

**COMMENTS**  
**on the 2010 Draft**  
**Aquatic Plant and Algae Management NPDES**  
**State Waste Discharge General Permit**

Compiled and submitted by  
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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.

**COMMENT #1**

**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.

**COMMENT #2**

**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.

### **COMMENT #3**

#### **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.

#### **COMMENT #4**

##### **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.

#### **COMMENT #5**

##### **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.

#### **COMMENT #6**

##### **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. Were 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.

## **COMMENT #7**

### **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.

9. 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.

## **COMMENT #8**

### **Section S2.B (final paragraph not identified, page 11)**

I am very concerned that the Discharge Management Plan will not be reviewed 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 other 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 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.

## **COMMENT #9**

### **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.

## **COMMENT #10**

### **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.

## **COMMENT #11**

### **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.

## **COMMENT #12**

### **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.

## **COMMENT #13**

### **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.

## **COMMENT #14**

### **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.

## **COMMENT #15**

### **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*.

## **COMMENT #16**

### **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.

## **COMMENT #17**

### **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.

## **COMMENT #18**

### **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~~

## **COMMENT #19**

### **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.~~

## **COMMENT #20**

### **Comment on Discharge Management Plan**

#### **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.

## **COMMENT #21**

### **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.

## **COMMENT #22**

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.

Thank you for this opportunity to comment. Water resources are very precious and finite. We need to protect them. Our water is far too important for many reasons other than aesthetics, boating and recreation. The introduction of toxic chemicals to surface waters should only be performed with extreme care and thorough analysis of the risks and effects.

Sincerely,

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