

**RESPONSE TO COMMENTS  
RECEIVED DURING THE PUBLIC COMMENT PERIOD FOR THE  
IRRIGATION SYSTEM AQUATIC WEED CONTROL  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
WASTE DISCHARGE GENERAL PERMIT**

As required in the “Waste Discharge General Permit Program” rule, 173-226 WAC, this document constitutes a response to all relevant comments received during the public comment period and a brief description of changes, other than editing changes, with the reasons for the changes to the draft general permit.

Comments on the draft permit were received between February 6, 2002 and March 12, 2002 from the following individuals or organizations.

- #1 Keith E. Franklin, Quincy-Columbia Basin Irrigation District
- #2 Robert Smoot, Yakima Valley Canal Company
- #3 Tom Hebert, SePRO Corporation
- #4 Heather Hansen, Washington Friends of Farms and Forests
- #5 Wendy Sue Wheeler, Washington State Department of Agriculture
- #6 Pat Boss, Washington State Potato Commission
- #7 Thomas Myrum, Washington State Water Resources Association

The changes to the general permit with the justification for each change are presented in the order of the permit structure. Deletions to the permit text are indicated by ~~strikeout~~ and additions are indicated by **bold text**.

**PERMIT COVERAGE**

**C1. ACTIVITIES COVERED**

Every irrigation district or irrigation water supplier who applies herbicides to water in irrigation canals or ditches that interconnect with natural surface waters of the state must apply for and obtain coverage under this general permit unless those activities are covered under an individual NPDES permit, **or are in compliance with FIFRA requirements and exempt under the provisions of the NPDES permit exemption for irrigation return flows.**

~~An irrigation water supplier is required to be covered by the general permit if it applies herbicide into water of a supply or drainage system and water in the system directly returns to natural waters.~~

### C3. HOW CAN COVERAGE BE OBTAINED

#### 1. Existing Irrigation Supply Systems ~~Requiring~~ **Requesting** Coverage

Notify the Department by submitting a completed application for coverage no later than 90 days after the issuance date of this general permit. Unless the Department responds in writing to the notification, coverage of a discharger under this permit will commence on the effective date of the permit.

#### 2. New Irrigation Supply systems or those seeking coverage after [90 days after issuance]

- a. Notify the Department by submission of a completed application form requesting coverage under this permit at least 90 days prior to the planned activity that will result in the discharge to waters of the state.
- b. Publish twice in a local newspaper of general circulation a notice that an application for coverage has been made pursuant to Section 173-226-130(5) WAC. This notice shall specify the last day of the 30 day public comment period.
- c. At the end of the 30 day comment period, the Department will accept the application and review all comments prior to making a determination on whether to grant permit coverage.
- d. The Department intends to notify applicants by mail of their status concerning coverage under this permit. If the applicant does not receive notification of the coverage decision from the Department, coverage under this permit will commence on the 31st day following the Department's acceptance of an application form.

### C4. HOW COVERAGE MAY BE TERMINATED

**Grounds for termination of coverage in addition to that found in G5, G16, and G20 include change in regulatory status that indicates that the activity should not be subject to CWA Section 402. Regulatory status for a permittee under this general permit will be determined by the department based on new information that demonstrates how the permitted activity should not be regulated under CWA Section 402.**

#### Reason for change

On April 4, 2002, a legislative bill became effective that requires the department to “take appropriate action to rescind or modify these [aquatic pesticide application] permits “ as a result of “..clarification of scope by the United States environmental protection agency..” in the matter

of interpretation of the *Headwaters, Inc. v. Talent Irrigation District* federal court of appeals decision. Such a clarification of scope by USEPA was released on March 28, 2002.

Consistent with the interpretation by EPA and the directive of the legislative bill, the department is modifying the permit to reflect the opinion of EPA that discharge of herbicides into an irrigation system in compliance with FIFRA qualifies for the NPDES permit exemption for discharges consisting entirely of return flow from irrigated agriculture.

The paragraph that is stricken was redundant of the original language of the preceding paragraph.

The general permit is available for those irrigation districts seeking to apply for NPDES permit coverage. The department has determined that the decision to apply for coverage under the general permit may be difficult due to the uncertainty generated by the EPA interpretation. A means to terminate coverage is included for this general permit only because of the uncertainty of the final outcome from the EPA interpretation and the actual case law.

Commentor #6 expressed the expectation that the department will discontinue the issuance of the general permit in response to EPA requirements (or lack of requirements) for aquatic pesticide application permits. USEPA released a memorandum on March 28, 2002 titled "Interpretive Statement and Regional Guidance on the Clean Water Act's Exemption for Return Flows from Irrigated Agriculture." In summary, the guidance concludes that the application of an aquatic herbicide consistent with the FIFRA label to ensure the passage of irrigation return flow is a nonpoint discharge not subject to NPDES permit requirements under the CWA. Since the Ninth Circuit Court in the *Headwaters, Inc. v. Talent Irrigation District* decision held that the approved FIFRA label did not eliminate the obligation to obtain an NPDES permit but did not rule on the issue of defining maintenance of irrigation water delivery as an irrigation return flow, uncertainty still exists regarding the need for an NPDES permit. The department has determined to issue the general permit with the additional coverage language to provide NPDES permit coverage to irrigation water suppliers that choose to be covered.

## SPECIAL CONDITIONS

### S2. MONITORING REQUIREMENTS

A. The permittee shall choose either option 1 or option 2 during permit years 2002, 2003, and 2004. The permittee shall follow the option 2 requirements in permit years 2005 and 2006.

#### 1. Option 1) Annual Monitoring Plan

The permittee choosing this option shall submit a plan for monitoring a representative sampling of herbicide application sites during the upcoming aquatic weed control season. The permittee may participate in a group monitoring plan and implementation in lieu of an individual monitoring plan. Annual monitoring plans shall be submitted no later than February 1 of each year except for the year 2002 in order to satisfy this

condition. Annual monitoring plans for the 2002 season shall be submitted by ~~May 1~~ **June 15**, 2002. The plans will be subject to approval by the department.

Monitoring of application sites selected and accepted in the monitoring plan shall be performed by the permittee(s) as stated in the monitoring plan. The annual monitoring plan shall be devised so that alternative methods of application, different types of treated locations, and concentration and transport of herbicides after application, relative herbicide persistence in the water column, and plant species surveys are measured in a representative sampling of applications. Special studies of herbicide degradation and volatility may be performed to satisfy the monitoring requirement as directed by the department.

2. Option 2) Monitoring at Selected Sites

The permittee choosing this option shall monitor all herbicide applications where the treated water eventually flows to natural waters.

The herbicide(s) applied shall be monitored according to the sampling schedule, Table 1

Sampling Schedule Table 1

Monitoring site	Parameter	MDL Units	Minimum Sampling Frequency	Sample Type
outfall to natural waters	Flow		3 times per treatment*	Measurement
“	Copper, total dissolved	2-5 ug/l	3 times per treatment *	grab
	Hardness (only when monitoring copper)		Concurrently with copper sampling	grab
“	Acrolein	± 2ug/l	3 times per treatment *	grab
“	Xylene	1 mg/l /	3 times per treatment *	grab
*On the hour treated flow is expected to reach the sampling site, and 1-2 hours before and 12 to 24 hours later.				

The minimum sampling frequency may be reduced if certain conditions are met and written approval is granted by the department. The objective of the sampling in option 2 is to quantify the amount of the herbicide, if any, passing into natural waters. A permittee may provide information to the department that indicates assurance that the travel time from location and circumstances of flow rate for a herbicide’s potential maximum concentration at the outlet to natural water is known and reliable. If approved by the department, the minimum sampling frequency may be reduced but no

fewer than once per treatment **in the years 2002 through 2004, and no fewer than twice annually for each treatment site after the 2004 treatment season.**

#### Reason for changes

The delay for submitting annual monitoring plans under option 1 is appropriate due to the delay in the permit effective date until at least May 3, 2002. It is hoped that thoroughly considered annual monitoring plans may save time and reiterations of plans during the 2002 monitoring season.

The increase in method detection limits (MDL) for copper and acrolein are in response to comments from #1 and #2 over the additional cost to meet MDLs more stringent than those of the program in 2001, and a general concern expressed by #4 over additional cost of monitoring. The slightly higher MDLs will still be suitable to determine compliance with the specific numerical limits of the permit while detecting concentrations that may be of concern for other reasons.

The further potential reduction in monitoring frequency under Option 2 is in response to comments from #1 and #6 over the cost to monitor when travel times are known in each irrigation system. If herbicide application practices remain stable through the permit cycle, travel times under different flow regimes should be well understood and demonstrated. The department still maintains the authority to either approve or disapprove the monitoring frequency change requests.

#### **S5. ENGINEERING REPORT (FACILITY PLAN)**

No later than March 1, 2003 two copies of an approvable engineering report shall be prepared and submitted by the Washington Water Resources Association (WSRA) in accordance with the agreed scope of work and submitted to the Department for review and approval.

Any interested person may request, in writing, permit modification based on new information not available at the time of permit issuance. The department will determine if permit modification is justified.

The permittee shall submit a copy of an ~~Integrated Pest~~ **Integrated Vegetation** Management Plan (**IVMP**) and a Best Management Practices Plan to the department on or before November 1, 2003 for review and ~~approval~~ **acceptance**. The IPM may be based on the results of the engineering report. The ~~IPM~~ **IVMP** and BMPs shall be implemented after acceptance from the department.

#### Plans and Specifications

No later than one year after the approval date of the engineering report, if treatment to reduce or eliminate herbicide residues is selected as a method to achieve compliance,

the Permittee shall submit two copies of approvable plans and specifications in accordance with WAC 173-240 to the Department for review and approval.

#### Reason for changes

The requirement to submit an Integrated Pest Management Plan as a demonstration that all known available and reasonable methods of pollutant reduction (AKART) have been considered was perhaps the most confusing requirement for the irrigation districts. Integrated Pest Management Practices have a specific meaning under the laws and regulations under the authority of the Washington State Department of Agriculture. Because of the confusion expressed by #4, #5, #6, and #7, the plans for controlling aquatic vegetation in irrigation systems labeled IPM in the programmatic EIS will be retained but relabeled as to reduce confusion with the IPM provisions of state law. References to IPM plans in the fact sheet should be considered as Integrated Vegetation Management Plans. The plans submitted and accepted in accordance with Section S5 are enforceable as AKART.

### PUBLIC NOTICE PROCEDURES

#### P2. Posting Procedures:

The Permittee shall post signs at all irrigation canal and drainage ditch accesses within one mile of the point of application for acrolein or xylene that are normally available to the public (such as public road crossings of canals or drainage ditches). The Permittee shall post and maintain ~~all signs at least 24 hours~~ signs prior to the initial application. The Permittee shall use good faith and reasonable effort to ensure that posted signs remain in place throughout the treatment season.

The Permittee shall ~~construct and~~ post **and maintain** signs as follows:

- A. The signs shall include but not be limited to the following information:
  1. Name and telephone number of the irrigation district;
  2. Access sites are private property, not to be trespassed upon; and
  3. Water treatments using {the chemical} to control aquatic plants may occur during the irrigation season.

#### Reason for changes

The removal of the 24 hour requirement for posting herbicide application sites is in response to an observation by #1 that signs posted a day before the application are often missing by the time of application. The department concurs that posting just prior to application is sufficient to inform the public of the presence of herbicides.

The change in wording to reflect the importance of sign maintenance rather than sign construction is at the suggestion of #1 and the department agrees that the emphasis should be on sign maintenance.

## RESPONSES TO OTHER COMMENTS

Commentor #1 suggested removing general condition G13 which prohibits releasing pollutants collected in the course of treatment. This particular general condition may or may not have an effect on the permittee. If materials considered to be a pollutant are removed from the ditches during herbicide waste treatment, G13 prohibits placing such material back into surface waters of the state. G13 will be retained in the final permit.

Commentor #3 requested that additional aquatic herbicides, fluridone and chelated copper, be added to the list of allowed herbicides. None of the prospective permit applicants requested that fluridone be considered as a permitted discharge nor did any other party request its use in this general permit. Fluridone will not be added to the list of approved discharges at this time. Fluridone is being considered as a permitted herbicide in other classes of general permits. Chelated copper is allowed to be used already in the general permit. The references to copper include all FIFRA approved forms of copper, whether chelated or as copper sulfate.

Commentor #4 questioned what criteria for IPM/AVM plans would be used by the department in accepting the plans. The criteria have not been developed because the engineering report that describes available options and the situations where feasible has not yet been submitted. Had the engineering report preceded the permit, such criteria may have been adopted. The department will develop the criteria in the future.

Commentor #5 pointed out that the fact sheet has a statement regarding IPM that was misleading. The Pesticide Control Act does not mention IPM. The IPM requirements in state law pertain to state agencies and institutions and not the general public. The former IPM plan requirement is renamed as an Aquatic Vegetation Management Plan and required on the basis of implementation of all known available and reasonable methods of prevention and control of pollutants.

Commentors #4 and #5 questioned the inclusion of the fact sheet statement regarding EPA policy development for ESA considerations during FIFRA licensing. Although this proposed action by EPA will have no direct effect on this general permit, it may in the future affect the use of the permitted herbicides and so is relevant to the use of the herbicides in protecting beneficial uses of state waters.