

TOPIC: Public Notification Methods and Criteria

White Paper

BACKGROUND

Public notification methods are in relation to the chemical management of aquatic plants, as described in NR 107. Public notice is a requirement under the current program so property owners and impacted stakeholders can be informed of proposed treatments, share concerns with the permit applicant prior to permit submission, and can be aware of and/or take precautions if a treatment is approved.

The department has not analyzed how effective current public notification and posting requirements are in informing all of the relevant stakeholders of the applicants' intent to apply for a permit, where and when permitted activities will occur and how those treatments may impact water users. This white paper outlines how public notification works under current administrative rule, then supplies options and commentary for the public and stakeholders to consider when providing feedback to the department for rule development.

Stakeholders

In the state of Wisconsin, aquatic plant management (APM) activities are conducted by and important to a diverse group of stakeholders and partners, including state agencies, lake organizations, outdoor sporting groups, other nonprofit and non-governmental organizations, commercial APM service providers and manufacturers, colleges and universities, Native American Tribes, local government, federal agencies, individual citizens, tourism-related businesses, tourists, and others.

For more information on the stakeholders of APM, please go here: [Strategic Analysis Chapter 5 – Aquatic Plant Management Stakeholders and Collaborators](#).

Current Types and Timing of Stakeholder Notification

There are several times and ways stakeholders can be informed of proposed, permitted, or impending aquatic plant management activities

Before a permit application is submitted to the department

Notification of riparian owners next to and within the proposed treatment areas, NR 107.04(4).

- The applicant must certify to the department that a copy of the application has been provided to any affected property owners' association, inland lake district, and in the case of chemical applications for rooted aquatic plants, to any riparian property owners adjacent to and within the treatment areas.

- * Because the department moved to exclusive ePermitting, this notification now occurs after the application is submitted to the department and will need to be incorporated into the rule.

Public Notice of the proposed application, NR 107.04(3)(f).

- If a proposed treatment is a large-scale treatment exceeding 10 acres in size or 10% of the area of the water body that is 10 feet or less in depth, the applicant must provide public notification in the newspaper prior to submitting a permit to the department. This notice must be 2 x 4 inch

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advertising format stating the size of treatment, the approximate treatment dates, and inform the public how and when they may seek more information.

Public Information Meetings, NR 107.04(3)(f).

- Within 5 days of the newspaper public notice, if a combination of 5 or more individuals, organizations, special units of government, or local units of government request an informational meeting in writing to the applicant with a copy to the department, the applicant will conduct a public informational meeting.
- The person or entity requesting the meeting shall state a specific agenda of topics including problems and alternatives to be discussed.
- The meeting shall be given a minimum of one-week advance notice, both in writing to the requesters and advertised in the same format as the original public notification.

After permit application is approved by the department

Posting of chemical applications, NR 107.08(7) and ATCP 29.15.

- The permit holder is responsible for posting the areas of use in accordance with water use restrictions stated on the chemical label for a minimum of one day up to the time period stated on the pesticide label for water use restrictions.
- At the beginning of treatment, the permit holder or representing agent will post signs that are conspicuous to the stakeholders intending to use the treated water from both the water and the shore. These signs should be placed along contiguous treated shoreline and at strategic locations to adequately inform the public.
- The signs will state the applicable label water use restrictions of the chemicals being used, the name of the chemical and date of treatment.
- The department may require posting prior to treatment as a permit condition when the department determines such posting is in the best interest of the public.

Other Provisions

Notice of proposed treatment will be provided by the department to any person or organization who annually requests in writing a desire to receive notification, NR 107.04(5).

Waivers from Public Notification

Private ponds as defined in NR 107.11(3)(a), are waived from newspaper public notification and treatment posting. Private ponds are bodies of water located entirely on the land of an applicant, with no surface water discharge or a discharge that can be controlled to prevent chemical loss, without access by the public.

*Permittees may still be required by DATCP or label directions to post warning signs.

OPTIONS FOR RULE DEVELOPMENT

Public notification and treatment posting are important processes within aquatic plant management. The department has not analyzed how effective current public notification and posting requirements are in informing all of the relevant stakeholders of the applicants’ intent to apply for a permit, where and when permitted activities will occur and how those treatments may impact water users.

Applications are submitted to the department earlier and earlier in the calendar year. Permits may be submitted to the department up to 6 months in advance of treatment, public notification via newspaper prior to application submission for large scale treatments may not be reaching stakeholders at the appropriate time or in the appropriate way. Furthermore, urban development over time has created certain waterbody types such as HOA ponds and stormwater ponds, that may not be considered “private” under existing rule. These ponds are likely to need public notice, even when those waterbodies have only two owners and no surface water discharge.

The department is seeking input from the public to determine what methods of public notice are effective, when public notification should occur, and which permitted activities should require public notice.

Potential Method for Adjacent Riparian Owner Notification			
Method	Used Currently	How Would it Work?	Additional Factors for Consideration
Copy of application provided to any affected property owners' association, inland lake district, and in the case of chemical applications for rooted aquatic plants, to any riparian property owners adjacent to and within the treatment areas	*Yes (See background section)	Continuation of current process	With technology improvements, a copy of the application may be provided via electronic link to the permit document set. Some applicants mail postcards with the relevant information. Some may send emails
			The department may seek to outline specific methods which are appropriate to clarify requirements for permit applicants
			Current regulatory framework does not clearly identify who is considered an adjacent riparian depending on the scale of management, the department intends to clarify these requirements in the new rule.
Other	The department has not identified additional methods or criteria to classify how, who and when adjacent riparian owners are notified of the intent to apply for a permit or whether a permit is approved/denied. The department seeks input from lake associations, riparian owners, and other interested parties on this topic.		

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Potential Methods for Public Notification of Intent to Submit a Permit			
Method	Used Currently	How Would it Work?	Additional Factors for Consideration
Newspaper	Yes, for large scale herbicide treatments	Applicants would continue to advertise the intent to apply for a permit in the newspaper prior to submitting an application to the department.	The department does not know how effective newspaper notification is. Newspaper circulation is steadily declining.
			Newspapers may still be the only method of public outreach available in some rural communities
			Newspaper businesses benefit from the public notice requirements.
			Applicants would continue to pay for and be responsible for public notification.
Online - DNR Web page	Not for APM Program	Applicants would submit their permit to the department, any permit that met the criteria for public notice would be posted for a set number of days on a department web page. The web page would provide the necessary information to request a public informational hearing. If no hearing was requested, at the end of the set timeline the permit would be considered "ready" for department review and moved to permit processing. If a public meeting was requested, the permit would wait on "hold" in the system until after the public informational meeting was conducted. The permittee would provide documentation that the public meeting was concluded and signal if any edits were needed for the permit application.	Public communication would be needed to inform stakeholders of the updated process. An alternative may be needed for people without internet access.
			Many other department programs are moving to online public notification, it would add continuity of service across programs
			Newspaper businesses would lose revenue.
Other			Applicants would no longer need to pay for or organize public notification, it would be automatic as part of the application process.
			The department has not identified any other methods at this time. If there is a method the department has not considered, please supply written feedback within the allotted input period.

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Potential Criteria for Public Notification of Intent to Submit a Permit			
Criteria	Used Currently	How Would it Work?	Additional Factors for Consideration
Large-Scale Chemical Treatments on non-private waters	Yes	Applicants would continue to conduct public notification of the intent to apply for a permit via whatever method is finalized in the rule.	<p>The department proposed changes to the definition of large-scale chemical treatments. Instead of a hard threshold (>10 acres or >10% Littoral), the department proposes a calculation be done to determine if a proposed treatment over >5% of the waterbody will have whole lake impacts</p> <p>The applicant may have to consult with the department prior to submitting public notification to ensure the treatment needed public notification based on the new criteria.</p>
All chemical treatments on non-private waters	No	Applicants would conduct public notification of the intent to apply for a permit via whatever method is finalized in the rule.	<p>Online public notification may be the best method if these criteria were used.</p> <p>These criteria would add "time" to the permit process. Permit applicants would need to consider this time while planning when to submit a permit to the department</p> <p>This criteria set would not differentiate between scales of chemical management</p> <p>This criteria set would simplify public notification requirements for the department and permit applicants</p>
Other/Hybrid	The department has not identified any other criteria alternatives at this time. If there is an alternative the department has not considered, please supply written feedback within the allotted input period.		

As indicated, the department intends to waive private ponds from public notification requirements. Please see the private pond white paper to understand proposed changes to the definition of "private pond."

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Potential Methods of Chemical Treatment Posting			
Method	Used Currently	How Would it Work?	Additional Factors for Consideration
Treatment Warning Signs	Yes	Signs are posted in accordance with water use restrictions on the chemical label. Signs should be conspicuous to the stakeholders intending to use the treated water from water and shore. Signs should be contiguous along treated shoreline and at strategic locations.	The department intends at minimum to incorporate current language on posting into the newly revised NR 107. The department encourages comments on the specifics of where and when signs should be placed, who supplies signs and how many are needed to effectively inform the stakeholders of ongoing treatments.
			The department does not intend to contradict current DATCP or other existing regulations.
Semi-Permanent Notification Signage	Not Requirement	At all public access points, a notification sign would be placed after a permit was approved by the department signaling when, where, and what chemical treatments would occur and where stakeholders could go for more information. This signage would stay in place until after the treatment occurred.	This may be an added cost for applicants.
			This may be a better alternative to give stakeholders advance notice of impending treatments. Particularly, individuals who are not adjacent riparian's.
			This requirement would be in addition to the warning signs posted at the beginning of chemical treatment, it would not replace treatment posting.
Other			The department has not identified any other methods for treatment posting at this time. If there is a method the department has not considered, please supply written feedback within the allotted input period.