

Chapter NR 107

AQUATIC NUISANCE CONTROL

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Note: Chapter NR 107 as it existed on August 31, 1981 was repealed and a new chapter NR 107 was created effective September 1, 1981.

NR 107.01 Purpose. The purpose of this chapter is to establish procedures for the chemical control of aquatic nuisances pursuant to s. 144.025 (2) (i), Stats. The department allows the use of only those chemicals registered and labeled by the U.S. environmental protection agency for controlling specific aquatic nuisances except for silvex (2, 4, 5-TP) specified in s. NR 107.07.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.

NR 107.02 Applicability. Any person sponsoring or conducting the chemical control of aquatic nuisance in waters of the state must obtain a permit from the department of natural resources except as provided in s. NR 107.09, Wis. Adm. Code. Waters of the state includes 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 s. 144.01, Stats. Private ponds are included in this meaning.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.

NR 107.03 Application for permit. (1) Permit applications shall be made on forms provided by the department and shall be submitted to the district director for the district in which the project is located. Any amendment or revision to an application shall be treated by the department as a new application.

District Headquarters Locations:

1. Southern — 3911 Fish Hatchery Road, Route 4, Madison 53711
2. Southeast — 9722 W. Watertown Plank Road, P.O. Box 13248, Milwaukee 53213
3. Lake Michigan — 1125 N. Military Avenue, Box 3600, Green Bay 54303
4. North Central — Box 818, Rhinelander 54501
5. West Central — 1300 W. Clairemont Avenue, Eau Claire 54701
6. Northwest — Box 309, Spooner 54801

(2) The application shall be accompanied by:

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- (a) A \$5.00 application fee;
 - (b) A legal description of the body of water proposed for treatment including township, range and section number;
 - (c) One copy of a detailed map or sketch of the body of water with the maximum proposed treatment area outlined and pertinent information necessary to locate those properties riparian to the treatment area which may include street address, local telephone number, block, lot and fire number;
 - (d) Description of the aquatic nuisance and reason for treatment;
 - (e) The trade names of chemicals proposed for usage.
- (3) The applicant shall certify to the department that a copy of the application has been provided:
- (a) In the case of a proposed treatment for nonrooted organisms, to any affected property owners association.
 - (b) In the case of a proposed treatment for rooted organisms, to any affected property owners association and to owners of riparian property adjacent to the treatment area.
- (4) A notice of the proposed treatment shall be provided by the department to any person or organization indicating annually in writing their desire to receive such notification.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.

NR 107.04 Issuance of permit. (1) The department shall issue the permit between 10 and 15 working days after receipt of an acceptable application unless:

- (a) The proposed chemical is not labeled and registered for the intended use by the United States environmental protection agency.
- (b) The department determines the chemicals the applicant proposes to use will not provide nuisance relief or have unreasonable labeled use restrictions incompatible with existing water uses.
- (c) The department determines the use of chemicals, as proposed, will result in a hazard to humans, animals or other nontarget organisms.
- (d) The department determines the proposed use of chemicals will result in a significant and adverse effect on the body of water.
- (e) An environmental impact report or statement is required under s. 23.11, Stats., or s. 1.11, Stats. Notification to the applicant shall be in writing within 10 working days of receipt of the application and no action will be taken until the report or statement has been completed.
- (f) A public hearing has been granted under s. 227.064, Stats.

(2) (a) Subsequent to the granting of a permit but prior to the actual treatment allowed by the permit, the department may grant a public hearing under s. 227.064, Stats., if no such hearing was previously held.

(b) If a request for a public hearing is received after the permit is issued but prior to the actual treatment allowed by the permit, the de-

partment is not required to, but may, suspend the permit because of the request for public hearing.

(3) The department may approve the application in whole or in part consistent with the provisions of sub. (1) (a) through (f). Denials shall be in writing stating reasons for the denial.

(4) Permits may be issued for up to 3 treatment seasons. Any revision in project scope shall require submittal of an amendment consistent with the requirements of s. NR 107.03.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.

NR 107.05 Supervision. (1) Unless specifically exempted by this chapter, all applications of chemicals for the control of aquatic nuisances shall be supervised by a department representative, physically present at the time chemicals are applied. On-site supervision may include the determination that treatment is unnecessary or unwarranted. The cost of such on-site supervision shall be charged to the sponsor of the project at a rate of \$30 for the first hour, or part thereof, and \$10 per hour for each subsequent hour, or part thereof, on the same day.

(2) The department may waive the on-site supervision requirement for aquatic nuisance control projects which meet all of the following conditions:

(a) The proposed treatment area encompasses a total of one acre or less;

(b) The treatment area is limited to the waters adjacent to the applicant's own shoreline;

(c) Separate applications meeting the conditions in pars. (a) and (b) collectively do not exceed 10% of the shoreline;

(d) Chemicals used are salts of endothal and granular endothal amine, diquat, 2,4-D (iso-octyl or ethyl-hexyl ester formulation) or granular chelated copper compounds;

(e) The public interest does not require on-site supervision.

(3) Notwithstanding sub. (2), the department may waive on-site supervision when:

(a) The body of water is a pond located totally on the land of the applicant and the discharge can be controlled to prevent chemical loss from the pond.

(b) The body of water is an agricultural drainage ditch and the department determines that the control of aquatic nuisances is conducted to improve agricultural potential of adjacent lands.

(c) The treatment is made for the control of bacteria on swimming beaches with chlorine or chlorinated lime.

(d) The treatment is intended to control algae or other aquatic nuisances that interfere with the use of the water for potable purposes.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.

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NR 107.06 Conditions of the permit. (1) The applicant shall notify the district office 4 working days in advance of the anticipated treatment date so a supervisor will be made available on the date required.

(2) When onsite supervision is waived, the applicant shall submit an aquatic nuisance control treatment report on a form supplied by the department. This form shall be completed and submitted by October 1 of each year for which a permit has been granted. If treatment did not occur, the card should be returned with appropriate comment to the department by October 1. Failure to submit the card form may result in loss of future permit privileges or may require mandatory on-site supervision of future treatments.

(3) The department may stop or limit the application of chemicals to a body of water if at any time it determines that chemical treatment will be ineffective or produce environmental pollution. The department shall state the reason for such action in writing to the applicant.

(4) The applicant shall be responsible for posting those areas of public use in accordance with water use restrictions stated on the chemical label and with the following conditions:

(a) Posting shall be required for all shoreline aquatic rooted plant control projects except for projects involving private ponds, and shall be at the discretion of the department supervisor for algae and swimmers' itch control.

(b) Posting signs shall be visible and conspicuous to the public intending to use the treated waters and shall state applicable label water use restrictions of the pesticide being used, the name of the pesticide and date of treatment. For tank mixes, the label requirements of the most restrictive chemical will be posted.

(c) Minimum sign dimensions used for posting shall be 11 inches by 9 inches. The applicant shall be responsible for furnishing signs to meet posting requirements. Signs may be purchased from the department.

(d) Posting shall be completed by the end of treatment by the permit holder or representing agent. In special cases, posting prior to treatment may be required as a permit condition when the department determines that such posting is in the best interest of the project.

(e) Posting signs shall be placed along contiguous treated shoreline and at strategic locations to adequately inform the public. Noncontiguous shoreline should be posted at the discretion of the department supervisor.

(f) Posting signs shall remain up for the time period stated on the pesticide label for water use restrictions, after which the permit holder or representing agent is responsible for sign removal.

(5) Chemical applications for aquatic rooted plants shall be limited to those waters within 150 feet from shore except where special approval is given by the department to maintain navigation channels, piers or other facilities used by organizations or the public including commercial facilities.

(6) Chemical applications for aquatic rooted plants shall be limited to water along developed shoreline including public parks except where

special approval is given by the department for projects of public benefit.

(7) Swimmer's itch control shall be limited to beaches used by organizations or the public including commercial facilities, where itch cases have been verified or there has been a history of swimmers' itch.

(8) Chemical applications, other than those conducted by the department pursuant to ss. 29.62 and 29.623, Stats., shall be prohibited when documented technical evidence is presented that the application will significantly injure fish, fish, eggs, fish larvae, essential fish food organisms or wildlife present in the proposed application area at the time of application or after application. Such evidence must be reviewed and accepted as reliable and valid by the department.

(9) Chemical applications for the control of aquatic rooted plants shall be prohibited in locations known to have endangered or threatened plant species as specified in s. 29.415, Stats., and as determined by the department.

(10) Tank mixing of labeled chemicals must be done in the presence of the department supervisor. Violation of this section may result in cancellation of the present permit.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.

NR 107.07 Prohibited chemicals. Silvex (2,4,5-TP) may not be used for aquatic nuisance control in "waters of the state" as defined in s. 144.01 (1), Stats.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.

NR 107.08 Field evaluation use permits. (1) When a chemical product is considered for aquatic nuisance control and does not have a federal label for such use the applicant must apply to the administrator of the United States environmental protection agency for an experimental use permit under section 5 of the federal insecticide, fungicide and rodenticide act as amended October 21, 1972, November 28, 1975 and September 30, 1978. Upon receiving such permit, the applicant shall obtain a field evaluation use permit from this department and be subject to on-site supervision requirements of s. NR 107.05 (1). Such department field evaluation use permits shall be issued for the purpose of evaluating product effectiveness and safety under field conditions and will require in addition to the condition of the permit specified in s. NR 107.06, the following:

(a) Treatment shall be limited to an area specified by the department;

(b) The applicant shall submit to the department a summary of treatment results at the end of the treatment season. The summary shall include:

1. Total chemical used and distribution pattern, including chemical trade name, formulation and dosage rate in parts per million of active ingredient;

2. Description of treatment areas including the character and the extensiveness of the nuisance present;

3. Effectiveness of the application and when applicable, a summary comparison of the results obtained from past experiments using the same chemical formulation;

4. Other pertinent information required by the department;

5. Conclusions and recommendations for future use on a routine basis.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.

NR 107.09 Exemptions. The use of chemicals in accordance with label instructions is exempt from the provisions of this chapter, when used in:

- (1) Water tanks used for potable water supplies,
- (2) Swimming pools,
- (3) Treatment of public or private wells,
- (4) Private fish hatcheries licensed under s. 29.52, Stats.,
- (5) Waste treatment facilities which have received s. 144.04, Stats., plan approval or are utilized to meet effluent limitations set forth in permits issued under s. 147.02, Stats.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.

NR 107.10 Severability. Should any section, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81.