



Final Supplemental Environmental Impact Statement for Aquatic Plant Management

Appendix B State Water Pollution Control Laws and Washington's Administrative Codes Governing the Use of Aquatic Pesticides



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

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Washington State Department of Ecology
Water Quality Program

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RCW 17.15.010 Integrated Pest Management

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Integrated pest management" means a coordinated decision-making and action process that uses the most appropriate pest control methods and strategy in an environmentally and economically sound manner to meet agency programmatic pest management objectives. The elements of integrated pest management include:

- (a) Preventing pest problems;
- (b) Monitoring for the presence of pests and pest damage;
- (c) Establishing the density of the pest population, that may be set at zero, that can be tolerated or correlated with a damage level sufficient to warrant treatment of the problem based on health, public safety, economic, or aesthetic thresholds;
- (d) Treating pest problems to reduce populations below those levels established by damage thresholds using strategies that may include biological, cultural, mechanical, and chemical control methods and that must consider human health, ecological impact, feasibility, and cost-effectiveness; and
- (e) Evaluating the effects and efficacy of pest treatments.

(2) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director of the department of agriculture may declare to be a pest.

[1997 c 357 § 2.]

RCW 17.15.020 Implementation of Integrated Pest Management Practices

Each of the following state agencies or institutions shall implement integrated pest management practices when carrying out the agency's or institution's duties related to pest control:

- (1) The department of agriculture;
- (2) The state noxious weed control board;
- (3) The department of ecology;
- (4) The department of fish and wildlife;
- (5) The department of transportation;
- (6) The parks and recreation commission;
- (7) The department of natural resources;
- (8) The department of corrections;
- (9) The department of general administration; and
- (10) Each state institution of higher education, for the institution's own building and grounds maintenance.

[1997 c 357 § 3.]

RCW 90.48.010 Water Pollution Control 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.

[1973 c 155 § 1; 1945 c 216 § 1; Rem. Supp. 1945 § 10964a.]

RCW 90.48.260 Federal Clean Water Act - Department Designated as State Agency

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. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the *Puget Sound water quality authority. The powers granted herein include, among others, and notwithstanding any other provisions of [chapter 90.48 RCW](#) or otherwise, the following:

(1) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of [RCW 90.48.262](#)(2). Program elements authorized herein may include, but are not limited to: (a) Effluent treatment and limitation requirements together with timing requirements related thereto; (b) applicable receiving water quality standards requirements; (c) requirements of standards of performance for new sources; (d) pretreatment requirements; (e) termination and modification of permits for cause; (f) requirements for public notices and opportunities for public hearings; (g) appropriate relationships with the secretary of the army in the administration of his responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his duties, and with other governmental officials under the federal clean water act; (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; and (k) user charges.

(2) The power to establish and administer state programs in a manner which will insure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(3) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning. The governor shall have authority to perform those actions required of him or her by the federal clean water act. [1988 c 220 § 1; 1983 c 270 § 1; 1979 ex.s. c 267 § 1; 1973 c 155 § 4; 1967 c 13 § 24.]

*Reviser's note: The Puget Sound water quality authority and its powers and duties, pursuant to the Sunset Act, [chapter 43.131 RCW](#), were terminated June 30, 1995, and repealed June 30, 1996. See 1990 c 115 §§ 11 and 12. Powers, duties, and functions of the Puget Sound water quality authority pertaining to cleanup and protection of Puget Sound transferred to the Puget Sound action team by 1996 c 138 § 11. See [RCW 90.71.903](#). Severability -- 1983 c 270: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 270 § 5.]

RCW 90.48.445 Aquatic Noxious Weed Control -- Water Quality Permits

Definition.

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of agriculture to control spartina, as defined by [RCW 17.26.020](#), the water quality permits shall contain the following criteria:

(i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department, the department of agriculture, and the department of fish and wildlife agree to add additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;

(ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;

(iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;

(iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and

(v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other

than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental use permit, under the authority of [RCW 15.58.405](#)(3). Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under [chapter 43.21C RCW](#) by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but instead shall authorize the department of agriculture, as lead agency for the control of spartina under [RCW 17.26.015](#), to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under [RCW 17.10.080](#).

[1999 sp.s. c 11 § 1; 1995 c 255 § 3.]

NOTES: Effective date -- 1999 sp.s. c 11: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 11 § 2.]

Severability -- Effective date -- 1995 c 255: See [RCW 17.26.900](#) and 17.26.901.

RCW 90.48.447 Aquatic Plant Management Program

Commercial herbicide information – Experimental application of herbicides -- Appropriation for study.

(1) The department of ecology shall update the final supplemental environmental impact statement completed in 1992 for the aquatic plant management program to reflect new information on herbicides evaluated in 1992 and new, commercially available herbicides. The department shall maintain the currency of the information on herbicides and evaluate new herbicides as they become commercially available.

(2) For the 1999 treatment season, the department shall permit by May 15, 1999, municipal experimental application of herbicides such as hydrothol 191 for algae control in lakes managed under [chapter 90.24 RCW](#). If experimental use is determined to be ineffective, then the

department shall within fourteen days consult with other state, federal, and local agencies and interested parties, and may permit the use of copper sulfate. The Washington institute for public policy shall contract for a study on the lake-wide effectiveness of any herbicide used under this subsection. Prior to issuing the contract for the study, the institute for public policy shall determine the parameters of the study in consultation with licensed applicators who have recent experience treating the lake and with the nonprofit corporation that participated in centennial clean water fund phase one lake management studies for the lake. The parameters must include measurement of the lake-wide effectiveness of the application of the herbicide in maintaining beneficial uses of the lake, including any uses designated under state or federal water quality standards. The effectiveness of the application shall be determined by objective criteria such as turbidity of the water, the effectiveness in killing algae, any harm to fish or wildlife, any risk to human health, or other criteria developed by the institute. The results of the study shall be reported to the appropriate legislative committees by December 1, 1999. A general fund appropriation in the amount of \$35,000 is provided to the Washington institute for public policy for fiscal year 1999 for the study required under this subsection.

[1999 c 255 § 2.]

NOTES:

Findings -- Purpose -- 1999 c 255: "The legislature finds that the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by the invasion of nuisance and noxious aquatic weeds. Once established, these nuisance and noxious aquatic weeds can colonize the shallow shorelines and other areas of lakes with dense surface vegetation mats that degrade water quality, pose a threat to swimmers, and restrict use of lakes. Algae can generate health and safety conditions dangerous to fish, wildlife, and humans. The current environmental impact statement is causing difficulty in responding to environmentally damaging weed and algae problems. Many commercially available herbicides have been demonstrated to be effective in controlling nuisance and noxious aquatic weeds and algae and do not pose a risk to the environment or public health. The purpose of this act is to allow the use of commercially available herbicides that have been approved by the environmental protection agency and the department of agriculture and subject to rigorous evaluation by the department of ecology through an environmental impact statement for the aquatic plant management program." [1999 c 255 § 1.]

Effective date -- 1999 c 255: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 1999]." [1999 c 255 § 5.]

RCW 90.48.448 Eurasian Watermilfoil - Pesticide 2,4-D Application

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under [RCW 90.48.445](#), if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology, the department of fish and wildlife, the department of agriculture, the department of health, and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department of fish and wildlife may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in [RCW 43.21A.660](#).

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

[Statutory Authority: Chapter [90.48](#) RCW and 40 CFR 131.97-23-064 (Order 94-19), § 173-201A-110, filed 11/18/97, effective 12/19/97. Statutory Authority: Chapter [90.48](#) RCW. 92-24-037 (Order 92-29), § 173-201A-110, filed 11/25/92, effective 12/26/92.]

WAC 173-201A-110 Short-Term Water Quality Modifications

The criteria and special conditions established in WAC [173-201A-030](#) through [173-201A-140](#) may be modified for a specific water body on a short-term basis when necessary to accommodate essential activities, respond to emergencies, or to otherwise protect the public interest, even though such activities may result in a temporary reduction of water quality conditions below those criteria and classifications established by this regulation. Such activities must be conditioned, timed, and restricted (i.e., hours or days rather than weeks or months) in a manner that will minimize water quality degradation to existing and characteristic uses. In no case will any degradation of water quality be allowed if this degradation significantly interferes with or becomes injurious to characteristic water uses or causes long-term harm to the environment.

(1) 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:

(a) A short-term modification will in no way lessen or remove the project proponent's obligations and liabilities under other federal, state and local rules and regulations.

(b) A request for a short-term modification shall be made to the department on forms supplied by the department. Such request shall be made at least thirty days prior to initiation of the proposed activity, and after the project proponent has complied with the requirements of the State Environmental Policy Act (SEPA);

(c) A short-term modification shall be valid for the duration of the activity requiring modification of the criteria and special conditions in WAC [173-201A-030](#) through [173-201A-140](#), or for one year, whichever is less. Ecology may authorize a longer duration where the activity is part of an ongoing or long-term operation and maintenance plan, integrated pest or noxious weed management plan, waterbody or watershed management plan, or restoration plan. Such a plan must be developed through a public involvement process consistent with the Administrative Procedure Act (chapter [34.05](#) RCW) and be in compliance with SEPA, chapter

[43.21C](#) RCW, in which case the standards may be modified for the duration of the plan, or for five years, whichever is less;

(d) Appropriate public notice as determined and prescribed by the director or his/her designee shall be given, identifying the pesticide, applicator, location where the pesticide will be applied, proposed timing and method of application, and any water use restrictions specified in USEPA label provisions;

(e) The pesticide application shall be made at times so as to:

(i) Minimize public water use restrictions during weekends; and

(ii) Avoid public water use restrictions during the opening week of fishing season, Memorial Day weekend, Independence Day weekend, and Labor Day weekend;

(f) Any additional conditions as may be prescribed by the director or his/her designee.

(2) A short-term modification may be issued for the control or eradication of noxious weeds identified as such in accordance with the state noxious weed control law, chapter [17.10](#) RCW, and Control of spartina and purple loosestrife, chapter [17.26](#) RCW. Short-term modifications for noxious weed control shall be included in a water quality permit issued in accordance with RCW [90.48.445](#), and the following requirements:

(a) Water quality permits for noxious weed control may be issued to the Washington state department of agriculture (WSDA) for the purposes of coordinating and conducting noxious weed control activities consistent with their responsibilities under chapter [17.10](#) and [17.26](#) RCW. Coordination may include noxious weed control activities identified in a WSDA integrated noxious weed management plan and conducted by individual landowners or land managers.

(b) Water quality permits may also be issued to individual landowners or land managers for noxious weed control activities where such activities are not covered by a WSDA integrated noxious weed management plan.

(3) The turbidity criteria established under WAC [173-201A-030](#) shall be modified to allow a temporary mixing zone during and immediately after necessary in-water or shoreline construction activities that result in the disturbance of in-place sediments. A temporary turbidity mixing zone is subject to the constraints of WAC [173-201A-100](#) (4) and (6) and is authorized only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary turbidity mixing zone shall be as follows:

(a) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from activity causing the turbidity exceedance.

(b) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of activity causing the turbidity exceedance.

(c) For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of activity causing the turbidity exceedance.

(d) For projects working within or along lakes, ponds, wetlands, estuaries, marine waters or other nonflowing waters, the point of compliance shall be at a radius of one hundred fifty feet from activity causing the turbidity exceedance.

WAC 173-201A-030 (5) Characteristic Uses for Lake Class Waters

(a) General characteristic. Water quality of this class shall meet or exceed the requirements for all or substantially all uses.

(b) Characteristic uses. Characteristic uses shall include, but not be limited to, the following:

(i) Water supply (domestic, industrial, agricultural).

(ii) Stock watering.

(iii) Fish and shellfish:

Salmonid migration, rearing, spawning, and harvesting.

Other fish migration, rearing, spawning, and harvesting.

Clam and mussel rearing, spawning, and harvesting.

Crayfish rearing, spawning, and harvesting.

(iv) Wildlife habitat.

(v) Recreation (primary contact recreation, sport fishing, boating, and aesthetic enjoyment).

(vi) Commerce and navigation.

(c) Water quality criteria:

(i) Fecal coliform organism levels shall both not exceed a geometric mean value of 50 colonies/100 mL, and not have more than 10 percent of all samples obtained for calculating the geometric mean value exceeding 100 colonies/100 mL.

(ii) Dissolved oxygen - no measurable decrease from natural conditions.

(iii) Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.

(iv) Temperature - no measurable change from natural conditions.

(v) pH - no measurable change from natural conditions.

(vi) Turbidity shall not exceed 5 NTU over background conditions.

(vii) Toxic, radioactive, or deleterious material concentrations shall be below those which have the potential either singularly or cumulatively to adversely affect characteristic water uses, cause acute or chronic conditions to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the department (see WAC [173-201A-040](#) and [173-201A-050](#)).

(viii) Aesthetic values shall not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

(6) Establishing lake nutrient criteria.

(a) The following table shall be used to aid in establishing nutrient criteria:

Lakes in the Willamette, East Cascade Foothills, or Blue Mountain ecoregions do not have recommended values and need to have lake-specific studies in order to receive criteria as described in (c)(i) of this subsection.

(b) The following actions are recommended if ambient monitoring of a lake shows the epilimnetic total phosphorus concentration, as shown in Table 1 of this section, is below the action value for an ecoregion:

(i) Determine trophic status from existing or newly gathered data. The recommended minimum sampling to determine trophic status is calculated as the mean of four or more samples collected from the epilimnion between June through September in one or more consecutive years. Sampling must be spread throughout the season.

(ii) Propose criteria at or below the upper limit of the trophic state; or
(iii) Conduct lake-specific study to determine and propose to adopt appropriate criteria as described in (c) of this subsection.

(c) The following actions are recommended if ambient monitoring of a lake shows total phosphorus to exceed the action value for an ecoregion shown in Table 1 of this section or where recommended ecoregional action values do not exist:

(i) Conduct a lake-specific study to evaluate the characteristic uses of the lake. A lake-specific study may vary depending on the source or threat of impairment. Phytoplankton blooms, toxic phytoplankton, or excessive aquatic plants, are examples of various sources of impairment. The following are examples of quantitative measures that a study may describe: Total phosphorus, total nitrogen, chlorophyll-a, dissolved oxygen in the hypolimnion if thermally stratified, pH, hardness, or other measures of existing conditions and potential changes in any one of these parameters.

(ii) Determine appropriate total phosphorus concentrations or other nutrient criteria to protect characteristic lake uses. If the existing total phosphorus concentration is protective of characteristic lake uses, then set criteria at existing total phosphorus concentration. If the existing total phosphorus concentration is not protective of the existing characteristic lake uses, then set criteria at a protective concentration. Proposals to adopt appropriate total phosphorus criteria to protect characteristic uses must be developed by considering technical information and stakeholder input as part of a public involvement process equivalent to the Administrative Procedure Act (chapter [34.05](#) RCW).

(iii) Determine if the proposed total phosphorus criteria necessary to protect characteristic uses is achievable. If the recommended criterion is not achievable and if the characteristic use the criterion is intended to protect is not an existing use, then a higher criterion may be proposed in conformance with 40 CFR part 131.10.

(d) The department will consider proposed lake-specific nutrient criteria during any water quality standards rule making that follows development of a proposal. Adoption by rule formally establishes the criteria for that lake.

(e) Prioritization and investigation of lakes by the department will be initiated by listing problem lakes in a watershed needs assessment, and scheduled as part of the water quality program's watershed approach to pollution control. This prioritization will apply to lakes identified as warranting a criteria based on the results of a lake-specific study, to lakes warranting a lake-specific study for establishing criteria, and to lakes requiring restoration and pollution control measures due to exceedance of an established criterion. The adoption of nutrient criteria are generally not intended to apply to lakes or ponds with a surface area smaller than five acres; or to ponds wholly contained on private property owned and surrounded by a single landowner; and nutrients do not drain or leach from these lakes or private ponds to the detriment of other property owners or other water bodies; and do not impact designated uses in the lake. However, if the landowner proposes criteria the department may consider adoption.

(f) The department may not need to set a lake-specific criteria or further investigate a lake if existing water quality conditions are naturally poorer (higher TP) than the action value and uses have not been lost or degraded, per WAC [173-201A-070](#)(2).

Statutory Authority: Chapter [90.48](#) RCW and 40 CFR 131. 97-23-064 (Order 94-19), § 173-201A-030, filed 11/18/97, effective 12/19/97. Statutory Authority: Chapter [90.48](#) RCW. 92-24-037 (Order 92-29), § 173-201A-030, filed 11/25/92, effective 12/26/92.]