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Chapter NR 107

AQUATIC PLANT MANAGEMENT

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Note: Chapter NR 107 as it existed on February 28, 1989 was repealed and a new Chapter NR 107 was created effective March 1, 1989.

NR 107.01 Purpose. The purpose of this chapter is to establish procedures for the management of aquatic plants and control of other aquatic organisms pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 281.17 (2), Stats. A balanced aquatic plant community is recognized to be a vital and necessary component of a healthy aquatic ecosystem. The department may allow the management of nuisance-causing 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. Chemical management shall be allowed in a manner consistent with sound ecosystem management and shall minimize the loss of ecological values in the water body.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; correction made under s. 13.93 (2m) (b) 7., Stats., Register, December, 2000, No. 540.

NR 107.02 Applicability. Any person sponsoring or conducting chemical treatment for the management of aquatic plants or control of other aquatic organisms in waters of the state shall obtain a permit from the department. 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 s. 281.01 (18), Stats.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; correction made under s. 13.93 (2m) (b) 7., Stats., Register, December, 2000, No. 540.

NR 107.03 Definitions. (1) "Applicator" means the person physically applying the chemicals to the treatment site.

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

(3) "Department" means the department of natural resources.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

NR 107.04 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, except as provided in s. NR 107.04 (3) (g).

Note: The DNR district headquarters are located at:
1. Southern — 3911 Fish Hatchery Road, Fitchburg 53711
2. Southeast — 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee 53212
3. Lake Michigan — 1125 N. Military Ave., Box 10448, Green Bay 54307
4. North Central — 107 Sutliff Ave., Box 818, Rhinelander 54501
5. Western — 1300 W. Clairemont Ave., Call Box 4001, Eau Claire 54702
6. Northwest — Hwy 70 West, Box 309, Spooner 54801

(2) The application shall be accompanied by:

(a) A nonrefundable permit application fee of $20, and, for proposed treatments larger than 0.25 acres, an additional refundable acreage fee of $25.00 per acre, rounded up to the nearest whole acre, applied to a maximum of 50.0 acres.

1. The acreage fee shall be refunded in whole if the entire permit is denied or if no treatment occurs on any part of the permitted treatment area. Refunds will not be prorated for partial treatments.

2. If the permit is issued with the proposed treatment area partially denied, a refund of acreage fees shall be given for the area denied.

(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 proposed treatment area dimensions clearly shown and with pertinent information necessary to locate those properties, by name of owner, riparian to the treatment area, which may include street address, local telephone number, block, lot and fire number where available. If a local address is not available, the home address and phone number of the property owner may be included;

(d) A description of the uses being impaired by plants or aquatic organisms and reason for treatment;

(e) A description of the plant community or other aquatic organisms causing the use impairment;

(f) The product names of chemicals proposed for use and the method of application;

(g) The name of the person or commercial applicator, and applicator certification number, when required by s. NR 107.08 (5), of the person conducting the treatment;

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

(3) In addition to the information required under sub. (2), when the proposed treatment is a large-scale treatment exceeding 10.0 acres in size or 10% of the area of the water body that is 10 feet or less in depth, the application shall be accompanied by:

(a) A map showing the size and boundaries of the water body and its watershed.

(b) A map and list identifying known or suspected land use practices contributing to plant-related water quality problems in the watershed.

(c) A summary of conditions contributing to undesirable plant growth on the water body.

(d) A general description of the fish and wildlife uses occurring within the proposed treatment site.

(e) A summary of recreational uses of the proposed treatment site.

(f) Evidence that a public notice of the proposed application has been made, and that a public informational meeting, if required, has been conducted.

1. Notice shall be given in 2 inch x 4 inch advertising format in the newspaper which has the largest circulation in the area affected by the application.

2. The notice shall state the size of the proposed treatment, the approximate treatment dates, and that the public may request within 5 days of the notice that the applicant hold a public informational meeting on the proposed application.

a. The applicant will conduct a public informational meeting in a location near the water body when a combination of 5 or more individuals, organizations, special units of government, or local units of government request the meeting in writing to the applicant with a copy to the department within 5 days after the notice is made. The person or entity requesting the meeting shall state a specific agenda of topics including problems and alternatives to be discussed.

b. The meeting shall be given a minimum of one week advance notice, both in writing to the requestors, and advertised in the format of subd. 1.

(g) The provisions of pars. (a) to (e) shall be repeated once every 5 years and shall include new information. Annual modifications of the proposed treatment within the 5-year period which do not expand the treatment area more than 10% and cover a similar location and target organisms may be accepted as an amendment to the original application. The acreage fee submitted under sub. (2) (a) shall be adjusted in accordance with any proposed amendments.

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

(5) A notice of the proposed treatment shall be provided by the department to any person or organization indicating annually in writing a desire to receive such notification.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

NR 107.05 Issuance of permit. (1) The department shall issue or deny issuance of the requested permit between 10 and 15 working days after receipt of an acceptable application, unless:

(a) An environmental impact report or statement is required under s. 1.11, Stats. Notification to the applicant shall be in writing within 10 working days of receipt of the application and no action may be taken until the report or statement has been completed; or

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

(2) 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 department is not required to, but may, suspend the permit because of the request for public hearing.

(3) The department may deny issuance of the requested permit if:

(a) The proposed chemical is not labeled and registered for the intended use by the United States 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;

(b) The proposed chemical does not have a current department aquatic chemical fact sheet;

(c) The department determines the proposed treatment will not provide nuisance relief, or will place unreasonable restrictions on existing water uses;

(d) The department determines the proposed treatment will result in a hazard to humans, animals or other nontarget organisms;

(e) The department determines the proposed treatment will result in a significant adverse effect on the body of water;

(f) The proposed chemical application is for waters beyond 150 feet from shore except where approval is given by the department to maintain navigation channels, piers or other facilities used by organizations or the public including commercial facilities;

(g) The proposed chemical applications, other than those conducted by the department pursuant to ss. 29.421 and 29.424, Stats., will significantly injure fish, fish eggs, fish larvae, essential fish food organisms or wildlife, either directly or through habitat destruction;

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

(i) The proposed chemical application is in locations identified by the department as sensitive areas, except when the applicant demonstrates to the satisfaction of the department that treatments can be conducted in a manner that will not alter the ecological character or reduce the ecological value of the area.

1. Sensitive areas are areas of aquatic vegetation identified by the department as offering critical or unique fish and wildlife habitat, including seasonal or lifestage requirements, or offering water quality or erosion control benefits to the body of water.

2. The department shall notify any affected property owners' association, inland lake district, and riparian property owner of locations identified as sensitive areas.

(4) New applications will be reviewed with consideration given to the cumulative effect of applications already approved for the body of water.

(5) The department may approve the application in whole or in part consistent with the provisions of subs. (3) (a) through (i) and (4). Denials shall be in writing stating reasons for the denial.

(6) Permits may be issued for one treatment season only.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; corrections in (3) (g) and (h) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 2000, No. 540.

NR 107.06 Chemical fact sheets. (1) The department shall develop a chemical fact sheet for each of the chemicals in present use for aquatic nuisance control in Wisconsin.

(1m) Chemical fact sheets for chemicals not previously used in Wisconsin shall be developed within 180 days after the department has received notice of intended use of the chemical.

(2) The applicant or permit holder shall provide copies of the applicable chemical fact sheets to any affected property owners' association and inland lake district.

(3) The department shall make chemical fact sheets available upon request.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

NR 107.07 Supervision. (1) The permit holder shall notify the district office 4 working days in advance of each anticipated treatment with the date, time, location, and proposed size of treatment. At the discretion of the department, the advance notification requirement may be waived.

(2) Supervision by a department representative may be required for any aquatic nuisance control project involving chemicals. Supervision may include inspection of the proposed treatment area, chemicals, and application equipment before, during or after treatment. The inspection may result in the determination that treatment is unnecessary or unwarranted in all or part of the proposed area, or that the equipment will not control the proper dosage.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

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NR 107.08 Conditions of the permit. **(1)** 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 will result in unreasonable restrictions on current water uses, or will produce unnecessary adverse side effects on nontarget organisms. Upon request, the department shall state the reason for such action in writing to the applicant.

(2) Chemical treatments shall be performed in accordance with label directions, existing pesticide use laws, and permit conditions.

(3) Chemical applications on lakes and impoundments are limited to waters along developed shoreline including public parks except where approval is given by the department for projects of public benefit.

(4) Treatment of areas containing high value species of aquatic plants shall be done in a manner which will not result in adverse long-term or permanent changes to a plant community in a specific aquatic ecosystem. High value species are individual species of aquatic plants known to offer important values in specific aquatic ecosystems, including *Potamogeton amplifolius, Potamogeton Richardsonii, Potamogeton praelongus, Potamogeton pectinatus, Potamogeton illinoensis, Potamogeton robbinsii, Eleocharis spp., Scirpus spp., Valisneria spp., Zizania aquatica, Zannichellia palustris* and *Brasenia schreberi.*

(5) Treatment shall be performed by an applicator currently certified by the Wisconsin department of agriculture, trade and consumer protection in the aquatic nuisance control category whenever:

(a) Treatment is to be performed for compensation by an applicator acting as an independent contractor for hire;

(b) The area to be treated is greater than 0.25 acres;

(c) The product to be used is classified as a "restricted use pesticide"; or

(d) Liquid chemicals are to be used.

(6) Power equipment used to apply liquid chemicals shall include the following:

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

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

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

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

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

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

(g) Equipment shall be calibrated by the applicator. Evidence of calibration shall be provided at the request of the department supervisor.

(h) Other equipment designs may be acceptable if capable of equivalent performance.

(7) The permit holder shall be responsible for posting those areas of use in accordance with water use restrictions stated on the chemical label, but in all cases for a minimum of one day, and with the following conditions:

(a) Posting signs shall be brilliant yellow and conspicuous to the nonriparian public intending to use the treated water from both the water and shore, and shall state applicable label water use restrictions of the chemical being used, the name of the chemical and date of treatment. For tank mixes, the label requirements of the most restrictive chemical will be posted;

(b) Minimum sign dimensions used for posting shall be 11 inches by 11 inches or consistent with s. ATCP 29.15. The department will provide up to 6 signs to meet posting requirements. Additional signs may be purchased from the department;

(c) Signs shall be posted at the beginning of each treatment by the permit holder or representing agent. 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 public;

(d) Posting signs shall be placed along contiguous treated shoreline and at strategic locations to adequately inform the public. Posting of untreated shoreline located adjacent to treated shoreline and noncontiguous shoreline shall be at the discretion of the department;

(e) Posting signs shall be made of durable material to remain up and legible 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.

(8) After conducting a treatment, the permit holder shall complete and submit within 30 days an aquatic nuisance control report on a form supplied by the department. Required information will include the quantity and type of chemical, and the specific size and location of each treatment area. In the event of any unusual circumstances associated with a treatment, or at the request of the department, the report shall be provided immediately. If treatment did not occur, the form shall be submitted with appropriate comment by October 1.

(9) Failure to comply with the conditions of the permit may result in cancellation of the permit and loss of permit privileges for the subsequent treatment season. A notice of cancellation or loss of permit privileges shall be provided by the department to the permit holder accompanied by a statement of appeal rights.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; correction in (7) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477.

NR 107.09 Special limitation. Due to the significant risk of environmental damage from copper accumulation in sediments, swimmer's itch treatments performed with copper sulfate products at a rate greater than 10 pounds of copper sulfate per acre are prohibited.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

NR 107.10 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 United States environmental protection agency for an experimental use permit under section 5 of the federal insecticide, fungicide and rodenticide act as amended (7 USC 136 et seq.). 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 will require in addition to the conditions of the permit specified in s. NR 107.08 (1) through (9), the following:

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(1) Treatment shall be limited to an area specified by the department.

(2) The permit holder shall submit to the department a summary of treatment results at the end of the treatment season. The summary shall include:

(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 treatment areas including the character and the extent of the nuisance present;

(c) Effectiveness of the application 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; and

(e) Conclusions and recommendations for future use.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

NR 107.11 Exemptions. (1) Under any of the following conditions, the permit application fee in s. NR 107.04 (2) (a) will be limited to the basic application fee:

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

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

(c) The treatment is necessary for the protection of public health, such as the control of disease carrying organisms in sanitary sewers, storm sewers, or marshes, and the treatment is sponsored by a governmental agency.

(2) The treatment of purple loosestrife is exempt from ss. NR 107.04 (2) (a) and (3), and 107.08 (5).

(3) The use of chemicals in private ponds is exempt from the provisions of this chapter except for ss. NR 107.04 (1), (2), (4) and (5), 107.05, 107.07, 107.08 (1), (2), (8) and (9), and 107.10.

(a) A private pond is a body of water located entirely on the land of an applicant, with no surface water discharge or a discharge that can be controlled to prevent chemical loss, and without access by the public.

(b) The permit application fee will be limited to the non-refundable $20 application fee.

(4) The use of chemicals in accordance with label instructions is exempt from the provisions of this chapter, when used in:

(a) Water tanks used for potable water supplies;

(b) Swimming pools;

(c) Treatment of public or private wells;

(d) Private fish hatcheries licensed under s. 95.60, Stats.;

(e) Treatment of emergent vegetation in drainage ditches or rights-of-way where the department determines that fish and wildlife resources are insignificant; or

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

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; corrections in (4) (d) and (f) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 2000, No. 540.