

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

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

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

WY-29-19

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted:

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

2. Statutory Authority:

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

3. Explanation of Agency Authority:

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

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

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

This order implements s. 281.69, Stats., which directs the department to promulgate rules to establish and administer a cost-sharing program to award grants to eligible recipients for lake management projects that

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

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

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

4. Related Statutes or Rules:

Chapter NR 40 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 here but not yet established.

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

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

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

5. Plain Language Analysis:

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

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

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

Under the current program, approximately 1,000-1,200 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 (HOA’s). The proposed rule will create a section specific to ponds less than 10 acres, which allows for five-year permits and fewer regulatory requirements.

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

Under the current program, chemical control is limited to areas within 150 feet from shore in most circumstances and the scope and scale of large-scale chemical control is determined by a strict surface acreage threshold. In addition, plans for aquatic plant management are only required in some cases for mechanical control and there are no provisions for evaluating the success and impacts of ongoing aquatic plant management activities. The proposed rule will update the thresholds for large-scale control activities in wetlands and lakes following current scientific understandings, incorporating an evaluation component for control activities expected to impact a broad area. The proposed rule will also require a

plan in most situations so waterbodies can implement multiple control techniques together under one set of goals and objectives and operate under multiyear permits in some instances.

The recreated rule also will update citations, references, and notes to appropriate statutes and administrative codes and include other housekeeping changes.

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

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

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

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

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

7. Comparison with Similar Rules in Adjacent States:

Michigan

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

pulling, diver assisted suction harvesting (DASH), benthic mats, weed rollers, and dredging require a permit from Michigan EGLE.

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

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

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

Minnesota

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

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

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

Illinois

Illinois DNR requires any person, company, or organization that wishes to conduct aquatic plant control (chemical or non-chemical) in the Fox Chain O'Lakes to obtain a Letter of Permission (LOP). To obtain

an LOP, a completed application and map of treatment area is needed. Individual property owners with a titled portion to the bottom of the waterbody do not need an LOP if they plan to treat 0.25 acres or less. A LOP is not needed for waterbodies outside the Fox Chain O’Lakes.

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

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

Iowa

Iowa DNR requires permits for the introduction and removal of aquatic plants in public waters. These permits may be issued for 1-5 years. For physical removal permits, plants must be removed by hand-cutting, hand-pulling, hand-raking, or mechanical cutting only. Plants should only be removed to establish a travel lane and all removed plant material must be left in place or collected and composted on the same land owned or used by the permittee.

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

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

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

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

Current scientific and practical understandings of aquatic plant management support integrated pest management as the modern solution for the long-term management of invasive and nuisance-causing species.

The stakeholder surveys identified four major themes, which are supported in the proposed regulatory structure:

1. Reduce aquatic plant abundance when plants are impeding use of a waterbody.
2. Non-native species control. In some cases, this may include attempts to eradicate a non-native plant species, depending on the species to be controlled or the extent of its spread within a waterbody. In other cases, the goal may be to keep the population of a non-native species from becoming overabundant rather than to remove the population completely.
3. Ecological protection and restoration. Removal of a population that is negatively impacting a lake ecosystem, preservation of biodiversity and habitat, and lake or ecosystem services protection are also drivers of APM.
4. Public education and outreach. Private service providers and department staff as well as lake organization representatives also see APM as an opportunity to educate the public on aquatic ecology and water quality. This goal was described by a subset of interviewees, while the above three goals were well-represented within most interviews.

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

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

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

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

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

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

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

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

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

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

Madi Johansen – WY/4
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921
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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.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

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

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

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

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

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

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

NR 107.03 Definitions. In this chapter:

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

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

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

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

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

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

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

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

(a) Algae.

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

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

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

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

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

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

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

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

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

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

(15) “Hand wicking” means the individual pours or sprays the pesticide directly onto the glove and applies the pesticide using only the thumb, fingers and palm of the wicking glove directly to the target species.

(16) “Integrated pest management” means an ecosystem-based decision-making strategy informed by current, comprehensive information on pest life cycles and the interactions among pests and the environment that focuses on long-term suppression of pests or their damage and considers all the available pest control practices.

(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 the body of water assuming homogeneous mixing of herbicide throughout the entire lake water volume.

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

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

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

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

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

(23) “Non target organism” means a species not targeted by a control authorized under ch. NR 107.

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

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

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

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

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

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

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

- (a) Is located on the land of a single owner not in common ownership.
- (b) Has no surface water connection to other surface waters.
- (c) Has no public access.

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

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

- (a) Has a surface water connection to other surface waters.
- (b) Has public access.

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

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

- (a) Is located on land owned by multiple persons.
- (b) Has no surface water connection to other surface waters.
- (c) Has no public access.

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

(36) “Stakeholder” means a person who is involved in or affected by activities authorized under s. NR 107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Manual and biological control of Purple Loosestrife - *Lythrum salicaria*.

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

1. Water tanks used for potable water supplies.

2. Swimming pools.

3. Public or private wells.

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

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

6. Privately accessible ponds that are less than 0.1 acres in size and are lined, with no groundwater connection to waters of the state.

(c) Manual removal and collection of native aquatic plants for lake study or scientific research when performed in a manner that does not harm the native aquatic plant community.

(d) Control within roadside right-of-ways or drainage ditches if the department determines non-target and adverse impacts of the control activity are minimal and acceptable.

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

(f) Hand wicking of invasive emergent vegetation provided that the activity is performed in a manner that does not harm the native aquatic plant community or result in or encourage regrowth of nonnative vegetation.

(g) Manual removal or mechanical control that is conducted on woody vegetation below the ordinary high water mark on outlying waters, including Lake Superior and Lake Michigan, if the department determines non-target and adverse impacts of the control activity are minimal and acceptable.

(h) Mechanical control and manual removal that is conducted on woody vegetation above the ordinary high-water mark in palustrine wetlands.

(i) Control of emergent vegetation on storm water management structures.

(j) Chemical control of emergent vegetation when waters of the state are frozen.

(k) Mechanical control and manual removal that the department conducts and is consistent with the purposes of this chapter.

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

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

(m) Any control conducted by a federal agency.

(n) Control or removal of native aquatic plants by manual or mechanical means in the course of operating an aquatic nursery as authorized under s. 94.10, Stats., on privately owned non-navigable waters of the state.

(4) SCENARIO WAIVERS. The department shall waive the permitting requirements of this chapter for any of the following control activities:

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

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

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

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

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

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

3. ‘Invasive plant removal.’ Invasive aquatic plants are controlled in a manner that does not harm the native aquatic plant community or result in or encourage re-growth of invasive vegetation.

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

5. ‘Riparian rights.’ The removal does not interfere with the rights of other riparian owners.

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

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

(d) *Incidental control.* When a person causes incidental damage, removal, or destruction of aquatic plants when engaged in beneficial water use activities.

NR 107.05 Plan specifications and approval. (1) PLAN ELEMENTS. An applicant shall develop and submit a plan in a format specified by the department prior to submitting a permit application for aquatic plant control. An applicant shall use department-approved monitoring protocols and data to fulfill the requirements of this section.

(a) Department-approved monitoring protocols and data are found on the program’s web page and may include any of the following:

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

(b) The plan shall include all of the following items:

1. A physical, chemical, and biological description of the body of water including the aquatic plant community.
2. A description of historical control activities.
3. A description of the target species’ life cycle and habitat preferences.
4. A description of the documented impairments to beneficial water uses and ecological effects of the target species.
5. A description of aquatic plant management goals and objectives.

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

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

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

9. An education and information strategy for all stakeholders.

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

(2) PLAN DEVELOPMENT AND SUBMITTAL. (a) *Pre-planning.* An applicant shall notify the department in writing of the intent to create a plan at least 30 days before beginning plan development. Within that time frame, the department may require a meeting by notifying the sponsor in writing.

(b) *Best management practice waiver.* At the time of notification, if the applicant proposes the use of a department approved best management practice the applicant may request in writing that the department waive the requirements of all or a part of sub. (1) (b) 1., 3., 4., and 6. to 10. The applicant shall provide evidence that the best management practice is appropriate for the conditions presented in and around the body of water.

(c) *Best management practice approval.* The department shall approve or deny the request in consideration of sub. (3) (c).

(d) *Public Input.* After a meeting is conducted or waived by the department and a plan application is completed under sub. (1), the applicant shall provide and advertise a 21-day public review period under all of the following conditions:

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

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

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

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

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

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

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

(e) *Plan submittal*. The applicant shall submit a plan to the department for consideration at least 60 days prior to applying for a permit issued under this chapter.

(3) PLAN REVIEW AND APPROVAL. (a) *Plan review*. Within 45 days of the receipt of the plan application, the department shall notify the applicant in writing of any additional information that is required or modifications necessary to approve the application under the requirements of par. (c). The department may require a meeting with the applicant to discuss the plan application before completing the

review and approval process. If the applicant does not submit the additional information or does not modify the plan application as required by the department, the department may dismiss the plan application.

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

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

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

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

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

(b) *Plan update.* An applicant may request to update a management plan prior to the 5-year deadline. The department may approve or deny a request for an updated management plan in consideration of sub. (3) (c).

(c) *Plan renewal.* When a plan expires, the applicant shall update the management plan following the process of subs. (2) and (3).

(d) *Plan renewal waiver.* Under the process outlined in sub. (2) a., the applicant may request the department waive the requirements in sub. (1) (b) 3. to 4. and 6. to 10. The applicant shall provide aquatic plant baseline monitoring data to the department with the waiver request. The department may waive the requirements if the department determines the baseline body of water conditions do not change the plan approval under sub. (3) (c).

(5) PLAN WAIVERS. The department may waive the requirements of this section for any of the following activities when considering the factors under sub. (3) (c):

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

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

(c) The small-scale control is for a navigational obstruction to open water when all the following conditions apply:

1. Upon a request for the waiver, the department determines that aquatic plants are creating a water use obstruction for one or more riparian's access to open water.

2. The department determines the control actions are small in scale and have a high likelihood of achieving the goal of providing access to open water.

3. The department determines reasonable adaptations, including alternate navigational paths and aquatic plant management options that do not require a permit, are unfeasible, or impractical.

4. The proposed control will not adversely affect or interfere with an ongoing control effort that is guided by an existing management plan or directed by a surface water management organization.

(d) The control is operating under a best management practice created by the department for the specific body of water.

(6) 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. The department shall consider any amendment or revision to a permit application as a new application, except as provided in s. NR 107.07 (11).

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

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

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

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

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

1. Local street address.

2. Telephone number.

3. Email address.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) 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 chemical control.

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

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

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

(4) NOTIFICATION OF INTENT. (a) *Notification requirements.* The applicant shall certify to the department that a copy of the entire permit application will be provided to any affected property owners' association, inland lake district, and to all riparian property owners on the body of water within 5 days of permit submittal to the department. An applicant may satisfy this requirement using any of the following methods:

1. An email or postcard bearing the internet address leading to the department designated permitting website with information to locate the permit application.

2. A paper copy of the printed permit application sent via postal mail.

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

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

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

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

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

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

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

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

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

1. The applicant shall provide public notice in all of the following forms:

a. In writing to the requestors.

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

2. The applicant may also advertise the meeting in an online newspaper, lake association web page, or any other location that may adequately inform stakeholders of the upcoming meeting.

(c) *Notice requirements.* The notices required under par. (b) 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 access to participate in the meeting.

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

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

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

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

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

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

(b) Thirty days for permit applications that will have large-scale effects under s. NR 107.41 or permit applications for privately accessible ponds and public ponds.

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

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

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

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

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

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

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

(a) The proposed control activity is not consistent with the department approved plan for the body of water.

(b) The aquatic plants are not causing a water use impairment of beneficial water use activities.

(c) 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.

(d) The proposed introduction or control will result in a hazard to humans, animals, or other nontarget organisms.

(e) The proposed introduction or control will cause an adverse impact to threatened or endangered resources.

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

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

(i) The proposed control is in any of the following locations identified by the department as approved or proposed, except when the applicant demonstrates that the project can be conducted in a manner that will not adversely alter the aquatic vegetative habitat or reduce the ecological value of the area:

1. A sensitive area, under s. NR 107.03 (27).
2. An area of special natural resource interest, under s. NR 1.05.

3. A priority navigable waterway, under s. NR 1.07 (3) (a) to (b) and (4) (a) to (f).

(j) The proposed control will interfere with the rights of riparian owners.

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

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

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

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

1. The quantity of aquatic plants that may be introduced or controlled.

2. The species of aquatic plants that may be introduced or controlled.

3. The areas in which aquatic plants may be introduced or controlled.

4. The methods that may be used to introduce or control aquatic plants.

5. The times during which aquatic plants may be introduced or controlled.

6. The allowable methods used for disposing of or using aquatic plants that are removed or controlled.

7. The methods that may be used to monitor the aquatic plant community.

8. The areas that may be monitored to evaluate the aquatic plant community prior to and following control if the department determines the proposed control area is located in the primary aquatic vegetative habitat of the body of water or a department designated protection area under sub. (7) (i).

9. Reasonable conditions as determined by the department to satisfy the criteria of a best management practice.

10. Reasonable conditions as determined by the department to satisfy the goals and objectives in the approved aquatic plant management plan.

11. Reasonable conditions as determined by the department to be necessary to reduce or avoid impacts in order to meet the standards established in sub. (7).

12. Annual or other reporting requirements to the department that may include information related to subs. 1 to 11.

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

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

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

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

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

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

1. It is within a designated public rights feature navigation area under s. NR 1.06 (5) (d).
2. It addresses a demonstrated water use obstruction.
3. It is identified within the department approved management plan.
4. It is permissible under subs. (7) and (8).

(c) *Multi-year permit notification.* If a permit is issued for multiple years, the applicant shall notify the department 10 days before the first control activity each calendar year on a form supplied by the department. The applicant shall include a permit application fee of one-half the total original application fee under s. NR 107.06 (1) (a) to (b), but not less than \$75.

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

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

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

- (a) The company managing the control.
- (b) The individual conducting the control.
- (c) The control area if the proposed change is within the scope of the department approved plan.
- (d) The disposal site for removed aquatic plants.
- (e) The finalized aquatic plant monitoring data.

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

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

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

(15) CONTROL NOTIFICATION. (a) *Timeline requirements.* The permit holder shall post at least 2 notification signs at all public access points within 5 days of receipt of the department approved permit, or immediately following the receipt of the department approved permit if the control is to occur within the 5 days following the receipt of the department approved permit.

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

(c) *Control dates.* If a permit holder has not determined the specific control date when the notification is posted, the permit holder may state a one-week period in which the control may occur. The permit holder shall update the notification signs with a specific date when the control is scheduled.

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

(e) *Sign removal.* The permit holder or representing agent is responsible for sign removal.

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

(16) CONTROL REPORTS. (a) *Timeline.* After conducting a control activity, the permit holder shall complete and submit a control report within 30 days on a form supplied by the department.

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

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

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

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

(d) *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.

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

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

NR 107.08 Supervision. (1) NOTIFICATION DEADLINE. The permit holder shall notify the department staff who issued the permit in writing a minimum of 4 business days in advance of each anticipated control activity with the date, time, location, and proposed size of control. Upon approval of the department, the advance notification requirement may be waived in the permit decision letter.

(2) 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 or is not scale appropriate.

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

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

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

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

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

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

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

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

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

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

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

1. A summary report of the field surveys.

2. A description of the designated sensitive areas including their categorization.

3. A list of management recommendations for protection and restoration of the sensitive area.

4. A list of recommendations for an education strategy.
5. A description of the relevant regulations and ordinances for the area.

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

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

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

(d) *Public meeting notification.* The department shall conduct a public informational meeting in a location near the body of water under all the following processes:

1. When a combination of 5 or more persons or organizations request the meeting in writing to the department within 30 days after the notice is posted on a department designated website.

2. Upon receipt of a request for a public informational meeting, the department shall, not less than 10 days before the meeting, mail written notice to each person who requested the meeting as well as the persons in par. (f), and shall provide notice on its website and through its system of electronic notices to state media.

3. If a public informational meeting is not requested in writing within 30 days after the publication of the notice, the department may waive the meeting.

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

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

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

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

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

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

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

SUBCHAPTER II CHEMICAL CONTROLS

NR 107.20 Purpose. The purpose of this subchapter is to establish procedures for the use of chemical controls in managing aquatic plants and other aquatic organisms. The department may allow the control of aquatic plants with chemicals registered and labeled by the U.S. environmental protection

agency and labeled and registered by firms licensed as pesticide manufacturers and labelers with the Wisconsin department of agriculture, trade and consumer protection.

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

(2) APPLICANT RESPONSIBILITY. An applicant shall provide copies or the internet address of the applicable chemical fact sheets to all affected property owners, property owners' associations, inland lake districts and all riparian owners within 5 days of permit application submittal to the department.

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

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

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

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

(4) Liquid chemicals are to be used.

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

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

(2) **POSTING CONDITIONS.** (a) *Required information.* The posting 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.

(b) *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.

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

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

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

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

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

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

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

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

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

SUBCHAPTER III WETLAND MANAGEMENT

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

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

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

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

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

(4) PERMIT RENEWAL The permit applicant shall submit a renewal request 14 days before any control activities occur on a form supplied by the department each calendar year the permit is issued for. A renewal of this permit shall include an additional application fee of one-half the total original application fee under s. NR 107.06 (1) (a) to (b), but not less than \$75.

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

(6) SUMMARY CONTROL REPORT. (a) *Timeline*. Within 30 days, the permit holder shall complete and submit a control report summarizing the previous 30 days control on a form supplied by the department.

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

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

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

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

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

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

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

SUBCHAPTER IV LARGE-SCALE CONTROL

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

NR 107.41 Monitoring. (1) LARGE-SCALE MECHANICAL CONTROL. For the purposes of this subchapter, mechanical, manual, or physical control of submerged aquatic plants shall be considered to have large-scale effects if the department determines that the control is conducted in an area greater than 50 percent of the littoral area. The permit applicant shall follow all the following processes for large-scale control:

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

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

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

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

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

(c) *Additional control.* The permit holder shall not conduct additional chemical control activities prior to the post-control monitoring survey unless a department approved best management practice is incorporated into the body of water's approved plan to approve the additional chemical control activity.

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

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

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

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

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

SUBCHAPTER V POND MANAGEMENT

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

NR 107.51 Exemptions. (1) PRIVATELY ACCESSIBLE PONDS. The use of chemicals in privately accessible ponds are exempt from the provisions of ss. NR 107.05; 107.06 (2) (a), (b), (e) to (g), (i) and (n); (3) (a) and (b); 107.07 (1), (2), (11) (a) to (c) and (15); and 107.08, subch. III, and subch. IV.

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

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

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

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

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

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

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

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

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

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

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

(2) PUBLIC NOTIFICATION. The permit holder of a permit issued for a public pond shall submit an annual public notification form to the department a minimum of 14 days prior to the first control activity of each calendar year for which the permit is issued.

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

NR 107.55 Supervision. The department may require the permit holder to notify the department of anticipated control activities. The department shall inform the permit holder of this requirement in writing on the permit decision letter. If the department requires notification, the permit holder shall notify

the department staff who issued the permit in writing a minimum of 4 business days in advance of each anticipated control activity with the date, time, location, and proposed size of control. The department may require supervision for to ensure permit compliance.

SUBCHAPTER VI
ENFORCEMENT

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

(2) Failure to comply with the conditions of a permit issued under or in accordance with this chapter shall constitute an aquatic plant management activity performed without a valid permit issued by the department under s. 23.24 (3) (a), Stats.

(3) Failure to comply with the conditions of a permit issued under or in accordance with this chapter may result in cancellation of the permit and loss of permit privileges for the subsequent year. The department shall provide notice of cancellation or loss of permit privileges to the permit holder in writing.

SECTION 3. NR 109 is repealed.

SECTION 4. NR 150.20 (1m) (qm) and (2) (a) 20. and 21. are amended to read:

NR 150.20 (1m) (qm) Issuance of aquatic plant management permits under ch. NR ~~109~~ 107 except for those that meet the criteria under s. NR 107.41.

(2) (a) 20. Issuance of an aquatic plant management permit under s. NR ~~107.05~~ 107.07. that meets the criteria under s. NR ~~107.04 (3)~~ 107.41.

21. Approvals of aquatic plant management plans under s. NR ~~109.09~~ 107.05 and surface water management plan recommendations under s. NR 193.53.

SECTION 5. NR 193.32 (1) (f) is amended to read:

NR 193.32 (1) (f) ~~Comprehensive management~~ Management planning for lakes and watersheds.
~~Comprehensive management~~ Management planning projects for lakes and watersheds that will result in a

new or updated management plan for one or more of the following: a lake, a watershed, an aquatic plant community, aquatic invasive species prevention and aquatic invasive species. A management plan is a dynamic, written document that presents baseline information, explores management challenges, defines general management goals and objectives and provides strategic direction for selecting management actions and planning specific activities to accomplish plan objectives. The plan should present a set of recommended management actions and outline a plan for implementation, progress assessment, and plan updates. The public shall be given an opportunity to review the plan before it is adopted and provide comment. The grantee shall summarize comments received and use comments to modify the management plan, as appropriate.

Note: ~~Management~~ Eligible management plans include comprehensive plans, such as watershed plans, Nine Key Element watershed plans, basin plans, Total Maximum Daily Load implementation plans, lake management plans, river management plans, and county land and water plans, as well as focused management plans addressing a specific management challenge, including aquatic plant management and protection plans, and aquatic invasive species control plans written under s. NR 107.05.

SECTION 6. NR 193.51 (1) (b) (intro.), (c) and (3) (c) (intro.) are amended to read:

NR 193.51 (1) (b) Shoreland protection. A shoreland protection project that will assist a grantee in carrying out best management practices intended to improve surface water or aquatic ecosystems. Eligible activities include one or more of the following best practices conducted in compliance with the general and practice-specific standards outlined in ~~s. ATCP 50.64~~ ch. ATCP 50 or technical standards developed under the process described in subch. V of ch. NR 151:

(c) *In-water management.* In-water management projects that will assist a grantee to protect or improve the littoral or in-stream areas of waterbodies. Eligible activities include installing department-approved structures that provide fish or wildlife habitat; culvert, road, or trail stream crossing modification or removal and other modifications to improve habitat or connectivity; and planting of native aquatic plants in a natural shoreland or littoral environment; subject to department approval.

(3) (c) ~~Lake~~ In-water restoration activities where the department has determined that all of the following conditions exist:

SECTION 7. NR 193.51 (3) (c) 3. and (cm). are created to read:

NR 193.51 (3) (c) 3. The likely benefits of the proposed activities are determined by the department to outweigh likely adverse effects, including those on water quality, biodiversity, habitat, ecosystem condition, navigation, recreational value, and hydrology.

(cm). Surface water restoration activities that abate conditions related to ecological impairment, including aeration, floating treatment wetland systems, and similar artificial devices intended to improve water quality or habitat, may be implemented when recommended in a management plan and approved for eligibility by the department under s. NR 193.53.

SECTION 8. NR 193.53 (2) (e) is created to read:

NR 193.53 (2) (e) Consider any of the factors outlined in s. NR 107.05 (3) (c).

SECTION 9. NR 193.53 (3) is amended to read:

NR 193.53 (3) The department may consider the eligibility of management plan recommendations or activities under this section when they are contained in a current management plan. A current management plan will have a completion date of no more than 10 years prior to submittal under this section, notwithstanding aquatic plant management and protection plans, which shall have a completion date of no more than 5 years prior to submittal under this section. The department may determine that a longer lifespan is appropriate for a given management plan if the applicant can demonstrate it has been actively implemented and updated during its lifespan.

SECTION 10. NR 193.61 (1) is renumbered (1r).

SECTION 11. NR 193.61 (1g) is created to read:

NR 193.61 (1g) “Control” means actions that impact aquatic invasive species and other organisms including manual removal, the use of biological agents, dewatering, desiccation, burning, freezing, shading, suffocation, mechanical force, inhibition, potentiation, or metabolic disruption.

SECTION 12. NR 193.63 (3) and (4) are amended to read:

NR 193.63 (3) LARGE-SCALE POPULATION MANAGEMENT PROJECTS. Large-scale population management projects shall consist of aquatic invasive species control projects that will result in long-

term, multi-season suppression of one or more established populations of aquatic invasive species ~~in a substantial portion~~. Eligible projects shall implement management activities that are expected to affect significant portions of a lake, stream reach, or wetland, or aquatic invasive species control projects that employ a strategic approach to address multiple populations within a defined region. Management projects shall implement activities recommended in a management plan following a determination of eligibility under s. NR 193.53.

(4) SMALL-SCALE POPULATION MANAGEMENT PROJECTS. Small-scale population management projects shall consist of aquatic invasive species control projects that will maintain low abundance or frequency of one or more small established populations of aquatic invasive species ~~populations~~ or further reduce them in size. Grant funds awarded under this paragraph may be used to manage a small population ~~populations~~ resulting from a successful large-scale population management project. Small-scale management projects shall implement management activities with the goal of continued suppression of the target species on a localized scale, ~~where the~~ using management actions are ~~unlikely not expected~~ to affect the entire lake, stream reach, or wetland. Management projects shall implement activities recommended in a management plan following a determination of eligibility under s. NR 193.53.

SECTION 13. NR 193.65 (1) is amended to read:

NR 193.65 General conditions. (1) INTEGRATED PEST MANAGEMENT. Projects funded with a grant awarded under this subchapter shall employ an integrated pest management strategy. Integrated pest management is an ecosystem-based ~~management~~ decision-making strategy ~~that focuses on long-term suppression of pests or their damage and considers all of the available pest control practices.~~ Integrated pest management projects shall be informed by current, comprehensive information on pest life cycles and the interactions among pests and the environment that focuses on long-term suppression of pests or their damage and considers all of the available pest control practices. A project that employs an integrated pest management strategy shall include more than one management practice.

SECTION 14. NR 329.04 (2) (f) 8. is amended to read:

NR 329.04 (2) (f) 8. The riparian is responsible for removing vegetation that has been dislodged or cut within their riparian zone as required under s. NR ~~109.08 (3)~~ 107.12 (1).

SECTION 15. NR 345.04 (2) (h) (intro.), 1., (ir) 4., 5. (Note), and 6. are amended to read:

NR 345.04 (2) (h) *Standards for jetting to harvest aquatic plants, tubers or seeds.* Jetting of the bottom sediments during the harvesting of aquatic plants is eligible for a general permit which will meet the substantive requirements of ch. NR ~~109~~ 107, subject to all of the following limitations:

1. The project shall be in a location where the bed of the waterway is privately-owned or a location where the bed of the waterway is publicly-owned if the department determines that the project is consistent with the aquatic plant management activities authorized under ch. NR ~~109~~ 107.

(ir) 4. The use of the motor vehicle is for the purpose of controlling emergent invasive or nonnative aquatic plant species as designated by the department under s. 23.24, Stats., and s. ~~NR 109.07~~ ch. NR 40.

Note: An invasive or nonnative aquatic plant species control plan, as required under s. NR ~~109.04~~ (3) 107.05 and described in s. NR ~~109.09~~ 107.03 (28), must contain the following items: a description of the existing condition including the types of plants present and their abundance; a strategy for the control of the invasive or nonnative aquatic plant species; a plan for the re-establishment of the native plant community; and a monitoring plan to assess the success or failure of the control plan.

6. For projects requiring a permit under ch. NR 107 ~~or 109~~, before the department can consider the application complete or issue a general permit under this section, the applicant shall submit documentation to demonstrate that a permit under ch. NR 107 ~~or 109~~ has been applied for.

SECTION 16. NR 345.04 (2) (ir) 6. (Note) is repealed.

SECTION 17. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 18. 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 Preston D. Cole, Secretary