

DRAFT REPEALED AND REVISED NR 107

May 2025 Draft



SECTION 1. NR 107 is repealed and recreated to read:

CHAPTER NR 107

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 diverse and stable communities of native aquatic plants and regulate how aquatic organisms are managed under ss. 23.22 (2) (b) 2., 23.235, 23.24, and interpreting s. 281.17 (2), Stats. A balanced aquatic plant community is recognized to be a vital and necessary component of a healthy aquatic ecosystem. This chapter establishes procedures and requirements for issuing aquatic plant management permits for introduction of aquatic plants or control of aquatic organisms. 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 of aquatic plants and control of aquatic organisms 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. Introduction of aquatic plants and control of aquatic organisms shall be allowed in a manner which minimizes harmful effects to the waters of the state and is protective of public health, safety, and welfare and the environment consistent with s. 160, Stats., and ch. NR 140.

NR 107.02 Applicability. A person sponsoring, directing, or conducting control of aquatic organisms or the introduction of aquatic plants in waters of the state shall obtain an aquatic plant management permit from the department under this chapter. Waters of the state 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 as specified under 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 likely to be detrimental to non-target species or ecosystems, including death, illness, stunting, deformation, discoloration, sublethal effects, demographic changes, or reproductive impacts.

(d) Harmful 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 physically applying chemicals to a control site.

(4) “Aquatic organism” means an aquatic plant, aquatic algae, an aquatic invertebrate, or other aquatic biotic life.

(5) “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.

(6) “Aquatic plant community” 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.

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

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

(9) “Chemical fact sheet” means a summary of information on a specific chemical written by the department including general aquatic community and human safety considerations applicable to Wisconsin sites.

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

(11) “Control” means any actions that cut, remove, destroy, or suppress aquatic organisms, including chemical application, manual removal, the use of biological agents, dewatering, desiccation, burning, freezing, shading, suffocation, mechanical force, inhibition, potentiation, or metabolic disruption.

(12) “Department” means the Wisconsin 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.

(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) “Hazard” means a substance or activity that is known to have the potential to cause acute or chronic injury or death if exposure to the substance, activity, or condition is not abated or removed.

(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 chemical control exceeding 10 acres in size or 10 percent of the area of the body of water that is 10 feet or less in depth.

(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 that may require the aid of external or auxiliary power.

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

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

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

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

(26) “Plan” means an aquatic plant management plan approved under s. NR 107.05.

(27) “Private pond” means a body of water 10 acres or less that has all of the following characteristics:

(a) It is located on the land of a single owner not in common ownership.

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

(c) It has no public access.

(28) “Public pond” means a body of water 10 acres or less located on land owned by one or more persons that has any of the following characteristics:

(a) A surface water discharge.

(b) Public access.

(29) “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.

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

(a) It is located on land owned by more than one person.

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

(c) It has no public access.

(31) “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.

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

(33) “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.

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

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

(36) “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, for which there are no reasonable alternatives.

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

NR 107.04 Waivers. (1) ACREAGE FEE WAIVERS. The department shall limit the permit application fee to the basic application fee under s. NR 107.06 (3) (a), waiving additional fees under this chapter, for any of the following control activities:

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

(b) A control targeting an aquatic organism that interferes with the use of the water for potable purposes.

(c) A control sponsored by a governmental agency 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.

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

(2) FEE EXEMPTION. The department shall not require a permit fee for any of the following:

(a) Any control conducted by the department.

(b) Any chemical control for the species Purple Loosestrife.

(3) PERMIT 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 plant community, result in or encourage regrowth of nonnative vegetation, or cause adverse impacts to fish and wildlife:

1. Manual or 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 or manual removal that the department conducts.

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

4. 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.

5. Manual removal of invasive aquatic plants.

(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 controls that are utilized to meet effluent limitations set forth in permits issued under s. 283.31, Stats.

6. Private ponds 0.5 acres or less in size, that have a functional, impermeable liner, do not have a history of being a lake or stream or of being part of a lake or stream, and do not connect hydrologically or discharge to a water of the state.

(c) Rights-of-way or drainage ditches, provided that fish and wildlife resources are insignificant.

(d) 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) *Manual or mechanical control on private ponds.* Manual or mechanical control 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.

Note: If wild rice is present in a body of water less than 10 acres in size, the procedures of s. NR 19.09 shall be followed. A permit will be needed prior to conducting manual or mechanical control in this scenario.

(b) *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 of the following conditions:

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 that is 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, or 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 sensitive area identified under s. NR 107.09, 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.

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

5. 'Wild rice limitation.' The removal is not in an area where wild rice is present.

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

(5) FEDERAL WAIVER. The department may waive permit requirements under this chapter for control activities conducted by the federal government.

NR 107.05 Plan specifications and approval. (1) PLAN REQUIREMENTS. The department may require that an application for an aquatic plant management permit contain an aquatic plant management plan that describes how the aquatic plants will be introduced, controlled, removed or disposed. Requirements for an aquatic plant management plan shall be made in writing stating the reason for the plan requirement. In deciding whether to require a plan, the department shall consider any of the following:

(a) Potential for effects on protection and development of diverse and stable communities of native aquatic plants.

(b) Conflict with goals of other written ecological or lake management plans.

(c) Cumulative impacts and effect on the ecological values in the body of water.

(d) The long-term sustainability of beneficial water use activities.

(2) PLAN ELEMENTS FOR NEW AND UPDATED PLANS. If required under sub. (1), an applicant shall develop a plan in a format specified by the department. The plan shall present and discuss each of the following items:

(a) The goals and objectives of the aquatic plant management and protection activities.

(b) A physical, chemical and biological description of the body of water.

(c) The intensity of water use.

(d) The location of aquatic plant management activities.

(e) An evaluation of chemical, mechanical, biological and physical aquatic plant control methods.

(f) Recommendations for an integrated aquatic plant management strategy utilizing some or all of the methods evaluated under par. (e).

(g) An education and information strategy.

(h) A strategy for evaluating the efficacy and environmental impacts of the aquatic plant management activities.

(i) The involvement of local units of government and any lake organizations in the development of the plan.

(3) PLAN REVIEW AND APPROVAL. (a) *Plan review.* Within 30 days of receipt of the plan, the department shall notify the applicant of any additional information or modifications to the plan that are required. If the applicant does not submit the additional information or modify the plan as requested by the department in a timely manner, the department may dismiss the aquatic plant management plan.

(b) *Plan approval.* In deciding whether to deny or approve a plan in full or in part, the department shall consider the standards of s. NR 107.07

(c) *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.

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

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

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.

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

(2) APPLICATION AMENDMENTS. The department shall consider any amendment or revision to a permit application as a new application.

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

(a) A \$75 non-refundable base application fee accompanied by:

1. An additional acreage fee of \$50 per acre of control to a maximum of \$5,000 for a proposed chemical control application and a maximum of \$1,000 for a proposed mechanical control application.

The department shall round up partial acres above one acre to the next full acre for the purposes of fee determination.

Note: This means a maximum permit payment in any given year will be \$5,075 for a chemical control application and \$1,075 for a mechanical control application.

2. If a mechanical control permit is issued for 5 years, the permit holder shall pay an annual fee for years two through five. The fee shall be one-half the total original application fee under s. NR 107.06 (3) (a), but not less than \$75. This fee shall be paid prior to conducting control each year.

Note: This means a permitted harvesting project will pay a minimum of \$75 up to a maximum of \$537.5 for each year the permit is issued after the first year.

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

1. Local street address.
2. Telephone number or email address.
3. Block, lot, and fire number, when available.
4. If a local address is not available, an applicant shall include the home address and phone number of the permit applicant instead.
5. 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.

Note: Applicant phone and email are hidden from public view on the permit application after they are submitted.

(c) 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.

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

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

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

(f) A copy or link to any existing aquatic management plan for the body of water, or detailed reference to the plan, citing the plan references to the proposed introduction or control area, and a description of how the proposed introduction or control of aquatic plants is compatible with any existing plan.

(g) A description of the water use impairment caused by the aquatic organisms and the reason for control.

(h) A description of the aquatic plant community including the target and other species.

Note: Meander surveys, point-intercept surveys, and photo evidence are all examples of acceptable descriptions of the species present.

(i) 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.

(j) A description of any other control activities that the applicant intends to carry out in or abutting the proposed control area.

(k) A comparison of alternative control methods and their feasibility for use on the proposed control site.

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

(m) For mechanical control, the name of any person or commercial provider of control or removal services.

(n) 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.

(o) For chemical control, a lake-wide concentration rate calculation if the proposed control area exceeds 5 percent of the body of water surface area. The calculation is determined one of the following ways:

1. If the body of water is not anticipated to be thermally stratified at the time of control, you shall calculate the total concentration of the herbicide's active ingredient in the body of water using each proposed herbicide's formulation and rate of application assuming no thermocline and a homogeneous mixing of herbicide throughout the entire volume of the body of water.

2. If the body of water is anticipated to be thermally stratified at the time of control, you shall calculate the concentration considering only the estimated volume of the upper layer above the thermocline instead of the total volume of the body of water, to create the epilimnetic lake-wide concentration rate.

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

(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) RIPARIAN NOTIFICATION CERTIFICATION. The applicant shall certify to the department that a copy of the permit application will be provided within 7 days of permit submittal to any affected property owners' association, inland lake district, and, in the case of control applications for rooted aquatic plants, to any property owners within 150 feet of the control area.

(7) LARGE-SCALE CHEMICAL CONTROL. In addition to the information required under sub. (2), when the proposed chemical control is a large-scale treatment exceeding 10.0 acres in size or 10 percent of the area of the body of water that is 10 feet or less in depth, the application shall be accompanied by evidence that a public notice of the proposed application has been made. The notice shall state the size of the proposed treatment, the approximate treatment dates, and that the public may request within 5

business days of the notice that the applicant hold a public informational meeting on the proposed application. The notice shall include a mailing address and email address from which the public may request a public informational meeting. Evidence shall include all the following:

(a) *First Notice*. Notice shall be given in 2-inch x 4 inch advertising format in the newspaper that has the largest circulation in the area affected by the application.

(b) *Second Notice*. Notice shall also be given in at least one of the following ways:

1. A publicly available lake association or district web page.
2. A county-wide press release.
3. A publicly available body of water organization newsletter.
4. A radio address at a local station.

(c) *Notice Replacement*. If the department provides a public notice service, permit applicants shall not be responsible for sub. (a) and (b) and shall use the department hosted service. The department may include nominal fees charges for this service that shall not exceed current public notice requirements.

(8) PUBLIC INFORMATIONAL MEETINGS. The applicant shall conduct a public informational meeting in a location near the body of water when any 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 5 business days after the notice is posted. The applicant and meeting requester shall conduct the meeting in accordance with all of the following processes:

(a) *Requestor Responsibilities*. 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) *Applicant responsibilities*. The applicant shall find an individual to moderate the meeting. The applicant shall design and send out a public notice for the meeting as outlined in the following subsection:

Note: Moderator examples include the applicant's consultant, a department staff member, or an extension agent.

(c) *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.

(d) *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.

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

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

(f) *Department involvement.* The department may attend the meeting to answer technical questions about the permit application. The department may moderate or facilitate the public informational meeting.

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

(9) REFUNDS. Acreage permit fees shall be refunded under any of the following circumstances:

(a) *Full refund.* The department shall refund an acreage fee under sub. (3) (a) 1. in its entirety upon the written request of an applicant if the entire permit is denied.

(b) *Partial refund.* The department shall refund an acreage fee under sub. (3) (a) 1. 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.

(c) *No refund.* The department shall not provide refunds for the acreage fee under sub. (3) (a) 1. when control occurs in any portion of the control area specified in the permit or no control is done.

NR 107.07 Permit issuance. (1) COMPLETED APPLICATION. The department shall not consider the permit application complete until all procedures and requirements under ss. NR 107.05 and 107.06, are met. 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 15 days, the department may dismiss the permit application.

(2) PERMIT REVIEW TIMELINES. The department shall review completed applications and issue or deny issuance of a permit within one of the following timeframes:

(a) 15 business days.

(b) If wild rice abundance or habitat may be affected within the Ceded Territory the department shall comply with the stipulations incorporated by *Lac Courte Oreilles v. Wisconsin*, 775 F. Supp. 321 (W.D. Wis. 1991). If the department determines that Consultation with the Voigt Task Force is required:

1. The department shall notify the permit requestee that the permit is placed on hold.

2. The department shall offer an opportunity to Consult.

3. If Consultation is requested, the permit shall remain on hold until Consultation is complete. After the Consultation process is complete, the department shall issue or deny issuance of the permit within 15 business days.

(3) 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 and 107.06, 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.

(4) 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.

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

- (a) The aquatic plants are not causing a water use impairment of beneficial water use activities.
- (b) 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.
- (c) The 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.
- (d) The proposed chemical does not have a current department aquatic chemical fact sheet under s. NR 107.13 (1).
- (e) The proposed introduction or control will result in a hazard to humans, animals, or other non-target organisms.

(f) The proposed introduction or control will result in an adverse impact on water quality, aquatic habitat or the aquatic community including the native aquatic plant community.

(g) 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.

(h) The proposed chemical application is in a location known to have endangered or threatened species as specified under s. 29.604, Stats., and as determined by the department.

(i) The proposed control is in locations identified by the department as sensitive areas as defined under s. NR 107.03 (29), except when the department determines the applicant demonstrated that the project will be conducted in a manner that will not adversely impact the ecological character or reduce the ecological value of the sensitive areas.

(j) The proposed management will result in adverse long-term or permanent changes to a plant community or a high value species in a specific aquatic ecosystem. High value species are individual species of aquatic plants known to offer important values in specific aquatic ecosystems, including *Potamogeton amplifolius*, *Potamogeton richardsonii*, *Potamogeton praelongus*, *Stuckenia pectinata*, *Potamogeton illinoensis*, *Potamogeton robbinsii*, *Eleocharis* spp., *Schoenoplectus* spp., *Scirpus* spp., *Vallisneria americana*, *Zizania* spp., *Zannichellia palustris* and *Brasenia schreberi*.

(k) The proposed introduction or 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.

(L) The proposed control is inconsistent with a department approved aquatic plant management plan for the body of water.

(6) CUMULATIVE IMPACTS. New applications shall be reviewed with consideration given to the cumulative effect of applications already approved for the body of water.

(7) CONDITIONS. The department may specify any of the following as conditions of the permit:

(a) The quantity of aquatic plants that may be introduced or controlled.

- (b) The species of aquatic plants that may be introduced or controlled.
- (c) The areas in which aquatic plants may be introduced or controlled.
- (d) The methods that may be used to introduce or control aquatic plants.
- (e) The times during which aquatic plants may be introduced or controlled.
- (f) The allowable methods used for disposing of or using aquatic plants that are removed or controlled.
- (g) Annual or other reporting requirements to the department that may include information related to pars. (a) to (f).

(8) CONTROL LIMITATIONS. (a) 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 or agent, the department shall state the reason for such action in writing.

(b) Control on lakes and impoundments are limited to waters along developed shoreline, including public parks, except when approval is given by the department for projects of public benefit.

(9) PERMIT DECISION. The department may deny or approve an application in whole or in part consistent with the provisions of subs. (5) through (9). The department shall notify the applicant in writing and state the reasons for the approval or denial.

(10) ISSUANCE TIMELINES. (a) *Chemical control.* The department shall issue a permit for chemical control for one year.

(b) *Mechanical and manual control.* The department may issue a permit for mechanical or manual aquatic plant control for any of the following:

1. Annually without a management plan.
2. 5 years if the proposed control is identified within an approved aquatic plant management plan.

(c) *Aquatic nursery growers.* The department may issue an aquatic plant management permit to a licensed nursery grower for a 3-year term for the harvesting of aquatic plants from a publicly owned lake bed or for a 5-year term for harvesting of aquatic plants from privately owned beds with the permission of the property owner.

Note: All permits with an expiration date past the first day of rule promulgation will be considered valid permits under this chapter until they expire.

(11) 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.

(12) CONTROL REPORTS. (a) *Chemical control.* 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. General permit information.
2. Control date and time.
3. The weather and body of water conditions during control.
4. Comment on any adverse or unusual conditions.
5. Relevant pesticide label information.
6. The applicator information.
7. The quantity and type of chemical, including the herbicide concentration rates.
8. The specific size and location of each control area.
9. The species present and the species targeted.

(b) *Mechanical and manual control.* After conducting mechanical control, the permit holder shall complete and submit an annual control report by the end of 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 specific size and 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.

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, 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.

(2) NOTIFICATION DEADLINE. The permit holder or their agent 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 Sensitive areas. The department may designate any portion of a body of water as a sensitive area under the process outlined in s. NR 1.06. The department shall also notify any affected property owners' association, inland lake district, and riparian property owner of locations identified as sensitive areas.

NR 107.10 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. If a permit or approval issued under one of those 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 107.11 Prohibitions. (1) No person may intentionally cut aquatic plants in public, navigable waters without removing the cut vegetation from the body of water.

(2) Due to the significant risk of environmental damage from copper accumulation in sediments, no person may apply copper sulfate products at a rate greater than 10 pounds of per acre.

(3) 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 private or shared ponds.
3. The dye is used by the department.

SUBCHAPTER II

CHEMICAL CONTROLS

NR 107.12 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 107.13 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 within 180 days 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 (5).

NR 107.14 Permit determinations. In addition to the standards established under s. NR 107.07, control shall be performed by an applicator currently certified by the Wisconsin department of agriculture, trade and consumer protection in the appropriate category 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 107.15 Conditions of the permit. In addition to conditions established under s. NR 107.07 (7), 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, and existing pesticide use laws, including ch. ATCP 29.

(2) **POSTING CONDITIONS.** (a) *Timing.* The permit holder or representing agent shall post signs at the beginning of each control event. The department may require the permit holder or representing agent to post prior to the control event if the department determines that such a posting is in the best interest of the public.

(b) *Posting locations.* Posting signs shall be conspicuous to the nonriparian public intending to use the treated water from both the water and shore. Posting signs shall be placed along contiguous treated shoreline and at strategic locations to adequately inform the public. Posting of untreated shoreline located adjacent to treated shoreline and noncontiguous shoreline shall be at the discretion of the department.

(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 areas of use 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 107.16 Field evaluation use permits. When a chemical product is considered for aquatic organism 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 evaluating product effectiveness and safety under field conditions and shall require all of the following in addition to the conditions of the permit specified under 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

POND MANAGEMENT

NR 107.17 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 bodies of water less than 10 acres in size.

NR 107.18 Requirements. (1) PRIVATE PONDS. The use of chemicals in private ponds as defined under s. NR 107.03 (27) are exempt from the provisions of this chapter except for ss. NR 107.04, 107.06 (1), (3) (b), (d), (e), (g), (h) - (k), (n), (5) 107.07 (1) – (9), (11), (12), 107.08 - 107.11, 107.12 – 107.15 (1), 107.15 (2), 107.16.

(2) SHARED PONDS. The use of chemicals in shared ponds as defined under s. NR 107.03 (30) are exempt from the provisions of this chapter except for ss. NR 107.04, NR 107.06 (1), (3) (b) - (e), (g) – (o), (4) – (6), 107.07 (1) – (9), (11), (12), 107.08 - 107.11, Subchapter II.

(3) PUBLIC PONDS. The use of chemicals in public ponds as defined under s. NR 107.03 (28) are exempt from the provisions of this chapter except for ss. NR 107.04, 107.05, 107.06 (1), (3) (b) – (o), (4), (5)- (8), 107.07 (1) – (9), (11), (12), 107.08 - 107.11, Subchapter II.

NR 107.19 Land controls standard. No person may be considered the sole owner of a private pond if the owner of the land surrounding the body of water provides access to the body of water to the public by means of an easement or other right-of-way.

107.20 Wetlands. Wetlands as defined in s. NR 107.03 (37) shall not be considered under this Subchapter III.

NR 107.21 Homeowners Associations. For the purposes of this subchapter, ponds managed by Homeowners Associations cannot be considered Private Ponds under s. NR 107.03 (27).

NR 107.22 Permit application requirements and fees. The application fee for an aquatic plant management pond permit shall be a \$400 non-refundable application fee.

NR 107.23 Permit issuance. (1) ISSUANCE TIMELINE. The department shall issue a permit under this subchapter for 5 years.

(2) PERMIT EXPIRATION. A permit shall expire on November 1 of the 5th year after the permit is issued.

SUBCHAPTER IV

ENFORCEMENT

NR 107.23 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 2. NR 109 is repealed.