

Report to
Legislative Council Rules Clearinghouse
NR 1, 107, 109, 150, 193, 329 and 345, Wis. Adm. Code
Natural Resources Board Order No. WY-29-19

Wisconsin Statutory Authority

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

Federal Authority

Not applicable. The federal government does not regulate the management of aquatic plants.

Comparison of 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. An LOP is not needed for waterbodies outside the Fox Chain O'Lakes.

For waterbodies outside of the Fox Chain O'Lakes, herbicides may be applied by property owners that own a portion of the lake bottom. Property owners must also ensure herbicides do not affect neighboring portions. For a whole lake treatment, permission of all 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 a National Pollutant Discharge Elimination System (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 one to five years. For physical removal permits, plants must be removed by hand-cutting, hand-pulling, hand-raking, or mechanical cutting only. Plants should only be removed to establish a travel lane and all removed plant material must be left in place or collected and composted on the same land owned or used by the permittee.

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

A dock owner may remove aquatic vegetation without a permit if the aquatic vegetation creates a hazardous or detrimental condition in the boating area around the dock or covers a minimum of 75% of the boating area around the dock. A dock permittee is limited to the removal of vegetation in a 20-foot radius around the dock, removal of a hazardous condition, or creation of a 15-foot-wide boating pathway. The removal

method is limited to hand-cutting, hand-pulling, hand-raking or mechanical cutting devices, excluding automated plant control devices that disturb the bottom substrate.

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

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 of permittees reapply each year for the same control activity. The proposed rule moves these permits to a 5 year permit. 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 Subch. 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 Subch. V of ch. NR 151, Wis. Adm. Code.

Agency Procedures for Promulgation

The department will hold a hearing online on February 22, 2022 at 1 PM. The hearing will be followed by request for board adoption, expected in June 2022, followed by a request for the governor's approval and legislative review.

Description of any Forms

A new form for control in wetlands is in development. Updates are in development for forms 3200-155, 3200-004, 3200-111 and 3200-113.

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