

CONCISE EXPLANATORY STATEMENT

Adoption of Permanent Rules Amendments to WAC 16-750

November 18, 2024

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 2025:

Updates to the Noxious Weed List

- ❖ WAC 16-750-005 Class A Noxious Weed Changes and Additions
The addition of round leaf bittersweet, *Celastrus orbiculatus*
The addition of marsh thistle, *Cirsium palustre*
- ❖ WAC 16-750-011 Class B Noxious Weed Changes and Additions
Un-designating shiny geranium, *Geranium lucidum*, in Pierce County.
- ❖ WAC 16-750-015 Class C Noxious Weed Changes and Additions
Adding wild holly, *Ilex species* not including holly found in managed landscapes, or where commercially or agriculturally grown.

Updating Pronouns Throughout

- ❖ WAC 16-750-120 (8)(11), WAC 16-750-130 (2b), WAC 16-750-135 (11)(15c), WAC 16-750-137 (5).

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 01, 2024 for inclusion in the Washington State Register Issue number 25-20 (WSR #24-20-110). A detailed summary of the proposed rule changes, public hearing information, and options to provide testimony were published on the WSNWCB website October 1st 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 1st, 2024.

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 1st, 2024 until 5:00 p.m. on Monday, November 4th, 2024. Unsolicited comments were also received and accepted between March 1, 2024 and November 4th, 2024. Forty-four (44) written testimonies were submitted before November 4th, 2024 and two after the fact. Sixty-five (65) oral comments were received on November 5th.

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 hearing was held in person at the Confluence Technology Center in Wenatchee, WA and over video and teleconference using the Webex platform at 1:00 p.m. on November 5th, 2024. Twelve (12) members the State Noxious Weed Board, seventeen (17) members from county noxious weed boards and forty-five (45) members of the public attended the hearing. 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 Anne Schuster provided a technical presentation on the proposed rule changes. The hearing officer was WSDA Agency Rules Coordinator Gloriann Robinson. Written testimony and oral testimony submitted is summarized below:

Proposed addition of Class A noxious weed round leaf bittersweet, <i>Celastrus orbiculatus</i>		
# supporting addition of Class A noxious weed round leaf bittersweet, <i>Celastrus orbiculatus</i>	# opposing addition of Class A noxious weed round leaf bittersweet, <i>Celastrus orbiculatus</i>	# neutral on addition of Class A noxious weed round leaf bittersweet, <i>Celastrus orbiculatus</i>
1	0	0

Proposed addition of Class A noxious weed marsh thistle, <i>Cirsium palustre</i>
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# supporting addition of Class A noxious weed marsh thistle, <i>Cirsium palustre</i>	# opposing addition of Class A noxious weed marsh thistle, <i>Cirsium palustre</i>	# neutral on addition of Class A noxious weed marsh thistle, <i>Cirsium palustre</i>
1	0	0

Proposed designation change of Class B noxious weed: Un-designating shiny geranium, <i>Geranium lucidum</i> , in Pierce County.		
# supporting un-designating shiny geranium in Pierce County with the amendment “east of the Narrows Bridge”	# opposing un-designating shiny geranium in Pierce County.	# neutral on un-designating shiny geranium in Pierce County.
3 and 2 without amendment	0	0

Proposed addition of Class B noxious weed wild holly, <i>Ilex species</i> not including holly found in managed landscapes, or where commercially or agriculturally grown.		
# supporting addition of Class B wild holly, <i>Ilex species</i> not including holly found in managed landscapes, or where commercially or agriculturally grown.	# opposing addition of Class B noxious weed wild holly, <i>Ilex species</i> not including holly found in managed landscapes, or where commercially or agriculturally grown.	# neutral on addition of Class B noxious weed wild holly, <i>Ilex species</i> not including holly found in managed landscapes, or where commercially or agriculturally grown.
89	13	0

Comments Received from Stakeholders:

Regarding the proposed Class A addition of round leaf bittersweet, *Celastrus orbiculatus*.

No written were submitted regarding this proposed change. One (1) verbal comment was made in support of this listing.

Regarding the proposed Class A addition of marsh thistle, *Cirsium palustre*.

No written were submitted regarding this proposed change. One (1) verbal comment was made in support of this listing.

WSNWCB response: The Washington State Noxious Weed Control Board appreciates the comments made about the proposed class A additions of round leaf bittersweet, *Celastrus orbiculatus* and marsh thistle, *Cirsium palustre*. The WSNWCB evaluates and adds species as a class A noxious weed that are

limited in distribution throughout the state and that are highly invasive and hard to control by normal means such as tilling, herbicide, or hand pulling. The WSNWCB did adopt round leaf bittersweet and marsh thistle as a class A noxious weeds taking into consideration the proposals, written findings, and testimony given.

Regarding the proposed designation change of: Un-designating shiny geranium, *Geranium lucidum*, in Pierce County.

In support:

One (2) oral testimony in favor of un-designating shiny geranium in Pierce County.

Four (3) oral testimonies regarding keeping shiny geranium designated on the Kitsap Peninsula but ok with un-designating east of the Narrows Bridge.

No written testimony

In opposition:

No oral testimony

No written testimony

Neutral support:

No oral testimony

No written testimony

Summary of oral testimony

The general testimony was in caution of un-designating shiny geranium on the Kitsap Peninsula. Two noxious weed coordinators from counties on the peninsula were opposed to the un-designation of shiny geranium throughout Pierce County as a whole. However, they were supportive of the un-designation of shiny geranium east of the Narrows Bridge. The reasoning was that there is little shiny geranium on the Kitsap Peninsula and keeping shiny geranium designated west of the Narrows Bridge will help protect the rest of the counties on the Kitsap Peninsula from becoming infested.

WSNWCB response: The Washington State Noxious Weed Control Board appreciates the comments made about the proposed designation change of un-designating shiny geranium, *Geranium lucidum*, in Pierce County. 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 un-designate it. The WSNWCB adopted the proposed un-designation change to shiny geranium with the amendment of only un-designating shiny geranium in Pierce County east of the Narrows Bridge, to better match the distribution taking into consideration the testimony submitted.

Regarding the proposed Class C addition of wild holly, *Ilex species* not including holly found in managed landscapes, or where commercially or agriculturally grown.

In support:

Thirty-two (56) total oral testimony of which four (4) supported listing *Ilex Aquifolium* but not the whole *Ilex species*.

Thirty-two (33) total written testimony of which four (19) supported listing *Ilex Aquifolium* but not the whole *Ilex genus* and two (2) supported the listing without the exception of “not including holly found in managed landscapes, or where commercially or agriculturally grown.

In opposition:

Two (2) oral testimony

Eleven (11) written testimony one of which testified to postpone the decision to support better wording for the listing.

Neutral support:

No oral testimony

No written testimony

Summary of oral testimony

The public testimony presented at the rule-making hearing for the noxious weed list update in Washington focused primarily on the inclusion of English holly (*Ilex aquifolium*) as a Class C noxious weed. Here’s a summary of key points made by various stakeholders:

Impact on Ecosystems: Multiple ecologists, land managers, and private property owners highlighted the detrimental effects of English holly on native flora. Holly was cited as an invasive species that suppresses native plant diversity, forming dense thickets that crowd out local vegetation. Speakers emphasized its ability to thrive in both light and shaded environments, making it particularly problematic in Western Washington forests.

Spread and Resilience: Holly’s ability to spread through bird-dispersed seeds, suckering, and layering makes it challenging to control. The species was noted for its rapid spread, especially in undisturbed forests where it has historically gone unmonitored. Once established, holly becomes difficult to eradicate due to its aggressive growth and resilience.

Fire Hazards: Holly was identified as a “ladder fuel,” increasing wildfire risk by facilitating fire spread from the forest floor into the canopy. This concern was particularly significant for utilities managing forests to protect drinking water sources, such as Seattle Public Utilities, which highlighted holly’s threat to defensible space around critical infrastructure.

Challenges of Control: Speakers, including conservation specialists, discussed the high costs and difficulty of managing holly due to its resilience to traditional removal methods. Chemical treatments are often required but are costly and not feasible for all landowners, adding to the burden on private landowners and public land management agencies.

Educational Benefits: Some testified that listing holly as a noxious weed would help raise public awareness and support educational efforts about its identification and removal, especially in volunteer

groups involved in restoration. Enhanced public education could also clarify holly's noxious status and emphasize its ecological threat.

Industry and Economic Considerations: Representatives from the holly industry expressed concerns that listing holly as a noxious weed might harm their businesses, leading to potential negative economic impacts. They suggested that if the listing proceeded, commercial holly growers should receive financial support to offset the costs of compliance. However, other stakeholders pointed out that the listing would not apply to holly in managed, cultivated landscapes, and that economic impact concerns were often overstated.

Regulatory Recommendations: There was a broad consensus on refining the language of the listing to specifically target *Ilex aquifolium*, avoiding inclusion of the entire *Ilex* genus to prevent unintended impacts on other non-invasive holly species. Many urged for specific adjustments to ensure the rule would be enforceable and focused on addressing the ecological harm caused by feral holly in natural areas.

In summary, the testimony was largely in favor of listing English holly as a Class C noxious weed, with detailed arguments on its invasive characteristics, ecological impacts, and the practical challenges associated with its control. The holly industry raised concerns regarding the potential negative impact regarding the perception of holly as a bad plant. Many speakers emphasized the pressing need for regulatory measures to manage holly's spread effectively.

WSNWCB response: The State Noxious Weed Control Board (Board) appreciates all comments made on the proposal to add wild holly, *Ilex species*, not including holly found in managed landscapes, or where commercially or agriculturally grown as a Class C noxious weed for the 2025 list. Washington State's open noxious weed listing process encourages public participation, and the Board brought this proposal to hearing to make sure both sides were heard and allowed the Board to make a well-informed decision.

The Board recognizes that there is considerable disagreement related to listing English holly as a Class C noxious weed and the wording surrounding such a listing. Please see the section below, titled "Differences Between the Proposed and Adopted Rule" for the Board's evaluation of the issues and explanation of the decision to not list English holly at this time.

Reasons for adopting the rule changes

Regarding the proposed Class A addition of round leaf bittersweet, *Celastrus orbiculatus*.

The WSNWCB adopted this proposal, submitted by the King County Noxious weed Control Program, to add round leaf bittersweet, *Celastrus orbiculatus* for listing as a Class A Noxious Weed because it climbs and dominates canopies, it chokes and shades out lower plants. Additionally, birds readily spread seeds. The intent is to prevent round leaf bittersweet from establishing in Washington. The Class A listing is reasonable, given that it is only found at one site in Washington.

Regarding the proposed Class A addition of marsh thistle, *Cirsium palustre*.

The WSNWCB adopted this proposal, submitted by the Stevens County Noxious Weed Control Board, to add marsh thistle, *Cirsium palustre* as a Class A noxious weed for 2025. Marsh thistle is a newly identified non-native thistle found in Spokane, Whatcom, and Island counties. Marsh thistle can invade riparian areas and wetlands as well pastures and woodlands. It is quick to infest and expand. It reproduces by seed but can hybridize with creeping thistle potentially causing large infestations with rhizome roots. The Class A listing is reasonable, given that it is not yet found in most Washington, but has been found in British Columbia, CA.

Regarding the proposed designation change of: Un-designating shiny geranium, *Geranium lucidum*, in Pierce County.

The WSNWCB adopted the proposal to Un-designating shiny geranium in Pierce County with the amendment, east of the Narrows Bridge, to better match its current distribution. The Board recognizes the importance to protect un-infested areas and counties, therefor adopted the amended proposed language to ensure that the area west of the Narrows Bridge or area of Pierce County on the Kitsap Peninsula remain designated for control of shiny geranium.

Differences Between the Proposed and Adopted Rule:

Regarding the proposed designation change of: Un-designating shiny geranium, *Geranium lucidum*, in Pierce County.

The Board voted to un-designate shiny geranium east of the Narrows Bridge in Pierce County instead of the entire county. Testimony was given by adjacent counties with the concern that shiny geranium would more likely infest neighboring counties on the Kitsap Peninsula if it was not designated west of the Narrows Bridge. Additionally, infestation data shows that shiny geranium is distributed less west of the Narrows Bridge and more densely infested east of the Narrows Bridge making it un-economically feasible to control east of the Narrows Bridge within in one season.

Regarding the proposed Class C addition of wild holly, *Ilex species* not including holly found in managed landscapes, or where commercially or agriculturally grown.

The Board voted to postpone the proposal to add wild holly, *Ilex species*, as a Class C noxious weed (not including holly found in managed landscapes, or where commercially or agriculturally grown) for the 2025 noxious weed list. Although there is sufficient scientific research to indicate that wild holly, *Ilex aquifolium*, meets the criteria of a noxious weed defined in RCW 17.10.010 and has an ecological impact, there is some debate on the precise wording for the listing. Many testimonies supported the listing of wild holly as the species *Ilex aquifolium* but did not support the genus being listed as a whole. The Board agreed that this change to the proposed language would need to go through the rule making process. The Board voted to hold a sperate hearing in March followed by an official vote on the addition of wild holly, *Ilex Aquifolium* (species specific and not genus). This postponement allows for the discussion and input of stakeholders to better mitigate the impacts of this listing on both commercial holly growers and those faced with the negative impacts of holly infestations and to reflect on the precise wording of this listing.

If a plant is not on the state noxious weed list (WAC 16-750), then a county noxious weed control board does not have the authority to enforce control on that species. However, county noxious weed control boards are still able to educate about unlisted, weedy species.

It was not the intention to cause any harm to growers of an agricultural commodity, and the Board strongly considered potential direct and indirect economic impacts of listing wild holly when making its decision.

All of the other changes were adopted as proposed.

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