

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

**SUBJECT:** Board Order WY-29-19, proposed rules affecting chapters NR 1, 107, 109, 150, 193, 329 and 345, related to aquatic plant management, manual removal and mechanical control regulations, aquatic habitat protection, and surface water grants

**FOR:** June 2022 Board meeting

**TO BE PRESENTED BY:** Carroll Schaal, Lakes & Rivers Section Chief

**SUMMARY:**

This information item will provide Board members with an overview of the public input received on the proposed rule, a summary of the major changes made as a result of the input, and opportunity to ask clarifying questions.

The aquatic plant management program regulates the chemical, mechanical, physical and biological control of aquatic organisms in order to protect and develop diverse and stable native aquatic plant communities. The program is currently regulated under two separate but related administrative rules, ch. NR 107, Wis. Adm. Code – chemical control and ch. NR 109, Wis. Adm. Code – mechanical, physical, burning, and manual control.

The proposed recreated ch. NR 107, Wis. Adm. Code, unifies all control activities under a consistent set of procedures and policies that align with current state and federal law, improving administrative consistency and efficiency as well as customer service. The proposed rule also updates the program to employ contemporary management practices such as integrated pest management to control aquatic invasive and nuisance-causing species.

The cost of compliance with proposed ch. NR 107, Wis. Adm. Code, is not directly placed on businesses

The Board approved the scope statement and conditionally authorized hearings for Board Order WY-29-19 at its May 2020 meeting. The department has completed the external review process for Board Order WY-29-19, which includes holding a public hearing and review by the Legislative Council Rules Clearinghouse. Comments received have been considered in the draft final rule.

The Board heard introductory information on components of Board Order WY-29-19 at the April 2022 meeting. At that time, the Board requested materials from the department showing a communication and outreach strategy for the public on the components of draft rule, particularly Integrated Pest Management. The communication plan and supplementary materials are included in the attached materials.

The department intends to request adoption of the Board Order at the August 2022 meeting.

**RECOMMENDATION:** Information only

**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- Background memo
- Fiscal estimate and economic impact analysis (EIA) form
- Response summary
- Attachments to background memo
- Board order/rule

For

Approved by	Signature	Date
Adrian G. Stocks, Water Quality Program Director	DocuSigned by: <i>Adrian G. Stocks</i> 28A250334FC040B...	6/8/2022   12:56 PM CDT
Gail E. Good, Acting Environmental Management Division Administrator	DocuSigned by: <i>Gail E. Good</i> 9AA94D46A40C4A3...	6/8/2022   9:42 PM CDT
Preston D. Cole, Secretary	DocuSigned by: <i>Sarah Barry</i> A7D70DC3770642F...	6/10/2022   10:57 AM CDT

cc: Board Liaison – AD/8

DS  
*klz*

by Sarah Barry

This page intentionally left blank.

**CORRESPONDENCE/MEMORANDUM**

DATE: June 8, 2022

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order WY-29-19, relating to aquatic plant management, manual removal and mechanical control regulations, aquatic habitat protection, and surface water grants

**1. Subject of Proposed Rule:**

Revisions to chs. NR 1, 107, 109, 150, 193, 329 and 345, relating to aquatic plant management, manual removal and mechanical control regulations, aquatic habitat protection, and surface water grants.

**2. Background:**

The aquatic plant management program regulates the chemical, mechanical, physical and biological control of aquatic organisms in order to protect and develop diverse and stable native aquatic plant communities. The program is currently regulated under two separate but related administrative rules, ch. NR 107, Wis. Adm. Code – chemical control and ch. NR 109, Wis. Adm. Code – mechanical, physical, burning, and manual control.

The proposed recreated ch. NR 107, Wis. Adm. Code, unifies all control activities under a consistent set of procedures and policies that align with current state and federal law, improving administrative consistency and efficiency as well as customer service. The proposed rule also updates the program to employ contemporary management practices such as integrated pest management to control aquatic invasive and nuisance-causing species.

**Public Outreach and Input Opportunities**

## Preparation of Scope Statement

- 2016-2019 the department completed a Strategic Analysis of the Aquatic Plant Management Program. The process included stakeholder surveys and a public comment period.
- In 2019, the department created a Study Group of external partners to consult on the Strategic Analysis and eventual scope statement for administrative rule drafting. The Study Group was comprised of aquatic plant management (APM) industry representatives, lake association members, Wisconsin Lakes, a Conservation Congress representative and external field experts.

## Rule Drafting

- Summer 2020
  - The department met with Wisconsin Manufacturers and Commerce and APM chemical industry representatives to discuss their perspective on rule development and solicited feedback.
- Fall of 2020 and Spring of 2021
  - The department drafted 10 policy white papers based on the Study Group report.
  - Four public informational meetings were held.

- Two public comment periods were opened. 38 individuals and organizations provided written comments and questions. Over 450 relevant comments and questions were received. The department responded to all comments. A summary of the comments received during rule drafting can be found here: <https://dnr.wisconsin.gov/topic/lakes/plants/rules>
- The department drafted the first version of ch. NR 107, Wis. Adm. Code, based on the feedback during the white paper process.
- Spring 2021
  - The department presented the policy proposals and encouraged public participation in the rule process to lake association and district members during Wisconsin Lakes and Rivers Convention 2021.
  - The department presented the policy proposals to the Voight Intertribal Task Force and Great Lakes Indian Fish and Wildlife Commission and solicited feedback.
  - The department coordinated with Wisconsin Wetland Association to assemble a work group of field and industry experts to discuss wetland management within the draft rule.
  - The department met with Hamilton Group and United Phosphorous Limited LLC to discuss their perspectives on rule development and solicited feedback.
- Fall 2021
  - A public comment period on the draft economic impact analysis (EIA) occurred from September 27 to November 10, 2021. The department received comments from 55 individuals and entities representing lake associations and districts, APM chemical applicators, APM consultants, conservation groups, lake and wetland representatives and industry representatives on the EIA during this period.
- Winter 2021-2022
  - The department provided a briefing on the draft rule to the Wisconsin Tribal Conservation Advisory Council.
  - The department provided an information session on the draft rule and encouraged participation in the public hearing process to Wisconsin Lakes members.
  - The department published an article in Lake Tides highlighting the primary changes in the draft rule and provided information on the public hearing and comment period.
  - The department met with Wisconsin Wetland Association and the wetland work group to discuss wetland management within the draft rule.
  - The department met with Dane County to discuss the economic impact and policy feasibility of draft rule as it relates to mechanical harvesting operations.
  - A public hearing on the draft rule was held February 22, 2022, 75 individuals attended.
  - A public comment period for the proposed rule was held from January 10 through March 1, 2022. 49 individuals and entities representing lake associations and districts, APM chemical applicators, APM consultants, lake and wetland representatives, conservation groups and industry representatives provided written comments.
- Spring 2022
  - The department provided an update on the administrative rule process during the Wisconsin Lakes and Rivers Convention in April.

- The department provided an informational item to the Natural Resources Board April meeting on the program to date and included information on Integrated Pest Management.
- The department provided an update on the proposed rules for harvesting at the Weed Harvester Safety and Maintenance Seminar help by Aquarius Systems.
- The department updated its website with current information on the proposed rule package.

### **3. Why is the rule being proposed?**

The current program processes and requirements are based on an outdated administrative rule that does not incorporate the emergence of the internet, modern technologies, new scientific understandings, changes in statute and administrative law, and changes in urban development. This creates inefficiencies of process and policy implementation that affect all stakeholders.

The objective of the proposed rule is to bring the policies of the state's aquatic plant management (APM) program into alignment with current state and federal law, modern technology, the scientific understanding of the control of aquatic invasive and nuisance-causing species, as well as the protection of native aquatic plants, aquatic habitats, water quality and public health.

### **4. Summary of the rule.**

The proposed recreated ch. NR 107, Wis. Adm. Code, unifies all control activities under a consistent set of procedures and policies that align with current state and federal law, improving administrative consistency and efficiency as well as customer service. The proposed rule also updates the program to employ contemporary management practices such as integrated pest management to control aquatic invasive and nuisance-causing species.

Under the current program, wetland management is not separated from other surface waters and the requirements are not reflective of current best management practices. The proposed rule creates a section specific to the conditions, treatment timing and reporting relevant to wetland control. In addition, the proposed rule creates a waiver section, which clarifies existing waivers and adds multiple waivers, primarily for activities in private ponds and wetlands.

Under the current program, approximately 1,000 to 1,200 permits are issued annually under ch. NR 107, Wis. Adm. Code, for small waterbodies such as ponds and stormwater management facilities. The majority of permittees reapply each year for the same control activity. In addition, the original pond definition in ch. NR 107, Wis. Adm. Code, does not effectively incorporate waterbodies such as stormwater ponds and ponds owned in common such as through homeowner's associations. The proposed rule creates a section specific to waterbodies less than 10 acres, which allows for five-year permits and fewer regulatory requirements.

The current program requires public notification for large-scale chemical control via newspaper ad. The proposed rule expands riparian and public notification to all control methods and implements modernized methods of notification such as website posts, social media outreach, and newsletters. Under the proposed rule, the department will assume responsibility for public notification of the intent to submit a permit, in order to reduce the requirements for permit applicants.

Under the current program, chemical control is limited to areas within 150 feet from shore in most circumstances and the scope and scale of large-scale chemical control is determined by a strict surface acreage threshold. In addition, plans for aquatic plant management are only required in some cases for mechanical control and there are no provisions for evaluating the success and impacts of ongoing aquatic plant management activities. The proposed rule updates the thresholds for large-scale control

activities in wetlands and lakes following current scientific understandings, incorporating an evaluation component for control activities expected to impact a broad area. The proposed rule also requires a plan for large scale control and long-term AIS management so waterbodies can implement multiple control techniques together under one set of goals and objectives and operate under multiyear permits for mechanical harvesting and wetlands.

The recreated rule also updates citations, references, and notes to appropriate statutes and administrative codes and includes other housekeeping changes.

Several updates are proposed to ch. NR 193, Wis. Adm. Code, the administrative rule governing the surface water grant program, that bring the rule into greater alignment with the recreated ch. NR 107, Wis. Adm. Code. Aquatic plant management and protection plans outlined under the proposed s. NR 107.05, Wis. Adm. Code, are included as eligible projects for surface water planning grants. Plan approval language was added to include conditions specified under proposed s. NR 107.05 (3) (c), Wis. Adm. Code. Other non-substantive changes are proposed to achieve consistency in definitions and terminology across the recreated chapters.

Finally, updates to Subch. IV of ch. NR 193, Wis. Adm. Code, align with s. 281.69 (1b) (ae), Stats., regarding grant eligibility for floating treatment wetland systems. Additions include: stipulations for eligibility determination mirroring those considered for individual permits issued under s. NR 30.12 (3m) (c), Wis. Adm. Code, a note about the eligibility of floating treatment wetland systems, and the allowable use of stormwater technical standards developed under Subch. V of ch. NR 151, Wis. Adm. Code.

## **5. How does this proposal affect existing policy?**

Cross-references and definitions are updated in chs. NR 1, 150, 329 and 345, Wis. Adm. Code. Chapter NR 193, Wis. Adm. Code, is modified to provide consistent policy between the Surface Water Grant and Aquatic Plant Management Programs. Chapter NR 109, Wis. Adm. Code, for Mechanical, Manual and Physical Control of Aquatic Plants is repealed. Chapter NR 107, Wis. Adm. Code, for Chemical Control of Aquatic Plants is repealed and revised to be a consolidation of chs. NR 109 and 107, Wis. Adm. Code.

Current ch. NR 107, Wis. Adm. Code was written in 1989 to address chemical control of nuisance aquatic plants. Chapter NR 109, Wis. Adm. Code was written in 2003 after s. 23.24, Stats., was written to address mechanical control of aquatic plants. Since these rules were written, the spread of aquatic invasive species has completely changed the scale and scope of aquatic plant management in Wisconsin.

The purpose of the rule is to create more effective aquatic plant management programs for the control of aquatic invasive species. Effective management requires planning and evaluation to guide decision making and consideration of all the available control tools. This approach is in line with Best Management Practices outlined by the EPA and APM industry and is not a substantial change from current practice. The rule proposal aligns policy with current practice for AIS control, while allowing the control of nuisance causing aquatic plants to continue much the same. Policy for the chemical or mechanical control of nuisance aquatic plants, stays largely unchanged beyond updates to fees and some permit processes.

For context, 90% of the permits issued annually are for chemical control of aquatic plants and the department expects little change after rule implementation.

## **6. Has Board dealt with these issues before?**

Yes. The Board approved the scope statement and conditionally authorized hearings for board order WY-29-19 at its May 2020 meeting. The Board heard introductory information on components of Board Order WY-29-19 at its April 2022 meeting.

#### **7. Who will be impacted by the proposed rule? How?**

The activities regulated under ch. NR 107, Wis. Adm. Code, are voluntary activities. However, individual riparian and landowners, lake organizations including lake districts and associations, private professional service contractors and consultants, and other stakeholders seeking to control aquatic plants in state waters will be affected by the proposed rule's changes to permit and plan requirements.

Members of the public, tribes and other stakeholders are also impacted by the proposed rule. The draft rule increases opportunities for public and tribal participation in the planning and permitting process. Individuals who do not live on waterbodies, or conduct aquatic plant control, are also affected by any aquatic plant control activity through a wide variety of recreational and spiritual activities.

#### **8. Soliciting public input on economic impact synopsis**

A public comment period on the draft economic impact analysis (EIA) occurred from September 27 to November 10, 2021. The department received comments from 55 individuals and organizations on the EIA during this period. Of those, 38 were individuals who supplied a form letter from their lake association and chemical applicator, representing three lake associations. Three additional lake associations and districts provided comments.

The comments can be summarized into these categories:

- EIA is a fair and accurate representation of the likely impacts of the rule change.
- EIA should increase cost estimates for planning and monitoring.
- EIA should account for impacts to property values.

#### **Department Response**

The department made several revisions to the EIA as a result of input from entities and individuals during both the EIA solicitation period and the public comment period for the draft rule. From the draft EIA released for the economic solicitation period to the updated EIA based on public comments of the draft rule, the department has increased the total estimate of implementation and compliance costs by \$877,477. These cost increases were derived from suggested costs from lake associations and districts, chemical applicators, industry representatives and wetland practitioners regarding the costs of planning, monitoring and public notification. The department also removed projected cost reductions from the total gross cost estimate.

The department found that the draft EIA had an incomplete number of existing management plans after a complete inventory of all plans was done. As a result, the number of existing aquatic plant management plans was increased after the EIA solicitation period ended from 250-280 to 345 existing plans. The median cost of a baseline point intercept lake survey was increased from \$2,908 to \$3,500. Newspaper notification costs were increased from \$80 to \$90 total. Analysis and plan writing were split from one cost of \$100-\$400 in the draft EIA to a \$0-\$5,700 range in the updated EIA. The total average cost increase of planning from draft EIA to updated EIA is \$158,104.

Multiple entities commented during the draft rule comment period that the monitoring costs associated with mechanical harvesting operations were high relative to the ecological benefit of the surveys

themselves. The department adjusted the requirements in the proposed rule, and the total cost of monitoring for large scale mechanical harvesting operations was reduced by \$10,582 as a result from draft EIA to updated EIA.

An error in the fee revenue section was pointed out by an entity, and the department corrected that fee error after the EIA solicitation period. The original EIA estimate only included one year of revenue, and did not add in the revenues for years 2 through 5. This was corrected prior to the public comment period for the draft rule.

One entity commented that cost reductions should not be included in the total gross cost estimate. The department has removed these reductions from the gross estimate but kept those reductions in the EIA document as part of the record for public consideration. The proposed rule provides new waivers and efficiencies, which will reduce time, cost and effort for entities seeking aquatic plant management permits. These cost reductions were calculated using historical permit data, standard hourly rates of labor and anticipated reductions based on proposed rule.

The department's updated EIA is a complete assessment of the likely impacts of the rule change. The department used aquatic plant management permit data, Surface Water Grant funding data, and cost estimates provided by entities and individuals during the EIA solicitation and public comment periods to present an accurate assessment of the likely cost range.

The cost estimates provided by some entities regarding planning and monitoring were likely drawn from experience developing comprehensive lake management plans, which are not what is proposed in this rule. The department proposes plan templates based on the plan elements in the proposed rule, as a fillable form, to assist permittees to comply with the planning requirements. This will reduce the length and complexity of these targeted aquatic plant control plans. The cost to complete these plans will be less than what has been the norm as a result.

Monitoring costs were identified by using the median acreage of APM permitted waters, and overlying Surface Water Grant monitoring cost containment measures. The department acknowledges these costs are a range. Every waterbody's specific planning and monitoring cost will vary based on waterbody size. It is also understood certain parts of the state have fewer consumer choices currently for these services, which can impact prices as well.

Multiple entities and individuals cited the potential negative impact the draft rule will have to the economy and lakefront property values based on the assumption management will largely be curtailed under the proposed rule. The department agrees there are direct and indirect economic benefits of aquatic plant management as documented in the Strategic Analysis for the Aquatic Plant Management Program. The department believes these conclusions drawn by the commenters are erroneous and speculative. The proposed rule was created to ensure long-term, effective aquatic plant management control programs will continue in Wisconsin. Many lake organizations across the state are already conducting integrated aquatic plant management activities that would comply under the proposed rule. Individual property owners, lake districts and associations, sanitary districts and county governments will continue to have many options to conduct voluntary aquatic plant management activities under the proposed rule. 90% of the permits issued annually are for the chemical control of aquatic plants, the department expects this to continue after rule implementation.

## **9. Small Business Analysis**

The proposed rule reduces the compliance requirements for small businesses by incorporating less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance or reporting, and consolidation or simplification of reporting requirements in multiple ways.



- Incorporating fewer permitting and reporting requirements.
  - For small waterbodies under 10 acres, approximately 1,200 permits will move from an annual permit to a five-year permit, reducing permit form requirements.
- For waterbodies requiring public notification, the department is taking the responsibility of creating a public notification system and posting the intent to submit a permit.
  - Agents of the applicant (small businesses) will no longer need to submit newspaper notification for large scale treatments.
- Incorporating fewer permitting and reporting requirements for wetland management:
  - Waiving permit requirements for several control activities entirely.
  - Moving from an annual permit to a five-year permit with an approved plan.
  - Lumping reporting requirements to a monthly basis instead of after every control event.
- Fewer permitting requirements for mechanical management:
  - Moving from a three- to five-year permit with a plan to a five-year permit with an approved plan.
- Moving from no allowed permit amendments to incorporating permit amendment options in some instances after the permit has been approved.
- Incorporating multiple options for public or riparian notification for planning and permitting to allow flexibility.

**Drafter:** Madi Johansen



## Integrated Aquatic Plant Management Rule

### OVERVIEW

<b>Title:</b>	Integrated Aquatic Plant Management Rule Rollout
<b>Dates</b> ( <i>first date considered "launch date"</i> ):	5/25/22
<b>DNR Staff Lead/Program:</b> ( <i>please list names and emails for all contacts</i> )	Madi Johansen, <a href="mailto:Madison.johansen@wisconsin.gov">Madison.johansen@wisconsin.gov</a> , Carroll Schaal, <a href="mailto:carroll.schaal@wisconsin.gov">carroll.schaal@wisconsin.gov</a>
<b>Other Staff/Programs/Agencies/External Partners Involved:</b>	Wisconsin Lakes, UW Extension Lakes

### KEY MESSAGE, PURPOSE, CALL TO ACTION & GOALS

Feel free to add or remove columns as needed.

#### Identify Key Message (*What is the main point we are trying to make?*)

<b>Key Messages</b>	The aquatic plant management program is in the final steps of revising its administrative rule.
	The changes to the aquatic plant management program are reasonable, necessary and will lead to effective aquatic plant control programs.

#### Establish Purpose (*Why are we communicating this?*)

<b>Purpose 1</b>	NRB requested a broad outreach on the proposed rule prior to the NRB hearing on the rule in June 2022.
<b>Purpose 2</b>	To familiarize lake associations and districts, private landowners, APM service providers and the public with the requirements in the proposed rule prior to rule implementation, scheduled for January 1, 2024
<b>Purpose 3</b>	

#### Determine Call to Action (*What should stakeholders do as a result of this communication?*)

<b>Call to Action</b>	Educate themselves on the key program changes, prepare themselves to implement an updated plan and permit process.
-----------------------	--

#### Set Measurable Goals (*How will you measure that this communication was successful?*)

Please work with the OC to agree upon goals)

<b>Goal 1</b>	
<b>Goal 2</b>	
<b>Goal 3</b>	

### AUDIENCE & OUTREACH

#### Define Target Audience

<b>Audience 1</b>	Lake associations and districts
<b>Audience 2</b>	Private landowners of surface waters and wetlands
<b>Audience 3</b>	APM Service Providers
<b>Others</b>	

#### Outreach Strategies

How will you roll out this message? Please mark an "X" next to all that apply. If checked, please fill out additional details below.

GovDelivery	X
News Release	X
Social Media	
DNR Website	X
Off the Record Podcast	
Lake Tides Articles	X
Wisconsin Lakes Membership Outreach	X
Advertised Workshops	X

## GOVDELIVERY AND MEDIA COMMUNICATIONS

### GovDelivery and News Release Communications Schedule

Please send all draft GovDelivery emails for OC review to [DNRPress@wisconsin.gov](mailto:DNRPress@wisconsin.gov)

Please send all press release requests through this [Asana form](#).

Target Date	Communication (GovDelivery email, news release, direct emailing)	Audience	Topic
5/25/22	GovDelivery, Direct Emailing, News Release	Subscribers to APM Rule Revision GovDelivery, APM Permittee Contact List, Wisconsin Lakes Membership, Public	Information on Proposed Rule Available on APM Rules Website
9/12/22	GovDelivery, Direct emailing, news release, Lake Tides Article	Subscribers to APM Rule Revision GovDelivery, Wisconsin Lakes Membership, APM Permittee Contact List.	Workshops on the proposed changes to the APM program are available for lake associations and districts and wetland practitioners this fall and winter.
4/1/23	GovDelivery, Direct emailing, news release, Lake Tides Article	Subscribers to APM Rule Revision GovDelivery, APM Permittee Contact List, Wisconsin Lakes Membership	Workshops on the proposed changes to the APM program are available for lake associations and districts and wetland practitioners this summer.

## DNR WEBSITE

### DNR Website Updates

Please work with your DWC for website updates. Have additional questions? Please contact the OC at

[DNRpress@wisconsin.gov](mailto:DNRpress@wisconsin.gov).

Target Date	Web Page (URL)	Notes
5/25/22	<a href="https://dnr.wisconsin.gov/topic/lakes/plants/rules">https://dnr.wisconsin.gov/topic/lakes/plants/rules</a>	Add all updated rule communication pieces to website.
9/12/22	<a href="https://dnr.wisconsin.gov/topic/lakes/plants/rules">https://dnr.wisconsin.gov/topic/lakes/plants/rules</a>	Advertise Workshops on Program Changes.
4/1/23	<a href="https://dnr.wisconsin.gov/topic/lakes/plants/rules">https://dnr.wisconsin.gov/topic/lakes/plants/rules</a>	Advertise Workshops on Program Changes.

## WORKSHOPS

**The APM Program will hold several workshops fall-winter 2022-2023 to familiarize lake associations and districts and wetland practitioners with the program changes prior to rule implementation January 1, 2024.**

Target Months	Topic	Attendee Slots	Locations
(22) October, November, December, (23) January	What's Changing in the APM Program for lake groups?	25 per workshop location	One location in S, W, E and N Wisconsin
(22) October, November, December, (23) January	What's Changing in the APM Program for wetlands?	25 per workshop location	One location in S, W, E and N Wisconsin
January 2023	What's Changing in the APM Program for APM Service Providers?	Unlimited	One central location – Perhaps Two Day Long
(23) June, July, August	What's Changing in the APM Program for lake groups?	25 per workshop location	One location in S, W, E and N Wisconsin
(23) June, July, August	What's Changing in the APM Program for wetlands?	25 per workshop location	One location in S, W, E and N Wisconsin

## WORK GROUPS

**The APM Program will host work groups with stakeholders to develop Best Management Practices and plan templates. Specific work group members will be determined in the fall.**

Topic	Work Group Membership	Dates	Locations
APM Plan Templates - Lakes	Lake associations and district members, APM consultants, Wisconsin Lakes, UW Extension	Winter 2022-2023	Virtual
APM Plan Templates – Wetlands	Wetland Work Group with Wisconsin Wetland Association	Winter 2022-2023	Virtual
Best Management Practices	APM Industry, Herbicide Manufacturers	Winter 2022-2023	Virtual

## CONFERENCES

**The APM Program will present program changes at multiple conferences prior to rule implementation January 1, 2024.**

Conference	Topic	Target Audience	Rough Date
Wisconsin Wetland Association – Wetland Science Conference	What's Changing in the APM Program for wetlands?	Wetland practitioners	Winter 2023
Midwest Aquatic Plant Management Conference	What's Changing in the APM Program for APM Service Providers?	APM chemical service providers	Winter 2023
Wisconsin Lakes and Rivers Convention	What's Changing in the APM Program for Lake Groups?	Lake association and District Members	Spring 2023

## ARTICLES

The APM Program will publish program changes in [Lake Tides](#) prior to rule implementation January 1, 2024.

Target Months	Topic	Article Length	Submission Deadline	Publish Date
2022 Spring Issue	Brief APM Rule Update	Informational Box	Complete	Late May
2022 Summer Issue	Workshop Advertisement	Informational Box	Last week of June	Early August 2022
2022 Fall Issue	Summary of APM Program Changes	One Page Article	First week of October	November 2022
2023 Winter Issue	Planning in updated the APM Program	One Page Article	First week of January	February 2023
2023 Spring Issue	All About Aquatic Plants	Lead Article	First week of April	May 2023
2023 Summer Issue	Monitoring in updated the APM Program	One Page Article	Last week of June	August 2023
2023 Fall Issue	Permitting in the updated APM Program, rule implementation upcoming	One Page Article	First week of October	November 2023

## OTHER IMPORTANT ITEMS TO NOTE

The first push of educational materials for the public will be released once the Green Sheet package is sent to the NRB.

The rollout will begin again in the fall once the NRB and Governor have approved the proposed rule.

## APPROVALS

*It is recommended that you work with the OC early and often to help execute your communications plan as smoothly as possible. Feel free to add or remove columns as necessary.*

Approver	Staff Name and Email	Date Approved
Program Lead	Madi Johansen, <a href="mailto:Madison.johansen@wisconsin.gov">Madison.johansen@wisconsin.gov</a>	
Program Administrator	Carroll Schaal, <a href="mailto:carroll.schaal@wisconsin.gov">carroll.schaal@wisconsin.gov</a>	
OC Staff	Sarah Hoye, <a href="mailto:sarahm.hoye@wisconsin.gov">sarahm.hoye@wisconsin.gov</a>	
Secretary's Office (if applicable)		

## Comments and DNR Responses Natural Resources Board Order WY-29-19

April 13, 2022

This document presents a summary of public comments received on proposed rules affecting chs. NR 1, 107, 109, 150, 193, 329 and 345, related to aquatic plant management, manual removal and mechanical control regulations, aquatic habitat protection, and surface water grants.

### OVERVIEW

The proposed recreated ch. NR 107, Wis. Adm. Code, unifies all control activities under a consistent set of procedures and policies that align with current state and federal law, improving administrative consistency and efficiency as well as customer service. The proposed rule also updates the program to employ contemporary management practices such as integrated pest management to control aquatic invasive species. The rule also modernizes public notification procedures, and reduces regulations for small waterbodies.

Several updates are proposed to ch. NR 193, Wis. Adm. Code, the administrative rule governing the Surface Water Grant Program, that bring the rule into greater alignment with the recreated ch. NR 107, Wis. Adm. Code. Aquatic plant management and protection plans outlined under the proposed s. NR 107.05, Wis. Adm. Code, are included as eligible projects for surface water planning grants.

### Public Outreach and Input Opportunities

#### Preparation of Scope Statement

- 2016-2019 the department completed a Strategic Analysis of the Aquatic Plant Management Program. The process included stakeholder surveys and a public comment period.
- In 2019, the department created a Study Group of external partners to consult on the Strategic Analysis and eventual scope statement for administrative rule drafting. The Study Group was comprised of aquatic plant management (APM) industry representatives, lake association members, Wisconsin Lakes, a Conservation Congress representative and external field experts.

#### Rule Drafting

- Summer 2020
  - The department met with Wisconsin Manufacturers and Commerce and APM chemical industry representatives to discuss their perspective on rule development and solicited feedback.
- Fall of 2020 and Spring of 2021
  - The department drafted 10 policy white papers based on the Study Group report.
  - Four public informational meetings were held.
  - Two public comment periods were opened. 38 individuals and organizations provided written comments and questions. Over 450 relevant comments and questions were received. The department responded to all comments. A summary of the comments received during rule drafting can be found here:  
<https://dnr.wisconsin.gov/topic/lakes/plants/rules>
  - The department drafted the first version of ch. NR 107, Wis. Adm. Code, based on the feedback during the white paper process.
- Spring 2021

- The department presented the policy proposals and encouraged public participation in the rule process to lake association and district members during Wisconsin Lakes and Rivers Convention 2021.
- The department presented the policy proposals to the Voight Intertribal Task Force and Great Lakes Indian Fish and Wildlife Commission and solicited feedback.
- The department coordinated with Wisconsin Wetland Association to assemble a work group of field and industry experts to discuss wetland management within the draft rule.
- The department met with Hamilton Group and United Phosphorous Limited LLC to discuss their perspectives on rule development and solicited feedback.
- Fall 2021
  - A public comment period on the draft economic impact analysis (EIA) occurred from September 27 to November 10, 2021. The department received comments from 55 individuals and entities representing lake associations and districts, APM chemical applicators, APM consultants, conservation groups, lake and wetland representatives and industry representatives on the EIA during this period.
- Winter 2021-2022
  - The department provided a briefing on the draft rule to the Wisconsin Tribal Conservation Advisory Council.
  - The department provided an information session on the draft rule and encouraged participation in the public hearing process to Wisconsin Lakes members.
  - The department published an article in Lake Tides highlighting the primary changes in the draft rule and provided information on the public hearing and comment period.
  - The department met with Wisconsin Wetland Association and the wetland work group to discuss wetland management within the draft rule.
  - The department met with Dane County to discuss the economic impact and policy feasibility of draft rule as it relates to mechanical harvesting operations.
  - A public hearing on the draft rule was held February 22, 2022, 75 individuals attended.
  - A public comment period for the proposed rule was held from January 10 through March 1, 2022. 49 individuals and entities representing lake associations and districts, APM chemical applicators, APM consultants, lake and wetland representatives, conservation groups and industry representatives provided written comments.
- Spring 2022
  - The department provided an update on the administrative rule process during the Wisconsin Lakes and Rivers Convention in April.
  - The department provided an informational item to the Natural Resources Board April meeting on the program to date and included information on Integrated Pest Management.
  - The department provided an update on the proposed rules for harvesting at the Weed Harvester Safety and Maintenance Seminar held by Aquarius Systems.
  - The department updated its website with current information on the proposed rule package.

## **ECONOMIC IMPACT ANALYSIS**

A public comment period on the draft economic impact analysis (EIA) occurred from September 27 to November 10, 2021. The department received comments from 55 individuals and organizations on the EIA during this period. Of those, 38 were individuals who supplied a form letter from their lake association and chemical applicator, representing three lake associations. Three additional lake associations and districts provided comments.

The comments can be summarized into these categories:

- EIA is a fair and accurate representation of the likely impacts of the rule change.
- EIA should increase cost estimates for planning and monitoring.
- EIA should account for impacts to lakefront property values.

### **Department Response**

The department made several revisions to the EIA as a result of input from entities and individuals during both the EIA solicitation period and the public comment period for the draft rule. From the draft EIA released for the economic solicitation period to the updated EIA based on public comments of the draft rule, the department has increased the total estimate of implementation and compliance costs by \$877,477. These cost increases were derived from suggested costs from lake associations and districts, chemical applicators, industry representatives and wetland practitioners regarding the costs of planning, monitoring and public notification. The department also removed projected cost reductions from the total gross cost estimate.

The department found that the draft EIA had an incomplete number of existing management plans after a complete inventory of all plans was done. As a result, the number of existing aquatic plant management plans was increased after the EIA solicitation period ended from 250-280 to 345 existing plans. The median cost of a baseline point intercept lake survey was increased from \$2,908 to \$3,500. Newspaper notification costs were increased by \$10. Analysis and plan writing were split from one cost of \$100-\$400 in the draft EIA to a \$0-\$5,700 range in the updated EIA. The total average cost increase of planning from draft EIA to updated EIA is \$158,104.

Multiple entities commented during the draft rule comment period that the monitoring costs associated with mechanical harvesting operations were high relative to the ecological benefit of the surveys themselves. The department adjusted the requirements in the proposed rule, and the total cost of monitoring for large scale mechanical harvesting operations was reduced by \$10,582 as a result from draft EIA to updated EIA.

An error in the fee revenue section was pointed out by an entity. The original EIA estimate only included one year of revenue, and did not add in the revenues for years 2 through 5. This was corrected prior to the public comment period for the draft rule.

One entity commented that cost reductions should not be included in the total gross cost estimate. The department has removed these reductions from the gross estimate but kept those reductions in the EIA document as part of the record for public consideration. The proposed rule provides new waivers and efficiencies, which will reduce time, cost and effort for entities seeking aquatic plant management permits. These cost reductions were calculated using historical permit data, standard hourly rates of labor and anticipated reductions based on proposed rule.

The department's updated EIA is a complete assessment of the likely impacts of the rule change. The department used aquatic plant management permit data, Surface Water Grant funding data, and cost estimates provided by entities and individuals during the EIA solicitation and public comment periods to present an accurate assessment of the likely cost range.

The cost estimates provided by some entities regarding planning and monitoring were likely drawn from experience developing comprehensive lake management plans, which are not what is proposed in this rule. The department proposes plan templates based on the plan elements in the proposed rule, as a



fillable form, to assist permittees to comply with the planning requirements. This will reduce the length and complexity of these targeted aquatic plant control plans. The cost to complete these plans will be less than what has been the norm as a result.

Monitoring costs were identified by using the median acreage of APM permitted waters, and overlying Surface Water Grant monitoring cost containment measures. The department acknowledges these costs are a range. Every waterbody's specific planning and monitoring cost will vary based on waterbody size. It is also understood certain parts of the state have fewer consumer choices currently for these services, which can impact prices as well.

Multiple entities and individuals cited the potential negative impact the draft rule will have to the economy and lakefront property values based on the assumption management will largely be curtailed under the proposed rule. The department agrees there are direct and indirect economic benefits of aquatic plant management as documented in the Strategic Analysis for the Aquatic Plant Management Program. The department believes these conclusions drawn by the commenters are erroneous and speculative. The proposed rule was created to ensure long-term, effective aquatic plant management control programs will continue in Wisconsin. Many lake organizations across the state are already conducting integrated aquatic plant management activities that would comply under the proposed rule. Individual property owners, lake districts and associations, sanitary districts and county governments will continue to have many options to conduct voluntary aquatic plant management activities under the proposed rule. 90% of the permits issued annually are for the chemical control of aquatic plants, the department expects this to continue after rule implementation.

## **LEGISLATIVE COUNCIL RULES CLEARINGHOUSE**

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement; and clarity, grammar, punctuation and use of plain language. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

## **PUBLIC COMMENTS ON PROPOSED RULE**

A public comment period for the proposed rule was held from January 10 through March 1, 2022, with a public hearing on February 22, 2022. 75 individuals attended the public hearing: 3 registered 'in support' and 5 registered 'in opposition.' 49 individuals and entities provided written comments. Of those, 27 of the individuals submitted one form letter along with their chemical applicator.

The following is a summary of written comments and the department's response.

### **Contents**

General	5
Permit Waivers	7
Permit processes, decision-making and reporting	8
Fees	9
Planning and Integrated Pest Management	10
Monitoring	13
Notification	14

Wetlands 16  
Small waterbodies 16  
Best Management Practices 19  
Surface Water Grants 20

## General

**Comment** Wisconsin Lakes, Green Lake Association, Onterra and one member of the public expressed general support for the department’s move toward an integrated pest management framework, which incorporates planning and monitoring in some scenarios. Wisconsin Lakes stated implementing IPM in Wisconsin will lead to more efficient and cost-effective aquatic plant management in the long term for Wisconsin’s lakes and their managers.

**Department Response:** The department agrees with the commentors.

**Comment:** One member of the public commented that hand wicking should be changed to hand picking in the waiver section.

**Department Response:** Hand wicking is control strategy to chemically control emergent vegetation. It is defined in s. NR 107.03 (15) as pouring or spraying a pesticide directly onto a wicking glove and applying the pesticide using only the thumb, fingers, and palm of the wicking glove directly to the target species. It is not a typo.

**Comment:** One member of the public commented that lake districts should be included in the proposed rule wherever lake associations are.

**Department Response:** The department made this suggested change.

**Comment:** One member of the public suggested a language clarification for s. NR 107.06 (2) (m), to say “For chemical control, the name...”

**Department Response:** The department made this suggested change.

**Comment:** One member of the public suggested both s. NR 107.07 (11) (a) and (16) (c) be amended to read, “Mechanical and Manual Control.”

**Department Response:** The department made the suggested change.

**Comment:** One member of the public suggested s. NR 107.41 (1) be modified to say “Large Scale Mechanical, Manual and Physical Control”

**Department Response:** The department made the suggested change.

**Comment:** Wisconsin Lake and Pond Resource commented that the water use impairment definition is subjective and open to interpretation.

**Department Response:** The department believes the definitions in the proposed rule clearly define the parameters of a water use impairment. The department defines water use impairment in

proposed rule as a condition of aquatic plant growth that creates a water use obstruction or causes adverse impacts to the ecosystem. A water use obstruction is defined as a condition of over-abundant aquatic plant growth that creates a material obstruction that limits a person's ability to reasonably conduct beneficial water use activities and there are no reasonable alternatives. Adverse impacts are also clearly defined in proposed rule. Current chs. NR 107 and 109 do not define these terms. The department believes these definitions add clarity and continuity for statewide interpretation.

**Comment:** Wisconsin Lake and Pond Resource commented that the definition of aquatic plants is broad, stating any plant growing in seasonably saturated soils would require all applicators under DATCP to be certified in category 5 and would require an APM permit.

**Department Response:** The department understands why the commentor may have interpreted the definition in that manner. However, the purpose and applicability sections of the proposed rule clearly define the authority of ch. NR 107 is related to waters of the state as defined in ss. 281.01 and 23.24, Stats. The definition of aquatic plants, particularly the inclusion of seasonably saturated soils, is a direct referral to ephemeral wetlands, which are a water of the state. A seasonal backyard wet spot would not be considered a water of the state under ch. NR 107.

**Comment** Wisconsin Lake and Pond Resource, Marine Biochemists, United Phosphorous Limited, Wisconsin Builders Association, Wisconsin Manufacturers and Commerce, and multiple members of the public stated general concerns that the costs associated with planning, monitoring and permit fees will discourage the level of management, particularly for chemical control.

**Department Response:** Around 90% of permits the department issues annually are for the chemical control of aquatic plants and the department expects this to continue after rule implementation. In fact, the purpose of the rule is to create more effective aquatic plant management programs, particularly for the management of aquatic invasive species. Effective management requires planning and evaluation (monitoring) to guide decision making and make the best use of all the available control tools. This approach is in line with Best Management Practices outlined by the EPA and APM industry. Fees have remained the same for 30 years for chemical and 20 years for mechanical. Proposed fees are comparable to fees charged in neighboring states and required to support permit staffing.

**Comment** Wisconsin Lake and Pond Resource, Marine Biochemists, United Phosphorous Limited, Wisconsin Manufacturers and Commerce, and multiple members of the public cited the potential negative impact the proposed rule will have to the economy and lakefront property values based on the assumption management will largely be curtailed under the proposed rule.

**Department Response:** The department agrees there are direct and indirect economic benefits of aquatic plant management. The department believes these conclusions drawn by the commentors are erroneous and speculative. Lakefront property values are impacted by a wide variety of factors including water quality, lake type, shoreline development policies, aquatic invasive species, the real estate market, the broader economy and a host of other factors. The proposed rule was created to ensure long-term, effective aquatic plant management control programs will continue across the state. A large number of lake organizations across the state are already conducting integrated aquatic plant management activities that would comply under the proposed rule. Individual property owners, lake districts and associations, sanitary districts and county governments will continue to have many options to conduct aquatic plant management activities under the proposed rule.

**Comment:** Wisconsin Manufacturers and Commerce cited 42 provisions in draft rule they interpreted as broad grants of authority which should be removed. They also stated the rule grants broad authority to deny permit approvals based on subjective criteria.

**Department Response:** Proposed ch. NR 107 as currently written is within the department's rulemaking authority under ss. 23.24 and 227.11(2), Stats. All criteria for permit review are within the department's authority. Many of these cited provisions are carried over from existing rules.

**Comment:** Two members of the public suggested the department modify the draft rule to enable their lake organization to manage nuisance-causing duckweed.

**Department Response:** The department has no provisions in proposed rule specific to any invasive or native aquatic plant species. Broad provisions for any one species in proposed rule would limit the flexibility of a waterbody organization to conduct aquatic plant management based on their specific waterbody conditions. The control of nuisance native plants is still a permissible activity under proposed rule, as long as the criteria of ch. NR 107 are met.

## Permit Waivers

**Comment:** One member of the public suggested the waiver in draft s. NR 107.04 (4) b 3., allowing the hand removal of invasive aquatic plants, be extended to contractors and/or agents on behalf of riparian owners, not exclusively riparian owners.

**Department Response:** The department agrees with this suggestion and made changes to proposed rule to allow hand pulling of invasive aquatic plants to be done by both riparian owners and their contractors, without a permit.

**Comment:** Wisconsin Lake and Pond Resource suggested the permit waiver cited in draft s. NR 107.04 (3) (b) 6., "Privately accessible ponds that are less than 0.1 acres in size and are lined, with no groundwater connection to waters of the state," be amended as follows: "Privately accessible and/or shared ponds of any size which are lined, do not have a history of being a lake or stream or of being part of a lake or stream, and are not hydrologically connected to a natural navigable waterway and that does not discharge into a natural navigable waterway except as a result of storm events."

**Department Response:** The department agrees the permit waiver for ponds should be expanded to incorporate more waterbodies on private land that are exempt from the permitting process. The department has expanded the waiver, incorporating components of the commentors' suggested language: "Privately accessible ponds<sup>1</sup> less than .5 acres in size, which have a synthetic, artificial liner, do not have a history of being a lake or stream or of being part of a lake or stream, and are not hydrologically connected to a water of the state and that does not discharge into a water of the state." The original provision of .1 acre privately accessible ponds in draft rule waived up to 41 previously permitted small waterbodies. The change to the waiver in the proposed rule greatly expands the number of waterbodies which may be waived from permitting.

**Comment:** Wisconsin Wetland Association suggested the acreage limitation be removed from the permit waiver cited in draft s. NR 107.04 (4) (a), in which no permit is required for mechanical or manual removal of aquatic plants on a body of water less than 10 acres in size if confined to one owner's property.

---

<sup>1</sup> In draft NR 107.03 (30): a privately accessible pond is a body of water 10 acres or less, on the land of one owner, with no surface water discharge or a discharge that can be controlled to prevent chemical loss and no public access.

**Department Response:** The department agrees with this suggestion as it related to manual or mechanical control on privately owned wetlands and made changes to proposed rule to accommodate this. The provision for less than 10 acres is still proposed for lakes or ponds, and is consistent with current rule.

**Comment:** Multiple individuals commented that the waivers section, as written, was confusing. They stated it was unclear whether a waiver meant an individual needed to apply for the waiver prior to conducting control or if it meant the activity was exempted entirely.

**Department Response:** The department agrees, and the waiver section was clarified. The department rearranged the waiver section to clarify: fee waivers; waivers specific to types of control activities; and waivers specific to riparian owners and private landowners. The department intends to issue a communication document which outlines the waivers in plain language to assist the public upon rule promulgation.

**Comment:** One member of the public suggested the waiver in draft s. NR 107.04 (4) (b) 2., include a specified length in addition to the 30 foot width riparian easement.

**Department Response:** A length is not specified because the length of a riparian access lane to open water is individual to each property. Placing a length restriction would likely create scenarios where a riparian owner or their agent may need to acquire a permit to manually create an access lane to open water.

### Permit processes, decision-making and reporting

**Comment:** Multiple members of the public and Marine Biochemists commented that herbicide control was likely to be denied in most cases, citing the provision in draft s. NR 107.07 (7), which says the department shall deny issuance of a permit if the department determines the proposed control activity is not consistent with the department approved plan for the waterbody or the aquatic plants are not causing a water use impairment to beneficial water use activities.

**Department Response:** The department has modified draft ch. NR 107 to instead say, “the department may deny” for those two provisions. It was not the department’s intention to imply that aquatic plant control can only occur to address a water use impairment. The majority of aquatic plant control in the state is done to address water use impairments or manage aquatic invasive species populations. Moreover, the department acknowledges there may be instances where a plan may not have captured a specific scenario, but there may still be a clear need for aquatic plant control. If a permit application states the goal of control is to manage an invasive aquatic plant population, and if all other criteria of s. NR 107.07 (7) were met, the permit would be approved.

**Comment:** One member of the public suggested the language in s. NR 107.07 (11) (d) be clarified so that multi-year permit expiration dates are clear.

**Department Response:** The department clarified the language to say the permit shall expire on October 15<sup>th</sup> of the year the permit expires.

**Comment:** Wisconsin Wetland Association commented the department should streamline reporting requirements to reduce landowner financial burdens and administrative costs.

**Department Response:** The department agrees private landowners conducting aquatic plant control should be given consideration to reduce compliance costs. Chemical control reports were changed in draft rule so the permit holder conducting wetland control submits a monthly summary of the control activities under the permit. Current administrative rule requires a control report after every individual chemical control event. Private landowners conducting mechanical and manual control on wetlands are waived from permitting entirely. The department also added a waiver in the planning section stating the department may waive private landowners conducting control on their properties from the planning process as long as there was no surface water discharge from the property, which would reduce requirements for wetlands as well.

**Comment:** One member of the public suggested reports for chemical control on lakes be done every 30 days and mechanical and manual control be done within 60 days to compile all the data.

**Department Response:** The department agrees mechanical harvesting reports do not need to come in as frequently. The department changed the reporting provision to state mechanical harvesting operations shall submit an annual report to the department summarizing all control efforts for the year. Chemical control reports for lakes and ponds have 30 days to submit the control report after the control has occurred, the department did not make any changes to this provision.

**Comment:** One member of the public suggested the expiration dates for mechanical harvesting be extended to October 31<sup>st</sup>, instead of October 15<sup>th</sup>.

**Department Response:** No change. In northern temperate waters, most aquatic plants senesce by mid to late fall, generally the middle of October. There is no reason to mechanically harvest submerged aquatic plants beyond that time, as the plants are no longer growing to cause water use obstructions.

**Comment:** Wisconsin Lake and Pond Resource suggested that expiration dates for small waterbodies less than 10 acres be extended to December 31<sup>st</sup>, particularly for artificial waterways. They commented that the October 1<sup>st</sup> expiration date is arbitrary and does not align with the recognized end of growing season dates across the state used by USDA and wetland professionals, which is usually mid-October. They stated the expiration of October 1<sup>st</sup> strongly restricts compliance with stormwater maintenance agreements set by many municipalities.

**Department Response:** Subchapter V – Pond Management, already has an expiration date set for November 1. The department agrees aquatic plants usually senesce by mid-October.

## Fees

**Comment:** One member of the public commented that it is unfair to place the burden of fee increases on lake residents. They stated lake residents should not be solely responsible for paying for aquatic invasive species (AIS) control and containment. They commented boat license fees should be raised instead to make all boaters responsible for preventing the spread of AIS. Particularly, fees graduated by boat size, or boats with live wells or bladders because they can carry AIS.

**Department Response:** No change. The department agrees lake residents are not solely responsible for the control and containment of AIS throughout Wisconsin. Preventing the spread of AIS is a shared responsibility among all Wisconsin water users. State cost-sharing grants are available to lake residents for AIS control and containment. The \$4 million annual appropriation comes from an excise tax on gasoline estimated to be used by motorboats using Wisconsin waters. The proposed fee increase is to help cover the department's costs of reviewing and processing permits for all aquatic plant management

permitting, not just AIS. Fees have not changed in 20 years for mechanical and 30 years for chemical permits while administrative costs have risen. The amount of fees to license boats is controlled by the legislature and could not be addressed in this administrative rule.

**Comment:** Multiple members of the public noted that the increase to mechanical harvesting fees was greater than the 50% as stated in the rule drafting objectives. One individual suggested fees for mechanical harvesting operations be reduced in years 2-5 to 25% of the year one permit cost, or a minimum cost of \$250.

**Department Response:** Fees have not changed since 1989 for chemical permits and 2003 for mechanical. The fees for multiple year permits help pay for staff time to supervise control, review control reports, and communicate with permit holders. Staff engage with permit holders on an annual basis regardless of whether an annual or multi-year permit is issued. Fee amounts for mechanical harvesting are considerably less than for chemical in the current rule. One objective of the proposed rule was to establish the same fee for all types of control since review and processing times are essentially the same. Also, proposed fees were roughly doubled to account for general inflation and the increased costs of program administration. The proposed fee increases are based on a doubling of the current rule's chemical fees. Consequently, fees for harvesting increased by more than 50%. Even at the higher levels, fees account for just a small fraction of the overall costs of control. As an offset, the 50% renewal fee for 5 year mechanical harvesting permits is considerably less than chemical fees which must apply each year at 100%. The department did not adjust fees based on comments.

**Comment:** Wisconsin Wetland Association made two suggestions to modify the fees for wetland management. The first, to eliminate the per acre fee for chemical control in wetlands. Second, to eliminate the year two through five fees for multi-year permits.

**Department Response:** The fees for multiple year permits help pay for staff time to supervise control, review control reports, and communicate with permit holders. Staff engage with permit holders on an annual basis regardless of whether an annual or multi-year permit is issued. Larger permits with more control acreage require more staff time to review and follow up on. The permit fees are 50% less in years two through five for wetland control. In addition, a goal of the proposed rule was to establish consistent fees for all management activities. Eliminating the acreage fees and annual renewal fees for wetlands would create a significant inconsistency compared to lake management and pond activities.

**Comment:** One member of the public commented about the fee increase's impact on an individual's ability to seek a permit for aquatic plant control.

**Department Response:** Any control conducted over an area greater than 1 acre will be required to supply an acreage fee. Acreage fees are rounded up to the next acre. A single individual conducting APM activities adjacent to or on their property will likely involve less than an acre of control. The proposed base fee of \$75 was not changed.

## Planning and Integrated Pest Management

**Comment:** Wisconsin Lakes Association commented favorably towards the firm deadlines for plan review and approval. They stated the reasonable timelines were an improvement.

**Comment:** Wisconsin Lakes Association commented favorably towards the provision allowing for plans to be extended an additional five years under specific criteria.

**Department Response:** The department further clarified plan review and approval deadlines based on other public comments. The department agrees the plan update provisions will allow for more flexibility and reduced costs for applicants.

**Comment:** One member of the public commented the plan templates should be available for public review before the rule is implemented.

**Department Response:** The department agrees the draft templates should be available for public review before the rule is implemented. The department will provide a public input period on the planning templates when they are completed.

**Comment:** Multiple members of the public stated general concerns regarding the timing of the planning process. Individuals stated various ranges of time it may take to draft a plan, and were concerned permits would be delayed as a result. One member of the public specifically mentioned the added time the 30 day notification period added prior to beginning the planning process.

**Department Response:** The department understands the concerns stated and made several changes to proposed rule to clarify and reduce timelines, when appropriate. The department removed a total of 45 days from the planning process in proposed rule. The department removed the provision requiring a pre-notification 30 days in advance of the planning process starting. The department further clarified the plan review timelines to state the department shall review and deny or approve a complete plan all or in part within 45 days. The department shortened the minimum deadline to submit a plan to the department before a permit from 60 days to 45 days. However, the department strongly encourages applicants to submit plan applications as early as they can. There is no reason to wait until 45 days before submitting a permit application.

**Comment:** Multiple entities and members of the public stated the number of plans required in draft rule was too extensive and expensive to implement. Commentors also noted the draft rule's description of when a plan was and was not required was unclear.

**Department Response:** The department made several changes clarifying when a plan shall or may be required. Instead of saying applicants shall submit a plan for almost all aquatic plant management activities, with a few noted waivers, the department clearly states in proposed rule under what situation a plan shall be required. The proposed rule now states an applicant shall submit a plan if they are: conducting large scale control, which means the aquatic plant control will impact a significant portion or the entirety of a waterbody; conducting invasive species population control; or applying for a multi-year permit for mechanical harvesting or wetlands. In addition, the department notes two situations where a plan may be required. These are if the permitted control may impact a department designated protection area such as a Sensitive Area, or previously approved control activities have caused cumulative adverse impacts to water quality, fish and wildlife habitat or native aquatic plants. Both of these scenarios outline instances where a permit may be denied without a plan in place prior to control due to impacts to the aquatic ecosystem.

Integrated Aquatic Plant Management Planning is a necessary and beneficial process to ensure community support, clearly defined goals and objectives for aquatic plant control activities, and adequate resource protection. Integrated Pest Planning is nationally recognized as a necessary component of any aquatic invasive species management strategy. Aquatic Ecosystem Restoration Foundation develops a Best Management Practices Manual, which provides a national framework for aquatic plant control



activities. An entire chapter is dedicated to the importance and benefits of planning<sup>2</sup>. The department agrees with their approach to planning, and will use their resources to assist with the plan template designs.

In addition, there are three proposed planning waivers in the proposed rule, to allow flexibility and reduced requirements in specific cases. Particularly, for the control of pioneering prohibited invasive species and control occurring on waterbodies contained on privately owned land.

**Comment:** Wisconsin Wetland Association suggested plan requirements should be waived or significantly adapted for wetland control projects on private lands to reduce burdens for private property owners.

**Department:** The department agrees consideration should be given to private property owners and individuals who lack the capacity of lake organizations conducting plant management activities. The department added a planning waiver stating the department may waive planning requirements for waterbodies entirely contained on the property of one owner with no discharge or a controlled discharge. This provision applies to wetlands and may capture other waterbodies which are greater than 10 acres including some lakes if entirely owned by one person.

**Comment:** Wisconsin Manufacturers and Commerce suggested the plan requirements should be optional, stating the “applicant may” submit a plan to the department.

**Department Response:** Section 23.24 (3) (b), Stats., states, “The department may require that an application for an aquatic plant management permit contain a plan for the department's approval as to how the aquatic plants will be introduced, removed, or controlled.” Making planning optional would compromise the consistency of decision-making and long term evaluation of control activities the rule is seeking to establish.

**Comment:** Wisconsin Manufacturers and Commerce suggested existing aquatic plant management plans be grandfathered into the draft rule upon promulgation.

**Department:** A provision was added in proposed rule to clearly state the department’s intention to allow existing, department approved, aquatic plant management plans to be considered as complete and whole plans under repealed and revised ch. NR 107 until they expire.

**Comment:** One member of the public requested a clarification of language in s. NR 107.05 (1) to say, “Plan elements for New and Revised Plans.”

**Department Response:** The department made this change.

**Comment:** One member of the public requested clarification in draft rule for newspaper public notice of a planning public comment period. They wanted to know if the department meant a Class 1, 2, or 3 notice.

**Department Response:** The department clarified the language to mean the plan applicant should post a newspaper notification a minimum of one time, to let the public know of the 21 day comment period on the draft plan.

**Comment:** Wisconsin Lake and Pond Resource suggested the definition of Integrated Pest Management (IPM) should incorporate the economics of control, specifically adopting the EPA’s definition.

---

<sup>2</sup> <http://aquatics.org/bmpchapters/3.2%20Developing%20a%20Lake%20Management%20Plan.pdf>

Wisconsin Manufacturers and Commerce suggested the definition of IPM should be consistent with federal law.

**Department Response:** The department incorporated economics into the IPM definition in proposed rule. The department agrees the economics of control are an important part of IPM. According to the EPA, the economics of control consider the short term and long term costs of entire management strategies to ensure efficient and environmentally conscious decisions are made.

## Monitoring

**Comment:** Wisconsin Manufacturers and Commerce commented that the rule limits large-scale chemical control to every other year, which limits herbicide use to treat aquatic invasive species.

**Department Response:** The department modified the language in proposed rule to state that large scale control of any kind, not just chemical control, cannot occur prior to conducting a post treatment aquatic plant survey. The department also modified the language to say that back to back large scale control could occur if it was part of an approved in a plan. This management strategy could be appropriate in some cases, and the department would approve of that control in a plan. It must also be noted that the language is not an outright ban on any control the year after large scale control. Small scale chemical control, mechanical harvesting, hand pulling, and diver assisted suction harvesting are examples of control techniques which could still occur in the year following large scale chemical control. This is in line with integrated pest management principles.

**Comment:** One member of the public and Dane County commented the monitoring requirements for mechanical harvesting operations are too stringent. They both stated an understanding of why a pre and post control survey was necessary for chemical control, but did not see the same value from a pre and post control survey for large scale mechanical harvesting operations. Plant community shifts from harvesting operations are much more subtle than with chemical treatments.

**Department Response:** The department agrees monitoring requirements should be modified for exclusive mechanical harvesting operations. The department changed proposed rule to say large scale mechanical harvesting operations shall conduct a monitoring survey every five years with the plan.

**Comment:** Wisconsin Lake and Pond Resource commented the definition of what constitutes large scale effects is ambiguous and may allow for too much latitude for the department to interpret what is large scale.

**Department Response:** The department believes this comment is in relation to large scale chemical control. The proposed policy states that any permit proposal to treat more than 5% of the lake surface area will calculate the hypothetical lake wide concentration rate following dissipation and movement off targeted treatment sites. Specific herbicide rates which may be capable of lake wide impacts to plants will be based upon laboratory concentration exposure time (CET) studies, operational field studies, and herbicide product labels. This approach is consistent with the most current understandings of how herbicides interact with water, and allows for new research and new herbicides to be incorporated into the policy over time in a way a hard threshold cannot.

Determining whether a treatment may reach herbicide concentrations levels capable of having large-scale impacts can generally be calculated by dividing the volume of water being treated by the volume of water within the lake. In deeper lakes which thermally stratify, the volume of water above the thermocline should be used rather than the volume of the whole lake.

The intent of the calculation is to allow for each individual treatment scenario to be evaluated for its potential whole lake effects, instead of a hard threshold in rule as is used currently. Treating >5% of the lake surface area may or may not result in a lake wide concentration high enough to affect plants. Whether such a treatment results in lake wide effects depends on the active ingredient, application rate, and lake surface area to volume ratio. If the calculation determines the proposed treatment will not have whole lake effects, then the proposed treatment would not be required to conduct associated regulatory requirements for large scale control, whether that control was in an area was greater than 5% surface area or not.

The commentor is correct that department staff would review the calculation on the permit application and make the final determination. As stated above, specific herbicide rates which may be capable of lake wide impacts to plants will be identified from laboratory concentration exposure time (CET) studies, operational field studies, and herbicide product labels. The department agrees some form of reference guide which summarizes the current science for commonly used herbicides which is updated as new studies and data become available will be necessary. This document would also be publicly available to ensure clear communication and understanding.

Finally, the department does not believe all control exceeding 5% surface area will have whole lake effects, or that all treatments under 5% surface area will not have whole lake effects. The department ran several hypothetical scenarios with multiple lake sizes, depths, treatment sizes and herbicides to determine whether the 5% threshold captured most treatments which would have whole lake effects. In fact, the department found that the 5% surface area threshold is not protective in all situations, particularly in small lakes. However, no threshold for large scale control will be able to capture every scenario due to the variability of lake size and herbicide type in the state.

## Notification

**Comment:** One member of the public commented the notification process is not conducive to physical control methods, particularly hand harvesting. Specifically, the necessity to post control dates and locations at public access points.

**Department Response:** Hand pulling of invasive species is waived from the permit process entirely, so a lake organization who was conducting hand pulling would not be required to do any notification processes under repealed and revised ch. NR 107. Hand pulling of native aquatic plants in the 30 foot riparian access zone is also waived from permitting.

**Comment:** One member of the public suggested the rule should include the ability to notify riparian owners of a permit submission via their monthly bill, not just a postcard.

**Department Response:** The department agrees flexibility is important to ensure the riparian notification requirements are simple and easy to comply with for lake associations. The department modified the policy to say either the permit application itself, or a link to access the permit application electronically, should be sent to all riparian owners either through paper or electronic means. Under these modifications, the commentor could submit their permit application shortly before sending their monthly bill statement to lake district members, and the bill statement could include a link to the department's permitting webpage with information about how to access the permit documents.

**Comment:** Wisconsin Lakes and multiple members of the public commented that notifying all riparian property owners on a waterbody may be challenging depending on lake size, the resources of the lake

association or district, and the time constraints for this notification in draft rule. Wisconsin Lakes suggested the department create tools to help organizations meet these requirements. They also suggested a clarification in language to make it clear the department intended for the riparian notice to be sent within 5 days, not that the permit application had to get into the hands of riparian owners within 5 days.

**Department Response:** The department made several modifications to proposed rule based on these comments. The department clarified in proposed rule that the permit application information should be “sent” to all riparian property owners, instead of “provided.” The department modified the timeline from 5 days to 7 days after a permit is submitted. The department modified the policy to say either the permit application itself, or a link to access the permit application electronically, should be sent to all riparian owners either through paper or electronic means, to allow for more flexibility. In addition, the department added a provision so applicants submitting permits that were not large scale on lakes over 2,000 acres and control on rivers and wetlands could propose a shortened list of riparian owners that will be impacted by the control to the department prior to sending out their notices. The department would review the request considering the area of impact of the control and riparian owner’s rights. This is a common sense “out” allowing for some flexibility for large systems.

**Comment:** Multiple members of the public commented on the posting of approved permits at all public access points. One member of the public suggested the details on the signs should be flexible for mechanical harvesting operations. Multiple members of the public and Wisconsin Lake and Pond Resource commented the provision to post at public access points within 5 days after a permit was approved was overburdensome, particularly because the uncertainty of a specific control date until much closer to the control. One member of the public commented that posting at all public access points may not make sense in all situations, depending on the type of access point.

**Department Response:** The department made several modifications to proposed rule based on these comments. The department changed the requirement to say notification signs should be posted at all public access points a minimum of 7 days before the estimated control date. This should allow for permit holders to plan their control and post signs once a rough date of control is set. The provisions still allow for a one-week control period to be posted on the notification, until a set date is determined. A provision was added stating mechanical harvesting operations may state a general narrative of the frequency of control over the entire growing season, instead of specific dates. Finally, a provision was added stating the permit applicant may request a public access point be excluded from posting requirements as part of the permit application. The department would consider that request by looking at the size of the control impact area relative to the size of the body of water, and the proximity of a public access point relative to the area impacted by control. This provision is another common sense “out” for large waterbodies in the state.

**Comment:** Wisconsin Manufacturers and Commerce commented public notice and meeting requirements lack explicit statutory authority, and should be removed entirely.

**Department Response:** The department has authority under s. 227.11 (2) (b). Stats., to prescribe procedures to administer s. 23.24, Stats., that are necessary to effectuate the purpose of the statute. The department has further authority under s. 23.24 (2) (a) 4., Stats., to establish by rule procedures and requirements for issuing APM permits. Public notification on the department’s website at no cost to the applicant, the department’s acceptance of public comments, and a public informational hearing in the event of sufficient interest from the public are clearly procedures for the issuance of APM permits within the department’s rulemaking authority.

**Comment:** One member of the public stated concerns about the supervision requirements in draft rule, particularly for hand harvesting operations.

**Department Response:** Hand harvesting of invasive aquatic plants is exempt from ch. NR 107. The supervision requirements in proposed rule are the same provisions that exist in current ch. NR 107, they were not modified.

**Comment:** One member of the public commented that the provision in s. NR 107.07 (2) (d) 4., should only apply to lake districts because they are required under ADA to accommodate people with disabilities. They stated ADA requirements cannot be imposed on non-governmental organizations.

**Department Response:** There are no ADA requirements being imposed in this provision. The department is committed to facilitating accessibility to a process that is relevant to its permit decisions for individuals that need it.

**Comment:** One member of the public said it was unclear if s. NR 107.07 (15), relating to public access posting was only for chemical control or also for mechanical control.

**Department Response:** Public access posting in draft ch. NR 107 is a requirement under the general provisions section, and is a requirement for all waterbodies and all permitted control activities except waterbodies under 10 acres in size that do not have public access

## Wetlands

**Comment:** One member commented that the applicability section of Subchapter III, of ch. NR 107, relating to wetland management, was confusing. Specifically, “non-riparian lacustrine and riverine wetlands.”

**Department Response:** A riparian owner means a landowner abutting a navigable waterway. The department modified the language to say, “control of aquatic plants on non-riparian wetlands.” The department specified non-riparian wetlands because many lake systems in the state have wetland, marsh, or bog areas around the perimeter of a lake, and the department would consider those situations as part of the broader lake management strategy.

**Comment:** One member of the public questioned why wetland permit expiration dates were set to December 31<sup>st</sup> unlike lake permits, which have an October 15<sup>th</sup> expiration date.

**Department Response:** Certain wetland control activities take place over the winter time, so an expiration of October 15<sup>th</sup> would limit those control options. In addition, allowing for multi-year wetland permits will mean permit applicants will not have to apply for another annual permit while in the middle of control work during the winter. All other APM permits run annually during the growing season, and permits are generally sent to the department at the beginning of the calendar year up through May.

## Small waterbodies

**Comment:** One member of the public commented with concerns regarding the relaxed requirements for permitting small waterbodies. They stated the elimination of public notice for small waterbodies is rash, because water does not stay in one place and may impact groundwater quality and soil quality. They

stated the public should be informed on what happens on small waterbodies. They also noted the relaxed reporting requirements will reduce the ability of the department to evaluate the effects of the waste.

**Department Response:** The department recognizes the concerns stated above. The department believes the proposed rule allows for sufficient regulatory flexibility, while also maintaining adequate resource protection of threatened and endangered resources as well as public rights and interests. Permit applications for waterbodies with public access or a surface water discharge will be required to be posted on the department's webpage for public notification for 14 days. Permit applications for waterbodies with multiple owners will be required to share the permit application with the other homeowners around the waterbody. Permit applications for waterbodies entirely confined on the land of one owner, with no public access or surface water discharge have the fewest permitting requirements.

**Comment:** Wisconsin Lake and Pond Resource suggested the permit waiver cited in draft s. NR 107.04 (3) (b) 6., "Privately accessible ponds that are less than 0.1 acres in size and are lined, with no groundwater connection to waters of the state," be amended as follows: "Privately accessible and/or shared ponds of any size which are lined, do not have a history of being a lake or stream or of being part of a lake or stream, and are not hydrologically connected to a natural navigable waterway and that does not discharge into a natural navigable waterway except as a result of storm events."

**Department Response:** The department agrees the permit waiver for ponds should be expanded to incorporate more waterbodies on private land that are exempt from the permitting process. The department has expanded the waiver, incorporating components of the commentors' suggested language: "Privately accessible ponds<sup>3</sup> less than .5 acres in size, which have a synthetic, artificial liner, do not have a history of being a lake or stream or of being part of a lake or stream, and are not hydrologically connected to a water of the state and that does not discharge into a water of the state." The original provision of .1 acre privately accessible ponds in the draft rule waived up to 41 previously permitted small waterbodies. The change to the waiver greatly expands the number of waterbodies which may be waived from permitting.

**Comment:** Wisconsin Lake and Pond Resource questioned why the department continues to require aquatic plant control permits for private, artificial waters, stating this is inconsistent with s. 30, Stats. They also commented that public trust doctrine and past case law have shown that public trust does not apply to artificial navigable lakes or ponds.

**Department Response:** Chapter NR 107 regulates waters of the state as defined in ss. 23.24 (1) (k) and 281.01 (18), Stats. This includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction. The scope of ch. 30, Stats., is limited to navigable public waters only.

**Comment:** Wisconsin Lake and Pond Resource commented saying the 10 acre threshold for the three small waterbody classifications should be removed so there is no maximum size threshold for pond or private water.

---

<sup>3</sup> In draft NR 107.03 (30): a privately accessible pond is a body of water 10 acres or less, on the land of one owner, with no surface water discharge or a discharge that can be controlled to prevent chemical loss and no public access.

**Department Response:** The 10 acre size threshold was determined by using current ch. NR 107's threshold for large scale control. A size threshold was set to create a clear delineation for planning requirements. Waterbodies less than 10 acres in size are exempt from planning requirements in ch. NR 107, even if they are conducting large scale control or AIS population control.

**Comment:** Wisconsin Lake and Pond Resource, The Pond People and Wisconsin Manufacturers and Commerce commented the three different categories of small waterbodies were confusing.

**Department Response:** The department modified the language of each of the three small waterbody classifications to reduce confusion. The department reinstated existing language specifying surface water "discharges, or a discharge which may be controlled." This language has been used since 1989 and may reduce some of the confusion upon rule implementation. In addition, the department removed the provision stating a business open to the public with a waterbody on their property could not be considered a sole owner of a privately accessible pond. By removing this provision, golf courses, campgrounds and other businesses who are the sole owner around a body of water, without a surface water discharge or public access easement may be considered a privately accessible pond. Finally, the department removed the provision which stated a public pond would need to resubmit for public notice every year that the permit was issued for, which will reduce administrative costs for permit applicants.

These provisions were not modified. Permit applications for waterbodies with public access or a surface water discharge will be required to be posted on the department's webpage for public notification for 14 days. Permit applications for waterbodies with multiple owners will be required to share the permit application with the other homeowners around the waterbody. Permit applications for waterbodies entirely confined on the land of one owner, with no public access or surface water discharge have the fewest permitting requirements. All of these waterbodies under 10 acres are eligible for a 5 year permit.

The department will release a plain language communication document walking permit applicants through the proposed permit process to facilitate a smooth transition.

**Comment:** Wisconsin Manufacturers and Commerce suggested the department adopt pending legislation provisions in place of what is in draft rule.

**Department Response:** The proposed rule recognizes and incorporates some of the intended goals in the vetoed bill for more streamlined regulations for small waterbodies. The proposed rule creates three distinct categories to focus public oversight where there is public interest. Also, where there is a need to protect sensitive, threatened, and endangered species, many of which thrive in small waterbodies. The department is opposed to the vetoed changes to s. 23.24, Stats. The bill would have removed social and ecological safeguards for waters under 10 acres without public access and surface water discharge. These waters range from small backyard ponds to natural navigable waters, and many of these are named public inland lakes. A minimum of 45,000 waters of the state would have been removed from the department's protective oversight. In addition, the permitting process ensures the state's ability to meet its legal obligations to the Ojibwe Bands and the Clean Water Act.

**Comment:** Wisconsin Builders Association commented that the changes will affect the development process when water retention ponds are established in a new subdivision, which will increase costs.

**Department Response:** There are no provisions in ch. NR 107 which dictate how water retention ponds should be built. Chapter NR 107 regulates the control of aquatic plants. Furthermore, the proposed provisions in proposed rule provide reduced regulation for aquatic plant control on stormwater retention ponds. Under the proposed rule, control of emergent vegetation in and around stormwater

management structures is waived from permitting. In addition, stormwater retention ponds with multiple homeowners around them, with no surface water discharge or a controlled discharge, will no longer be required to conduct public notice of the proposed control.

**Comment:** One member of the public asked for clarification on why small waterbodies have a permit expiration date of November 1<sup>st</sup>, unlike October 15<sup>th</sup> for waterbodies over 10 acres in size.

**Department Response:** The expiration date set for waterbodies greater than 10 acres in size is extended two weeks beyond what is in current ch. NR 107, to account for climate change impacts in the state. The rationale behind management of certain types of small waterbodies, including ponds and stormwater retention ponds, are different than lake management. Management can occur later into the fall for these waterbodies.

**Comment:** Wisconsin Lake and Pond Resource suggested the privately accessible pond name be shortened to “private pond” and should include those waters with multiple landowners.

**Department Response:** The term “privately accessible pond” was chosen because while the land surround the waterbody may be privately owned and only accessed by that owner, the body of water itself is a water of the state. These waters have the least number of permit requirements associated with them. Waterbodies with multiple homeowners surrounding them are named “shared ponds” because multiple individuals have access to that waterbody. These waterbodies are required to share an electronic or paper copy of the permit application with each neighbor so everyone around the waterbody is informed of what happens on the shared water.

**Comment:** The Pond People commented that the use of dyes would not be allowed on public ponds in draft rule.

**Department Response:** The pesticidal use of dyes is allowed for privately accessible and shared ponds.

## Best Management Practices

**Comment:** Wisconsin Wetland Association commented in support of the incorporation of Best Management Practices (BMPs) into the planning and permitting process. They supplied suggestions for ways to develop BMPs for wetland management, and indicated they would work with the department and wetland consultants to develop BMPs.

**Department Response:** The department agrees BMPs may be a useful tool to encourage implementation of beneficial standards and provide customer service to those who seek services for aquatic plant control. The department also agrees collaboration with technical experts will be necessary for the creation of BMPs.

**Comment:** United Phosphorous Limited suggested the department create a matrix to identify under what criteria a BMP would be used, with site specific parameters including financial metrics to remove human bias regarding which tool should be selected.

**Department Response:** The department agrees best management practices will need to incorporate site specific parameters, and sees the value in a matrix as described. BMPs will be designed to capture the available or appropriate management options for specific scenarios.



**Comment:** Wisconsin Manufacturers and Commerce commented that BMPs should not be in guidance, but must be in draft rule.

**Department Response:** BMPs are intentional actions taken as part of a control effort to avoid or minimize adverse impacts of the treatment. BMPs are not required under the rule and are not statements of general policy. The proposed rule is structured such that the use of BMPs provides an optional pathway to reduced regulatory requirements. The department is not seeking to mandate or impose BMPs in any particular situation. Accordingly, no rule is required for the creation of BMPs. Furthermore, codified BMPs would be less flexible to change and modify as better information and technology emerges.

## Surface Water Grants

**Comment:** One member of the public commented that having two separate processes for plans under surface water grants and aquatic plant management would be difficult for the general public to understand. They suggested the surface water grant planning program be terminated to make the rules the same for each. They stated grants will be necessary to assist lake groups with conducting aquatic plant management protocols under the proposed rule.

**Department Response:** Planning projects conducted under ch. NR 193 are applicable to a range of surface water management challenges, including aquatic plant management. Rather than terminating the ch. NR 193 planning process, the proposed revisions ensure planning supported under ch. NR 193 and planning under ch. NR 107 are aligned and cross-compatible. As stated under proposed s. NR 107.05 (6), aquatic plant management and protection plans written under s. NR 193.32 (1) (f) and consistent with s. NR 193.33 may be approved to satisfy the conditions of s. NR 107.05 (1). Additional revisions to s. NR 193.32 (1) (f) clarify that aquatic plant management and protection plans pursuant to permitting under ch. NR 107 may be eligible for ch. NR 193 cost sharing. Finally, activities to support planning, like aquatic plant community assessments and monitoring, remain eligible under ss. NR 193.32 (1) and 193.63.

**Comment:** One member of the public suggested an insertion to ch. NR 107 stating: “NR107.06(7) Permit Fee Waived – The permit fee shall be waived when control is performed as part of a DNR Surface Water Grant covering control activities on the lake.” They commented if this was not possible that permit fees be included as an expense under the grant, and noted that reimbursement is possible in ch. NR 107.

**Department Response:** The department made no changes to NR 107 based on this comment. Permit fees are eligible expenses under a surface water grant. As stipulated under s. NR 193.06 (1) (b) 4., the department may reimburse fees necessary for federal, state or local permits required for the implementation of a project supported by ch. NR 193.

**Comment:** Wisconsin Wetland Association commented that it is important to offer funding options for those who will need an APM plan. They noted concern that more applicants to the planning grant funds may shift allocation of limited resources towards APM at the expense of other types of wetland, lake and river restoration planning and management. They stated the surface water grant program should manage this added pressure so restoration projects are not lost.

**Department Response:** The department proposes additional text to s. NR 19.32 (1) (f) that clarifies the program’s continued support of comprehensive management planning for surface water protection and restoration. The department moved material formerly presented in a note to two substantive subsections. We distinguished between comprehensive management plans that take a holistic

approach to planning for ecosystem protection and restoration and “focused” management plans that are written to address a specific management challenge like aquatic plant management. While we anticipate increased draw for Surface Water Planning projects to help fund Aquatic Plant Management and Protection Plans, the surface water grant program will also continue to support the Comprehensive Management Planning program outlined under s. NR 193.05, and now under s. NR 193.32 (1) (f) 1.

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis  <input type="checkbox"/> Original   <input checked="" type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date 4/13/22</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)  NR 107 – Aquatic Plant Management  NR 109 – Aquatic Plants: Introduction, Manual Removal and Mechanical Control Regulations  NR 193 – Surface Water Grant Program  (CR 22-002)</p>	
<p>4. Subject  Aquatic plant management, manual removal and mechanical control regulations, aquatic habitat protection, and surface water grants. WY-29-19</p>	
<p>5. Fund Sources Affected  <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input checked="" type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input checked="" type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 42900</p>
<p>7. Fiscal Effect of Implementing the Rule  <input type="checkbox"/> No Fiscal Effect   <input checked="" type="checkbox"/> Increase Existing Revenues   <input checked="" type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs  <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply)  <input type="checkbox"/> State's Economy   <input checked="" type="checkbox"/> Specific Businesses/Sectors  <input checked="" type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers  <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).  <b>\$1,746,650.00 over the first five years.</b></p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?  <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule  The objective of the proposed rule is to bring the policies of the state's aquatic plant management (APM) program into alignment with current state and federal law, modern technology, the scientific understanding of the control of aquatic invasive and nuisance-causing species, as well as the protection of native aquatic plants, aquatic habitats, water quality and public health.</p> <p>The current program processes and requirements are based on an outdated administrative rule that does not incorporate the emergence of the internet, modern technologies, new scientific understandings, and changes in urban development. This creates inefficiencies of process and policy implementation that affect all stakeholders.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.  The activities regulated under ch. NR 107, Wis. Adm. Code, are voluntary activities. However, private professional service contractors and consultants, individual riparian landowners, lake organizations including lake districts and associations, local governments and other stakeholders seeking to control aquatic plants in state waters will be affected by the proposed rule. These stakeholders were represented in an "APM Study Group" that examined the aspects of APM in Wisconsin and reviewed the APM Strategic Analysis and the scope statement for rule development. The department held public meetings on the policy proposals for rule development to consider stakeholder's comments during rule drafting. The department contacted these entities during the economic impact analysis (EIA) comment period via email. Other entities that may have interest in this rule, including Wisconsin Lakes, Wisconsin Wetland Association, Wisconsin Manufacturers and Commerce, Great Lakes Indian Fish and Wildlife Commission, Midwest</p>	

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

Aquatic Plant Management Society, and The Nature Conservancy were contacted during the EIA solicitation period for comments.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

The department prepared the updated EIA with input from lake associations, lake districts and local government units that may be most affected by the proposed rule. This included lake districts and counties. Based on the last five years of permit data, these entities are the primary organizations and local units of government who seek APM permits.

There are currently 240 lake districts in Wisconsin. The department solicited information from these groups through Wisconsin Lakes and via GovDelivery during the solicitation and comment period process of the draft EIA. Individuals from three lake districts provided comments.

During the public comment period, one entity noted the department did not reach out to county governments. The department coordinated with Dane county, who manages one of the largest aquatic plant harvesting operations in the state, on the economic impact of the draft rule.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The integrated aquatic plant management program is a voluntary program, unless a species classified as a prohibited species in ch. NR 40, Wis. Adm. Code, is found. Local lake districts, associations and private landowners may choose whether to seek aquatic plant control permits. The last five years of permit data show the majority of aquatic plant control activities are conducted by these entities. The Surface Water Grants program provides 66% cost-sharing for the development of aquatic invasive species (AIS) management plans. Grants are also available to control aquatic invasive plants.

The types, number, and acreages of permits vary on an annual basis. The costs estimated below are based on the department's experience with lake associations and districts, as well as wetland practitioners. Historical permit data, cost analysis from the Surface Water Grant, standard hourly rates for administrative work and cost estimates provided by entities and individuals during the EIA solicitation period were used to estimate the gross cost of rule implementation.

In the *Strategic Analysis of Aquatic Plant Management in Wisconsin*, Wisconsin DNR, 2019, the department estimated that \$9.4 million is spent each year on APM in Wisconsin. Of that, approximately half is spent by lake associations and districts, non-governmental organizations and municipalities. The remainder is spent by the department through grants and land management.

**(A) Economic Impact on Businesses:**

In 2020, 77 businesses provided aquatic plant management services in Wisconsin. The cost of compliance with proposed ch. NR 107, Wis. Adm. Code, is not directly placed on these businesses. The department expects a net positive gain for business as a result of the proposed rule.

**(B) Economic Impacts on Local Governments, Utility Rate Payers and Public Entities:** Entities impacted by the rule will experience changes (increases and reductions) in costs associated with planning, monitoring, permit waivers, and public notifications.

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

Estimation of Implementation and Compliance Over the First Five Years	
	Costs
Planning	\$578,500.00
Monitoring	\$352,875.00
Revenue	\$815,275.00
<b>Total Over the First Five Years</b>	<b>\$1,746,650.00</b>
Cost Reductions	
Maximum Waiver Reductions	\$160,187.00
Pond, Wetland, Mechanical 5 Year Permit	\$117,200.00
Public Notification	\$297,000.00

#### **\*Financial Assistance through Surface Water Grants**

The Surface Water Grant program provides 66% cost-sharing for the development of aquatic plant and aquatic invasive species (AIS) management plans. The department intends to assure a sizable portion of the planning funds are available each year for APM planning, which will subsidize the overall cost of compliance statewide. Grants are also available to control aquatic invasive plants. APM permit fees are a reimbursable expense for an applicant that has also received a surface water grant for implementation. From 2016-2020, the annual state appropriation was nearly \$4 million on AIS projects. Within that \$4 million, over \$1 million was allocated to AIS planning and \$1 million was allocated for control of AIS each year.

#### **I. Planning:**

During the public comment period on the draft rule, multiple entities commented that the scope of plans required by the proposed rule was too extensive. As a result, the department modified the proposed rule to clarify and reduce when a plan is needed for aquatic plant control. In the proposed rule, the department proposes the creation of a focused aquatic plant management plan for most control activities in the state once every five years. The department proposes plan templates based on the plan elements in the proposed rule, as a fillable form, to assist permittees and reduce the length and complexity of these targeted aquatic plant control plans. The cost to complete these plans will be less as a result. The templates will be designed for non-professionals who could complete most of the planning without hiring a consultant, though many communities may choose to hire outside help. In either case, state cost-share grants are available.

Multiple entities stated the proposed cost estimates in the EIA were fair and accurate and multiple entities commented that the cost estimates were low. The department increased planning costs based on public comments during the economic impact analysis solicitation period. During the public comment period on the draft rule, one entity commented the cost estimates were still too low for planning. The department acknowledges current price increases and inflation may impact the cost estimates previously provided. The department believes the updated cost estimates depict a reasonable range of costs entities can expect under the updated planning requirements. The median cost of monitoring was increased by \$300, the cost range of data analysis was increased by \$50, the cost range of plan writing was increased by \$500, and the cost of a newspaper ad was increased by \$10.

The department clarified when a plan is required in the proposed rule. Plans will be required for large scale control, long-term management of AIS populations, and for multi-year permits. Small scale control for navigational relief will not require plans, and an additional waiver for waterbodies confined entirely by the land of one owner was included. The department assumed all permit applicants for mechanical harvesting and wetlands would seek a five-year permit. The

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

department assumed all large scale control projects were for the long-term management of AIS populations. Current permit data pulls information regarding the goals of control, and one option is control of invasive exotics. However, checking that box does not necessarily mean long-term AIS control is the goal of management. Many permits check multiple reasons for control. For this reason, the department cannot predict the exact number of plans that will be submitted for long-term AIS control. As a result, the department conservatively assumed the same number of plans may be required at the outset of rule implementation as was predicted during the EIA solicitation and public comment periods. Although, the number of required plans is likely lower than predicted.

The department estimates around 400 to 450 waterbodies will be required to create aquatic plant management plans under the proposed rule structure. However, around 345 of those waterbodies have existing management plans that may not need to be updated or need minor updates upon rule promulgation. Approximately 55 to 100 waterbodies may need plans at the outset of rule implementation. For the purposes of the cost analysis, the department assumed 100 waterbodies will need plans at the outset of rule implementation. Lakes account for nearly 70% of the plans, wetlands the remaining 30%.

For those waterbodies, the estimated cost will be:

	Low Cost Range	High Cost Range
<b>Average Cost Range of a Single Lake Plan</b>	\$3,600.00	\$9,300.00
<b>Average Cost Range of a Single Wetland Plan</b>	\$1,400.00	\$7,100.00

The costs enumerated in the table above would recur every five years. Plans may be granted an extension for an additional five years; in which case the cost of a plan update would be on the low-cost range.

Planning Costs	# of Plans	Median Monitoring	Data Analysis	Plan Writing	Notification	Low Cost Range	High Cost Range
Lake Plans	70	\$3,500	\$0-200	\$0-\$5,500	\$50 newspaper ad, \$40 administrative costs	\$252,000.00	\$650,300.00
Wetland Plans	30	\$1,300	\$0-200	\$0-\$5,500	\$50 newspaper ad, \$40 administrative costs	\$42,000.00	\$212,700.00
<b>Total Cost Range at Implementation</b>						\$294,000.00	\$863,000.00
<b>Average Cost at Implementation</b>						\$578,500.00	

### **II. Monitoring:**

The department increased the estimated monitoring costs as a result of public comments during the EIA solicitation period. During the public comment period, the department received comments from multiple entities regarding the costs

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

of monitoring, stating the costs were too low. As a result, the department adjusted monitoring costs to reflect inflation and cost increases. The median cost of a point intercept survey was increased by \$300.

All associated costs for monitoring were created assuming similar numbers and types of permits will be submitted to the department as submitted in the past two to three years. The monitoring costs were identified by reviewing Surface Water Grant cost data and APM permit data. The median permitted waterbody size in the state is 212 acres.

#### A. Monitoring Costs for Large Scale Chemical Control on Waters Greater than 10 acres:

Based on the last five years of permit data, 7-10% of the anticipated permits may have large scale effects which achieve whole lake concentrations under the proposed rule, which triggers a requirement for a pre and post-control evaluation survey.

Number of Lake, River, Stream Permits	Anticipated Permits with Whole Lake Effects	Median Cost of Pre Control PI Survey	Median Cost of Post Control PI Survey
465	7-10%	\$3,500	\$3,500
<b>Total Cost of Monitoring Over 2-3 years</b>			\$7,000
<b>Total Average Range of Monitoring Costs Over 2-3 Years</b>			\$227,850 - \$325,500
<b>Average Total Cost</b>			\$276,675.00

#### B. Monitoring Costs for Large Scale Mechanical Control on Waters Greater than 10 acres:

The department adjusted the proposed rule to reduce monitoring requirements for mechanical harvesting operations as a result of public comments. Pre and post surveys will no longer be required. Instead, a survey conducted every 5 years with a plan update will be required. The average cost of a point intercept survey was increased throughout the analysis, but the number of surveys required for mechanical harvesting has reduced. The costs were adjusted below as a result.

Based on recent permit data, approximately 5% of the anticipated permits are expected to have large-scale effects under the proposed rule.

Total Number of Mechanical Lake Permits	Anticipated Permits with Large Scale Effects	Median Cost of PI Survey
220	5%	\$3,500
<b>Total Cost of Monitoring Over 5 years</b>		<b>\$3,500</b>
<b>Average Total Cost</b>		<b>\$38,500</b>

#### C. Monitoring Costs for Large Scale Control of Wetlands:

Based on recent permit data, 30-35% report acreages which may have large scale effects under the proposed rule.

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Number of Wetland Permits	*Anticipated Permits with Large Scale Effects	Avg. Cost of Pre Control PI Survey	Avg. Cost of Post Control PI Survey
100	30-35%	\$580/day	\$580/day
<b>Total Cost of Monitoring Over 2-3 years</b>			\$1,160
<b>Total Average Range of Monitoring Costs Over 2-3 Years</b>			\$34,800 - \$40,600
<b>Average Total Cost</b>			\$37,700.00

\*The median reported treated acreage for all wetland permits was 3.26 acres. As a result, the 30-35% estimate from the department may be high for the total number of wetland control activities exceeding the large-scale threshold in the rule proposal. That estimate was set based on the acreage amounts submitted on permit applications.

### III. Permit Fee Revenue:

During the EIA solicitation period, entities noted a discrepancy in the permit fee revenue section. Specifically, the original EIA estimate only incorporated one year of revenue, and did not add in the additional revenues from years 2 through 5. This was corrected prior to the public comment period on the draft rule.

Proposed Fee Structure	Fees capped to \$2,500	
	Year 1	Years 2-5
Chemical Waters < 10 acres	\$50 base plus \$30 annual fee	\$30/ year
Chemical Lakes, Rivers, Streams	\$75 base plus \$50/acre round up	\$75 base plus \$50/acre round up
Chemical Wetlands	\$75 base plus \$50/acre round up	One-half Year 1 fee but not less than \$75
Mechanical Lakes, Rivers and Streams	\$75 base plus \$50/acre round up	One-half Year 1 fee but not less than \$75
Mosquito	\$75 base	\$75 base

#### Permit Fee Example:

Permit Type	# of Total 2020 Permits Assigned to Each Type	Proposed Rule - Revenue Year 1	Proposed Rule - Revenue Years 2 – 5 (per year)
Chemical - Ponds/Wetlands (Public/Shared/Private Accessible, <10ac)	1402	\$112,400	\$42,150
Chemical - Lakes, Rivers, Streams, Ponds >10ac	285	\$191,725	\$191,725
Chemical - Wetlands	13	\$24,275	\$12,138
Mechanical	158	\$98,350	\$50,062
Mosquito	4	\$300	\$300
Exemptions/Waivers (2020 exemptions, Ponds <0.1ac, etc)	135	0	0
*Refunds		Unknown	
<b>Total</b>	<b>1997</b>	<b>\$427,050</b>	<b>\$296,375</b>
<b>Total Fee Revenue Over the First Five Years of Proposed Rule</b>		<b>\$1,612,550</b>	
<b>*Total Fee Revenue Over Five Years from Current Rule (NR 107 and NR 109)</b>		<b>\$797,275</b>	
<b>Total Fee Revenue Change Over the First Five Years</b>		<b>\$815,275</b>	

\*The cost estimates in the "Permit Fee Example" table above were created using 2020 permit data. The department ran a



## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

scenario of one year's permit data continued to approximate fee increases over a five-year period if the same number of permits with the same acreages were submitted. However, permits in subsequent years may not have the same acreage amounts, or the same number of permits, which would impact the total fee. Refunds, withdrawals, fee exemptions from 2020 and some waivers applicable in the new rule are not captured with the estimation above. A waiver modification after the public comment period on the draft rule increased the number of ponds which may be exempted from permitting. Up to 600 past permitted waterbodies may be waived from permitting, but the department does not have data on how many of those waterbodies are lined and artificially built, so there is no way to capture those waterbodies in an updated fee assessment. However, it can be stated that the fee estimate above is high as a result.

#### 2020 Permit Fee Data:

Permit Type	Revenue	Number of Permits
Chemical NR107 Non-private	\$123,300	611
Chemical NR107 Private	\$24,500	1,228
Mechanical NR109	\$21,120	158
*Refunds	(\$9,465)	
<b>Total</b>	<b>\$159,455</b>	<b>1,997</b>

#### IV. Cost Reductions:

The draft rule provides new waivers and efficiencies, which will reduce time, cost and effort for entities seeking aquatic plant management permits. These cost reductions were calculated using historical permit data, standard hourly rates of labor and anticipated reductions based on the draft rule. These reductions were incorporated into the original Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals. However, one entity commented that these cost reductions should not be included in the total gross cost estimate. The department has removed these reductions from the gross estimate, but reports these reductions here as part of the record for public consideration.

#### A. Waivers:

Private Pond Waiver			
Maximum Number of Ponds Waived	Permit Fee (5 years)	Administrative Costs	Maximum Reduction Over 5 Years
Up to 600	\$200	\$20/hr	\$132,000

\* After the public comment period on the draft rule, the pond waiver was expanded based on multiple entities' suggestions. The rule now proposes any waterbody less than .5 acres in size, which are synthetically lined, artificial waterbodies with no connection to other waters, should be exempt from the permitting process. This primarily impacts small backyard ponds. The department does not collect permit data on whether a waterbody is lined or not, so an exact estimate of the number of waterbodies removed from permit requirements is not possible. However, 600 past permitted waterbodies are less than .5 acres in size, with no discharge or a discharge which can be controlled. As a result, the permit fees and administrative costs to submit a permit will no longer be compliance costs for up to 600 waterbodies.

\*Wetland Waivers

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Number of Wetlands Waived	Average Treated Acreage	Administrative Cost Reduction Over 5 Years	Permit Fee Estimate Over 5 Years (based on 2020 permit data)	Reduction Range Over 5 Years
40-70	3.5 acres	\$100	\$412.5	\$16,500-\$28,875
<b>Average Reduction Over 5 Years</b>				<b>-\$28,187.50</b>

\*Permits will be waived from permit requirements under the proposed rule for: cut stump control of woody vegetation, hand wicking of invasive emergent vegetation, manual removal of woody vegetation below the ordinary high-water mark (OHWM) in outlying waters, control of emergent vegetation along stormwater ponds, chemical control of emergent vegetation in winter conditions, manual/mechanical removal of woody vegetation above OHWM, and burning.

### **B. Increased Permit Issuance Timelines:**

The permits below are being moved from an annual permit, or a 2-5 year permit, to a 5 year permit in most situations. As a result, permit applicants will no longer need to spend administrative time submitting a permit annually.

<b>5 Year Administrative Cost Reductions</b>			
	Number of Permits	Administrative Costs	Reduction Over 4 years
Chemical Control Waters Under 10 acres	1210	\$20/hr	\$96,800
Mechanical Control	155	\$20/hr	\$12,400
Chemical Wetlands	100	\$20/hr	\$8,000
<b>Total Reduction in Administrative Costs Over 4 Years</b>			<b>-\$117,200</b>

### **C. Public Notification Requirements:**

The proposed rule removes public notification costs for the intent to pursue a permit from applicants.

<b>Public Notification Requirement Cost Reduction</b>			
Newspaper Ad	Administrative Time	*Permits	Annual Cost Reduction
\$50	\$40	660	\$59,400
<b>Total Reduction in Public Notification Costs Over 5 Years</b>			<b>-\$297,000</b>

\*Permit totals include an estimate from all permits for: chemical over 10 acres, wetlands, mechanical, mosquito and approximately 200 public ponds. These data come from 2020 permit records.

### (C) State Economy:

Multiple entities and individuals cited the potential negative impact the draft rule will have to the economy and lake front property values based on the assumption management will largely be curtailed under the proposed rule. The department agrees there are direct and indirect economic benefits of aquatic plant management as documented in the Strategic Analysis for the Aquatic Plant Management Program. The department believes these conclusions drawn by the commentators are erroneous and speculative. The draft rule was created to ensure long-term, effective aquatic plant management control programs will continue across the state. Many lake organizations across the state are already conducting integrated aquatic plant management activities that would comply under the proposed rule. Individual property owners, lake districts and associations, sanitary districts and county governments will continue to conduct beneficial aquatic plant management on a voluntary basis.

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

#### (D) Fiscal Impacts:

APM Permitting: Permit revenue for fiscal years 2018, 2019, and 2020 averaged approximately \$158,000 per year. In Fiscal Year 2020 it was \$159,455 which will be used as a baseline for this analysis. These revenues (appropriation 42900) are used to fund one full-time project position to staff central permit intake (CI) and four limited term staff (LTE) to process permits in field offices under the oversight of a biologist and supervisor. Hours charged by the biologist and supervisors (FTE) or other LTEs are charged to other appropriations, including Lake SEG (Water Resources Account), GPR or federal Clean Water Act S. 106 funds.

Total expenditures for staff and related expenses for administering the APM program amounted to \$475,836 in Fiscal Year 2019 and \$582,720 in Fiscal Year 2020. These figures do not account for time staff may spend on education and outreach about aquatic plants and invasive species. Using Fiscal Year 2020 numbers, subtracting permit fee revenue from expenditures shows that APM permitting is “subsidized” by about \$423,264 a year. Put another way, permit fees currently only cover about 27% of the program costs.

The higher fees proposed in the rule are estimated to generate an additional \$815,275 over the first five years. The “subsidy” drops to \$313,729 per year covering about 53% of program costs assuming staff workload does not appreciably increase. The cost increase would allow 3.5 additional LTE or one dedicated FTE and one LTE.

Workload would almost certainly increase in the first year or two due to the increase in assistance needed to advise on and review plans. After an initial wave of planning, workload should taper off into a more predictable rhythm. After that, other administrative efficiencies in the rule should offset any increases over the long term.

Surface Water Grants: Permittees who need to develop plans under the proposed rule will seek cost-sharing through Surface Water Grants. This will lead to increased demand and consequently competition among applicants for limited funds. This shouldn’t significantly increase costs to the department, because staff will be administering the same amount of money and the same relative number of applications each grant cycle. The use of standardized planning tools (templates) should streamline application review. However, a greater portion of the available funds will go toward aquatic plant management plans as opposed to other surface water planning needs, which may increase customer dissatisfaction or impede or delay other types of surface water planning projects.

---

#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The new rule will streamline the permitting process by eliminating redundancies. The use of electronic filing and notice will be incorporated to further enhance efficiencies for the applicant, industry and the department. It will address concerns from citizen, industry, academia and other governmental units over program consistency, qualification of professionals, planning and standard methodologies for project assessment. The recreated rule will update citations, references, and notes to appropriate statutes and administrative codes and include other housekeeping changes.

The new rule will increase permit issuance timelines for wetlands, mechanical harvesting operations and all waterbodies under 10 acres, which will reduce administrative costs for permit applicants and the department. Several waivers for wetland control activities and small backyard ponds will reduce regulatory costs entirely for a subset of currently regulated waterbodies. The department will also manage public notification on behalf of permit applicants, which will save on administrative costs for permit applicants. These benefits provide a total of \$528,987 in savings over the first five years of rule implementation.

---

Alternatively, if updates to the aquatic plant management rules are not made, the control of aquatic invasive species will

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

be restricted by outdated rule language that was written before AIS control was widely conducted. Waterbodies will continue to be managed with outdated methods leading to reduced efficacy of management and cumulative impacts to the resource. Customers and the commercial applicator industry will continue to be frustrated by adherence to outdated methods of public notification and annual permitting for over a thousand private ponds. Wetland practitioners will continue to be regulated for all of their control activities, as will small backyard pond owners.

#### 16. Long Range Implications of Implementing the Rule

The long-range implication will be the same as the short-range implication of this rule.

#### 17. Compare With Approaches Being Used by Federal Government

Not applicable. The federal government does not regulate the management of aquatic plants.

#### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

##### **Michigan**

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) issues permits for aquatic plant management (APM) using pesticides. Special permit conditions are implemented when chemical treatment may negatively impact threatened or endangered species or result in a public health hazard. Permit application fees vary between \$75 to \$1,500 depending on the acreage proposed for treatment. Michigan EGLE staff may limit the size of treatments for native control projects. A permit is generally not required for mechanical harvesting or manual cutting. Other physical APM activities such as hand-pulling, diver assisted suction harvesting (DASH), benthic mats, weed rollers, and dredging require a permit from Michigan EGLE.

Applicants may also choose to apply for a Certificate of Coverage (COC) under a General Permit (GP) in place of an individual or standard permit for chemical control. Aquatic nuisance control activities covered under a COC must be determined by EGLE to not negatively impact human health and have no more than minimal short-term adverse impact on the natural resources or environment. The GPs for ponds and Great Lakes canals and marinas in Michigan have pre-qualified waterbody lists.

Permits for chemical control typically require the permittee to notify waterfront owners within 100 feet of the area of impact 7 to 45 days before the initial treatment of the season. The notification must be in writing and must include permittee contact information, the list of pesticides and corresponding water use restrictions, and approximate treatment dates. Signs must be posed the day of treatment along the shoreline of treatment areas.

Whole lake chemical treatment must have a Lake Management plan (LMP). The LMP must include the physical and biological characteristics of the waterbody, management goals, history of waterbody management, water quality information, vegetation management plan, description of nuisance conditions, and planned monitoring and evaluation.

##### **Minnesota**

Minnesota DNR requires an Invasive Aquatic Plant Management (IAPM) permit for the management of invasive plants that involves either mechanical removal of plants or application of herbicides to public waters. In order to receive an IAPM permit, target invasive aquatic plants must be found in the proposed treatment area and the treatment method must be selective for the target plants. Additionally, the treatment must minimize potential negative impacts to aquatic habitat and water quality. A permit must also include a justification such as providing riparian access, enhancing recreational use, controlling invasive aquatic plants, managing water levels, or protecting habitat.

A permit is also required for APM activities below the ordinary high-water mark. This includes mechanical and pesticide

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

control of nuisance aquatic plants, transplanting aquatic plants into public waters, relocating or removing bogs, and installing or operating an automatic aquatic plant control device. Permits may be issued to property owners, lake organizations, or local governments. Herbicide control cannot exceed 15% of the littoral area. Mechanical control (or a combination of mechanical and herbicide) cannot exceed 50% of the littoral area. However, a variance can be filed to allow a larger percentage of littoral area to be controlled.

A map of the treatment site and the signatures of affected landowners are required for chemical control permits. Prior to permit issuance, a DNR field inspection is required (but may be waived by the local invasive species specialist). Delineation surveys should be conducted on a seasonal basis for permitted activities. Permit conditions may include limits on the amount of control, restrictions on the methods and timing of control, restrictions on the target species, requirements for supervision of the control, and public notification requirements.

#### **Illinois**

Illinois DNR requires any person, company, or organization that wishes to conduct aquatic plant control (chemical or non-chemical) in the Fox Chain O'Lakes to obtain a Letter of Permission (LOP). To obtain an LOP, a completed application and map of treatment area is needed. Individual property owners with a titled portion to the bottom of the waterbody do not need an LOP if they plan to treat 0.25 acres or less. An LOP is not needed for waterbodies outside the Fox Chain O'Lakes.

For waterbodies outside of the Fox Chain O'Lakes, herbicides may be applied by property owners that own a portion of the lake bottom. Property owners must also ensure herbicides do not affect neighboring portions. For a whole lake treatment, permission of all bottom owners is required. Property owners may apply their own herbicide if it is categorized as a General Use pesticide. Restricted Use pesticides must be applied by a person with a pesticide license.

Illinois EPA has a National Pollutant Discharge Elimination System (NPDES) general permit for pesticides that are applied to, over, or near Illinois waters. Private water owners with waters that discharge to waters of the state are covered under this permit. To be covered under the general permit, private water owners must submit a Notice of Intent (NOI) 14 days prior to pesticide application. There is an annual threshold level of 80 acres. If the annual threshold is exceeded, a Pesticide Discharge Management Plan (PDMP) is required in addition to the NOI. As part of the NOI, the pond owner must contact the Illinois DNR to check for threatened and endangered species in the treatment area. If the waterbody is an artificial impoundment less than 10 acres, it is exempt from the threatened and endangered species consultation. Private waterbodies that do not discharge to state waters do not need an NPDES permit for chemical treatment of aquatic plants.

#### **Iowa**

Iowa DNR requires permits for the introduction and removal of aquatic plants in public waters. These permits may be issued for one to five years. For physical removal permits, plants must be removed by hand-cutting, hand-pulling, hand-raking, or mechanical cutting only. Plants should only be removed to establish a travel lane and all removed plant material must be left in place or collected and composted on the same land owned or used by the permittee.

Permits are also required for cities and counties to use chemical control of aquatic vegetation in water intake structures. For all public waters and some private waters, a permit is required for chemical control of aquatic plants. For chemical control permits, the permittee must have written permission of impacted littoral and riparian landowners. For class C waters, permittees must submit an "Aquatic Pesticide Application to Prohibited Waters" permit application about one month prior to treatment. For Outstanding Iowa Waters (OIW), permittees must apply for an individual NPDES permit. There is no application form, so permittees must send a letter indicating their intent to apply. If a lake is not a class C or OIW, herbicide can be applied by a certified applicator without a specific permit under a general permit. For all lakes

---

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

regardless of classification, records must be kept, and best management practices followed.

A dock owner may remove aquatic vegetation without a permit if the aquatic vegetation creates a hazardous or detrimental condition in the boating area around the dock or covers a minimum of 75% of the boating area around the dock. A dock permittee is limited to the removal of vegetation in a 20-foot radius around the dock, removal of a hazardous condition, or creation of a 15-foot-wide boating pathway. Removal method is limited to hand-cutting, hand-pulling, hand-raking or mechanical cutting devices, excluding automated plant control devices that disturb the bottom substrate.

19. Contact Name Madi Johansen	20. Contact Phone Number 608-712-2798
-----------------------------------	--

This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

---

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule provides a net benefit to small business impacted by the rule. The proposed planning and evaluation components are likely to increase opportunities for business growth in the state.

---

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The department reviewed a list of known private service consultants and contractors for aquatic plant management activities in the state and estimated the number that were likely to meet the definition of a small business, based on staff knowledge of the businesses. The department used a list of all permits from 2019 and 2020 to determine how many permits individual businesses submit as agents of the permit applicant.

---

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements  
 Less Stringent Schedules or Deadlines for Compliance or Reporting  
 Consolidation or Simplification of Reporting Requirements  
 Establishment of performance standards in lieu of Design or Operational Standards  
 Exemption of Small Businesses from some or all requirements  
 Other, describe:

---

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The proposed rule reduces the compliance requirements for small businesses by incorporating less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance or reporting, and consolidation or simplification of reporting requirements in multiple ways.

- Incorporating fewer permitting and reporting requirements.
  - For small waterbodies under 10 acres, approximately 1,200 permits, moving from an annual permit to a five-year permit and reducing permit form requirements.
- For waterbodies requiring public notification, the department is taking the responsibility of creating a public notification system and posting the intent to submit a permit.
  - Agents of the applicant (small businesses) will no longer need to submit newspaper notification for large scale treatments.
- Incorporating fewer permitting and reporting requirements for wetland management:
  - Waiving permit requirements for several control activities entirely.
    - For waterbodies less than .5 acres in size, synthetically lined, artificial with no hydrologic connects, permit requirements are proposed to be waived.
  - Moving from an annual permit to a five-year permit with an approved plan.
  - Lumping reporting requirements to a monthly basis instead of after every control event.
- Fewer permitting requirements for mechanical management:
  - Moving from a three- to five-year permit with a plan to a five-year permit with an approved plan.
- Moving from no allowed permit amendments to incorporating permit amendment options in some instances after the permit has been approved.
- Incorporating multiple options for public or riparian notification for planning and permitting to allow flexibility.

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

---

5. Describe the Rule's Enforcement Provisions

The department follows the enforcement procedures in ss. 23.24 (6), 23.50, and 281.98, Stats.

---

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes  No

---



April 25, 2022

The statement of scope for this rule, SS 024-20, was approved by the Governor on April 20, 2020, published in Register No. 772B on April 27, 2020, and approved by the Natural Resources Board on May 27, 2020. This rule was approved by the Governor on insert date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING,  
REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal** ch. NR 109 and 345.04 (2) (ir) 6. (Note); to **renumber** NR 193.61 (1); to **renumber and amend** NR 193 .32 (1) (f), to **amend** NR 1.06 (8), 150.20 (1m) (qm), (2) (a) 20. and 21., 193.03 (18), 193.07 (1), 193.51 (1) (b) (intro.), (c) and (3) (c) (intro.), 193.53 (3), 193.63 (3) and (4), 193.65 (1), 329.04 (2) (f) 8., 345.04 (2) (h) (intro.), 1., (ir) 4., 5. (Note), and 6.; to **repeal and recreate** ch. NR 107 and to **create** NR 193.32 (1) (f) 1. and 2., 193.51 (3) (c) 3. and (cm), 193.53 (2) (e) and 193.61 (1g) relating to aquatic plant management, manual removal and mechanical control regulations, aquatic habitat protection, and surface water grants and affecting small business.

WY-29-19

**Analysis Prepared by the Department of Natural Resources**

**1. Statute Interpreted:**

ss. 23.22, 23.24, 281.17 (2), and 281.11, Stats.

**2. Statutory Authority:**

ss. 23.22, 23.24, 281.17 (2), 281.11, 281.69, 281.70 and 227.11 (2) (a), Stats.

**3. Explanation of Agency Authority:**

This order implements s. 23.22 (2) (c), Stats., which directs the department to promulgate rules to establish a procedure to award cost-sharing grants to control invasive species. The rule establishes the criteria for determining eligible projects and eligible public and private grant recipients, allowing cash and non-cash contributions as eligible cost share, and considers the recommendations of the Invasive Species Council.

This order implements s. 23.24, Stats., which directs the department to promulgate rules to administer and establish requirements for the issuing of aquatic plant management permits, establish fees, and waive permit requirements for certain activities. The rule authorizes the department to implement efforts to protect and develop diverse and stable communities of native aquatic plants and regulate how aquatic plants are managed. Section 23.24 (3) (b), Stats., authorizes the department to require that an application for a permit contain a plan as to how aquatic plants will be managed.

This order implements s. 281.17 (2), Stats., which requires the department to supervise chemical treatment of waters for the suppression of nuisance-producing organisms that are not specifically regulated under s. 23.24 (2), Stats.

This order implements s. 281.69, Stats., which directs the department to promulgate rules to establish and administer a cost-sharing program to award grants to eligible recipients for lake management projects that improve or protect the quality of water in lakes or the quality of natural lake ecosystems, and for lake

April 25, 2022

classification projects that will classify lakes by use and implement protection activities based on their classification. The rule also allows the department to award contracts for lake classification technical assistance. Section 281.69, Stats., also directs the department to promulgate rules to administer and determine eligible recipients and activities for lake management projects and lake classification projects.

This order implements s. 281.70, Stats., which directs the department to establish and administer a cost-sharing program to award grants to eligible recipients for river planning projects and river management projects. The rule designates eligible activities for planning, management and education, and the types of natural riverine ecosystems that are eligible for funding and allows the department to approve river management plan recommendations for funding under s. 281.70, Stats.

The department has authority to promulgate rules under s. 227.11 (2) (a), Stats., to administer the statutory requirements in ss. 23.22, 23.24, and 281.17 (2), Stats.

#### **4. Related Statutes or Rules:**

Chapter NR 40, Wis. Adm. Code, creates a comprehensive, science-based system with criteria to classify invasive species into two categories: "prohibited" and "restricted." With certain exceptions, the transport, possession, transfer and introduction of prohibited species is banned. The regulations are aimed at preventing new invasive species from getting to Wisconsin and enabling quick action to control or eradicate those that are here but not yet established.

The rule also includes [preventive measures](#) that are not species-specific but instead address common pathways that may allow invasives to spread. These measures complement existing statutes and rules such as the viral hemorrhagic septicemia ([VHS](#)) rules, for example, and include requirements to remove aquatic plants and animals and drain water from vehicles, boats, trailers and equipment upon removal from the water and to remove aquatic plants and animals from any vehicle, boat, trailer or equipment before placing it in any water of the state or transporting it on a highway.

Chapter NR 193, Wis. Adm. Code, establishes procedures for awarding cost-sharing grants to public and private entities to protect and improve the waters of Wisconsin. Rules under this chapter outline grant programs supporting aquatic invasive species control and prevention. This chapter outlines a grant program that provides financial assistance for surface water planning and management projects benefitting the waters of Wisconsin.

Grants awarded under this chapter may be used for education, planning and management projects conducted for the benefit of surface water or aquatic ecosystems. Lake protection funding is available for projects benefitting lakes and lake ecosystems. Lake management grants that include natural resource enhancement services are available for projects benefitting public inland lakes. River protection funding is available for activities benefitting rivers and riverine ecosystems. Aquatic invasive species control funding is available for aquatic invasive species projects conducted on surface waters of the state, including lakes, rivers, streams, wetlands, and the Great Lakes.

#### **5. Plain Language Analysis:**

The aquatic plant management program regulates the chemical, mechanical, physical and biological control of aquatic organisms in order to protect and develop diverse and stable native aquatic plant communities. The program is currently regulated under two separate but related administrative rules, ch.

April 25, 2022

NR 107, Wis. Adm. Code – chemical control and ch. NR 109, Wis. Adm. Code – mechanical, physical, burning, and manual control.

The proposed recreated ch. NR 107, Wis. Adm. Code, unifies all control activities under a consistent set of procedures and policies that align with current state and federal law, improving administrative consistency and efficiency as well as customer service. The proposed rule also updates the program to employ contemporary management practices such as integrated pest management to control aquatic invasive and nuisance-causing species.

Under the current program, wetland management is not separated from other surface waters and the requirements are not reflective of current best management practices. The proposed rule creates a section specific to the conditions, treatment timing and reporting relevant to wetland control. In addition, the proposed rule creates a waivers section, which clarifies existing waivers and adds multiple waivers, primarily for activities in wetland environments.

Under the current program, approximately 1,000 to 1,200 ch. NR 107 permits for small waterbodies such as ponds and stormwater management facilities are issued annually. The majority are reapplied for each year for the same control activity. In addition, the original pond definition in ch. NR 107, Wis. Adm. Code, does not effectively incorporate waterbodies such as stormwater ponds and ponds owned in common such as through homeowner's associations. The proposed rule creates a section specific to ponds less than 10 acres, which allows for five-year permits and fewer regulatory requirements.

The current program requires public notification for large-scale chemical control via newspaper ad. The proposed rule expands riparian and public notification to all control methods and implements modernized methods of notification such as website posts, social media outreach, and newsletters. Under the proposed rule, the department will assume responsibility for public notification of the intent to submit a permit, in order to reduce the requirements for permit applicants.

Under the current program, chemical control is limited to areas within 150 feet from shore in most circumstances and the scope and scale of large-scale chemical control is determined by a strict surface acreage threshold. In addition, plans for aquatic plant management are only required in some cases for mechanical control and there are no provisions for evaluating the success and impacts of ongoing aquatic plant management activities. The proposed rule updates the thresholds for large-scale control activities in wetlands and lakes following current scientific understandings, incorporating an evaluation component for control activities expected to impact a broad area. The proposed rule also requires a plan for large-scale control and long-term aquatic invasive species management so waterbodies can implement multiple control techniques together under one set of goals and objectives and operate under multiyear permits for mechanical harvesting and wetlands.

The recreated rule also updates citations, references, and notes to appropriate statutes and administrative codes and includes other housekeeping changes.

Several updates are proposed to ch. NR 193, Wis. Adm. Code, the administrative rule governing the Surface Water Grant Program, that bring the rule into greater alignment with the recreated ch. NR 107, Wis. Adm. Code. Aquatic plant management and protection plans outlined under the proposed s. NR 107.05, Wis. Adm. Code, are included as eligible projects for surface water planning grants. Plan approval language was added to include conditions specified under the proposed s. NR 107.05 (3) (c),

April 25, 2022

Wis. Adm. Code. Other non-substantive changes are proposed to achieve consistency in definitions and terminology across the recreated chapters.

Finally, updates to subch. IV of ch. NR 193, Wis. Adm. Code, are proposed to align with s. 281.69 (1b) (ae), Stats., regarding grant eligibility for floating treatment wetland systems. Additions include: stipulations for eligibility determination mirroring those considered for individual permits issued under s. NR 30.12 (3m) (c), Wis. Adm. Code, a note about the eligibility of floating treatment wetland systems, and the allowable use of stormwater technical standards developed under subch. V of ch. NR 151, Wis. Adm. Code.

## **6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

The proposed changes for the aquatic plant management program are in accordance with federal regulations:

- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The EPA approves pesticide products for use, classifies according to toxicity and evaluates safety. These rules apply to everyone. The proposed rule revision clarifies the use of these products in waters of the state.
- The Clean Water Act (CWA) regulates waters in the United States, including setting minimum water quality standards, and regulates additives in waters as pollutants. According to the Cotton Council Decision in Federal Court, 553 F.3d 927 (6th Cir. 2009), additives, including pesticides, are required to have a National Pollutant Discharge Elimination System (NPDES). In Wisconsin, the department issues Wisconsin Pollutant Discharge Elimination System (WPDES) in lieu of NPDES, thereby regulating the use at the state level rather than federal level.

## **7. Comparison with Similar Rules in Adjacent States:**

### **Michigan**

The Michigan department of Environment, Great Lakes and Energy (EGLE), issues permits for aquatic plant management (APM) using pesticides. Special permit conditions are implemented when chemical treatment may negatively impact threatened or endangered species or result in a public health hazard. Permit application fees vary between \$75 to \$1,500 depending on the acreage proposed for treatment. Michigan EGLE staff may limit the size of treatments for native control projects. A permit is generally not required for mechanical harvesting or manual cutting. Other physical APM activities such as hand-pulling, diver assisted suction harvesting (DASH), benthic mats, weed rollers, and dredging require a permit from Michigan EGLE.

Applicants may also choose to apply for a Certificate of Coverage (COC) under a General Permit (GP) in place of an individual or standard permit for chemical control. Aquatic nuisance control activities covered under a COC must be determined by EGLE to not negatively impact human health and have no more than minimal short-term adverse impact on the natural resources or environment. The GPs for ponds and Great Lakes canals and marinas in Michigan have pre-qualified waterbody lists.

Permits for chemical control typically require the permittee to notify waterfront owners within 100 feet of the area of impact 7 to 45 days before the initial treatment of the season. The notification must be in writing and must include permittee contact information, the list of pesticides and corresponding water use restrictions, and approximate treatment dates. Signs must be posed the day of treatment along the shoreline of treatment areas.

April 25, 2022

Whole lake chemical treatment must have a Lake Management plan (LMP). The LMP must include the physical and biological characteristics of the waterbody, management goals, history of waterbody management, water quality information, vegetation management plan, description of nuisance conditions, and planned monitoring and evaluation.

### **Minnesota**

Minnesota DNR requires an Invasive Aquatic Plant Management (IAPM) permit for the management of invasive plants that involves either mechanical removal of plants or application of herbicides to public waters. In order to receive an IAPM permit, target invasive aquatic plants must be found in the proposed treatment area and the treatment method must be selective for the target plants. Additionally, the treatment must minimize potential negative impacts to aquatic habitat and water quality. A permit must also include a justification such as providing riparian access, enhancing recreational use, controlling invasive aquatic plants, managing water levels, or protecting habitat.

A permit is also required for APM activities below the ordinary high-water mark. This includes mechanical and pesticide control of nuisance aquatic plants, transplanting aquatic plants into public waters, relocating or removing bogs, and installing or operating an automatic aquatic plant control device. Permits may be issued to property owners, lake organizations, or local governments. Herbicide control cannot exceed 15 percent of the littoral area. Mechanical control (or a combination of mechanical and herbicide) cannot exceed 50% of the littoral area. However, a variance can be filed to allow a larger percentage of littoral area to be controlled.

A map of the treatment site and the signatures of affected landowners are required for chemical control permits. Prior to permit issuance, a DNR field inspection is required (but may be waived by the local invasive species specialist). Delineation surveys should be conducted on a seasonal basis for permitted activities. Permit conditions may include limits on the amount of control, restrictions on the methods and timing of control, restrictions on the target species, requirements for supervision of the control, and public notification requirements.

### **Illinois**

Illinois DNR requires any person, company, or organization that wishes to conduct aquatic plant control (chemical or non-chemical) in the Fox Chain O'Lakes to obtain a Letter of Permission (LOP). To obtain an LOP, a completed application and map of treatment area is needed. Individual property owners with a titled portion to the bottom of the waterbody do not need an LOP if they plan to treat 0.25 acres or less. An LOP is not needed for waterbodies outside the Fox Chain O'Lakes.

For waterbodies outside of the Fox Chain O'Lakes, herbicides may be applied by property owners that own a portion of the lake bottom. Property owners must also ensure herbicides do not affect neighboring portions. For a whole lake treatment, permission of all bottom owners is required. Property owners may apply their own herbicide if it is categorized as a General Use pesticide. Restricted Use pesticides must be applied by a person with a pesticide license.

Illinois EPA has an NPDES general permit for pesticides that are applied to, over, or near Illinois waters. Private water owners with waters that discharge to waters of the state are covered under this permit. To be covered under the general permit, private water owners must submit a Notice of Intent (NOI) 14 days prior to pesticide application. There is an annual threshold level of 80 acres. If the annual threshold is

April 25, 2022

exceeded, a Pesticide Discharge Management Plan (PDMP) is required in addition to the NOI. As part of the NOI, the pond owner must contact the Illinois DNR to check for threatened and endangered species in the treatment area. If the waterbody is an artificial impoundment less than 10 acres, it is exempt from the threatened and endangered species consultation. Private waterbodies that do not discharge to state waters do not need an NPDES permit for chemical treatment of aquatic plants.

### **Iowa**

Iowa DNR requires permits for the introduction and removal of aquatic plants in public waters. These permits may be issued for one to five years. For physical removal permits, plants must be removed by hand-cutting, hand-pulling, hand-raking, or mechanical cutting only. Plants should only be removed to establish a travel lane and all removed plant material must be left in place or collected and composted on the same land owned or used by the permittee.

Permits are also required for cities and counties to use chemical control of aquatic vegetation in water intake structures. For all public waters and some private waters, a permit is required for chemical control of aquatic plants. For chemical control permits, the permittee must have written permission of impacted littoral and riparian landowners. For class C waters, permittees must submit an “Aquatic Pesticide Application to Prohibited Waters” permit application about one month prior to treatment. For Outstanding Iowa Waters (OIW), permittees must apply for an individual national pollution discharge elimination system (NPDES) permit. There is no application form, so permittees must send a letter indicating their intent to apply. If a lake is not a class C or OIW, herbicide can be applied by a certified applicator without a specific permit under a general permit. For all lakes regardless of classification, records must be kept, and best management practices followed.

A dock owner may remove aquatic vegetation without a permit if the aquatic vegetation creates a hazardous or detrimental condition in the boating area around the dock or covers a minimum of 75% of the boating area around the dock. A dock permittee is limited to the removal of vegetation in a 20-foot radius around the dock, removal of a hazardous condition, or creation of a 15-foot-wide boating pathway. Removal method is limited to hand-cutting, hand-pulling, hand-raking or mechanical cutting devices, excluding automated plant control devices that disturb the bottom substrate.

### **9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:**

The department’s strategic analysis of APM in Wisconsin was conducted to help decision-makers and the public to better understand the program and to aid in the crafting of the proposed rule. The final [strategic analysis report](#) summarizes current information on APM, including known and possible environmental impacts, applicable regulations, economic considerations and potential management alternatives for the future. The report references over 500 peer reviewed scientific literature articles, social surveys of stakeholders, and historical environmental analyses.

The stakeholder surveys conducted during strategic analysis development identified four major themes, which are supported in the proposed regulatory structure:

1. Reduce aquatic plant abundance when plants are impeding use of a waterbody.
2. Non-native species control. In some cases, this may include attempts to eradicate a non-native plant species, depending on the species to be controlled or the extent of its spread within a

April 25, 2022

waterbody. In other cases, the goal may be to keep the population of a non-native species from becoming overabundant rather than to remove the population completely.

3. Ecological protection and restoration. Removal of a population that is negatively impacting a lake ecosystem, preservation of biodiversity and habitat, and lake or ecosystem services protection are also drivers of APM.

4. Public education and outreach. Private service providers and department staff as well as lake organization representatives also see APM as an opportunity to educate the public on aquatic ecology and water quality. This goal was described by a subset of interviewees, while the above three goals were well-represented within most interviews.

Current scientific and practical understandings of aquatic plant management support integrated pest management as the modern solution for the long-term management of invasive and nuisance-causing species. EPA, Aquatic Ecosystem Restoration Foundation, Forest Stewardship Council and WDNR Forestry, NHC and Wildlife programs all support or adopt IPM policies.

Additionally, permit data and control records were examined to determine the types, locations and frequency of aquatic plant control in the state over time. This data was used to support the proposed regulatory framework for large-scale control, pond classifications, public notification and riparian notification. These and other findings were used to frame 10 policy white papers used to guide rule development.

#### **10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:**

The cost of compliance with proposed ch. NR 107, Wis. Adm. Code, is not directly placed on businesses. The department expects a net positive gain for business as a result of the proposed rule. In 2020, 77 businesses provided aquatic plant management services in the state.

The department reviewed a list of known private service consultants and contractors for aquatic plant management activities in the state and estimated the number that were likely to meet the definition of a small business, based on staff knowledge of the businesses. The department used a list of all permits from 2019 and 2020 to determine how many permits individual businesses submit as agents of the permit applicant.

Permit data and control records were examined to determine the types, locations and frequency of aquatic plant control in the state over time. This data was used to support the proposed regulatory framework for large-scale control, pond classifications, public notification and riparian notification.

#### **11. Effect on Small Business (initial regulatory flexibility analysis):**

The proposed rule provides a net benefit to small business impacted by the rule. The proposed planning and evaluation components are likely to increase opportunities for business growth in the state. In addition, the proposed rule indirectly reduces the compliance requirements for small businesses by:

- Incorporating less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance or reporting, and consolidation or simplification of reporting requirements in multiple ways.

April 25, 2022

- Incorporating fewer permitting and reporting requirements, and supplying exemptions from public notification for small waterbodies under 10 acres in some instances.
- Incorporating fewer permitting and reporting requirements for wetland management.
- Incorporating permit amendment options in some instances after the permit has been approved.
- Incorporating multiple options for public or riparian notification and removing the requirement of public notification of the intent to submit a permit from the applicant's responsibility.

**12. Agency Contact Person:** Madi Johansen – WY/4, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707-7921; madison.johansen@wisconsin.gov; (608) 712-2798

**13. Place where comments are to be submitted and deadline for submission:**

Written comments were accepted from January 10, through March 1, 2022. A public hearing was held on February 22, 2022.

---

**RULE TEXT**

**SECTION 1. NR 1.06 (8) is amended to read:**

**NR 1.06 (8) SENSITIVE AREAS.** Sensitive areas designated under s. NR ~~107.05 (3) (i)~~ 107.10 are determined to be public rights features.

**SECTION 2. NR 107 is repealed and recreated to read:**

CHAPTER NR 107  
INTEGRATED AQUATIC PLANT MANAGEMENT PROGRAM  
SUBCHAPTER I – GENERAL PROVISIONS

**NR 107.01 Purpose.** The purpose of this chapter is to establish procedures and requirements for issuing aquatic plant management permits to protect and develop diverse and stable communities of native aquatic plants and regulate how aquatic organisms and aquatic invasive species are managed pursuant to ss. 23.22 (2) (b) 2., 23.235, 23.24, and 227.11 (2) (a) and (b), Stats., and interpreting s. 281.17 (2), Stats. Communities of native aquatic plants are recognized as a vital and necessary component of a healthy aquatic ecosystem. Aquatic invasive species are recognized as a potential threat to healthy aquatic ecosystems. This chapter establishes procedures and requirements for issuing aquatic plant management permits for introduction or control of aquatic plants. This chapter identifies other permits issued by the department for aquatic plant management that contain conditions required under this chapter for aquatic plant management, and for which no separate permit is required under this chapter. Introduction and



April 25, 2022

control of aquatic plants shall be allowed in a manner consistent with the principles of integrated pest management and shall minimize the loss of ecological values and consider cumulative impacts of control.

**NR 107.02 Applicability.** A person sponsoring, directing, or conducting control of aquatic plants or introducing nonnative aquatic plants to waters of this state shall obtain an aquatic plant management permit from the department under this chapter. Waters of the state include those portions of Lake Michigan and Lake Superior, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems, and other ground or surface water, natural or artificial, public or private, within the state or its jurisdiction as specified in ss. 23.24 (1) (k) and 281.01 (18), Stats.

**NR 107.03 Definitions.** In this chapter:

**(1)** “Adverse impact” means a control activity exposure or disturbance to a site or organism that may result in any of the following:

(a) Pesticide residues in excess of food or feed tolerances established by the U.S. environmental protection agency or department of agriculture, trade and consumer protection.

(b) Exceedance of environmental media standards or benchmarks for chemicals established by a federal or state agency.

(c) Visible, measurable or documented effects, including death, illness, stunting, deformation, discoloration, sublethal effects, demographic changes, or other effects likely to be detrimental to non-target species or ecosystems.

(d) Significant degradation in individual or cumulative impacts to human health and welfare; fish and wildlife; ecosystem diversity, productivity, and stability; or recreational values.

**(2)** “Applicant” means a person applying for a plan or permit or a representing agent applying for a plan or permit on behalf of a person.

**(3)** “Applicator” means a person applying chemicals to a control site.

April 25, 2022

**(4)** “Aquatic plant” means a plant naturally growing in water, saturated soils, or seasonally saturated soils, and includes all of the following:

(a) Algae.

(b) Submersed, floating-leaf, floating, and emergent plants, and their root stalks, seeds, and other vegetative propagules.

**(5)** “Aquatic vegetative habitat” means an area within an ecosystem where aquatic plants provide for the ecological needs of fish and wildlife, improve water quality, reduce erosion, or provide other ecosystem services.

**(6)** “Beneficial water use activity” means angling, boating, swimming, the use of water for irrigation or drinking, or other navigational or recreational water use activities.

**(7)** “Best management practice” means an activity or combination of activities intended to control a target species while avoiding or minimizing adverse impacts on non-target organisms that is both effective and practicable, considering technological, economic, ecological, and institutional factors.

**(8)** “Body of water” means any lake, river, wetland or pond that is a water of this state.

**(9)** “Ceded territory” has the meaning given in s. NR 13.02 (1).

**(10)** “Completed application” means a completed and signed application form, including the information specified in ss. NR 107.06 and 107.07, and any other information that may reasonably be required from an applicant and which the department needs to make a decision under applicable provisions of law.

**(11)** “Control” means actions that impact aquatic invasive species and other organisms including manual removal, the use of biological agents, dewatering, desiccation, burning, freezing, shading, suffocation, mechanical force, inhibition, potentiation, or metabolic disruption.

**(12)** “Department” means the department of natural resources.

**(13)** “Drainage ditch” means a constructed or reconstructed watercourse for the purpose of draining water from the land or for transporting water for use on the land.

April 25, 2022

**(14)** “Epilimnetic lake wide concentration rate” means the calculated concentration of herbicide in a body of water assuming homogeneous mixing of herbicide throughout the upper water layer above the thermocline.

**(15)** “Hand wicking” means pouring or spraying a pesticide directly onto a wicking glove and applying the pesticide using only the thumb, fingers, and palm of the wicking glove directly to the target species.

**(16)** “Integrated pest management” means an ecosystem-based decision-making strategy informed by current, comprehensive information on pest life cycles and the interactions among pests and the environment that focuses on long-term suppression of pests or their damage by combining monitoring, biological, cultural, physical, and chemical tools in a way that minimizes health, environmental, and economic risks.

**(17)** “Invasive species” has the meaning given in s. NR 40.02 (24).

**(18)** “Lake wide concentration rate” means the calculated concentration of herbicide in a body of water assuming homogeneous mixing of herbicide throughout the entire lake water volume.

**(19)** “Large-scale control” means a project that implements management activities on a non-localized scale, where the management actions are expected to affect significant portions of a lake, stream reach or wetland.

**(19)** “Littoral area” has the meaning given in s. NR 193.03 (22).

**(20)** “Manual removal” means the control of aquatic plants by hand or handheld devices without the use or aid of external or auxiliary power.

**(21)** “Mechanical control” means the control of aquatic plants using machinery designed to cut, shear, shred, crush, uproot, transport, or otherwise affect aquatic plants and which may require the aid of external or auxiliary power.

**(22)** “Navigable waters” has the meaning given in s. 30.10, Stats.

April 25, 2022

**(23)** “Non-target organism” means a species not targeted by a control authorized under this chapter.

**(24)** “Ordinary high-water mark” has the meaning given in s. NR 193.03 (28).

**(25)** “Permit” means a permit to control aquatic plants authorized under ch. NR 107.

**(26)** “Pesticide” has the meaning given in s. 94.67 (25), Stats., and includes a pesticide-fertilizer mixture.

**(27)** “Pesticide overspray” means pesticide deposited outside a target application site as a result of an applicator's failure to control the direct flow or application of pesticide from the application equipment so as to confine it to the target application site.

**(28)** “Pioneering population” has the meaning given in s. NR 193.61 (4).

**(29)** “Plan” means an aquatic plant management and protection plan approved under s. NR 107.05.

**(30)** “Privately accessible pond” means a manmade or natural body of water 10 acres or less that has all of the following characteristics:

- (a) Is located on the land of a single owner not in common ownership.
- (b) Has no surface water discharge or a discharge that can be controlled to prevent chemical loss.
- (c) Has no public access.

**(31)** “Prohibited species” has the meaning given in s. NR 40.02 (41).

**(32)** “Public pond” means a manmade or natural body of water 10 acres or less located on land owned by multiple persons that has any of the following characteristics:

- (a) Has a surface water discharge.
- (b) Has public access.

April 25, 2022

**(33)** “Sensitive area” means an area of aquatic vegetation identified by the department as offering critical or unique fish and wildlife habitat, including seasonal or life stage requirements, or offering water quality or erosion control benefits to the body of water.

**(34)** “Shared pond” means a manmade or natural body of water 10 acres or less that has all of the following characteristics:

(a) Is located on land owned by multiple persons.

(b) Has no surface water discharge or a discharge that can be controlled to prevent chemical loss.

(c) Has no public access.

**(35)** “Small-scale control” means a project that implements management activities on a localized scale, where the management actions do not affect the entire lake, stream reach, or wetland.

**(36)** “Stakeholder” means a person who is involved in or affected by activities authorized under this chapter.

**(37)** “Storm water management structure” has the meaning given in s. NR 528.03 (16).

**(38)** “Sublethal effects” means changes or consequences experienced or demonstrated by organisms or populations that survive exposure to a toxicant, including biological, physiological, demographic, reproductive, developmental, genetic, or behavioral effects.

**(39)** “Target species” means one or more aquatic species the applicant designates as the species to be controlled.

**(40)** “Thermocline” means the zone of rapid temperature change with depth in a body of water, where the water temperature changes at least 1 degree Celsius with every meter of depth.

**(41)** “Waters of the state” has the meaning given in ss. 23.24 (1) (k) and 281.01 (18), Stats.

**(42)** “Water use impairment” means a condition of aquatic plant growth that creates a water use obstruction or causes adverse impacts to the ecosystem.

April 25, 2022

**(43)** “Water use obstruction” means a condition of over-abundant aquatic plant growth that creates a material obstruction that limits a person’s ability to reasonably conduct beneficial water use activities and there are no reasonable alternatives.

**(44)** “Wetland” has the meaning given in s. 23.32 (1), Stats.

**NR 107.04 Waivers. (1) FEE WAIVERS.** The department shall limit the permit application fee to the basic application fee under s. NR 107.06 (2) (a) for any of the following control activities:

(a) A control targeting bacteria on swimming beaches using chlorine or chlorinated lime.

(b) A control targeting algae or other aquatic nuisances that interfere with the use of the water for potable purposes.

(c) A control that is necessary for the protection of public health as determined by the department under s. 23.24 (4) (c) 6., Stats, such as the control of disease carrying organisms in sanitary sewers, storm sewers, or wetlands, when the control is sponsored by a governmental agency.

(d) A control that is conducted by a state agency as defined under s. 227.01 (1), Stats.

**(2) DEPARTMENT.** Any control conducted by the department shall be fee exempt.

**(3) CONTROL WAIVERS.** The department shall waive the permit requirements under this chapter for any of the following control activities:

(a) Manual, mechanical, physical or biological control when conducted in any of the following ways provided that the activity is performed in a manner that does not harm the native aquatic vegetative habitat, result in or encourage regrowth of nonnative vegetation, or cause adverse impacts to fish and wildlife:

1. Manual and biological control of Purple Loosestrife - *Lythrum salicaria*.

2. Manual removal and collection of native aquatic plants for lake study or scientific research

3. Mechanical control and manual removal that is conducted on woody vegetation above the ordinary high-water mark in non-riparian wetlands.

April 25, 2022

4. Mechanical control and manual removal that the department conducts.

5. Burning of emergent vegetation if the control is conducted for conservation purposes and follows a prescribed burn plan.

**Note:** This provision does not waive any existing municipal, county, or department requirements regarding burning.

6. Manual or mechanical control of native aquatic plants in the course of operating an aquatic nursery as authorized under s. 94.10, Stats., on privately owned non-navigable waters of the state.

7. Manual removal of invasive aquatic plants.

8. Manual removal or mechanical control that is conducted on woody vegetation below the ordinary high-water mark on Lake Superior and Lake Michigan.

(b) Chemical control in accordance with label instructions when used in any of the following locations or scenarios:

1. Water tanks used for potable water supplies.

2. Swimming pools.

3. Public or private wells.

4. Private fish hatcheries licensed under s. 95.60, Stats.

5. Waste treatment facilities that have received plan approval under s. 281.41, Stats., or are utilized to meet effluent limitations set forth in permits issued under s. 283.31, Stats.

6. Privately accessible ponds 0.5 acres or less in size, which have a synthetic, artificial liner, do not have a history of being a lake or stream or of being part of a lake or stream, and are not hydrologically connected or discharge to a water of the state.

7. Emergent vegetation when waters of the state are frozen.

April 25, 2022

8. Hand wicking of invasive emergent vegetation provided that the activity is performed in a manner that does not harm the native aquatic vegetative habitat or result in or encourage regrowth of nonnative vegetation.

9. Cut stump chemical application to woody vegetation, provided that the chemical is painted directly onto the stump in a manner that does not result in pesticide overspray, harm the native aquatic plant community, or result in or encourage regrowth of other nonnative vegetation.

(c) Control of emergent vegetation on and around the perimeter of storm water management structures.

(d) Any control conducted by a federal agency.

(e) Control within right-of-ways or drainage ditches provided that fish and wildlife resources are insignificant.

(f) Incidental damage, removal or destruction of aquatic plants by a person engaged in beneficial water use activities or in the course of harvesting wild rice.

**(4) PRIVATE LANDOWNER AND RIPARIAN OWNER WAIVERS.** The department shall waive the permitting requirements of this chapter for any of the following activities:

(a) *Mechanical and manual control on surface waters.* When manual or mechanical control occurs on a body of water 10 acres or less that is entirely confined on the property of one person with the permission of that property owner.

(b) *Mechanical and manual control on wetlands.* When manual or mechanical control occurs on a wetland that is entirely confined on the property of one person with the permission of that property owner.

(c) *Riparian owner control.* When a riparian owner or their agent manually removes aquatic plants from a body of water or uses mechanical devices designed for cutting or mowing vegetation on an exposed lakebed provided that the removal meets all the following conditions:



April 25, 2022

1. 'Removal location.' The removal is conducted on a riparian owner's parcel adjacent to the body of water.

2. 'Native plant removal.' The removal of native aquatic plants is limited to one contiguous area a maximum of 30 feet wide along the parcel's shoreline, and all of the following conditions are met:

a. Any piers, boatlifts, swim rafts and other recreational and water use devices are located within the 30-foot wide zone.

b. The removal is not in a new area or additional to an area where plants are controlled by another method.

3. 'Removal limitation.' The removal is not located in a department designated protection area identified under s. NR 107.07 (7) (i), or in an area known to contain threatened or endangered resources, or floating bogs.

4. 'Riparian rights.' The removal does not interfere with the rights of other riparian owners.

5. 'Wild rice.' The riparian owner shall follow the procedures under s. NR 19.09 (1) if wild rice is involved.

**Note:** Section 30.29, Stats., prohibits the use of self-propelled motor vehicles on the bed of navigable waters.

(d) *Loose vegetation.* When a riparian owner removes dislodged aquatic plants that drift onshore and accumulate along the waterfront.

**NR 107.05 Plan specifications and approval. (1) PLAN REQUIREMENTS.** (a) An applicant shall develop and submit a plan prior to submitting a permit application for aquatic plant control for any of the following activities:

1. Conducting large-scale control under subch. IV.

2. Conducting invasive species population control with the goal of long-term, multi-season suppression of one or more established populations to maintain low abundance or frequency.

April 25, 2022

3. Applying for a multi-year permit under s. NR 107.07 (11) or 107.31 (2).

(b) The department may require an applicant to develop and submit a plan prior to submitting a permit application for aquatic plant control if any of the following conditions apply:

1. The department determines the control may impact a department designated protection area under s. NR 107.07 (7) (b) 7.

2. The department determines the cumulative impacts of applications already approved on the body of water have had adverse impacts to water quality, the stability of the native aquatic vegetative habitat, or fish or wildlife populations.

**(2) PLAN ELEMENTS FOR NEW AND UPDATED PLANS.** (a) *Plan contents.* If required under sub. (1), an applicant shall develop a plan in a format specified by the department. An applicant shall use department-approved monitoring protocols and data to fulfill the requirements of this section. The plan shall include all of the following elements:

1. A physical, chemical, and biological description of the body of water including the aquatic plant community.

2. A description of historical control activities.

3. A description of the target species' life cycle and habitat preferences.

4. A description of the documented impairments to beneficial water uses and ecological effects of the target species.

5. A description of aquatic plant management goals and objectives.

6. An evaluation of the chemical, mechanical, biological and physical aquatic plant control methods available.

7. Recommendations for an integrated aquatic plant management strategy utilizing some or all of the methods evaluated in subd. 6.

8. A strategy for evaluating the efficacy and environmental impacts of the aquatic plant management activities.

April 25, 2022

9. An education and information strategy for all stakeholders.

10. A description of how stakeholders and local governmental entities were involved in the development of the plan, including local units of government, qualified lake organizations, qualified river management organizations, and waterbody users.

(b) *Best management practice waiver.* If the applicant will use a best management practice under s. NR 107.09 as a part of a plan application, the applicant may request that the department waive the requirements of all or a part of par. (a) 1., 3., 4., and 6. to 10. in writing before starting a plan application. The applicant shall provide evidence that the best management practice is appropriate for the conditions presented in and around the body of water.

(c) *Best management practice approval.* The department shall approve or deny the waiver request under par. (b) in consideration of sub. (4) (c).

(d) *Approved protocols and resources.* Department-approved monitoring protocols and data are found on the department's web page and may include any of the following:

1. Aquatic plant baseline monitoring.
2. Aquatic plant pre/post-treatment monitoring.
3. Wetland plant community assessment.
4. Water clarity and chemistry.
5. Invasive species early detection, prevention and monitoring.
6. Lake classification and assessment.
7. Macroinvertebrate community monitoring.
8. Water quality monitoring.
9. Social science.

April 25, 2022

**Note:** The department may create fillable plan templates for applicant use per the requirements in sub. (2). An associated guidebook will be available to provide assistance with filling out a plan application.

**(3) PLAN DEVELOPMENT AND SUBMITTAL.** (a) *Public input.* After a plan application is completed under sub. (2), the applicant shall provide and advertise a 21-day public comment period under all of the following conditions:

1. The plan application shall be posted on a publicly accessible web page for the duration of the public comment period.

2. The public comment period shall be advertised a minimum of one time in a 2-inch x 4-inch advertising format in the newspaper that has the largest circulation in the area affected by the application and shall include all the following information:

- a. A description of the specific body of water affected by the plan.
- b. A description of the location where a person may review the entire plan.
- c. A description of where a person may submit comments in writing via email or postal mail.
- d. A date range when a person may submit comments.

3. The applicant shall also advertise the public comment period in at least one of the following ways to adequately inform stakeholders:

- a. An online newspaper.
- b. A lake association or district web page.
- c. A county-wide press release.
- d. A waterbody organization newsletter.

4. The applicant may also use social media, sign posting or other mediums to inform stakeholders of the comment period.

April 25, 2022

5. The applicant shall include all public comments received with the plan application as an appendix.

(b) *Plan submittal.* The applicant shall submit a plan to the department for consideration at least 45 days prior to applying for a permit issued under this chapter.

(4) PLAN REVIEW AND APPROVAL. (a) *Plan review.* The department shall review the plan and deny or approve the plan in full or in part within 45 days of plan receipt. Within the 45 days, the plan application shall be placed on hold if the requirements of sub. (2) are not complete within the plan application. The department shall notify the applicant in writing of any additional information that is required or modifications necessary to approve the application under the requirements of sub. (2) and par. (c). If the applicant does not submit the additional information or does not modify the plan application as required by the department, the department may dismiss the plan application. The department may require a meeting with the applicant to discuss the plan application before completing the review process.

(b) *Ceded territory comments.* If the plan is for a body of water located in the Ceded Territory, the department shall submit the plan application to the Great Lakes Indian Fish and Wildlife Commission to solicit comment. Comments received within 45 days shall be considered as part of the entire plan application.

(c) *Plan approval.* In deciding whether to deny or approve a plan in full or in part, the department shall consider all of the following:

1. The potential for effects on protection and development of diverse and stable communities of native aquatic plants.
2. The potential for conflicts with goals of other written ecological or lake management plans.
3. The potential for cumulative impacts and effect on the ecological values in the body of water.
4. The potential for the long-term sustainability of beneficial water use activities.
5. The ability of the proposed management strategies to meet the stated goals of management.

April 25, 2022

(d) *Plan activities*. Department approval of a plan does not represent an endorsement for plant management but represents that adequate considerations in planning the actions have been made and fulfill the requirements under par. (c).

(5) PLAN ISSUANCE. (a) *Current plan*. Department approval of a plan expires 5 years after the date of approval.

(b) *Plan revision*. An applicant may request to revise a management plan prior to the 5-year deadline. The department may approve or deny a request for an updated management plan in consideration of sub. (4) (c).

(c) *Plan update*. When a plan expires, the applicant shall update the management plan following the process under subs. (3) and (4) prior to applying for additional permits.

(d) *Plan update waiver*. Before drafting a plan update, the applicant may request in writing that the department waive the requirements in sub. (2) (b) 3. to 4. and 6. to 10. The applicant shall provide aquatic plant baseline monitoring data conducted in the last 2 years to the department with the waiver request. If an aquatic plant baseline monitoring survey has not been conducted since the plan was last approved, a new aquatic plant baseline monitoring survey shall be conducted. The monitoring survey shall not be conducted in a year where large-scale control occurred. The department may waive the requirements in all or in part if the department determines the baseline body of water conditions do not change the plan approval under sub. (4) (c).

(6) PLAN WAIVERS. The department may waive the requirements of this section for any of the following activities when considering the factors under sub. (4) (c):

(a) The control is a part of a response to mitigate the impacts of a pioneering population of a prohibited species.

(b) The control is a part of an early detection and response project funded by an aquatic invasive species control grant awarded under s. NR 193.63 (2).

(c) The control is conducted on a body of water entirely contained on the private property of one owner, with no discharge or a controlled discharge

April 25, 2022

(7) OTHER PLANS. The department may approve a plan that is consistent with the requirements of s. NR 44.04, or 193.33.

(8) EXISTING PLANS. Any plan approved by the department prior to the effective date of this section [LRB inserts date] will be considered to meet the requirements of this chapter until the plan expires.

**NR 107.06 Permit application requirements and fees. (1) PERMIT FORM AND SUBMITTAL.** An applicant shall submit a permit application on a form provided by the department and through a permit system designated by the department. The department shall consider any amendment or revision to a permit application as a new application, except as provided in s. NR 107.07 (11).

**Note:** The department's ePermitting water portal is available at <https://permits.dnr.wi.gov/water/SitePages/Permits.aspx>.

(2) APPLICATION REQUIREMENTS. The permit application shall include all of the following:

(a) A \$75 non-refundable base application fee.

(b) An additional acreage fee of \$50 per acre of control to a maximum of \$2,500 for a proposed project to manage aquatic plants on one acre or larger. The department shall round up partial acres above one acre to the next full acre for the purposes of fee determination.

(c) The applicant's contact information including all of the following:

1. Local street address.

2. Telephone number.

3. Email address.

4. Block, lot, and fire number, when available.

5. If a local address is not available, an applicant shall include the home address and phone number of the permit applicant instead.

April 25, 2022

6. If the permit application is submitted by a representing agent, the representing agent's contact information, including street address, telephone number, email address, and block, lot, and fire number.

(d) The geographic location of the body of water.

(e) A copy or link to the plan approved under s. NR 107.05 (4) referencing the approved control activity.

(f) A description of the water use impairment caused by the target species and the reason for control, subject to all of the following conditions:

1. If the water use impairment is claimed to be a water use obstruction, the permit applicant shall provide evidence demonstrating that the target species interferes with the proposed use of the body of water. The permit applicant shall provide time and location stamped photo evidence or monitoring data from the year before, or both, to satisfy these criteria.

2. Department staff may conduct a site visit to confirm the presence and magnitude of the water use impairment.

(g) A description of the plant community or other aquatic organisms causing the use impairment. The applicant shall provide monitoring data to satisfy these criteria including target species verification.

**Note:** Meander surveys, point-intercept surveys, and photo evidence of target species are all examples of acceptable monitoring data.

(h) A detailed map of the body of water with the proposed introduction or control area dimensions clearly shown.

(i) A list by name of owner, riparian to the control area, that includes all of the following information:

1. Local Street address.

2. Telephone number.

3. Block, lot, and fire number, when available.



April 25, 2022

4. If a local address is not available, the property owner's home address, phone number, or email address.

5. If a private person is doing plant introduction or control, the name of the owner riparian to the management area, the street address or block, lot, and fire number for the proposed introduction or control area, when available, and local telephone number or email address or other pertinent information necessary to locate the riparian property.

(j) The type of equipment and methods to be used to conduct the proposed control activities. For chemical control, the applicant shall include the product names of chemicals proposed for use and the method of application. Proposed chemicals shall be linked to specific target species.

(k) A description of any other control activities that the applicant intends to carry out in or abutting the management area described in the permit.

(L) The area used for removal, reuse or disposal of aquatic plants for mechanical and manual removal.

(m) For chemical control, the name of any person or commercial applicator providing control services, and the applicator certification number and business license of the person and company conducting control.

(n) For chemical control, a lake wide herbicide concentration rate calculation if the proposed control area exceeds 5 percent of the body of water surface area.

**Note:** Lake wide herbicide concentration is determined by calculating the total concentration of the herbicide's active ingredient in the waterbody using each proposed herbicide's formulation and rate of application assuming a homogeneous mixing of herbicide throughout the entire volume of the waterbody. If the body of water is anticipated to be stratified at the time of treatment, the calculation is made considering only the estimated volume of the upper layer above the thermocline instead of the total volume of the waterbody, to create the epilimnetic lake wide concentration rate.

**(3) AQUATIC NURSERY GROWER.** An application made by a licensed aquatic nursery grower for harvest of nursery stock may omit the information required under sub. (2) (e), (f), and (j) to (L).

April 25, 2022

**(4) NOTIFICATION OF INTENT.** (a) *Notification requirements.* The applicant shall certify to the department that a copy of the entire permit application will be sent to any affected property owners' association, inland lake district, and to all riparian property owners on the body of water within 7 days of permit submittal to the department. An applicant may satisfy the requirement to notify property owners by providing in paper or electronic format any of the following: 1. The internet address leading to the department designed permitting website with information to locate the permit application documents.

2. A copy of the permit application and accompanying documents.

(b) *Applicant responsibility.* An applicant shall determine the appropriate methods that will adequately inform each riparian owner.

(c) *Riparian waiver.* If the control is not large-scale under subch. IV, an applicant may contact the department prior to submitting a permit to propose a list of riparian owners that will be impacted by the control under any of the following scenarios:

1. The control will occur on a lake larger than 2,000 acres in size.

2. The control will occur on a river or wetland.

(d) *Department review.* The department may approve or deny the applicant's proposed riparian owner's list in consideration of riparian owner's rights and natural resource interests.

**(5) NOTIFICATION REQUEST.** The department shall provide a notice of the receipt of a proposed control activity to any person or organization indicating annually in writing a desire to receive such notification.

**(6) REFUNDS.** Permit fees shall be refunded under any of the following circumstances:

(a) *Full refund.* The department shall refund an acreage fee under sub. (2) (b) in its entirety upon the written request of an applicant if the entire permit is denied or if no control occurs in any part of the permitted control area. The department may not provide refunds when control occurs in any portion of the control area specified in the permit.

April 25, 2022

(b) *Partial refund.* The department shall refund an acreage fee under sub. (2) (b) in part upon the written request of the applicant if the permit is issued with a lesser acreage than what was submitted to the department.

**NR 107.07 Permit issuance.** (1) PUBLIC NOTIFICATION OF PERMIT. The department shall make a permit application available for public comment on a department designated website for 14 days upon receipt.

(2) PUBLIC INFORMATIONAL MEETINGS. The applicant shall conduct a public informational meeting in a location near the body of water when a combination of 5 or more persons or organizations request the meeting in writing to the applicant with a copy to the department postmarked or dated within 14 days after the notice is posted on a department designated website. The applicant and meeting requester shall conduct the meeting in accordance with all of the following processes:

(a) *Agenda.* The person who requested the meeting shall state a specific agenda of topics including problems and alternatives to be discussed and provide the agenda to the applicant prior to the meeting.

(b) *Meeting notification.* The applicant shall provide public notice of the informational meeting at least 7 days prior to the meeting. The applicant shall maintain, and provide to the department upon request, documentation of the notice. The applicant shall provide public notice in all of the following forms:

1. In writing to the requestors.

2. In a 2 inch x 4 inch advertising format in the newspaper that has the largest circulation in the area affected by the application, one time.

(c) *Optional meeting notification.* The applicant may also advertise the meeting in an online newspaper, lake association or district web page, or any other location that may adequately inform stakeholders of the upcoming meeting.

(d) *Notice requirements.* The notices under pars. (b) and (c) shall include all of the following:

1. The date, time, and location of the meeting.

April 25, 2022

2. A brief description of the purpose of the meeting.

3. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location.

4. A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special accommodations to participate in the meeting.

5. The name, address, and telephone number of a contact person for the applicant.

(e) *Department involvement.* The department may attend the meeting by request of the applicant or meeting requester to answer technical questions about the plan or permit application. The department may not moderate or facilitate the public informational meeting.

(f) *Public comments.* The applicant shall submit all public comments to the department to be included with the permit document set.

**(3) COMPLETE APPLICATION.** The department shall not consider the permit application complete until the public comment period is finished, or a public informational meeting is conducted. The department shall contact the permit applicant in writing if a permit application is incomplete under s. NR 107.06, to request the information that is incorrect or missing. If the applicant does not supply the information within 14 days, the department may dismiss the permit application.

**(4) PERMIT REVIEW TIMELINES.** Except as provided in sub. (5), the department shall review complete permit applications and issue or deny issuance of a permit within one of the following timeframes:

(a) Forty-five days for permit applications that will affect wild rice or waterbodies in the Ceded Territory. If wild rice is involved, the department shall comply with the stipulations incorporated by *Lac Courte Oreilles v. Wisconsin*, 775 F. Supp. 321 (W.D. Wis. 1991).

(b) Thirty days for permit applications that will have large-scale effects under s. NR 107.41 or bodies of water under subch. V.

(c) Twenty-one days for all other permit applications.

April 25, 2022

**(5) ENVIRONMENTAL IMPACT REPORTS AND CONTESTED CASE HEARINGS.** The department shall issue or deny issuance of a requested permit after receipt of a completed application and approved plan as required under s. NR 107.05, unless any of the following conditions are met:

(a) An environmental impact report or statement is required under s. 1.11, Stats. If an environmental impact is required, the department shall do all of the following:

1. Notify the applicant in writing within 10 business days of receipt of the application.
2. Stop work on the permit request until the report or statement has been completed.

(b) A contested case hearing has been granted under s. 227.42, Stats.

**(6) PERMIT SUSPENSION.** If the department receives a request for a contested case hearing under s. 227.42, Stats., after issuing the permit but prior to the actual control allowed by the permit, the department may suspend the permit until the report or statement has been completed.

**(7) PERMIT REVIEW.** (a) The department may deny issuance of a requested permit if the department makes any of the following determinations:

1. The proposed control activity is not consistent with the department approved plan for the body of water.
2. The aquatic plants are not causing a water use impairment of beneficial water use activities.
3. The proposed control will interfere with the rights of riparian owners.

**Note:** Riparian owner rights include reasonable access to or use of water and to reasonably direct or consume water for domestic, agricultural, or industrial purposes.

4. Any proposed chemical does not have a current department aquatic chemical fact sheet under s. NR 107.21.

(b) The department shall deny issuance of a requested permit if the department makes any of the following determinations:

April 25, 2022

1. The proposed introduction or control will not remedy the water use impairments caused by aquatic plants as identified as a part of the application or will place unreasonable restrictions on existing water uses.

2. The proposed introduction or control will result in a hazard to humans, animals, or other non-target organisms.

3. The proposed introduction or control will cause an adverse impact to threatened or endangered resources.

4. The proposed introduction or control will result in a substantial adverse impact on water quality or the aquatic vegetative habitat.

5. The proposed introduction or control, other than those conducted by the department under ss. 29.421 and 29.424, Stats., will result in adverse impacts on fish, fish eggs, fish larvae, essential fish food organisms, or wildlife, either directly or through habitat destruction.

6. The cumulative impacts of previously approved applications on the body of water have caused substantial adverse impacts over time to water quality or the aquatic vegetative habitat.

7. The proposed control is in any of the following locations identified by the department as approved or proposed, except when the department determines the applicant demonstrated that the project will be conducted in a manner that will not adversely impact the aquatic vegetative habitat or reduce the ecological value of the area:

- a. A sensitive area, under s. NR 107.03 (27).
- b. An area of special natural resource interest, under s. NR 1.05.
- c. A priority navigable waterway, under s. NR 1.07 (3) (a) to (b) and (4) (a) to (f).

8. Any proposed chemical is not labeled and registered for the intended use by the U.S. environmental protection agency and both labeled and registered by a firm licensed as a pesticide manufacturer and labeler with the Wisconsin department of agriculture, trade and consumer protection.

April 25, 2022

**(8) CONDITIONS.** (a) *All control activities.* The department may specify any of the following as conditions of the permit:

1. The quantity of aquatic plants that may be introduced or controlled.
2. The species of aquatic plants that may be introduced or controlled.
3. The areas in which aquatic plants may be introduced or controlled.
4. The methods that may be used to introduce or control aquatic plants.
5. The times during which aquatic plants may be introduced or controlled.
6. The allowable methods used for disposing of or using aquatic plants that are removed or controlled.
7. The methods that may be used to monitor the aquatic plant community.
8. The areas that may be monitored to evaluate the aquatic plant community prior to and following control if the department determines the proposed control area is located in the primary aquatic vegetative habitat of the body of water or a department designated protection area under sub. (7) (b) 7.
9. Reasonable conditions as determined by the department to satisfy the criteria of a best management practice.
10. Reasonable conditions as determined by the department to satisfy the goals and objectives in the approved aquatic plant management plan.
11. Reasonable conditions as determined by the department to be necessary to reduce or avoid impacts in order to meet the standards established in sub. (7).
12. Annual or other reporting requirements to the department that may include information related to subs. 1. To 11.

April 25, 2022

(b) *Surface water grant funded control.* The department shall include conditions under par. (a) in any permit funded by a surface water grant awarded under ch. NR 193 in order to implement the control activities in a manner consistent with the grant agreement and in accordance with all the following:

1. The project proposal.
2. The application.
3. The terms, promises, and conditions.
4. The plans, specifications, procedures, and maps.
5. The estimates, and any assurances attached.

(9) PERMIT DECISION. The department may deny or approve an application in whole or in part consistent with the provisions of subs. (7) and (8). The department shall notify the applicant in writing and state the reasons for the approval or denial.

(10) CONTROL LIMITATION. The department may stop or limit control activities if at any time it determines that control will be ineffective or will result in unreasonable restrictions on beneficial water uses or will produce unnecessary adverse impacts on non-target organisms. Upon request from the applicant, the department shall state the reason for such action in writing.

(11) ISSUANCE TIMELINES. (a) *Mechanical and manual control.* The department may issue a permit for mechanical or manual aquatic plant control for up to 5 years with an approved plan, provided no modifications or changes are made from the original permit or the plan.

(b) *Chemical control.* The department shall issue a permit for chemical control for one year. The department may renew a permit annually under par. (c) if the control area meets all of the following criteria:

1. It is within a designated public rights feature navigation area under s. NR 1.06 (5) (d).
2. It addresses a demonstrated water use obstruction.
3. It is identified within the department approved management plan.



April 25, 2022

4. It is permissible under subs. (7) and (8).

(c) *Multi-year permit fee.* If a permit is issued for multiple years, the applicant shall include a permit application fee of one-half the total original application fee under s. NR 107.06 (1) (a) to (b), but not less than \$75. This fee shall be paid prior to conducting control each year for which the permit is issued.

(d) *Permit expiration.* A permit shall expire no later than October 15 of the calendar year in which the permit expires.

(e) *Renewal revocation.* The department may revoke a permit renewal if at any time the department determines on the basis of new information that treatment as permitted will fail to meet the standards in s. NR 107.07 (7).

**(12) PERMIT AMENDMENTS.** The applicant may submit a written request in a format specified by the department to amend any of the following permit application sections:

(a) The company managing the control.

(b) The individual conducting the control.

(c) The control area if the proposed change is within the scope of the department approved plan.

(d) The disposal site for removed aquatic plants.

(e) The finalized aquatic plant monitoring data.

(f) The trade name of the herbicide to be used if the active ingredient is listed on the permit.

**(13) AMENDMENT CRITERIA.** The department shall grant or deny a request under sub. (12) based on the conditions of the original permit issued and notify the applicant in writing.

**(14) DEPARTMENT APPROVAL.** Department approval of a permit does not represent an endorsement of the permitted control but represents that the applicant has complied with all criteria of this chapter.

April 25, 2022

**(15) CONTROL NOTIFICATION.** (a) *Timeline requirements.* The permit holder shall post at least 2 notification signs at all public access points a minimum of 7 days before the estimated control date or immediately following the receipt of the department approved permit if the control is to occur within the 7 days following the receipt of the department approved permit.

(b) *Access waiver.* The applicant may request that a public access point be excluded from this requirement on the permit application.

(c) *Department consideration.* The department may deny or approve a waiver request as a condition of the permit in consideration of all the following:

1. The size of the area of impact in relation to the size of the body of water.
2. The proximity of a public access point relative to the area impacted by control.

(d) *Sign information.* The first notification sign shall state the intended treatment date and include a map of the control areas and any chemicals approved for use on the body of water. The second notification sign shall provide an internet address or quick response code to direct where the public may access the corresponding department chemical factsheets, the approved permit document set, and the current management plan.

(e) *Control dates.* If a permit holder has not determined the specific control date when the notification signs are posted, the permit holder may state a one-week period in which the control may occur. The permit holder shall update the notification signs with a specific date when the control is scheduled. Mechanical harvesting operations may state a general narrative of the frequency of control weekly or monthly over the control season.

(f) *Sign material and dimensions.* Notification signs shall be conspicuous to the public. Notification sign dimensions shall be a minimum of 8.5 inches by 11 inches. Notification signs shall be made of durable material to remain posted and legible until the completion of the control.

(g) *Sign removal.* The permit holder or representing agent is responsible for sign removal. The signs shall remain posted and legible until the completion of control.

(h) *Department involvement.* The department may create template signage for permit holder use.

April 25, 2022

**(16) CONTROL REPORTS.** (a) *Chemical control.* Except as provided in subch. III, after conducting chemical control, the permit holder shall complete and submit a control report within 30 days on a form supplied by the department. A chemical control report form shall include all of the following:

1. The weather conditions during control.
2. The person who conducted control.
3. The quantity and type of chemical, including the herbicide concentration rate.
4. The specific size and location of each control area.
5. The species present and the species targeted.

(b) *Mechanical and manual control.* Except as provided in subch. III, after conducting mechanical control, the permit holder shall complete and submit an annual control report within 30 days of the last control activity in the calendar year on a form supplied by the department. Mechanical, manual, and physical control report forms shall include all of the following:

1. The quantity and species of all removed organisms.
2. The location of each control area.
3. The disposal site.
4. The name of any individual operating any equipment.

(c) *Immediate submittal.* In the event of any unusual circumstances associated with a control, or at the request of the department, the control report shall be provided to the department immediately.

(d) *No control.* If the control activity did not occur, the permit holder shall submit the control report with appropriate comment by December 31.

**(17) ADDITIONAL REQUIREMENTS.** The department may request that the permit holder provide geo-referenced data of the control area with the control report form as a condition of the permit.

**NR 107.08 Supervision. (1) PURPOSE.** The department may require supervision for any aquatic plant management activity. Supervision may include inspection of the proposed control area, chemicals,

April 25, 2022

and application equipment before, during, or after control. The inspection may result in the department's determination that control is unnecessary or unwarranted in all or part of the proposed area, or that the equipment will not control the proper dosage or is not scale appropriate.

(2) NOTIFICATION DEADLINE. The permit holder shall notify the department staff who issued the permit in writing a minimum of 4 business days in advance of each anticipated control activity with the date, time, location, and proposed size of control. Upon approval of the department, the advance notification requirement may be waived in the permit decision letter

**NR 107.09 Best management practices. (1)** The department shall draft and designate best management practices for aquatic plant management in consideration of the criteria under s. NR 107.07.

(2) The department may consult stakeholders with technical or academic experience while drafting a best management practice.

(3) The department shall post a proposed best management practice for public comment on the department's website for 21 days prior to publication under sub. (4).

(4) The department shall publish best management practices on the department's website.

**NR 107.10 Sensitive areas. (1) DEVELOPMENT PROCESS.** The department may designate any portion of a body of water as a sensitive area under all of the following processes:

(a) The department shall base the identification of sensitive areas on factual information obtained from reputable sources, including all of the following:

1. Field surveys and inspections, including historical surveys for fish, wildlife, rare species, aquatic plants, geologic features, or water quality.

2. Surveys or plans from federal, state, or local agencies.

3. Factual documentation of features or use patterns from property owners, user groups, or knowledgeable users on the body of water.

(b) The department shall consult all relevant department programs to categorize sensitive area designations.

April 25, 2022

(c) The department shall draft a sensitive area report, which may include any of the following:

1. A summary report of the field surveys.
2. A description of any designated sensitive area including its categorization.
3. A list of management recommendations for protection and restoration of the sensitive area.
4. A list of recommendations for an education strategy.
5. A description of the relevant regulations and ordinances for the area.

**(2) PUBLIC NOTIFICATION AND INPUT.** (a) *Preliminary meeting.* The department may hold a preliminary meeting with the affected property owners' association, inland lake district, and riparian property owners to present the sensitive area report and solicit comment.

(b) *Notification of draft report.* After a draft sensitive area report is complete, the department shall give notice of the report in the official state newspaper or the paper of record in the area affected to inform local residents that a draft report is available for review. The department shall provide notice of the report on its website and through its system of electronic notices to state media.

(c) *Notification content.* The notice under par. (b) shall contain the location and description of the possible sensitive area and the basis for the department's determination that the location is likely to contain sensitive areas.

(d) *Public meeting notification.* The department shall conduct a public informational meeting in a location near the body of water if a combination of 5 or more persons or organizations request the meeting in writing to the department within 30 days after the notice is posted on a department designated website. Upon receipt of a request for a public informational meeting, the department shall, not less than 10 days before the meeting, mail written notice to each person who requested the meeting as well as the persons in par. (f), and shall provide notice on its website and through its system of electronic notices to state media.

April 25, 2022

(e) *Public meeting.* At a public informational meeting, the department shall take evidence offered by persons in support of or in opposition to the determination. If the department finds any location not properly classified, the location may not be identified as a sensitive area.

(f) *Sensitive area notification.* The department shall notify any affected property owners' association, inland lake district, and riparian property owner of locations identified as sensitive areas in writing.

(g) *Publication.* The department shall publish all completed sensitive area designations on a map within a department internet site.

**NR 107.11 Other permits and requirements.** A permit or approval issued under subch. II, ch. NR 30 or 40, or s. 31.02 or 281.36, Stats., may contain provisions that provide for aquatic plant management. The permit or approval of the application of lime and alum shall be issued under this chapter unless the department issues a Wisconsin pollutant discharge elimination system general permit for the use of these products. If a permit or approval issued under one of these authorities contains the appropriate conditions as required under this chapter for aquatic plant management, a separate permit is not required under this chapter. The permit or approval shall explicitly state that it is intended to comply with the substantive requirements of this chapter.

**NR 107.12 Prohibitions. (1)** No person may intentionally cut aquatic plants in public, navigable waters without removing the cut vegetation from the body of water.

**(2)** No person may apply dyes for any purpose in waters of the state unless one of the following scenarios is met:

1. The dye is used as part of a study for research purposes.
2. The dye is used in privately accessible or shared ponds.
3. The dye is used by the department.

SUBCHAPTER II  
CHEMICAL CONTROLS

April 25, 2022

**NR 107.20 Purpose.** The purpose of this subchapter is to establish procedures for the use of chemical controls in managing aquatic plants and other aquatic organisms. The department may allow the control of aquatic plants with chemicals registered and labeled by the U.S. environmental protection agency and labeled and registered by firms licensed as pesticide manufacturers and labelers with the Wisconsin department of agriculture, trade and consumer protection.

**NR 107.21 Chemical fact sheets. (1) DEPARTMENT RESPONSIBILITY.** The department shall develop a chemical fact sheet for each of the chemicals in present use for control in aquatic environments in Wisconsin. The department shall develop chemical fact sheets for chemicals not previously used in Wisconsin after the department has received notice of intended use of the chemical. The department shall host chemical fact sheets on department webpages.

**(2) APPLICANT RESPONSIBILITY.** An applicant shall send copies or the internet address of the applicable chemical fact sheets in accordance with the requirements under s. NR 107.06 (4).

**NR 107.22 Permit determinations.** In addition to the standards established under s. NR 107.07 (7), control shall be performed by an applicator currently certified by the Wisconsin department of agriculture, trade and consumer protection in the aquatics and mosquitos category 5.0 if any of the following apply:

**(1)** The control is to be performed for compensation by an applicator acting as an independent contractor for hire.

**(2)** The area to be treated is greater than .25 acres.

**(3)** The product to be used is classified as a restricted use pesticide under s. ATCP 29.01 (36).

**(4)** Liquid chemicals are to be used.

**NR 107.23 Conditions of the permit.** In addition to conditions established under s. NR 107.07 (8), each permit to control aquatic plants with the use of chemicals shall include all of the following conditions:

**(1) GENERAL CONDITIONS.** Chemical controls shall be performed in accordance with label directions, existing pesticide use laws, including ch. ATCP 29, and permit conditions.

April 25, 2022

(2) POSTING CONDITIONS. (a) *Timing.* The permit holder or representing agent shall post signs at the beginning of each control event.

(b) *Posting locations.* Posted signs shall be conspicuous to the non-riparian public intending to use the treated water from both the water and shore. Signs shall be placed along contiguous treated shoreline, at each property directly adjacent to treated properties, and at all public access points. If the control is conducted offshore, the signs shall be posted at each riparian property directly inshore to the nearest shoreline from the control area. If the control will have expected large-scale impacts under s. NR 107.41 (2), signs shall be placed at each riparian property within the area of impact. The department may require posting of untreated shoreline located adjacent to treated shoreline and noncontiguous shoreline.

(c) *Required information.* The posted signs shall state applicable label water use restrictions of the chemical being used, the name of the chemical, and the date of control. For tank mixes, the label requirements of the most restrictive chemical shall be posted.

(d) *Sign construction and dimensions.* The permit holder shall create the signs. Minimum sign dimensions used for posting shall be 8.5 inches by 11 inches or consistent with s. ATCP 29.15. Signs shall be constructed to resist deterioration and remain legible throughout the required posting period.

(e) *Length of posting.* The permit holder shall post the control in accordance with water use restrictions stated on the chemical label, but in all cases for a minimum of one day.

(f) *Signage removal.* The permit holder or representing agent is responsible for sign removal once the water use restrictions have expired.

(g) *Additional requirements.* The department may require bi-lingual signage.

(h) *Template signage.* The department may create template signage for permit holder use.

**NR 107.24 Field evaluation use permits.** When a chemical product is considered for aquatic nuisance control and does not have a federal label for such use, the applicant shall apply to the administrator of the U.S. environmental protection agency for an experimental use permit under section 5 of the federal insecticide, fungicide and rodenticide act as amended, 7 USC 136. Upon receiving a permit, the permit holder shall obtain a field evaluation use permit from the department and be subject to the requirements of this chapter. Department field evaluation use permits shall be issued for the purpose of



April 25, 2022

evaluating product effectiveness and safety under field conditions and shall require all of the following in addition to the conditions of the permit specified in s. NR 107.07:

- (1) The control shall be limited to an area specified by the department.
- (2) The permit holder shall submit to the department a summary of control results at the end of the control season. The summary shall include all of the following:
  - (a) Total chemical used and distribution pattern, including chemical trade name, formulation, percent active ingredient, and dosage rate in the treated water in parts per million of active ingredient.
  - (b) Description of control areas including the character and the extent of the target species present.
  - (c) Effectiveness of the control and when applicable, a summary comparison of the results obtained from past experiments using the same chemical formulation.
  - (d) Other pertinent information required by the department.
  - (e) Conclusions and recommendations for future use.

### SUBCHAPTER III WETLAND MANAGEMENT

**NR 107.30 Purpose.** The purpose of this subchapter is to establish procedures and requirements for issuing plans and permits for introduction of aquatic plants or control of aquatic plants on non-riparian wetlands.

**NR 107.31 Permit issuance. (1) PERMIT REVIEW.** The applicant shall follow the provisions of subch. I, except for the provisions under s. NR 107.07 (11) and (16).

**(2) ISSUANCE TIMELINES.** The department may issue a permit for chemical, mechanical or manual control under this subchapter for up to 5 years if all the following conditions are met:

- (a) The control is authorized under an approved management plan.
- (b) The control is not modified or changed from the original permit or plan.

April 25, 2022

**(3) PERMIT EXPIRATION.** A permit shall expire no later than December 31 of the calendar year in which the permit expires.

**(4) PERMIT RENEWAL.** If a permit is issued for multiple years, the applicant shall include a permit application fee of one-half the total original application fee under s. NR 107.06 (1) (a) to (b), but not less than \$75. This fee shall be paid prior to conducting control each year for which the permit is issued.

**(5) RENEWAL REVOCATION.** The department may revoke a permit renewal if at any time the department determines on the basis of new information that treatment as permitted will fail to meet the standards in s. NR 107.07 (7).

**(6) SUMMARY CONTROL REPORT.** (a) *Timeline.* The permit holder shall complete a control summary report summarizing the previous 30 days control on a form supplied by the department. The permit holder shall submit the form to the department within 30 days of the last control event in the control summary report.

(b) *Chemical control.* A chemical control summary report shall include all of the following:

1. The weather conditions during control.
2. The person who conducted control.
3. The quantity and type of chemical, including application rates.
4. The specific size and location of each control area.
5. The species present and the species targeted.
6. The monitoring results, if required.

(c) *Mechanical control.* Mechanical, manual, and physical control summary reports shall include all of the following:

1. The quantity and species of all removed organisms.
2. The location of each control area.

April 25, 2022

3. The disposal site.
4. The individual operating the equipment.
5. The monitoring results, if required.

(d) *Immediate submittal.* In the event of any unusual circumstances associated with a control, or at the request of the department, the permit holder shall provide the summary control report immediately.

(e) *No control.* If control did not occur, the permit holder shall submit the form with appropriate comment by December 31 of each year the permit is issued.

#### SUBCHAPTER IV LARGE-SCALE CONTROL

**NR 107.40 Purpose.** The purpose of this subchapter is to establish procedures and requirements for the use of large-scale control activities on waters of the state.

**NR 107.41 Monitoring. (1) LARGE-SCALE MECHANICAL, MANUAL AND PHYSICAL CONTROL.** For the purposes of this subchapter, mechanical, manual, or physical control of submerged aquatic plants shall be considered to have large-scale effects if the department determines that the control is conducted in an area greater than 50 percent of the littoral area.

(a) *Survey.* The applicant shall conduct a baseline survey of the aquatic plant community within the body of water following department approved protocols every 5 years.

(b) *Submission of data.* The applicant shall enter the data on a form supplied by the department and submit the data to the department with the permit application.

**(2) LARGE-SCALE CHEMICAL CONTROL.** For the purposes of this subchapter, chemical control of submerged aquatic plants shall be considered to have large-scale effects if the department determines on the basis of the herbicide concentration rate calculated under s. NR 107.06 (2) (n) that control will achieve an effective lake wide concentration rate. The permit applicant shall follow all of the following processes for large-scale chemical control:

April 25, 2022

(a) *Pre-control survey.* The applicant shall conduct a baseline survey of the aquatic plant community within the body of water following department approved protocols prior to the control activity. The applicant shall enter the data on a form supplied by the department and submit the data with the permit application.

(b) *Post-control survey.* The permit holder shall conduct a repeat of the baseline survey of the aquatic plant community within the body of water following department approved protocols the growing season after the control activity was conducted. The permit holder shall enter the data on a form supplied by the department and submit the data to the department within 30 days of conducting the monitoring.

(c) *Additional control.* The permit holder shall not conduct additional large-scale control activities prior to the post-control monitoring survey unless the control is part of an approved plan.

**(3) LARGE-SCALE WETLAND CONTROL.** For the purposes of this subchapter, chemical control of emergent plants on non-riparian wetlands shall be considered to have large-scale effects if the department determines that the control is to be conducted in an area greater than 5 acres in a contiguous wetland. The permit applicant shall follow all of the following processes for large-scale wetland control:

(a) *Pre-control survey.* The applicant shall delineate the population margins of the target species and non-target species following department approved protocols prior to control. The applicant shall enter the data on a form supplied by the department and submit the data with the permit application.

(b) *Post-control survey.* The permit holder shall delineate the population margins of the target species and non-target species following department approved protocols during the growing season of the year following control. The permit holder shall enter the data on a form supplied by the department and submit the data to the department within 30 days of monitoring. The permit holder shall repeat this process for every year the permit is issued.

**(4) MONITORING SCALE.** The area to be surveyed shall include the entire body of water in which the control activities occur, unless the department determines that a survey may occur on a scale-appropriate portion of a body of water in consideration of the likely scale of effects, the potential for adverse impacts, and the size of the body of water to be managed.

April 25, 2022

**Note:** As an example, a large-scale treatment on a portion of the lake Winnebago system would not require a whole body of water monitoring survey prior to and following control, due to the size of the body of water relative to the scale of effect.

SUBCHAPTER V  
POND MANAGEMENT

**NR 107.50 Purpose.** The purpose of this subchapter is to establish procedures and requirements for issuing permits for introduction of aquatic plants or control of aquatic plants on privately accessible, shared, and public ponds.

**NR 107.51 Exemptions. (1) PRIVATELY ACCESSIBLE PONDS.** The use of chemicals in privately accessible ponds is exempt from the provisions of ss. NR 107.05; 107.06 (2) (a), (b), (e) to (g), (i) and (n); (4) (a) and (b); 107.07 (1), (2), (11) (a) to (d) and (15); and 107.08, subch. III, and subch. IV.

**(2) SHARED PONDS.** The use of chemicals in shared ponds is exempt from the provisions of ss. NR 107.05; 107.06 (2) (a), (b), (e) to (g), (n); 107.07 (1), (2), (11) (a) to (d) and (15); and 107.08, subch. III, and subch. IV.

**(3) PUBLIC PONDS.** The use of chemicals in public ponds is exempt from the provisions of ss. NR 107.05; 107.06 (2) (a), (b), (e) to (g) and (n); 107.07 (11) (a) to (d); and 107.08, subch. III, and subch. IV.

**Note:** The waiver in s. NR 107.04 (4) relating to manual removal may also apply to privately accessible ponds in many circumstances.

**NR 107.52 Land controls standard.** No person may be considered the sole owner of a privately accessible pond if the owner of the land surrounding the privately accessible pond provides access to the body of water to the public by means of an easement or other right-of-way.

**NR 107.53 Permit application requirements and fees. (1) FEES AND REFUNDS. (a) Fees.** The application fee for an aquatic plant management pond permit includes all of the following:

1. A \$50 non-refundable application fee.
2. A \$30 fee per year the permit is issued.

April 25, 2022

(b) *Refunds*. The department shall refund the annual fee in whole if the entire permit is denied or if no control occurs on any part of the permitted control area at the request of the applicant. The department shall prorate refunds for each year of control.

(2) APPLICATION REQUIREMENTS. In addition to the general provisions of s. NR 107.06, the applicant shall provide all of the following information in the permit application:

(a) A description of the impairments to water use caused by the aquatic plants or organisms to be managed and the reason for control.

(b) A description of the plant community or other aquatic organisms causing the water use impairment.

**NR 107.54 Permit issuance.** (1) ISSUANCE TIMELINE. The department shall issue a permit under this subchapter for up to 5 years. The department shall establish a lottery system to stagger all permits received during the first year of rule promulgation to a one to 4-year permit. Every permit for a body of water after the first permit will be issued as a 5-year permit.

**Note:** The provision in sub. (1) will be done to evenly distribute the number of permits submitted to the department on an annual basis.

(2) PERMIT EXPIRATION. A permit shall expire on November 1 of each year for which the permit is issued.

**NR 107.55 Supervision.** The department may require the permit holder to notify the department of anticipated control activities. The department shall inform the permit holder of this requirement in writing on the permit decision letter. If the department requires notification, the permit holder shall notify the department staff who issued the permit in writing a minimum of 4 business days in advance of each anticipated control activity with the date, time, location, and proposed size of control. The department may require supervision to ensure permit compliance.

## SUBCHAPTER VI ENFORCEMENT

April 25, 2022

**NR 107.60 Enforcement. (1)** Violations of this chapter may be prosecuted by the department under chs. 23, 30, 31, 281, or 299, Stats.

**(2)** Failure to comply with the conditions of a permit issued under or in accordance with this chapter shall constitute an aquatic plant management activity performed without a valid permit issued by the department under s. 23.24 (3) (a), Stats.

**(3)** Failure to comply with the conditions of a permit issued under or in accordance with this chapter may result in cancellation of the permit and loss of permit privileges for the subsequent year. The department shall provide notice of cancellation or loss of permit privileges to the permit holder in writing.

**SECTION 3. NR 109 is repealed.**

**SECTION 4. NR 150.20 (1m) (qm) and (2) (a) 20. and 21. are amended to read:**

**NR 150.20 (1m) (qm)** Issuance of aquatic plant management permits under ch. NR ~~109~~ 107 except for those that meet the criteria under s. NR 107.41.

**(2) (a) 20.** Issuance of an aquatic plant management permit under s. NR ~~107.05~~ 107.07. that meets the criteria under s. NR ~~107.04(3)~~ 107.41.

**21.** Approvals of aquatic plant management plans under s. NR ~~109.09~~ 107.05 and surface water management plan recommendations under s. NR 193.53.

**SECTION 5. NR 193.03 (18) is amended to read:**

**NR 193.03 (18)** “Grantee match” means the dollar amount of the eligible project cost not funded with a grant awarded under this chapter.

**SECTION 6. NR 193.07 (1) is amended to read:**

**NR 193.07 Grantee match. (1)** The grantee shall pay the grantee match for a grant awarded under this chapter ~~using funds not provided by the department~~. The minimum grantee match shall amount to the percentage of the total project cost that is specified in Table 1 under s. NR 193.05. The grantee

April 25, 2022

shall confer with the department if the grantee match includes federal funds or other state funds to determine applicability as grantee match.

**SECTION 7. NR 193.32 (1) (f) is renumbered (1) (f) (intro.) and amended to read:**

**NR 193.32 (1) (f)** ~~Comprehensive m~~Management planning for lakes and watersheds.  
~~Comprehensive management~~Management planning projects for lakes and watersheds that will result in a new or updated management plan for ~~one or more of the following: lake, a watershed, an aquatic plant community, aquatic invasive species prevention and aquatic invasive species~~ an aquatic ecosystem. A management plan is a dynamic, written document that presents baseline information, explores management challenges, defines general management goals and objectives and provides strategic direction for selecting management actions ~~and planning specific activities to accomplish plan objectives~~. The plan should present a set of recommended management actions and outline a plan for implementation, progress assessment, and plan updates. The public shall be given an opportunity to review the plan before it is adopted and provide comment. The grantee shall summarize comments received and use comments to modify the management plan, as appropriate. Eligible management plans include all of the following:

~~**Note:** Management plans include watershed plans, Nine Key Element watershed plans, basin plans, Total Maximum Daily Load implementation plans, lake management plans, river management plans, county land and water plans, aquatic plant management plans, and aquatic invasive species control plans.~~

**SECTION 8. NR 193.32 (1) (f) 1. and 2. are created to read:**

**NR 193.32 (1) (f) 1.** Comprehensive Management Plans for Lakes and Watersheds that aim to protect or restore lake ecosystems by taking a holistic approach to understanding and addressing ecosystem challenges. Eligible comprehensive management plans include watershed plans, Nine Key Element watershed plans, basin plans, Total Maximum Daily Load implementation plans, lake management plans and county land and water plans.

**2.** Surface Water Plans that address a focused or specific management challenge. Focused management plans eligible for Surface Water Planning grants include aquatic invasive species prevention and control plans and aquatic plant management and protection plans written under s. NR 107.05.



April 25, 2022

**SECTION 9. NR 193.33 (2) is amended to read:**

**NR 193.33 (2)** A plan shall include ~~or be submitted along with~~ a description of the process used to provide the public the opportunity to review and comment on the plan, a summary of comments received, and the steps the grantee took or intends to take to formally adopt the plan. Applicants that intend to use the plan for an Integrated Aquatic Management permit under ch. NR 107 shall follow the public review and comment period procedures outlined in s. NR 107.05 (3).

**SECTION 10 NR 193.51 (1) (b) (intro.), (c) and (3) (c) (intro.) are amended to read:**

**NR 193.51 (1) (b) *Shoreland protection.*** A shoreland protection project that will assist a grantee in carrying out best management practices intended to improve surface water or aquatic ecosystems. Eligible activities include one or more of the following best practices conducted in compliance with the general and practice-specific standards outlined in ~~s. ATCP 50.64~~ch. ATCP 50 or technical standards developed under the process described in subch. V of ch. NR 151:

(c) *In-water management.* In-water management projects that will assist a grantee to protect or improve the littoral or in-stream areas of waterbodies. Eligible activities include installing department-approved structures that provide fish or wildlife habitat; culvert, road, or trail stream crossing modification or removal and other modifications to improve habitat or connectivity; and planting of native aquatic plants in a natural shoreland or littoral environment; subject to department approval.

**(3) (c) ~~Lake-In-water~~** restoration activities where the department has determined that anyall of the following conditions exist:

**SECTION 11. NR 193.51 (3) (c) 3. and (cm). are created to read:**

**NR 193.51 (3) (c) 3.** The likely benefits of the proposed activities are determined by the department to outweigh likely adverse effects, including those on water quality, biodiversity, habitat, ecosystem condition, navigation, recreational value, and hydrology.

(cm). Surface water restoration activities that abate conditions related to ecological impairment, including aeration, floating treatment wetland systems, and similar artificial devices intended to improve water quality or habitat, may be implemented when recommended in a management plan and approved for eligibility by the department under s. NR 193.53.

April 25, 2022

**SECTION 12.. NR 193.53 (2) (e) is created to read:**

**NR 193.53 (2) (e)** Consider any of the factors outlined in s. NR 107.05 (3) (c).

**SECTION 13. NR 193.53 (3) is amended to read:**

**NR 193.53 (3)** The department may consider the eligibility of management plan recommendations or activities under this section when they are contained in a current management plan. A current management plan will have a completion date of no more than 10 years prior to submittal under this section, notwithstanding aquatic plant management and protection plans, which shall have a completion date of no more than 5 years prior to submittal under this section. The department may determine that a longer lifespan is appropriate for a given management plan if the applicant can demonstrate it has been actively implemented and updated during its lifespan.

**SECTION 14. NR 193.61 (1) is renumbered (1r).**

**SECTION 15. NR 193.61 (1g) is created to read:**

**NR 193.61 (1g)** “Control” means an action that impacts aquatic invasive species and other organisms including manual removal, the use of biological agents, dewatering, desiccation, burning, freezing, shading, suffocation, mechanical force, inhibition, potentiation, or metabolic disruption.

**SECTION 16.. NR 193.63 (3) and (4) are amended to read:**

**NR 193.63 (3)** LARGE-SCALE POPULATION MANAGEMENT PROJECTS. Large-scale population management projects shall consist of aquatic invasive species control projects that will result in long-term, multi-season suppression of one or more established populations of aquatic invasive species ~~in a substantial portion.~~ Eligible projects shall implement management activities on a non-localized scale, using management actions that are expected to affect significant portions of a lake, stream reach, or wetland, or ~~aquatic invasive species control projects that employ a strategic approach to address multiple~~ populations within a defined region. Management projects shall implement activities recommended in a management plan following a determination of eligibility under s. NR 193.53.

**(4)** SMALL-SCALE POPULATION MANAGEMENT PROJECTS. Small-scale population management projects shall consist of aquatic invasive species control projects that will maintain low abundance or

April 25, 2022

frequency of one or more small established populations of aquatic invasive species ~~populations~~ or further reduce them in size. Grant funds awarded under this paragraph may be used to manage a small population resulting from a successful large-scale population management project. Small-scale management projects shall implement management activities ~~with the goal of continued suppression of the target species~~ on a localized scale, ~~where the~~ using management actions that are unlikely not expected to affect the entire lake, stream reach, or wetland. Management projects shall implement activities recommended in a management plan following a determination of eligibility under s. NR 193.53.

**SECTION 17. NR 193.65 (1) is amended to read:**

**NR 193.65 General conditions. (1) INTEGRATED PEST MANAGEMENT.** Projects funded with a grant awarded under this subchapter shall employ an integrated pest management strategy. Integrated pest management is an ecosystem-based ~~management~~ decision-making strategy ~~that focuses on long-term suppression of pests or their damage and considers all of the available pest control practices. Integrated pest management projects shall be informed by current, comprehensive information on pest life cycles and the interactions among pests and the environment and considers all of the available pest control practices. A project that employs an integrated pest management strategy shall include more than one management practice.~~ that focuses on long-term suppression of pests or their damage by combining monitoring, biological, cultural, physical, and chemical tools in a way that minimizes health, environmental, and economic risks

**SECTION 18. NR 329.04 (2) (f) 8. is amended to read:**

**NR 329.04 (2) (f) 8.** The riparian is responsible for removing vegetation that has been dislodged or cut within their riparian zone as required under s. NR ~~109.08 (3)~~ 107.12 (1).

**SECTION 19. NR 345.04 (2) (h) (intro.), 1., (ir) 4., 5. (Note), and 6. are amended to read:**

**NR 345.04 (2) (h)** *Standards for jetting to harvest aquatic plants, tubers or seeds.* Jetting of the bottom sediments during the harvesting of aquatic plants is eligible for a general permit which will meet the substantive requirements of ch. NR ~~109~~ 107, subject to all of the following limitations:

April 25, 2022

1. The project shall be in a location where the bed of the waterway is privately-owned or a location where the bed of the waterway is publicly-owned if the department determines that the project is consistent with the aquatic plant management activities authorized under ch. NR ~~109~~ 107.

(ir) 4. The use of the motor vehicle is for the purpose of controlling emergent invasive or nonnative aquatic plant species as designated by the department under s. 23.24, Stats., and ~~s. NR 109.07~~ ch. NR 40.

**Note:** An invasive or nonnative aquatic plant species control plan, as required under s. NR ~~109.04~~ ~~(3)~~ 107.05 and described in s. NR ~~109.09~~ 107.03 (28), must contain the following items: a description of the existing condition including the types of plants present and their abundance; a strategy for the control of the invasive or nonnative aquatic plant species; a plan for the re-establishment of the native plant community; and a monitoring plan to assess the success or failure of the control plan.

6. For projects requiring a permit under ch. NR 107 ~~or 109~~, before the department can consider the application complete or issue a general permit under this section, the applicant shall submit documentation to demonstrate that a permit under ch. NR 107 ~~or 109~~ has been applied for.

**SECTION 20. NR 345.04 (2) (ir) 6. (Note) is repealed.**

**SECTION 21. EFFECTIVE DATE.** This rule takes effect on January 1, 2024.

**SECTION 22. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN

April 25, 2022

DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

For Preston D. Cole, Secretary

This page intentionally left blank.