

ANALYSIS OF SB 5670

***House Agriculture & Ecology Committee
23, 1999***

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| <ul style="list-style-type: none">- Adds experimental uses of herbicides on aquatic sites to the uses for which water quality permits are to be issued under the state's aquatic weed control program and exempts the issuance of permits for this purpose from SEPA review.- Adds criteria for the issuance of water quality permits for the use of glyphosate and surfactants under the program and adds certain criteria for all permits issued under the program.- Expressly authorizes WSDA to amend earlier EIS's issued regarding aquatic weed control. |
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BACKGROUND:

Legislation enacted in 1995 designates the Washington State Department of Agriculture (WSDA) as being responsible for a unified effort to eliminate spartina and control purple loosestrife. It requires the Department of Ecology (DOE) to issue or approve water quality permits to governmental agencies and licensed applicators for the use of registered herbicides and surfactants in controlling aquatic noxious weeds. The issuance of the permits is subject only to compliance with: federal and state pesticide label requirements, federal and state pesticide laws, the State Environmental Policy Act (SEPA), and applicable requirements established for controlling the weed by a final environmental impact statement (EIS) published under SEPA by DOE before May 5, 1995, or published by WSDA or by WSDA jointly with other state agencies. (May 5, 1995, was the effective date of the 1995 legislation.)

Two species of spartina are native to Washington and both of these are found in eastern Washington. A non-native species was introduced to Willapa Bay in the late 1800s. It is an aggressive colonizer and a better competitor than native salt marsh plants in parts of the intertidal zone. Although the largest population of this cordgrass is found in Willapa Bay, smaller populations have been found elsewhere along the coast and along the state's inland marine waters. The spartina subject to control under the WSDA aquatic weed control program are the non-native species and its variants.

A rule adopted by the U. S. Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act, 40 C.F.R. Section 172.3, states that an experimental use permit is generally required for testing of any unregistered pesticide or any registered pesticide being tested for an unregistered use. It also describes certain types of these tests that are presumed not to involve unreasonable adverse effects and, therefore, are exempted from this permit requirement.

SUMMARY:

The circumstances under which DOE is to issue or approve water quality permits for the use of registered herbicides and surfactants for controlling aquatic noxious weeds are also the circumstances under which it is to issue such a permit for the experimental use of herbicides on aquatic sites as defined— in 40 C.F.R. Section 172.3.

When DOE issues water quality permits for the purpose of using glyphosate and surfactants registered by WSDA to control spartina, the water quality permits must contain the following criteria:

- Spartina treatment must occur between June 1st and October 31st of each year unless DOE, WSDA, and the Department of Fish and Wildlife agree to add additional dates beyond this period, and special restrictions are established for applications on July 4th or Labor Day;
- The applicator must take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;
- A period of 14 days between treatments is required for any area;
- Aerial or ground broadcast application cannot be made when the wind speed exceeds 10 mph; and
- An application cannot be made when a tidal regime leaves the plants dry for less than 4 hours.

Water quality permits for using herbicides or surfactants registered by WSDA to control aquatic noxious weeds other than spartina must also prohibit broadcast applications when the wind speed exceeds 10 mph. All water quality permits issued under this aquatic weed control program, except those issued for the experimental use of herbicides, are effective for 5 years, unless a shorter time is requested by the applicant.

DOE must issue water quality permits for the experimental use of herbicides on aquatic sites as defined in 40 C.F.R. Section 172.3 when WSDA has issued an experimental use permit under the state's Pesticide Control Act. Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued for this purpose are not subject to SEPA review.

The requirements identified for controlling an aquatic noxious weed by a final EIS published by DOE before May 5, 1995, or by WSDA or WSDA jointly with other state agencies, are to be considered guidelines for the purpose of granting the water quality permits. WSDA is expressly authorized to supplement, amend, or issue addenda to a final EIS 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.

EFFECTIVE DATE:

The bill contains an emergency clause and takes effect immediately.