

**AQUATIC NOXIOUS WEED MANAGEMENT GENERAL PERMIT**

**ADDENDUM TO FACT SHEET**

**APPENDIX C: RESPONSE TO COMMENTS**

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

**January 18, 2012**

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## **Introduction**

This is a summary of comments received and changes made to the Aquatic Noxious Weed Management General Permit (permit) in response to comments received during the public comment period October 5 to November 18, 2011. In finalizing this permit and accompanying documents, the Washington State Department of Ecology (Ecology) considered and responded to all comments received during the public comment period.

Ecology published a draft Aquatic Noxious Weed Management General Permit and accompanying documents (Fact Sheet and Environmental Impact Statement (EIS) Addendum) on October 5, 2011 for public comment. It made these draft documents available on its website and notified stakeholders and interested parties of their availability. The public comment period ended November 18, 2011 at 5:00 PM. During the comment period, Ecology conducted a public hearing and workshop in Lacey (November 10, 2011). Ecology also presented information about the draft permit during two workshops at the Washington State Weed Association Conference on November 2 in Yakima and at a knotweed workgroup meeting on November 16 in Port Hadlock. Ecology accepted comments via letter and email and the public had an opportunity to testify at the public hearing.

The Response to Comments documents each comment, Ecology's response to each comment, and any changes to the permit that resulted from the comments. Ecology received written comments from 10 people/entities during the public comment period. Ecology did not receive any oral testimony at the public hearing in Lacey. Ecology assigned a number to each commenter in the chronological order in which Ecology received the comments. This number allows the commenter to find Ecology's responses to their comments. There is a separate response to comments section in the EIS addendum for those comments directed specifically to the EIS.

This document is broken into four sections:

1. General comments about the permit
2. Comments on specific sections in the permit
3. Comments on the Fact Sheet
4. List of Commenters

## Section 1. General Comments about the Permit

**1. Comment:** *This permit is well done and contains all the herbicide tools that will be required to manage aquatic weeds in the future. (Commenter #1, Kim Patten)*

**Response:** Comment noted.

**2. Comment:** *The Washington State Noxious Weed Control Board (WSNWCB) sincerely appreciates and supports the effort that went into modifying the 2008 permit to make it easier to understand, and with which to comply. Separating the Aquatic Noxious Weed Management General Permit and the Aquatic Plant and Algae Management General Permit by the process by which chemicals are discharged into streams, rivers, estuaries, marine areas, wetlands, lake shorelines, roadside ditches, and other wet areas - i.e., either directly or indirectly - will be beneficial to those applicators who are strictly treating noxious weeds, WSDA quarantine species, and other invasive plants along these wet areas, and not discharging directly into water bodies. This distinction makes the permit notification and posting process easier for those who are engaged in the indirect chemical applications of emergent and riparian noxious weeds. Moreover, these changes may reduce the inadvertent non-compliance of notification and posting. The WSNWCB appreciated the inclusion of five new active ingredients to the permit. (Commenter #7, Alison Halpern)*

**Response:** Comment noted.

**3. Comment:** *I appreciate separating herbicide applications that are not made directly to water from those that are. In most cases, plants we are treating may be near water's edge, but little to no herbicide gets in the water. The risks associated with this kind of application are significantly different from those that are made directly to plants in the water and several of the changes that are proposed reflect that appropriately.*

*I would like to thank WA Dept of Ecology and WA Dept of Agriculture for continuing to work together so this important work can continue while providing thoughtful protections for the environment and citizens. (Commenter #9, Cathy Lucero)*

**Response:** Comments noted.

**4. Comment:** *We have reviewed the Draft Aquatic Noxious Weed State Waste Discharge General Permit. This permit affects the application of herbicides to control aquatic noxious weeds around or near water. The following comments are provided in the interest of protecting and/or restoring the Muckleshoot Indian Tribe's fisheries resources.*

*We support the control of invasive aquatic plants and understand the need for chemical control in some or even many situations; however, we want to ensure that herbicide treatment does not*

*result in unintended impacts to fisheries resources as discussed below. (Commenter #8, Karen Walter)*

**Response:** Comment noted. Comments from the Muckleshoot Tribe are addressed separately in Sections I and II of this document.

**5. Comment:** *The idea of permitting use doesn't make sense to me. It's either okay or it's not, or it's tolerable in limited quantities which the on/off permit doesn't address. (Commenter #3, Steven Richmond)*

**Response:** It is state and federal law to require permits for aquatic pesticide application. After a 2001 federal court decision (9th Circuit Court), Ecology determined that pesticide applications to state surface waters required coverage under NPDES permits. Subsequent court decisions have affirmed this position and as of October 31, 2011, all states must have NPDES permitting programs in place for aquatic pesticide applications. In Washington, an Environmental Protection Agency (EPA) permit covers any aquatic pesticide applications to federal and tribal lands. See the Fact Sheet for additional information about the legal basis for aquatic pesticide permitting in Washington.

**6. Comment:** *The WSNWB also requests clarification as to whether or not the draft permit for 2012 will cover the treatment of Japanese eelgrass, *Zostera japonica*, which will be a Class C noxious weed (on commercially managed shellfish beds) effective January 2012? (Commenter #7, Alison Halpern)*

**Response:** The Aquatic Noxious Weed Management permit will not cover the treatment of Japanese eelgrass. Treatment of Japanese eelgrass would take place on tidelands and Ecology believes that monitoring and permit oversight requirements for this activity are better suited to occur under a separate general permit specifically targeted to Japanese eelgrass removal (see comment #7). The Aquatic Noxious Weed Management permit does not cover all noxious weeds. Currently Permittee's cannot treat obligate wetland species such as variable-leaf milfoil and hydrilla (both Class A noxious weeds) under this permit. Instead, treatment of obligate wetland species occurs under the Aquatic Plant and Algae Management (APAM) permit. APAM requires more stringent permit notification, posting, and other environmental considerations for in-water treatments.

**7. Comment:** *I think the state should consider adding marine species to this permit, other than *Spartina*. If a year from now WDFW or DNR are required to consider managing *japonica* because it affects critical habitat of green sturgeon (see *Characterization of green sturgeon feeding habitat in Willapa Bay, Wa*. 23rd Annual Meeting of the Gilbert Ichthyological Society. 2011. M. Moser, S Corbett, K. Patten, B. Feist and S. Lindley. NOAA, WSU and Pacific State Marine Fisheries Commission) what are you going to do. The agencies could get sued for failure to protect habitat and then what? (Commenter #1, Kim Patten)*

**Response:** Ecology is planning to develop a separate permit for the management of Japanese eelgrass (*Zostera japonica*) on commercial shellfish beds. It is unlikely that federal agencies would require state agencies to manage Japanese eelgrass for the purposes of protecting the critical habitat of green sturgeon. However, if this happened, Ecology has the option of modifying this or other appropriate permits to include the treatment of Japanese eelgrass.

**8. Comment:** *The previous NPDES permit (issued in 2008) included requirements to apply fish timing windows when applying herbicides, however, no mention of the fish timing windows restricting herbicide application is included in the current draft permit. The rationale for this should be explained. (Commenter #8, Karen Walter)*

**Response:** Ecology removed the fish-timing window requirements from the Aquatic Noxious Weed Management permit because it no longer allows for any in-water chemical treatments. The 2008 permit allowed applications to rivers to manage obligate wetland species such as Eurasian watermilfoil and curly leaf pondweed where applicators added chemicals directly to the water. The permit now allows only indirect treatments to water where the applicator applies the herbicide directly to the plant. Any herbicide entering the water is inadvertent and incidental and may occur through aerial drift or by dripping from sprayed plants into adjacent waters. Monitoring conducted by the Washington State Department of Agriculture (WSDA) after indirect treatments shows that samplers typically do not detect herbicides in adjacent streams and wetlands after these treatments. Because such small amounts of herbicide potentially enter water after such treatment, Ecology did not believe that salmon would be at risk and removed the fish-timing table and requirements from the draft permit.

**9. Comment:** *Some noxious plants may provide habitat for salmonids, such as instances where reed canarygrass provides low velocity habitats in channelized streams that have little other native plant habitat structure. In some cases, controlling or removing these plants may adversely impact salmon habitat. Therefore, the permit should require restoration of native vegetation when the aquatic noxious vegetation is removed. This will improve the adjacent habitat areas and may also eventually reduce the need for future chemical applications as the reed canary grass or other noxious weeds are shaded out. (Commenter #8, Karen Walter)*

**Response:** Ecology agrees that restoring native vegetation is generally desirable and can add to the overall success of the project. However, requiring revegetation in the permit would be very onerous to those groups removing noxious vegetation. Perhaps the Muckleshoot Tribe could work with local noxious weed control boards or other groups removing reed canarygrass or other noxious vegetation to help them find funding or other resources to restore native vegetation to treated areas.

**10. Comment:** *Punitive fines for misuse are always too late, and they are an abusive stick (\$7000 and out of business) hanging over our heads that could be more effectively administered. Licensed applicators are unfairly targeted when detectable overuse is likely to come from homeowners. (Commenter #3, Steven Richmond)*

**Response:** Ecology and/or WSDA carefully investigate any complaints about pesticide overuse. These agencies do not take action or issue fines unless there is clear evidence of inappropriate pesticide use. Ecology is not aware of issuing any punitive fines under its NPDES permits for aquatic pesticide use.

**11. Comment:** *I'm suggesting a proactive pricing mechanism that factors in the health and environmental risks into the price of the product. If detectable herbicide amounts show up in waterways, and they're suspected of having detrimental effects, then raise a fee/tax on the product commensurate with its damage (including contributions to landslide risks), because price is one label people are guaranteed to read, and the money raised could compensate those harmed. Industry, with their marketing abilities and direct contact with customers, could educate consumers far better than an ineffective bureaucracy. (Commenter #3, Steven Richmond)*

**Response:** Ecology is authorized by law (RCW 90.489.465) to charge permit fees to pay for the cost of administering its permit program. It does not have the authority to impose extra charges on the manufacture and sale of products. This initiative would need to come from the state legislature.

**12. Comment:** *I have to drive 50 miles to pick up regulated herbicide, and the two gallons of gas used is a hundred times more toxic than the 2 gallons of wetland-safe glyphosate, a safer formulation (no surfactants) of Roundup that homeowners can't even buy. The regulations won't stop homeowners from applying Roundup in the wrong place, so you may as well offer the safer version, particularly because it works better for cut and paint applications of invasive holly, laurel, hawthorn, knotweed - invasive plants whose spread may pose a greater threat to diversity and salmon habitat than a "practically non-toxic" herbicide (according to the EPA) such as glyphosate. If its overuse causes superweeds on farmland, then a tax reflecting that risk would engage industry and their consumers to find a better practice. (Commenter #3, Steven Richmond)*

**Response:** Washington's pesticide laws are under the jurisdiction of WSDA rather than Ecology. WSDA has designated all aquatic herbicides as restricted use, requiring a state-licensed applicator to purchase and apply these herbicides. See also the response to comment #11.

**13. Comment:** *It has come to our attention that the state legislature is considering significantly changing the Aquatic Noxious Weed Management General Permit. As stewards of one of*

*Washington's beautiful lakes, this board is concerned about the effect of the changes on compliance and subsequent effect of maintaining a healthy lake ecosystem.*

*Our primary goal as a board of directors for our community is to maintain a beautiful and healthy lake environment that is enjoyed by the many residents of Lake Marcel. The changes would increase fees which could make compliance cost prohibitive, resulting in non-compliance not only for us, but I am sure for many other lakes in our area. As the intention of the Noxious Weed Control Program is to: "...provide benefits to the environment, recreation, public health and economic resources of King County by preventing and minimizing harmful impacts of noxious weeds." An increase in the required permit fee would seem to counteract this goal.*

*Furthermore, we at Lake Marcel treated noxious weeds in 2008 and 2009, but not in 2010 and 2011, but still paid a permit fee of \$400 dollars or more per year. It does not appear we should be required to pay a fee for years we do not treat, and now the permitting fee may potentially double. Additionally in section S8.A.2 of the draft we would also have to submit a monitoring report and have our water lab tested, even in the years we do not need to treat. In these tough economic times, we cannot ask our community members to approve such an increase to our budget. Consequently, it would seem that this new permit draft must meet the needs of those who will be most affected by it. (Commenter # 5)*

**Response:** The rule-making initiative to redistribute permit fees among categories of permit holders is a separate process from permit development. Submit any permit fee comments to Mike Herold at 360-407-6434 or at [mher461@ecy.wa.gov](mailto:mher461@ecy.wa.gov). Also, see this website for permit fee status updates: <http://www.ecy.wa.gov/programs/wq/wdpftaskforce/index.html>. However, staff forwarded your comment letter about pending permit fees to Mr. Herold for his consideration.

The Lake Marcel permit coverage is under the APAM permit and not the Aquatic Noxious Weed Management permit. Therefore, S8.A.2. does not apply to your permit coverage. A similar reporting requirement exists in the APAM permit, but it is for the Permittee (for Lake Marcel, the applicator is the Permittee) to report to Ecology. The APAM permit does not require your community to monitor Lake Marcel.

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

### **S1 – Permit Coverage**

**14. Comment:** *It is not clear whether stem injection of near shore invasive/noxious plants (e.g. Japanese knotweed) will require permit coverage. I would not consider this type of application to have the potential to indirectly enter surface water as defined by this permit. Since this is a*

*fairly common method of knotweed control [I] recommend clarifying this in S1 and/or in the Appendix A definition of "Indirectly" and/or in the Fact Sheet. (Commenter #2, Mike Hardiman)*

**Response:** It is the responsibility of the applicator to determine whether the application has the possibility of entering surface waters. This can vary depending on weather and site conditions, application methods, distance from the shoreline, target species, etc. For Ecology to set buffer distances without site-specific information would do a disservice to applicators and their judgment. Instead, Ecology advises that if there is an opportunity during treatment for an herbicide to enter the water, the entity should become a "limited agent" of WSDA and operate under the Aquatic Noxious Weed Management Permit. There is no permit fee to the applicator to become a "limited agent". While Ecology believes that careful stem injection techniques should not cause conditions where herbicides might enter the water, can the applicator guarantee no application mistakes if he or she is working close to water? It is the responsibility of the applicator to weigh up these risks and make the determination whether to become a "limited agent" of WSDA.

### **S3 – Discharge Limits**

**15. Comment:** *S3. A. 2. It is not just Washington Pesticide Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act that govern the label. There are other laws and rules that impact the application of a pesticide. The use of herbicides and algaecides are regulated under Code of Federal Regulations (CFR) which includes FIFRA. (Commenter #10, Wendy Sue Wheeler and Erik Johansen)*

**Response:** Ecology will revise the language in S3.A.2. to read "Compliance with this permit, the **Washington Pesticide Control Act**, the requirements of the **Federal Insecticide, Fungicide, and Rodenticide Act** (FIFRA) label, and all other applicable federal, state, and local laws constitute AKART."

**16. Comment:** *S3. C. If a person only complies with the FIFRA label, there may be other laws and rules they would be in violation of. The applicators are regulated by other state and federal statutes, rules and regulations. (Commenter #10, Wendy Sue Wheeler and Erik Johansen)*

**Response:** This section does not limit the Permittee to complying only with FIFRA. Other sections of this permit remind the Permittee that it must comply with any applicable federal, state, or local statutes, ordinance, or regulations (see General Condition 10.).

**17. Comment:** *S3 Discharge Limits Page 8, Section E: other waterbodies that have native vegetation along them should also be protected from pesticide applications, not just wetlands. (Commenter #8, Karen Walter)*

**Response:** Ecology called special attention to protecting native vegetation in identified and/or emergent wetlands in the draft permit, but agrees with the commenter that native vegetation along other water bodies or in wet areas may also need protection from non-target effects of herbicide applications. Ecology will revise S3. E. to read

#### **E. Protecting Native Vegetation**

In *identified and/or emergent wetlands* and other areas with native vegetation, the Permittee must make reasonable effort to protect native plants by minimizing non-target effects when applying chemicals.

#### **18. Comment:** *Page 8, Section F.3*

*It is not clear if the WSDA Integrated Pest Management Plan (current or future version) is applicable to all permittees or just those managing noxious plants through the WSDA or its contractors. Item F.3 should be rewritten so that the Integrated Pest Management Plan applies to all permittees seeking coverage under the permit and a requirement to demonstrate how they have complied with the plan. Permit applications could include a checklist to demonstrate that various pest management techniques in the Plan were considered, used in the past, or proposed to document compliance with this permit requirement. (Commenter #8, Karen Walter)*

**Response:** No other entities have operated under this permit except for WSDA and its "limited partners" however, it is possible that another entity could seek coverage from Ecology. Ecology will add a 4<sup>th</sup> point to F. to read.

4. New applicants must adopt and follow the WSDA plan's IPM principles or develop its own IPM plan(s), which Ecology must approve in advance of any treatment.

#### **S4 – The Application of Products**

**19. Comment:** *The permit should require removal of dead plants after treatment for all treated areas to ensure that dissolved oxygen sags are not induced from these activities. Even selective herbicides may not provide sufficient protection to prevent low DO at certain sites. (Commenter #8, Karen Walter)*

**Response:** In S4.A.1. Ecology prohibits treatment that causes oxygen depletion to the point of stress or lethality to aquatic biota from plant die-off, the mortality of aquatic vertebrates, or unintended impacts to water quality or biota. However, Ecology does not think that indirect treatment of noxious weeds would trigger low oxygen conditions in adjacent waters since most of the decaying plants would not be in the water (as occurs for in-water treatments). Requiring removal of dead plants would be an onerous requirement

for those entities treating noxious weeds and would likely have little environmental benefit.

**20. Comment:** *It might be a good idea to put a source for obtaining more information in the section on surfactants - what is most and what is least toxic, what do I use when etc. (Commenter #1, Kim Patten)*

**Response:** Ecology typically does not put this sort of information into the permit. It is more applicable in the Fact Sheet. However, Ecology also does not update the Fact Sheet in response to comments, except for adding a Response to Comments section as an appendix to the Fact Sheet. WSDA has aquatic toxicology data for each adjuvant. Applicators can contact WSDA for this information. Information about what adjuvants to use and when, would be most appropriately placed in the IPM plan that Ecology requires WSDA to update during this permit cycle. Ecology will recommend that WSDA incorporate that information, if available, in its updated plan. WSDA is required to post the updated plan on-line.

**21. Comment:** *I would also refer the readers to the PNW weed control handbook to obtain the yearly recommendations and registration updates and PICOL database. I would hate for someone to use a product for the wrong weed etc. That section is downloadable as a pdf. (Commenter #1, Kim Patten)*

**Response:** Ecology typically does not put this sort of information into the permit. Ecology believes that a link and reference to the *Pacific Northwest Weed Management Handbook* is more appropriate in the *Integrated Pest Management Plan for Freshwater Emergent Noxious and Quarantine Listed Weeds* that Ecology requires WSDA to update during this permit cycle. Ecology will recommend that WSDA include this information in their updated plan. Here is the link to the handbook <http://pnwhandbooks.org/weed/> and here is a link to the plan [http://www.ecy.wa.gov/programs/wq/pesticides/final\\_pesticide\\_permits/noxious/Noxious%20Emergent%20IPM.pdf](http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/noxious/Noxious%20Emergent%20IPM.pdf)

**22. Comment:** *S4. B. 4. Table 2. - Need to correct 2 adjuvant brand names, should be “Destiny HC” and “Pro AMS Plus”. Also need to correct Product use for Superb HC, should be “High Surfactant Oil Concentrate”. (Commenter #10, Wendy Sue Wheeler and Erik Johansen)*

**Response:** Ecology corrected Table 2 - Adjuvants to include this information.

**23. Comment:** *The spray adjuvant AgriSolutions Fast Break (WA Reg. No. 1381-50006) no longer meets WSDA criteria for aquatic use in Washington. Fast Break should be removed from*

*the list of spray adjuvants that are permitted for aquatic use in Washington. (Commenter #4, Erik Johansen)*

**Response:** Ecology removed AgriSolutions Fast Break from Table 2 - Ajuvants.

**24. Comment:** *I recommend that you add AquaSurf (WA Reg. No. 17545-11001) 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. Here is a summary of the aquatic acute toxicity information for AquaSurf:*

<b>Product Name</b>	<b>Registrant</b>	<b>Principle Functioning Agents</b>	<b>Acute Toxicity to Rainbow Trout</b>	<b>Acute Toxicity to Daphnia Magna</b>
AquaSurf	Monterey AgResources	Petroleum oil, saccharides, polyoxyethylene sorbitan fatty acid ester	LC <sub>50</sub> (96 hour) >100 mg/L, Practically non-toxic	LC <sub>50</sub> (48 hour) >100 mg/L, Practically non-toxic

*AquaSurf is currently registered for distribution in Washington, and is labeled for use on aquatic sites. Aquatic acute toxicity studies for AquaSurf have been reviewed by Kelly McLain, M.S. (WSDA Pesticide and Water Quality Specialist), and the studies are acceptable. AquaSurf meets all WSDA criteria for registration of spray adjuvants for aquatic use (attached). Addition of AquaSurf to the Aquatic Pesticide Permits will provide an additional option for aquatic pesticide applicators. Aquatic acute toxicity studies are on file at WSDA Registration Services Program, and are available for review by Ecology. (Commenter #4, Erik Johansen)*

**Response:** Ecology added AquaSurf to Table 2 - Adjuvants.

**25. Comment:** *S4. C. If a person obtains a federal experimental use permit and wants to use that federal experimental use permit, they are still required to apply for and obtain a state experimental use permit prior to use of the federal experimental use permit in Washington State. The way that it is written, it may appear that they can use a federal experimental use permit without a state experimental use permit. (Commenter #10, Wendy Sue Wheeler and Erik Johansen)*

**Response:** Ecology will add the following sentence to S4. C. 1.

"The Permittee must operate under both federal and state experimental use permits for projects over one acre."

## S5 – Notification and Posting Requirements

**26. Comment:** *The permit should require that chemical and mechanical plant management activities be discontinued in the event that dead salmonids are observed on site during the application or live salmonids are present where there is potential for adverse effects by the treatment activity. (Commenter #8, Karen Walter)*

**Response:** Ecology does not regulate mechanical plant management activities. Ecology does not believe that indirect applications will harm salmon because monitoring has shown little to no herbicide enters the water. However, Ecology will revise S5.A. to read "The Permittee must immediately call Ecology headquarters at 360-407-6600 or 1-800-6457-911 and *discontinue treatment*, when they are aware of any of the following conditions occurring during or after a treatment."

**27. Comment:** *I have some comments related to the notification requirements in the Aquatic Permit. In order to set the stage for the comments I will share an example:*

*We are in the process of controlling knotweed in Chelan County. Mission Creek is a small stream that flows through orchard and private residences near and through the town of Cashmere. There are about 80 patches of knotweed along about 3.5 miles of stream but the square footage is very small (much less than 1 acre for all the patches). Parcels are often small (particularly within or near the town) and contacting just the owners is a real big job. Most patches are not really accessible since most properties are fenced and vegetation is dense. Many owners are gone during the day and some have free-roaming dogs. In our case it is common to have numerous owners within 200 feet of a very small knotweed patch due to the small parcels that occur near the stream on the edge of a parcel. Now apply the following requirements (from the permit language) to this scenario:*

- a. The Permittee must notify residents/businesses within 200 feet of any treated area before chemical application. The Permittee may provide notice the same day as treatment.*
- b. The Permittee must provide notice to the resident/business by a notification form, letter, flyer, or a personal conversation. The notice must explain the purpose of the treatment, identify the herbicide used, any re-entry or water use restrictions, and provide the location of the treated area(s) in relation to the residences/businesses.*

*The issue is that now we are notifying not just landowners but hundreds of adjacent folks who have no real ability to be exposed to the patch (may be across the stream through dense vegetation) from their parcel. It seems that there needs to be some means of notification that takes into account a scenario like the above. We feel there should be some subjectivity built into*

*the notification requirement to allow applicators to use their own judgment when it comes to who should reasonably be notified, rather than an arbitrary distance, like 200 feet.*

*Accessibility of patches—Is the spray site down a stream bank or fenced from access? Is there a natural barrier (such as a stream) that keeps the landowners on the other side from accessing the sprayed area? Putting flyers on every door is not always possible (free-ranging pit bull on the porch). Maybe notification of ADJACENT owners or OWNERS WITH POTENTIAL ACCESS might suffice. How do we deal with the owner who is unavailable by phone and not home?*

*When we apply the proposed notification requirements to our case (described above) we feel that it becomes a notification nightmare and the requirements don't currently provide any alternatives to reasonably notify folks. We are notifying folks when we are spraying a very small patch across the creek on the other side of the fence from their property. I can say that notifying owners is our biggest headache. People don't respond, aren't home or, in some cases their dogs make access to the house difficult if not impossible. We feel that the regulations pertaining to notification, add too much of a burden to the applicator without adding any appreciable increase in protection from danger when application is taking place in areas that are not easily accessible and on private property. If a patch is marked, a person approaching the patch will be warned, for all other persons who do not approach the patch, there is no danger, so notification seems unnecessary.*

*Suggestions: Could we notify the landowner and ribbon the patch? Maybe reduce the notification distance to the lesser of: adjacent parcels; or to 75 or 100 feet. It seems that small parcel size and/or accessibility of the treatment sites should be part of the mix. Should there be a patch size, stem number or amount of material criterion applied? Is there some form of general notice that could be used? (Commenter #6, Terry Lillybridge)*

**Response:** Ecology agrees that in the situation that you describe, notification procedures could be egregious for the applicator and do not add benefit to nearby landowners within the notification distance, but without access to the spray site. Please note that the notification language allows same day notification but does not prevent spray notification from occurring earlier such as when/if the applicator obtains permission to work on private property. However, Ecology will modify the notification procedure in S5.C.1. as follows:

#### 1. Notification Requirements

- a. The Permittee must notify private residents/businesses immediately adjacent to any treated area before chemical application, or as an alternative to notification, post the treated area (see d.). The Permittee may provide notice the same day as treatment.

- b. If notifying under 1.a., the Permittee must provide notice to the resident/business by a notification form, letter, flyer, or a personal conversation. The notice must explain the purpose of the treatment, identify the herbicide used, any re-entry or water use restrictions, and provide the location of the treated area(s) in relation to the residence/business.
- c. Ecology does not require posting on private properties that do not have any public access areas so long as the Permittee follows the notification procedure in S5. C.1.b.
- d. Instead of notification, the Permittee may post the treated areas on private properties where advance notification of adjacent landowners is difficult. Where it is obvious that many people other than landowners are accessing the treated site, the Permittee must post the treated site. In these situations, the Permittee must follow the posting requirements outlined in S5.2. - Posting Public Access Areas.
- e. The Permittee need not post or provide notification in private areas with limited site accessibility where people are highly unlikely to enter treated areas.

**28. Comment:** *I would ask that the posting notices only list a phone number for more information, but not stipulate that it be the applicator's. While I agree that the applicator will be in the best position to know exactly what applications were made in the field, and is ultimately responsible for treatments, they are not always available or within range to accept a phone call. It is important to provide a contact number, but best to it be worked out by the entity responsible for the treatments to decide whose name and number will be placed on the posting notice. (Commenter #9, Cathy Lucero)*

**Response:** Ecology believes that it is important that citizens have access to treatment information, but understands that the applicator telephone number may not always be the best number for this purpose. Ecology has changed the wording in its sign templates to read: For more information about this treatment, contact: \_\_\_\_\_ (Applicator to list a number for a contact that can explain the treatment to the caller).

**29. Comment:** *S5 Notification and Posting Requirements. There may be potential impacts to Muckleshoot Indian Tribal members fishing salmon/trout, and shellfish at times when herbicides are applied in WRIs 8, 9, and 10. Herbicide applications could overlap with the time of year when tribal members are conducting fisheries activities and may result in chemical exposure to tribal fishers. Since there is no requirement to provide the Muckleshoot Indian Tribe notice in Section S5, we request that Ecology send the MITFD any applications within WRIs 8, 9, and 10 with a full 30 days to comment on the proposal prior to approval by WDOE. (Commenter #8, Karen Walter)*

**Response:** Ecology believes that the notification and posting requirements in the permit are protective for the general population including tribal members. Most herbicide treatments occur by "limited agents" of the WSDA. These entities fill out an on-line application form and apply to WSDA each year to become "limited agents" of WSDA. "Limited agents" operate under and follow all the permit provisions as if they were WSDA. Although both Ecology and WSDA have access to the "limited agents" on-line Secure Access Washington applications, only WSDA issues approval. There is no simple way for Ecology or WSDA to notify the Muckleshoot Tribe about pending treatments within WRIAs 8, 9, and 10 or for Ecology to give you access to the database. The agencies track the applications by county and not by WRIA. You could contact WSDA or Ecology staff each spring and summer to ask them to run a query on "limited agents" in the counties where you conduct tribal fisheries. Then it would be up to you to contact those "limited agents" to determine treatment plans.

**30. Comment:** *In addition, the MITFD should also be notified if any experimental use permits are issued within WRIAs 8, 9, and 10. (Commenter #8, Karen Walter)*

**Response:** WSDA issues experimental use permits so you will need to work directly with that agency for notification about pending experimental use permits.

## **S6 – Monitoring Requirements for Freshwater Emergent Plants**

**31. Comment:** *The permit only requires monitoring for emergent weeds? Might want to consider submergent weed species also? If I use one of the new herbicide on a submersed species I don't have to monitor? (Commenter #1, Kim Patten)*

**Response:** Ecology covers herbicide treatments for submersed species under another permit (the APAM permit). The Aquatic Noxious Weed Management Permit covers only indirect herbicide applications and does not authorize in-water treatments for submersed species.

**32. Comment:** *S6 Monitoring Requirements, page 14  
In waters where salmonids are present, the following monitoring requirements should be required in the permit:*

*Pre and Post-treatment water column monitoring after herbicide treatment 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.*

*The permit should require a Quality Assurance Project Plan (QAPP) for monitoring activities listed in Section 6. Without a QAPP, one will not be able to determine whether a permittee*

*followed standard protocols and if equipment was functional. A QAPP should be required and filed with the application. (Commenter #8, Karen Walter)*

**Response:** Ecology does not believe that indirect applications of herbicide allowed under this permit will have any adverse effects on salmonids. Monitoring conducted by WSDA staff under previous permits demonstrated that detection of herbicides is unlikely in adjacent waters immediately after treatment and 24 hours after treatment. Because of these monitoring data, Ecology does not require further monitoring under this permit after treatments using glyphosate, imazapyr, triclopyr, or 2,4-D. Because Ecology added five new active ingredients to the permit, it will require that WSDA monitor a subset of any treatments that occur using these new herbicides. Ecology does not believe that these new herbicides will behave differently than the older herbicides, but would like to have data to verify this assumption. The permit requires WSDA to prepare a monitoring plan that is reviewed and approved by Ecology and includes quality assurance parameters.

## **S8 – Reporting and Recordkeeping Requirements**

**33. Comment:** *Complete permit applications should include a pre- and post project report detailing the genus, species, and stem density of all treated weeds; the date, time and method of control; and an affidavit from the herbicide applicator that the report is correct and complete. (Commenter #8, Karen Walter)*

**Response:** Applicators ("limited agents" of WSDA) are required to submit annual on-line post-project reports that provide the waterbody name, plant species targeted, the dates treatment occurred, the chemicals used, the amount of active ingredient, the acres treated, any monitoring results, and a signature that the report is correct and complete. WSDA compiles these reports from their "limited agents" and submits a consolidated report to Ecology each year under its authorized signatory. These data are also available through the state's Secure Access Washington database so Ecology permit administrative staff can access this information at any time. The on-line pre-application for "limited agents" may be less specific about location and target plants because entities often do not know exact treatment locations and noxious weed species until they conduct spring surveys.

## **General Conditions**

**34. Comment:** *G5 General Permit Modification or Revocation, G5.D, page 18*  
*The permits states "the permit may be revoked, modified, etc.... when information is obtained, which indicates that cumulative effects on the environment from dischargers covered under this general permit are unacceptable."*

*It is unclear how this standard is triggered as there appears to be no plan to actually determine cumulative impacts. (Commenter #8, Karen Walter)*

**Response:** Comment noted. This language comes from WAC 173-226-230 and 40 CFR 122.62 and is a standard general permit condition in Ecology's State Waste Discharge permits and National Pollutant Discharge Elimination System permits. Should Ecology receive information that indicates the cumulative effects of herbicide treatments permitted under this permit are causing unacceptable effects, this condition would allow Ecology to revoke or modify the permit.

### **Section 3. Comments on Accompanying Documents**

**35. Comment:** *Fact sheet (page 29) – Adjuvant criteria (4th bullet and exceptions) need to be revised to be consistent with current WSDA criteria*

<http://agr.wa.gov/PestFert/definitions/DefinitionCriteriaRegistrationSprayAdjuvantsAquatic.pdf>.

*(Commenter #10, Wendy Sue Wheeler and Erik Johansen)*

**Response:** Ecology does not typically change the Fact Sheet language. However, people may access the most current adjuvant criteria by following the web link above.

**Ecology addressed the comments received about the EIS addendum in a separate Response to Comments section in the EIS addendum.**

### **Section 4. List of Commentors**

Commenter #1 – Dr. Kim Patten - Washington State University Extension Long Beach

Commenter #2 – Michael Hardiman – Naval Base Kitsap - Bremerton

Commenter # 3 – Steven Richmond – Garden Cycles, Seattle

Commenter # 4 – Erik Johansen, Washington State Department of Agriculture (comments received under three separate emails)

Commenter # 5 – Jennifer Robison, on behalf of the Lake Marcel Community Club Board of Directors

Commenter #6 – Terry R. Lillybridge, Chelan County Noxious Weed Control Program

Commenter # 7 – Alison Halpern, Washington State Noxious Weed Control Board

Commenter #8 – Karen Walter, Muckleshoot Indian Tribe Fisheries Division

Commenter # 9 – Cathy Lucero, Clallam County Noxious Weed Control Board

Commenter #10 – Wendy Sue Wheeler and Erik Johansen, Washington State Department of Agriculture

**Public Hearing**

There was no formal public testimony at the public hearing in Lacey for the Aquatic Noxious Weed Management permit.