

CONCISE EXPLANATORY STATEMENT

Adoption of Permanent Rules Amendments to WAC 16-750

November 26, 2019

Statutory Authority:

The State Noxious Weed List and Schedule of Monetary Penalties (WAC 16-750) provides the basis for noxious weed control efforts by county noxious weed control boards, the Washington State Noxious Weed Control Board (WSNWCB), and the Washington State Department of Agriculture (WSDA) under the authority of Chapter 17.10 RCW.

Reasons for Adopting the Rule:

The State Noxious Weed List, as set forth in rule, provides the basis for noxious weed control efforts by county noxious weed control boards, weed districts, the WSNWCB and the WSDA, under the authority of Chapter 17.10 RCW. The intent of the State Noxious Weed List is to prioritize control of noxious weed species statewide, concentrating on prevention and early detection, while still allowing for local program flexibility for more widespread noxious weeds.

Rule Changes Proposed:

The Washington State Noxious Weed Control Board considered proposals to make the following amendments to Chapter 16-750 WAC for 2020:

- ❖ WAC 16.750.005 Proposed Class A addition:
 - One Proposed Class A addition- South American spongeplant, *Limnobium laevigatum*
- ❖ WAC 16.750.011 Proposed designation changes:
 - Designate Eurasian watermilfoil, *Myriophyllum spicatum*, in Kitsap, Kittitas, and Whitman counties
 - Designate Bohemian knotweed, *Polygonum x bohemicum*, in San Juan, Stevens, Whitman, and Yakima counties
 - Designate Japanese knotweed, *Polygonum cuspidatum*, in Stevens County
 - Designate Himalayan knotweed, *Persicaria wallichii*, in Clark and Stevens counties
 - Designate lesser celandine, *Ficaria verna*, in all of Washington State except for King and Whatcom counties
 - Designate leafy spurge, *Euphorbia virgata*, in Whitman and Garfield counties
 - Designate purple loosestrife, *Lythrum salicaria*, in Pierce and Benton counties

- Designate wand loosestrife, *Lythrum virgatum*, in Mason, Pierce, and Benton counties
 - Designate poison hemlock, *Conium maculatum*, in Douglas County
 - Designate policeman’s helmet, *Impatiens glandulifera*, in Pacific and Pierce counties
 - Designate Ravenna grass, *Saccharum ravennae*, in Grant County
 - Designate rush skeletonweed, *Chondrilla juncea*, in Kitsap County
 - Designate European coltsfoot, *Tussilago farfara*, in Grant County
- ❖ Proposed additional changes to WAC 16.750:
- WAC 16.750.140 Adding a standing legislative committee.
 - WAC 16.75.142 Creating a new section for the State noxious weed control board—Executive secretary and education specialist—Hiring and dismissal.
 - WAC 16.750.145 Editing the State noxious weed control board—Executive secretary—Definition.
 - WAC 16.750.146 Creating a new section for the State noxious weed control board—Education specialist—Definition.
 - WAC 16.750.150 Repealing section on State noxious weed control board- Executive secretary- Hiring and dismissal. Moved to section 142.

Summary of the Public Comment Process:

The WSNWCB complies with Chapter 34.05 RCW, the Administrative Procedure Act, when providing notice of opportunity for public participation. The proposed rule amendments, instructions for submission of written comments, and the date, time, and location of the public hearing were submitted on October 02, 2019 for inclusion in the October 16 Washington State Register Issue number 20-120 (WSR #19-20-120). A detailed summary of the proposed rule changes, public hearing information, and options to provide testimony were published on the WSNWCB website October 2 and a press release was emailed to over seventy local weekly newspapers along with interested parties, including every county noxious weed control board and weed district in the state as well as numerous interested stakeholders and citizens on October 8, 2019. An announcement about the proposed changes to the noxious weed list and the public hearing was also posted on Facebook on October 8, 2019, which reached over 2,500 people.

RCW 34.05.325(1) requires the WSNWCB to accept written comments on its proposed amendments to WAC 16-750 if they are received no later than the time and date specified in the notice of proposed rule-making (CR-102). The advertised public comment period ran from October 2, 2019 until 5:00 p.m. on Monday, November 4, 2019. Three pieces of written testimony were submitted between October 3 and November 4, 2019.

RCW 34.05.325(2) requires the WSNWCB to provide interested parties an opportunity to present oral comments on the proposed rules in a rule-making hearing. The WSNWCB held a public hearing on Tuesday, November 5 starting at 1:00 p.m. at the Coast Wenatchee Center Hotel in Wenatchee, WA. The hearing was conducted under authority granted by RCW 17.10 (Noxious Weeds, Control Boards),

RCW 42.30 (Open Public Meetings Act), and RCW 34.05 (Administrative Procedure Act). Prior to the period for oral comments, Education Specialist Wendy DesCamp provided a technical presentation on the proposed rule changes. The hearing officer was WSDA Agency Rules Coordinator Gloriann Robinson. No written testimony was submitted at the hearing. Oral testimony submitted at the hearing is summarized below:

Proposed designation change of Class B noxious weed Eurasian watermilfoil, <i>Myriophyllum spicatum</i>		
# supporting designation changes of Eurasian watermilfoil	# opposing designation changes of Eurasian watermilfoil	# neutral on designation changes of Eurasian watermilfoil
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Comments Received from Stakeholders:

Regarding the proposed Class A addition of South American spongeplant, *Limnobium laevigatum*.

In Opposition:

No oral or written testimony submitted

In Support:

No oral testimony submitted

Summary of written testimony:

Leticia Hernandez – representing herself submitted written comment regarding the proposal. Ms. Hernandez stated, “I grew up in Stockton California downtown where the San Joaquin River runs threw and I watched over the years as the sponge plant tripped in size every year and it was horrible! You would find a lot of dead fish in it, it would catch a lot of trash, the river turned a bright green color and the smell was awful! It stopped us people from being able to swim in designated areas as well. I moved to Washington 2 years ago and the thought of that nasty weed coming here and ruining the beauty of this wonderful state saddens my heart. I hope we can do something to stop the destruction that lays ahead of this weed.”

Regarding the proposed designation of Eurasian watermilfoil, *Myriophyllum spicatum*, in Kitsap, Kittitas, and Whitman counties.

In opposition:

No oral testimony

Summary of written testimony

David Heimer – representing the Washington Dept. of Fish and Wildlife submitted written comment regarding the proposal. Mr. Heimer stated, “WDFW restates its opposition to the listing of Eurasian watermilfoil (EWM) as a B-Designate in Kittitas County. First, WDFW has made an effort to manage EWM in the county where the Department has had some management responsibilities over the past ten years: North and South Fiorito Lakes (2008, 2010 and 2011); Mattoon Lake (2009 and 2011); and Lavender Lake (2018). Sampling at Lavender Lake during the summer of 2018 indicated that the native

northern milfoil made up 51% of the vegetation, 22% were other aquatic plants and 23% was EWM. Even though the EWM made up less than a 25% of the vegetation, we still treated the lake at the request of the weed board and others. Sampling of aquatic vegetation by Ecology of Lavender in 2019 indicated no milfoil of any species and the suppression of other aquatic vegetation. The decision of when and how is to treat a lake is complicated. As Lavender illustrated, there can a lot of collateral damage to the native plant community when managing for a relatively small proportion of EWM. In addition, correctly identifying EWM from native milfoil from hybrid milfoil can be problematic even for very experienced individuals and may require DNA analysis. In some cases, treatment of EWM using herbicides has selected for hybrid milfoil (a state Class noxious weed). We ran into this post-treatment issue at Mattoon Lake where only one milfoil sample out of thirteen had the definitive 14 leaflet pairs indicating it was EWM. Coincidentally, the Kittitas County Noxious Weed Control Board (KCNWCB) has been informed that we intend to treat Mattoon in 2020 using ProcellaCOR. Applicators at WDFW were certified in 2019 to use ProcellaCOR, a new herbicide that, according to the manufacturer, will permit more effective and targeted control of EWM and hybrid milfoil. I am concerned that a finding of a single EWM plant at a lake could, technically, allow the KCNWCB to ask WDFW to treat the lake without considering all of the ecological, biological or financial challenges, some of which I have described in this email. When I broached the idea to a landowner at Fiorito of forming a lake management district (LMD) in order to put more control and responsibility in their hands, their response was not favorable. They felt the state should be paying them to use their property below the lake surface. This leads me to believe the other landowners will not be too excited to hear about their duty to manage EWM on their submerged lands if the weed is designated. In summary, WDFW has worked slowly, but in good faith with the KCNWCB on EWM. We feel this relationship can continue into the future without a designation of the weed in Kittitas County. WDFW will continue this work in an attempt to limit the spread of EWM and to improve the recreational experience at these lakes.”

In support:

Summary of oral and written testimony:

Todd Davis – representing the Kittitas County Noxious Weed Board submitted written comment regarding the proposal. Mr. Davis stated, “My board supports and would welcome the designation of Eurasian Watermilfoil in Kittitas County with the caveat that it not be designated in the Columbia River at this point. All other areas of Kittitas County meet the requirements for Class B-designation except for the Columbia River, where the weed is so widespread with a seemingly endless source upstream that it wouldn’t be possible to achieve meaningful control. In all other water bodies within the county it is reasonably feasible to control EWM and there is no reason it shouldn’t be designated.”

Mike Mackey – representing himself submitted both written and oral comment regarding the proposal. Mr. Mackey stated, “I would like to address the classification for Eurasian Water Milfoil. I agree with the Class B designation for the entire state with the following exception. The entire Columbia River system should be classified as B designate, the reason is to protect a multimillion dollar sport fishery and increase the number of adult Salmon and Steelhead returning to spawn. Milfoil provides the best ambush habitat for predatory fish. Currently the Northern Pikeminnow are in the Columbia River system in abundance. Milfoil is where they spawn and raises there young, Northern Pike are about to infest the river as they move south down the system they too thrive in a milfoil dominated waterway. There are

several other sport fish that live in the Columbia River and do damage to the Salmon and Steelhead, all of these fish are feeding on or have the ability to feed on Salmon and Steelhead. With the current emphases on insuring the Orca Whales are protected all these predator fish add to the loss of a food source. I would like to see Milfoil controlled by the agencies and the best way to do that is to classify Eurasian Water milfoil as a B designate for control. There needs to be an aquatic habitat management plan for the entire Columbia River System. This is how the State Noxious Weed Control Board can do their part to save a species of whale and help stop an economic disaster for sport fishing and commercial fishing.”

WSNWCB response: The Washington State Noxious Weed Control Board appreciates the comments made about the proposed designation change for Eurasian watermilfoil. The WSNWCB designates Class B noxious weeds in regions or areas where those species are limited or absent. As noxious weed distributions change over time, it’s important to reassess current distributions to ensure that the state designation matches. In cases where a once widespread noxious weed has been controlled and effectively reduced in a county or region, it is appropriate to designate it at the state level. In contrast, a once limited or absent Class B noxious weed can expand to an extent where it no longer meets the distribution criterion for a Class B designate, in which case it is appropriate to undesignate it. The Class B designation of Eurasian watermilfoil presents a challenge, as do other aquatic noxious weeds, in surveying its distribution and management. Eurasian watermilfoil causes negative ecological and economic impacts in Washington State. After thorough review of distribution data and testimony and with Eurasian watermilfoil’s potential impacts on salmon, the WSNWCB adopted this proposal to designate Eurasian watermilfoil in Kitsap, Kittitas, and Whitman counties.

Regarding the proposed designation of Bohemian knotweed, *Polygonum x bohemicum*, in San Juan, Stevens, Whitman, and Yakima counties; proposed designation of Japanese knotweed, *Polygonum cuspidatum*, in Stevens County and proposed designation of Himalayan knotweed, *Persicaria wallichii*, in Clark and Stevens counties.

In opposition:

No oral testimony

Summary of written testimony

Cindy Jennings – representing the Stevens County Noxious Weed Control Board submitted written comment regarding the proposal. Ms. Jennings stated, “On behalf of my Board of Directors, staff and myself, I would like to express our concerns about listing all the knotweeds for control at this time. Most of the known knotweed occurrences in Stevens County are within cities. We are concerned with telling folks that they must control knotweed which they have planted and taken care of, usually as a border, wind break or privacy screen. We believe that most of the knotweed inside city limits is Japanese knotweed. At this time, we fully support listing Himalayan knotweed for control in our county but would like to request delaying the listing of Japanese and Bohemian knotweed as a B designate in Stevens County for one year so we may gather more information about these sites. We need to determine if they have expanded or if it has been treated. In addition, some sites have changed

ownership since our survey in 2008. We plan to send out a survey to all landowners of properties with any of the knotweeds. We will ask if they have any interest in eradicating it and if so, would they be interested in a program to assist them and if they want to retain the knotweed, what they will do to contain it. If the committee has any suggestions or other questions, I would welcome the suggestions. Greg Haubrich has been in contact with me and let me know there is still funding available to help with knotweed control. Letters have been sent out to landowners where we know the escaped infestations occur along Stranger Creek and Hunters Creek. Field inspections will be required to determine if the infestation has spread further along Stranger Creek. We are awaiting responses from the landowners. I am enclosing a summary of the information we currently have about knotweeds in our county. Please let me know if you have further questions. Thank you for your consideration of this matter.

STEVENS COUNTY KNOTWEED INFORMATION: We have 2 sites along creeks that flow into Lake Roosevelt. These sites were treated by the weed board in 2008 and then National Park Service started doing follow up work the next year. But with the continual changes in their staff this doesn't appear to be happening any longer and the knotweed has re-infested the area. We have several sites of knotweed that are in rural areas. Some landowners we contacted want to keep the knotweed either as a wind break or a privacy hedge. So far these landowners have not allowed the knotweed to escape that we are aware of. We have many sites in towns around the county. The same goes for these folks. Some of them wanted to eradicate the knotweed while others wanted it for a privacy border. In our database there are/were 62 landowners with knotweed in 2008 when we received a WSDA grant for knotweed control. Many did not want to get rid of the knotweed. Some of the land owners kept up on control work which was done, some did not. This fall I am starting work on verifying how many knotweed sites there are and try to identify which species it is, although in our county it may be getting to late in the season to be successful. I will GPS every site I find.”

In Support:

No oral or written testimony submitted

WSNWCB response: The Washington State Noxious Weed Control Board appreciates the comments made about the proposed designation change for Bohemian, Japanese, and Himalayan knotweed. The WSNWCB designates Class B noxious weeds in regions or areas where those species are limited or absent. As noxious weed distributions change over time, it's important to reassess current distributions to ensure that the state designation matches. In cases where a once widespread noxious weed has been controlled and effectively reduced in a county or region, it is appropriate to designate it at the state level. In contrast, a once limited or absent Class B noxious weed can expand to an extent where it no longer meets the distribution criterion for a Class B designate, in which case it is appropriate to undesignate it. The WSNWCB adopted the proposed designation of Bohemian knotweed, *Polygonum x bohemicum*, in San Juan, Stevens, Whitman, and Yakima counties; proposed designation of Japanese knotweed, *Polygonum cuspidatum*, in Stevens County and proposed designation of Himalayan knotweed, *Persicaria wallichii*, in Clark and Stevens counties, to better match the distribution taking into

consideration the testimony submitted. Knotweed species are in limited distribution within the mentioned counties.

Regarding the proposed designation of lesser celandine, *Ficaria verna*, in all of Washington State except for King and Whatcom counties.

No written or oral comments were submitted regarding this proposed change.

Regarding the proposed designation of leafy spurge, *Euphorbia virgata*, in Whitman and Garfield counties.

No written or oral comments were submitted regarding this proposed change.

Regarding the proposed designation of purple loosestrife, *Lythrum salicaria*, in Pierce and Benton counties.

No written or oral comments were submitted regarding this proposed change.

Regarding the proposed designation of wand loosestrife, *Lythrum virgatum*, in Mason, Pierce, and Benton counties.

No written or oral comments were submitted regarding this proposed change.

Regarding the proposed designation of poison hemlock, *Conium maculatum*, in Douglas County.

No written or oral comments were submitted regarding this proposed change.

Regarding the proposed designation of policeman's helmet, *Impatiens glandulifera*, in Pacific and Pierce counties.

No written or oral comments were submitted regarding this proposed change.

Regarding the proposed designation of Ravenna grass, *Saccharum ravennae*, in Grant County.

No written or oral comments were submitted regarding this proposed change.

Regarding the proposed designation of rush skeletonweed, *Chondrilla juncea*, in Kitsap County.

No written or oral comments were submitted regarding this proposed change.

Regarding the proposed designation of European coltsfoot, *Tussilago farfara*, in Grant County.

No written or oral comments were submitted regarding this proposed change.

Regarding proposed additional changes to WAC 16.750:

- WAC 16.750.140 Adding a standing legislative committee.
- WAC 16.750.142 Creating a new section for the State noxious weed control board—Executive secretary and education specialist—Hiring and dismissal.
- WAC 16.750.145 Editing the State noxious weed control board—Executive secretary—Definition.

- WAC 16.750.146 Creating a new section for the State noxious weed control board— Education specialist—Definition.
- WAC 16.750.150 Repealing section on State noxious weed control board- Executive secretary- Hiring and dismissal. Moved to section 142.

No written or oral comments were submitted regarding these proposed change.

Reasons for adopting the rule changes

Regarding the proposed Class A addition of South American spongeplant, *Limnobium laevigatum*.

The WSNWCB adopted this proposal, submitted by the Department of Ecology, to add South American spongeplant as a Class A noxious weed for 2020. South American spongeplant is a nonnative, invasive aquatic plant that can outcompete native vegetation, forming dense mats on the water surface. It is weedy in its native range and is considered an invasive species in California. The Class A listing is reasonable, given its known limited distribution in Washington.

Regarding the proposed designation of Eurasian watermilfoil, *Myriophyllum spicatum*, in Kitsap, Kittitas, and Whitman counties.

The WSNWCB adopted the proposal to designate Eurasian watermilfoil in Kitsap, Kittitas, and Whitman counties to better match its current distribution.

Regarding the proposed designation of Bohemian knotweed, *Polygonum x bohemicum*, in San Juan, Stevens, Whitman, and Yakima counties; proposed designation of Japanese knotweed, *Polygonum cuspidatum*, in Stevens County and proposed designation of Himalayan knotweed, *Persicaria wallichii*, in Clark and Stevens counties.

The WSNWCB adopted the proposal to designate Bohemian knotweed, *Polygonum x bohemicum*, in San Juan, Stevens, Whitman, and Yakima counties; the proposal to designate Japanese knotweed, *Polygonum cuspidatum*, in Stevens County and the proposal to designate Himalayan knotweed, *Persicaria wallichii*, in Clark and Steven’s counties. Infestations of knotweed are currently being controlled in San Juan, Whitman, Yakima, and Clark counties. Steven’s County has a very limited number of knotweed infestations. These designations better match distribution and current control efforts. Due to the similarities in Japanese and Bohemian knotweeds, designation for control are generally the same.

Regarding the proposed designation of lesser celandine, *Ficaria verna*, in all of Washington State except for King and Whatcom counties.

The WSNWCB adopted this proposal to designate lesser celandine, *Ficaria verna*, in all of Washington State except for King and Whatcom counties to better match its current distribution.

Regarding the proposed designation of leafy spurge, *Euphorbia virgata*, in Whitman and Garfield counties.

The WSNWCB adopted this proposal to designate leafy spurge, *Euphorbia virgata*, in Whitman and Garfield counties to better match its current distribution.

Regarding the proposed designation of purple loosestrife, *Lythrum salicaria*, in Pierce and Benton counties.

The WSNWCB adopted this proposal to designate purple loosestrife, *Lythrum salicaria*, in Pierce and Benton counties to better match its current distribution.

Regarding the proposed designation of wand loosestrife, *Lythrum virgatum*, in Mason, Pierce, and Benton counties.

The WSNWCB adopted this proposal to designate wand loosestrife, *Lythrum virgatum*, in Mason, Pierce, and Benton counties to better match its current distribution.

Regarding the proposed designation of poison hemlock, *Conium maculatum*, in Douglas County.

The WSNWCB adopted this proposal to designate poison hemlock, *Conium maculatum*, in Douglas County to better match its current distribution. Livestock deaths were reported in 2019 due to poison hemlock.

Regarding the proposed designation of policeman's helmet, *Impatiens glandulifera*, in Pacific and Pierce counties.

The WSNWCB adopted this proposal to designate policeman's helmet, *Impatiens glandulifera*, in Pacific and Pierce counties to better match its current distribution.

Regarding the proposed designation of Ravenna grass, *Saccharum ravennae*, in Grant County.

The WSNWCB adopted this proposal to designate Ravenna grass, *Saccharum ravennae*, in Grant County to better match its current distribution.

Regarding the proposed designation of rush skeletonweed, *Chondrilla juncea*, in Kitsap County.

The WSNWCB adopted this proposal to designate rush skeletonweed, *Chondrilla juncea*, in Kitsap County to better match its current distribution.

Regarding the proposed designation of European coltsfoot, *Tussilago farfara*, in Grant County.

The WSNWCB adopted this proposal to designate European coltsfoot, *Tussilago farfara*, in Grant County to better match its current distribution.

Regarding proposed additional changes to WAC 16.750:

- WAC 16.750.140 Adding a standing legislative committee.
- WAC 16.750.142 Creating a new section for the State noxious weed control board—Executive secretary and education specialist—Hiring and dismissal.
- WAC 16.750.145 Editing the State noxious weed control board—Executive secretary—Definition.
- WAC 16.750.146 Creating a new section for the State noxious weed control board—Education specialist—Definition.
- WAC 16.750.150 Repealing section on State noxious weed control board- Executive secretary- Hiring and dismissal. Moved to section 142.

The WSNWCB adopted these additional proposed changes to WAC 16.750.140, .142, .145, .146, and .150 to improve the ability of the WSNWCB to carry out the duties and authorities assigned to the board per Chapter 17.10 RCW. These additional changes are regarding internal processes of the State Noxious Weed Control Board.