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The statement of scope for this rule, SS 094-24, was approved by the Governor on August 8, 2024, published in Register No. 824A2 on August 12, 2024, and approved by the Natural Resources Board on October 23, 2024. This rule was approved by the Governor on insert date.

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 109, 193.03 (4), and 345.04 (2) (ir) 6. (Note); to **amend** NR 1.06 (8), 150.20 (1m) (qm) and (2) (a) 20. and 21., 193.03 (3) (Note), 193.32 (1) (f), 193.33 (1), 193.53 (1), 193 subch. V (title), 193.60, 193.61 (2), 193.62, 193.65 (1), 329.04 (2) (f) 8., and 345.04 (2) (h) (title), (intro.), and 1. and (ir) 4., 5. (Note), and 6.; to **repeal and recreate** NR 107; and to **create** 193.61 (1m) relating to aquatic plant management, manual removal and mechanical control regulations, aquatic habitat protection, and surface water grants, and affecting small business.

**WY-20-23**

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

**1. Statute Interpreted:**

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

**2. Statutory Authority:**

Sections 23.22 (2) (c), 23.24, 227.11 (2) (a), 281.11, 281.17 (2), 281.69, and 281.70, 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 (APM) 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.

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.

This order implements s. 281.11, Stats., which requires the department to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private.

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.

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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 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, specifies 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.

#### **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 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 APM 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, which regulates chemical control, and ch. NR 109, Wis. Adm. Code, which regulates burning and mechanical, physical, and manual control.

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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.

Under the current program, approximately 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 that allows for five-year permits and fewer regulatory requirements.

The recreated rule also makes modest updates to riparian notification and public notice procedures to allow for electronic notification and greater flexibility to reach stakeholders and for stakeholders to indicate interest in receiving more information about a permit.

Under the current program, permit fee revenue covers only 27% of program costs. The proposed fee increase will cover approximately 100% of total projected program costs in 2028.

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

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

The proposed changes for the APM program are in accordance with federal regulations:

- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The U.S. Environmental Protection Agency (EPA) approves pesticide products for use, classifies them according to toxicity, and evaluates their 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) permit. In Wisconsin, the department issues Wisconsin Pollutant Discharge Elimination System (WPDES) permits in lieu of NPDES permits, thereby regulating the use at the state level rather than federal level.

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

All neighboring states issue permits for Aquatic Plant Management control for some or all waterbodies depending on what waters are considered public waters. In addition to state permits, all states issue NPDES permits for pollutant discharges.

## **Michigan**

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The Michigan department of Environment, Great Lakes, and Energy (EGLE), issues permits for 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, 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 body of water 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 body of water, management goals, history of body of water management, water quality information, vegetation management plan, description of nuisance conditions, and planned monitoring and evaluation.

In 2021 the Aquatic Nuisance Control (ANC) Program within the Water Resources Division of the Michigan Department of Environment, Great Lakes, and Energy (EGLE) instituted additional restrictions on copper usage in May and June to protect spawning fish.

### **Minnesota**

Minnesota DNR requires an Invasive APM (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

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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 body of water 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 lake-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 exceeded, a Pesticide Discharge Management Plan 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 body of water 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 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

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radius around the dock, removal of a hazardous condition, or creation of a 15-foot-wide boating pathway. The 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 conducted a strategic analysis of APM in Wisconsin 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](#) (2019) 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. Reduction of aquatic plant abundance when plants are impeding use of a body of water.
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 body of water. 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 APM support integrated pest management as the modern solution for the long-term management of invasive and nuisance-causing species. The EPA, Aquatic Ecosystem Restoration Foundation, Forest Stewardship Council, and the department's Forestry, Natural Heritage Conservation, 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 pond classifications, public notification, and riparian notification. This information was shared with the Advisory Committees during rule drafting.

## **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 2023-2024, 77 businesses provided APM services in the state.

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The department reviewed a list of known private service consultants and contractors for APM 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 2023 and 2024 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.

**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.
- Incorporating fewer permitting and reporting requirements, and supplying exemptions from public notification for small waterbodies under 10 acres in some instances.
- Incorporating multiple options for riparian notification.

**12. Agency Contact Person:** Madi Johansen; madison.johansen@wisconsin.gov; (608) 712-2798

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

Written comments may be submitted at the public hearings, by regular mail, or email to:

Madi Johansen  
Department of Natural Resources  
3550 Mormon Coulee Road, La Crosse, WI  
608-712-2798, [Madison.johansen@wisconsin.gov](mailto:Madison.johansen@wisconsin.gov)

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wisconsin.gov/calendar/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

The consent of the Attorney General will be requested for the incorporation by reference of *Lac Courte Oreilles v. Wisconsin*, 775 F. Supp. 321 (W.D. Wis. 1991).

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**RULE TEXT**

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

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**NR 1.06 (8) SENSITIVE AREAS.** Sensitive areas designated under s. NR ~~107.05 (3) (i)~~ 107.09 are determined to be public rights features.

**SECTION 2. 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, and 23.24, and to interpret s. 281.17 (2), Stats. A balanced aquatic plant community is 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 the introduction of aquatic plants or the control of aquatic organisms. This chapter identifies other permits issued by the department that contain conditions required under this chapter, and for which no separate permit is required for aquatic plant management. The department shall allow the introduction of aquatic plants and control of aquatic organisms in a manner that is consistent with the principles of integrated pest management; minimizes the loss of ecological values and considers cumulative impacts of control; minimizes harmful effects to the waters of the state; and is protective of the environment and public health, safety, and welfare 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:



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

(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 or welfare; fish or wildlife; ecosystem diversity, productivity, or stability; or recreational values.

(2) “Applicant” means a person applying for a plan or permit or an 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, algae, 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 or wildlife, improve water quality, reduce erosion, or provide other ecosystem services.

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(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 water resource that is regulated by this chapter.

(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 permit form that includes the information specified under ss. NR 107.06 and 107.07.

(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 watercourse that was constructed or reconstructed 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, activity, or condition that is known to have the potential to cause acute or chronic injury or death if the exposure is not abated or removed.

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

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

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**(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, diver assisted suction harvesting, 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 species” means a species not targeted by a control authorized under this chapter.

**(24)** “Permit” means a permit to control aquatic plants authorized under this chapter.

**(25) (a)** “Pesticide” has the meaning given in s. 94.67 (25), Stats.

**(b)** “Pesticide” 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 and is 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 owner that has any of the following characteristics:

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(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 or 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 owner.

(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) (a)** “Sublethal effect” means a change or consequence experienced or demonstrated by an organism or population that survives exposure to a toxicant.

(b) “Sublethal effect” includes 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 using control authorized under this chapter.

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

**(35)** “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.

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(36) “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 acreage 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 unit 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 WAIVER.** The department shall waive a permit fee for any of the following:

(a) Any control conducted by the department.

(b) Any chemical control for the species purple loosestrife, *Lythrum salicaria*.

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

(a) *Manual control.* 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 scientific study or research.

3. Mechanical control or manual removal that the department conducts.

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**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.* Chemical control in accordance with label instructions when used in any of the following locations or scenarios:

1. A water tank used for potable water supplies.

2. A swimming pool.

3. A public or private well.

4. A private fish hatchery licensed under s. 95.60, Stats.

5. A waste treatment facility that has received plan approval under s. 281.41, Stats., or a control that is utilized to meet effluent limitations set forth in permits issued under s. 283.31, Stats.

6. A private pond that meets all of the following requirements:

a. Is 0.5 acres or less in size.

b. Has a functional and impermeable liner.

c. Does not have a history of being a lake or stream or of being part of a lake or stream.

d. Does not connect hydrologically or discharge to a water of the state.

(c) *Rights-of-way and drainage ditch control.* Control within rights-of-way or drainage ditches, provided that the department determines fish and wildlife resources are insignificant.

(d) *Incidental control.* 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.

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

(a) *Manual or mechanical control on private ponds.* 1. Except as provided in subd. 2., manual or mechanical control on a body of water 10 acres or less that is entirely confined on the property of one person and that is conducted with the permission of that property owner.

2. 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. An applicant shall receive permit approval from the department prior to conducting manual or mechanical control in this scenario.

(b) *Riparian owner control.* Control conducted by a riparian owner or their agent to manually remove aquatic plants from a body of water or use a mechanical device designed for cutting or mowing vegetation on an exposed lakebed, excluding motor vehicles, 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.' Any 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. A pier, boatlift, swim raft, or other recreational or water use device is located within the 30-foot-wide zone.

b. The removal is not in 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.

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

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

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(c) *Loose vegetation*. Riparian owner removal of 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 of. The department shall provide, in writing, the determination that an aquatic plant management plan is required and the reason for requiring a plan. In deciding whether to require a plan, the department shall consider any of the following:

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

(b) Any conflict with the goals of other written ecological or management plans for the body of water or watershed.

(c) The cumulative impacts and potential effects on the ecological values in the body of water.

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

**(2) PLAN ELEMENTS.** If required under sub. (1), an applicant shall develop a plan in a format specified by the department. The plan shall present and discuss all 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, including any protected areas designated by the department.

(c) The intensity of use on the body of water.

(d) The location of aquatic plant management activities.

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



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(f) A recommendation for an integrated pest 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) A description of the involvement, if any, of local units of government, tribal governments, and any lake organizations in the development of the plan.

**(3) PLAN REVIEW AND APPROVAL.** (a) *Plan review.* Within 45 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, the department may not approve the aquatic plant management plan.

(b) *Public notice.* The applicant shall conduct a 21-day public notice after the initial department review of the plan. After considering comments received during the public notice period, the applicant shall submit an updated draft of the plan to the department. The updated draft shall include 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 changes the applicant made prior to finalizing the plan draft.

(c) *Plan approval.* In deciding whether to deny or approve a plan in whole or in part, the department shall consider the standards for permit issuance under s. NR 107.07.

(d) *Plan activities.* Department approval of a plan does not constitute an endorsement of plant management but represents that the applicant has made adequate considerations in planning the actions.

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

(b) *One plan per body of water.* The department shall approve no more than one aquatic plant management plan per body of water. The department may allow multiple plans for large, complex bodies of water.

**Note:** An example of a large system where multiple plans are necessary is Lake Winnebago.

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(c) *Grandfathered plans.* All department approved aquatic plant management plans will be considered to meet the standards of this chapter until January 1, 2033, or when the plan expires, whichever is sooner.

**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 a new application.

(3) APPLICATION REQUIREMENTS. Except as specified under sub. (4), the applicant shall include all of the following in the permit application:

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

(b) 1. For a proposed chemical control application, an additional acreage fee of \$50 per acre of control up to a maximum of \$7,500.

2. For a proposed mechanical control application, an additional acreage fee of \$50 per acre of control up to a maximum of \$1,500.

3. For proposed chemical and mechanical control applications, the department shall round up partial acres above one acre to the next full acre for the purposes of fee determination.

(c) If a mechanical control permit is issued for 5 years, the permittee shall pay an annual fee for years 2 through 5. The fee shall be one-half of the first-year fee under pars. (a) to (b), but not less than \$75. This fee shall be paid prior to conducting control each year.

(d) The applicant's name and contact information, including all of the following:

1. Local street address.

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2. Telephone number or email address.

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

4. If a local address is not available, the applicant's home address and phone number.

5. If the permit application is submitted by a representing agent, the permit shall also include the 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 the application is submitted.

(e) A list of property owners adjacent to and within the control area, organized by last name, that includes all of the following information:

1. Local street address.

2. Telephone number or email address, when available.

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.

**Note:** This list is used by the department to determine whether the applicant complied with neighbor notification as outlined under sub. (6).

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

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

(h) A copy or link to any existing aquatic management plan for the body of water, or a 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.

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

(j) 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.

(k) 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.

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

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

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

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

(p) For chemical control, the name of any individual or commercial applicator providing control services and their applicator certification number.

(q) For chemical control, the business license and name of the company conducting control.

(r) For chemical control, a lake-wide concentration rate calculation if the proposed control area exceeds 5 percent of the body of water's surface area. The calculation shall be determined in one of the following ways:

1. If the body of water is not anticipated to be thermally stratified at the time of control, the applicant 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.

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2. If the body of water is anticipated to be thermally stratified at the time of control, the applicant 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 determine the epilimnetic lake-wide concentration rate.

**(4) AQUATIC NURSERY GROWER.** An application made by a licensed aquatic nursery grower for the 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 an application for a proposed control activity to any individual or organization that has indicated in writing, in that calendar year, a desire to receive such notification.

**(6) NEIGHBOR NOTIFICATION CERTIFICATION.** The applicant shall certify to the department that the permit application information was provided 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 or adjacent to the control area prior to submitting a permit application to the department for review. The permit application information shall include including all the following:

- (a) The acreage of control.
- (b) The methods of control.
- (c) The target species.
- (d) The goal of treatment.
- (e) The permit applicant contact information.
- (f) The link to or copy of the approved management plan, if applicable.

**Note:** A link to the permit application information on a postcard, email, flyer, or letter may be considered sufficient for this requirement. A hard copy of the information may also be provided. A copy of the permit application may be provided as well.

**(7) NOTICES FOR LARGE-SCALE CHEMICAL CONTROL.** In addition to the information required under sub. (3), 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 applicant shall provide public notice of the proposed application prior to submitting the application to the department. The notice shall state the acreage of the proposed treatment, target species, proposed chemicals, approximate

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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 of the applicant, or their agent, and the appropriate department contact from whom the public may request a public informational meeting. Except as allowed under par. (d), notices shall be conducted in accordance with all of the following requirements:

(a) *Local notice*. Local notice shall be given in at least one of the following places:

1. A publicly available lake association or district website.
2. A publicly available newsletter for an organization representing the body of water.
3. A public access site to the body of water, such as a boat landing or park.
4. A municipality website.

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

1. A local government press release.
2. A county website.
3. A public notice in the newspaper that has the largest circulation in the area affected by the application.
4. A radio announcement on a local station.

**Note:** Publicly available social media platforms that are open to the general public can be used for the requirement under par. (a) 1.

(c) *Evidence of public notice*. The final application shall include evidence that public notice has been provided. If payment is required for a notice, a signed affidavit shall be submitted with the permit application. If the notice is posted on a public forum for free, a time-stamped screenshot or photo of when the notice was posted and removed shall be submitted with the permit application.

(d) *Notice options*. The department shall assess these requirements under pars. (a) and (b) every 5 years, and may modify them to reflect the most up to date ways to effectively notify the public.

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(e) *Notice on a department-hosted service.* If the department provides a public notice service, the permit applicant is not responsible for the requirements under pars. (a) and (b) and shall use the department-hosted service. The department may include nominal fee charges for this service that shall not exceed the public notice requirements of this subsection.

**(8) PUBLIC INFORMATIONAL MEETINGS.** The applicant shall conduct a public informational meeting in a location near the body of water if any combination of 5 or more persons or organizations send a request for a meeting in writing to the applicant, with a copy to the department, that is postmarked or emailed 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 create 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 under par. (c).

**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 public notice in the newspaper that has the largest circulation in the area affected by the application, for at least one day.

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

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(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, including the address and contact information of the facility.
4. 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 if requested by the applicant.

(g) *Public comments.* The applicant shall submit all public comments with the application to the department.

**(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, or fully if no control is conducted.

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

**NR 107.07 Permit issuance. (1) COMPLETED APPLICATION.** (a) The department may not consider the permit application complete until all of the following requirements are met:

1. The procedures and requirements under ss. NR 107.05 and 107.06.
2. Any other provisions that the department determines may reasonably be required from an applicant, and that the department needs to make a decision under applicable provisions of law.



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(b) 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 business days, the department may dismiss the permit application.

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

(a) 15 business days.

(b) If a wild rice abundance or habitat may be affected within the ceded territory the department shall comply with the stipulations in *Lac Courte Oreilles v. Wisconsin*, 775 F. Supp. 321 (W.D. Wis. 1991), which are incorporated by reference. If the department determines that consultation with the Voigt Task Force is required, the department shall do all of the following:

1. Notify the permit applicant that the permit is placed on hold.

2. Offer an opportunity to consult.

3. If consultation is requested, the department shall place the permit 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.

**Note:** The stipulations in *Lac Courte Oreilles v. Wisconsin*, 775 F. Supp. 321 (W.D. Wis. 1991) is incorporated by reference and is available for inspection at the Legislative Reference Bureau. It may also be obtained from *[web url will be inserted when available where standards can be accessed online]*.

**(3) ENVIRONMENTAL IMPACT REPORTS AND CONTESTED CASE HEARINGS.** The department shall issue or deny issuance of an application after receipt of a completed application and approved plan as required under ss. NR 107.05 and 107.06, unless an environmental impact statement is required under s. 1.11, Stats. If an environmental impact statement is required, the department shall do all of the following:

(a) Notify the applicant in writing within 10 business days of receipt of the application.

(b) Stop work on the permit request until the environmental impact statement has been completed.

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(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 activities allowed by the permit, the department may suspend the permit until the contested case decision has been completed.

(5) PERMIT REVIEW. The department may deny issuance of an application if the department makes any of the following determinations:

(a) The target species are not causing the stated water use impairment.

(b) The proposed introduction or control will not alleviate the water use impairments caused by the target species 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 both the U.S. environmental protection agency and 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 as required under s. NR 107.13 (1).

(e) The proposed introduction or control is likely to result in a hazard to humans, animals, or other non-target organisms.

(f) The proposed introduction or control is likely to 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 that conducted by the department under ss. 29.421 and 29.424, Stats., is likely to result in an adverse impact on fish, fish eggs, fish larvae, essential fish food organisms, or wildlife, either directly or through habitat destruction.

(h) The proposed introduction or control 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 introduction or control is in a location identified by the department as a sensitive area as defined under s. NR 107.03 (29), except when the department determines the applicant

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demonstrated that the project can be conducted in a manner that is not likely to adversely impact the ecological character or reduce the ecological value of the sensitive area.

(j) The proposed introduction or control is likely to result in adverse long-term or permanent changes to a native 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 ecological or cultural values in specific aquatic ecosystems.

(k) The proposed introduction or control is likely to result in adverse long-term or permanent changes to wild rice of any *Zizania* species.

(L) The proposed introduction or control is likely to interfere with the rights of riparian owners.

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

**(6) CUMULATIVE IMPACTS.** The department shall review new applications 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 or dates 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).

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**(8) CONTROL LIMITATIONS.** (a) The department may stop or limit control activities if at any time it determines that control will be ineffective, result in unreasonable restrictions on beneficial water use activities or 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 is limited to the 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 issue or deny issuance of 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 chemical control permits for a duration of no more than one year.

(b) *Mechanical and manual control.* The department may issue a permit for mechanical or manual aquatic plant control for following time periods, as applicable:

1. One year if there is not an approved aquatic plant management plan.
2. Five 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 harvest of aquatic plants from a publicly owned lake bed or for a 5-year term for the harvest 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 [LRB inserts date] will be considered valid permits under this chapter until they expire.

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

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**(12) CONTROL REPORTS.** (a) *Chemical control.* After conducting chemical control, the permittee or their agent shall complete and submit a control report within 30 days on a form supplied by the department. A chemical control report shall include all of the following:

1. The general permit information.
2. The control date and time.
3. The weather and conditions of the body of water during control.
4. A statement on any adverse or unusual conditions.
5. The 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, manual, and physical control.* After conducting mechanical, manual, and physical control, the permittee or their agent shall complete and submit an annual control report by December 31 on a form supplied by the department. The control report 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 that cause a departure from the approved control, or at the request of the department, the permittee shall provide the control report to the department immediately.

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(d) *No control.* If the control activity did not occur, the permittee shall submit the annual control report stating no control was conducted 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 dispense the proper dosage.

(2) **NOTIFICATION DEADLINE.** The permittee or their agent shall notify, in writing, the department staff who issued the permit a minimum of 4 business days in advance of each anticipated control activity with the date, time, location, and proposed acreage 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 following the process outlined under s. NR 1.06. The department shall also notify any affected property owners' association, inland lake district, and riparian property owners 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 authorize 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) **AQUATIC PLANT CUTTING.** No person may intentionally cut aquatic plants in public, navigable waters without removing the cut vegetation from the body of water.

(2) **COPPER SULFATE APPLICATION.** 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 copper sulfate per acre.

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

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(a) The dye is used as part of an investigative or scientific study for compliance or research purposes.

(b) The dye is used in private or shared ponds.

(c) The dye is used by the department.

(d) The dye is used for the marking of chemical applications in wetlands.

**(4) MIXING PROP, BLOWER, OR FAN USE.** No person may use a mixing prop, blower, or fan to cut or dislodge aquatic plants around a structure in a body of water.

**Note:** The use of equipment in this manner can negatively impact neighbors, water quality, and the aquatic plant community. If used improperly, this equipment may also require a dredging permit for the disturbance to the bottom of the body of water.

**107.12 Permit Amendments.** **(1) ALLOWED PERMIT AMENDMENT.** An approved permit under this subchapter may be amended following procedures under sub. (3) if the permittee changes service providers.

**(2) AMENDMENT PROCEDURES.** An applicant shall submit an amendment application on a form provided by the department and through a permit system designated by the department. The permittee shall include a non-refundable amendment fee of \$50 per amendment with the permit application.

## SUBCHAPTER II

### CHEMICAL CONTROLS

**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.

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**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 within 180 days after the department has received notice of intended use of the chemical. The department shall post 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 (6).

**NR 107.22 DATCP certification.** In addition to the standards established under s. NR 107.07, control shall be performed by an applicator certified by the Wisconsin department of agriculture, trade, and consumer protection in the appropriate category.

**NR 107.23 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 permittee or agent shall post signs at the time that each control event begins. The department may require the permittee or 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.* The permittee or agent shall posted signs in a conspicuous location to both the riparian neighbors and the public intending to use the treated water from both the water and the shore. The permittee or agent shall post signs along the contiguous treated shoreline and at strategic locations to adequately inform neighbors and the public. The department may also require posting of signs along the untreated shoreline located adjacent to the treated shoreline and the noncontiguous shoreline.

(c) *Required information.* In the posted signs, the permittee or agent shall state the name of the chemical being used, the date of control, and any applicable water use restrictions that are indicated on the chemical's label. For tank mixes, the permittee shall post the label requirements of the most restrictive chemical.



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

(e) *Length of posting.* The permittee or agent shall post signs in the areas of use for a length of time that is in accordance with water use restrictions stated on the chemical label, which in no case may be less than one day.

(f) *Signage removal.* The permittee or agent shall remove the sign once the water use restrictions have expired.

(g) *Additional requirements.* The department may require bilingual signage.

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

**(3) LIQUID CHEMICAL APPLICATION CONDITIONS.** Except as specified under par. (h), power equipment used to apply liquid chemicals shall include all of the following specifications, as applicable:

(a) Containers used to mix and hold chemicals shall be constructed of watertight materials and be of sufficient size and strength to safely contain the chemical. The applicator shall provide measuring containers and scales for the purpose of measuring solids and liquids.

(b) Suction hose used to deliver the chemical to the pump venturi assembly shall be fitted with an on-off ball-type valve. The system shall also be designed to prevent clogging from chemicals and aquatic vegetation.

(c) Suction hose used to deliver surface water to the pump shall be fitted with a check valve to prevent back-siphoning into the surface water should the pump stop.

(d) Suction hose used to deliver a premixed solution shall be fitted with an on-off ball-type valve to regulate the discharge rate.

(e) Pressure hose used to discharge chemicals to the surface water shall be provided with an on-off ball-type valve. This valve shall be fitted at the base of the hose nozzle or as part of the nozzle assembly.

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(f) All pressure and suction hoses and mechanical fittings shall be watertight.

(g) The applicator shall calibrate the equipment and provide evidence of calibration at the request of the department supervisor.

(h) The applicator may utilize other equipment designs if they are capable of equivalent performance.

**NR 107.24 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 federal experimental use permit, the permittee shall obtain a field evaluation use permit from the department and be subject to the requirements of this chapter prior to conducting control. The department shall issue field evaluation use permits 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 permittee 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 information:

(a) The total amount of chemical used and the distribution pattern, including the chemical trade name, formulation, percent active ingredient, and dosage rate in the treated water in parts per million of active ingredient.

(b) A description of control areas including the character and the extent of the target species present.

(c) The 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) The permittee's conclusions and recommendations for future use.

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### SUBCHAPTER III

#### POND MANAGEMENT

**NR 107.30 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 107.31 Requirements. (1) PRIVATE PONDS.** The use of chemicals in a private pond as defined under s. NR 107.03 (27) is exempt from the provisions of this chapter except for ss. NR 107.04, 107.06 (1), (3) (b), (d), (e), (g) to (i), and (o), and (5), 107.07 (1) to (5) (i), (6) to (9) (a), (11), and (12), 107.08, 107.10, 107.11, 107.20 to 107.21, 107.23, and 107.16.

**(2) SHARED PONDS.** The use of chemicals in a shared pond as defined under s. NR 107.03 (30) is exempt from the provisions of this chapter except for ss. NR 107.04, 107.06 (1), (3) (b) to (e), (g) to (m), and (o), and (4) to (6), 107.07 (1) to (9), (11), and (12), 107.08 to 107.11, and subch. II.

**(3) PUBLIC PONDS.** The use of chemicals in a public pond as defined under s. NR 107.03 (28) is exempt from the provisions of this chapter except for ss. NR 107.04, 107.05, 107.06 (1), (3) (b) to (m) and (o) to (p), (4), and (5) to (8), 107.07 (1) to (9), (11), and (12), 107.08 to 107.11, and subch II.

**NR 107.32 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.

**NR 107.33 Wetlands.** The requirements of this subchapter do not apply to wetlands as defined under s. NR 107.03 (37).

**NR 107.34 Housing or community associations.** For the purposes of this subchapter, ponds with community access managed by associations or other entities are subject to the notification and signage requirements specified under ss. NR 107.06 (6) and 107.23 (2).

**NR 107.35 Permit application requirements and fees. (1) FEE.** The application fee for an aquatic plant management permit under this subchapter shall be \$400 and is non-refundable.

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(2) ALLOWED AMENDMENTS. An approved permit under this subchapter may be amended following procedures under sub. (3) for any of the following reasons:

- (a) A new target species is identified.
- (b) The permittee proposes to apply a chemical not previously covered under the permit.
- (c) The permittee changes service providers.

(3) AMENDMENT PROCEDURES. An applicant shall submit an amendment application on a form provided by the department and through a permit system designated by the department. The permittee shall include a non-refundable amendment fee of \$50 per amendment with the permit application.

(4) AMENDMENT REVIEW. The department shall issue or deny issuance of an amendment under the standards of s. NR 107.07. An amendment may not extend the original expiration date of the permit.

**NR 107.36 Permit issuance.** (1) ISSUANCE TIMELINE. The department shall issue permits under this subchapter for a duration of 5 years.

(2) PERMIT EXPIRATION. A permit issued under this subchapter shall expire on November 1 of the 5<sup>th</sup> year after the permit is issued.

## SUBCHAPTER IV

### ENFORCEMENT

**NR 107.40 Enforcement.** (1) Violations of this chapter may be prosecuted by the department under ch. 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) The department may cancel a permit or rescind permit privileges for the subsequent year, if a permittee fails to comply with the conditions of a permit issued under this chapter. The department shall provide notice of cancellation or loss of permit privileges to the permittee in writing.

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**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 107.16.

**(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)~~107.06 (4).

**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 (3) (Note) is amended to read:**

**NR 193.03 (3) Note:** Some aquatic invasive species are legally identified, classified, and regulated under ch. NR 40 and s. NR ~~109~~107.

**SECTION 6. NR 193.03 (4) is repealed.**

**SECTION 7. NR 193.32 (1) (f) is amended to read:**

**NR 193.32 (1) (f)** *Comprehensive management planning for lakes and watersheds.*  
Comprehensive management planning projects ~~for lakes and watersheds~~ that will result in a new or updated management plan for one or more of the following: ~~a lake, a watershed, an aquatic plant community, aquatic invasive species prevention and aquatic invasive species~~lakes or watersheds. 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~~shall 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.

**SECTION 8. NR 193.33 (1) is amended to read:**

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**NR 193.33 (1)** A plan shall comply with minimum plan requirements published in program guidance and available upon request. An aquatic plant management plan shall also comply with s. NR 107.05 (2) to (3).

**SECTION 9. NR 193.53 (1) is amended to read:**

**NR 193.53 (1)** A grantee shall request from the department a determination of eligibility prior to applying for a management plan implementation grant awarded under s. NR 193.51 (3) or an aquatic invasive species ~~control~~population management grant awarded under s. NR 193.63 (3) or (4), subject to all of the following:

**SECTION 10. NR 193 Subchapter V (title) is amended to read:**

**NR 193 Subchapter V — Aquatic Invasive Species ~~Control~~**

**SECTION 11. NR 193.60 is amended to read:**

**NR 193.60 Purpose.** The purpose of this subchapter is to establish procedures for awarding cost-sharing grants to prevent the introduction or spread of, or for integrated pest management of, aquatic invasive species populations that threaten or cause adverse effects ~~on~~to surface waters and shorelands.

**SECTION 12. NR 193.61 (1m) is created to read:**

**NR 193.61 (1m)** “Control” has the meaning given in s. NR 107.03 (11).

**SECTION 13. NR 193.61 (2) is amended to read:**

**NR 193.61 (2)** “Integrated pest management ~~strategy~~” ~~means a pest management strategy consistent with s. NR 193.65 (1)~~ has the meaning given in s. NR 107.03 (16).

**SECTION 14. NR 193.62 is amended to read:**

**NR 193.62 Eligible grantees.** In addition to the eligible grantees under subch. I, any person owning property on which a verified prohibited species occurs or who has a waterbody located entirely on their property in which a verified prohibited species occurs is eligible to apply for an ~~Aquatic Invasive Species Control Grant~~ aquatic invasive species population management grant under this subchapter.

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**SECTION 15. NR 193.65 (1) is amended to read:**

**NR 193.65 (1) INTEGRATED PEST MANAGEMENT.** Projects funded with a grant awarded under this subchapter shall employ integrated pest management. ~~Integrated pest management is an ecosystem-based management 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. A project that employs an integrated pest management strategy shall include more than one management practice.~~

**SECTION 16. 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)~~107.11 (1).

**SECTION 17. NR 345.04 (2) (h) (title), (intro.), and 1. and (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 that~~ will meet the substantive requirements of ch. NR ~~109~~ 107, subject to all of the following limitations:

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.

5. **Note:** ~~An invasive or nonnative aquatic plant species control management plan, as required under s. NR 109.04 (3) 107.05 and described in s. NR 109.09,~~ 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.

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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 18. NR 345.04 (2) (ir) 6. (Note) is repealed.**

**SECTION 19. EFFECTIVE DATE.** This rule takes effect on January 1, 2028.

**SECTION 20. 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

DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

For Karen Hyun, Ph.D., Secretary