

**From:** [Kim Patten](#)  
**To:** [ECY RE Aquatic Permit Comments](#)  
**Subject:** comments on the NPDES draft  
**Date:** Tuesday, September 07, 2010 2:44:29 PM

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I have three comments concerning the draft NPDES permit. Please enter these into the record.  
Thank You

Kim Patten, Professor, WSU Long Beach Research and Extension Unit.

- 1) 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? For many of the weeds and water body 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 large mouth bass. Has WDFW conducted a survey to know how many, if any, large mouth 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 swams feed on the weeds which I am controlling, can I even treat for the weeds? What is the concern relating to swams? 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.
- 2) 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 complete cease.

- 3) 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.