

October 5, 2010

To: Washington Department of Ecology

From: Terry McNabb

Re: Comments on Draft NPDES Permit for Aquatic Plant and Algae Management
General Permit

Overall we feel that this is a well written and workable permit that meets the requirements of NPDES and allows necessary work to be performed to manage nuisance and noxious aquatic weeds and algae. We do however have the following concerns and comments.

Comment 1. 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.

Comment 2. 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 a illegal application or discharge. This should read "activities that do not require coverage:, not activities that may not require coverage.

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.

Comment 3. Page 11, 7. This step 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.

Comment 4. 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.

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They often in those cases force the applicator to pay for coverage they don't need or use. This would easily solve this problem.

Comment 5. 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.

Comment 6. 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. 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.

Comment 7. 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. In addition, the wording regarding advance notice should be amended to exclude the working "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 working and place reasonable requirements in terms of timing in place of that language.

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. 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 can not 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.

1. 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.
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.
3. 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

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summer, herbicides are not as effective and plants have been allowed to spread through limited control all summer.

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.

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.

Comment 9. 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.

10. 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.

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

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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.

Thank you for your consideration of these comments.