" over the waterbody

- 3) informing Ecology, Permittee and “sponsors” of households with legal water rights, legal water claims who were not prepared for lake closures
- 4) informing Ecology, of entire plant community being affected by chemical application directly and by drift (out of compliance, but anticipated by both Rod Thysell (inspector) and Kathy Hamel (Water Quality Department), as voiced in emails.
- 5) informing Mason Co Health, Ecology and others water testing for Diquat indicated persistence above potable rates 5 days beyond the 3 day label guarantees
- 6) Informing Ecology of the Skokomish Tribe opinion on chemicals in Haven Lake, and supplying a documentation of past communications between the Tribe and both Ecology and either “Sponsors” or Permittee.
- 7) Communicating with Mason County and learning entire chemical application constituted a criminal violation and civil violation.
- 8) Offering information and assistance to out of county and out of state lakefront residents, not in communication with “sponsors”.
- 9) Informing WDFW and other agencies of chemical usage

Lake Tahuyeh citizens (in 1997) informed Ecology of rare wetland peat mats which resulted in the referenced paragraph. (Fact Sheet pg. 40 Trotland et al. v. Ecology and Tahuyeh Lake Community Club.

Had Ecology’s permit required “sponsors” and chemical applicator’s to include all stakeholders in all aspects of the permitting process, perhaps the resulting damage to private property, criminal and civil offenses within the county, damage to wetlands, etc. could have been prevented, and time consumption of Ecology staff (fielding questions) would have been greatly reduced.

*One positive change – written notification*

Written notification, is the one positive change to the draft 2011 permit (“applying for permit coverage”)

*The notification should be:*

- 1) in writing before any SEPA, DMP is ever submitted, or before any sponsor signs anything
- 2) the notification needs to be sent to the address of each property owner found on the local county tax parcel website
- 3) to affected county agencies which govern waterbody and shoreline activities (and at Haven Lake actually **own** two lots)
- 4) to WDFW
- 5) to any other stakeholders such as the Skokomish Tribe and other tribes, WRIA managers, etc.
- 6) should include where to download and check the completed SEPA or DMP for details

Sharing the responsibility of fact checking by all stakeholders will make the job of scrutinizing these mitigating documents faster and easier for Ecology. Get it right the first time and everyone

saves time and money. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)

**Response:** Comment noted.

**33. Comment:** *Salmon Recovery and Chemical Usage (see Chemical persistence)*

*State agencies need to work as a team for the good of all and chemicals are not always in the public interest.*

*Fact sheet pg 26 (Endangered and Sensitive Species) concerns Fish and Wildlife Service and National Marine Fisheries Service and their rights to issuing “Biological Opinions and by consulting with EPA on certain species, or other ways of being involved in EPA’s processes to protect listed species and designated critical habitat in several ways, “as necessary”.*

*While Ecology follows chemical manufacturer’s label guidelines these studies are conducted in lab situations, and are based on mortality studies. In the case of Diquat used in Haven Lake, diquat did not degrade in the water according to the label guarantee for potability after 3 days. WDFW motivations are for the optimal health of species and their survival in the wild. BMJ (best management judgment) would be to follow WDFW recommendations, in my opinion, such as in the example given at the Oct 4th “workshop by Kathy Hamel. She explained to us, WDFW had requested a specific lake receive no chemical treatment. Adhering to WDFW professional advice would be to the benefit of the public, as required in the legislative directive. Ecology did not accept the “biological opinion” and requested a timing window for chemicals anyway. Why? Does one agency’s opinion “trump” the other? (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology does not recall this specific instance referred to at the public workshop. Typically, Ecology defers to WDFW knowledge of fish and wildlife usage of a water body, although not all chemicals have fish timing restrictions.

**34. Comment:** *As mentioned earlier in this article, the public benefits from salmon recovery efforts, monetarily. For example, Washington just received \$27.5 million for salmon recovery efforts which went to the Washington State Recreation and Conservation Office. It also benefits from the economic impact of the salmon industry and the direct recreational benefit of salmon fishing which cannot exist without lake “nurseries”(such as Haven Lake and Wooten Lake). (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Juvenile sockeye salmon rear extensively in lakes, coho rear for at least one year in streams, and pink and chum salmon do not rear in freshwater (from NOAA Fisheries Service Report # 2006-06). According to WDFW information, Haven Lake has

coho salmon. The diquat treatment in Haven Lake in 2008 occurred after July 15 and within the fish-timing work window established by WDFW.

**35. Comment:** *Dispersion effects (chemical drift, outside of direct application areas) have the potential to eradicate stands of native plants which provide a food source and habitat for salmon in lakes. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Native species have seeds, tubers, turions, and other reproductive propagules that allow them to recover from non-target herbicide applications. It takes repeated applications using non-selective and systemic herbicides to eradicate non-targeted native plant species and this is generally temporary. Eradication of native species in a water body is only likely to occur in rare instances where a project proponent may subject a Class A noxious weed to long-term whole lake treatments (e.g., fluridone treatment in Pipe and Lucerne Lakes for hydrilla eradication). The permit limits dispersion by limiting the littoral zone area that the Permittee can directly treat for control projects. In addition, Ecology added a condition to the permit to help limit off target impacts when treating in reservoirs or flowing water. In these situations, the Permittee must ensure that there is adequate contact time between the targeted vegetation and the selected herbicide to avoid downstream impacts.

**36. Comment:** *Permit language found on Pg. 30 Fact Sheet 4th paragraph does nothing to address the issue, for example:*

*“Dispersion is the reason why Ecology uses the term “intentionally applied.” Ecology cannot regulate or control the extent of dispersion because it varies depending on environmental conditions. Dispersion means that sometimes the treatment affects more area or less area than anticipated. ...Requiring installation of barriers around treated or untreated areas is extremely expensive and time consuming.” (fact sheet pg 30)*

*In my opinion, chemical applicators can pass this expense on to the customers (“sponsor”), as explained on pg. 8 Conclusion, Draft Economic Impact Analysis. Certainly loss of habitat, or damage to non target areas such as private property lake bed is quite expensive too.*

*Drift reduction measures should be factored into the cost of doing business applying chemicals to lakes, as well as to the decision making process which should include available aquatic plant removal alternatives to chemicals. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology factored dispersion management into the permit by establishing littoral zone limitations for all control projects. Preparing a DMP makes the applicant/Permittee and the sponsor consider all available aquatic plant removal methods.

Nothing in the permit precludes installation of barriers, although it is likely that such installation would trigger the need for other state and local permits.

**37. Comment:** *Permit language should require the usage of barriers, curtains or other means to protect property rights of “non sponsor” citizens, and to protect sensitive areas from chemical dispersion. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** At this time, Ecology does not plan to require the use of barriers or curtains. They are expensive, difficult to deploy, and can be a liability because they can be a navigation and swimming hazard. However, in certain situations, sponsors may want to consider their use, although it is likely that barrier installation will trigger the need for other local and state permits. Ecology does not regulate non-chemical aquatic plant control methods.

**38. Comment:** *Valuable habitat (which benefits all state citizens) can be degraded in a day, without the use of barriers to control the chemical movement in water, leaving expensive salmon recovery efforts worthless if fish are killed by predation. WDFW is the agency assigned to oversee fish such as salmon and it is their BPJ to leave salmon bearing lakes in their natural condition, or avoid the usage of chemicals if possible and use alternative measures for plant removal (if necessary). This is one area of management Ecology can change - limiting chemical usage dramatically in salmon bearing lakes. This would be good for the general public which benefits from the recreation associated with salmon fishing.*

*Also extremely valuable for the entire population of the state, is the entire \$904.8 million yearly economic input to Washington State, from salmon and fisheries related expenditures (boats, equipment, hotels, transportation, etc). Ecology is mandated by the legislation (RCW 90.48.447) to “rigorously evaluate” all relevant information in issuing permits for Washington State Lakes, (based on individual criteria) Certainly salmon habitat is a highly important criteria, and the use of chemicals to remove plants is not always in the public interest.*

*“In terms of economic impacts, commercial and recreational fishing conducted in Washington fisheries directly and indirectly supported an estimated 16,374 jobs and \$540 million in personal income in 2006. Recreational fishing generates 12,850 jobs and state residents accounted for 90% of spending to support those jobs on fishing goods and services.” An estimated 286,000 anglers sport fished in Marine Waters of Washington State and spent \$904.8 million in 2006 on fishing related equipment and trip related items.*

*“Final Report Economic Analysis of the Non-Treaty Commercial and Recreational Fisheries in Washington State” prepared for the Washington Department of Fish and Wildlife (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Comment noted. Some salmon-bearing lakes are intensely urbanized and heavily used for recreation and residents may depend on herbicide use for safe recreation and navigation. WDFW timing windows limit impacts to salmon.

**39. Comment:** *Who's in charge, exactly?*

*Chemical Applicator and Sponsor alone determine:*

- 1) all answers to the DMP / SEPA.*
- 2) all applicable county laws (such as Mason County, Kitsap County permitting requirements, Shoreline Master Plans) (General Conditions G9 (General Permit))*
- 3) all applicable Federal Laws (General Conditions G9 (General Permit))*
- 4) all wetland delineation information*
- 5) all WDFW concerns such as migrating species, threatened species, nesting heron, eagle, other species*
- 6) Plant surveys identifying species, density, distribution*
- 7) all property rights issues related to lake bed ownership*
- 8) all legal authority over waterbody issues as "certified" by sponsor*
- 9) soils, sediment and bathymetric considerations (affecting dispersal)*
- 10) sensitive areas considerations*
- 11) legal water rights documentation and research*
- 12) necessity for chemical usage v/s non chemical usage to manage native plants or noxious weeds*
- 13) which chemical, which adjuvant to use on each water body, based on usage closure times, impacts to salmon and other species, household replacement water requirements, persistence and its effect on wildlife or anadromous fish*
- 14) removal of decaying plants or not*
- 15) buffers or no buffers for individual lot treatments*
- 16) level and amounts of chemicals used, acreage treated (within approved maximum)*
- 17) number of times per season chemicals are applied*
- 18) monitoring of application results for dissolved oxygen levels, persistence around domestic water supply intakes, aesthetics of decaying plants underwater,*
- 19) determination of where the "untreated" aquatic plants will remain (in compliance with WDFW and Ecology requirements. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** The applicant and the sponsor fill out the DMP (SEPA addendum). They obtain this information from various data sources including agency websites. For example, Ecology has plant species records from various surveys of public-access lakes. This information is credible and readily available on Ecology's website. Many other agencies make similar data available via their websites. It is the responsibility of the sponsor and applicant to research this information and make it available to Ecology via

the DMP. Permit conditions and provisions cover other aspects of an herbicide treatment as do FIFRA label requirements and state pesticide laws. Ecology's permit manager consults the WDFW timing windows for fish and other sensitive species and the Natural Heritage database before making any decision to issue permit coverage for that site. Ecology's permit manager also reviews the information, queries the applicant if any information appears inaccurate, and obtains revised documents from the applicant when appropriate. Ecology often works directly with the applicant and other appropriate agencies to help protect rare plants and habitats from aquatic vegetation removal projects.

**40. Comment:** *DOE, WDFW and the Legislature are all three in charge:*

*1) DOE*

*July, 2008, WDFW William Freymond (Region 6 Fish Manager) made this statement: "As we all know, however, there is state law that allows the activity of native plant removal within specific guidelines. And DOE is responsible for reviewing applications and granting permits for such activities that fall within those guidelines."*

*2) WDFW*

*Bulletins and Biological Opinion are enforceable under FIFRA Rules (pg 26, Fact Sheet), so WDFW must be in charge of some aspect of fish management as it concerns chemical usage. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Bulletins are an EPA requirement under FIFRA. The federal fish services produce biological opinions where there is a federal nexus. WDFW provides information to Ecology about salmon and other priority species and habitats in its timing table and through direct consultation with its biologists.

**41. Comment:** *The Department of Ecology is directed by the Legislature (RCW 90.48.445 and RCW 90.48.447) to oversee issuing or approving water quality permits for applications of pesticides to control both native aquatic plants and noxious aquatic weeds, and "subject to rigorous evaluation". (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology believes the phrase "rigorous evaluation" used by the Legislature refers to the Environmental Impact Statement process by which Ecology evaluates herbicides and not each site-specific coverage decision. In Ecology's opinion, the commenter has taken this phrase in this, and in other comments out of context.

*"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** [Ecology emphasis] by the department of ecology through an environmental impact statement for the aquatic plant management program."

**42. Comment:** *Ecology is responsible for:*

*Enforcement: The Department of Ecology has the authority to revoke coverage for failure to comply with regulations set out in the "General Permit". WAC173-226-240) Ecology also has the authority to determine which areas within lakes are the areas where chemicals may be applied or whether or not chemicals should be utilized at all to remove aquatic plants. These decisions should be based on staff BPJ, (drawing on the professional talent pool of the entire DOE, not just the "water quality" division, which is highly focused on noxious weed eradication and algae concerns.) (Commenter #33 - Monica Harle; Commenter 30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology does not designate areas within lakes for treatment, except as set out in the general permit and in compliance with littoral zone limitations. Ecology reviews treatment maps submitted by the applicant to ensure that the applicator conforms to littoral zone limitations for control projects. Occasionally the Permit Manager asks staff from other Ecology programs or agencies to provide input when a project potentially affects a rare habitat, plant, or animal. However, Ecology does not have the funding to involve other program staff with permit application review on a routine basis.

**43. Comment:** *Writing and issuance of aquatic chemical permits, based on governing legal codes (found in the permit) Technology based standards (WAC173-226-070) AKART, and staff BPJ Pg. 26. Fact Sheet explains:*

*"Before issuing coverage, Ecology reviews the information in the permit coverage application and the DMP. The DMP identifies specific information about project and site conditions including information about threatened or endangered plants and animals, water usage and sensitive habitats. ...The DMP and NOI provide site specific project information to Ecology that is supplemental to Ecology's programmatic SEIS"*

*The question is who fills out the information Ecology is reviewing? Who is truly qualified to do this? (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology's regulatory relationship is with the applicant and sponsor. These entities must jointly complete the DMP and certify to Ecology that the information contained in the DMP is to the best of their knowledge and belief, true, accurate, and complete. The DMP template provides links to credible information sources. Ecology's permit manager reviews the applicant materials and consults the Natural Heritage database and the WDFW timing table before issuing coverage.

**44. Comment:** *Administering decisions allowing or denying chemical usage to control native aquatic plant growth (in areas) in each and every lake in Washington State. Tier II Antidegradation requirements must be met (pg 23 Fact Sheet) Ecology has stated this permit does not cover discharges to Tier III waters, however, Lake Tahuya in Kitsap County, and Haven Lake in Mason County each have at least one characteristic consistent with Tier III requirements. (see WAC 173-201A-330 Tier III Protection of Outstanding Resource Waters.)*

*Furthermore, both lakes lie within the Lower Hood Canal watershed, emptying into the Tahuya River and into the Hood Canal. (Hood Canal has been designated a Shoreline of Statewide Significance in WAC 173-16-030 (13) and WAC 173-16-040(5))*

*Ecology would be obligated to consider all of the following findings from the Kitsap County Code “Chapter 22.24 SHORELINES OF STATEWIDE SIGNIFICANCE – MANAGEMENT PRINCIPLES AND DEVELOPMENT GUIDELINES” (H 2. 3, 4, I, JI, 2, K. 2, for example, to comply with requirements for chemical permitting decisions for these two lakes. Both of these lakes currently are permitted for chemical usage, however. Is that truly in the “best interest of the public”, or is this a result of “best professional judgment”? (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** At this time, there are no Tier III lakes in Washington. A Lake Tahuya resident took the question about chemical use in Lake Tahuya being in the best interest of the public to the PCHB in 1997 (PCHB 97-90). Note that in 1997, Ecology issued administrative orders called short-term modifications to the Water Quality Standards to regulate aquatic herbicide use in lakes. The PCHB ruled:

“The Department of Ecology is authorized to issue temporary modifications of water quality standards under RCW 90.48.030 and WAC 173-201A-110. Short term modifications are specifically allowed under the anti-degradation policy at WAC 173-201A-070(5).

III. Short term modifications are appropriate to “accommodate essential activities, respond to emergencies, or to otherwise protect the public interest.” WAC 173-201A-110. We held in *Allied Aquatics v. Department of Ecology*, PCHB 86-92, at 7, that maintaining recreational opportunities by control of aquatic plants was in the public interest under the terms of this regulation. This interpretation is consistent with the water quality criteria applicable to the lake which includes recreation. WAC 173-201A-030(1)(b)(v). RCW 90.48.010 further states that it “is declared to be the policy of the state of Washington to maintain the highest possible standards to insure the purity of all water of the state consistent with public health and public enjoyment thereof.”

IV. The public interest in recreational uses has not been exalted over all other water quality criteria under the short term modification rule. In *Allied Aquatics v. Department of Ecology*, PCHB No. 96-193 (1997), the board upheld the denial of an application to treat a lake with copper sulfate where copper, a compound known to be highly toxic to salmon, was found to have accumulated in lake sediments. It would not be appropriate in such a case to allow a temporary modification that was inconsistent with another important characteristic uses under the applicable water quality criteria.

V. In this case, however, the proposed treatment as conditioned in the order and further specified in mapping by the applicator to the Department of Ecology meets the requirements of the short term modification rule as long as the treatment is further conditioned to prohibit any applications within the buffer zone recommended by the Department of Ecology wetland biologist. Within this additional condition the proposed treatment is designed to achieve and maintain the water quality of the lake with respect to recreational opportunities without posing any significant adverse impact on the environment.

VI. We accordingly conclude that the appeal should be denied but that the order should be further conditioned. First, no treatment shall be allowed within 100 feet of the Conservancy Area identified by Resource Management, Inc., on Exhibit R-16 or within 100' of any peat mats within the lake. Second, no treatment shall be allowed in areas not identified on Exhibit R-16 without the prior approval of the Department of Ecology.

**45. Comment:** *BPJ and Wetland areas*

*“Sometimes recreational activities and navigation occur in identified high quality emergent wetlands. Ecology allows limited treatment within these wetlands...” (pg 40 fact sheet)*

*Ecology’s directive for aquatic plant removal to accommodate recreational activity in rare wetland areas, should instead require using available manual methods of aquatic plant removal, such as divers, etc.*

*This is a “win/win” situation. Ecology’s interpretation of RCW 90.48.445 and 447 doesn’t support the EPA directive of using “Best Professional Judgment” based on known risks to wetland plant communities, and BPJ of wetland experts. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology only allows herbicide use in identified wetlands (as defined in the permit) for safe navigation or recreation. Ecology does not regulate other aquatic plant control activities and therefore has no authority to require their use.

**46. Comment:** *Special Categories*

*The draft General Permit makes special detailed allowances for certain category of lake conditions. (Permit Coverage S1a , Discharge limits S3e, for example)*

*a) noxious weed infestations - chemical applications have no littoral zone limitations – or 100% coverage (draft permit pg. 6, 7)*

*b) impaired water bodies - have numerous requirements for water testing and other requirements such as removal of decaying plants which add to oxygen depletion, etc. (draft permit pg. 13)*

*I believe a new category for exceptionally clean clear lakes with native plants, no, or few, noxious weeds and wetlands, need to also be a unique category given special consideration in this permit, as these are relatively rare in Washington State. Why is this logical?*

*1) plant removal of (nuisance) native plants is a choice, not a requirement by the noxious weed board*

*2) time is not of the essence*

*3) alternatives such as hand pulling or boat mounted cutters can and must be given priority under certain conditions such as:*

*a) existence of wetlands*

*b) presence of households using lake water for domestic usage*

*c) exceptional water clarity and water quality maintenance*

*d) coho salmon rearing*

*e) local codes precluding the usage of chemicals*

*Using guidelines for this new category of lake:*

*1) all recreational needs will still be met without the necessary usage of chemicals to do so*

*2) 'drift' or dispersion onto neighboring property and lakebeds will be avoided.*

*3) the food chain cycle will not be broken unnecessarily driving away native birds and stressing fish requirements(mortality of invertebrates, etc.)*

*4) additional habitat loss or wetland damage by drifting chemicals will be avoided*

*5) the potential bioaccumulation of chemicals will be avoided*

*6) aesthetic values will be ensured and pregnant women or sensitive children won't need to be worried about swimming for the 10 day minimum of chemical persistence. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Comment noted. Tier III water bodies can only be designated by regulation (chapter 173-201A WAC) and therefore are subject to the public process associated with rulemaking. At this time, Washington does not have any designated Tier III water bodies.

**47. Comment:** *3) Any "sponsor and permittee" reapplying for coverage under the 2006 Permit (and using the 2006 SEPA information) should be denied continuing permit coverage if any part of the original permit application and SEPA checklist is out of compliance whatsoever with any of the requirements of the permit, itself.*

*This includes*

*a) legal authority of sponsor to use the permit on said body of water,*

*b) insufficient information, or incorrect information on the SEPA document under which the permit was first granted. Sponsors and permittees may apply as "new applicants" following the new regulations and certification required.*

*4) Any "Permittee or Sponsor" reapplying for coverage 180 days before the expiration of the 2006 permit must submit the exact application requirements as a new permittee. All conditions related to DMP or SEPA information must be equally applied to all lake sponsors and permittees.*

*5) Under no condition should the Department of Ecology allow "piggy back" or spinoff*

*individual lot permits to lakefront owners whose original permit was granted based upon a permit application with insufficient information in the SEPA or whose sponsor is not a legal entity under RCW codes and holding legal authority to manage a lake.*

*6) If Ecology grants permits to individual lot owners to apply chemicals to individual lots, each individual lot owner must follow the exact procedural pathway as a “sponsor” and chemical applicator, as it concerns DMP plans or SEPA information and written notification requirements, as well as responsibility for water testing if required.*

*7) Permits given to an individual lot owner to apply chemicals to his or her waterfront area should be rigorously scrutinized for compliance. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Comments noted.

**48. Comment:** *Dispersion (Drift), Chemical Persistence and Pollutant Legalities and Wetlands*

*1) When does a pesticide become a pollutant? Ecology has addressed “drift, persistence, and dispersion” issues only a few times in the 5 documents associated with the permit. Pg 18, Fact Sheet explains : “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.” Technically speaking, any drift of chemicals beyond the targeted application site which remains in the water or settles on neighboring lake beds, and or negatively affects healthy plant growth on those lake beds is clearly a pollutant.*

*“Permits must incorporate requirements to implement reasonable prevention 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. “(Pg. 18, Fact Sheet) On Pg 7, (Draft permit) it is stated, “minimal impact on non target plants is acceptable”. I believe impact to non target plants is covered under the definition of a Pollutant....unintended impact, and residue persisting outside of targeted area. A chemical applicator is supposed to understand dispersion, and seems required to control it.*

*2) FIFRA, EPA and the Washington State Department of Agriculture requires chemical applicators “demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides”. This would include knowledge of:*

- a) expected dispersion – (drift from targeted areas)*
- b) dissipation and persistence rates of chemicals in water*
- c) comprehending label instructions as to maximum gallons per surface acre per depth allowed*
- d) expected movement of chemicals within a cove or unusual water body characteristic*

3) Kathy Hamel, ECY is author/coordinator of the draft 2011 Permit for aquatic chemical coverage, and also co-author of the following publication: Parsons, Jenifer K.; Hamel, K. S.; Wierenga, R.; *J. Aquat. Plant Manage* 45: 2007 “The Impact of Diquat on Macrophytes and Water Quality in Battle Ground Lake, Washington.

*Although Ms. Hamel is not a licensed chemical applicator she has shown knowledge of the persistence beyond label rates of diquat in water (mentioned in the above study) as well as the “expected drift” or “dispersion” throughout an entire cove (Haven Lake, 2008), although aquatic chemicals were only directly applied to a portion of the cove area.*

*One example of BPJ (best professional judgment) being used in the 2011 draft permit, is the new restrictions for potable water usage from 3 to at least 10 days following diquat and other specific types of chemicals. While that addresses health concerns regarding measured persistence, it does nothing to address the sensitivity of the environment and aquatic animals found in the Haven Lake cove, a rare lacustrine wetland. ((NWI Lake Wooten Quadrangle – LIUBH)*

*Chemical applications to Lacustrine wetlands can potentially kill all of the emergent vegetation. CARO regulations define buffer requirements, and Ecology is obligated to weigh all the above information using BPJ . Pg 14, (General Permit) should clarify BPJ may preclude the usage of chemicals in wetland areas. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Lacustrine or lake-associated wetlands extend from the shoreward boundary of the water body to a depth of 6.6 feet below low water or to the maximum extent of non-persistent emergents, if these grow deeper than 6.6 feet. Lacustrine wetland is another name for the aquatic plants associated with lakebeds (littoral zone). These kinds of wetlands are not rare in Washington. In its Fact Sheet Ecology acknowledges that this permit allows the chemical treatment of lacustrine wetlands (littoral zone).

The Water Quality Standards allow for the protection of the beneficial uses of swimming, boating, navigation, fishing, and aesthetics as well as habitat. The permit allows the partial removal of native aquatic vegetation in lake littoral areas using chemicals. Allowing treatment of native vegetation to protect the recreational uses of a water body as well as retaining native vegetation to protect the habitat uses of a water body is a balancing act between sometimes-conflicting needs. Through its permitting program, Ecology strives to achieve a balance with various needs and water body uses. However, Ecology would not expect to see significant impacts to emergent vegetation (emergent wetlands associated with lakes) from lake treatments unless the applicator deliberately targeted emergent vegetation for treatment.

**49. Comment:** *The impact of prolonged exposure to chemicals beyond label dispersion rates is not addressed on the manufacturer’s label (guaranteeing safety). Aquatic chemicals persisting beyond a guaranteed dissipation rate of 3 days may be sublethal to aquatic species such as*

*salmon, amphibian While not being outright mortal, the prolonged exposure of up to 10 days, in the example of diquat, (7 days beyond the 3 day guaranteed exposure listed on the manufacturer's label) could potentially impair the survival ability of salmon smolt, or "young of the year" for example. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Dissipation varies based on many environmental conditions. For diquat, Ecology determined that the three-day drinking water restriction on the Federal Insecticide, Fungicide, and Rodenticide Act of 1979 (FIFRA) label did not sufficiently protect humans drinking lake water after treatment in some Washington Lakes. Therefore, in the permit Ecology increased the time interval before people can resume drinking lake water after a diquat treatment (and for some other herbicides). These permit restrictions are now more stringent than the FIFRA label.

Some, but not all chemicals may cause sub-lethal impacts to juvenile salmon. Research shows that there is potential that diquat may interfere with juvenile olfaction. That is why Ecology imposes a salmon timing window for the use of diquat. Permittees may only apply diquat in salmon-bearing waters during windows of time when most juvenile salmon are not present in the treated waterway.

**50. Comment:** *These were concerns raised by the Skokomish Tribe habitat biologists, Confederated Tribes of the Chehalis Reservation Fish Biologists, as well as WDFW fish biologists and the Hood Canal Salmon Enhancement Group among other groups. Ecology also indicated "White Paper" findings addressing the unknown impacts of 'adjuvants' on salmon. There are also significant health concerns to humans with persistence, as well, if "sponsors" are not actually sampling the drinking water beyond the 10 day maximum waiting period now required by Ecology. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology invited Tribal habitat biologists and WDFW staff to meet with the Permittee before the 2008 treatment to discuss the Haven Lake project and to delineate aquatic vegetation that they did not want treated. The Permittee indicated to Ecology that he was willing to comply with their advice. However, neither group followed up with the invitation to meet with the Permittee to develop a treatment plan that met their needs.

WSDA requires aquatic toxicity testing for any adjuvants approved for aquatic use in Washington and only allows those adjuvants that show low aquatic toxicity. Ecology lists aquatic-approved adjuvants in the revised permit and applicators must select adjuvants from that list. However, applicators do not typically use adjuvants with diquat applications. The data reviewed by Ecology indicated that a ten-day waiting period after diquat treatment should sufficiently protect drinking water use.

**51. Comment:** *“Boating restrictions for powerboats” should be implemented in lake communities when chemical applications occur in “individual lot aquatic applications”, and /or partial lake or cove aquatic applications.*

*Kathy Hamel indicated at an Ecology workshop Oct. 4th that motorboat activity in areas of chemical applications will have an impact on dispersion (or drift) to other areas because of the action of the prop. Imposing a boating restriction which coincides with “dispersion rates” associated with drinking water, would be a logical way to contain excessive chemical movement outside of targeted areas, where it becomes a “pollutant” (pg 18 Fact Sheet). (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology does not intend to impose any boating restrictions after herbicide treatments. Kathy Hamel mentioned boating in context of posting buoys around a treatment area where posting signs on the water attracted boaters into the area to read the signs. Many boats in an area can increase dispersion of herbicides.

**52. Comment:** *100% of Haven Lake property owners have (legally binding) CCNR’s on title prohibiting interfering with the usage of the lake in any way. Only a portion of Haven Lake property owners belong to the voluntary “sponsor” organization without authority over the water body, other than individuals. This information is appropriate for a SEPA or DMP to determine type of method to control native plants, one which will not violate these protections. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology considers it the responsibility of the sponsor and residents to be aware of and comply with their own association’s covenants, conditions, and restrictions.

**53. Comment:** *“Neighbor Disputes” (Ecology’s term)*

*The Department of Ecology has adopted the stance of not wanting to become involved in “neighbor disputes”. (Oct. 4th workshop, Kathy Hamel) Ecology, must initially “rigorously evaluate”, legal qualifications of proposed “sponsors”, and “rigorously administer” logical legal matters which may arise due to the usage of aquatic chemicals which it is permitting, such as expected drift of chemicals onto private property. Ecology actually can create “neighbor disputes” by ignoring matters of legal authorization and by allowing drifting chemicals to damage private property. A permit to apply aquatic chemicals can be a permit to create disputes within a community without absolute legal certainty of authority of “sponsors”, and agreement of citizens to be affected by drifting chemicals put into lake resources by others. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** It is the sponsor’s decision to use chemicals. Ecology along with EPA and WSDA provide rules and boundaries within which the Permittee (hired by the sponsor) can legally apply an aquatic pesticide. Ecology adopts a neutral stance towards sponsors using chemicals to remove nuisance aquatic plants. Sometimes people expect Ecology to mediate when disputes about chemical use occur between property owners. Ecology does not have the staff or the legal or technical expertise to become the mediator in these disputes. Ecology believes that the sponsor is best able to handle community disputes because its members initiated the action to obtain the permit.

**54. Comment:** *Other permits – Ecology should use this opportunity to clarify in its Fact Sheet any other federal, state, or local permits required for activities under the Aquatic Plant and Algae Management General Permit. Specifically, Ecology should clarify in the Fact Sheet whether, if only activities covered by the Aquatic Plant and Algae Management General Permit will be engaged in, an applicant needs to apply for the following for a specific project:*

- *A WDFW Hydraulic Project Approval*
- *Local land use or shoreline permit*
- *Any federal permits*

*(Commenter #21- Chuck Clarke)*

**Response:** The permit clearly states that this permit does not excuse the Permittee from complying with all applicable local, state, and federal laws, rules, and ordinances (collectively referred to as laws). It is the responsibility of the Permittee not Ecology to determine whether its pesticide application project complies with any other laws. Ecology administers about 140 permit coverages and many of these coverages span a five-year period. Projects occur in different counties and cities, all with separate laws. Ecology lacks the resources to keep current with each jurisdiction’s laws, especially because these may change over the life of the permit. Since these are not Ecology’s laws, Ecology could inadvertently misinterpret a law or provide incorrect information to a Permittee, thereby incurring liability. Therefore, Ecology will not provide this type of information in its Fact Sheet or via other means to Permittees other than advising them to check with other jurisdictions before starting the project.

**55. Comment:** *The analysis of the risks and effects of the herbicides listed in this permit are based on the listed active ingredient only. We do not even know what the “other ingredients” are, let alone how they act in the environment or combined as the pesticide product. Until we start testing and analyzing the actual pesticide and all its ingredients, we do not really know what we are introducing to our environment. Testing and Environmental Impact Statements should be performed for the listed pesticides, not just one of the ingredients. (Commenter #35 - Richard Bruskrud)*

**Response:** Much of this information in this response came directly from the EPA website. EPA regulates the sale, distribution, and use of pesticides in the U.S. under the statutory framework of FIFRA 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).

Pesticide products contain both "active" and "inert" ingredients. The terms "active ingredient" and "inert ingredient" are defined by FIFRA. An active ingredient is one that prevents, destroys, repels, or mitigates a pest, or is a plant regulator, defoliant, desiccant, or nitrogen stabilizer. By law, the active ingredient must be identified by name on the pesticide product's label together with its percentage by weight.

All other ingredients in a pesticide product are called "inert ingredients." An inert ingredient means any substance (or group of similar substances) other than an active ingredient that is intentionally included in a pesticide product. Called "inerts" by the law, the name does not mean non-toxic. Pesticide products often contain more than one inert ingredient. Inert ingredients play key roles in the effectiveness of pesticides. Examples include inerts that prevent caking or foaming, extend product shelf life, or solvents that allow herbicides to penetrate plants.

Most of the data requirements and regulatory activities under FIFRA have focused on the active ingredient. There are two exceptions to this general policy; (1) A battery of acute toxicity tests on the pesticide formulation, which generally includes both active and inert ingredients, is routinely required for registration of an end-use product; (2) EPA has imposed certain labeling requirements for hazardous inert ingredients (49 FR 37980, September 26, 1984).

In order to reduce the potential for adverse effects to humans or the environment it is the policy of the EPA to encourage the use in pesticide products of the least toxic inert ingredients available and to require development of the information necessary to determine the conditions under which various chemicals may be used safely as inert ingredients in pesticide products. In line with this policy, EPA has developed procedures

for dealing with new and existing pesticide registrations containing inerts of toxicological concern.

EPA also considers data from field tests where the commercial product is used as do Ecology's risk assessments when these data are available. The commercial product includes the active ingredient along with inert ingredients.

<http://www.epa.gov/opprd001/inerts/fr52.htm>

Chemical companies consider inert ingredients to be proprietary information and they do not generally release that information to the public (EPA and WSDA know what these ingredients are). EPA is currently considering making inert ingredients public. Ecology supports this effort by EPA.

**56. Comment:** *The Permit is an extensive and detailed document with many requirements that may be met more readily by those aquatic applicators that already have experience with previous permits and have good water management knowledge. It is a concern that new applicators may experience difficulties in comprehending and implementing the action to meet the requirements. This may result in limiting newcomers to aquatic applications, and as a result of that, possibly impact our aquatic environments to their detriment in the longer term.*  
(Commenter #36 - Jill Winfield)

**Response:** Ecology acknowledges that this is a long and detailed document. However, Ecology staff are always willing to spend time with each Permittee answering questions and providing guidance to ensure that each Permittee understands and can follow the permit provisions. In addition, the Fact Sheet provides explanations and the rationale for many of the requirements in the permit. Since NPDES permitting for aquatic pesticides began in Washington, Ecology has noted the addition of several new aquatic applicators to the business.

**57. Comment:** *We encourage Ecology to identify those few lakes that have had problems with habitat loss, herbicide drift, and unauthorized applications and work with them specifically to address problems, rather than apply additional corrections and limitations to all parties.*  
(Commenter #38 - Janie Civile)

**Response:** Although Ecology made some suggestions and changes in the permit because of comments from lake residents that had concerns with permit provisions, Ecology did not incorporate any conditions into the permit that it did not agree with and support.

**58. Comment:** *This permit needs additional conditions in the permit to minimize potential impacts to newly planted native plant species required as mitigation on sites near on-site herbicide treatments. The U.S. Army Corps of Engineers (as part of its Regional General Permit 3) and other agencies issuing permits for in-water and shoreline activities sometimes require that applicants revegetate the affected shoreline areas with native upland and emergent plants as a standard mitigation measure (<http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=mainpage> RGPs; see Attachments 1 and 2). If the draft aquatic pesticide permit is approved without modification, then it is possible that entities seeking coverage under this permit may apply herbicides that harm these newly planted species since there can be spatial and temporal overlap between the planting and herbicide applications. For example, attached are two recent Corps permits where private landowners will be planting native species as mitigation. Both sites are near a public park that may also seek a 100% littoral zone aquatic plant permit that may kill the newly planted plants. (Commenter #26, Karen Walter)*

**Response:** Comment noted. The permit requires the applicator to minimize impacts on non-target species. Ecology believes that it would be very difficult for a Permittee to acquire information about these types of projects and the likelihood of a submersed plant treatment impacting this sort of project is small.

## **Section 2. Comments on Specific Sections of the Permit**

### **Summary of Permit Report Submittals**

**59. Comment:** *TABLE 1 (page 5).*

*'Pre-treatment notice' timeframe is given, no 'post treatment' timeframe is given. It can be an understanding but is not mentioned. It would be difficult to give a post-treatment report "Prior to the first week of treatment each treatment season".*

*(Commenter #1 - Tom Wimpy)*

**Response:** Ecology understands that the first Ecology pre-and post-treatment notice for the treatment season will only have information about pending treatments. After that time, Ecology will expect to see both pre-and post-treatment information on the notification form, when appropriate.

**60. Comment:** *I like the addition of the Summary of Permit Report Submittals. In the Summary, it states that the Pre-and Post-treatment Notification is due prior to the first week of treatment, but the Notification, Inspection, and Posting Requirements (S5) seem to indicate that it is due by 8am the SAME week of the application. Which is correct? (Commenter # 16 - Dawn Petek)*

**Response:** S5. is correct. Ecology corrected the Summary of Permit Report Submittals to reflect the language in S5.

## **S1. Permit Coverage**

### **Activities Covered under This Permit**

**61. Comment:** *In the Special Permit Conditions (S1), the definition of what littoral zone limitations are seem a bit obtuse until one reads through to the end of the section AND the fact sheet. Maybe adding some additional verbiage toward the top of this section might help provide clarification? (Commenter #16 - Dawn Petek)*

**Response:** Ecology agrees that this section of the permit can be confusing. Ecology added the following sentence to help clarify the meaning of littoral zone limitations. "Ecology limits direct herbicide application to a percentage of the littoral zone for most control projects to preserve native plant habitat". However, if Permittees are confused about the meaning of any permit language, contact the permit manager for clarification or look in the Fact Sheet.

**62. Comment:** *S1.A.2.a Permit Coverage- Control The draft permit language in S1.A.2.a is ambiguous and should be more precise and/or detailed. One example concerns the term 'littoral habitat'. This should be defined as a certain distance from shore, not a certain water depth, since some areas have water shallow enough to contain aquatic vegetation a quarter mile or more from shore. (Commenter #26 - Karen Walter)*

**Response:** Ecology agrees that the permit is complex because it covers both eradication and control of state-listed noxious weeds and the control of native nuisance plants in single permit. Ecology endeavored to be as clear and concise as possible in its permit language. Ecology defined the littoral zone to mean the vegetated area in a water body. In some water bodies, the littoral zone can encompass the entire geographic area. In response to this comment, Ecology changed the language for treatments on individual lots to limit the extent of the treatment from the shore.

**63. Comment:** *Another potentially confusing factor is the lake level at the time of the application. Since Lake Washington is regulated within a two foot range, care should be given to document all decisions and controls with regard to a fixed reference point and the lake elevation at the time of the decision. (Commenter #26 - Karen Walter)*

**Response:** Comment noted.

**64. Comment:** *Section S1.A.2.ii.4 - The littoral zone is currently defined as where plants can grow. Not all areas of littoral zones have plant growth. Only those areas with plant growth should be included in any percentage calculation. Otherwise a control method could result in an eradication effort. Percentage calculations should be based on "littoral zone" with vegetation.*

*I suggest that Section S1.A.2.ii. item (4) be revised as follows:*

*(4) A percentage of a water body's littoral zone with vegetation based on the littoral acres with vegetation of the water body and the size of the water body. (Commenter #35 - Richard Bruskrud)*

**Response:** Ecology defines the littoral zone in the permit as the "vegetated area" from the water body's edge to the maximum water depth where plant growth occurs. Vegetated area means that plants are growing in this area. Sometimes as lakes become nutrient enriched or the species mix changes, plants will grow in areas that formerly did not support plant growth so littoral zones may change over time. Mapping requirements under the DMP will delineate these vegetated areas.

**65. Comment:**

<i>Page</i>	<i>Heading</i>	<i>Existing Verbiage</i>	<i>Comments/Changes</i>
6	2. Control a. Aquatic plant control	<i>The goal is to maintain native aquatic vegetation for habitat while allowing partial plant removal for recreation and other beneficial uses. Permit requirements differ depending on plant growth forms and the legal status of the plant species. Minimal impact on non-target plants is acceptable to the extent needed to control the target plants</i>	<i>What are plant growth forms and what are the different requirements?</i>

*(Commenter #9 - Cathy Backland)*

**Response:** Ecology added a definition for “plant growth forms” to the permit. “Plant growth forms” refers to the growth characteristics (morphology) of aquatic plants such as emergent plants (cattails), submersed plants (milfoil), and floating-leaved plants (water lilies), etc. Ecology specifies the requirements for the growth forms in the permit. As an example of a “permit requirement”, see S1. A. 2.a.i. (2) “100 percent of any submersed (this refers to the growth form) noxious or quarantine-listed weeds (this refers to the legal status of the plants) not covered under (1) if the Permittee conducts weed control using a selective herbicide” (this is a permit requirement for submersed noxious or quarantine list weeds).

**66. Comment:** *On page 7 of the draft permit, item 4a states the following:*

*“The area where the Permittee intentionally applies chemicals must remain the same for the entire length of the permit coverage up to the maximum percentage of the littoral zone allowed for by water body size.”*

*This requirement does not meet the needs for lakes that are 100% developed with residential homes (Steilacoom Lake, Gravelly Lake, Lake Louise, Long Lake, Timber Lake, Ketchum Lake, Palmer Lake, Lake Minterwood; just to name a few). This requirement needs to be refined to allow lake water bodies that are 100% developed to change treatment areas on an as needed*

*basis or Ecology needs to establish a schedule that allows such changes to occur within the cycle of the permit. Native noxious weed problems are not isolated to specific lake areas and cannot be “instructed” to not migrate throughout a system. Problematic native weed growth occurs lake-wide. This requirement provides no safety or recreational benefit to residents that reside outside of the five year “treatment zone”. The requirement as written will establish unsafe swimming and recreational conditions directly adjacent to lake areas that may be used on a daily basis by families seeking the enjoyment of their lakefront property. The laws of Washington State provide for the safe use of lake waters for recreational purposes. This requirement appears to violate that requirement. NWAEC requests that The Department of Ecology establish some type of “floating” treatment schedule that would provide all residents of a lake the opportunity to freely utilize their lakefront in a safe fashion and still adhere to the allowable percentage of treatment permitted on a yearly or biyearly basis. (Commenter #25 - Douglas Dorling)*

**Response:** Littoral zone limitations apply to the control of native nuisance plants.

Ecology has different littoral zone requirements when noxious weeds or quarantine list weeds are involved. Ecology established littoral zone limitations for control projects to balance the needs of lake residents for safe recreation, but to allow also for the protection and establishment of native aquatic plants for food, shelter, nesting materials for fish, waterfowl, and other wildlife and other benefits to an ecosystem that aquatic plants provide. Many people do not think that Ecology should allow any chemical use for native plant management. However, aquatic herbicides and algaecides are legal, EPA-approved products so Ecology allows their use with littoral zone limitations to balance water body beneficial uses.

Chemical application is just one tool for aquatic plant management. There are other non-chemical methods available for lake groups to use to meet everybody’s needs for safe recreational areas. Highly urbanized lakes need a holistic approach that uses integrated aquatic plant management methods that incorporates non-chemical as well as chemical control methods. Using this approach should meet the needs of all lake residents, while still limiting herbicide use to a percentage of the littoral zone.

**67. Comment:** *Page 7 ii 4. The area where the Permittee intentionally applies chemicals must remain the same for the entire length of the permit. The entire length being five years, this appears to mean that the Permittee cannot apply chemicals to any other part of the water body for the length of the permit, which is five years, even if the situation arises where chemical application is required. This appears to be unreasonably restrictive over such a time period. (Commenter #36 - Jill Winfield)*

**Response:** Littoral zone limitations apply only to control projects and even for control projects, there are exceptions for state-listed noxious weeds and for quarantine-listed

plants. There are also non-chemical aquatic plant management methods available for native nuisance plant problems.

**68. Comment:** *Pg 7, ii (3) Aquatic Nuisance Plant Control: What exactly constitutes High Usage?*

*The Haven Lake Cove was defined as “high use” in the Permittee’s documents, although it is a lacustrine wetland, 5 mph speed limit, has no power boat traffic from October to April, and zero to little boat traffic in summer months except for very hot days and happy hour cruise times on weekends. The term is subjective but a “high use” label allows for 100% of eradication of plants in that area, according to permit language. Who decides and what specific criteria determine this? (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** The permit defines high use areas as “any areas that get a high level of human use. Examples include community and public boat launches, marinas, public or community swim beaches, and canals.” The sponsor and the applicant together determine the areas of the water body to treat. Under the new DMP, areas such as public or community swim beaches may have lower action thresholds that may trigger more rigorous treatment regimes. However, Ecology only allows eradication for noxious weeds or quarantine-listed weeds.

**69. Comment:** *Pg 7, ii(3), Aquatic Nuisance Plant Control:*

*Chemical applicators want to now be able to treat 100% of lakes between 50 and 500 acres over a 10 year period of two, 5 year permits – each permit being allowed up to 50% treatment. This was never allowed and should not be allowed now. Lakes need some area “set aside” which always remains chemical free in order to preserve natural flora, fauna and ecosystems. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** The permit allows treatment of 50 percent of the littoral zone (which is not the same as treatment of 50 percent of the lake, unless the lake is 100 percent littoral zone). Ecology allows Permittees to "adjust" their treatment areas when it reissues a permit (generally once each five years). Theoretically, sponsors could choose to treat one-half of the littoral zone during one permit cycle and treat the other half the next cycle. In reality, this is unlikely, because sponsors typically treat high use areas (swimming beaches, water ski lanes, etc.) and in front of water front residences. These areas tend to remain the same through the years. The other factor to consider is that plants recover rapidly from herbicide treatment. If they did not, there would be no need to continue to treat these areas (as some sponsors do each year). So even if a sponsor chose to treat the untreated littoral zone, the previously treated area would revegetate.

**70. Comment:** *SIA ii 4 a-(page 7)*

*Treated areas have to remain the same. Does this mean they cannot be reduced over the time of permit or just not expanded? (Commenter #10 - Tom Wimpy)*

**Response:** For control projects where the Permittee has treated the maximum amount of littoral zone allowed for water body size, the Permittee cannot expand the treated areas over the lifetime of the permit. The Permittee has the option of treating less area. The Permittee should only treat when the vegetation exceeds the action thresholds (as set out in the DPM).

**71. Comment:** *S.1.A ii (page 7) Nuisance weed control*

*Limits of 20 feet per lot for individual treatments mentioned in ii 1) versus what is mentioned in ii 4) What determines the individual treatments versus treating high use areas within the entire lake? I am speculating that a management plan needs to be used to determine the 'high use' areas, since the definition of high use does not include high use by residents, just community areas. Most property owners I know use their own waterfront for skiing, swimming and boating rather than community areas. As an applicator, trying to limit the size on a per lot basis is even harder than trying to follow property lines out into the water. I also hear that people need more space to swim than 20 feet. (Commenter #10 - Tom Wimpy)*

**Response:** Ecology defines high use areas as community and public areas such as public swimming beaches, marinas, and canals. Treatment for individuals around their docks is an individual treatment generally benefitting a single family.

**72. Comment:** *If individual lots need individual permits, the size limit for nuisance control amounts to MORE money for the permit than the cost of the treatment. For an example, the annual permit fee is \$417. Cost of treating 20 feet may be \$100 or less per year. Does it make sense to have the permit cost FOUR TIMES MORE than the treatment? (Commenter #10 - Tom Wimpy)*

**Response:** It is up to the sponsor to determine the cost/benefit ratio of treatment. Sponsors can use other available aquatic plant management alternatives that do not require permit coverage. Ecology sets permit fees under a rule-making process that is completely separate from the permit reissuance process. Permit fees are supposed to pay for the cost of writing the permit and administering the permit coverages. However, permit fees do not begin to cover Ecology's administrative costs for managing this and other Ecology NPDES permits.

**73. Comment:** *The distance of 10' either side of a dock or no more than 20' is not accurate enough due to obvious, known "drift or dispersion" issues.*

a) the distance of 10' either side of an 8' dock should apply to 100' lots only. Lots less than 100', such as 50' or 75' must have the exact ratio of lot size to treatment area as a 100' lot. The goal is to keep the chemical where the treatment is intended, not on the neighbor's lakebed or plants.

Example:

- 1) 100' lot allows for 10' either side of 8' dock
- 2) 75' lot allows for 7.5' either side of 8' dock
- 3) 50' lot allows for 5' either side of 8' dock
- 4) adjust ratios to reflect location of dock with respect to property lines (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)

**Response:** Other commenters complained that the requirement limiting treatment to ten feet either side of a dock is too restrictive. See the response to Comment # 74.

**74. Comment:** *Item 1) Page 7, SI.A.2.a.ii (1) SePRO Corporation Comment: By setting a fixed distance for area of application, the permit conditions do not factor in site-specific lot sizes and area of weed infestation. These limitations may result in poor efficacy due to high dilution (as a result of very small treatment areas) and /or require higher rates of herbicide necessary on a square foot or acre basis. We recommend changing the condition in SI.A.2.a.ii.as follows, "individual herbicides along a shoreline require a minimum of 50 feet or 40 percent of an individual lot shoreline, whichever is greater."* (Commenter #27- Shaun Hyde)

**Response:** Ecology changed the language to read "The Permittee may intentionally apply chemicals to: "(1) No more than 25 feet on either side of a dock or no more than an area 50 feet wide per lot for individual treatments. Treatment of the vegetated area may extend up to 25 feet beyond the end of the dock. On individual lots with no docks, treatment of the vegetated area can extend up to 50 feet from the shore".

**75. Comment:** *On page 7, ii-2. The limitation placed on treatment of 10 feet on either side of a dock for individual treatments is unrealistic. Because of dilution and movement of herbicides, treating such a small area could easily lead to no control being achieved. When this work is done it is generally to open safe swimming areas on private shorelines, not effectively removing problem vegetation can result in safety threats to swimmers such as drowning death or rapid recovery of victims to prevent drowning death. There are very few of these types of treatments going on with respect to the actual area of littoral zones on these lakes, there is no reason to restrict this activity in this way at this point.* (Commenter #15 - Terry McNabb)

**Response:** See the response to Comment # 74.

**76. Comment:** *Page 7 – ii – 1 The restriction to 10' on either side of a dock or 20' per lot is inappropriate. Dilution and movement of applied chemicals may not provide adequate control of*

*weeds, to allow for safe recreation. Private property owners should have the right to ensure safety of their shoreline. (Commenter #29 - Anna Lyon)*

**Response:** See the response to Comment # 74.

**77. Comment:** *In the DRAFT General Permit on page 7 under 2.a.ii.(1) it limits treatments to 10 feet on either side of a dock or no more than 20 feet wide per lot for individual treatments. The areas around or near a dock are high riparian usage areas and aquatic treatments should be allowed to ensure protection of public health and safety.*

*The reality and science of such aquatic applications makes the limitation placed on treatment to 10 feet on either side of a dock for an individual treatment artificial and arbitrary. Applicators must tailor the treatment to specific conditions. (Commenter #32 - James Skillen)*

**Response:** See the response to Comment # 74.

**78. Comment:** *Comment 1. Page 7,ii 2. The limitation of 10 feet either side of the dock that is placed on treatment is problematic and could lead to poor control as a result of movement and dilution. The areas at or near docks are high riparian, high usage areas and it might be argued that additional allowance for aquatic weed control is justified in such places. (Commenter #36 - Jill Winfield)*

**Response:** See the response to Comment # 74.

**79. Comment:** *S1. Permit Coverage. A.2.a.ii Aquatic Nuisance Plant Control (1). Limitation of chemical application to ten feet on either side of a dock is too restrictive. A marina must have the ability to treat all fairways between piers plus avenues of access to the marina. (Commenter #31 - David King)*

**Response:** Ecology allows 100 percent treatment in marinas.

**80. Comment:** *Item 6) Page 22, Table43. SePRO Corporation Comment: Why is there no reference to approved buffering agents (page 9, S1.A.2.c) but there is specific reference to buffer types and uses in Table 4 (Other Specific Restrictions) (Commenter # 27 - Shaun Hyde)*

**Response:** Ecology changed the language in S1.A.2.c to refer to approved buffering agents for nutrient inactivation treatments.

### **Activities that May Not Need Coverage Under this Permit**

**81. Comment:** *Page 9 C, activities that may not require coverage. This wording is problematic. An applicator might make an application that "may not" require coverage only to find out later that Ecology wanted them to have a permit and unknowingly make an illegal application or*

*discharge. This should read "activities that do not require coverage; not activities that may not require coverage. (Commenter #15 - Terry McNabb)*

**Response:** Ecology revised the language to read "Activities Excluded from Coverage Under This Permit". There are no exemptions allowed under the Federal Clean Water Act. However, Ecology considers some treatments occurring in waters of little public or environmental significance *de minimus* such as treatment in small constructed isolated water bodies or in stormwater retention and detention ponds. Ecology does not perceive significant environmental benefit from issuing coverage for these activities.

**82. Comment:** *Page 9 – C “Activities That May Not Need Coverage Under This Permit” is vague language. Activities that do require permit coverage must be stated as such to negate the possibility of an illegal application. The vague language leaves the issue open to interpretation.(Commenter #29 - Anna Lyon)*

**Response:** See the response to comment # 81.

**83. Comment:** *On page 9 under C. Activities That May Not Need Coverage Under This Permit it lists Nos. 1 through 5. The wording, “may not require coverage” is ambiguous and open to interpretation. If an applicator treats a stormwater retention pond or a farm pond multiple times in a year without a permit; and the next year, DOE tells the applicator he needs a permit to treat the same stormwater retention pond or farm pond. What event triggered the requirement for permit coverage? Applicators must have clarity and consistency in the regulatory requirements, so they can comply. (Commenter #32 - James Skillen)*

**Response:** See the response to comment # 81.

**84. Comment:** *Comment 3. Page 9 C. Activities that may not need coverage under this permit. The words 'may not' are particularly open to interpretation. Applicators need to know exactly what does not need coverage. (Commenter #36 - Jill Winfield)*

**Response:** See the response to comment # 81.

**85. Comment:** *In section 2 of this section, the constructed water body area should be expanded when there is one owner and these conditions are met. We would recommend 20 acres and we believe that is consistent with what EPA is considering. (Commenter #15 - Terry McNabb)*

**Response:** Ecology added an additional category and new language to this section. "Ecology will not require coverage under this permit for the use of chemicals on the following sites: 3. Any constructed water body ten acres or less in surface area under single

ownership with no public access and no discharge to other surface waters of the state during and for two weeks after treatment".

## **S2. Application for Coverage**

### **Who May Obtain Permit Coverage**

**86. Comment:** *Shutting Out Legal Stakeholders (DMP and SEPA Addendum pg 1) (Draft permit pg 10 B)*

*The 2011 permitting process begins with "Sponsor" and the chemical applicator (Permittee) submitting applications (including SEPA or DMP documents) privately on line. Again, this 2011 draft permit excludes every other legal stakeholder in the lake and watershed. (Commenter # 33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology does not exclude stakeholders or others from reviewing permit application documents. The applicant fills out a Notice of Intent (application) on-line. This information enters a database that allows Ecology flexibility to track applications and reporting requirements. In addition, this database communicates directly with Ecology's internet site that immediately posts applicant information to <https://fortress.wa.gov/ecy/wqapnoidisplay/>. On-line new applicant information includes water body name, county, applicant, plants proposed for treatment, pesticides proposed for use, and approximate acreage proposed for treatment. Viewers can see all pending and current permit coverages at this public site.

In addition to filling out the on-line application, the applicant must print out the application, sign it, and send it to Ecology. Ecology requires the applicant to mail or deliver public notice of the application to all potentially affected lake residences and businesses within a quarter mile along the shoreline of any proposed treatment areas. Ecology added this additional notification step to the reissued permit. The applicant also publishes the notice in a newspaper of general circulation. The public notice directs interested parties to contact Ecology's permit manager for copies of the application (this includes the DMP/SEPA Addendum). Ecology believes that this transparent permitting process is inclusive of affected parties and the public.

### **How to Apply for Coverage**

**87. Comment:** *Legal Authority Requirements*

*(Pg 59 Fact Sheet Sponsor Definitions) (Draft Permit pg 10 and 11, B 2a. and b.) 1) Legal authority of an organization to treat a water body must be evaluated by the DOE using real property law, before issuing a permit to apply aquatic chemicals.*

*One of the Department of Ecology's biggest failure's with respect to the permitting process for aquatic chemicals is the complete avoidance of any process that would adequately consider the*

*authority of an applicant to do any treatment whatsoever on a lake or other body of water. (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** Ecology has regulated aquatic herbicide treatment in lakes for 30 years. Until the Haven Lake treatment, no lake residents, sponsors, Permittees, or interested parties had ever questioned Ecology's process to determine the authority of any applicant to treat a lake or area of a lake. Once Haven Lake residents raised this issue, Ecology acted to change its permitting procedures during this permit revision process.

**88. Comment:** *There are, generally, only two ways that anyone has the right to apply chemicals to a lake for any purposes. One is by statutory grant of right.*

*The only other way for a nonpublic entity to have the right to treat is by having a recorded or case law created interest in the real property in question. If a lake is nonnavigable, then the lake bed is owned by the owners in pie slices to the middle (as an example). They have recorded interests in their ownerships; case law tells us what that means to their relationship to ownership of the lake bed and plants growing on it. Each set of circumstances is different, but the basic rules are the same: if you have the right, you can prove that you have the right. If you can't prove it, you don't have it.*

*That's it. If a lawyer on behalf of a voluntary nonprofit association with no recorded or case-law rights send you a letter saying that the association has the right to treat, he or she is just plain wrong. Voluntary groups of people cannot just call themselves an association, incorporated or not, and assert control over something they have no legal right to control.*

*Any seasoned real property lawyer will tell you that a voluntary association of people who own property near a lake does not have the right to chemically treat the lake. That would be what a Lake Management District is for.*

*The Legislature has provided for Lake Management Districts. If an applicant wants to chemically treat a lake, and cannot prove the right to treat otherwise, then the Department needs to tell the applicant to form a Lake Management District.*

*The proposed definition of what Ecology will accept as "legal association" includes lake management districts, other special purpose districts, some homeowners' associations, and "others". This is inadequate, not based on real law, and will lead to lawsuit after lawsuit or real property damage for those affected negatively by "permitted" sponsors. (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** In the 30 years that Ecology has been regulating aquatic herbicide application to lakes, there have been no lawsuits against Ecology because of treatment sponsorship

issues. Ecology does not have the regulatory authority to direct lake groups to form Lake Management Districts. It can require certification that the signatory represents a group with the authority to treat common areas of a water body. What constitutes an entity with this authority is up to the sponsor and its legal advisors.

Lake bed ownership can be difficult to determine (see [http://www.dnr.wa.gov/Publications/aqr\\_aquatic\\_land\\_boundaries.pdf](http://www.dnr.wa.gov/Publications/aqr_aquatic_land_boundaries.pdf)). Often it depends on court adjudication. According the Washington Department of Natural Resources "the navigability status and state ownership of aquatic lands are decided on a site-by-site basis, and ultimately may need to be determined by the U.S. Supreme Court".

**89. Comment:** *Lakefront property owners can show proof they own their lake beds, if the lake is non navigable. They have deeds and plat maps to prove that they do. Their applications should include a copy of the same so that the Department knows they are authorized to treat. (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** Ecology does not require proof of lakebed ownership to treat. Sponsors have three years to sign a certification statement attesting to their authority to administer a treatment. Ecology requires only this certification statement from the sponsor.

**90. Comment:** *In this draft permit, "New "sponsors will have three years to obtain legal standing. Is Ecology suggesting that in the interim, while not actually having any legal authority they will be allowed to dispense herbicides? That cannot be legal. (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** Ecology has assumed that any group or individual receiving coverage under the permit had the authority to treat. Now Ecology requires a certification statement from the group or individual to that effect. This is a new requirement and Ecology understands that it may take time for sponsors to consult with their legal advisors to determine their status, or to form an entity that meets Ecology certification requirements. Ecology allows sponsors up to three years to come into compliance with this new permit requirement.

**91. Comment:** *I am responding to the following section of the proposed permit: "Who May Obtain Permit Coverage*

*1. Pesticide applicators (WAC 16-228-1545) may apply for coverage. Applicators must be licensed in Washington State with an aquatic endorsement (WAC16-228-1545 3(t)).*

*a. Applicators must obtain separate permit coverage for each water body that they plan to treat. Each coverage requires a sponsor. However, applicators may obtain a single permit coverage for water bodies that have a surface hydraulic connection (e.g., connecting channel) and the*

*same sponsor or are part of a community where a single sponsor has legal oversight over more than one water body.*

*b. In water bodies with multiple sponsors or multiple permit coverages, applicators must obtain separate permit coverage for each location within the water body (e.g., Lake Washington).*

*2. Applicators are not required to be licensed to apply nutrient inactivation chemicals. For these projects, the discharger may apply for permit coverage. Applicators must have a sponsor for each nutrient inactivation coverage.*

*3. Any state or local government entity may apply for coverage.*

*a. Government entities may obtain a single coverage that includes multiple water bodies under its legal jurisdiction. Government entities are considered sponsors.*

*b. Government entities must keep Ecology updated with a current list of its licensed pesticide applicator(s), including license numbers and license expiration dates.”*

*As President of Save Union Bay Association (SUBA) in Seattle, I want to inform you of the complication we see with this section of the revised permit as it pertains to us and other bays/community groups in the Seattle and Bellevue area.*

*SUBA is an organization of waterfront property owners and other interested parties. SUBA has been involved in milfoil issues on Union Bay since 1975. We worked with King County on a harvesting program in the 1980's. Once the application of herbicides to treat aquatic weeds became legal in Seattle, individual lakefront property owners hired herbicide applicators to keep their docks and waterfront clear of invasive aquatic plants. However, there was no mechanism to treat the entire bay and so the milfoil problem continued to get worse. Brazilian elodea and other invasive weeds also multiplied in Union Bay. In 2008, SUBA pursued the idea of forming a lake management district. But, for various reasons, we did not get support from Seattle City Council*

*SUBA has spent this past year working with Seattle Public Utilities on a planning grant to write an IAVMP for Union Bay. We are hoping to implement our preferred strategy next year. Although the city of Seattle was not willing for us to become a “district”, they are willing to support our pursuit of improved water quality and reduction of invasive noxious weeds in UB. They indicated that, in addition to sponsoring the IAVMP Planning Grant, they would also sponsor the implementation grant. I was told that, if we could get the IAVMP approved and the permit issued from DOE, and fund the milfoil management program with non-city funds, then they (Seattle) would support us. Seattle has jurisdiction over Union Bay.*

*The language in the revised permit describes two types of entities who can apply for a permit to manage aquatic weeds throughout an entire water body. We do not qualify under either of these definitions. SUBA does not have “legal oversight” of Union Bay. We would not qualify for a permit based on that definition.*

*“State or local government may apply for coverage.” ...for “water bodies under its legal jurisdiction.” Seattle per se does not want to apply for the permit to treat Union Bay. I have no concerns that they would be willing to “sponsor” SUBA as long as SUBA’s name was on the application.*

*I would suggest that you add another category of “who may apply for coverage” to your permit revision. “Any lake organization, with the approval of the majority of lakefront property owners, sponsored by a local government with jurisdiction over that water body, may apply for coverage of a single waterbody.”*

*Please consider making this change to the revised permit so that SUBA can be assured that we can apply for a permit to treat UB. Homeowners associations from several other bays along Lake Washington have approached SUBA and are observing our progress in working with the city and the state to remove the invasive aquatic weeds in Union Bay. They are also interested in developing IAVMPs for their areas. Like us, they would not be able to apply herbicides to their bays within Seattle without a wording change to the revised permit.*

*It is an exciting time for Seattle waterfront owners and lake users. We are close to being able to take effective action against the invasive aquatic weeds that have choked Union Bay. Please enable us to continue forward in our plan to manage the weeds in UB. Please change the revised permit language so that our situation is addressed and included in the list of “who may obtain a permit.” Thank you for your consideration.(Commenter # 20 - Susan Holliday, Stephen Sulzbacher, David Dunning, Colleen McAleer)*

**Response:** Ecology does not plan to change the requirements for sponsorship in the permit. There are other options for forming entities with authority to treat common areas of a water body. For example, the formation of a special purpose district could occur under the county rather than the city. There may be other options and you will need to consult with a legal advisor.

**92. Comment:** *Sponsors as legal entities*

*I appreciate the draft general permit’s requirement that each sponsor of an application for permit coverage be or become a legal entity. (S2 A 1 a). This requirement has particular appeal because such entities are often democratic, inclusive lake associations where all members have a say in lake management decisions and share whatever costs are associated with those decisions.*

*Because individual lot treatments can still occur, (S2 B c) it seems important, however, that those applying for treatment of their own lots on a water body with multiple sponsors and permit coverages do so as individuals rather than “signing on” to treatments for which permits are being secured by neighboring legal entities. (Commenter #37 - Diana Forman)*

**Response:** Individuals must comply with the restrictions for an individual lot treatment. Entities with the authority to treat common areas of a water body are generally composed of lake residents that pool resources or assess themselves to finance treatment of common areas. These entities can include areas in front of individual residences as part of the common areas treated under the permit.

**93. Comment:** S 2 A 1 a-(page 9 & 10) *Many questions here for clarification. Sponsor and legal oversight- As defined Lake Management Districts, Special Purpose Districts, and Homeowners Association can be sponsors but really, only the DOE has legal oversight for the waters of the state. The DNR is only concerned with the bed of the lake, not the water. (Commenter #10 - Tom Wimpy)*

**Response:** Ecology has regulatory authority over substances that alter the chemical, physical, or biological characteristics of the water (i.e., herbicides, algacides, nutrient inactivation products). That is why it can issue permits that allow others to discharge to these waters.

**94. Comment:** *Section S2.B.2.a - Sponsors should not be allowed to administer treatment without legal authority. In order to expedite the permit process, sponsors in the process of forming a legal entity may be allowed to submit for coverage, but not granted coverage until the legal entity is formed. Once an entity with legal authority is formed, notification and 30 day comment and appeal periods should occur prior to allowing any treatment.*

*Chemical application without the legal authority could be considered trespass. This permit should not condone illegal trespass.*

*However, “Because forming a legal entity can be time-consuming and since Ecology does not want to burden noxious weed eradication efforts” (Fact Sheet for the Aquatic Plant and Algae Management NPDES General Permit), there could be a provision that would allow for early infestation noxious weed eradication efforts. This provision should be backed and recommended by Ecology or other governmental agency that has jurisdiction. Such provision should maintain the application, notification, comment and appeal aspects.*

*I suggest that Section S2.B.2. item a. be revised as follows:*

*a. The sponsor's signatory must certify to Ecology in the NOI that he or she has the authority to administer the treatment. The sponsor must also certify that he or she either represents an entity that has the legal authority to administer common areas of the water body or locations within the water body for the purposes of aquatic plant and algae management or that the sponsor intends to form such a legal entity. New sponsors that do not represent a legal entity may apply for ~~and get~~ coverage, but they must form a legal entity for purpose of managing aquatic plant and algae in common areas of the water body prior to obtaining coverage. No treatment can occur until the legal entity is formed. To assure that the legal entity is what was proposed in the application, a 30 day legal entity comment period will occur prior to issuance of the coverage letter, and a 30 day appeal period prior to allowing treatment, within three years from the date of the coverage letter. After that time, Ecology may terminate permit coverage application if a legal entity has not been established within three years.*

*Section S2.B.2.b -Sponsors should not be allowed to administer treatment without legal authority. Those entities with current coverage and no legal authority, may be allowed to maintain their coverage while they form a legal entity, however they should not be able to administer treatment until the legal entity is formed and after 30 day comment and appeal periods.*

*Chemical application without the legal authority could be considered trespass. This permit should not condone illegal trespass.*

*I suggest that Section S2.B.2. item b. be revised as follows:*

*b. Sponsors continuing coverage from the previous permit that do not currently represent a legal entity that has the authority to administer common areas of the water body or locations within the water body for the purposes of aquatic plant and algae management have three years from the date of permit reissuance to form a legal entity for these purposes. No treatment can occur until the legal entity is formed. To assure that the legal entity formed does have the authority to administer treatment, 30 day legal entity comment and appeal periods will occur prior to any treatment. After that time, If a legal entity is not formed within 3 years, Ecology may terminate permit coverage. (Commenter #35 - Richard Bruskrud)*

**Response:** Sponsor certification is a new Ecology regulatory requirement for groups obtaining permit coverage. For some groups forming an entity with the authority to treat common areas of the water body may be a time consuming and expensive process. Therefore, Ecology intends to allow sponsors three years to form such entities. Many of these groups have a long history of Ecology regulation for aquatic pesticide use. In the 30 years that Ecology has regulated these activities, the situation on Haven Lake is the only

instance where anyone has questioned the right of an individual or a group to apply herbicides under an Ecology permit or administrative order.

The permit does not condone or authorize trespass. S4.B.2. says, "This 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".

**95. Comment:** *S2 B (page 10 & 11) I would really like a better understanding of the intention here. For individual lots, the legal authority is not needed but the sponsor must be able to administer the treatment. What is meant by administer? This also gets back to an individual permit needed for each lot. Which, as mentioned, costs more for the permit than the treatment. (Commenter #10 - Tom Wimpy)*

**Response:** In its thirty years of processing applications for coverage, Ecology has always assumed that the sponsor had the authority to administer a treatment in the areas designated in their application for coverage. In other words, an individual homeowner had the authority to contract for a treatment in front of his or her home or a lake association had the authority to contract for treatment of common areas of the lake covered under the lake association. In the reissued permit, Ecology now requires a certification statement affirming this authority. Entities with that authority may include Lake Management Districts formed under chapter 36.61 RCW, Special Purpose Districts formed under Title 57 RCW, Homeowners Associations formed under chapter 64.38 RCW, and groups operating under the provisions of chapter 90.24 RCW. There may also be other entities with the authority to manage common areas in public or private water bodies. That is for each lake group and its legal advisor to discuss and determine.

**96. Comment:** *Homeowners associations are not governing bodies (usually voluntary in nature) and many are non-profit organizations. How do these organizations get 'legal oversight'? (Commenter #10 - Tom Wimpy)*

**Response:** It is up to homeowners associations or non-profit associations to determine whether they have oversight to administer common areas of the lake. They may need to consult with a legal advisor to determine their status.

**97. Comment:** *Lake Management Districts and voting etc. I would like some clarification on how recreational use/property owners are expected to participate in those elections when the counties run the elections and the recreational owner lives in another county? (Commenter #10 - Tom Wimpy)*

**Response:** Under RCW 36.61.080, the county or city must mail a ballot to each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed lake management district. It does not matter if the owner lives in another county or state as long as they are the owner or reputed owner of the property.

**98. Comment:** *S2. Application for Coverage B2. a/b How to Apply for Coverage Membership in the Haven Lake Property Owners Association is voluntary, not mandatory; however we communicate with all Haven Lake property owners. It is a 52 year old entity that was formally incorporated in 2009 but some property owners question the authority of the Association. So the permit requirement of the sponsor certifying to Ecology they have the authority to administer treatment could be disputed by some people. How would Ecology handle resolving any disputes of sponsor authority? (Commenter #17 - Kris Tompkins)*

**Response:** Ecology will accept the signed certification statement from the sponsor. Determining what is an entity with the authority to treat common areas of the water body and who has the authority to sign for permit coverage is between the sponsor and its legal advisors. Ecology will not mediate in any disputes between property owners or third parties about the authority of an association to sign the certification statement. Any disputes and their resolution are between the affected parties.

**99. Comment:** *B. How to Apply for Coverage Pg 10/11. How are disputes regarding Sponsor authority resolved? For example: If a well established (for over 50 yr's) incorporated voluntary Property Owners Association contacts all property owners (members & non members) within the affected community and if a majority of those responding favor treatment, would that constitute legal authority for treatment? What is the minimum requirement? (Commenter #19 - Craig Tompkins)*

**Response:** It is up to each lake group to verify that it has authority to treat common areas of the water body. The group must determine how it confirms that authority which could involve obtaining legal advice. Ecology requires a signed certification statement from the sponsor. That is Ecology's requirement from the sponsor.

**100. Comment:** *3) Under pg 11 B2a. This specifically relates to a voluntary nonprofit group currently holding permit coverage and getting in under the "wire" by the 180 day time limit before the issuance of the new permit. Sponsors continuing coverage from the previous permit have either three more years, or one more year to try to get legal somehow and after that if they can't Ecology "may" terminate coverage, but may not have to. This would then be 5 years under the 2006 coverage without legal authority over the water body, and then being granted even more years.' (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** All entities with coverage under an existing NPDES permit may reapply for coverage within 180 days of permit expiration (see WAC 173-226-220). Ecology allows

sponsors up to three years to sign its certification statement. After that time, Ecology will terminate coverage if a sponsor has not demonstrated significant progress towards signing the certification statement.

**101. Comment:** *I believe that an organization such as the above (Ecology Note: the commenter is referring to the Haven Lake Property Owners Association) should not be considered for a five year “re up” with the next permit, again without proving legal authority. It’s unclear how such a group without legal authority to use chemicals on a lake would have actually received a permit in the first place. I believe any chemical application undertaken by a group with no legal authority to treat would be an illegal act.*

*On pg 11 B2c. It is indicating that individual lot owners don’t have to show ownership of the lake bed to receive a permit to use chemicals on that lake bed. I think they definitely should be required by law to provide proof of ownership and thus authority. (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** Comment noted.

**102. Comment:** *Where multiple sponsors, there are multiple permits e.g., Lake Washington. Who determines the number of permits for a waterbody? (Commenter #10 - Tom Wimpy)*

**Response:** Ecology's permit manager determines the number of permits on a water body depending on the cumulative amount of littoral zone proposed for treatment for any control projects.

**103. Comment:** *Applying for coverage*

*It appears that applications for coverage under the general permit are granted largely on the basis of “applicability of this permit to the proposed aquatic plant or algae management activity.” (S2 B final paragraph). This makes sense, of course, as far as it goes, but I suggest that decisions regarding the granting of permits do not go far enough.*

*Specifically I am concerned that coverage permits appear to be granted without regard for whether aquatic herbicides have recently been, or are currently being, applied to adjoining or neighboring portions of the same waterbody. This is particularly worrisome in waters such as Lake Washington, Portage Bay, and the north shore of the Ship Canal where just three years ago Ecology reported 35 separate treatments with aquatic herbicides at 19 different sites: two in Portage Bay, one on the north shore of the Ship Canal, and 16 in Lake Washington. The treatments discharged 273 gallons of liquid triclopyr, diquat dibromide, and glyphosate into these waters in addition to 2,022 pounds of granular triclopyr, endothall, and fluridone, raising the question of whether multiple treatments of adjoining properties could produce unintended*

*consequences for the target areas as well as neighboring waters by compounding the total amount of active herbicide.*

*In addition all of the herbicides being introduced into the Lake Washington Ship Canal from roughly Gas Works Park east through the Montlake Cut, including all of Lake Union and Portage Bay – 11 such applications in 2007 – were made to Category 5 impaired waters defined under Section 303(d) of the Clean Water Act as “Polluted waters that require a TMDL” or pollution control plan that “establishes limits on pollutants that can be discharged to the waterbody and still allow state standards to be met.” The same could apply to parts of Lake Washington, as well, for the Section 303(d) map of the lake prepared for the 2008 Water Quality Assessment indicates that 16-22 areas on Lake Washington are also Category 5 impaired waters, depending on how one interprets the map, and in 2007 there were 24 treatments on the lake.*

*To me this raises the following question: On a large waterbody with multiple jurisdictions and large numbers of landowners, wouldn't it be prudent – even important – to determine which waters have been or are already being treated with aquatic herbicides before granting another permit for application of herbicide to an adjoining or neighboring site, particularly when the herbicides are being discharged into Category 5 impaired waters? (Commenter #37- Diana Forman)*

**Response:** Ecology has all the permit coverage information and treatment information for each water body and for each permit coverage in its permit database. When Ecology reviews new applications for coverage, the Permit Manager consults this database to determine which areas or if any areas in the water body are already being treated. On lakes with multiple permit coverages, the Permit Manager ensures that the cumulative number of littoral acres treated under multiple permits for control projects does not exceed the total amount of littoral zone allowed for treatment for each water body. Typically, multiple permit coverages only occur on very large water bodies such as Lake Washington.

If treating an impaired water body, the Permittee must not cause further permanent impairment of that water body for any listed parameter. If impaired for dissolved oxygen or phosphorus, the Permittee must choose an appropriate chemical for the targeted vegetation and adopt one or more of the mitigation measures specified in S3.E.2. and S3.E.3.

**104. Comment:** *We are concerned that the issue of competing groups and/or permits on one water body is not more clearly addressed. If a homeowner's group holds a permit for only a portion of the lake, how will Ecology handle a second permit application for the same lake? We understand that only 50% of the lake may be treated under the permit, but are concerned about*

*equity for property owners as well as preventing entire lakes from being treated by different groups and Permittees. (Commenter #38 - Janie Civile)*

**Response:** For lakes with multiple permit coverages, Ecology's permit manager will determine when the cumulative area allowed for treatment for control projects reaches the littoral zone limitation for that water body. Ecology will issue permit coverages accordingly. Multiple permit holders have not been an issue in the past. If it becomes an issue, permit coverages could operate something like water rights with senior permit holders having first rights to treat. If this becomes a problem, Ecology will address this when it reissues the permit in 2016. Note: for control projects, littoral zone limitations range from 30 to 75 percent of the littoral zone depending on lake size.

**105. Comment:** *S2 B 4 (page 11) Written notice about potable water and intakes? Is there a form for these entities or is it up to the applicator to determine the content of the written consent? Legally, this could have specific language that may or may not work. (Comment refers to municipal or community water intakes) (Commenter #10 - Tom Wimpy)*

**Response:** There are a few lakes where there are municipal or community drinking water intakes (e.g., Summit Lake, Thurston County, Lake Chelan, and Whatcom Lake). Because an herbicide treatment could affect potable water supply for a large number of people, Ecology will not issue any coverage in these lakes unless the water provider consents to the treatment. It is up the applicant or its sponsor to communicate with the water rights holder and obtain their consent in writing. Because this situation applies to few lakes, Ecology did not provide a form.

**106. Comment:** *Section S2.B.4 - A person's water supply is critical whether they are an individual, municipality or community. This is extremely important since Environmental Impact Statement mitigation recommendations for potable water intakes have not been included in this permit.*

*I suggest that Section S2.B item 4. be revised as follows:*

*4. Obtain written consent from ~~the municipality or community~~ potable water users if the treatment affects potable water use on water bodies ~~with municipal or community drinking~~ potable water intakes. (Commenter # 35 - Richard Bruskrud)*

**Response:** Ecology agrees that drinking water supply is important. It has special provisions in the permit to protect the rights of individuals drinking lake water by requiring the Permittee to provide an alternate water supply to an individual if a treatment has the potential to affect their drinking water.

**107. Comment:** *Page 11 – 7 Mailing or delivering notices to potentially affected residents can cause a huge burden on the applicant. "Residents" is vague language and it may prove an*

*onerous burden to determine exactly who is to receive notice. I suggest instead that notices be mailed or delivered to legally registered property owners that might potentially be affected by an application. I do agree that limiting the notification to those within a quarter mile of the application site is adequate notice. (Commenter # 29 - Anna Lyon)*

**Response:** This has been the standard language in Ecology aquatic herbicide permits and Administrative Orders for many years and seems to work well. Ecology does not plan to change this language.

**108. Comment:** *SEPA – The Ecology Fact Sheet for Draft Aquatic Plant and Algae Management General Permit (page 26) discusses compliance with the State Environmental Policy Act (SEPA). Cascade is its own SEPA lead agency and could adopt Ecology FEIS using the site-specific project information in the DMP as supplemental information to the programmatic FEIS. Is Ecology suggesting that only Ecology can do this? Please clarify. (Commenter #21- Chuck Clarke)*

**Response:** Cascade Water Alliance has coverage under the permit and has already satisfied the permit SEPA requirements. The Fact Sheet states that Ecology is the lead agency for the SEPA determination when the applicant is an applicator (a private entity). When the applicant is a government, that government is the SEPA lead. Some governments have asked Ecology to assume the SEPA lead for their permit coverage. In those situations and only at the other government's request, Ecology has become the SEPA lead for that government.

**109. Comment:** *Page 11, 7. This step (the commenter is referring to the notification process when an applicant first applies for coverage) is not necessary in the majority of cases and adds an expensive cost to the already very burdensome problem of financing these permit applications. There have been very limited circumstances (Haven Lake) where this has been an issue. Ecology should make this similar to the wording regarding rare and native plants if there is potential concern Ecology could require this on a case by case basis and avoid requiring those that will not experience that type of problem from having to deal with this cost. (Commenter #15 - Terry McNabb)*

**Response:** A state legislator requested that Ecology require this additional notification step during the application process. Ecology agrees with the legislator that many residents affected by a lake treatment may not see newspaper legal advertisements and thus miss their opportunity to comment on or to appeal Ecology's permit coverage decision. This notification applies only to new applicants. Most lake groups will not be subject to this requirement because they are continuing coverage from the previous permit.

**110. Comment:** *Section S2.B.7 - I am concerned about where and to whom notice will be delivered. Many waterfront properties are recreational with the owners not residing at the*

waterfront property. To assure proper notification, the notice should be delivered to the property owner at the address as listed in the county assessor's tax records.

I suggest that Section S2.B. item 7. be revised as follows:

7. Mail or deliver the public notice to all potentially affected waterfront ~~residents~~ property owners (those within one-quarter mile in each direction along the shoreline or across the water from proposed treatment areas) within one week of publishing the first newspaper notice. (Commenter #35 - Richard Bruskrud)

**Response:** Comment noted. Ecology follows state law for notification procedures for new applications for coverage. Ecology has already significantly increased the notification requirements for new applicants in the revised permit by now requiring public notice to all potentially affected waterfront residents. In addition, Ecology posts information about all new applications for coverage to its website. Ecology believes that, along with the steps that sponsors typically take to keep their constituencies informed, this should provide adequate notice to everybody.

**111. Comment:** Section S2.B. - *When the treatment is proposed on public access lakes, it is important that those that frequent the lake be informed in a timely manner of any proposed activity that could affect their use. Posting at the public access point would help inform frequent users that may not own property on the lake.*

I suggest that another item be added to Section S2.B. Item 8. should be added to the public notice requirements.

8. Where the treatment affects public access water bodies, post the public notice at the public access area prior to the second published notice. Posting of this public notice shall remain until the end of any appeal period. (Commenter #35 - Richard Bruskrud)

**Response:** Comment noted. See the response to comment # 110.

**112. Comment:** Section S2.B. - *Also it is important to assure that local codes and other requirements are met. Notifying agencies with jurisdiction, local agencies, local government agencies and political subdivisions whose public services could be changed as a result of implementation of the proposal should help.*

I suggest that another item be added to Section S2.B. Item 9. should be added to the public notice requirements.

Send the NOI (Notice of Intent), Determination and DMP (Discharge Management Plan) to all agencies with jurisdiction, affected tribes, local agencies, local government agencies and political subdivisions whose public services would be changed as a result of implementation of the proposal. (Commenter #35 - Richard Bruskrud)

**Response:** This is outside of the scope of managing permit coverages under a general permit. For the Aquatic Plant and Algae Management Permit, Ecology posts all new applications for permit coverage on its website. The Permittee also advertises the application for coverage in a newspaper of general circulation and under the reissued permit mails or delivers public notice to affected residents and business. Ecology makes the NOI and DMP available to the public on request through the public disclosure process. However, these additional notification steps are something that the sponsor may consider when applying for permit coverage.

### **How to Terminate Permit Coverage**

**113. Comment:** *Page 12, C. Ecology should for the purposes of this permit change the dates to fall for renewal of coverage. Many projects end in August and lake associations may decide they don't need to do additional work because that is when results are known. They often in those cases force the applicator to pay for coverage they don't need or use. This would easily solve this problem. (Commenter #15 - Terry McNabb)*

**Response:** Applicators may terminate their coverage at any time of year. Permit fee collection and billing processes for NPDES permits are completely separate from the permit. Permittees should address any questions or concerns about fees or the fee billing process to Ecology's Permit Fee Unit 1-800-633-6193 (press 2).

**114. Comment:** *In section S2 – there are sections on how to apply for coverage, and how to terminate coverage, but not how to renew. It might be helpful to add that to this section for clarification. The only mentions I found about continuing coverage were when the permit or fact sheet talked about the DMP. (Commenter #16 - Dawn Petek)*

**Response:** General Condition G18. Duty to Reapply - describes coverage renewal (continuation of coverage). Ecology's permit manager typically notifies all Permittees in advance of the 180-day reapplication period and instructs them how to reapply for continued coverage.

### **S3. Discharge Limits**

#### **Application Requirements**

**115. Comment:** *S3 C 1 (page 12) the direct supervision states that as "verbal and visual contact at all times. (page 43 &44)". This is extremely difficult to do if there is more than one boat involved. Going around a point or back into a cove blocks visual contact and motor noise limits or inhibits verbal contact. (Commenter #10 - Tom Wimpy)*

**Response:** The language in the permit is from RCW 17.21.020. By Washington law, direct supervision means direct on-the-job supervision and requires the certified applicator be physically present at the application site and that the person making the application be in voice and visual contact with the certified applicator at all times during

the application. Ecology interprets this to mean that if there is more than one boat involved with applying pesticides, then each boat needs to have a licensed applicator in it.

**116. Comment:** *S3 C 3 (page 12) Appropriately trained personnel. Is there special training needed for equipment calibration besides the continuing education classes? (Commenter #10 - Tom Wimpy)*

**Response:** Ecology expects a professional level of competence for aquatic pesticide applicators and their staff so they always apply chemicals at correct label rates from properly calibrated and maintained application equipment. Ecology expects each applicator to be familiar with and know the correct way to calibrate its application equipment. Ecology does not provide and is not aware of any special training opportunities in state.

### **Discharge Management Plan**

**117. Comment:** *Page 13, discharge management plans. Ecology has stated in the Economic Evaluation that this plan requirement is based on the draft EPA national permit. While Ecology is required to issue an NPDES permit that is as rigorous as the federal EPA permit, and EPA is considering a similar plan, that permit is not yet finalized. If EPA drops that requirement in their final permit, Ecology should drop this requirement from this permit. This will also cost clients money, a significant amount of money when the projects are smaller, and this should not be something people have to pay to develop if EPA doesn't require it in their final document. (Commenter #15 - Terry McNabb)*

**Response:** EPA indicated in telephone conference with the states that it did not intend to drop its Pesticide Discharge Management Plan (DMP) requirement from its final aquatic pesticide permit. Ecology believes that developing a DMP is a reasonable requirement in most situations, but it did remove the DMP requirement for small projects.

**118. Comment:** *S3. Discharge Limits. D. Discharge Management Plan. Any requirement that a sponsor prepare a Discharge Management Plan should be conditional upon inclusion of such a requirement in the EPA national permit. Complying with such a requirement will be expensive and burdensome for both sponsors and the Department and should be avoided if possible. (Commenter #31 - David King)*

**Response:** See the response to Comment # 117.

**119. Comment:** *Please consider the onerous impact of new requirements for the discharge permit. As I reviewed the document, I noticed many things that will require much more time effort and cost to citizens who will be preparing plans such as the need for a bathymetry map. I understand that in some rare instances there may be a real need for such a map to determine the appropriateness of the plan. In most cases, a simple statement of the general depths and conditions of the water body will provide sufficient information to make reasonable decisions.*

*Please do not require onerous provisions on all applicants to satisfy the needs of the most complicated plans. (Commenter #8 - Bill Neal)*

**Response:** Ecology agrees with your comment about the bathymetric map. It did not intend the inclusion of a bathymetric map in the plan to be onerous or expensive to the sponsor or applicant. Therefore, for lakes where a bathymetric map does not already exist (bathymetric maps exist for many lakes), Ecology will accept a statement of general depth of the water body. Ecology also removed the DMP requirement for small projects (see response # 127 for details).

**120. Comment:** *Continuity in coverage under current and new permits – The Ecology Publication Number 10-10-056 states: “The draft permit requires a Discharge Management Plan (DMP) for all permit coverages. Existing permittees have one year to prepare their plans. Existing plans are acceptable as long as they contain all the elements outlined in the DMP.” To ensure there is no gap in existing permits and plans, Ecology should consider automatically extending the current permits under the NPDES Permit No. WAG994000 until the new permit is issued and under the new permit after it is issued. (Commenter #21 - Chuck Clarke)*

**Response:** Ecology does not automatically extend permit coverage. If a Permittee reappplies for coverage at least 180 days prior to the expiration date of the permit (as required by General Condition 18), it remains under coverage. An expired permit and coverage under the permit continues until Ecology issues a new permit or Ecology cancels the permit. Those Permittees that reapply for coverage are covered under the reissued permit (see G18 – Duty to Reapply).

**121. Comment:** *Continuity between plans – For cost efficiencies for existing permittees who have prepared Integrated Aquatic Vegetation Management Plans (IAVMP), Ecology should consider specifying that the DMP template be satisfied by referencing, where appropriate, the provisions of an existing IAVMP.(Commenter #21 - Chuck Clarke)*

**Response:** The permit states - if a water body plan exists that is equivalent to the DMP (IAVMP's are generally equivalent to DMP's), the applicant/Permittee may submit this plan in lieu of developing a DMP. The applicant/Permittee must certify to Ecology that their equivalent plan contains all the elements included in the DMP template. Ecology suggests that the applicant/Permittee and sponsor review the information required in the DMP. If the existing IAVMP lacks information required in the DMP, the applicant/Permittee may attach missing information as an addendum to the IAVMP and certify to Ecology that the IAVMP and addendum are equivalent to the DMP. Ecology clarified this by adding additional language S3.D.

**122. Comment:** *The proposed elements of the new Discharge Management Plan (DMP) and SEPA Addendum are consistent with the Thurston LMD's Integrated Aquatic Vegetation Management Plans (IAVMPs) and SEPA checklists, but differ in organization and terminology.*

*Will we need to revise our IAVMPs to comply with the DMP format? One component of the DMP addresses Equipment Calibration and Maintenance, which is the responsibility of contracted aquatic herbicide applicators hires by the County. What is Ecology's suggestion for addressing this element? (Commenter #38 - Janie Civile)*

**Response:** Thurston County does not need to revise its IAVMPs to comply with DMP format. Thurston County need only certify that its IAVMPs include all elements of the DMP. Thurston County should have its contracted applicator complete the Equipment Calibration and Maintenance element of the DMP and the County should append it to the IAVMP.

**123. Comment:** *The template for the DMP is great – it might be nice to mention that the template is available in the permit in the sections that reference it. If I hadn't gotten the permit from the website, I might not have known it existed. (Commenter #16 - Dawn Petek)*

**Response:** Ecology added an internet link to the templates in the permit.

**124. Comment:** *At the public comment meeting in Spokane, it was discussed that the Discharge Management Plan may not be completely applicable when the size of the treatment is quite small, like the Lake Spokane Canal (3.2 acres). Would it be possible to have threshold or size limit to when the plan needs to be completed or have an abbreviated plan for small areas? Another example that may come up would be individual lot treatments or localized residential treatments on a large lake. (Commenter #10 - Tom Wimpy)*

**Response:** Ecology agrees that a size limit is appropriate and will exempt treatments under five acres from needing to develop a DMP. In those situations, new applicants will need to complete a SEPA checklist for the project.

**125. Comment:** *The Discharge Management Plan template of the Draft Aquatic Plant and Algae Management Permit appears to be targeted specifically to lake-specific treatments. WSDOT has statewide responsibility to maintain roadsides. As such, the template does not seem appropriate for our activities and a statewide approach. Instead, WSDOT would like to respectfully submit the WSDOT "Roadside Vegetation Management Final Environmental Impact Statement", 1993, and the 2003-2005 Supplement to the FEIS, for consideration as an alternative to the Discharge Management Plan. (Commenter #18 - Steve Yach)*

**Response:** Ecology agrees with the Washington State Department of Transportation (WSDOT) that the Discharge Management Plan specifically targets site-specific lake treatments and as such is not appropriate for a statewide roadside vegetation management program. Therefore, Ecology will not require the preparation of a DMP for ditch bank and roadside maintenance activities. If WSDOT should conduct a lake treatment, it would need to prepare a site-specific DMP for that lake. Ecology appreciates that WSDOT has a

“Roadside Vegetation Management Final Environmental Impact Statement”, 1993, and a 2003-2005 Supplement to the FEIS, and would like a copy for our files.

**126. Comment:** *A few additional comments on the discharge management plan: Basically, this is a very costly addition to the permit. I see that it is necessary though. Is the DOE going to help with the costs or the plant surveys, bathymetry and education requirements that are needed to complete the DMP? How does one get the governing agencies to participate in this process? Which government agencies need to be involved? It also brings back the question of sponsors and the legal authority to oversee or administer. (Commenter #10 - Tom Wimpy)*

**Response:** Ecology developed a DMP template that is a fill-in form. Ecology also provides web links to pertinent information that will help applicants/Permittees and sponsors acquire the information to prepare their DMP. This should help limit costs for the plan. Ecology does not have any way of helping with these costs, except that integrated aquatic vegetation management plans prepared under the Aquatic Weeds Grant Program or other previous permits should satisfy most of the elements of a DMP. Governing agencies do not necessarily have to be part of the process if the preparer can obtain the necessary site-specific information from agency websites. Otherwise, ask the agencies if, or how they want become involved with the DMP process. Who should be involved will depend on each water body and the local jurisdiction. However, Ecology considers it good policy to ask Tribes and local governments to participate in and review the DMP.

**127. Comment:** *Ecology should consider the economic impact of developing the required discharge plans. There are many things present, such as need for bathymetry map, that may cause excessive costs and make smaller projects unfeasible. These plans are a new cost we will have to bear and will impact our ability to manage noxious or nuisance weed and algae growth. (Commenter #3 - Jon Roskill, Commenter #5 - Wayne Gruen, Commenter #7 - Michael J. Holmes)*

**Response:** Because of public feedback, Ecology reconsidered the way that it will implement the requirement for DMP's under the reissued permit. Applicants and sponsors for projects less than five acres do not need to develop a DMP. However, new applicants will need to fill out and submit a SEPA checklist with their NOI.

DMP's as originally proposed served two functions (1) as a planning document and (2) as a State Environmental Policy Act (SEPA) addendum. The SEPA function is not applicable to continuing coverages that have already satisfied their SEPA requirements. Therefore, Ecology will have separate DMP or DMP/SEPA addendum templates as outlined below:

### **DMP Template for Permittees with Continuing Coverage (Treatments Five or More Acres)**

This template applies to Permittees continuing their coverage under the reissued permit where the treatment is five or more acres for the water body. Permittees holding coverage for ditch bank or roadside treatment do not need to complete a DMP. Permittees with a DMP requirement may submit an equivalent plan to Ecology in lieu of the DMP as long as they certify that the plan includes all the elements in the DMP template. They may append additional information to existing plans to satisfy DMP requirements.

### **New Applicant DMP/SEPA addendum Template (Treatments Five Acres or more)**

This template applies to new permit applicants where the treatment area is over five acres.

**128. Comment:** *The cost of obtaining a Permit and developing a Discharge Management Plan may be restrictive for stakeholders in lakes and particularly for new lakes, resulting in a gradual decline in lake and pond management practices. (Commenter #36 - Jill Winfield)*

**Response:** Ecology is following the example set by the draft EPA general permit. Based on public input, Ecology adopted a threshold approach to the development of DMPs so that Permittees holding coverage for small acreage treatments will not have to develop a DMP.

**129. Comment:** *The new Discharge Management Plan. I applaud Ecology's requirement that prospective sponsors and applicators complete a Discharge Management Plan for all permit coverages. (S2 B 3) When properly used, this instructive document provides an introduction to integrated pest management principles for first-time sponsors. Its serious preparation by applicators working in concert with sponsors can also spur meaningful conversation and produce a relationship focused on sound and environmentally responsible decisions about weed management. As it stands, however, without evaluation and response from Ecology, the DMP requirement may be only an admirable but empty step toward meaningful decision making and stewardship.*

*The DMP process could be greatly improved if Ecology actually reviewed each DMP and engaged in dialog with sponsors and applicators. Further, if sponsors were primarily responsible for the preparation of the DMP, rather than applicators, the language of the plan could avoid boilerplate justifications and reflect thoughtful weighing of all non-chemical means of control before turning to chemicals. With implementation of sponsor authorship and departmental review, this new requirement could move from being merely an exercise to becoming a meaningful part of every application for coverage. (Commenter #37 - Diana Forman)*

**Response:** Ecology will review each DMP/SEPA addendum submitted by new applicants for coverage. As part of this review, Ecology may ask the applicant for additional

information or for clarification of the submitted information. However, Ecology does not have the resources to review and engage in dialogue with the sponsor and the applicator about the DMP. Nor does Ecology have limnologists that could provide technical review and oversight to the DMP. DMPs are available through public disclosure so third parties have the opportunity to read and review these documents. The permit language requires that the applicant/Permittee and the sponsor develop the DMP jointly so the sponsor must be involved with DMP development.

**130. Comment:** *The following are comments regarding the DMP: The purpose, I believe, of the DMP is to help the Sponsor determine the best approach to protect the water body and the surrounding environment while enhancing pleasurable human activity and water enjoyment when choosing chemical use. I am not sure if a chemical applicator is the proper person to help the Sponsor develop the DMP unless the chemical applicator holds the proper credentials to determine or diagnosis such issues as wetlands, threaten species, aquatic plants etc. What can be done to ensure that the DMP is developed with someone holding the proper credentials such as a Limnologist, Wetland specialist or qualified aquatic specialist?*

*Also, I am not sure that the understanding or connection is being made clear that the DMP is for the Sponsor's benefit! The DMP is to help the Sponsor make good, long term decisions along with understanding the long term consequences of chemical use. Is it possible to add a paragraph at the beginning of the DMP to explain why DMPs are important for the Sponsor's benefit? And include somewhere about the possible long term consequences of chemical use and how to monitor post treatment outcomes?*

*If a Sponsor is taking on the responsibility of using chemicals, then the Sponsor needs to understand enough lake ecology to know what is happening. Can reading requirements be added such as reading the IAMAP manual and the Washington Lakes pamphlet or other literature deemed necessary for better understanding?*

*I also believe that the Sponsor needs to be the pro-active, "in charge" partner in developing the DMP since the Sponsor is ultimately responsible for the end result and have to live with the consequences. Taking full responsibility will also help the Sponsor take ownership of the DMP. Can the questions of the DMP and the project be directed toward the Sponsor with the qualified aquatic specialist assisting? (Commenter #9 - Cathy Backland)*

**Response:** The DMP is a new requirement for the Aquatic Plant and Algae Management permit and represents a step forward in introducing the sponsor to the concept of integrated plant management. The DMP requires that the sponsor and the Permittee consider the ecology and function of the lake by answering questions about critical habitats, surveillance plans, and action thresholds. Ecology provided many links to lake information and planning manuals that sponsors may read as they work through and answer the questions in the DMP template.

It is not Ecology's role to judge contractor qualifications. Many of the Aquatic Plant Management firms (applicators) performing the treatments have staff with biology degrees and years of lake management experience. These applicators would argue that their firms are full service aquatic plant management companies and that they are qualified aquatic plant specialists as well as applicators. Nothing in the permit prevents sponsors from hiring independent consultants to help develop DMPs.

**131. Comment:** *We were informed at the workshop that the DMPs will be submitted to Ecology, but not reviewed for accuracy, completeness or appropriate management choices by Ecology. If it is true that some lakes have been over-treated or somehow mishandled in the past, how will Ecology avoid the same circumstances if permittees are allowed to merely certify that their plans are accurate without some technical and expert review at the state level? This is not to suggest that DMPs would deliberately misrepresent conditions, only that mistakes could be made in detail and analysis. Thurston County looks to Ecology as the experts in this situation and strongly urge Ecology to reinstate a technical review of each application, DMP, and SEPA document. (Commenter # 38 - Janie Civile)*

**Response:** Ecology staff initially misspoke at the workshop when the presenter said that Ecology would not review DMPs. For new applicants with projects where the treated area is five or more acres, the DMP is also the SEPA addendum. Ecology's permit manager will review all application materials including the DMP before issuing coverage. Permittees continuing their coverage have satisfied their SEPA requirements and are already operating under the permit. Ecology does not have the resources to review and approve DMPs from Permittees continuing their coverages.

Ecology developed DMP requirements and provides guidance and links to information sources in the DMP templates. Ecology will maintain copies of the DMP at its headquarters office and will make DMPs available on request to Ecology inspectors. All DMPs are available for review through public disclosure. Ecology handles DMPs more rigorously than it handles its Stormwater Pollution Prevention Plans (SWPPP) prepared by the Permittee under Ecology's Stormwater Construction General NPDES Permit. In that permit, Permittees do not submit the SWPPPs to Ecology unless specifically requested, but SWPPPs are available to the public through public disclosure.

Ecology has regional inspectors to ensure compliance with permit conditions. Although Ecology does not have the staff to inspect every treatment, it inspects a subset of treatments each year to ensure permit compliance. WSDA also inspects a subset of aquatic applications each year to ensure compliance with its pesticide laws and the FIFRA label.

**132. Comment:** *I am very concerned that the Discharge Management Plan will not be revised and coverage will not be based on Best Professional Judgment or Best Management Practices.*

*This concern is based on a comment by Kathy Hamel at the October 4<sup>th</sup> hearing “Ecology will put the DMP in the file without review.” The DMP requires the applicant to “evaluate all applicable aquatic plant and algae management methods before selecting the method or methods best suited to their situation.” (Fact Sheet for the Aquatic Plant and Algae Management NPDES General Permit). Additionally, “Every coverage issued under the permit undergoes further SEPA review. Before issuing coverage, Ecology reviews the information in the permit coverage application and the DMP. The DMP identifies specific information about the project and site conditions including information about threatened and endangered plants and animals, water usage, and sensitive habitats. The DMP also functions as a SEPA addendum.” (Fact Sheet for the Aquatic Plant and Algae Management NPDES General Permit).*

*Ecology should review and comment on the DMP, consider public comments, then approve, approve with conditions or deny coverage. This decision should be based on Best Management Practices, Best Professional Judgment and Integrated Pest Management. This should be completed within a set period of time. At which time ecology shall issue their determination and the 30 day appeal period begins. Should coverage be granted, treatment should not begin before the end of the appeal period.*

*I suggest that Section S2.B item (final paragraph not identified, page 11) be revised as follows:*

*At the end of the required 30-day public comment period, Ecology will consider comments about the applicability of this permit to the proposed aquatic plant or algae management activity before ~~deciding to issue permit coverage~~ issuing a decision on permit coverage. ~~If the applicant does not receive notification of a coverage decision from Ecology, coverage under this permit will begin automatically on the 61st day following Ecology’s acceptance of a completed NOI.~~ Ecology will issue this determination within 30 days. A 30 day appeal period will begin after Ecology’s determination. If coverage is granted, treatment may begin after the appeal period or after any appeal has been resolved, whichever is later. (Commenter #35 - Richard Bruskrud)*

**Response:** See the comment # 131 above pertaining to Ecology review of DMP’s for new applicants. Ecology will change the wording in the first sentence to “At the end of the required 30-day public comment period, Ecology will consider comments about the applicability of this permit to the proposed aquatic plant or algae management activity before issuing a decision on permit coverage.” The language in the second sentence is from WAC 173-226-200.

**133. Comment:** *The commercial applicator and client are the sole entities directed by Ecology to fill out and submit every scientific, legal, environmental, judgmental question concerning treatment areas, on the DMP or SEPA, minus review or fact checking by stakeholders, many of whom are scientists or county authorities on law. Why does Ecology assume a “sponsor” and “chemical applicator” (Permittee) will know all of the correct answers to these important questions? Existing examples of application documents with significant concerns for accuracy,*

*(such as the one for Haven Lake), indicate absolutely not. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** The applicator and sponsor are the entities with which Ecology has a regulatory relationship under this permit. Ecology does not assume that these entities know all the answers when developing a DMP. Ecology provides a list of contacts and websites in the DMP template where the sponsor and applicant can research the information for that water body. Information sources may also include directly contacting and communicating with state and local agencies and water body residents to acquire the information required in the DMP.

**134. Comment:** *Ecology's responsibility to all citizens and to the legislature is to make sure that SEPA or DMP is absolutely accurate in every way, in order to determine mitigation for that specific lake and population of citizens.*

*How can the Department of Ecology, an agency with close to 1000 employees, many of whom have high level degrees in science, lake and water chemistry expertise, soil and environmental expertise, stand by and not use that collective knowledge to determine appropriate management of aquatic plants in Washington lakes? Does the DOE really think a chemical applicator, and any property owner 'sponsor' are qualified to answer environmental questions, related to wetlands, soil chemistry, legal questions concerning governing state and county laws for shorelines, wetlands, lakes, etc?.*

*Questions in a DMP or a SEPA must be examined by experts, and many experts are found right there at the Department of Ecology. The legislature did direct the Department of Ecology to oversee permitting and review, and perhaps Ecology should not leave the entire process to just one department.... "Water Quality". (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology does not have funding for other employees to read, review, and oversee DMP accuracy. This policy is consistent with the way that it handles other planning documents required in its other general NPDES permits. Ecology requires that both the applicant/Permittee and the sponsor certify that the information is to the best of their knowledge and belief, true, accurate, and complete. In its DMP template, Ecology provides links to credible on-line information sources so that the sponsor and applicant/Permittee can assess and compile accurate information for the water body.

**135. Comment:** *S3.DISCHARGE LIMITS Pg 13....A Discharge Management Plan will now be required for both new & renewed NPDES Permits. A portion (para VI) of the proposed DMP template requires Applicator and Sponsor to develop "action thresholds" (i.e. density etc) that determine types of treatment to be applied but provides no guidance as how to develop them or minimum/maximum standards to be applied. It seems that the Permittee and Sponsor are being set up for failure. (Commenter #19 - Craig Tompkins)*

**Response:** Ecology revised the DMP template to reference applicable websites or resources along with the associated question. This should help both the sponsor and the Permittee find relevant water body or other information. For action thresholds, Ecology references an EPA website that discusses integrated pest management principles. It also references its planning manual - *A Citizen's Guide for Developing Integrated Aquatic Vegetation Management Plans*. It is not Ecology's intent to set up anybody for failure, rather to provide for a thoughtful decision making process to determine when it is appropriate to chemically treat a water body or area within a water body.

**136. Comment:** *DMP or SEPA Accuracy; Rollover Reapply Issues; Piggyback Individual Lot Permits DMP information and SEPA checklists (if used in lieu of actual DMP) should be open for examination by all stakeholders of a waterbody at any time (online at Ecology's website when one clicks on the lake). (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Information about pending and existing coverages is always available on-line at any time, but it is not possible to display all of the application materials through the website. However, the public can review all application documents including the DMP through the public disclosure process.

**137. Comment:** *Is Ecology willing to "rigorously evaluate" DMPs submitted as intended by RCW 90.48.447? I don't think so based on comments Oct. 4th at a workshop by Kathy Hamel ECY. It was suggested only new applicants for 2011 permit coverage would have the DMP documents checked by Jon Jennings. Existing "permittees" reapplying or 'rolling over" coverage would need to update SEPA to match the DMP information but these would "just be put into a drawer".*

*It is my opinion that this draft permit, if administered by the Department of Ecology in such a fashion, will continue to put the chemical applicator in the control seat for the health of all Washington State lakes. I do not believe this was the intent of the legislation, and I do not believe any lake organization should get a "free pass". (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** The licensed commercial applicator is not in the "control seat". The applicator works only at the request of a sponsor that in most cases represents a lake group or association. The sponsor finances the chemical control of aquatic vegetation. The sponsor generally lives on, recreates on, and has an interest in preserving the integrity of the water body if only to maintain property values. As such, it is in the sponsor's best interest to ensure a healthy water body.

**138. Comment:** *My suggestions are:*

1) *Every existing permit coverage for every lake starting April 1, 2011 is bound by the new EPA requirements and existing DMP and SEPA checklist information undergoes “rigorous evaluation” as expected by the Legislature, by local county governments, by State organizations such as WDFW, the Puget Sound Partnership, and by the citizens of Washington State, and as required by EPA shortly (pg 11, fact sheet).*

2) *All information required in DMP or SEPA type of documents is farmed out to the respective departments within the Department of Ecology. Example:*

*a) replies to wetland questions are referred to the wetland experts within the department, as these experts have written many of the standards for delineation. These are the people to accurately determine wetland information for each waterbody.*

*b) replies to plant density, plant surveys, plant distribution would be checked by lake specialists such as Jenifer Parsons, Tricia Shoblom.*

3) *All legal information pertaining to shoreline codes, county and local laws and restrictions should be passed over to the appropriate agency at the local county. (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** This type of oversight is not appropriate for coverages under a general permit. Ecology does not have the funding or the staff resources to carry out this evaluation, which is why it chose a general permit approach for the Aquatic Plant and Algae Management Permit rather than issuing individual permits. The public and other agencies have opportunity to comment on the general permit during the permit development process and can further comment on Ecology’s site-specific coverage decisions. It is not Ecology's responsibility to research shoreline codes, county and local laws, and restrictions. Note: The draft EPA general permit is far less stringent than Ecology's general permit.

**139. Comment:** *The new required updates to the DMP, such as plant surveys, change of chemicals, etc. should be immediately sent to Ecology and added to the original on file. Only an updated DMP will fulfill the legal requirement that a “current” DMP is a public document and has to be available to the public, and if it is sitting in the chemical applicator’s office it is not available to the public. (“general permit” S.8) (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology adopted the language used by EPA for updated DMPs in its draft general permit. Ecology requires the Permittee to make its DMP available on request. Ecology can then forward the DMP to the public. Therefore, the DMP is available to both Ecology and the public through the public disclosure process. This is consistent with the way that Ecology manages planning documents in other NPDES permits.

**140. Comment:** *I have reviewed the draft permit and would like to call your attention to the apparent lack of a habitat / invasive pre-application survey of species distribution in the water body in question. Simply put, there should be a requirement to map and quantify the distribution and abundance of the invasive species (not just a treatment map) as a part of the application for the permit. Further, treatment follow-up monitoring can be achieved using the same methods. Examples for this type of assessment can be found several places (see below), and is outlined (for SAV) in the attached document. Similar survey, quantification, and assessment can be accomplished for algae, fish, and other aquatic species (see BioSonics Capabilities, attached). (Commenter # 11 - Bob McClure)*

**Response:** Comment noted. Section V. of the DMP template requires the applicant/Permittee to attach a map that includes the approximate location and species of the aquatic plants in the water body and the proposed management areas. The applicant/Permittee must also describe its surveillance plan for evaluating the treatment management areas to determine when treatment or re-treatment is appropriate.

**141. Comment:** *In the past Ecology staff have denied submitted plans as a means of halting treatment programs. As long as submitted plans meet the criteria listed in your document there should be no additional need to require re-submittal. (Commenter #3 – Jon Roskill; Commenter #5 - Wayne Gruen; Commenter #7 - Michael J. Holmes)*

**Response:** Ecology does not approve or deny submitted plans so long as both the applicant/Permittee and the sponsor certify that the information in the DMP is, to the best of their knowledge and belief, true, accurate, and complete. However, Ecology staff will review the information in the DMP for new applications for coverage. The DMP is a site-specific SEPA addendum to the NOI. If deficient, Ecology will ask the applicant for additional information, corrections, or clarification.

**142. Comment:** *It is our understanding that as long as the submitted plan meets the criteria listed in the Department's documentation there should be no need to apply for re-submittal. (Commenter #8 - Bill Neal)*

**Response:** That is correct so long as the sponsor and applicant/Permittee certify the plan. However, Ecology may ask for additional information, corrections, or clarification to the SEPA addendum, if warranted.

**143. Comment:**

<i>Page</i>	<i>Heading</i>	<i>Existing Verbiage</i>	<i>Comments/Changes</i>
13	D. Discharge Management Plan	3. After the effective date of this permit, the Permittee must keep the DMP updated. The Permittee must keep an updated copy of the DMP at its business office and make it available upon request to Ecology.	What is required for a DMP to be updated?

*(Commenter #9 - Cathy Backland)*

**Response:** Ecology expects the Permittee (and sponsor) to update their DMP any time they make significant changes to their project, For example, amending the permit to add new chemicals could trigger the need to update the DMP or finding a new invasive plant could mean more acreage being treated.

**144. Comment:** *The Discharge Management Plan looks like an abbreviated IAVMP. Experience tells me the action thresholds are probably going to be "when plants are growing". No one wants to wait for plants to be a certain size before treating. (Commenter #10 - Tom Wimpy)*

**Response:** The DMP incorporates the principles of integrated pest management. An action threshold is a level (e.g., density, species, etc.) of plant population that when reached triggers a control action. The sponsor and Permittee determine the appropriate action thresholds for each area of the lake or for specific species of plants in the DMP. Action thresholds may vary depending on use patterns in different areas of the lake and the presence of noxious weeds.

**145. Comment:** *S3 D (page 13)*

*After looking over the Discharge Management Plan, it looks a lot like an IAVMP. How does one get the sponsor to spend the time to develop one? (Commenter #10 - Tom Wimpy)*

**Response:** Ecology expects the applicant/Permittee and the sponsor to develop the DMP cooperatively. The logistics of accomplishing DMP development are between the two parties, but both need to sign and certify the DMP. The DMP is a permit requirement and not submitting a timely DMP would be grounds for permit revocation. If the sponsor no longer plans to use chemicals or if they treat an area under five acres, they will not need to develop a DMP.

**146. Comment:** *Some of the specifics on the DMP include a list of water rights and water users. How is one to find this information? Experience shows that many of the records here are not accurate or up to date. (Commenter #10 - Tom Wimpy)*

**Response:** Ecology provides a list of web links and contacts for information required in the DMP. One way to find water users is to ask the sponsor to query their constituency to determine who is drinking the water and who has water rights and claims for irrigation or stock watering. This is one reason why Ecology requires that both the sponsor and the applicant/Permittee develop the DMP. The sponsor often has the most pertinent and up to date information about the water body.

**147. Comment:** *Section S3.D.1.d - The DMP, as part of the application, should be available to the public on request without the regard to who the permittee is or who is requesting this information.*

*I suggest that Section S3.D.1. item d. be revised as follows:*

*d. ~~Government~~ Permittees must make their DMPs available ~~to the water body residents~~ on request. (Commenter #35 - Richard Bruskrud)*

**Response:** There are two categories of Permittees under this revised permit: the commercial applicator applying for coverage at the request of a client (sponsor) and a state or local government entity. State and local governments do not necessarily have sponsors. Applicators must develop their DMP jointly with their sponsors. Ecology assumes that the constituencies of the sponsors will be involved with DMP development. Ecology does not require government entities to have lake sponsors, but governments must make their DMP available to water body residents on request. Ecology also advises government agencies to develop any DMPs jointly with the affected water body residents as a good business practice. Under public disclosure requests, anybody may obtain any public documents from Ecology.

**148. Comment:** *Section S3.D.3 - The DMP is part of the application. This document provides basic information to base appropriate management techniques. Alterations to the DMP have the possibility of altering the appropriate pest management actions. Updated DMP's should be submitted to Ecology for review. If significant alterations have been made, notification, comment periods and appeal periods should be provided.*

*Please alter and add wording to this section to assure that the updated DMP is reviewed and, if appropriate, the permit adjusted. Should adjustment in the permit be warranted, notification and comment and appeal periods should be provided. (Commenter #35 - Richard Bruskrud)*

**Response:** Ecology requires that if a Permittee significantly alters (amends) their initial permit application, that they must provide public notice. The action of amending the permit significantly may also trigger an appeal period. Ecology does not consider that adding another chemical or another plant to the permit to be a significant change. Ecology considers that increasing the amount of treated acreage is a major change to the permit.

#### **S4. The Application of Products**

**149. Comment:** *C) Draft Permit recommendations: Pg. 18, D 4 General Application Restrictions:*

*This paragraph requiring Permittee's to follow WDFW treatment windows to protect salmon, steelhead, etc....should also contain the following sentence: WDFW reserves the right to deny chemical treatment in lakes when and if it deems necessary to protect species using BMJ and science, according to EPA regulations. Similar "hunting and fishing closures" are mandated by WDFW.*

*"WDFW and NMFS are involved in EPA processes to protect listed species and designated critical habitat by consulting with EPA, issuing Biological Opinions or other ways, as necessary" (Fact Sheet Pg. 26 Endangered and Sensitive Species) (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology and not WDFW regulates aquatic pesticide use for Washington. Ecology consults with and follows the advice of WDFW, but Ecology makes the final decision about herbicide or algaecide use.

**150. Comment:** *Timing Treatment Windows*

*Retaining the treatment timing windows created by the Washington Department of Fish and Wildlife is a vital protection for vulnerable species, and I am pleased to see that this protection has been enhanced. (S4 D 4) As a resident of Portage Bay, a Tier I area for salmon habitat restoration, I am especially aware of the need for effective timing windows to "protect salmon, steelhead, bull trout, other aquatic sensitive species, waterfowl nesting areas, and critical habitats." (Commenter #37 - Diana Forman)*

**Response:** Comment noted.

**151. Comment:** *Table 3 Specific Restrictions on the Application of Herbicides and Algaecides for Control and Eradication Projects. There are potential impacts to Muckelshoot Indian Tribal fishing activities in freshwater areas of WRIA 8 where there are several existing permittees. The proposed application timing overlaps with the time of year when the Tribe is likely to conduct its fisheries (i.e., July-December) which may result in unnecessary exposure to Tribal fishers. Additional timing restrictions will likely be needed to avoid this impact depending on the location of the herbicide application, the proposed timeframe for spraying and the Tribal fishing opportunities in that particular year. We request a coordinated effort between WDOE and MIT Fisheries Division staff to develop the appropriate permit language. (Commenter #26 - Karen Walter)*

**Response:** None of the herbicides allowed for use in the permit restrict fishing or fish consumption. Ecology determined that the measures built into the permit to protect the public from herbicide application protect tribal fishers. However, Ecology changed this section to read, “The Permittee must avoid treatments that restrict public water use during the opening week of fishing season or during tribal fisheries.”

**152. Comment:** *This permit will allow the application of herbicides and other products in surface waters that affect the Tribe’s fisheries resources. We request that the permit be modified to avoid herbicide and other chemical application to road ditches and surface water with the potential to adversely affect fish hatchery water supplies. The permit and fact sheet currently lack the appropriate consideration of herbicide applications that may adversely affect hatchery water supplies and sensitive salmon eggs and other life stages held in hatcheries that are highly vulnerable to toxic contaminants. Unlike some municipal water supplies, many hatchery facilities may not have readily available back up water sources and may be unable to shut off their intakes in response to upstream herbicide applications. Furthermore, it may not be possible to use the existing WDFW fish work windows to avoid impact to salmon hatcheries as these work windows are generally intended to protect juvenile salmon, not returning adults. (Commenter # 26, Karen Walter)*

**Response:** Ecology added a new condition to the permit (S4. B. 4.), “The Permittee must avoid treatments that adversely affect salmon or steelhead in hatcheries when applying treatments to area upstream of a hatchery water intake. Ecology will coordinate with the Permittee, the Washington State Department of Fish and Wildlife (WDFW), and affected tribes to ensure treatments proposed upstream of a hatchery intake do not adversely affect hatchery fish or hatchery operations”. Ecology also added a question to the DMP template about locations of fish hatcheries potentially affected by any chemical treatments.

**153. Comment:** *In the Ship Canal, the boundary on the east end may not be protective of the UW’s College of Ocean and Fisheries Science water intake for their salmon hatchery. Juvenile salmonids and salmonid eggs are present at this facility at least from October through May. DOE should confirm the location of the pipeline in Portage Bay before prescribing endpoints that may unduly allow herbicides into the hatchery’s water supply. DOE should speak to staff at the UW Hatchery (phone: (206) 543-4267). To a lesser extent, the Seward Park Hatchery in Lake Washington has some of the same issues. (Commenter # 26 - Karen Walter)*

**Response:** See the response to comment # 152.

**154. Comment:** *If the herbicides in Table 2 pose risk to adult salmonids, then these work windows are inadequate. Since fish timing windows developed by WDFW are for juvenile salmonids and not for the protection of adult salmonids, WDOE must provide an analysis on the*

*cumulative impacts that may occur on adult salmonids, which could be present during herbicide treatments. These cumulative impacts may be due but limited to the following: high water temperatures, low dissolved oxygen levels (<http://dnr.metrokc.gov/wlr/waterres/lakes/union.htm>); degraded habitat from native plant die-offs; herbicide runoff from land uses; and slower chemical degradation times due to anaerobic aquatic conditions. (Commenter #26 - Karen Walter)*

**Response:** The herbicides allowed in the permit do not pose a threat to adult salmon when used according to the label and any permit conditions.

**155. Comment:** *Fish timing windows need to be applied for herbicide treatments to roadside areas and “ditches” that may discharge to surface waters where salmonids are present. (Commenter #26 - Karen Walter)*

**Response:** Monitoring after roadside and ditch bank spraying projects shows that very little herbicide actually enters the water. The chemicals used for these projects have little impact to fish (imazapyr, glyphosate, triclopyr). Imazapyr and glyphosate have no effects on submersed vegetation, even if they enter the water. Applicators must use aquatic formulations and the adjuvants listed in this permit. All adjuvants in the permit are approved for aquatic use and demonstrate low aquatic toxicity. Fish timing is not necessary or appropriate for these types of activities.

**156. Comment:** *Should salmonids be found alive or dead in the immediate vicinity of the site during the herbicide application, all activity must stop. (Commenter #26 - Karen Walter)*

**Response:** Any dead or dying fish near the treatment triggers reporting and appropriate action. Ecology has never received any reports of dead salmon associated with an herbicide treatment.

**157. Comment:** *The restrictions in Table 3 do not protect invertebrates, which provide food for salmon, from adverse impacts due to herbicide treatments. Freshwater macroinvertebrates, such as mussels and crayfish also represent shellfish resource interests of the Tribe. (Commenter #26 - Karen Walter)*

**Response:** According to Ecology’s risk assessments there should not be any direct impact to invertebrates, mussels, or crayfish through herbicide treatments. Ecology limits chemical application to native plants to a percentage of the littoral zone. This should preserve native vegetation in the lake as food and habitat for macroinvertebrates.

**158. Comment:** *Section S4.B.4 - Tables 3-5 do not contain all the recommended mitigations in the EIS for the listed chemicals. This general permit should include all recommended mitigations or allow for the discussion of these mitigations at permit coverage review, as well as any other information pertinent to permit coverage.*

*I suggest that Section S4.B. item 4. be revised as follows:*

*4. The Permittee must comply with the specific restrictions/limitations on the use of each chemical listed in Tables 3-5. These restrictions/limitations are not all inclusive. Other restrictions/limitations may be imposed based on site specific characteristics, the Environmental Impact Statements for each chemical and/or additional information for each chemical or herbicide. (Commenter #35 - Richard Bruskrud)*

**Response:** Ecology reviewed the mitigations in the EIS while revising the permit and incorporated pertinent mitigations into the tables. Except for priority species timing, Ecology cannot alter the general permit except through a major modification process.

**159. Comment:** *Section S4.B.5.h - A new chemical has been added, Imazamox. The Fact Sheet for the Aquatic Plant and Algae Management NPDES General Permit sets out a process for the approval of a new active ingredient for use under this permit. However this process was not followed for the addition of this new active ingredient. A risk assessment independent of the risk assessment performed by EPA, an Environmental Impact Statement or public notification and review have not been performed.*

*Please remove this active ingredient until it has been properly reviewed. (Commenter #35 - Richard Bruskrud)*

**Response:** Ecology does not have the resources, nor is it likely to obtain resources in the future to conduct independent written risk assessments for new chemicals. Either Ecology stays with older chemical formulations or it alters its policies about adding new and less toxic chemicals to its permits. EPA classified imazamox as a reduced risk herbicide. EPA's reduced risk criteria include: low impact on human health, low toxicity to non-target organism (birds, fish, and plants), low potential for groundwater contamination, lower use rates, low pest resistance potential and compatibility with Integrated Pest Management (information from EPA's website). These are all characteristics that Ecology desires in any chemicals approved for use in the aquatic environment. Ecology reviewed information from EPA and information prepared for New York State about Clearcast™ (trade name for an aquatic registered imazamox product) before making the decision to add imazamox to this permit.

**160. Comment:** *S4.D.1 General Application Restrictions- The permit requires permittees to avoid herbicide treatments during the opening week of fishing season, presumably the opening of the State's fishing season. Please note that the Muckelshoot Indian Tribe typically schedules its fisheries to occur on days separate from the non-tribal fishing community and as a result, these fisheries would not be protected in this permit as written. We request coordination with WDOE to address the protection of MIT fisheries in regard to herbicide treatments. (Commenter #26 - Karen Walter)*

**Response:** The opening week of fishing refers to lowland lake fisheries that start on the last weekend in April. There are often hundreds of anglers on the lakes that week. The treatment restriction during the opening week is a condition of Washington's Water Quality Standards (173-201A-410 WAC). These standards strive to avoid any public use restrictions of water bodies particularly at times that might inconvenience large numbers of people. At the time that Ecology developed these standards, at least one commonly used contact herbicide had fish consumption restrictions following its application. Applying this herbicide during opening week could potentially have caused major disruption to fishing. This is no longer the case, but the language in the Water Quality Standards has not changed. Ecology perceives no lack of protection to Tribal fisheries by not imposing additional restrictions on other weeks or weekends since there are no fish consumption restrictions or any other fishing restrictions imposed on any herbicide allowed for use under this permit.

**161. Comment:** *Valent U.S. A. Corporation is a producer and supplier of specialty pesticide products to the agricultural and professional markets, including herbicides (which include aquatic herbicides), insecticides, and fungicides. Valent U.S.A. Corporation and our customers are impacted by any changes to the Aquatic Plant and Algae Management National Pollutant Discharge Elimination System State Waste Discharge General Permit (Permit) in the state of Washington.*

*In the Draft General Permit on pages 14 though 18 under S4. The Application of Products B. Authorized Discharges, the Washington Department of Ecology provides a specific list of chemicals authorized for use in state waters.*

*We believe that this is a mistake. Including a specific list of pesticide active ingredients, adjuvants, and other chemicals approved for use in the General Permit is problematic as the General Permit would have to be revised via rulemaking to add new active ingredients, adjuvants, and other chemicals to the list.*

*NPDES General Permits are typically reviewed and revised every five years. Aquatic applicators in the state of Washington should not have to wait five years to use new chemistries, new pesticide or adjuvant products while the General Permit goes through the rulemaking process.*

*We would recommend that you remove the list from the General Permit and insert a web link to the approved list of active ingredients, adjuvants, and other chemicals approved for use in Washington State that you maintain on your website. This would allow aquatic applicators in the State of Washington faster access to new products and new chemistry because the approved list could be amended by the Department of Ecology at any time. (Commenter #23 - Julie B. Schlekau)*

**Response:** NPDES permits do not go through a formal rule-making process in Washington, but they do go through a formal public process. People may request the addition of a chemical to the permit at any time if they follow the process as set out in the Fact Sheet. At the conclusion of the process, Ecology either approves, conditions, or denies approval for the use of the new product. If approved, Ecology modifies the permit to include the new chemical. If there are compelling reasons, Ecology will modify existing general permits outside of the five-year permit cycle. For example in March 2010, Ecology modified the Irrigation System Aquatic Weed Control NPDES Permit to add endothall to the list of chemicals approved for use in irrigation canals.

**162. Comment:** *In the DRAFT General Permit on pages 14 through 18 under S4. THE APPLICATION OF PRODUCTS B. Authorized Discharges the Washington Department of Ecology provides a specific list of chemicals authorized for use in state waters. We do not support inclusion of the list. Including a specific list of pesticide active ingredients, adjuvants and other chemicals approved for use in the General Permit is problematic as the General Permit would have to be revised via rulemaking to add new active ingredients, adjuvants and other chemicals to the list. NPDES General Permits are typically reviewed and revised every five years. Aquatic applicators in the state of Washington should not have to wait five years to use new pesticides or adjuvant products while the General Permit goes through the rulemaking process. The very nature of invasive aquatic plants required applicators to have ready access to the most current pesticide technologies. A lengthy rulemaking process will severely restrict applicator's options.*

*We suggest removing the list from the General Permit and providing a web link to the approved list of active ingredients, adjuvants and other chemicals approved for use in Washington maintained on the department's Website. This would give aquatic applicators in the state faster access to new products because the approved list could be amended by the Department of Ecology at any time. (Commenter #32 - James Skillen)*

**Response:** See the response to Comment # 161.

**163. Comment:** *Page 14-18. Authorized Discharges -where a specific list of chemicals authorized for use in state waters is listed. The list creates a problem because the General Permit would have to be revised via rulemaking to add new active ingredients, adjuvants and other chemicals to the list. NPDES General Permits are typically revised and reviewed every five years and so within this potential time frame, aquatic applicators would have to wait five years to use new pesticides or adjuvants that might potentially be of benefit to aquatic control practices. Perhaps the list could be removed and a link installed to the Washington State website that has the approved list of active ingredients, adjuvants etc. (Commenter#36 - Jill Winfield)*

**Response:** See the response to Comment # 161.

**164. Comment:** *Phoslock should be added as a nutrient inactivation tool. (Commenter #3 - Jon Roskill; Commenter #5 - Wayne Gruen; Commenter #7 - Michael J. Holmes; Commenter #8 - Bill Neal)*

**Response:** Ecology is unable to add Phoslock™ at this time because it was not on the list of chemicals included in the draft permit available for public comment. Ecology cannot now add it to the permit without a major permit modification to the reissued permit. However, Permittees may apply nutrient inactivation products not listed in this permit on a limited basis in the context of a research and development effort so long as the Permittee develops a plan approved by Ecology for this activity. The plan must undergo a public review process. Permittees can use Phoslock™ for a nutrient inactivation project under this permit so long as they develop an Ecology-approved plan for this treatment.

**165. Comment:** *The Permit's treatment of nutrient inactivation is not congruent with numerous relevant provisions of the Puget Sound Partnership Action Agenda, WACs, RCWs and ESSB 5699 in several respects. These are: (1) Nutrient inactivation is a Best Management Practice for restoring the natural function and value of phosphorus polluted and malfunctioning lakes; (2) nutrient inactivation applications do not constitute acts of pollution as defined by WAC 173-201A-020; (3) the listing of alum and calcium oxide, hydroxide and carbonate as the only approved nutrient inactivation products with all other proven nutrient inactivation products considered as experimental and subject to the Experimental Use provision of the Permit is contrary to the objective of incorporating all known nutrient inactivation "Best Management Practices" into this Permit.*

*The following sections of this paper elaborate on each of these three points.*

#### *The Nature of Freshwater Toxic Algal Blooms and BMPs*

*Freshwater toxic algal blooms are the result of phosphorus polluted surface and ground water flowing into lakes (external loading) and the subsequent and recurring release of the phosphorus (internal loading) that is retained (as a result of past and continuing external loading) in lake bottom sediments. The consequence of internal and external phosphorus loading is the explosive increase in the population of cyanobacteria (blue-green algae). More often than not cyanobacteria produce potent liver and nerve toxins that, upon their ingestion or senescence, pose a serious health risk to humans, their pets and livestock, wildlife and fish. Nutrient inactivation treatments are applied to prevent the consequence of phosphorus pollution of lakes, i.e., toxic cyanobacteria blooms. As such nutrient inactivation treatments function to restore the natural function and value of phosphorus polluted (impaired) lakes. That nutrient inactivation treatments are considered acts of pollution by the DOE is an oxymoron.*

*I believe that nutrient inactivation products should not be considered pollutants, nor should nutrient inactivation treatments be considered acts of pollution, when the objective is to prevent toxic cyanobacteria blooms by restoring the natural chemistry and function of a phosphorus*

*polluted lake. The inclusion of nutrient inactivation products and their application under provisions of an NPDES permit conveys to the public the impression that these chemicals and their application will pollute "their" lake when indeed the objective is to restore its safe and beneficial use. Many in the general public equate the addition of any "chemical" to a lake as an act of pollution, when the intent of nutrient inactivation is to bring the chemistry of a lake into compliance with state surface water quality standards and thus restore the natural function and value of "their" lake. This "your lake is about to be polluted" notion is reinforced by all the public notices and signage that the NPDES Permit requires be posted in advance of a nutrient inactivation treatment. It only takes a few misinformed "environmental activists" to arouse the citizens and thereby thwart the very act that will restore the beneficial use of a phosphorus impaired lake. We need to avoid "bad press" if we are to engage in serious and effective lake restoration work. (Commenter #14 - Don Russell)*

**Response:** State law requires that anything added to a water of the state that changes the chemical, physical, or biological composition of water be covered under a discharge permit. The addition of nutrient inactivation products can help restore the natural function of a phosphorus impaired water body, but this does not exempt this action from needing permit coverage. One may argue that applying an herbicide to remove state-listed noxious weeds like Eurasian watermilfoil or hydrilla from a water body is a restoration action, but this activity still requires oversight via a permit. Nutrient inactivation products are chemicals that alter the chemical characteristics of a water body. They can be toxic if not properly applied. As such, Ecology believes that regulating their addition under a permit is appropriate.

**166. Comment:** *Available BMP Nutrient Inactivation Products*

*For over a hundred years the salts of aluminum, calcium and iron and zero-valent iron have been used successfully to remove suspended matter and soluble pollutants from domestic water supplies. It was aluminum sulfate's (alum's) use for domestic water purification purposes that gave rise to the idea that it could also be used to prevent toxic cyanobacteria blooms in lakes by inactivating the accumulated phosphorus in lake bottom sediments. DOE accepted the notion (and included alum in its NPDES permit) that such an application would inactivate the nutrient (phosphorus) that caused toxic cyanobacteria blooms without requiring proof of concept studies and experimentation. Why then is DOE's position that the application of iron salts and zero-valent iron is not a BMP for inactivating phosphorus, but rather that their application is considered experimental? There already exist numerous and exhaustive USGS reports that attest to the success of the application of zero-valent iron in inactivating the phosphorus contained in the groundwater flowing into Ashumet Pond in Massachusetts. This Pond is typical of conditions that now exist in many of the cyanobacteria infested groundwater fed lakes located in the Puget Sound Basin.*

*Funding for studies to determine the efficacy of iron salts and zero-valent iron to inactivate phosphorus are simply not available, nor I presume is DOE staff personnel or time available to review and approve plans for the application of known, proven and relatively inexpensive nutrient inactivation treatments.*

*It is my recommendation that the DOE reconsider imposing on citizens the burden of having to experimentally prove to the DOE what is already known about the efficacy of iron salts and its elemental form (zero-valent iron) to inactivate the nutrients that are the proximate cause of toxic freshwater algal blooms. This burden can be removed very simply by either removing nutrient inactivation treatments from DOE's Aquatic Plant and Algae Management NPDES Permit altogether, or, by including (based upon current knowledge and research) iron salts and zero-valent iron nutrient inactivation treatments in DOE's Aquatic Plant and Algae Management NPDES Permit.*

*I suggest that DOE borrow nutrient inactivation language, including iron, from The Practical Guide to Lake Management in Massachusetts, pages 67 through 70. It can be accessed at the following website:[http://www.mass.gov/dcr/watersupply/lakepond/downloads/practical\\_guide.pdf](http://www.mass.gov/dcr/watersupply/lakepond/downloads/practical_guide.pdf) (Commenter #14 - Don Russell)*

**Response:** The lake guide is an excellent resource for lake management. Ecology asked the opinion of a national/international expert on nutrient inactivation whether to add iron to this permit. He stated, “There are two rather significant drawbacks to Fe use as a reliable P-inactivation agent. One and most important, Fe is very sensitive to reduction/oxidation (redox) potential and either under low pH and/or low dissolved oxygen conditions the reduction of Fe+3 to Fe+2 results in loss of P binding. Given most enriched sediments have anoxic to very low DO conditions and slightly acidic pH's, this makes the utility of Fe addition for sediment P-inactivation very poor. Two, the handling and delivery of Fe requires more care because Fe forms that can be used are very aggressive chemical compounds. With that said I do endorse the potential use of Fe in combination with oxygenation or hypolimnetic aeration, where the redox condition can be regulated to avoid Fe bond P release. But then, given the O & M and handling costs there would not seem to be any advantage other than direct material cost over alum injection or micro-floc alum injection in the same setting. So why take the risk of no ecological response relative to P-inactivation? That is a site to site specific assessment based on cost and environmental conditions.”

In addition, Ecology staff with a chemistry background reviewed literature on iron addition and concluded that Ecology should not add iron to the permit at this time. However, Ecology did not want to categorically exclude the use of some of the less commonly used nutrient inactivation chemicals like iron. Permittees may apply nutrient inactivation products not listed in this permit on a limited basis in the context of a

research and development effort so long as the Permittee develops a plan approved by Ecology for this activity. The plan must undergo a public review process.

**167. Comment:** *Applicable RCWs, WACs and Puget Sound Partnership Provisions*

RCW 90.48.010 Policy enunciated

*It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state.*

*RCW 90.48's focus is on preventing the loss of natural function and value that the introduction of pollutants can have on waters of the state. Application of pesticide products (e.g. herbicides and algaecides) can have adverse impacts on water quality of lakes that are naturally functioning (albeit with excessive aquatic plant and beneficial algae population growth) and therefore their application should be governed by provisions of DOE's Aquatic Plant and Algae Management NPDES Permit. However lakes that malfunction because of excessive external or internal phosphorus loading are polluted and need to be treated to restore their natural function. Nutrient inactivation products negate the adverse impact (cyanobacteria blooms) on lakes caused by external and internal phosphorus (a pollutant) loading and therefore should not be considered as pollutants under the jurisdiction and provisions of DOE's Aquatic Plant and Algae Management NPDES Permit.*

WAC 173-201A-020 Definition of Pollution

*"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.*

*DOE places heavy emphasis on the first half of this definition as justification for including nutrient inactivation treatments as acts of pollution without regard to the latter half of this definition (underlined). Nutrient inactivation treatments are designed and applied to bring*

phosphorus impaired (303 (d) listed) lakes back into compliance with WAC 173-201A-010 which states:

- (1) *The purpose of this chapter is to establish water quality standards for surface waters of the state of Washington consistent with public health and public enjoyment of the waters and the propagation and protection of fish, shellfish, and wildlife, pursuant to the provisions of chapter 90.48 RCW. All actions must comply with this chapter.*

A complement to WAC 173-201A-010 is WAC 173-201A-300 which states:

- (1) *The antidegradation policy is guided by chapter 90.48 RCW, Water Pollution Control Act, chapter 90.54 RCW, Water Resources Act of 1971, and 40 CFR 131.12.*
- (2) *The purpose of the antidegradation policy is to:*
  - (a) *Restore and maintain the highest possible quality of the surface waters of Washington;*
- (3) *Habitat restoration. Both temporary harm and permanent loss of existing uses may be allowed by the department where determined necessary to secure greater ecological benefits through major habitat restoration projects designed to return the natural physical structure and associated uses to a water body where the structure has been altered through human action.*

*A phosphorus polluted lake can be restored by nutrient inactivation treatments so as ...to return the natural physical structure and associated uses to a water body where the structure has been altered [by phosphorus pollution] through human action.*

#### *A Legislative Mandate Regarding Toxic Algae Blooms*

*ENGROSSED SUBSTITUTE SENATE BILL 5699*

*AN ACT Relating to preventing and controlling aquatic invasive species and algae*

*The legislature finds that aquatic invasive species and freshwater aquatic algae are causing economic, environmental, and public health problems that affect the citizens and aquatic resources of our state. The legislature also finds that freshwater algae, particularly blue-green algae, are also seriously degrading the water quality and recreational value of a number of our lakes. Blue-green algae can produce toxins that inhibit recreational uses and pose a threat to humans and pets. It is therefore the intent of the legislature to clarify the roles of the different state agencies involved in these issues in order to address the threat of aquatic invasive species and the problem caused by aquatic freshwater algae, and to provide a dedicated fund source to prevent and control further impacts.*

*Funds in the aquatic invasive species prevention account must be expended as follows:*

(e) *To implement an aquatic invasive species early detection and rapid response plan.*

(2) *Funds in the freshwater aquatic algae control account may be appropriated to the department to develop a freshwater aquatic algae control program. Funds must be expended as follows:*

(a) *As grants to cities, counties, tribes, special purpose districts, and state agencies to manage excessive freshwater algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and*

(b) *To provide technical assistance to applicants and the public about aquatic algae control.*

(3) *The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of this act.*

*The Legislature is clear on the subject of freshwater toxic algal blooms. The DOE has been mandated to act to manage and control freshwater toxic algal blooms. The only way to do this is to either prevent phosphorus pollution of lakes from nonpoint sources of pollution in their watersheds in the first place or, lacking that, treat phosphorus polluted lakes to bring them back into compliance with state surface water quality standards, i.e., WAC 173-201A. It follows that a full suite of known and proven nutrient inactivation treatments should be included in the Aquatic Plant and Algae Management NPDES Permit.*

#### *Puget Sound Partnership's Advocacy in Regard to This Issue*

*More than 1000 freshwater lakes and streams are classified as "impaired" and low oxygen conditions are increasingly frequent in Puget Sound marine waters. [Page 24 of the PSP's Action Agenda]*

*PSP's five priority strategies are: Protect, Restore, Prevent water pollution at its source, Work together, Build and implementation, monitoring, and accountability management system. [Page 29-30 of PSP Action Agenda]*

*Priority D: Work effectively and efficiently together on priority actions D.4 Reform the regulatory system to protect habitat at an ecosystem scale. The regulatory system that exists in Washington is fragmented. Regulatory authority has been vested in many different agencies at the federal, state, and local level, which can lead to multiple layers of regulation and reviews, conflicting requirements, and an incoherent approach to protecting [and restoring] the entire spectrum of ecosystem process, structures, and functions. Reforming the environmental regulatory system will provide more certainty that important ecosystem-forming processes remain intact, and should result in a more efficient, predictable permitting system for consumers. [Page 64 of PSP's Action Agenda]*

*D.4.1 Align federal, state, and local agency regulatory programs in Puget Sound to improve coordination, efficiency, and effectiveness of implementation. This means identifying overlapping authority and conflicts, and amending, realigning, or eliminating programs, laws, and regulations that are not resulting in desired outcomes.*

*D.4.1.5 Create and implement a streamlined permitting process for habitat restoration projects.*  
*[Page 65 of PSP's Action Agenda]*

#### *Conclusion*

*The legislature finds that aquatic invasive species and freshwater aquatic algae are causing economic, environmental, and public health problems that affect the citizens and aquatic resources of our state. The legislature also finds that freshwater algae, particularly blue-green algae, are also seriously degrading the water quality and recreational value of a number of our lakes. Blue-green algae can produce toxins that inhibit recreational uses and pose a threat to humans and pets. It is therefore the intent of the legislature to clarify the roles of the different state agencies involved in these issues in order to address the threat of aquatic invasive species and the problem caused by aquatic freshwater algae, and to provide a dedicated fund source to prevent and control further impacts.*

*The intent and language of the nutrient inactivation sections of DOE's Aquatic Plant and Algae Management NPDES Permit is presently incongruent with the intent and language of the Legislature's mandate to DOE in regard to control of freshwater toxic algal blooms and relevant provisions of the WAC, RCW and PSP excerpts (in italics) cited above and therefore should be rewritten to both comply with the intent and language of these mandates and facilitate, rather than impede, application of all Best Management Practice products for the inactivation of phosphorus. These products include zero-valent aluminum, aluminum sulfate, sodium aluminate, calcium oxide, calcium hydroxide, calcium carbonate, zero-valent iron, iron chloride, and iron sulfate. The Experimental Use provision should only apply to products other than those listed above, all of which are well known, established and proven Best Management Practice for the inactivation of phosphorus.(Commenter #14 - Don Russell)*

**Response:** Comment noted.

**168. Comment:** *There are US EPA registered products missing from the list of approved products. Chelated copper algaecides may be necessary to treat toxic algae blooms, Galleon herbicide has a role against hydrilla and other species. These need to be added to the permit. (Commenter #3 - Jon Roskill; Commenter #5 - Wayne Gruen; Commenter #7 - Michael J. Holmes)*

**Response:** Ecology does not allow the use of every EPA-registered product in this permit. Ecology has not allowed copper-based algaecide use in lakes for many years. Copper is persistent in the sediment and there is a very narrow margin of safety to fish,

particularly salmonids, when using copper compounds. There are other algaecides allowed in the permit, although Ecology believes the best approach to algae problems is to reduce nutrients, particularly phosphorus inputs, to the lake.

**169. Comment:** *I was surprised to notice several products from the United States Environmental Protection Agency list of approved products were missing from the New Permit. In particular, Chelated Cooper algaecides and Galleon Herbicide are missing. These products are necessary for the control of toxic algae blooms and hydrilla at a minimum. These items need to be added to the permit. (Commenter #8 - Bill Neal)*

**Response:** See the response to Comment # 168.

**170. Comment:** *Page 14-16, Authorized discharges. There are a number of US EPA registered aquatic herbicides and algaecides missing from this list. Newer chemistries such as Galleon are not listed and as such would not be allowed for use. This product works extremely well on a number of problem species such as salvinia, duckweed, hydrilla and others. Chelated copper algaecides may be required to treat toxic algae. (Commenter #15 - Terry McNabb)*

**Response:** See the response to Comment # 168.

**171. Comment:** *We fully support Washington State aquatic applicator's having access to all U.S. EPA registered aquatic herbicides and algaecides. In particular, those formulations containing copper, as an active ingredient. U.S. EPA completed Copper's reregistration Aug. 9, 2006. As part of its Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)-required review, EPA considered new data about the human health and environmental effects of copper to ensure products containing copper meet the most current scientific standards. New amendments were added to EPA's registration process for copper May 26, 2009, based upon public comments. Label revisions in accordance with EPA's review are currently in process by all registrants. However, aquatic use sites and dosage rates for copper products remain unchanged, these products are needed to treat some species of algae. (Commenter #32 - James Skillen)*

**Response:** See the response to Comment # 168.

**172. Comment:** *I recommend that you add Destiny HC (WA Reg. No. 1381-09002) and Superb HC (WA Reg. No. 1381-06003) to the list of spray adjuvants that are allowed for use on aquatic sites in Washington under the applicable Aquatic Pesticide Permits issued by Ecology. (Note: WSDA included a toxicity table here)*

*Destiny HC and Superb HC are currently registered for distribution in Washington. Aquatic acute toxicity studies for Destiny HC and Superb HC have been reviewed by Jim Cowles, Ph.D. (WSDA Environmental Toxicologist), and the studies are acceptable. Destiny HC and Superb HC meet all WSDA criteria for registration of spray adjuvants for aquatic use (attached).*

*Addition of Destiny HC and Superb HC to the Aquatic Pesticide Permits will provide additional options for aquatic pesticide applicators.*

*Aquatic acute toxicity studies are on file at WSDA Registration Services Program, and are available for review by Ecology. (Commenter #13 - Erik Johansen)*

**Response:** Ecology is unable to add these two adjuvants at this time because they were not on the list of chemicals/adjuvants included in the draft permit available for public comment. If Ecology modifies this permit, it will consider adding these two adjuvants.

**173. Comment:** *There must be an easy way for products that receive registration after this permit is issued to be added to the permit. (Commenter #3 - Jon Roskill; Commenter #5 - Wayne Gruen; Commenter #7 - Michael J. Holmes)*

**Response:** There is no quick and easy way for Ecology to add a new product after it finalizes the permit. The addition of any new active ingredient to the permit requires a major permit modification. This means that Ecology must revise the permit, have a public comment period, hold at least one public hearing on the permit modification, and prepare a "Response to Comments". However, Ecology may consider adding new products to this permit in the future through a major modification process should there be demonstrated need or demand for these chemistries.

**174. Comment:** *There needs to be a streamlined way to add products that receive registration after the permit is issued. (Commenter #8 - Bill Neal)*

**Response:** See the response to Comment # 173.

**175. Comment:** *The current list of herbicides and surfactants are fine. I am concerned, however, that it binds the state to these chemistries even if there is something much safer and more efficacious to use. We don't have those herbicides yet, but they are on the near horizon. So what happens if a safe alternative herbicide exist and the listed herbicides we are using doesn't work on a particular weed and/or its usage presents too much aquatic risk? We are stuck until the NPDES is re-issued in another 5 years. I think we need a method to add new safer alternative herbicides on the permit if the need exists without starting all over again. It just doesn't make sense to be locked into this list of herbicides for 5 years, if something better exist. I know of at least two new products pending aquatic registration that should be added. But we won't see them for at least five more years, regardless of their efficacious or safety. The whole purpose of the NDPEs is to minimize risk, yet the process itself is so cumbersome that it may result in situations where it maximizes the risk. Please try to include a system that would expedite the use of new safer and efficacious aquatic herbicides in the state. (Commenter #2 - Kim Patten)*

**Response:** See the response to Comment # 173.

**176. Comment:** *All US EPA registered herbicides and algaecides should be allowed and the table on page 19 should be used to further restrict use if appropriate as you have done for other products. There must also be a path for aquatic products that are registered after this permit is issued to be included for use during the life of the permit. (Commenter #15 - Terry McNabb)*

**Response:** See the response to Comment # 173.

**177. Comment:** *Item 2) Page 15, B.5. SePRO Corporation Comment: The active ingredient penoxsulam: 2-(2,2-difluoroethoxy)-6-(trifluoromethyl)-N-(5,8-dimethoxy [1,2,4]triazolo-[1,5c]pyrimidin-2-yl)-Benzenesulfonamide) is labeled for the management of freshwater submersed, emerged, and floating aquatic vegetation (e.g., cabomba, Brazilian elodea, Eurasian watermilfoil, hydrilla, sago pondweed, water pennywort, frogsbit) for use on aquatic sites and is registered by the Washington Department of Agriculture. We suggest penoxsulam be added to the list of approved active ingredients for use under the conditions of this permit.(Commenter # 27 - Shaun Hyde)*

**Response:** See the response to Comment # 173.

**178. Comment:** *Pages 14-16 Application of Products. Restricting application products to those currently listed does not allow for future products that may become available. New products will become available that may provide better control, lessen off target plant impacts, have lower use rates, and limit potential unnecessary impacts to fish and other wildlife utilizing the water body. Restricting products to those listed will also require constant revisions to the permit that are unnecessary given current workload burdens at DOE. (Commenter # 29 - Anna Lyon)*

**Response:** See the response to Comment # 173.

**179. Comment:** *Item 3) Page 15, S4.B.5.a,b,d,e SePRO Corporation Comment: To remain consistent throughout the permit, we suggest Department of Ecology remove reference to trade names for the dipotassium salt and amine salt of endothall. As an example, the amine and ester formulations of 2,4-D are referenced by chemical name not trade name.(Commenter # 27 - Shaun Hyde)*

**Response:** Ecology agrees with the commenter. Ecology removed the trade names for the endothall products in the permit.

**180. Comment:** *Section S4.D.2 - Potable water is used for many domestic purposes. Simply supplying drinking water is not sufficient and does not provide for sanitary and personal hygiene purposes.*

*An alternate potable water supply should be provided as long as the chemical persists in the water column. Since numerous studies have indicated that some of the chemicals persist in the water column long after the time listed in table 3 or the product label, testing is the only way to*

*assure that the chemical has dissipated below potable water standards. Any water body with potable water intakes should require testing as the only method to determine the length of time an alternative potable water supply is required.*

*I suggest that Section S4.D. item 2. be revised as follows:*

*2. When there are potable water restrictions on the label, the Permittee must not apply any chemical until it has notified people who withdraw ~~drinking~~ potable water from the water body. If requested by the affected water user(s), the Permittee must provide an alternative ~~drinking~~ potable water supply until the intake water tests at or below the concentration specified for that chemical in Table 3, ~~or until the time period specified in Table 3 for that chemical has elapsed.~~ If there is no ~~drinking~~ potable water restriction listed in Table 3, the Permittee must follow all label conditions for potable water supply. If requested by a water user, the Permittee must provide advance notice of pending treatments on a time schedule agreed to by all parties. (Commenter # 35 - Richard Bruskrud)*

**Response:** Ecology changed "drinking water" to "potable water", but made no other changes to this section. Ecology extended the time before allowing drinking water resumption based on water testing data from local lakes and by using best professional judgment. These data have shown that increased time intervals will allow treated water to be at or below EPA drinking water tolerances. This gives people an alternative to testing.

**181. Comment:** *Page 18, D, 3. The previous permits have had wording that requires the applicator or sponsor to supply water if the water right holder does not have a reasonable alternative supply themselves. For example a person watering a garden from Lake Washington that can easily hook up a hose to his home should avail themselves of that option. (Commenter #15 - Terry McNabb)*

**Response:** Permittees need only supply irrigation water at the request of a person holding a legal water right or claim for that purpose. Water right holders have a legal right to use the water for those purposes and a chemical treatment may interfere with that right. If a user has an alternative water supply, the sponsor or Permittee could offer to pay for any additional expenses that the user incurs by using an alternative water supply. Otherwise, the Permittee must supply irrigation water to the water right holder. This also applies for anybody using lake water as their primary drinking water source regardless of whether they have a water right or water claim.

**182. Comment:** *In addition, the wording regarding advance notice should be amended to exclude the wording "on a time schedule agreed to by all parties". One person with a water right could stop treatments completely for other neighbors by not agreeing to any schedule or the treatment would be a violation of an NPDES permit, something that carries severe penalties. Ecology can easily change this wording and place reasonable requirements in terms of timing in place of that language. (Commenter #15 - Terry McNabb)*

**Response:** Ecology revised the wording to read, “If requested by an affected water user, the Permittee must provide at least two weeks advance notice of pending treatments”.

**183. Comment:** *Page 18 – D – 2&3 The last sentence of the paragraph states “on a time schedule agreed to by all parties” This is totally unrealistic. This would allow one person to stop the application. This needs to be worded to allow for a majority of participants in the project area. (Commenter #29 - Anna Lyon)*

**Response:** See the response to Comment # 182.

**184. Comment:** *When property owners have legal water rights or use lake water as their sole source of water it is understandable that those water users are provided with a temporary water source. What is the reasonable amount of water to be provided and who determines it, particularly if the property owners are part time residents or weekenders? (Commenter #17 - Kris Tompkins)*

**Response:** The parties involved need to resolve these issues before any treatment that may affect the water source.

**185. Comment:** *S4. THE APPLICATION OF PRODUCTS D. General Application Restrictions Pg 18....Does requirement for temporary water source apply to only full time residents or all (including part time/weekenders etc) property owners? (Commenter #19 - Craig Tompkins)*

**Response:** The requirement to supply water applies to anybody drinking the lake water if in residence at the time that a chemical treatment would affect their water supply.

**186. Comment:** *Would jugs/bottles of drinking water fulfill requirement? Would temporary hose from neighbor’s well fulfill requirement? (Commenter #19 - Craig Tompkins)*

**Response:** The Permittee and the affected residents must work out a reasonable accommodation for water supply. Ecology cannot generalize about what is reasonable to fulfill this requirement. That may vary depending on circumstances and is for the affected parties to determine.

**187. Comment:** *Who’s responsibility to identify those drinking water from the lake.....i.e. Permittee/Sponsor or user? (Commenter #19 - Craig Tompkins)*

**Response:** Although it is the Permittees responsibility to identify any residents’ drinking water from the lake, the Permittee may find this information difficult to obtain without input from the sponsor. That is one reason why Ecology requires that the DMP that helps answer these questions to be a joint effort between the applicator and the sponsor. Users should also come forward in a timely manner to identify themselves if they need an alternative water supply. Sometimes residents are reluctant to disclose this information because they may not have legal rights to drink the water. They may be concerned that

Ecology will take enforcement against them. That is another reason why it is important that the sponsor work with and help identify residents that may not feel comfortable sharing this information.

**188. Comment:** *Does Permittee/Sponsor have final say as to what is provided if “user” is “unreasonable” (i.e. weekender demanding water truck etc)? It appears a single property owner could use this requirement to stop treatment by demanding “unreasonable” temporary water. (Commenter #19 - Craig Tompkins)*

**Response:** The parties involved may have to hire a mediator if they cannot reach an agreement. Ecology’s role is as a regulator and not a mediator.

**189. Comment:** *TABLE 3 (pages 20 & 21) This lists 'drinking water' restrictions beyond the label requirements. Does it include irrigation uses or JUST drinking water? What about other potable water for showers and dishes, etc? Also, is the applicator (or employee) allowed to sample the water for the tests? Obviously, this will mean that testing will be done and the costs will get passed along to someone. (Commenter #10 - Tom Wimpy)*

**Response:** The purpose of drinking water restrictions is to protect human health by ensuring that residents do not consume water with herbicide concentrations above EPA drinking water standards. Some residents using water for domestic purposes may also object to using treated water for bathing or dishwashing. This also seems reasonable.

The restrictions in Table 3 for drinking water do not apply to irrigation water or stock watering; however, any FIFRA label requirements for the chemical remain in effect. The Permittee does not have to test the water so long as the water user has an alternative water supply, does not resume drinking lake water until the time specified in the table elapses, or the applicator complied with any label setback distances from the intake. The Permittee could sample the lake water directly adjacent to the water intake if he or she did not have access to the residence.

**190. Comment:** *S4. The Application of Products D3. General Application Restrictions*

*I have a concern about the EUP exclusion. It states “The Permittee may apply chemicals not listed in this permit on a limited basis in the context of a research and development effort under the jurisdiction of the Environmental Protection Agency (EPA) through the issuance of a federal experimental use permit (40 CFR 172) and the WSDA through the issuance of a state experimental use permit (EUP). Discharges for the sole purpose of research and development are not required to be covered under a DMP (S3.D.) but must follow all other permit requirements”. This means I can get an EUP, but must follow “all other permit requirements”. What does the wording “all” mean? To me it means someone can sue me if I didn’t follow “all other permit requirements”, even if they don’t related to what I am doing. This wording needs to be cleaned up, to remove the applicant from risk of violation for not obeying the “all” wording.*

*For example – according to this wording, for my next EUP it could be inferred that I must follow the 60 days NOI and 30 days for public notice, plus all the public signage requirements. If that is the case, the usefulness of EUPs will completely cease.(Commenter #2 - Kim Patten)*

**Response:** Ecology changed the wording to read, “Discharges for the sole purpose of research and development are not required to be covered under a DMP (S3.D).”

**191. Comment:** *Diquat should not be subject to the fish timing windows. Ecology funded research have shown little to no impact. There are cases where this tool is necessary to manage noxious aquatic weeds and is the only option, but timing windows prevent its use. (Commenter #3 - Jon Roskill; Commenter #5 - Wayne Gruen; Commenter #7 - Michael J. Holmes)*

**Response:** Unpublished research from the University of Washington shows that diquat may affect juvenile salmon olfaction. This could alter feeding behavior or predator avoidance; therefore, Ecology will continue to require fish timing for diquat to protect juvenile salmon.

**192. Comment:** *Diquat is a very useful tool used to control noxious aquatic weeds. There is no reason that its use should be subject to timing windows. Timing windows will have a negative impact on its usefulness. There is no compelling research or studies that indicate a benefit to fish by imposing these restrictions. (Commenter #8 - Bill Neal)*

**Response:** See the response to Comment # 191.

**193. Comment:** *Page 19, Diquat. The wording do not spray on algae should be removed. Reward in some cases is used as an algaecide. In addition, filamentous algae often grows on noxious or nuisance aquatic weeds that would be treated. The application would then be an illegal discharge because the herbicide would be applied to those plants covered in filamentous algae. (Commenter #15 - Terry McNabb)*

**Response:** Ecology removed this wording from Table 3.

**194. Comment:** *Comment 6. Page 19. Diquat. Reward is sometimes used as an algaecide, on either algae alone or algae that grows on nuisance or noxious weeds. This would mean the Reward could not be used on those weeds as technically this would constitute an illegal discharge. The wording, do not spray on algae, should be removed. (Commenter #36 - Jill Winfield)*

**Response:** See the response to Comment # 193.

**195. Comment:**

<b>Page</b>	<b>Heading</b>	<b>Existing Verbiage</b>	<b>Comments/Changes</b>
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19	DIQUAT:	<i>Swimming advisory during treatment, and for 24-hours post-treatment (in the treated area)</i>	<i>Diquat has shown to be persistent in the water column longer than 24-hours</i>
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(Commenter #9 - Cathy Backland)

**Response:** The EPA label for diquat has no swimming advisories or restrictions (i.e., the EPA perceives no human health impacts by allowing people to swim immediately after diquat application when diquat would be at its highest concentration in the water). Ecology is more restrictive than the EPA, by imposing a 24-hour swimming advisory, primarily because of the potential for eye irritation. Ecology believes that this advisory is sufficiently protective of human health, even in lakes where diquat may persist longer than usual.

The persistence of diquat in a water body depends on several factors including the water quality of the water body. Typically, diquat does not persist in many water bodies because it binds tightly to organic material or suspended solids in the water. Ecology knows of three instances in Washington lakes with good water quality where diquat persisted at concentrations higher than the drinking water standard for more than three days. That is why Ecology increased the time interval for resuming drinking lake water after diquat treatment in the revised permit.

The following excerpt about diquat persistence is from Ecology’s risk assessment on diquat:

Most outdoor studies reported that diquat is removed rapidly from the water column with a half-life ranging from <1.0 day to ~ 4.0 days. When diquat is used at typical use rates (0.5 to 1.0 ppm c.e.), dissipation half-lives in water can vary from <1 day to ~ 4 days. At sites where diquat dissipation from water is rapid, a combination of factors is involved, which may contribute to the rapid dissipation of diquat. These factors may include sediment with high amounts of montmorillonite or bentonite clay, seston (suspended matter) containing suspended sediment with a high proportion of clays in them, the presence of phytoplankton which may adsorb diquat to high levels and the presence of aquatic macrophytes that may also adsorb diquat. Therefore, the persistence in water at concentrations higher than the limit of detection ranges from < 1 day to ~ 35 days.

Note: After Ecology wrote the risk assessment, EPA reduced the maximum label rate for diquat to 370 ppb. Therefore, typical use rates are less than those rates reviewed in the risk assessment.

**196. Comment:** *Subject to Fish Timing Windows: The restriction on fish timing windows should be removed for all endothall products .The endothall dipotassium salt (i.e. Aquathol K) is considered practically non-toxic to freshwater and marine fish and invertebrates by the US EPA. Aquathol K, containing 29.5% endothall as the active ingredient, was evaluated in aquatic toxicity studies in freshwater and marine fish and invertebrates. Aquathol K concentrations in these studies were determined by calculation from measured endothall concentrations. In the*

USEPA data evaluation records (DERs) for these studies, the Agency presented LC50/EC50 values for both the formulated product and endothall. The study results are summarized as follows:

<i>Species</i>	<i>Aquathol K</i>	<i>As endothall</i>	<i>MRID</i>
	<i>LC50/EC50 (ppm)</i>	<i>LC50/EC50 (ppm)</i>	
<i>Bluegill sunfish</i>	594	316	42695401
<i>Rainbow trout</i>	370	107	42695402
<i>Daphnia magna</i>	240	71	42695403
<i>Sheepshead minnow</i>	340	72	42695405
<i>Mysid shrimp</i>	257	79	42695406
<i>Oyster</i>	330	117	42695404

*Aquatic LC50/EC50 values >100 ppm are considered as practically nontoxic. This classification was verified in the DERs for all species except for the sheepshead minnow which apparently classified as slightly toxic on the basis of the LC50 for endothall. However, the LC50 for the dipotassium salt of endothall in the sheepshead minnow clearly exceeds the 100 ppm trigger and should also be considered practically nontoxic in this specie. This product is “practically nontoxic” to fish and aquatic invertebrates as noted by the EPA reviewers.*

*Although the amine formulation (i.e. Hydrothol 191) is more toxic to aquatic species, the amine formulation is only allowed to be used at rates(0.2 ppm) that are non-toxic to fish (toxicity seen at >0.3 ppm).*

*The current fish timing window hinders the use of endothall in applications that should be made early in the season for optimal efficacy as well as the use of lower rates, particularly Aquathol.(Commenter # 28, Tim Formella)*

**Response:** Ecology restricted endothall use around juvenile salmon because of sub-lethal impacts (interference with smoltification process). However, Ecology agrees that the wording in the table might be misconstrued to mean that fish timing for endothall applies for all fish species and not just salmon. Ecology revised this wording for endothall and other active ingredients with fish timing restrictions.

**197. Comment:** *Item 4) Page 19, Table 3 Treatment Limitations Section, SePRO Corporation comment (a): Why is there a 400 foot setback limitation near an outlet with outflow for 2,4-D amine? Why is there a difference between the 2,4-D amine and ester formulations? The 2,4-D product labels do not have setback distances for outlets listed and we are unaware of any data referenced in this permit or fact sheet supporting the setback.(Commenter #27 - Shaun Hyde)*

**Response:** Table 3 includes a setback from outlets for control projects only. Ecology wants to limit any downstream impacts from treatment. Data collected from Washington lakes after 2,4-D amine treatments using the liquid formulation show somewhat high and persistent 2,4-D levels in the water column, particularly in small lakes where the applicator treated substantial portions of the lake. Data collected after 2,4-D ester treatments (granular) in Washington lakes did not show high or persistent concentrations of 2,4-D in the water column, so any downstream movement after ester granular treatments would be much less than for the amine formulation.

**198. Comment:** *SePRO Corporation Comment (b): What data was referenced to establish a 28-day restriction prior to consumption of water treated with 2,4-D amine, assuming no water analysis is conducted? Why is there a difference in drinking water restriction between 2,4-D amine and 2,4-D ester applications? (Commenter #27 - Shaun Hyde)*

**Response:** Ecology used data collected after treatments in Washington lakes and analyzed by Ecology-accredited laboratories. Ecology found that 2,4-D concentrations in some lakes treated with the liquid amine formulation of 2,4-D remained detectable for at least a month. Ecology did not detect high or persistent water column concentrations with treatments using the granular 2,4-D ester. You may see some of these data at [http://www.ecy.wa.gov/programs/wq/pesticides/final\\_pesticide\\_permits/noxious/monitoring\\_data/monitoring\\_index.html](http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/noxious/monitoring_data/monitoring_index.html).

**199. Comment:** *SePRO Corporation Comment (b): The 2,4-D amine label for Sculpin G provides both a drinking water setback distance(based on application rate) and language if no setback distance is used, a waiting period for at least 21 days after application, unless water analysis is conducted to confirm concentrations are 70 ppb or less at the water intake. We suggest that this table directs the user to follow the 2,4-D label specific precautions and restrictions. (Commenter #27 - Shaun Hyde)*

**Response:** Ecology supports the 28-day restriction. The permit allows the Permittee to test the water at the intake or follow the label for setback distances to allow resumption of use before 28 days.

**200. Comment:** *The swimming restriction on the use of Hydrothol 191 should be reduced to an advisory warning. This restriction was removed from the label many years ago and this permit update provides the opportunity to make the change. The State Department of Agriculture and the EPA no longer recognize this old label requirement. When residents look at the EPA and State label for this product they are confused as to why the Department of Ecology requires a swimming restriction when the agencies that are responsible for registration and enforcement do not. The Hydrothol 191 swimming restriction needs to be updated. (Commenter #25 - Douglas Dorling)*

**Response:** Ecology revised the recreational restriction for the mono salt of endothall (Hydrothol 191™) to a swimming advisory. This is consistent with the revised label. In addition, Ecology permit conditions only allow a very low water column concentration for this chemical.

**201. Comment:** *Restrictions/Advisories: The EPA has previously determined that no swimming restriction is necessary for endothall applications. If Washington Department of Health deems a swimming restriction necessary, the swimming restriction should be worded to limit swimming to "next day" rather than 24 hours. The Aquathol K and Hydrothol 191 products are both highly soluble in water and are thoroughly mixed within a few hours of the application. (Commenter #28 - Tim Formella)*

**Response:** See the response to Comment # 200.

**202. Comment:** *Table 2. On page 20. The swimming and fishing restrictions on Hydrothol 191 and Aquathol K have been removed (Product labels attached to this E Mail). (Commenter #36 - Jill Winfield)*

**Response:** See the response to Comment # 200.

**203. Comment:** *Item 5, Page 21, Table 3. SePRO Corporation Comment (a): Sodium carbonate peroxyhydrate is an algaecide and thus the treatment limitations statement should be corrected by deleting algae. (Commenter #27 - Shaun Hyde)*

**Response:** Ecology made the suggested change.

**204. Comment:** *Page 21, Table 3. SePRO Corporation Comment (b): What data was referenced to establish a 28-day restriction prior to consumption of water treated with triclopyr TEA assuming no water analysis is conducted? The triclopyr TEA label for Renovate OTF has specific guidance on setback distances (by treatment area and rate applied) and water analysis*

*requirements related to treatments near potable water intakes. We suggest this table directs the user to follow the label specific precautions and restrictions. (Commenter #27 - Shaun Hyde)*

**Response:** Ecology has reviewed the label and concurs with the commenter that this label is well written, but the label provides only for distance setback or testing. A time-interval provides an additional way to protect drinking water without incurring the expense of testing or requiring a setback distance (that may not suit the treatment regime).

**205. Comment:** *Page 21, Table 3. SePRO Corporation Comment (c): What data were referenced to support prohibiting the aerial application of triclopyr TEA? The triclopyr TEA for Renovate 3 has specific guidance on aerial applications and best management practices of drift management We suggest that this table direct the user to follow the label specific precautions and restrictions. (Commenter #27 - Shaun Hyde)*

**Response:** This permit is primarily for the treatment of in-lake plants. Ecology does not perceive a need to apply triclopyr via aerial applications. Removing this restriction is something that Ecology will consider when revising the Aquatic Noxious Weed permit where use in difficult to access locations may support a need for aerial application (e.g., bluffs overlooking Columbia River).

## **S5. Notification, Inspection, and Posting Requirements**

**206. Comment:** *The permit lacks any discussion about notification procedures for affected Indian Tribes. Recommendations for notice to the Muckleshoot Indian Tribe (MIT) include a-c as listed below:*

- a. DOE needs to notify affected Indian Tribes directly when applicators apply for coverage under this permit. In the case of the MIT, any applications within WRIAs 8, 9, and 10 should be sent to the Tribe with a full 30 days to comment on the proposal prior to approval by WDOE.*
- b. The MIT should be notified of any fish kills that occur after chemical treatment*
- c. The MIT should also be notified if any experimental use permits are issued within WRIAs 8, 9, and 10. (Commenter #26 , Karen Walter)*

**Response:** a. Ecology now posts all applications for coverage on its website at <https://fortress.wa.gov/ecy/wqapnoidisplay/>. Ecology is investigating ways to notify people automatically when there are new applications for coverage. In the meantime, and as Ecology resources allow, the permit manager has agreed to contact the Muckleshoot Indian Tribe about herbicide applications that may affect the Tribe.

b. Comment noted.

c. Ecology does not issue experimental use permits. The Muckleshoots need to contact the Department of Agriculture and the EPA about these permits.

**207. Comment:** *Shoreline Posting – Thank you for adding the option to combine signs. This helps significantly! However, when posting on docks, it still seems redundant, as what we have typically done is put one on the dock facing the shore, and one facing the water to adhere to this requirement. Would it be possible to change this when posting on docks? Or, changing the verbiage to something like “signs must be placed in such a manner that they will be visible from BOTH the shore and the water,” etc.? (Commenter #16 - Dawn Petek)*

**Response:** Ecology wants people boating on the water to be able to read the signs as they approach the shore and people in the residences to be able to read the signs as they approach the water. Changing to your suggested wording would still require the applicator to place a sign facing the water and a sign facing the shore.

**208. Comment:** *We support the expansion of the initial Business and Residential window to a 10-42 day period (pg. 25). Spring weather is difficult to predict in the Puget Sound region, and this will allow us to wait for the safest and most effective time to apply herbicides. (Commenter #38 - Janie Civile)*

**Response:** Comment noted.

**209. Comment:** *S5. NOTIFICATION, INSPECTION, AND POSTING REQUIREMENTS  
E. Shoreline Posting Requirements Pg 26... Does this mean that if area treated is more than 400ft away (i.e. opposite shoreline or other end of lake etc, excluding boat launch/public access areas), there is no requirement to post notice on that shoreline? (Commenter #19 - Craig Tompkins)*

**Response:** That is correct. The applicator must post all properties adjacent to the area where he or she deliberately applies the chemical, 400 feet either side of this area, and across the shoreline from the area if the shoreline is within 400 feet of the treated area.

**210. Comment:** *LMDs in Thurston County are operating at great expense and the highest levels of public involvement, planning, visibility, and integrated vegetation management programs. LMDs already adhere to stringent requirements since they function as a public governing body answerable for the results of herbicide application and with considerable public participation in the decision making process. We would like the Permit to acknowledge this reality and reduce posting and notification conditions (page 26) for the LMDs in recognition of their extensive work in community involvement and balancing recreational uses with ecological needs of lakes. (Commenter #38 - Janie Civile)*

**Response:** Ecology agrees that Thurston County does a wonderful job of managing its Lake Management Districts (LMDs). However, Ecology does not plan to reduce its posting and notification requirements for LMDs. Ecology believes that posting is

particularly important as it alerts all potentially affected residents that the chemical either is in the water or will be soon.

**211. Comment:** *Section S5.C.1, 2 & 3 - Notice should also be delivered or mailed to the property owner. The property owner may not reside at the effected property, yet it is important they are aware of any action that has the potential to affect the use of their property.*

*I suggest that Section S5.C. items 1., 2. & 3. be revised as follows:*

*1. Using the template in Appendix E, the Permittee must provide Residential and Business Notice (notice) to all waterfront residences, ~~and~~ businesses, and property owners within one-quarter mile in each direction along the water body shoreline or across the water from proposed treatment areas.*

*2. The Permittee may provide the notice by mail, newsletter, or handbills delivered directly to the residences or businesses and property owners. If using handbills, the Permittee must secure the notice to the door in a fashion that will hold it in place but will not damage property. If the residence or business is gated or guarded by dogs, the Permittee may secure the notice in clear view on the outside of the gateway or may attach the notice to the outside of the residence or business in a fashion that will hold it in place but will not damage property.*

*3. Businesses, ~~and~~ residents and property owners must receive the notice at least 10 days in advance and at most 42 days before the first treatment of each year. If the notice explains the application schedule for the entire treatment season and there is no deviation from that schedule (with an exception for cyanobacteria treatment), Ecology requires no further notice for the rest of the treatment season. On water bodies with a history of cyanobacterial blooms, the Permittee may explain in the notice that algae treatment may occasionally occur outside of the scheduled time periods without prior notice depending on bloom conditions. The Permittee must provide additional notification to any resident, ~~or~~ business or property owner that specifically requests further notification of treatment dates. (Commenter #35 - Richard Bruskrud)*

**Response:** Ecology added a question to the DMP template asking how the applicant/Permittee and sponsor will address adequate notice to seasonal or weekend property owners for pending treatments.

**212. Comment:** *Section S5.E -The “on water” posting requirements have been removed from the permit. In larger water bodies, such as Lake Washington, treatment areas may be approached from the water without any notice, resulting in unknown exposure. The “on water” posting requirements of the previous permit are easily accomplished and should remain in the code to protect the unsuspecting from exposure.*

*Please reinstate the requirements of section S.6.D.8 Posting on the Water from the previous 2006 Aquatic Plant and Algae Management General Permit. (Commenter #35 - Richard Bruskrud)*

**Response:** Applicators told Ecology that posting buoys on the water did not warn people away from treated sites. Instead, boaters were often attracted to the area to read the signs. Applicators also reported difficulties in meeting this posting requirement and that posting buoys created unintended hazards. They reported difficulty in getting signs to remain upright and readable and that the buoys created a navigation hazard. A major reason for posting the treated area was to warn fishers when the herbicide had fish consumption restrictions. There are now no chemicals allowed in the permit with fish consumption restrictions. For these reasons, Ecology removed this posting requirement from the reissued permit.

**213. Comment:** *Children's Camp Notification*

*The requirement requested by the Washington Department of Health that managers of children's camps notify parents of impending herbicide treatments seems important for public health. (S5 D 1 2) Even though fish timing windows often restrict application of the most toxic aquatic herbicides to the very cool months in order to protect migrating salmon and other species, application to some Washington waters is permitted for part of the summer. In addition, chemicals such as fluridone, glyphosate, and triclopyr, which do not affect protected salmon, can be applied throughout the summer months when day sailing programs flourish – generally from mid-June to roughly Labor Day.*

*As a result I strongly believe that the Children's Camp Notification requirements should apply to children's sailing programs as well. Parents signing their children up for such programs – both members of the public and individuals associated with sailing program sponsors – have the right to know when aquatic herbicides will be applied to the water their children may be ingesting as they learn to sail. (Commenter #37 - Diana Forman)*

**Response:** Ecology defines a children's camp as "a site located along a water body that provides water contact recreation and other activities for children particularly during the summer months and includes day camps as well as residential camps". If any sailing program fits this definition, then the manager of those programs must work with Permittees to ensure that parents or guardians receive adequate notification prior to any herbicide treatment that may affect the children. However, generally, except for accidents, children should not ingest any herbicide-treated water during sailing classes. This activity does not carry the same exposure risk as swimming or other in-water sports associated with traditional children's camps.

## **S6. Monitoring Requirements**

**214. Comment:** *In waters where salmon are present (not just 303d listed waters), the following monitoring requirements should exist in the permit:*

- a. Pre- and post-treatment monitoring of dissolved oxygen and pH should be conducted near the surface and the bottom of the water column at the center and the outer perimeter of the treatment area, and*
- b. Post-treatment monitoring of any herbicide or algaecide in table 2 of the permit that may have an adverse effect on salmonids; monitoring should be conducted within 48 hours of completed treatments and should represent the water within the perimeter of the treatment area. (Commenter #26 - Karen Walter)*

**Response:** Ecology disagrees and the language in the permit remains unchanged. The only herbicides likely to have significant impacts to dissolved oxygen are contact herbicides. These are subject to fish timing windows and applicators cannot apply then outside of WDFW timing windows.

**215. Comment:** *Section S6. - This section notes that monitoring is required when grant funded by Ecology, yet does not require monitoring when not grant funded. Monitoring of the treatment should not be based on funding. Monitoring for pesticide residues is the only method that can confirm actual chemical persistence in the environment. Monitoring for effectiveness and unintended effects could also provide valuable information on the appropriateness of treatments and impacts to the environment and humans. This information is invaluable in establishing restrictions, product licensing and product development. We already know that laboratory testing does not always reflect what happens in the environment. Monitoring actual applications can increase our knowledge of the effects and impacts, contribute to improved treatment, product development and licensing.*

*Additional monitoring requirements should be adjusted for individual coverage based on the chemical to be used and the environmental conditions, but include, at a minimum:*

- Persistence in water column*
- Persistence in sediment*
- Drift*
- Effectiveness of treatment*
- Unintended impacts*

*I suggest additional items be added to Section S6. that require monitoring of all chemical treatment applications, both for eradication and control when applying herbicides or algaecides. (Commenter #35 - Richard Bruskrud)*

**Response:** Comment noted. Ecology does not agree that it is necessary to monitor all applications. Unlike traditional discharges regulated under NPDES permits (stormwater,

sewage), the “pollutant” is well studied, characterized, and precise amounts applied by a licensed applicator following both federal and state laws. The results from applications conducted under the grant program (and under the Aquatic Noxious Weed Permit) have helped further characterize all of the parameters listed by the commenter.

## **S7. Analytical Procedures**

### **216. Comment:**

- a. *The permit should require a Quality Assurance Project Plan (QAPP) for monitoring activities listed in Section 7. Without a QAPP, one will not be able to determine whether a permittee followed standard protocols and if data are credible. A QAPP should be required and filed with the application.*
- b. *As S7.C states, the draft permit does not require a state accredited entity to conduct dissolved oxygen and pH monitoring, which further highlight the need for a QAPP prior to monitoring in order to ensure that credible data will be collected. (Commenter #26 - Karen Walter)*

**Response:** Ecology typically does not require Quality Assurance Project Plans (QAPPs) for monitoring conducted under its general NPDES permits. Nor does Ecology have the resource to review and approve any QAPPs prepared under a permit. All dissolved oxygen (DO) and pH monitoring must follow the protocols in *A Citizens Guide to Understanding and Monitoring Lakes and Streams* found at this link:

<http://www.ecy.wa.gov/programs/wq/plants/management/joymanual/index.html>.

## **S8. Reporting and Record Keeping Requirements**

**217. Comment:** *S8 A 1 (page 30) Does the annual report acreage include re-treatment acreage? If two treatments occur on the same acreage, which acreage do you report? (Commenter #10 - Tom Wimpy)*

**Response:** The Permittee should report only the acreage initially treated. However, the report must reflect actual amount of chemical used for the season associated with that acreage.

**218. Comment:** *Pg. 31 B1, 2, 3, Records Retention:*

*Permittee’s should be required to continually update the Public Record at Ecology (of the DMP which includes wetland reports, surveys, plans, etc) as this will fulfill the requirement that it be available by “freedom of information act”.*

*Permittee’s who “roll over” or reapply for a second 5 year coverage using the original SEPA information should be required to retain all records associated with the original 2006 permit application form and materials. Any and all materials which were used as the basis for the initial and all subsequent permits should be retained for reference for the life of all subsequent permits*

*based upon that original information submitted to Ecology. (Commenter # 33 - Monica Harle; Commenter # 30 - Robert Hager and Constance Ibsen; Commenter # 34 - William Matchett)*

**Response:** Comment noted however, Ecology sets out the record retention schedule for NPDES permits in WAC 173-226-090. Any public records maintained by Ecology are always available to the public through the public disclosure act, but subject to Ecology's records retention schedule.

## **S10. Mitigation for the Protection of Sensitive, Threatened, or Endangered Plants: Aquatic Plant Control Projects**

**219. Comment:** *Mitigation requirement for in-water treatment when there are endangered plants present. Permit states – use selective herbicide as mitigation: how does one know which herbicide is or isn't selective on these plants. That is not general knowledge a person is likely going to have or find out. Should include something about consulting an expert to assure selectivity of herbicide. (Commenter #2 - Kim Patten)*

**Response:** When dealing with rare plants, Ecology typically coordinates with the Permittee to ensure that it adopts adequate protection measures. Ecology has at times worked with the chemical companies to determine selectivity of a chemical on a rare plant species.

**220. Comment:** *The permit lacks mitigation measures for impacts to native plants and salmon habitat. Specific comments are as follows: Submerged, floating, and emergent native plants can provide habitat for salmonids. Controlling or removing these plants may adversely affect salmonids. Exotic plants with less benefit or detrimental effects by providing salmon habitat are common in many areas of Portage Bay, Lake Washington, and Lake Sammamish. There should be mitigation for herbicide applications that adversely affect native plants that should include restoring native vegetation. (Commenter #26 - Karen Walter)*

**Response:** Most treatments on the water bodies referenced by the commenter are for the removal of noxious weeds or treatment of high-use areas such as marinas or swimming beaches. Ecology does not believe that revegetation is practical or even appropriate for the high use areas. Most Permittees treating for milfoil use selective herbicides that do minimal harm to most native plants species.

**221. Comment:** *The removal of dead plants, after the implementation of management activities related to this permit, should be required to ensure that dissolved oxygen sags are not induced from these activities. Even selective herbicides may not provide sufficient protection to prevent DO sags at sites with predominant milfoil cover. (Commenter #26 - Karen Walter)*

**Response:** It is not practical to require removal of dead plants after treatment and harvesting these plants may kill or remove fish (harvesting inadvertently removes large

quantities of small fish from a water body). Permittees may use triclopyr, a selective herbicide, outside of fish timing windows, and using this herbicide early in the season will help ensure that dying vegetation does not create low oxygen conditions. Monitoring after systemic herbicide treatment generally does not show much impact to water column dissolved oxygen concentrations.

**222. Comment:** *All chemical treatments to control milfoil should use selective herbicides in order to preserve any vestiges of native plants that remain. (Commenter #26 - Karen Walter)*

**Response:** Comment noted. Ecology encourages the use of selective chemicals for milfoil management. Unfortunately, there are no selective chemicals for Brazilian elodea control. Brazilian elodea is a dominant noxious weed in Portage Bay and the Ship Canal.

**223. Comment:** *Chemical and mechanical plant management activities must be discontinued in the event that live or dead salmonids are observed near the application site. (Commenter #26, Karen Walter)*

**Response:** Ecology prohibits treatments that cause the mortality of aquatic vertebrates. Permittees must immediately notify Ecology if they are aware of any fish or fauna exhibiting stress, or dying within or downstream of a treatment area.

### **Other Comments Relating to the Permit**

**224. Comment:** *Have Ecology inspectors verify chemical usage when inspecting instead of Dept of Agriculture. Require inspections by Ecology with renewal of ALL permits. Require yearly reports that show effectiveness of chemical use for public information. Have Ecology inspectors place mitigations or changes to chemical plans upon inspection as needed. Conduct regular inspections to verify that the permit requirements/DMPs are being followed. (Commenter #9 - Cathy Backland)*

**Response:** These comments do not pertain specifically to language in the permit, but relate to the permit inspection and reporting process. Inspections are the responsibility of Ecology's regional staff. Because of limited resources, Ecology inspects a sub-set of herbicide applications each year (although Ecology staff responds to complaints). It is up to each regional supervisor to determine priority water bodies or treatments for inspection. Ecology requires each Permittee to submit annual treatment reports for each site. The public may obtain these reports through the public disclosure process.

### **Comments on the General Conditions**

**225. Comment:** *Section G4. - Although I agree with allowing Ecology discretionary powers in revocation of a permit, I am also troubled with the past performance of Ecology on this issue. To error is human. However, in cases where the permittee or sponsor knew or should have known otherwise, revocation should be automatic.*

*Section G4.F. - When a permittee fails to satisfy public notice requirements or has coverage revoked for cause, the permittee should not be allowed temporary coverage.*

*I suggest that Section G4. item F. be deleted entirely.*

*F. Failure of the Permittee to satisfy the public notice requirements of WAC 173-226-130(5), when applicable; or Permittees who have their coverage revoked for cause according to WAC 173-226-240, may request temporary coverage under this permit during the time an individual permit is being developed, provided the request is made within ninety (90) days from the time of revocation and is submitted along with a complete individual permit application form.  
(Commenter #35 - Richard Bruskrud)*

**Response:** No change. Standard General Conditions are included in all NPDES permits issued by Ecology. Ecology bases these conditions on state and federal laws and regulations (See WAC 173-226-240 for the language in G4).

**226. Comment:** *Pg. 32 G4. Permit Coverage Revocation “Cases where revocation of coverage may be required include....”*

*Remove the word ‘may’ and replace with “must”. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** See the response to comment # 225.

**227. Comment:** *Pg. 38, G12. Requests to be Excluded from Coverage under a General Permit. This should not apply to “individual lot “spinoff” permits. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** General condition G12 pertains to a request from a discharger for Ecology to develop an individual permit for the discharge rather than continuing coverage under the general permit. Obtaining individual coverage under a general permit is not the same as obtaining an individual permit.

**228. Comment:** *Pg. 39, G13. Transfer of Permit Coverage. This should include a requirement that the new permittee sign and certify he or she has read and understands all of the information in the SEPA or DMA. The “sponsor” must also agree to transfer. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology will add the suggested certification language to the transfer form. The transfer of permit coverage takes place between Permittees. Therefore, Ecology cannot require that a sponsor must agree to transfer coverage. However, permit coverage transfers generally occur at the request of a sponsor. It would not be a good business

practice for a commercial applicator to transfer his or her coverage without first discussing the transfer with their client.

**229. Comment:**

<i>Page</i>	<i>Heading</i>	<i>Existing Verbiage</i>	<i>Comments/Changes</i>
39	<i>G13. TRANSFER OF PERMIT COVERAGE</i>	<p><i>This permit coverage may be automatically transferred to a new Permittee if:</i></p> <p><i>A. The Permittee notifies Ecology at least 30 days in advance of the proposed transfer date.</i></p> <p><i>B. The notice includes a written signed agreement between the existing and the new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them.</i></p>	<p><i>The Sponsor should be the one to notify Ecology when there is a change of an applicator since they are the one who has the authority to hire and fire a chemical applicator.</i></p> <p><i>Require the NEW applicator to submit his/hers signature and eliminate the need for the existing applicator's to release the permit. May be difficult or uncomfortable to get the existing applicator to sign the release form.</i></p>

*(Commenter #9 - Cathy Backland)*

**Response:** Comment noted. Permittees generally transfer coverage at the request of their sponsor.

**230. Comment:** *Section G16.B. - The terms and conditions of this permit do not contain all the recommended mitigations in the EIS for the listed chemicals. This general permit should include all recommended mitigations or allow for comments and appeal based on established recommended mitigations at permit coverage application review, as well as any other information pertinent to individual coverage.*

*I suggest that Section G16. item B. be revised as follows:*

*B. The applicability of the permit terms and conditions, EIS for the listed chemicals, EIS recommended mitigations and other pertinent information to an individual ~~discharger~~ permit coverage are subject to appeal in accordance with chapter 43.21(B) RCW within thirty (30) days of effective date of coverage ~~of that discharger~~. (Commenter #35 - Richard Bruskrud)*

**Response:** No change. Ecology based this general condition on WAC 173-226-190 and this is a standard condition in Ecology's NPDES permits. This rule limits the coverage decision appeals to the general permit's applicability or non-applicability to that individual discharger.

## **Comments About Appendix A – Definitions**

**231. Comment:** *Pg. 49 Appendix A Wetland: Wetland Identification can be conducted by Professional Wetland Experts in Delineation using the all the standards required (including Ecology's). If the current wetland delineation conducted by a professional using all the standards is the most recent and detailed available, these apply. CARO's protect Wetland Resources not necessarily recognized by Ecology's permitting process. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Comment noted.

**232. Comment:** *Pg 54, Appendix A: "Action Threshold: Densities that determine control action. This permit is allowing the chemical applicator and the sponsor to determine plant densities, rather than professional plant botanists or wetland specialists who use a numerical system based in scientific methods, not "feelings". (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Comment noted. To Ecology's knowledge there are no numerical action thresholds based on plant density as developed by professional botanists or wetland specialists.

**233. Comment:** *"The littoral zone is the part of the lake that supports plant growth". This definition should be written the exact same way as the definition in the "Fact Sheet" which explains the Littoral zone as the part of the lake where plant growth occurs. On October 4, 2010 Kathy Hamel stated the definition of littoral zone specifically means where the plants are actually growing, not where they "might grow". In 2008 Kelly McLain stated the littoral zone is the area plants could potentially grow, in other words the entire lake bed, substantially changing the treatment areas calculated which did not historically support plant life. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology defines the littoral zone in the permit as "The vegetated area from the water body's edge to the maximum water depth where plant growth occurs. The littoral zone varies between water bodies depending on bathymetry, water clarity, water quality, and other environmental conditions". The definition in the fact sheet did not include the phrase "and other environmental conditions". Ecology typically does not make changes to the fact sheet, but believes that the extra phrase in the definition in the permit does not alter the meaning of the littoral zone in the permit.

Ecology expects the applicator to apply chemical only in areas where plants are actually growing and where their density, number, or species triggers the action threshold for that area. Ecology does not generally endorse herbicide application for control projects in

areas where plants or a filamentous alga is not growing. Treatment for blue-green algae may take place lake-wide. Note: the entire lakebed is not the littoral zone of the lake, unless the entire lakebed contains vegetation. The littoral zone depends on many factors such as water clarity, slope, sediment type, etc.

**234. Comment:**

<i>Page</i>	<i>Heading</i>	<i>Existing Verbiage</i>	<i>Comments/Changes</i>
	APPENDIX A -- DEFINITIONS		Add: Limnologist (lake Specialist), Lake Management Plan, IAVMP, Discharge Management Plan, Chemical Drift or Impact on Non-target Plants, Opt-out, SEPA Addendum

(Commenter #9 - Cathy Backland)

**Response:** Ecology added definitions for "Discharge Management Plan", "impact on non-target plants", and "SEPA addendum" to the permit. Ecology did not use the other words/phrases in the permit and therefore did not add these definitions to the permit.

**235. Comment:** *The permit needs to define ditches. The Muckleshoot Indian Tribe has found that many “ditches” in WRIA 8, 9, and 10 are actually streams with salmonids in them.*

(Commenter #26 - Karen Walter)

**Response:** State and local transportation or ditchbank maintenance agencies typically perform all roadside ditchbank control. These activities do not involve the use of herbicides that treat submersed vegetation. None of the herbicides allowed by this permit used for emergent ditchbank plant control has impacts to salmonids.

**Comments About Appendix B – Public Notice**

**236. Comment:**

<i>Page</i>	<i>Heading</i>	<i>Existing Verbiage</i>	<i>Comments/Changes</i>
51	APPENDIX B – PUBLIC NOTICE	Applicant name and contact information Water body name may be treated to control aquatic weeds and algae. Copies of the application are available by contacting the Aquatic Pesticide Permit Manager.	Include Sponsor’s contact information. Change weeds to vegetation. Include Discharge Management Plan and maps as well as the application being available for review

(Commenter #9 - Cathy Backland)

**Response:** The sponsor information is included on the application. Interested parties may obtain copies of the application by contacting Ecology’s permit manager. The DMP and the maps are part of the application and will be available for public review through public disclosure request. Ecology changed the word “weeds” to “plants”.

## Comments About Appendix C – Ecology Notification Template

### 237. Comment:

<i>Page</i>	<i>Heading</i>	<i>Existing Verbiage</i>	<i>Comments/Changes</i>
52	APPENDIX C – ECOLOGY NOTIFICATION TEMPLATE	Chemicals/products proposed for use	Include PURPOSE of chemical treatment in reports for public track record and information purposes.

(Commenter #9 - Cathy Backland)

**Response:** This form is for Ecology staff only. It notifies Ecology inspectors and the permit manager of pending treatments and provides information about just completed treatments. It is not necessary to include the purpose of the chemical treatment here.

## Comments About Appendix D – Business and Residential Notice Template

### 238. Comment:

<i>Page</i>	<i>Heading</i>	<i>Existing Verbiage</i>	<i>Comments/Changes</i>
53	APPENDIX D – BUSINESS AND RESIDENTIAL NOTICE TEMPLATE	Applicant name and contact information	Include Sponsor's contact information. The Sponsor is responsible for hiring the chemical applicator and needs to be responsible for answering questions on why using chemicals.  Also include directions on how to "opt out" of treatment.

(Commenter #9 - Cathy Backland)

**Response:** During permit scoping meetings, Ecology proposed making sponsor contact information available on notices and signs, but Permittees strongly opposed this idea for the following reasons; sponsors:

- Are often at work and unavailable during treatment times.
- Do not have technical knowledge about herbicides and algaecides.
- Often do not know the applicator's exact treatment schedules.
- Can feel uncomfortable being expected address these types of questions.
- Hire a licensed commercial applicator to handle these requirements for them.

For these reasons, Ecology did not require sponsor contact information on notices and signs. However, Ecology encourages Permittees to include sponsor information when the

sponsor is willing to assume the responsibility of answering questions about the treatment.

Developing guidance for "opting out" is outside of Ecology's regulatory responsibility. "Opting out of treatment" if requested by a resident, is an issue that sponsors must resolve within their constituency.

### Section 3. Comments on Supporting Permit Documents

#### Comments on the Notice of Intent (NOI)

**239. Comment:** *Comment on the Notice of Intent - Section VII - The chemicals planned for use should be the actual chemicals planned. Past applications have listed several chemicals for use when, in fact, only one was actually planned to be used. If more than one chemical is listed for the same target plant, locations should be noted on the application (map?). If more than one chemical is listed for use, location and treatment timing should be noted. Review and conditioning of permit should follow to assure that chemicals are not mixed in the environment.*

*I suggest that Section VII of the NOI be revised as follows:*

*If more than one chemical is proposed, show proposed location for each chemical, target plant species and proposed application times. (Commenter #35 - Richard Bruskrud)*

**Response:** Plants and conditions change in lakes from year to year. Applicators often list several chemicals on their permit applications to have appropriate tools readily available to adjust for changing conditions. This is something that Ecology allows.

#### 240. Comment:

Page	Heading	Verbiage	Comments
1	Permittee Information	Permittee Information	Add Applicant/Permittee Information (to avoid confusion)

*(Commenter #9 - Cathy Backland)*

**Response:** Ecology will make the requested change in the NOI.

#### 241. Comment:

Page	Heading	Existing Verbiage	Comments/Changes
3	X. Public Notice	Public notice must be published at least once each week for 2 consecutive weeks, in a single newspaper that has general circulation in the county in which the project is to take place	<b>Add:</b> The applicant must mail or deliver this notice to all potentially affected waterfront residents (those within one-quarter mile in each direction along the shoreline or across the water from proposed treatment areas) within one week of publishing the first newspaper notice.

(Commenter #9 - Cathy Backland)

**Response:** Ecology added this language to the NOI.

**242. Comment:**

<b>Page</b>	<b>Heading</b>	<b>Existing Verbiage</b>	<b>Comments/Changes</b>
3	XI. Sponsor Certification	I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.	Add: permit may be revoked (as a consequence)

(Commenter #9 - Cathy Backland)

**Response:** Ecology believes the certification statement is sufficiently stringent as written.

**243. Comment:**

<b>Page</b>	<b>Heading</b>	<b>Existing Verbiage</b>	<b>Comments/Changes</b>
3	XII Applicant Certification	Applicant Certification	Add: Applicant/Permittee Certification. (To avoid confusion)  Add: Permittees must use <i>all known, available, and reasonable methods of pollution control, prevention, and treatment (AKART)</i> when applying pesticides. Compliance with this permit, the <i>Washington Pesticide Control Act</i> and the requirements of the <i>Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)</i> label constitute AKART.

(Commenter #9 - Cathy Backland)

**Response:** These are all permit conditions and Ecology does not need to add these to the NOI.

**244. Comment:**

<b>Page</b>	<b>Heading</b>	<b>Existing Verbiage</b>	<b>Comments/Changes</b>
3	XI. Sponsor Certification		Add Checklist for Sponsor to sign as follows:
YES	NO	QUESTION	
		Do you understand the possible long term consequences or risks involved when using chemicals?	
		Do you understand the public notification requirements?	
		Have the legal water rights residents been notified?	
		Has the local County been contacted for any necessary permits?	
		Do you understand your legal responsibility as a Sponsor?	
		Do you understand the goal of protecting the environment while using chemicals?	
		Have you read the "Citizen's Manual for Developing Integrated Aquatic Management" manual and the "Washington Lakes" book?	

		<i>Do you understand that chemical use is only one aspect or part of an overall Lake Management Plan?</i>
		<i>Have you read the AQUATIC PLANT AND ALGAE MANAGEMENT NPDES GENERAL PERMIT?</i>
		<i>Have you read the "Fact Sheet?"</i>

*(Commenter #9 - Cathy Backland)*

**Response:** The DMP addresses many of these questions and Ecology does not see a need to require this additional checklist.

**245. Comment:** *Draft NOI recommendations:*

*VI Waterbody Information:*

*There should be more questions regarding river, lake wetlands. Haven Lake, for example is a lake, has wetlands and has WRIA 15.461 flowing into the lake, through the deep channel in the cove and through the main basin and out of the lake, eventually into the Tahuya River. The permittee, in 2008 treated all three, the lake, the river and three wetland areas. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** The DMP template (SEPA Addendum) is comprehensive and requires the applicant/Permittee and the sponsor to provide the names and locations of any inlets and outlets to the water body, if available. Many inlets and outlets are unnamed. Applicants must also list any associated sensitive habitats or wetlands along with other relevant water body specific information.

**246. Comment:** *XI. Sponsor Certification:*

*Individual lot "sponsor" must provide legal basis for "certification" of legal authority, such as real estate documentation of lakebed ownership, or legal research and documentation of such. "Sponsors" must provide clear legal basis and documentation for "certification" of authority to treat lake areas. Any group not currently a "legal entity" at all, or a "legal entity with authority to carry out the permitted activity", cannot apply chemicals to that waterbody until legal status and authority is actually achieved (and clearly documented, not "claimed"). (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology requires the sponsor's signatory to certify that he or she "represent an entity that has authority to administer common areas of the water body, or locations within the water body, for the purposes of aquatic plant and algae management." The signatory must also certify that "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.” Ecology requires no further verification.

### **Comments on the Discharge Management Plan Template**

**247. Comment:** *Section IX - All DMP’s should undergo public review. It should not matter if it is a new application or existing coverage. The importance of environmental review is the same whether it is a new application or an existing coverage.*

*I suggest that Section IX of the DMP be revised as follows:*

*DMP’s ~~submitted as part of the Notice of Intent will~~ shall undergo public review. ~~DMP’s submitted by existing Permittees when the Permittee proposes to use a chemical that persists in the water for longer than days must satisfy the requirements of WAC 173-201A-410.7~~ The Permittee must follow the Administrative Procedures Act (chapter 34.05 RCW) for public involvement and complete a SEPA evaluation of the plan (chapter 43.21C RCW). The DMP review for existing coverage shall provide the same comment and appeal periods as an initial application. (Commenter #35 - Richard Bruskrud)*

**Response:** Comment noted, but no change to the permit.

**248. Comment:** *Draft DMP and SEPA recommendations:*

*II. Water Body Information:*

*Include the question following #22. List homes which have septic systems and whose domestic water source on legal documents names the lake. (such as is legally recognized in Mason County (per Mason Co. Environmental Health) (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology added a question that addressed septic systems to the DMP template.

**249. Comment:** *IX. Public Involvement:*

*DMP’s submitted by existing permittees must also undergo public review. Everyone should be completely equal and up to speed with each subsequent permit coverage (April 1, 2011) (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** DMPs submitted as part of an application for coverage undergo a public process. Ecology encourages existing Permittees (and their sponsors) to undertake a public review process for any new DMPs prepared to meet permitting requirements. Many of the continuing sponsors developed integrated aquatic vegetation management plans under the “old” Nuisance Plant Permit. These plans have undergone a public review process.

## **Comments on the Fact Sheet**

### **250. Comment:** *B) Draft Fact Sheet Recommendations:*

*Pg 42, paragraph #1, S4 Application of Products: “It is the responsibility of the Permittee, to determine if there are any other applicable laws, requirements...”*

*Haven Lake’s chemical application violated Mason County Codes....again, in this permit coverage, it is the “honor system”. Shared responsibility of filling out the DMP and SEPA information with the appropriate county authority will ensure the Permittee understands all applicable laws, CAROS, etc. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology considers that it is the responsibility of the Permittee to determine if other laws apply to the project. It is up each local jurisdiction to enforce its own laws, ordinances, and codes.

## **Comments on the Small Business Economic Statement**

### **251. Comment:** *Additional Specific Recommended Changes*

*Draft Economic Analysis recommendations:*

*Pg 6 III Overview; bottom paragraph: “When developing an economic impact statement Ecology does not to include the following....” is an unclear sentence. (Commenter #33 - Monica Harle; Commenter #30 - Robert Hager and Constance Ibsen; Commenter #34 - William Matchett)*

**Response:** Ecology has revised the Small Business Economic Impact Analysis for the Aquatic Plant and Algae Management Permit and corrected this sentence.

### **252. Comment:** *Re: Comments on Economic Impact Assessment Produced by Ecology*

*Overall we feel that this is a well written document that summarizes the costs associated with compliance with the DOE permit governing aquatic herbicide applications.*

*There is one key assumption however that is flawed. On page 2 in the executive summary and on page 8 in the conclusion is the statement “In addition, because small business is contracted to perform a service, the costs (including the costs for compliance with the permit) associated with the service are typically not borne by the small business, but passed on to the client”.*

*The problem with this statement and conclusion is that there are a significant number of potential or current clients that cannot afford to pay the additional fees as required by the Permit. In very many cases, the cost of compliance and the fees paid to Ecology are in excess of 75% of the total project costs. For example, the Seattle Seahawk property is heavily impacted by*

*Eurasian Milfoil. The total cost for them to manage this in 2010 was approximately \$2,200.00 to treat about one acre. The fee for treatment was approximately \$350.00 of that amount.*

*There are a significant number of groups that come to us that could afford the cost of aquatic plant management, but cannot afford the fees required for compliance. As they can not justify those costs they often leave the problem unresolved or resort to using mail order herbicides, something that has the potential to impact the environment. Based on an analysis of sales and potential sales/calls for service, our business is missing out on approximately \$200,000.00 of income in a normal year because of the impacts of permit costs. While these conditions may be required in order to comply with various state and federal laws, and we understand that, the conclusion that there is no or limited economic impact on small businesses for this stated reason is not valid and should be reconsidered.*

*Additionally, the new condition of requiring a Discharge Management Plan because of the potential inclusion in the new federal permit will add to this financial burden placed on clients. If this condition does not make it into the final document from EPA, it should be removed from the State Permit as well. (Commenter #15 - Terry McNabb)*

**Response:** Ecology has revised the Small Business Economic Statement. Because Ecology determines fees under a rule, fees are exempt from consideration in the Small Business Economic Statement.

### **Comments on the WDFW Treatment Windows**

**253. Comment:** *Comment 8. D, 4, general restrictions, the Permittee must follow the WDFW treatment windows as published, with that department able to update and change conditions through the life of this permit. This condition has a significant number of problems.*

*a. This document has changed from a simple 2-3 page word document to a 30 page document in the last year without any input or comment from the regulated community or the tens of thousands of lake residents to rely on using these tools. As these conditions are part of and incorporated into this NPDES permit, they require the opportunity to review and provide comment prior to their inclusion. (Commenter #15 - Terry McNabb)*

**Response:** Ecology made the WDFW timing table available for public review as one of the supporting documents for the Aquatic Plant and Algae Management Permit, along with the fact sheet, NOI, DMP template, and Small Business Economic Statement. As such, the public has had a chance for input to the WDFW treatment windows. Ecology received many comments about the table during this comment period and these comments and Ecology's response are included in this document. Ecology also consulted with WDFW and made changes to the timing table and permit because of these comments.

**254. Comment:** *In addition, they can change your entire permit at any time by updating these requirements. This agency could completely ban the use of Aquatic Herbicides through the life of this permit by simply changing this document to say such. Any future changes in this document should be subject to the same comment and review period as a NPDES permit requires. You cannot have conditions in an NPDES permit that are subject to change after it's issued by a different agency without the opportunity for input or comment. In addition, there are significant problems with this document as it is written and the following comments are provided. (Commenter #15 - Terry McNabb)*

**Response:** AquaTechnex appealed this same issue to the PCHB when Ecology issued the 2006 permit (PCHB NOS. 06-011, 06-020, 06-023). AquaTechnex was concerned that WDFW could modify the timing windows at any time without the full procedural protections normally applicable to NPDES permit modifications (i.e., public input and comment). WDFW bases timing windows on the anticipated presence or absence of fish or priority organisms during a particular period. The possibility exists that WDFW could modify certain provisions of the document during the life of the permit because of the dynamic nature of fish migration and scientific data collection.

The PCHB ruled, "Such changes do not implicate the substantive regulations imposed on permittees. It is permissible under these circumstances for Ecology to incorporate this type of document from another source into an NPDES or waste discharge permit, and particularly where the applicable restrictions are readily available for all Permit holders on the Ecology website. This arrangement is similar to how fishing and hunting season updates are made available to holders of fishing and hunting licenses". The PCHB concluded, "It is reasonable and does not unduly prejudice Permit holders or their ability to comply with the Permit's terms."

**255. Comment:** *Application of Products. D. General Application Restrictions. 4. The rights and duties of any sponsor pursuant to the terms of the permit must be fixed at the time of permit issuance. It is not appropriate to incorporate by reference a second document the terms of which are subject to change during the term of the permit. The fact that NPDES permits are for a term certain makes this argument all the more compelling because the changes in the WDFW rules will become applicable to a permit holder when and if a new permit issued. This has the additional benefit of phasing in new rules and gives the sponsor and applicator important certainties regarding treatment rights, duties, and costs. (Commenter #31 - David King)*

**Response:** See the response to comment # 254.

**256. Comment:** *In the general terms page 1, this document bans any application of many aquatic herbicides outside a treatment window of July 15-October 31st for any lake not on this list. That is not a legitimate requirement. There are many golf course lakes that may have a discharge that required treatment where this restriction would be problematic. There are many*

*cases where there would not be a concern similar to lakes where they indicate treatments can be year-round as needed. This should be removed and they should evaluate new permits that come in for lakes not on this list and develop site-specific recommendations as they have done for these other listed lakes. They claim the right to update this document and if Ecology retains that right for them, they should use it in place of this wording. (Commenter #15 - Terry McNabb)*

**Response:** WDFW did not ban the application of herbicides outside of a treatment window of July 15 to October 31 for any lake not on the list. WDFW specifically says, "If you need to treat outside this window, Ecology and the Permittee must consult with WDFW to determine species impacts and appropriate mitigation". If applicators treat lakes not listed in the table where this timing window is unsatisfactory, notify Ecology so that the parties can consult with WDFW to develop appropriate timing for these water bodies. Ecology will then add these water bodies and their timing windows to the table on the website.

WDFW did not provide site-specific timing windows for every water body in Washington because there are thousands of water bodies in the state. Instead, the agency focused on providing work windows on lakes with treatment history. By not listing a water body in the table, WDFW did not want to imply that there were no sensitive species concerns. That is why they imposed a default-timing window for any water body not listed in the table and provided project proponents an opportunity to consult with the agencies to develop appropriate timing windows for specific water bodies. In the older timing table, project proponents incorrectly assumed that because a water body was not on the list, it did not have any priority species or habitats. That is not always the case, even for smaller, isolated water bodies.

**257. Comment:** *Permit refers to WDFW timing table. " WDFW provides recommended treatment windows for aquatic herbicide treatment. These windows are designed to avoid adverse impacts to priority species (federal- and state-listed and other sensitive and vulnerable species). WDFW recognizes that aggressive treatment of emerging noxious weeds may sometimes be advisable during these treatment windows. In those cases, Ecology and the permittee shall consult with WDFW to determine ways to minimize or mitigate treatment impacts to fish and wildlife. Contact a WDFW regional office (<http://www.wdfw.wa.gov/about/regions/>) in those cases.*

*For all lakes not listed below, the annual treatment window is July 15 - October 31st. If you need to treat outside this window, Ecology and the permittee shall consult with WDFW to determine potential species impacts and appropriate mitigation". Is this table a legal binding document? Can it be amended? Is it up for review? (Commenter #2 - Kim Patten)*

**Response:** Permittees must consult this document and follow any permit provisions that refer the Permittee to the table. WDFW in consultation with Ecology can amend the table during the life of the permit. Changes to the table typically occur when a project proponent requests a change. Ecology is willing to consult with both the Permittee and WDFW when anybody requests an alternate timing window. The table was out for public comment from September 1 to October 15, 2010.

**258. Comment:** *2. There are a number of lakes on this list where WDFW says "avoid treatment". That makes it a violation of an NPDES permit to work in these waterbodies. Scott Lake in Thurston County for example has an established community with parks and beaches. While they have experienced noxious aquatic weed problems, they also have a need to target nuisance growth in beaches and high use areas. This agency is banning that particular community from doing any work through the use of this fish timing window that there was no opportunity to comment on prior to release. All references to "Avoid treatment" should be removed and if there are specific questions they can be addressed on a product by product basis. Another example is Bead Lake, Pend Oreille County. There is a rapidly expanding early infestation of Eurasian Milfoil in this lake, yet this document requires us to avoid treatment or only treat outside the summer months (?) when the performance of the herbicides are marginalized. It is against Washington State law to condition or burden noxious aquatic weed treatments and this condition is an example of this occurring. These are also examples of how an outside agency has banned the application of aquatic herbicides under this permit without any input or comment from the public or the regulated community. When they update this document as they are allowed to do, they could easily ban the use of these products in many other lakes simply by typing those words as they have here. (Commenter #15 - Terry McNabb)*

**Response:** Although WDFW uses the term “avoid treatment” for some lakes, it also provides applicators with an option to consult directly with the agency to allow for noxious weed treatments. WDFW has not banned any chemical through its timing windows. Instead, it has provided a way for applicators to work directly with agency staff to minimize impacts to priority species while allowing for chemical treatments. This seems reasonable to Ecology when balancing the need for noxious weed removal and protecting habitat for priority organisms.

**259. Comment:** *Some treatment windows are unreasonable. For example approximately 300 acres of Moses Lake was treated in early June with 2,4-D to target Eurasian Milfoil this summer. This document would have made that application illegal and restricted the use of this selective herbicide would have cost that District a significant amount of money to use a more expensive systemic herbicide. It would also force treatment to September when plants have impacted water use all summer, herbicides are not as effective and plants have been allowed to spread through limited control all summer. (Commenter #15 - Terry McNabb)*

**Response:** Ecology agrees that the timing window for treatment in Moses Lake is restrictive unless the project proponent consults with WDFW biologists to minimize impacts to nesting waterfowl. Nothing in Moses Lake timing window restricts the use of 2,4-D or other chemicals. Timing on Moses Lake concerns waterfowl nesting and rearing.

**260. Comment:** *Another example are the treatment windows for the Lake Washington Ship Canal for Reward. Brazilian Elodea is a rapidly expanding noxious aquatic weed that is impacting this area. Reward is the only realistic treatment option for this weed in many cases, yet this document requires it can only be used in the winter months when it is not as effective. This is directly leading to the spread of this noxious weed. In addition, Ecology has funded hundreds of thousands of dollars of studies at the UW that concluded this product does not have impacts on the fish this timing window is designed to protect, and Ecology staff indicated when these studies were completed, this product would no longer be restricted by timing windows. (Commenter #15 - Terry McNabb)*

**Response:** Lake Washington and its watershed support several threatened and endangered salmon species and runs. Salmon must travel through Portage Bay and the Ship Canal when outmigrating to Puget Sound. Many scientists (state, federal, and Tribal biologists) collaborated with WDFW to determine the optimal time to use chemicals in this area to avoid direct impacts to the juveniles. Because of multiple species and runs in this system, the timing windows in Portage Bay and the Ship Canal are restrictive. Ecology agrees that the timing for diquat treatment is not ideal. Nevertheless, Ecology understands that spring and fall diquat treatments in Portage Bay and Ship Canal have substantially reduced Brazilian elodea populations in these areas, in spite of the suboptimal timing.

Ecology indicated that if studies demonstrated that there were no impacts to salmon from diquat, then it would remove timing restrictions from this chemical. Although diquat did not have impacts on salmon smoltification (seawater challenge), studies showed that it has the potential to interfere with salmon olfaction. Therefore, Ecology determined that it cannot remove the juvenile salmon timing restriction from diquat.

**261. Comment:** *This is one of the most problematic portions of this permit and should be changed to allow for comment and input prior to adoption. This is no different than giving a City a permit for their municipal sewer plant after construction agreeing to let them generate an agreed to amount of discharge and having a condition where an outside agency can alter their required operations by simply typing a new letter. Some serious thought should be given to this method and document. It should not be allowed to stand in its present form. (Commenter #15 - Terry McNabb)*

**Response:** The timing windows have undergone a public review process, along with the permit and other supporting documents. The fish timing tables were ready for implementation for the 2010 treatment season. Due to significant changes in the table, Ecology agreed with the commenter that the table needed public review. Therefore, Ecology provided the revised table as a supporting document to the Aquatic Plant and Algae Management permit and made it available for public comment from September 1 through October 15 (a 45-day comment period). Because of comments received about the timing table, Ecology is making changes to the permit and after consulting with WDFW will make some changes to the timing table.

**262. Comment:** *Pages 19-22, "not for fish, but check timing table for sensitive species" is present with respect to many herbicides that are not subject to fish timing windows. This poses a significant number of problems. (Commenter #15 - Terry McNabb)*

**Response:** Ecology wants applicators to be aware of and follow WDFW recommendations when applying herbicides that can potentially affect the food and habitat of priority animals. This is similar to the protections afforded to protect rare plants from treatment.

**263. Comment:** *On page 28 of the Fish Timing Window document are 6 conditions that unnecessarily ban aquatic herbicide use for noxious and nuisance aquatic weed control. As this table is referenced as something that must be adhered to, there are again conditions present that halt or burden aquatic weed control efforts. Herbicides such as Fluridone, Imazamox and Imazapyr do not produce the impacts this page indicates, yet they are generically banned or restricted in many cases by this wording.*

*The WDFW generically states that pesticides "may" adversely impact ducks in condition 1, bans the use of pesticides where protected frogs are present in condition 2, states that pesticides removes small fish and amphibians from the heron food supply in condition 3, limits only application vessels (but no other boats on the lake) from areas where loons and grebes nest in condition 4, and discusses the impact of insecticides such as organophosphates and carbamate on pelicans as a means to ban all herbicides in condition 5.*

*Many of the herbicides we use such as Fluridone are known not to cause any of these impacts, they have none of these effects. But as this document generically lumps all pesticides and herbicides together, and the permit wording requires that the conditions in this document be followed, all herbicide use is banned in many cases by this document that was developed with no comment from the regulated community. That is ridiculous, if there are specific concerns regarding a pesticide such as Fluridone toward these other species, those conditions should be incorporated in the DOE permit, not in the fashion this table does.*

*This is again another example of the problem posed by a third party publishing a document that is referred to in the NPDES permit without the opportunity to comment on it. This document and*

*these conditions burden noxious aquatic weed control in a significant number of lakes throughout Washington State for no good reason.*

*NPDES permits have become a focal point of a number of environmental activists that look to fund their advocacy through citizen lawsuits. As this table is part of this NPDES permit and as this table has this vague language that is open to interpretation, the probability that this could be used against applicators in these suits is very high. This causes unnecessary liability for applicators and sponsors. For example, pelicans could show up and forge in a lake treated the previous day and the applicator could be liable under the Clean Water Act because of that.*

*This table poses the greatest threats to the required management of noxious and nuisance aquatic weeds. It should be subject to comment and review prior by the public prior to use. It should be edited to apply restrictions to products that have a reasonable potential to cause the effects it's trying to protect, not generically lumping all insecticides and pesticides together and basing restrictions on that. Any future changes should be made after public review and comment. (Commenter #15 - Terry McNabb)*

**Response:** The “conditions” at the bottom of the table are not permit conditions but rather WDFW notes that explain the rationale for any recommended windows for non-fish priority species. Ecology asked WDFW to develop this table for anadromous fish, threatened and endangered species, and priority habitats and species. WDFW has a Priority Habitats and Species Program that provides comprehensive information on fish, wildlife, and habitat resources in Washington. It is the backbone of the WDFW’s proactive approach to the conservation of fish and wildlife. This program is the principle means by which WDFW provides important fish, wildlife, and habitat information to local governments, state and federal agencies, private landowners and consultants, and tribal biologists for land use planning purposes. This information is used to screen Forest Practice Applications, Hydraulic Project Applications, SEPA documents, and many other permitted activities. It seems reasonable to Ecology that project proponents treating noxious or nuisance plants would want to ensure that they do not harm priority species or habitats. As always in this table, WDFW provides project proponents the opportunity to work directly with them to determine ways to accomplish the plant removal project without causing unnecessary harm to the environment.

**264. Comment:** *The WDFW timing recommendations that are incorporated in the draft permit is extremely problematic, will have a significant impact on the management of noxious aquatic weeds and will in many cases require the addition of more aquatic herbicide than would be required and Ecology should consider a number of factors in this regard.*

*In previous permits, Ecology has subjected some aquatic herbicides that have potential impacts on fish to the previous fish-timing window; and Ecology has exempt products that have no impact on these species. Ecology as the right and obligation to use the table on Pages 19-21 to*

*require compliance with the fish timing window where a herbicide may have an impact (example: Hydrothol 191) and to mitigate the impact on aquatic plant management caused by this timing window where specific products do not cause impacts. The draft permit says for a number of products such as Sonar "no for fish, but check timing table for other sensitive species". This wording in Ecology's permit should not be present for listed herbicides where those products do not have impacts on fish, invertebrates or the other species noted. This approach would insure protection of the environment and insure that undue and unnecessary burden is placed on noxious and nuisance aquatic plant management operations.*

*Further, on page 28 of the WDFW Timing Window are 7 conditions that this Department wants to impose on applicators in a number of lakes. The wording in this document clearly shows that there is a disconnect between the impact of pesticides in general and the specific aquatic herbicides that this permit allows. (Commenter #15 - Terry McNabb)*

**Response:** See the response to comment # 263. The commenter is misinterpreting the “notes at the bottom of table” that provide the “rationale for recommended windows for non-fish species” as being permit conditions. These notes are not permit conditions. Ecology added additional information to the permit that clarifies when fish timing applies and when it does not. Because aquatic herbicides may affect food and habitat for priority species, WDFW requests that applicators only conduct work outside of its recommended timing for specific water bodies after consultation with its biologists.

**265. Comment:** *Recommendation 1, Cavity nesting ducks and waterfowl concentrations "the use of herbicides and pesticides near wetlands may adversely affect ducks and waterfowl by lowering the number of invertebrates and aquatic vegetation. Waterfowl concentrations are also subject to disturbance from human activity". The majority of the aquatic herbicides subject to this permit do not have any impact on invertebrates. Further, aquatic plant management applications occur generally for a few hours once a summer on a lake, this is an insignificant human impact compared to other fishers, lakeshore residents, jet skiers, water skiers that utilized our lakes. If this is a legitimate concern, the impact of other lake users should be restricted prior to doing this to applicators, the least intrusive of water users. (Commenter #15 - Terry McNabb)*

**Response:** “Recommendation 1” – is not a recommendation, but instead a note to the timing table. Although there is typically no direct toxicity to invertebrates from any of the herbicides allowed in the permit, removal of habitat (aquatic vegetation) may affect the number and density of invertebrate species in the area. Some waterfowl feed on aquatic vegetation and its seeds and tubers. Removing vegetation through herbicide treatments may remove waterfowl food. WDFW wants to ensure that any herbicide application in areas of sensitive waterfowl nesting and rearing areas do not have an adverse impact on those populations.

**266. Comment:** *Recommendation 2, Columbia Spotted frog and Northern Leopard frog*  
*"Pesticides and herbicides should be avoided in, or adjacent to, waterbodies used by these frogs. Again, the aquatic herbicides this permit covers for the most part have no impact on these species and Ecology should not condition the use of products like Sonar because there is no possible impact on frogs. In addition, the second concern is algae, yet this condition is used to try and ban all herbicide use in these waters. Most aquatic herbicides have no impact on algae, yet the way this permit and fish timing window are worded, lakes with condition 2 listed would ban the use of herbicides that have no impact on algae. (Commenter #15 - Terry McNabb)*

**Response:** "Recommendation 2" – is not a recommendation, but instead a note to the timing table. Ecology does not agree that herbicides will not have any impacts to these species. Although Ecology agrees that there is no direct toxicity to amphibians from herbicides allowed in the permit, Ecology believes that if these frogs rely on aquatic vegetation for food and habitat, then removing vegetation could have impacts.

There are three water bodies in the timing table where WDFW listed these priority amphibians as being present. These are Potholes Reservoirs, Medical Lake, and the Black River. To Ecology's knowledge, nobody has proposed treatment of any of these water bodies under the Aquatic Plant and Algae Management Permit. Should a noxious weed invade, the WDFW timing table allows consultation with WDFW to determine mitigation measures. This seems reasonable to Ecology. WDFW has not banned herbicide use in these areas, rather asked for consultation if a project proponent must use an herbicide to treat a noxious weed.

The northern leopard frog is a state endangered species and a federal species of concern. Endangered means "any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state" (WAC 232-12-297, Section 2.4). The Columbia spotted frog is a state candidate species. State candidate species include species that WDFW will review for possible listing as State Endangered, Threatened, or Sensitive. "A species will be considered for designation as a State Candidate species if sufficient evidence suggests that its status may meet the listing criteria defined for State Endangered, Threatened, or Sensitive in WAC 232-12-297, Section 3.3. when populations are in danger of failing, declining, or are vulnerable, due to factors including, but not restricted to, limited numbers, disease, predation, exploitation, or habitat loss or change." (WDFW Policy 5301). It seems reasonable to Ecology that people wanting to alter the habitat of these species should take extra steps to ensure their continued survival.

**267. Comment:** *Recommendation 3, Great Blue Heron (rookeries) and nesting Bald Eagles*  
*"Heron rookeries are sensitive to disturbance during nesting season. Herbicides can remove small fish and amphibians from heron food supply. Eagles "disturbance by the physical act of herbicide application could be of concern during these times. Again, the majority of the aquatic*

*herbicides subject to this permit do not remove small fish and amphibians and should not be subject in Ecology's permit to this condition. In addition, the physical application of aquatic herbicides is the least possible impact on these species. If the aquatic applicators vessel is required to stay 1,000 feet from Heron rookeries during the few hours per year it might be on a lake in the vicinity of such a site, all watercraft should be subject to the same conditions. Fishing boats, water-ski boats, jet skies etc are far more prevalent, operate at all times and are hundreds of times more likely to cause any type of disturbance. (Commenter #15 - Terry McNabb)*

**Response:** “Recommendation 3” – is not a recommendation, but instead a note to the timing table. Ecology agrees that the herbicides allowed in this permit do not have any direct toxicity to fish or amphibians. However, removal of aquatic vegetation can lead to habitat loss and indirectly lead to less small fish and amphibians.

If it is necessary to treat close to a heron rookery or eagle nest, contact WDFW to determine how to minimize disturbance. Great blue herons are state monitored species. WDFW does not consider this species to be a Species of Concern, but WDFW monitors their populations for status and distribution. WDFW manages them, as needed, to prevent them from becoming endangered, threatened, or sensitive. WDFW classifies bald eagles as State Sensitive Species and the federal government lists them as Federal Species of Concern.

WDFW provides a recommended protective buffer from the outer edge of active heron colonies of 820 to 985 feet from February 15 to July 31 for all human activity. However, WDFW management recommendations do not have regulatory authority. Ecology believes that activities conducted under its permits should be as protective as possible to priority species regardless of what other boaters may do.

**268. Comment:** *Recommendation 4 Common loon and Red-necked grebe "sensitive to nest and nursery disturbance. Nesting occurs through July 15th followed by brood rearing in nursery pools through Sept. 1. Nursery pools are where chicks feed and are reared. Chicks swim to the nursery pool within days of hatching. They are usually located at the waters edge where the lake bottom drop off is steep enough to allow underwater arrival and departure for adults but pool depth is shallow enough to limit predator size". Again, aquatic applicators are biologists that can identify these species, understand that they should avoid nests and chicks with their boats as a normal part of their operations. The hundreds or thousands of jet ski, water ski, fishing boats and pleasure craft that are the lakes all the time compared with the 1-2 hours an application vessel might be on that particular lake are manned by people that for the most part have no similar understanding. This requirement will cause no reduction in disturbance of these species. Either all water craft should be banned from these areas or this condition should not be imposed on us. (Commenter #15 - Terry McNabb)*

**Response:** “Recommendation 4” – is not a recommendation, but instead a note to the timing table. If it is necessary to treat close to loon nursery pools, contact WDFW to determine how to minimize disturbance. Loons are state sensitive species. A state sensitive species means “any wildlife species native to the state of Washington that is vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range within the state without cooperative management or removal of threats” (WAC 232-12-297, Section 2.5). Red-necked grebes are listed as state monitor species. Ecology believes that activities conducted under its permits should be as protective as possible to priority species regardless of what other boaters may do.

**269. Comment:** *Recommendation 5 American White Pelican "avoid using any insecticide or herbicide in American white pelican nesting or foraging habitat, Organochlorine, organophosphate and carbamate insecticides can be highly toxic to birds and fish". Again, the WDFW imposes a condition based on the potential impact of products that this permit does not cover or allow. Banning the use of a product like Sonar because organophosphates can be highly toxic to birds and fish is not something that Ecology should allow to occur. In addition, applicators could be in violation of the Clean Water Act if they make an application and then White Pelicans, which are transient in nature, appear and begin to forge. (Commenter #15 - Terry McNabb)*

**Response:** “Recommendation 5” – is not a recommendation, but instead a note to the timing table. If it is necessary to treat close to American white pelican nesting areas, contact WDFW to determine how to minimize disturbance. The American white pelican is a state endangered species. According to information from Seattle Audubon, colonies have disappeared from historical breeding areas around Moses Lake. Disturbance may cause adults to expose eggs and young to predators and temperature stress or to abandon nests altogether.

Ecology removed the information about insecticides from the note in the timing table as being irrelevant to this permit. Ecology also consulted with WDFW and removed the language of about not treating in pelican foraging areas.

**270. Comment:** *This timing document has the flaws listed above. Being required to comply with these conditions will cause expansion of noxious aquatic weeds and burden noxious aquatic weed control efforts, something that State Legislature has specifically directed Ecology and other State Agencies to avoid. Ecology should not subject the majority of the aquatic herbicides that are in this permit on pages 19-21 to compliance with the timing window document in its present form. Those products that do not have the impacts of concern by WDFW should not be subject in the Ecology Permit to referring to this document. Serious thought also needs to be given to the fact that applicators are among the most careful around sensitive bird species, are among the few on the water that can identify them, and are a minuscule amount of the boater operations on any given lake.(Commenter #15 - Terry McNabb)*

**Response:** Many of the herbicides are exempt from anadromous and other fish timing windows, however, herbicide treatment has the potential to harm non-fish species habitat. Consulting with WDFW to help protect priority habitats or species when applying chemicals should not burden noxious weed management efforts. Priority habitats are habitat types or elements with unique or significant value to a diverse assemblage of species. This requirement is similar to the extra steps that Ecology requires when permitting herbicide treatment in water bodies with rare plants.

**271. Comment:** *Avista owns and operates the Long Lake Dam which creates a 5,060 acre reservoir, Lake Spokane, that extends 23.5 miles upstream and is located in Lincoln, Stevens, and Spokane Counties. The most recent aquatic plant survey of Lake Spokane was conducted in 2007 by AquaTechnex. This survey included mapping approximately 634 acres of aquatic noxious weeds consisting of Eurasian watermilfoil, yellow floating heart, and fragrant water lily.*

*Avista has a requirement through its Federal Energy Regulatory Commission License for the Spokane River Project, which includes Ecology's Section 401 Water Quality Certification, to control the spread and occurrence of Eurasian watermilfoil with a primary focus on access sites. Avista is also working with Ecology and other cooperating parties to monitor and control existing exotic aquatic weeds and any new exotic aquatic weeds that may become established in Lake Spokane.*

*In reading through the Draft Permit, Avista's main concern is in regard to the "Recommended Fish and Wildlife Treatment Windows for Ecology's Aquatic Plant and Algae Management Permit" completed by the Washington Department of Fish and Wildlife (WDFW) dated April 2010. The Draft Permit indicates the Permittee must follow the WDFW treatment windows, and that WDFW may periodically update this table as new information becomes available. The following are concerns regarding the two-week treatment window (September 1 through 15) identified for Lake Spokane and the Spokane Canal.*

*Restrictive Treatment Window* – *Avista believes the WDFW recommended two-week treatment window in September for Lake Spokane and the Spokane Canal is much too restrictive. It is Avista's understanding that treating Lake Spokane's noxious weeds is most effective early in the growing season, typically in June or July, when most aquatic weeds are actively growing and would quickly take up herbicide placed in the water. This is also the time when plant biomass is lower and the decomposition of treated weeds would have less effect on water quality, especially dissolved oxygen.*

*Restricting control options to a two-week timeframe early in September would severely impact the control of noxious aquatic plants in Lake Spokane. This is even further restricted, as it falls over the Labor Day holiday weekend under which Ecology restricts treatment applications. Without the ability to control noxious weeds, Lake Spokane is vulnerable to further water quality degradation and possible negative impacts to recreation and fish.*

*Avista recommends Ecology provide a broader and more effective treatment window, such as a June through August timeframe, so that noxious aquatic weeds can be adequately controlled in Lake Spokane.*

*Treatment Window Updates – According to WDFW, the two-week treatment timeframe was based upon known occurrence of the following Lake Spokane priority species: native wild redband trout, burbot, Kokanee, and mountain whitefish. The WDFW treatment timing table includes the following note with regard to the identified “Priority species known occurrence”:*

*Priority species known occurrence: This column list species on WDFW’s Priority Habitats and Species List that are known to occupy each lake. This information, in conjunction with PHS Management Recommendations and review of WDFW biologists, was used to develop the treatment windows. The PHS List and Management Recommendations can be found online at: <http://www.wdfw.wa.gov/hab/phspage.htm>.*

*Avista was unable to access the website identified above and therefore unable to review the documentation identifying the priority habitats and species known to occupy Lake Spokane. Avista requests this information for review with regard to its application of the treatment window timeframe(s).*

*In addition, Avista recommends revising the periodic update of the table as new information becomes available. Avista would recommend a process in which any new information on the priority habitats and species be documented in peer-reviewed scientific paper(s) and made available for public review prior to any revision to the treatment window timeframes. (Commenter #22 - Meghan Lunney)*

**Response:** WDFW recently updated and revised its website, changing its web addresses in the process. The new URL for Priority Habitats and Species is <http://wdfw.wa.gov/conservation/phs/>. For specific information about Lake Spokane priority species, you will need to contact WDFW directly at 360-902-2543 or e-mail the WDFW Habitat Program at [habitatprogram@dfw.wa.gov](mailto:habitatprogram@dfw.wa.gov). WDFW is concerned with protecting the nesting and nursery habitats of red-necked grebes in Lake Spokane.

Ecology consulted with WDFW during preparation of the Response to Comments and negotiated a revised timing window for Lake Spokane of July 15 through September 30. The timing window is predicated on Avista biologists consulting with WDFW habitat biologists and conducting a survey of nesting red-necked grebes before any treatments for noxious weeds. WDFW requires applicators to remain 500 feet away from these areas.

**272. Comment:** *Specific Lakes- Lake Spokane Canal This is a man-made canal that is used for boat moorage and access to Lake Spokane. The timing is limited from Sept 1 to Sept 15, which includes Labor Day week-end. In reality, no treatment could be done. Since this is a high-use area by design, boat passage and moorage, there should be no restrictions on the timing.*

*(Commenter # 10 - Tom Wimpy)*

**Response:** Ecology consulted with WDFW biologists about why the timing window for Lake Spokane was so restrictive. WDFW has concerns with treatments disturbing nesting and nursery areas and also removing habitat for red-necked grebes, a state monitor species. WDFW was willing to expand the treatment-timing window for Lake Spokane and the Lake Spokane Canal, so long as a biologist surveyed and mapped grebe nesting and nursery areas prior to treatment. WDFW requested that the project proponent consult with them prior to any survey work. Applicators must stay 500 feet from any nesting and rearing areas. The revised timing window is July 15 through September 30.

**273. Comment:** *Lake Spokane (Spokane & Stevens counties) Sept 1 to Sept 15-Again includes Labor Day week-end which further limits the time. Obviously, WDFW doesn't want any treatments done here or is tired of the complaints. Either way, this window is too restrictive. The residents are in favor of some plant control measures that allow for boating and swimming along the waterfront. Treating only after Labor Day essentially diminishes the beneficial uses of the residents along the reservoir. (Commenter # 10 - Tom Wimpy)*

**Response:** Comment noted. See the response to comment # 272.

**274. Comment:** *Timing window for Haven Lake is July 16 –Sept 30 where as other lakes in Mason County with similar fish listed are July 15 – Dec 31 ..... Why?*

*Example:*

*Mason Lake - July 15 - December 31*

*Coho; fall chum; Kokanee; rainbow trout; resident cutthroat; summer chum; winter steelhead*

*Haven Lake - July 16- September 30*

*Coho; resident cutthroat; winter steelhead (Commenter # - Tompkins)*

**Response:** Ecology consulted with WDFW during the preparation of the Response to Comments. Because of this consultation, WDFW changed the timing window for Haven Lake to July 15 – December 31. This timing is consistent with the other salmon-bearing lakes in Mason County. Ecology does not know why the timing window for Haven Lake was initially more restrictive than for other salmon-bearing lakes in the area.

**275. Comment:** *SePRO Comments on WDFW Treatment Windows for Aquatic Herbicide Treatment*

*We do not feel this document should be referenced as a condition of the NPDES permit due to its unreferenced and potentially inaccurate statements, potential to unnecessarily hinder aquatic plant management efforts and the subjective and vague language that may allow for unnecessary*

*lawsuits for violations in compliance. It is unclear in many instances how to comply when insecticide impacts are lumped in with the aquatic herbicides regulated under the draft permit. Any WDFW concerns should be addressed as part of the permitting process with WADOE when and if they may apply to a particular product of proposed treatment.*

*In the event, the Department of Ecology elects to keep a version of this table in this NPDES permit we offer the following comments for consideration. (Commenter #27 - Shaun Hyde)*

**Response:** Comment noted however, work windows to protect salmon are not a new requirement. Ecology used a WDFW timing table in the 2006 Aquatic Plant and Algae Management permit to protect juvenile salmon from possible herbicide impacts. WDFW recently revised the timing table at the request of Ecology and a state legislator. The revised table now includes other priority species and habitats and is more comprehensive.

**276. Comment:** *Revisions to this document appear significant for the new permit and have been circulated here without any apparent public or end-user feedback to this point. This lack of input would seem contrary to public comment requirements of proposed NPDES permit changes. In addition, as an addendum to the main general permit subject to periodic revision by DFW, the timing requirements appear outside the normal process and schedule for NPDES permits. The treatment timing windows are a major component of the permit that should not be updated without an opportunity for public comment. (Commenter #27 - Shaun Hyde)*

**Response:** The timing table, along with other permit documents, was available for public comment from September 1 to October 15, 2010. The PCHB ruled, “It is permissible under these circumstances for Ecology to incorporate this type of document from another source into an NPDES or waste discharge permit, and particularly where the applicable restrictions are readily available for all Permit holders on the Ecology website.” Ecology makes all permit documents available on its website at [http://www.ecy.wa.gov/programs/wq/pesticides/final\\_pesticide\\_permits/aquatic\\_plants/aquatic\\_plant\\_permit\\_index.html](http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/aquatic_plants/aquatic_plant_permit_index.html)

**277. Comment:** *The Treatment Windows table and its supplemental supporting information make no distinction between toxicological profiles or use characteristics of various aquatic herbicides. This lack of distinction unreasonably eliminates all aquatic herbicides from management consideration when a more measured, product-specific analysis relative to particular priority habitat and species would be a more effective approach to protecting species of concern from the threat of invasive aquatic plants and harmful algae. (Commenter #27 - Shaun Hyde)*

**Response:** For fish timing, Ecology will clarify the language in the permit. Most herbicides and algaecides are not restricted around juvenile salmon or other fish species.

In other instances, herbicides and algaecides may affect critical habitat or disturb priority nesting or rearing waterfowl. However, WDFW allows Ecology and the Permittee to consult with them to develop mitigations for noxious weed treatments. This seems reasonable and protective in situations where the project proponent needs to use a chemical.

**278. Comment:** *Frequent statements with the table describe the need to “Avoid Treatment: This language creates unproductive liability risk for the use of herbicides by automatically creating a decision environment where a decision to treat is readily subject to legal challenge. Such language should be dropped in favor of statements that indicated requirements for site-specific discussions with DOE and DFW on proposed herbicide use. (Commenter #27 - Shaun Hyde)*

**Response:** In every instance where WDFW used the term “avoid treatment” it followed the statement by saying if treatment is necessary for the control of noxious weeds, then consult with WDFW. Ecology is willing to participate in these consultations, if so desired by the applicant or Permittee.

**279. Comment:** *Pg.1 – “For all lakes not listed below, the annual treatment window is July 15 – October 31” This overarching statement sets an arbitrary window for treatment without any technical discussion of why this window is necessary where priority species are absent. It would seem more appropriate to state that lakes not on the list are subject to individual site-specific review on treatment timing based on the herbicide or algaecide formulation being proposed for treatment. (Commenter #27 - Shaun Hyde)*

**Response:** WDFW set default timing for any water body not listed in the revised timing table because in the earlier table, applicators assumed there were no timing restrictions for unlisted water bodies and therefore treated at any time. To avoid this situation, WDFW set a default timing of July 15 – October 31 for unlisted waters. WDFW followed this default-timing window with a statement, “If you need to treat outside this window, Ecology and the Permittee shall consult with WDFW to determine potential species impacts and appropriate mitigation.” After consultation, Ecology will add the site and any revised timing information to the table.

**280. Comment:** *Multiple References starting pg.2 and also page 28 – “If treatment is necessary for control of noxious weeds, then consult with WDFW to determine treatment areas to avoid impacts to Columbia spotted frog” Pesticides and herbicides should be avoided in, or adjacent to, water bodies used by these frogs.” What data exist that document impact of today’s registered aquatic herbicides to spotted frog? While habitat modification seems to be the concern and should be considered in management planning, the base DFW document from 1991 on management recommendations for this and many species of concern (WDFW Priority Habitats and Species management recommendations*

<http://www.wdfw.wa.gov/hab/phsrecs.html>) mentions possible chemical effects on larval development as rationale. Do scientific data exist that supports a conclusion of specific risk from aquatic herbicide use or is this a generalization made long ago about chemicals that has carried over from this 20 year-old document citing even older research? (Commenter #27 - Shaun Hyde)

**Response:** Ecology does not have concerns about the direct effects of herbicide on the amphibian eggs or tadpoles, but instead is concerned about indirect effects on these species through loss of food and habitat by removal of aquatic vegetation. Consulting with WDFW about site-specific treatments should help determine if there will be impacts and if so, how to mitigate for them to allow for noxious weed management. This seems reasonable when a priority species may be affected.

**281. Comment:** *Multiple References starting pg.2 and also page 28: “Through July 31, stay 1,000 feet from heron rookeries, or consult with WDFW Region 5 office at 360-696-6211 to determine how to minimize disturbance of nesting herons.” “Herbicide application can also remove small fish and amphibians from the heron food supply.” Physical disturbance of nests from – human activities (boats, noise, etc.) seems a reasonable concern. Are there any current notices or signage in these areas to indicate people are to stay 1,000 feet from heron rookeries? If not, then this restriction should not be specific to activities associated with treatments and deleted from this permit. What data documents that herbicide application (per the approved list in this NPDES permit) removes small fish and amphibians from heron food supply? This statement should be deleted from the permit language unless supported by scientific documentation. (Commenter #27 - Shaun Hyde)*

**Response:** WDFW’s fact sheet about Great Blue Herons ([http://wdfw.wa.gov/wildwatch/heroncam/heron\\_facts.html](http://wdfw.wa.gov/wildwatch/heroncam/heron_facts.html)) indicates that several studies have shown that human disturbance during the breeding season can cause adult herons to abandon the entire rookery. Herons are least tolerant of disturbance during the pre-nesting and courtship periods, becoming progressively less likely to abandon nests after laying eggs. WDFW’s Management Recommendations for Washington’s Priority Species – Great Blue Heron – says, “If pesticide use is planned within 2.5 miles of a known heron colony or feeding area, consult Appendix A for the Priority Habitat and Species bird volume (see <http://wdfw.wa.gov/hab/phs/vol4/appndxa.pdf>) for contacts to help assess the use of pesticides, herbicides, and their alternatives”. WDFW provides a recommended protective buffer from the outer edge of active heron colonies of 820 to 985 feet from February 15 to July 31 for all human activity. However, WDFW management recommendations do not have regulatory authority so they cannot prohibit boating activities. Ecology believes that activities conducted under its permits should be as protective as possible to priority species regardless of what other boaters may do.

**282. Comment:** *Multiple References starting Pg. 6 – “Consider waiting annually until after July 15 (to avoid impacts to largemouth bass).” Comment: What data are being utilized to set July 15 as start of a window? Presumably, this related to bass reproductive behaviors, but there is no reference in table or data for rationale here. (Commenter #27 - Shaun Hyde)*

**Response:** Ecology is concerned with protecting priority habitats and species. Bass and other spiny ray fish are not native to Washington water bodies. Therefore, although Ecology understands that many anglers are passionate about bass and spiny ray fishing opportunities, these species are not a priority for protection. Timing for bass and other nonnative fish is discretionary for the Permittee. Ecology added additional language to the permit to clarify this. The timing table requests that applicators consider waiting to treat during bass timing windows, but does not prohibit treatment outside of the preferring timing window.

**283. Comment:** *Most of Table on Page 28 (some material already commented upon above) “1. Cavity nesting ducks and Waterfowl concentrations: The use of herbicides or pesticides near wetlands may adversely affect ducks and waterfowl by lowering the numbers of invertebrates and aquatic vegetation.” EPA FIFRA Section 3 Label Risk Assessments and Supporting data would suggest that aquatic herbicides have minimal risk of adverse effects to aquatic invertebrates when applied according to label use directions. What data exist to support adverse effects of aquatic herbicides on invertebrate populations to the detriment of ducks and waterfowl? In terms of aquatic vegetation, aquatic herbicide selection, formulation selection, and application strategies can mitigate any risk of non-target aquatic vegetation changes potentially detrimental to ducks and waterfowl. A blanket statement on potential adverse effects of management with herbicides seems counterproductive to a science-based, site and condition-specific assessment of habitat goals and best management strategies that may include herbicide use. The inclusion of the general term “pesticides” in the same statement with herbicides also seems to lump the two chemical groups together when in reality, registered aquatic herbicides typically have much reduced risk profiles for invertebrates and other non-target fauna relative to other pesticide agents such as insecticides. (Commenter #27 - Shaun Hyde)*

**Response:** Ecology agrees that herbicides have much reduced risk profiles for invertebrates and other non-target fauna relative to insecticides. Ecology in consultation with WDFW revised the language to read “The use of herbicides in or near wetlands may adversely affect ducks and waterfowl by removing aquatic vegetation. Waterfowl concentrations are also subject to disturbance from human activity”.

**284. Comment:** *“5. American white pelican: Avoid using any insecticide or herbicide in American white pelican nesting or foraging habitat. Organochlorine, organophosphate, and carbamate insecticides can be highly toxic to birds and fish.” Reiterating the point made in previous comment, aquatic herbicides appear to be grouped here with multiple types of*

*insecticide products. The toxicological profiles of today's registered aquatic herbicides (none of which are organochlorine, organophosphate, or carbamate) are markedly different from those of such insecticides, and it is scientifically invalid to compare potential effects of these products on pelican habitat to those that might be expected from insecticide application. Secondly, the "or foraging habitat" statement is far reaching and could be interpreted to include any part of any water body with the range of the white pelican. For these two reasons, this entire reference should be summarily dropped from supporting information for the treatment windows.*  
(Commenter #27 - Shaun Hyde)

**Response:** Ecology in consultation with WDFW revised the language to read, "Avoid using herbicides in American white pelican nesting habitat".

**285. Comment:** *Pacific (western) pond turtle: Herbicides should not be applied where western pond turtles occur if such action will destroy all available cover in all or part of a wetland. This statement creates the impression that aquatic herbicide use typically has some risk of destroying all available cover when aquatic herbicide applications are generally conducted in a way to specifically avoid this outcome. This statement should be changed to again suggest the need for site-specific assessment of proposed management action if the turtle species of concern is present.* (Commenter #27 - Shaun Hyde)

**Response:** Ecology agrees that applicators conduct aquatic herbicide treatments for noxious weeds in such a manner that avoids destroying all available wetland cover. After consultation with WDFW, Ecology changed the language to read, "Consult with WDFW before applying any herbicides or algaecides in areas where western pond turtles are known to occur".

The pacific pond turtle (formerly known as the western pond turtle) has a state status of endangered and a federal status of species of concern. These turtles occur only in a few isolated sites unlikely to be treated with herbicides. WDFW estimates that the total state population is only 250-350 individuals. A captive breeding program is underway to enhance the survival of hatchling turtles from wild nests.

**286. Comment:** *Page 18 – D – 4 WDFW treatment windows. I suggest that if WDFW may periodically update the table, then written notice should be sent to permit holders notifying them of potential impacts to projects. If this is not an option, the table should be restricted from review for a given field season.* (Commenter # 29 - Anna Lyon)

**Response:** Ecology will notify any Permittee(s) that holds coverage on a water body affected by a timing table change. Ecology maintains the timing table on its website at [http://www.ecy.wa.gov/programs/wq/pesticides/final\\_pesticide\\_permits/aquatic\\_plants/aquatic\\_plant\\_permit\\_index.html](http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/aquatic_plants/aquatic_plant_permit_index.html). Ecology will update this table if any changes occur

during the life of the permit. Generally, changes to the timing table occur at the request of the project proponent.

**287. Comment:** *For many of the weeds and water bodies needing treatment the 7/15 to 10/31 timing won't work. How do I know if my regional office contact will know anything about the specific problem or concern? Is their word final? Take a few examples. Black Lake in Pacific County. The table says there is a concern about largemouth bass. Has WDFW conducted a survey to know how many, if any, largemouth bass are in the lake? What is the concern for bass— from herbicide or from oxygen depletion or weed removal? This is just one statement, by itself it is of no concern, but the implication are that someone in WDFW can say yes or no to a project based on something that has not been vetted in a scientific review. The reality of this particular lake is that the only time we can treat is in the winter, because of irrigation use concerns.*

*Another example is listed in Grays Harbor relating to the trumpeter swan. If the swans feed on the weeds which I am controlling, can I even treat for the weeds? What is the concern relating to swans? It is the herbicide or controlling the weeds. I just think this timing table leaves too much wiggle room from someone in WDFW to mess with the permit. Most of the ESA fish concerns in the table I assume are related to herbicides. Some of these herbicides, like imazamox, present no risk to fish. However, the table might preclude me from treating that body of water. This table has a bad history with me. A similar timing concern was put in place by WDFW for mowing Spartina in 1990's. WDFW said – don't mow or control Spartina if there are out migrating Salmon. That very wording set back the Spartina control effort millions of dollars and many years. It wasn't based on any facts, just someone in WDFW who thought they know better. We don't need to repeat this mistake. (Commenter #2 - Kim Patten)*

**Response:** The word “consider” in the timing table means that if it were reasonable and feasible to treat after July 1, then WDFW would prefer you to do so. However, if this timing does not work for the project proponent, they can treat outside of this timing window if the species of concern is bass. Adjusting a treatment window to accommodate bass spawning is a courtesy rather than a permit condition. However, because of this confusion, Ecology added a new condition to S3.D.6.a. “Timing windows do not apply to nonnative fish such as bass. At their discretion, Permittees may choose to comply with the bass timing windows noted in the WDFW timing table”.

Ecology and WDFW will base any timing restrictions on best available science. WDFW's role is to inform Ecology which priority species is using the water body and when. If issues arise about timing, the project proponent can meet with both agencies to discuss alternatives. Both WDFW and Ecology understand the need to treat noxious weeds.

Ecology hopes that lessons learned from any *Spartina* mismanagement will translate into better regulation in the future. There is much more awareness and understanding now about invasive species, noxious weeds and their impacts than 20 years ago when *Spartina* management was first occurring.

**288. Comment:** *S3 D 4 (page 18) The WDFW time table. A brief scanning shows timing windows on at least 20 lakes to be after July 1 or 15 to "(avoid impact to large mouthed bass)" In addition, there are windows that are July 1 or July 15 to start. This eliminates the ability to treat for curly-leafed pondweed which is usually not growing actively by July. It also eliminates the ability to treat nuisance aquatic plants when the growing season starts. Treating earlier decreases the amount of plant material that decomposes thereby reducing the amount of phosphorus recycling and the potential for oxygen depletion. (Commenter # 10 - Tom Wimpy)*

**Response:** Ecology changed the language in the permit to clarify that timing windows for fish apply only to salmon, bull head trout, and listed steelhead species. See also response to comment # 287.

### **Oral Testimony**

Testimony from the October 4, public hearing and workshop in Lacey, Washington.

**289. Comment:** *My name is Richard Bruskrud. I am a lake property owner.*

*I would like to thank the Department of Ecology for all the work on the NPDES Permit revisions for addressing numerous issues with this permit. It appears that notification, applicant certification, and review of appropriate management have been improved. Direct notification improvements at the permit application should help residents and property owners to become aware of pending actions in a timely manner. Hopefully this will resolve many issues at the permit stage and assure that the proper management techniques are utilized. Applicant and sponsor certification should increase accountability in submitting a complete and accurate application. Certification that the sponsor has legal authority to administer treatment should assure that rogue groups do not inflict harm on others. And, the discharge management plan should help with reviewing environmental conditions as well as alternative management methods and impacts.*

*Overall, it appears that the permit coverage application review and notification has been improved. No two conditions are the same. To be responsible, management techniques need to be tailored to the conditions.*

*With that said, there are still many issues, some minor, others critical if this permit is going to protect individuals and the environment when applying toxic substances to our surface waters. We need to be careful how we manage our environment. The following is a brief overview of concerns with the draft permit. (Richard Bruskrud, oral testimony)*

**Response:** Comments noted.

**290. Comment:** *Regarding permit coverage: when calculating the percentage of allowed treatment in control applications, only littoral zones with plant growth should be included. Otherwise, a control application could become an eradication effort. (Richard Bruskrud, oral testimony)*

**Response:** Ecology defines the littoral zone as the **vegetated area** from the water body edge to the maximum depth where plant growth occurs.

**291. Comment:** *Regarding application for coverages: the chemicals proposed to be used are listed in the notice of intent. If more than one chemical is proposed, target plant, location and treatment timing should be included to assure the chemicals are not mixed.*

**Response:** Comment noted. The DMP should provide further detailed information about treatment locations and timing.

**292. Comment:** *Although an effort has been made to assure that applicants have a legal authority to treat, allowing treatment without current legal authority could result in trespass. No treatment should be allowed prior to obtaining legal authority. (Richard Bruskrud, oral testimony)*

**Response:** See the response to comment # 94.

**293. Comment:** *Notification of permit coverage applications should include the property owner, not just the resident. As well, notification should be delivered to all agencies with jurisdictions, local agencies, local government agencies, and political subdivisions whose public services could be changed as a result of the proposal. This is a basic premise of the SEPA guidelines. (Richard Bruskrud, oral testimony)*

**Response:** See the response to comment # 110 and comment # 112.

**294. Comment:** *I'm also concerned about the one quarter mile notification limit. In smaller water bodies, it would be easy to be more than a quarter-mile away from an individual lot treatment, yet still impacted by a drift of the chemical. And, there is less water volume to dissipate the chemical. (Richard Bruskrud, oral testimony)*

**Response:** Comment noted. Quarter mile notification has been the standard notification distance for many years and has generally worked well.

**295. Comment:** *And, I think it would be helpful if the permit itemized the permit process, from application to review, commenting, determination, and appeal. (Richard Bruskrud, oral testimony)*

**Response:** Comment noted. Ecology's permit manager is available to walk applicants through the permitting process should they request assistance.

**296. Comment:** *Concerning discharge limits: The discharge management plan is a good start to environmental review. My question is, and I think I have better understanding of this now...will or can Ecology condition or deny coverage based on environmental and management information. My new question on this, after the meeting, is - will they even read the discharge management plans. They should review and make recommendations. The draft permit appears ambiguous as to the results of the discharge management plan review. (Richard Bruskrud, oral testimony)*

**Response:** Ecology will read and review all new application materials. In certain instances, Ecology has determined that a proposed application is not suitable for coverage under the general permit. In those instances, Ecology has suggested that the applicant apply for coverage under an individual permit.

**297. Comment:** *Furthermore, all discharge management plans should undergo public review, whether for initial application or for continuing coverage. It's the purpose of the discharge management plan. (Richard Bruskrud, oral testimony)*

**Response:** Comment noted, however Ecology only requires public review of DMPs for new applicants. Ecology encourages public review of DMPs developed by existing Permittees.

**298. Comment:** *Regarding application of products: although additional restrictions and limitations have been added to tables 3 through 5, the tables do not contain all the recommended mitigations in the environmental impact statements, nor do I think they should. It may be better to review this information on an individual coverage application for the conditions that pertain to the individual circumstances. We know that chemicals drift. Yet drift has not been addressed in the permit. This appears to be a major problem with aquatic applications. Especially with individual lot applications. How does Ecology propose to eliminate drift that has the potential and is likely to trespass onto neighboring properties? (Richard Bruskrud, oral testimony)*

**Response:** Chemicals disperse in water. That is the nature of aquatic applications. Ecology limits effects by limiting the percentage of the littoral zone where applicators can intentionally apply chemicals. The permit does not authorize trespass.

**299. Comment:** *Potable water mitigations are still limited and do not provide adequate restrictions or adequate alternate sources when disturbed. Supplying drinking water does not take into account personal hygiene or sanitary purposes. Disturbance of potable water source should require an alternate source, other than just drinking water, until the water tests show potable water standards are met. (Richard Bruskrud, oral testimony)*

**Response:** See the response to comment # 180.

**300. Comment:** *Regarding notification inspection and posting requirements. I believe the actual treatment should be performed by someone other than the applicator. Inspection of one's own work is difficult, if not biased. And, the residential and business notification should also be sent to the property owner. (Richard Bruskrud, oral testimony)*

**Response:** Ecology assumes that Mr. Bruskrud meant to say that someone other than the applicator should perform any inspection. The permit does not discuss inspections, but it makes sense that the sponsor or its representative evaluate treatment effectiveness. However, that is up to the sponsor to determine.

The problem with sending the residential and business notification to the property owner is that many times the property owner is not the resident. That leaves the resident (and person affected by the treatment) without advance notice of the treatment.

**301. Comment:** *I'd like to clarify this comment. The permit states that it goes to the resident. The resident may or may not be the property owner, and the property owners on the individual lakes are often recreational and do not reside at that address. So, it should go to the address of the registered property owner. (Richard Bruskrud, oral testimony)*

**Response:** See the response to comment # 211.

**302. Comment:** *Monitoring requirements: It is well known that the listed herbicides do not behave in the natural environment as the tested active ingredient does in the laboratory. The only way we know how it behaves and its persistence in the environment is to monitor the applications. This will not only provide us with better understanding of how to minimize impacts, but how well it performs. Monitoring of all treatments should be performed. Help us learn more and adjust, to be more efficient in aquatic plant management. (Richard Bruskrud, oral testimony)*

**Response:** Ecology monitors herbicide applications under its grant programs. Ecology does not believe that it is necessary to monitor each herbicide application because the chemicals behave similarly in Washington waters. However, in instances where chemicals do not perform as expected, applicators should consider monitoring further applications in the water body.

**303. Comment:** *Finally, the analysis of the risks and effects of the herbicides we are currently using are based on the listed active ingredient only. We do not even know what the other ingredients are. Nor do we know how they act when combined. Until we start testing and analyzing the actual pesticide, we do not really know what we are working with. Testing and environmental impact statements should be performed for all listed pesticides. However, this issue probably needs to be dealt with on a legislative level. (Richard Bruskrud, oral testimony)*

**Response:** See the response to comment # 55.

**304. Comment:** *And, thank you for the opportunity to comment. Our water is a very precious and infinite resource. We need to protect it. Our water is far too important for reasons other than aesthetic boating and recreation. Introducing toxic chemicals should only be done with extreme care and with thorough analysis of risks and effects.*

*I have prepared a list of code items that I believe should be revised. This comment list will be submitted to Ecology for review. Hopefully, this will help everyone be more responsible to others and our environment. Thank you for your time. (Richard Bruskrud, oral testimony)*

**Response:** Ecology agrees which is why it has been regulating aquatic herbicide and algaecide application for 30 years.

**305. Comment:** *My name is Don Russell. I'm a citizen.*

*I just want to make a few comments. Back in 2005, I worked with Gigi Talcott, to introduce the program that led to the freshwater algae control program. And, generally, I've been pleased that that program had disclosed that the state has a very serious problem in Western Washington with toxic blue-green algae, or cyanobacteria. I participated as a Lake water quality monitor on several of the lakes that have been afflicted with these algae. And my concern is that, whereas we have probably a leadership position in the United States regarding toxicity and presence of these algae, I think we lag many of the states in actually controlling these cyanobacteria blooms. And, I've been a little disappointed in the way that phosphorus inactivation treatments have been dealt with in the past permits.*

*Essentially, most of the focus has been on the toxicity of herbicides and algaecides and the fact that they generally have an adverse impact on the environment if they aren't properly controlled. However, by contrast, phosphorus inactivation treatments are a restorative act. Essentially, the lakes that need to be treated are polluted and the addition of or treatments by phosphorus inactivation methods is a restorative act, not an act of pollution. So, I have problems, essentially with the congruence of what's being advocated with a lot of other information that has been passed by the legislature, and I have documented essentially what I feel is a dichotomy.*

*On the one hand, herbicides and algaecides are a pollutant. Phosphorus inactivation treatments essentially are an act of restoration. And, in Western Washington, one of the problems we have is that those treatments that are listed aren't relevant to the condition that we face in many of the lakes in Western Washington. Most of the phosphorus is coming into these kettle lakes and a glacial floodplain setting are from surface water runoff that's infiltrated into the ground from septic system effluent that goes into the ground, which loads the aquifers that feed these lakes with phosphorus. And, this groundwater enters these lakes and if one is going to prevent toxic algae blooms, one has to intercept groundwater flowing into a lake and treat it to remove the phosphorus. And, the alum treatments to do this would require a shore-based large tank of alum,*

*pumping stations, metering stations, manifold distribution systems. It seems to me that the active ingredients in trying to inactivate phosphorus are really iron, calcium, and aluminum. And, I would like to see experimental work going on in this state so that it could claim leadership in the area of controlling the toxic algae blooms using elemental iron and elemental aluminum. There are techniques to be able to do this and essentially there is a lot of information out there that attests to the effectiveness of these various treatments. Aluminum is a little different because there are some techniques one has to use to get elemental aluminum to go into solution, but those are available.*

*So, I would really like to see an examination by Ecology of how do we advance the state of the art in the control of toxic algae blooms so that we can take a leadership in the United States as we have in the area of toxicity and posting and warning the public of all the hazards associated with these cyanobacteria blooms. I have a paper that I will give you a copy of, and I have others – enough for anybody who wants them – that really elaborate further on what I've had to say.*

*Thank you very much. (Don Russell, Oral Testimony)*

**Response:** Comments noted.

#### **Section 4. List of Commentors**

Commenter #1 - Gary Backland - Interested party - Haven Lake

Commenter #2 - Dr. Kim Patten - Washington State University Extension Long Beach

Commenter #3 - Jon Roskill - Interested party - Yarrow Point, Lake Washington

Commenter #4 - Paul Herbert - Interested party - Emmerling Lake Association

Commenter #5 - Wayne Gruen - Lakemoor Community Club

Commenter #6 - H. James Rhodes - Interested party

Commenter #7 - Michael J. Holmes - Interested party

Commenter #8 - Bill Neal - Water and Field Superintendent, Surfside Homeowners Association

Commenter #9 - Cathy Backland - Interested party - Haven Lake

Commenter #10 - Tom Wimpy - Inland Water Pest Control & Consulting, LLC

Commenter #11 - Bob McClure - Biosonics

Commenter #12 - Pat Clark - Interested party - Lone Lake

Commenter #13 - Erik Johansen - Washington State Department of Agriculture

Commenter #14 - Don Russell - Interested party

Commenter #15 - Terry McNabb - AquaTechnex

Commenter #16 - Dawn Petek - Lakeland Restoration Services, LLC

Commenter #17 - Kris Tompkins - Haven Lake Property Owners Association

Commenter #18 - Steve Yach - Washington State Department of Transportation

Commenter #19 - Craig Tompkins - Interested party - Haven Lake

Commenter #20 - Susan Holliday, Stephen Sulzbacher, David Dunning, Colleen McAleer - Save Union Bay Association Board of Directors

Commenter #21 - Chuck Clarke - Cascade Water Alliance

Commenter #22 - Meghan Lunney - Avista Corporation

Commenter #23- Julie B. Schlekau - Valent U.S.A. Corporation

Commenter #24 – Robert Wilson-Hoss - Hoss & Wilson-Hoss, LLP

Commenter #25 - Douglas Dorling - Northwest Aquatic EcoSystems

Commenter #26 - Karen Walter - Muckleshoot Tribe

Commenter # 27 - Shaun Hyde - SePRO Corporation

Commenter # 28 - Tim Formella - United Phosphorus, Inc.

Commenter #29 - Anna Lyon - Okanogan County Noxious Weed Control Board

Commenter #30 - Robert Hager and Constance Ibsen - Lower Hood Canal Watershed Coalition

Commenter #31 - David King - Seattle Yacht Club

Commenter #32 - James M. Skillen - RISE (Responsible Industry for a Sound Environment)<sup>®</sup>

Commenter #33 - Monica Harle - Interested party - Haven Lake

Commenter #34 - William Matchett - Hood Canal Environmental Council

Commenter #35 - Richard Bruskrud - Interested Party - Haven Lake

Commenter #36 - Jill Winfield - Cygnet Enterprises NorthWest, Inc.

Commenter #37 - Diana Forman - Interested Party - Portage Bay

Commenter #38 - Janie Civile - Thurston County

Commenter #39 - Ray E. Caldwell and Judi A. Strayer - Consolidated Diking Improvement District No. 1 of Cowlitz County

### **Public Hearing Commenters**

#### **Lacey Hearing**

Commenter #1 - Richard Bruskrud - Interested party - Haven Lake

Commenter #2 - Don Russell - Interested party - Pierce County Lakes

#### **Spokane Hearing**

No public testimony