

**TOPIC: Permit Processing- Amendments, Exemptions and Conditions**

White Paper Group 1

**BACKGROUND**

The Department is responsible for regulating the management of aquatic plants growing in the waters of the state (as defined in s. 281.01(18), Wis. Stats.). Historically, authority for chemical treatments to control nuisance species came under s. 281.17(2), Wis. Stats. Chemical treatment and authority to regulate other aquatic plant management techniques came later under s. 23.24(2), Wis. Stats. These statutes are implemented under two sets of rules; Ch. NR 107, Wis. Admin. Code and Ch. NR 109 Wis. Admin. Code. These rules result in two permit programs for aquatic plant management (APM). Chapter NR 107 establishes the procedures and requirements for permitting the use of chemicals for APM. Chapter NR 109 establishes procedures and requirements for issuing non-chemical APM permits and allows the DNR to request an aquatic plant management plan prior to permit issuance.

**Table 1.** Current application requirements for permits issued under NR 107 and NR 109.

	<b>NR 107</b> Chemical APM	<b>NR 109</b> Non-chemical APM
General application requirements	<ul style="list-style-type: none"> <li>– description of the water body</li> <li>– map of treatment area</li> <li>– description of the uses being impaired</li> <li>– comparison of alternative control measures</li> </ul>	
Additional application requirements	<ul style="list-style-type: none"> <li>– description of the plant community causing impairment</li> <li>– chemical product names</li> <li>– chemical application methods</li> <li>– chemical applicator name and certification number</li> </ul> <p>For large-scale treatments*</p> <ul style="list-style-type: none"> <li>– map of the watershed and list of land-use practices</li> <li>– conditions contributing to undesirable plant growth</li> <li>– general description of fish, wildlife and recreational uses</li> <li>– evidence of public notice</li> </ul>	<ul style="list-style-type: none"> <li>– copy of the existing management plan</li> <li>– description of aquatic plants to be controlled</li> <li>– type of equipment and methods to be used</li> <li>– other methods being used by the applicant</li> <li>– area used for plant disposal</li> <li>– Anyone performing services</li> <li>– department may also require an APM plan (s. NR 109.04 (3))</li> </ul>
Application Fee	Non-refundable application fee of \$20 + \$25/acre up to 50 acres (s. NR 107.04 (1) (a))	Non-refundable application fee of \$30 /acre up to \$300 (s. NR 109.04 (2) (a))
Issuance	Within 10-15 working days	Within 15 working days

\* greater than 10 acres or greater than 10% of the littoral zone (s. NR 107.04 (3))

### Application Requirements and Exemptions

Nearly all APM activities require a permit. Table 1 lists the application requirements for permits issued under NR 107 and NR 109. Private ponds<sup>1</sup> are exempt from some of the provisions in NR 107 (s. NR 107.11 (3)) and are limited to the non-refundable \$20 application fee. The department also waives permit requirements for non-chemical APM in private ponds (must be 10 acres or less; s. NR 109.06(1)). Additionally, there are several exemptions from permit requirements. One is for the manual removal of vegetation from a 30ft area that extends from a use area such as a dock (s. NR 109.06 (2) (a) 1.). The other exemption is for the manual removal of aquatic invasive species from the shoreline of a riparian owner when the removal of these plants does not harm native species, manual removal of aquatic plants that accumulate onshore (unless located in a sensitive area or wild rice is involved), APM conducted by the department, manual removal for research, manual or mechanical removal on an exposed lakebed, and incidental removal resulting from beneficial water use activities (s. NR109.06). Therefore, any manual removal outside the 30ft area or a 10-acre private pond, mechanical removal, and any use of chemical herbicides require a permit.

### Permit Issuance

The department may deny issuance of APM permits under NR 107 or NR 109 if:

- Proposed management will not provide nuisance relief or will result in unreasonable restrictions
- Proposed management will be hazardous to humans, animals, or other non-target organisms
- Proposed management is in a sensitive area<sup>2</sup> or an area with endangered or threatened species
- Proposed management will have an adverse effect on the waterbody

For permits issued under NR 107, the department may also deny the issuance of chemical permits if the proposed chemical is not licensed through the EPA or DATCP, the proposed chemical does not have a current department aquatic chemical fact sheet, or if the proposed treatment will be beyond 150ft from shore, unless approved by the department (s. NR 107.05 (3)). New NR 107 applications will be reviewed with consideration given to the cumulative effect of applications already approved for the body of water. For permits issued under NR 109, the department may also deny issuance of non-chemical permits if aquatic plants are not causing significant impairment of use activities, the proposed management will result in adverse long-term changes to a plant community or high value species<sup>3</sup>, the proposed management will interfere with the rights of riparian owners, the proposed management is inconsistent with approved APM plan, or if stipulations related to wild rice are not complied with (s. NR 109.05 (3)).

### Permit Conditions

Conditions for permits issued under NR 107 are laid out in NR 107.08. For these permits, the department may specify the following conditions:

- May limit or stop any chemical application if the treatment will be ineffective,
- May limit or stop any chemical application if the treatment will place unreasonable restrictions on water uses, or

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<sup>1</sup> waterbody 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 (s. NR 107.11 (3) (a))

<sup>2</sup> Areas 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 (s. NR 107.05 (3) (i) 1.)

<sup>3</sup> Individual species of aquatic plants known to offer important values in specific aquatic ecosystems, including species listed in s. NR 109.05 (3) (g)

- May limit or stop any chemical application if the treatment will result in adverse side effects on non-target organisms.
- Must follow label directions, pesticide use laws, and permit conditions.
- Chemical applications are limited to developed shorelines except where department approves.
- Avoidance of adverse long-term or permanent changes in areas with high value species.
- DATCP certification
- Specifications for power equipment used to apply liquid chemicals.
- Specifications for posting signs in treatment areas.
- Must submit an aquatic nuisance control report within 30 days of conducting a treatment.

In addition, the department may deny permits for treatments which may cause adverse impacts specified in s. NR 107.05(3), or may specify conditions necessary to avoid such impacts.

Conditions for permits issued under s. NR 109 are laid out in s. NR 109.05 (2). For these permits, the department may specify the following conditions:

- Quantity and species of plants to be managed
- Management methods
- Plant disposal methods
- Areas to be managed
- Management timeframe
- Reporting requirements

In addition, the department may deny permits for activities which may cause adverse impacts specified in s. NR 109.05(3), or may specify conditions necessary to avoid such impacts.

Failure to comply with conditions may result in loss of permit and loss of permit privilege for the following season for permits issued under both NR 107 and NR 109. Any amendment or revision to an application submitted under NR 107 is treated as a new application unless it is a large-scale treatment that does not expand the treatment area by more than 10% and covers a similar location and target organisms (s. NR 107.04 (3) (g)). Permits for NR 107 applications may be issued for one treatment season only (s. NR 107.05 (6)). Permits for NR 109 applications may be issued for a 3-term for a project that is less than one acre in a single riparian area (s. NR 109.05 (5) (a)) or for a 1-year term for a project that is more than one acre or more than one riparian area (may be renewed up to three years; s. NR 109.05 (5) (b)). Additionally, permits issued under 109 may be issued for 3-5 years regardless of size if it contains a department approved plan (s. NR 109.05 (5) (c)).

#### **RULE PROPOSAL – SUBMERGED AQUATIC PLANTS ON PUBLIC/NATURAL WATERBODIES**

The purpose of the APM program is to regulate the management of aquatic plants in order to protect diverse and stable aquatic habitats as well as to protect and promote the public rights and interests associated with water-based recreation and the ecological health of Wisconsin's waterbodies. Aquatic plant communities are a vital and necessary foundation of healthy aquatic ecosystems. All management actions within and surrounding Wisconsin waterbodies to address water use impairments caused by aquatic plants have varying levels of risk to human health and the environment.

The repealed and replaced NR 107 establishes procedures and requirements for issuing aquatic plant management permits for introduction and control of aquatic plants through chemical, physical, mechanical and biological activities.

Management of aquatic plants should be consistent with sound ecosystem management, shall consider cumulative impacts, and shall minimize the loss of ecological values in the body of water. Approval of a permit is not an endorsement of the permitted activity.

The proposals below describe proposed permit issuance procedures and criteria for the management of submerged aquatic species on public waterbodies. Emergent species management and private pond permit issuance procedures and criteria are in subsequent white papers.

**Table 2. Proposed application requirements for permits issued under repealed and replaced NR 107.**

	Chemical management of submerged aquatic species on public waterbodies	Non-chemical management of submerged aquatic species on public waterbodies
Application Fee	TBD – will be designed to adequately fund the program’s operations	TBD – will be designed to adequately fund the program’s operations
Application requirements (Please see other white papers for more description)	<ul style="list-style-type: none"> <li>– Acknowledge permit complies with department approved management plan. (See planning white paper)</li> <li>– Map of treatment area</li> <li>– Description uses being impaired</li> <li>– Description of the plant community causing impairment</li> <li>– Chemical product name</li> <li>– Calculation whole-lake herbicide concentration if treatment area to exceed 5%. May require calculation for whole bay, channel or marina if there is minimal-low water exchange, the primary plant assemblage is native, or the area is protected by dept. standards.</li> <li>– chemical applicator name and license number</li> </ul> <p>For large-scale treatments*</p> <ul style="list-style-type: none"> <li>– PI Survey Results (see monitoring white paper)</li> <li>– Evidence of Public Notice</li> </ul>	<ul style="list-style-type: none"> <li>– Acknowledge permit complies with department approved management plan. (See planning white paper)</li> <li>– Map of treatment area</li> <li>– Description uses being impaired</li> <li>– Description of the plant community causing impairment</li> <li>– Area used for plant disposal, if changed from management plan</li> <li>– Type of equipment and methods to be used.</li> <li>– Anyone performing services</li> </ul>
Issuance	-Within 15 working days small-scale management - Within 30 days large-scale management - Within 45 days if the proposed permit will affect wild rice populations	
Expiration	-Expire 10/1 each calendar year, or to year of renewal end-date	
Holds	- The permit application is incomplete	- The permit application is incomplete

	-A public hearing has been granted under s. 227.42, Wis. Stats. - An environmental impact report or statement required under s. 1.11	-A public hearing has been granted under s. 227.42, Wis. Stats.
Amendments	-Company conducting activity -Applicator conducting treatment -Treatment area, if within scope of approved plan -Trade name of herbicide	- Company conducting activity - Treatment area, if within scope of approved plan
Renewal	Annually	Renewal with plan (see below)
	<ul style="list-style-type: none"> <li>– The department may renew a permit up to 5 years if the treatment annually addresses a demonstrated water use impairment, in the exact same area, with the same treatment technique, in agreement with a department approved management plan; if no conditions in table 3 (permit denial) are met.</li> <li style="text-align: center;">Or</li> <li>– The department may renew a permit up to 5 years if the treatment is within a designated Public Rights Feature navigation area (NR 1.06(4)d), annually addresses a demonstrated water use impairment, with the same treatment technique, in agreement with a department approved management plan, if no conditions in table 3 (permit denial) are met.</li> <li>– The department may revoke the renewal if at any time waterbody conditions, treatment areas or water use impairments change.</li> </ul>	

**Table 3. Proposed Permit Issuance Criteria Under Repealed and Replaced NR 107**

	Chemical management of submerged aquatic species on public waterbodies	Non-chemical management of submerged aquatic species on public waterbodies
The department will approve the permit if these criteria are met.	<ul style="list-style-type: none"> <li>– There is a department approved APM plan for the waterbody</li> <li>– The proposed activity is consistent with a department approved APM plan for the waterbody</li> <li>– The proposed activity will remedy the water use impairments caused by aquatic plants</li> <li>– The proposed activity will not result in a hazard to humans</li> <li>– The proposed activity will not interfere with the rights of riparian owners</li> <li>– The proposed activity will not cause significant adverse impacts to threatened or endangered resources.</li> <li>– The proposed activity will not cause significant adverse effects to fish, fish eggs, fish larvae, essential fish food organisms or wildlife, either directly or through habitat destruction</li> </ul>	

	<ul style="list-style-type: none"> <li>– The proposed activity will not result in a significant adverse effect on the water quality, aquatic habitat or the aquatic community including the native aquatic plant community</li> <li>– The proposed activity is not in locations identified by the department as approved or proposed Critical Habitat - Sensitive Areas (subset of critical habitat), Public Rights Features (NR 1.06), ASNRI, Priority Navigable Waterway, Outstanding and Exceptional Resource Waters, if the proposal is in these areas, the applicant shall demonstrate 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.</li> <li>– The cumulative impacts of previously approved applications on the waterbody have not caused significant adverse effects over time to water quality, aquatic habitat or the aquatic community including the native aquatic plant community.</li> <li>– If wild rice is involved, the stipulations incorporated by <i>Lac Courte Oreilles v. Wisconsin</i>, 775 F. Supp. 321 (W.D. Wis. 1991) are complied with.</li> </ul>
The department may set conditions to satisfy the criteria of issuance	<ul style="list-style-type: none"> <li>– The quantity of aquatic plants that may be introduced or controlled</li> <li>– The species of aquatic plants that may be introduced or controlled</li> <li>– The areas in which aquatic plants may be introduced or controlled</li> <li>– The methods that may be used to introduce or control aquatic plants</li> <li>– The times during which the aquatic plants may be introduced or controlled</li> <li>– The allowable methods used for disposing of or using aquatic plants that are removed or controlled</li> <li>– Annual or other reporting requirements to the department that may include information related to the above</li> <li>– Any other conditions necessary to reduce or avoid impacts which would otherwise result in denial of a permit application.</li> </ul>
Conditional approval pending pre-treatment surveys and or supervisions	<ul style="list-style-type: none"> <li>– The department may stop or limit an activity if at any time it determines the activity will be ineffective, or will result in unreasonable restrictions on current water uses, or will produce unnecessary adverse side effects on non-target organisms or the targeted aquatic plants are not causing an impairment of beneficial water use activities.</li> </ul>

**Table 4. Proposed Application waivers for permits issued under repealed and replaced NR 107.**

	Chemical management of submerged aquatic species on public waterbodies	Non-chemical management of submerged aquatic species on public waterbodies
Waiver: The department may waive permit requirements if certain conditions are met.	<ul style="list-style-type: none"> <li>- *Keep NR 107.11(4) waivers</li> <li>*The APM Program will review current fish farm criteria to ensure permit exemptions align with the purpose of the APM Program.</li> </ul>	-Keep NR 109.06 waivers

## **PERMIT FORM CHANGES – SUBMERGED AQUATIC PLANTS ON PUBLIC WATERBODIES**

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As the APM program moves towards widespread planning and monitoring efforts, the amount of information required on an annual basis for permit decisions will decrease. As a result, permit forms will become more concise to reduce the paperwork for both permit applicants and the department. Mockups will not be created until later in the rule revision process but will be available for review prior to rule implementation.

In addition, continued technological advances will allow the department to improve the permit process for both permit applicants and department staff. This work will be ongoing and continue as a part of normal program improvements on an annual basis.