

Submitted by Cathy Backlund, Haven Lake Resident, Mason County, Tahuya, WA

In response to the state's surface water quality standards to sustain public health and public enjoyment of the waters and the propagation and protection of fish, shellfish, and wildlife as well as regulating the quality of surface waters in Washington that include commenting on the following guidelines:

- *To provide a forum to discuss all issues of interest regarding the water quality standards and their implementation.*
- *To discuss what new initiatives are being developed by EPA.*
- *To solicit suggestions for where guidance is needed to implement the current standards.*
- *To solicit suggestions for what new or revised criteria are needed in the regulation.*
- *To discuss the progress with ongoing standards-related efforts.*
- *To formally modify the long-term strategy and timeline for developing guidance and revising the surface water quality standards.*

Ecology has the standards in place and now needs to follow through and enforced them. Water quality, fish and wildlife are not protected when set regulations are violated and consequences for such violations are not carried out. Many infractions occurred on Haven Lake in 2008 when a chemical permit was granted without Ecology upholding its own standards, regulations, enforcement and consequences.

On the chemical permit application, several errors were presented to Ecology by private citizens including the listing of NO salmon rearing in Haven Lake because WDFW had it listed incorrectly on their website. Salmon rearing in Haven Lake is a long-time, well-known fact for many, and for no salmon to be listed because of this website when it is a well-known fact needs the proper consequences applied from Ecology.

Ecology needs to follow through with their own standards when outright attempts to evade the law or regulations occur. Ecology taking a stand would also help protect the private citizens who have the courage to report such acts from retaliation. When Ecology doesn't follow through with its own enforcement, the health and well being of citizens goes unprotected along with damage occurring in our waterways. Ecology needs to follow through with penalties to such violations.

In addition, when Ecology has inspectors on site that observe infractions who are not allowed to report such events because of being outside of their inspection requirements also only allows these type of violations to continue. When Ecology inspectors observe such incidents as watching a bystander getting sprayed by a pesticide airboat in a NO treatment zone without the inspector reporting the incident, the public goes unprotected. When Ecology doesn't report the reason for the incident which was reported that *the boat throttle got stuck* doesn't allow further investigation and inspections to occur.

Also incorrect vegetation was listed on the permit and treatment map, including noxious weeds. Listing noxious weeds on the permit allows additional chemicals to be used that potentially can harm native plants which affects water quality, fish and wildlife. Using the plant surveys performed by Ecology as part of the permit process will help identify the proper vegetation and chemical usage.

In addition, NO plant protection (conservancy area) was established. The set standard of leaving 50% of native plants unharmed and protected was not followed as listed in the permit guidelines. Ecology's inspector on site was unable to report this situation due to being beyond his inspection responsibilities. Other incidents that the Ecology inspector was not allowed to report are as follows. The inspector was not allowed to:

- Inspect and verify areas that were marked as "high use" which allows 100% treatment to be performed. In the case of Haven Lake, 14 acres in a wetland area out of the lake's total 19 acres of native vegetation was treated 100% because it was claimed to be in a "high use" area, and in reality this area was located in a Cove off of the main lake. This type of action impacts water quality and fish protection.
- Verify the amount of chemical used which only can be done by a WSDA inspector if on site. The initial amount reported by the applicator was changed to a lesser amount when questioned on the self reporting form.
- Evaluate the amount of acceptable drift that affected unintended native plants. Nearly 100% of the native vegetation was affected due to the chemical drift which affects water quality and fish protection.
- Report wetland areas that were not listed on the SEPA which affects water quality and fish protection.
- Verify that alternate water supply was provided to lake residents who legally draw lake water for personal use which violates public health standards.
- Investigate reports showing excess chemical in the water column longer than expected which violates public health standards.
- Verify that proper County permits were obtained which are meant to protect water quality and fish protection. Permits are required in Mason County for treating native vegetation.
- Report and place mitigations for endangered species such as Fresh Water Mussels.
- Verify that proper diagnosis was made to declare excess native vegetation existed.
- Report a boating incident when the pesticide boat sprayed a lake resident who was standing on a dock sticking out 5 ft from shore in a no treatment zone.

The public needs Ecology to oversee and enforce to set regulations and standards to protect our waterways and the health and well-being of the public. The laws and regulations are too overwhelming for the public to thoroughly understand and the public needs Ecology inspectors to thoroughly inspect for proper chemical use. Many folks at Haven Lake still want to know why Ecology didn't follow through with the established standards, regulations and laws. Why? Partial laws and regulations as listed as follows:

”Improved enforcement of existing law has been – and will continue to be – an important part of our thinking. Ecology looks forward to working with the Legislature to improve the effectiveness of our enforcement programs to better protect the health of our citizens and our environmental quality.”

Tier III — Protection of outstanding resource waters.

Where a high quality water is designated as an outstanding resource water, the water quality and uses of those waters must be maintained and protected. As part of the public process, a qualifying water body may be designated as Tier III(A) which prohibits any and all future degradation, or Tier III(B) which allows for de minimis (below measurable amounts) degradation from well-controlled activities.

RCW 90.48.144 Violations — Civil penalty — Procedure.

Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who:

- (1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or
- (2) Conducts a commercial or industrial operation or other point source discharge operation without a waste discharge permit as required by RCW 90.48.160 or 90.48.260 through 90.48.262, or
- (3) Violates the provisions of RCW 90.48.080, or other sections of this chapter or chapter 90.56 RCW or rules or orders adopted or issued pursuant to either of those chapters, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and/or the environment in addition to other relevant factors. The penalty herein provided for shall be imposed pursuant to the procedures set forth in RCW 43.21B.300.

WAC 173-201A-410 Short-term modifications.

(4) A short-term modification may be issued in writing by the director or his/her designee to an individual or entity proposing the aquatic application of pesticides, including but not limited to those used for control of federally or state listed noxious and invasive species, **and excess populations of native aquatic plants**, mosquitoes, burrowing shrimp, and fish, subject to the following terms and conditions:

RCW 90.48.180 Waste disposal permits required of counties, municipalities and public corporations — Issuance — Conditions — Duration.

The department shall issue a permit unless it finds that the disposal of waste material as proposed in the application will pollute the waters of the state in violation of the public policy declared in RCW 90.48.010. The department shall have authority to specify conditions necessary to avoid such pollution in each permit under which waste material may be disposed of by the permittee. Permits may be temporary or permanent but shall not be valid for more than five years from date of issuance.

RCW 90.48.010 Policy enunciated.

It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state. The state of Washington in recognition of the federal government's interest in the quality of the navigable waters of the United States, of which certain portions thereof are within the jurisdictional limits of this state, proclaims a public policy of working cooperatively with the federal government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising state powers to insure that present and future standards of water quality within the state shall be determined by the citizenry, through and by the efforts of state government, of the state of Washington.

RCW 90.48.260 Federal clean water act — Department designated as state agency, authority — elegation of authority — Powers, duties, and functions.

The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act.

- (e) termination and modification of permits for cause;
- (h) requirements for inspection, monitoring, entry, and reporting;
- (i) enforcement of the program through penalties, emergency powers, and criminal sanctions;
- (j) a continuing planning process

Denial and/or Revocation of Coverage

1. Ecology may deny permit coverage under the following conditions:

- a. Misrepresentation of facts or failure to disclose all relevant facts concerning the permit.
- b. Inadequate protection of sensitive, threatened, or endangered species.

Water pollution orders for conditions requiring immediate action — Appeal.

Notwithstanding any other provisions of this chapter or chapter 90.56 RCW, whenever it appears to the director that water quality conditions exist which require immediate action to protect the public health or welfare, or that a person required by RCW 90.48.160 to obtain a waste discharge permit prior to discharge is discharging without the same, or that a person conducting an operation which is subject to a permit issued pursuant to RCW 90.48.160 conducts the same in violation of the terms of said permit, causing water quality conditions to exist which require immediate action to protect the public health or welfare, the director may issue a written order to the person or persons responsible without prior notice or hearing, directing and affording the person or persons responsible the alternative of either (1) immediately discontinuing or modifying the discharge into the waters of the state, or (2) appearing before the department at the time and place specified in said written order for the purpose of providing to the department information pertaining to the violations and conditions alleged in said written order. The responsible person or persons shall be afforded not less than twenty-four hours notice of such an information meeting. If following such a meeting the department determines that water quality conditions exist which require immediate action as described herein, the department may issue a written order requiring immediate discontinuance or modification of the discharge into the waters of the state. In the event an order is not immediately complied with the attorney general, upon request of the department, shall seek and obtain an order of the superior court of the county in which the violation took place directing compliance with the order of the department. Such an order is appealable pursuant to RCW 43.21B.310.

Penalty.

Any person found guilty of willfully violating any of the provisions of this chapter or chapter 90.56 RCW, or any final written orders or directive of the department or a court in pursuance thereof is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter or chapter 90.56 RCW occurs may be deemed a separate and additional violation.