



## **Noxious Weeds in Aquatic Critical Areas: Regulatory Issues**

State Weed Law RCW 17.10 requires all landowners to eradicate Class A noxious weeds and to control and prevent the spread of designated Class B and Class C noxious weeds on their properties. It is important that noxious weed control activities undertaken in aquatic critical areas are consistent with local, state, and federal regulations designed to protect them. These guidelines aim to assist landowners controlling noxious weeds in King County to remain in compliance with these Federal, State and local regulations.

### **What are Aquatic Critical Areas?**

Many definitions of the different aquatic critical areas exist and the definition can vary with the level of jurisdiction, laws and regulatory agency involved. The definitions provided here have been selected to provide a general description of the aquatic critical areas regulated in King County. When dealing with a specific regulatory agency it is recommended that you refer to their definition.

#### ***Wetlands***

Wetlands are those areas which are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (*King County Code 21A.06.1415*). An inventory of wetlands in unincorporated King County was published in 1983 and updated in 1990. Copies of the inventory can be found in most local libraries and by contacting King County DDES. However, the inventory is not comprehensive and it is important if you suspect an area is a wetland to seek further advice before initiating any weed control activities not permitted in wetlands.

#### ***Streams and Agricultural Drainage***

Streams are aquatic areas where surface water produces a channel, not including a wholly artificial channel, **unless** it is used by salmonids or used to convey a stream that occurred naturally before construction of the artificial channel (*King County Code 21A.06*). Agricultural drainage is any stream, ditch, tile system, pipe or culvert primarily used to drain fields for horticultural or livestock activities (*King County Code 21A.06*). King County Agricultural Drainage Assistance Program provides technical and financial support to farmers attempting to clean agricultural waterways.

### ***Lakes and Other Aquatic Areas***

An aquatic area is any non-wetland water feature including all shorelines of the state, rivers, streams, marine waters, inland bodies of open water including lakes and ponds, reservoirs and conveyance systems and impoundments of these features if any portion of the feature is formed from a stream or wetland. Aquatic areas do not include water features that are entirely artificially collected or conveyed storm or wastewater systems or entirely artificial channels, ponds, pools or other similar constructed water features. (King County Code 21A.06)

### ***Wetland and Aquatic Area Buffers***

A buffer is a designated area contiguous to and intended to protect and be an integral part of an aquatic area or wetland. (King County Code 21A.06.122)

## **What Agencies Regulate Noxious Weed Control in Aquatic Critical Areas?**

The control of noxious weeds is regulated in aquatic critical areas through several federal and state laws, and at the local government level through the relevant municipal code. The following is a brief description of the legislation and major regulatory agencies involved, and the possible regulatory compliance and permitting issues at federal, state, county, and local levels.

### **Federal Regulation**

#### ***Clean Water Act (33 U.S.C. 1251 - 1375)***

A noxious weed control activity which results in the deposition of fill into aquatic areas with federal jurisdiction (Waters of the U.S.) requires consultation with the U.S. Corps of Army Engineers (USCOE). The USCOE may require a permit under Sections 404 of the Clean Water Act and Section 401 Water Quality Certification (administered by the Washington State Department of Ecology). A single application form, the Joint Aquatic Resource Permit Application (JARPA), consolidates the permit application process for these and other federal, state, and local permits.

Section 402 of the Clean Water Act defines the National Pollution Discharge Elimination Scheme (NPDES), administered by the EPA. The NPDES requires anyone who wants to discharge pollutants (including herbicides), into aquatic areas with federal jurisdiction, to first obtain an NPDES permit, or that discharge will be considered illegal. The CWA allows the EPA to delegate the NPDES Permit Program to state governments, enabling states to perform many of the permitting, administrative, and enforcement aspects of the program. The Washington State Department of Ecology (DOE) administers NPDES permits for use of herbicides to control aquatic noxious weeds in Washington (described below).

### ***Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)***

The US Department of Agriculture administers the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which provides federal control on the sale, distribution and use of herbicides and pesticides. FIFRA requires that pesticide uses and recommendations comply with the respective label. FIFRA also requires that the pesticide laws enacted by the individual states conform to federal standards. State laws (such as the Washington State Pesticide Control Act described below) cannot be less restrictive than those of FIFRA, but may be more restrictive.

### ***Endangered Species Act (7 U.S.C. 136; 16 U.S.C. 460 et seq.)***

The Endangered Species Act provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. EPA's decision to register a pesticide is based in part on the risk of adverse effects on endangered species including how a pesticide will affect habitat.

On July 3, 2002, the U.S. District Court for the Western District of Washington at Seattle found that the U.S. Environmental Protection Agency (EPA) had violated its obligations under the Endangered Species Act. The ruling was in response to a lawsuit brought by the Washington Toxics Coalition and other environmental and fishing groups. The court issued a final order on Jan. 22, 2004. This order restricts the use of several commonly used herbicides (including 2,4-D and triclopyr BEE) in specified buffer areas (20 yards for ground applications and 100 yards for aerial applications) beside streams bearing endangered salmonid species. Restrictions for 2,4-D apply only when used for aquatic weed control. Updated information on the implementation of this court ruling is available from the WSDA Endangered Species Unit.

## **State Regulation**

### ***Washington State Pesticide Control Act (RCW 15.58)***

The Washington Pesticide Control Act provides additional state control on the sale, distribution, and use of herbicides and pesticides. WSDA has restricted the use of all pesticide formulations labeled for application onto or into water. Only certified aquatic applicators with the private or aquatic license endorsement can purchase and use aquatic pesticide formulations (unless used under direct supervision of a licensed aquatic applicator). Only pesticides that are labeled for aquatic uses may be used for aquatic applications.

### ***The Water Pollution Control Act (RCW 90.48)***

The Water Pollution Control Act regulates noxious weed control activities that discharge herbicides and other pollutants directly into surface waters of the state through the NPDES permit system. This implements the CWA Sec. 402 described above. NPDES permits are issued by the Washington State Department of Ecology. Agencies and contractors can also receive coverage under the Washington State Department of Agriculture programmatic NPDES permit.

### ***Hydraulic Project Approval (RCW 75.20.100-160)***

In general, work that uses, diverts, obstructs or changes the natural flow or bed of state waters requires a Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW). Many aquatic noxious weed control activities require a HPA. The possession of the WDFW pamphlet "Aquatic Plants and Fish" acts as the HPA for many small scale aquatic noxious weed control activities, including the use of mechanical cutting and harvesting techniques. Projects conducted solely for the control of spartina (by any method) and purple loosestrife (with hand held equipment), may be conducted without obtaining an HPA or HPA pamphlet. WDFW authorization is required for the use of bottom barriers, weed rollers and diver dredges to control aquatic noxious weeds.

### **Local Government Regulation**

In unincorporated King County noxious weed control activities are regulated by components of the King County Code. Landowners in incorporated areas of King County will need to refer to their local municipal code to determine local government regulation.

### ***King County Code***

Three sections of the King County Code affect noxious weed and invasive vegetation control activities in unincorporated King County: 1) The Critical Areas Ordinance (Chapter 21A.24) defines critical areas and their buffers, and describes development standards; 2) The Clearing and Grading Ordinance (Chapter 16.82) regulates vegetation removal from critical areas through clearing and grading; and 3) Water Quality Ordinance, (Chapter 9.12) regulates water quality and contamination of surface water and storm or groundwater.

Critical Areas regulated by the King County Code include:

- Wetlands
- Aquatic and Severe Channel Migration Areas
- Landslide Hazard Areas (Over 40%)
- Steep Slope Hazard Area
- Wildlife Habitat Network Areas \*

\*No Clearing practices or other disturbances are allowed in Wildlife Habitat Network areas during breeding seasons established under section 198 of Ordinance 15051.

### ***Critical Areas Ordinance***

Noxious weeds are defined as any plant species listed on the state noxious weed list (WAC 16-750) and invasive vegetation is defined as any plant species listed as an obnoxious weed on the King County noxious weed list.

In general, removing noxious and invasive weeds is allowed in these critical areas if conducted in accordance **with** an approved forest management plan, farm management plan, or rural stewardship plan.

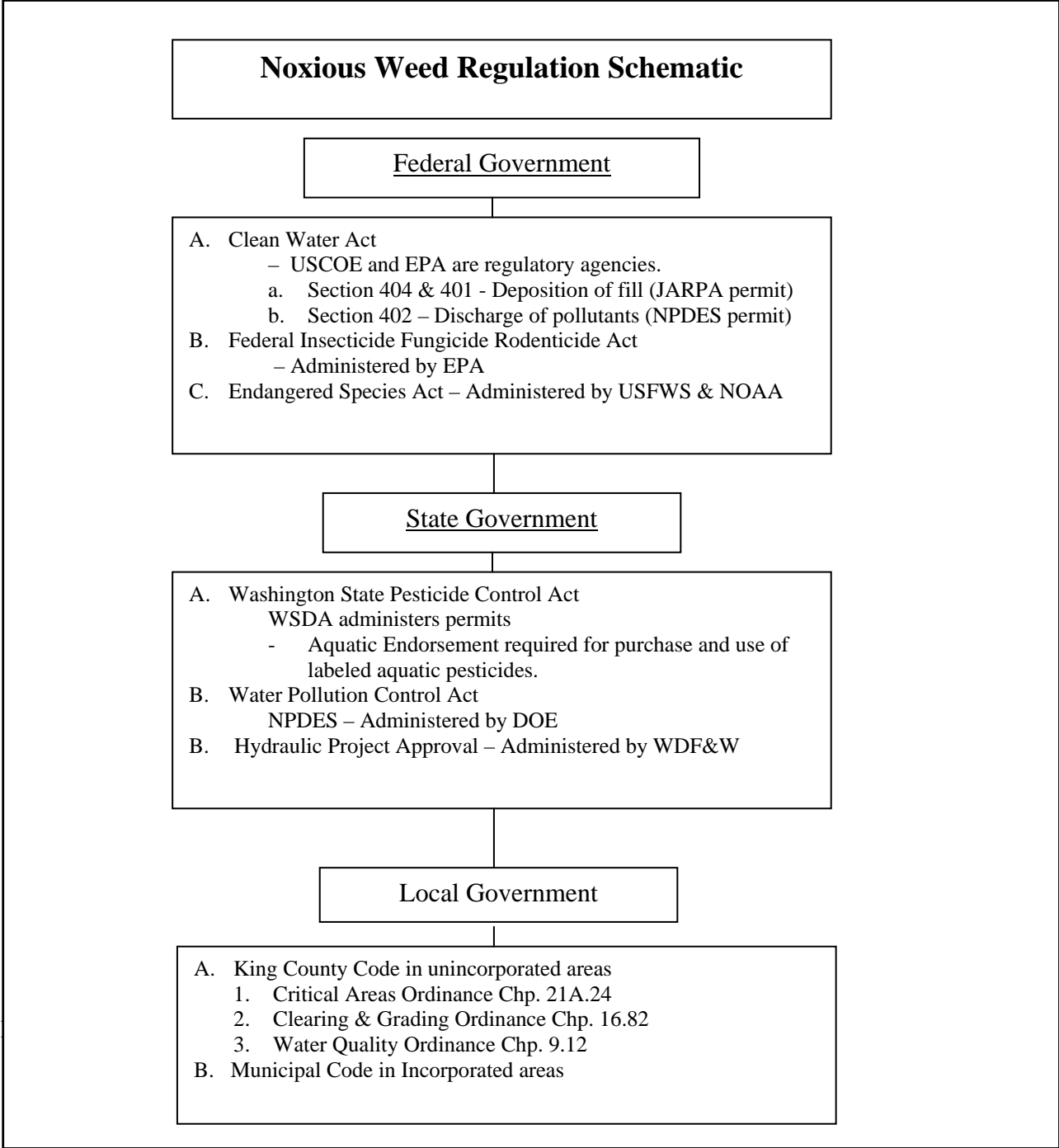
Control of noxious and invasive vegetation in these critical areas **without** an approved plan is allowed only if removal is undertaken with hand labor, including hand-held mechanical tools, unless the King County Noxious Weed Control Board prescribes the use of riding mowers, light mechanical cultivating equipment, herbicides or biological control methods. Refer to the BMP for the specific noxious weed to be controlled for a description of these additional allowed weed control prescriptions. The cleared area must also be stabilized to avoid re-growth or regeneration of noxious weeds, and the cleared area must be re-vegetated with native or non-native vegetation and stabilized against erosion. If herbicides are prescribed, they must be used in accordance with federal and state law.

### ***Clearing and Grading Ordinance***

The control of noxious weeds in critical areas is generally exempt from the requirement of a Clearing and Grading permit (KCC16.82.050). No permit is required for clearing of invasive vegetation up to a cumulative area of seven thousand square feet per parcel annually or in accordance with an approved farm management plan, forest management plan or rural stewardship plan. Clearing and Grading Permits are issued by the King County Department of Development and Environmental Services (DDES).

### ***Water Quality Ordinance***

Finally, the water quality management chapter of the King County Code (Chapter 9.12) regulates the release of herbicides, pesticides and fertilizers into surface water, storm or groundwater, or the Puget Sound. In general, compliance with the State administered NPDES permit requirements described above ensures compliance with the King County Water Quality Ordinance.



*Note: This schematic was created for the purpose of this document only, and is not meant to encompass all federal, state, or local regulations regarding aquatic critical areas.*

## Resources

This document is to be used as a general guide to regulatory compliance issues when controlling noxious weeds in aquatic critical areas in King County. Landowners may require further guidance from the relevant regulatory agency to make informed decisions of noxious weed control in aquatic areas. Below is a list of additional resources, including websites and contacts in incorporated areas.

King County Noxious Weed Program: <http://dnr.metrokc.gov/wlr/lands/weeds/index.htm>

King County Department of Development and Environmental Services (DDES):

<http://www.metrokc.gov/ddes/>

King County Agricultural Drainage Assistance Program: <http://dnr.metrokc.gov/wlr/waterres/fnd/>

U.S. Corps of Army Engineers: <http://www.nws.usace.army.mil>

Washington State Department of Agriculture (WSDA): <http://agr.wa.gov/>

Washington Department of Ecology (DOE): <http://www.ecy.wa.gov/>

Washington State Department of Fish and Wildlife (WDFW): <http://wdfw.wa.gov/>

Washington State Permit Assistance Center Phone number: **(360) 407-7037**

*(Information on environmental permits issued by federal, state, or local government)*

Local Government Municipal Codes: <http://www.mrsc.org/codes.aspx>

## References

Critical Areas, Clearing & Grading, and Stormwater Ordinances Retrieved December 15, 2004 from The Metropolitan King County Council Web Site: <http://www.metrokc.gov/council/cao/>

DDES – King County Code. Chapter 16.82 Grading – King County Code (6-96). Retrieved October 23, 2003 from King County Department of Development and Environmental Services, Codes and Policies Web Site: <http://www.metrokc.gov/mkcc/code/19-Title%2016.pdf>

DDES – King County Code. Chapter 21A.24 Sensitive Areas: Presumption of Salmonids, Sensitive Area and Buffer Modifications, and Mitigation Requirements– King County Code (7-02). Retrieved March 30, 2004 from King County Department of Development and Environmental Services, Codes and Policies Web Site: <http://www.metrokc.gov/mkcc/code/29-Title%2021A24-21A26.pdf>

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Washington State Department of Ecology (DOE). Announcement of Issuance of a General Permit for Aquatic Noxious Weed Control (n.d.). Retrieved on October 23, 2003, from Washington Department of Ecology, Water Quality, and Aquatic Pesticides Web Site: [http://www.ecy.wa.gov/programs/wq/pesticides/final\\_pesticide\\_permits/noxious/noxious\\_index.html](http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/noxious/noxious_index.html)

Washington Department of Fish and Wildlife (WDFW) – How to Control Aquatic Plants. Retrieved October 29, 2003 from the Washington Department of Fish and Wildlife, Aquatic Plants and Fish Web Site: <http://wdfw.wa.gov/>

Washington State Legislature – RCW 90.48.445 Aquatic noxious weed control – Water quality permits - Definition (n.d.). Retrieved October 23, 2003, from Washington Department of Ecology, Laws and Rules Web Site: <http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section&section=90.48.445>

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