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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

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### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **02-061**

AN ORDER to create chapter NR 109, relating to aquatic plant management.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-02-2002 RECEIVED BY LEGISLATIVE COUNCIL.

05-30-2002 REPORT SENT TO AGENCY.

RS:REL

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES             NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES             NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES             NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORM [s. 227.15 (2) (e)]  
Comment Attached            YES             NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES             NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES             NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES             NO



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### CLEARINGHOUSE RULE 02-061

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

a. Section 23.34 (3) (a) 2., Stats., provides, in part, that unless a person has a valid aquatic plant management permit, no person may manually remove aquatic plants from navigable waters. Under s. 23.34 (4) (c), Stats., the department is authorized to promulgate a rule to waive this permit requirement for a specified list of persons. However, in s. NR 109.06, the department waives the permit requirements for persons who perform activities that are not included on this list: in sub. (2) for the “manual removal of nonnative or invasive aquatic plants when performed in a manner that does not harm the native aquatic plant community”; in sub. (6) for the “manual removal and collection of native aquatic plants for lake study or scientific research when that does not harm the native aquatic plant community”; and in sub. (7) for “incidental cutting, removal or destroying of aquatic plants when engaged in angling, boating, swimming or other navigational or recreational water use activity.” Does the department have the authority to waive the permit requirement for these specified activities?

Further, the statutory authority of the department to waive the permit requirement under s. 23.24 (3) (a) 2., Stats., relates to the manual removal of aquatic plants from navigable waters. What statutory authority exists for the waiver of permit requirements when “mechanical devices” are used under s. NR 109.06 (1), (3), and (4)?

b. Section 23.24 (4) (b) 1., Stats., provides that the permit requirement does not apply to a person who manually removes aquatic plants from privately owned stream beds with the permission of the landowner. Also, s. 23.24 (4) (c) 1., Stats., provides that the department, by rule, may waive the permit requirement for the manual removal of aquatic plants from navigable

waters for a person who owns property on which there is a body of water that is entirely confined on the property of that person. Section NR 109.06 (1) provides that the department waives the permit requirement for the manual removal of, or use of mechanical devices to control, aquatic plants from 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. What statutory authority exists for the department to:

- (1) Authorize the use of mechanical devices, as referred to in comment a., above, to control aquatic plants in a body of water?
- (2) Limit the waiver to a body of water 10 acres or less?

## 2. Form, Style and Placement in Administrative Code

- a. In s. NR 109.01, both occurrences of the word “rule” should be replaced by the word “chapter.”
- b. Section NR 109.02 (1), refers to “public/navigable waters.” Slashed alternatives should be avoided. In this case, it seems that the term “navigable waters” would be an appropriate term to use throughout the rule.
- c. In s. NR 109.03 (2), the phrase “body of water” is defined as any lake, river, or wetland that is a water of this state. Does the department consider a marsh to be a wetland for purposes of the statutory definition? [See, for example, s. 218.01 (18), Stats.] In addition, the defined term “body of water” is not used consistently throughout the rule; for example, s. NR 109.04 (2) (c) uses the term “water body,” which is not defined. The term “body of water” should be used consistently throughout the rule.
- d. In s. NR 109.03 (3) “can” should be changed to “may.”
- e. In s. NR 109.05 (3) (f), the reference to “s. NR 107.05” should be replaced by a reference to “s. NR 107.05 (3) (i) 1.”
- f. In s. NR 109.05 (6), the word “may” should be replaced by the word “does.” [See also s. NR 109.09 (3).]
- g. In s. NR 109.06 (3) (b), it appears that the reference to “ch. NR 107” should be replaced by a reference to “s. NR 107.05 (3) (i) 1.”
- h. Section NR 109.07 (3) provides that native and nonnative aquatic plants of Wisconsin will be determined using various publications. The provisions of s. 227.21 (2), Stats., relating to incorporation of standards by reference should be met. In addition, updated lists should be accommodated through amendments to the rule.

## 5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In that portion of the analysis citing the statutes interpreted by the rule, the number “30.175” should be replaced by the number “30.715.”

b. In s. NR 109.01, it appears that in the third to the last sentence of the section the phrase "for which" should be inserted between "management" and "no."

c. In s. NR 109.03 (6) and (7), "an" should be inserted between "means" and "aquatic." In sub. (9), "wetlands" should be singular.

d. In s. NR 109.04 (1), the word "department's" should be inserted before the word "regional."

e. In s. NR 109.04 (2) (a) (intro.), the word "fees" should be singular. Does the application fee specified in subd. 2., apply to both riparians and nonriparians? The rule should specify whether it applies to one or the other, or both. Also, the phrase "larger, partial" should be replaced by the phrase "larger. Partial."

f. In s. NR 109.04 (2) (d), the word "of" should be inserted after the word "description."

g. In s. NR 109.05 (2) (intro.), the period should be changed to a colon. In sub. (4), "Denials" should be changed to the singular "A denial." In sub. (5) (b), it appears that "on" should be changed to "for."

h. In s. NR 109.05 (5), are the permits specified in pars. (a) and (c) renewable?

i. In s. NR 109.06 (1), if the phrase "mechanical devices" is retained, the word "of" should be inserted before the phrase.

j. In s. NR 109.08 (4) (a), "a" should be inserted between "in" and "navigable."

k. In s. NR 109.09 (2) (intro.), the period should be replaced with a colon.

l. In s. NR 109.11 (2), the phrase "the permit" should be replaced by the phrase "a permit issued under or in accordance with this chapter." Also, if the phrase "appeal rights" refers to other provisions of the administrative code, a cross-reference to those provisions should be included.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to create ch. NR 109 relating to aquatic plant management.

FH-29-02

Summary Prepared by Department of Natural Resources

Statutory authority: ss. 23.24 and 227.11(2)(a), Stats.  
Statutes interpreted ss. 23.24 and 30.175, Stats.

2001 WI Act 16 included new legislative language for the protection of native aquatic plant communities and control of invasive aquatic plant species. The department is directed, under Section 23.24, Stats., Aquatic plants, to establish a program for the waters of this state to: 1. Protect and develop diverse and stable communities of native aquatic plants; 2. Regulate how aquatic plants are managed; and 3. Provide education and conduct research concerning invasive aquatic plants. The department is further directed to designate by rule which aquatic plants are invasive species and to administer and establish by rule procedures and requirements for issuance of aquatic plant management permits.

Under the new law, traditional aquatic plant control activities that previously have been unregulated, such as manual removal and control using mechanical devices, now require a permit from the department. To allow traditional aquatic plant management activities to continue through the 2002 growing and open-water use season (May through October), an emergency rule is proposed. The rule, NR 109, will regulate the introduction, manual removal, burning and the use of mechanical means or plant inhibitors to control aquatic plants and designate invasive aquatic plants. The rule will assert that if a permit issued by the department under other authorities contains the appropriate conditions as required under this chapter for aquatic plant management, a separate permit is not required under this chapter.

2001 WI Act 16 included new legislative language to prevent the spreading of nuisance aquatic plants between waters of the state. Section 30.715, Stats., prohibits the launching of boats or boating equipment or trailers in navigable water if the person has reason to believe that the boat, boat trailer, or boating equipment has any aquatic plants or zebra mussels attached.

SECTION 1: CHAPTER NR 109 IS CREATED TO READ:

**Chapter NR 109**  
**AQUATIC PLANTS: INTRODUCTION, MANUAL REMOVAL & MECHANICAL CONTROL**  
**REGULATIONS**

- NR 109.01 Purpose.**
- NR 109.02 Applicability.**
- NR 109.03 Definitions.**
- NR 109.04 Application requirements and fees.**
- NR 109.05 Permit issuance.**
- NR 109.06 Waivers.**
- NR 109.07 Invasive and nonnative aquatic plants.**
- NR 109.08 Prohibitions.**
- NR 109.09 Plan specifications and approval.**
- NR 109.10 Other permits.**
- NR 109.11 Enforcement.**

**NR 109.01 Purpose.** The purpose of this chapter is to establish procedures and requirements for the protection and regulation of aquatic plants pursuant to ss. 23.24 and 30.715, Stats. Diverse and

stable communities of native aquatic plants are recognized to be a vital and necessary component of a healthy aquatic ecosystem. This rule establishes procedures and requirements for issuing aquatic plant management permits for introduction of aquatic plants or control of aquatic plants by manual removal, burning, use of mechanical means or plant inhibitors. This rule identifies other permits issued by the department for aquatic plant management that contain the appropriate conditions as required under this chapter for aquatic plant management no separate permit is required under this chapter. Introduction and control of aquatic plants shall be allowed in a manner consistent with sound ecosystem management, shall consider cumulative impacts, and shall minimize the loss of ecological values in the body of water. The purpose of this chapter is also to prevent the spread of invasive and non-native aquatic organisms by prohibiting the launching of watercraft or equipment that has any aquatic plants or zebra mussels attached.

**NR 109.02 Applicability.** A person sponsoring or conducting manual removal, burning or using mechanical means or aquatic plant inhibitors to control aquatic plants in public/navigable waters, or introducing non-native aquatic plants to waters of this state shall obtain an aquatic plant management permit from the department under this chapter.

waters of this state

**NR 109.03 Definitions.** (1) "Aquatic community" means lake or river biological resources.

(2) "Body of water" means any lake, river or wetland that is a water of this state.

(3) "Complete application" means a completed and signed application form, the information specified in s. NR 109.04 and any other information which can reasonably be required from an applicant and which the department needs to make a decision under applicable provisions of law.

(4) "Department" means the Wisconsin department of natural resources.

(5) "Manual removal" means the control of aquatic plants by hand or hand-held devices without the use or aid of external or auxiliary power.

(6) "Permit" means aquatic plant management permit.

(7) "Plan" means aquatic plant management plan.

(8) "Public/navigable waters" means those waters defined as navigable under s. 30.10, Stats.

(9) "Wetland" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

**NR 109.04 Application requirements and fees.** (1) Permit applications shall be made on forms provided by the department and shall be submitted to the regional director or designee for the region in which the project is located.

who is applying  
departments

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Note: Applications may be obtained from DNR regional headquarters or service centers.

(2) The application shall be accompanied by all of the following:

(a) A nonrefundable application fee. The application fees for an aquatic plant management permit is:

1. \$30 for a proposed project to manage aquatic plants on less than one acre in a single riparian area.

2. \$30 per acre to a maximum of \$300 for a proposed project to manage aquatic plants on one acre or larger, partial acres shall be rounded up to the next full acre for fee determination. An annual

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or ;

renewal of this permit may be requested with an additional application fee of one-half the original application fee, but not less than \$30.

(b) A legal description of the body of water including township, range and section number.

(c) One copy of a detailed map of the water body with the proposed introduction or control area dimensions clearly shown. Private individuals doing plant introduction or control shall provide the name of the owner riparian to the management area, which includes street address or block, lot and fire number where available and local telephone number or other pertinent information necessary to locate the property.

(d) One copy of any existing aquatic management plan for the body of water, or detailed reference to the plan, citing the plan references to the proposed introduction or control area, and a description how the proposed introduction or control of aquatic plants is compatible with any existing plan.

(e) A description of the impairments to water use caused by the aquatic plants.

(f) A description of the aquatic plant community and the plants causing the impairment.

(g) The type of equipment and methods to be used for introduction, control or removal.

(h) A description of other introduction or control methods considered and an explanation of why alternative methods are not selected.

(i) A description of any other method being used or intended for use for plant management by the applicant or on the area abutting the proposed management area.

(j) The area used for removal, reuse or disposal of harvested aquatic plants.

(k) The name of any person or commercial provider of control or removal services.

(3)(a) The department may require that an application for an aquatic plant management permit contain a plan for the department's approval as to how the aquatic plants will be introduced, controlled, removed or disposed. Requirements for an aquatic plant management plan shall be made in writing stating the reason for the plan requirement.

(b) Within 30 days of receipt of the plan, the department shall notify the applicant of any additional information or modifications to the plan that are required. If the applicant does not submit the additional information or modify the plan as requested by the department, the department may dismiss the aquatic plant management permit application.

(c) The department shall approve the aquatic plant management plan before an application may be considered complete.

(4) The permit sponsor may request an annual renewal in writing from the department under s. NR 109.05 if there is no change proposed in the conditions of the original permit issued.

**NR 109.05 Permit issuance.** (1) The department shall issue or deny issuance of the requested permit within 15 working days after receipt of a completed application and approved plan as required under s. NR 109.04(3).

(2) The department may specify any of the following as conditions of the permit.

(a) The quantity of aquatic plants that may be introduced or controlled.

(b) The species of aquatic plants that may be introduced or controlled.

where is  
the  
length of  
permit and  
renewal?



(c) The areas in which aquatic plants may be introduced or controlled.

(d) The methods that may be used to introduce or control aquatic plants.

(e) The times during which aquatic plants may be introduced or controlled.

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

(g) Annual or other reporting requirements to the department that may include information related to pars. (a) to (f).

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

(a) Aquatic plants are not causing significant impairment of beneficial water use activities.

(b) The proposed introduction or control will not provide effective relief of the water use impairment caused by aquatic plants.

(c) The proposed introduction or control will result in a hazard to humans.

(d) The proposed introduction or control will cause significant adverse impacts to threatened or endangered resources.

(e) The proposed introduction or control will result in a significant adverse effect on water quality, aquatic habitat or the aquatic community including the native aquatic plant community.

(f) The proposed <sup>(3)(i)!</sup> introduction or control is in locations identified by the department as sensitive areas, under s. NR 107.05, except when the applicant demonstrates to the satisfaction of the department that the project can be conducted in a manner that will not alter the ecological character or reduce the ecological value of the area.

(g) The proposed management will result in significant adverse long-term or permanent changes to a plant community or a high value species 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*, *Stuckenia pectinata* (*Potamogeton pectinatus*), *Potamogeton illinoensis*, *Potamogeton robbinsii*, *Eleocharis* spp., *Scirpus* spp., *Valisneria* spp., *Zizania aquatica*, *Zannichellia palustris* and *Brasenia schreberi*.

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

(5)(a) The department may issue an aquatic plant management permit on less than one acre in a single riparian area for a 3-year term. *renewable?*

(b) The department may issue an aquatic plant management permit for a one-year term on more than one acre or more than one riparian area. The permit may be renewed annually for up to a total of 3 years in succession at the written request of the permit holder, provided no modifications or changes are made from the original permit.

(c) The department may issue an aquatic plant management permit containing a department-approved plan for a 3 to 5 year term.

(6) The approval of an aquatic plant management permit <sup>does</sup> ~~may~~ not represent an endorsement of the permitted activity, but represents that the applicant has complied with all criteria of this chapter.

**NR 109.06 Waivers.** The department waives the permit requirements under this chapter for any of the following:

(1) Manual removal or <sup>of</sup> use mechanical devices to control aquatic plants from 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. *stat. auth.*

(2) Manual removal of nonnative or invasive aquatic plants as designated under s. NR 109.07 when performed in a manner that does not harm the native aquatic plant community.

(3) A riparian owner who manually removes aquatic plants from a body of water or uses mechanical devices designed for cutting or mowing vegetation to remove aquatic plants from an exposed lake bed that abuts the owner's property provided that the removal meets all of the following:

(a) Is limited to a single area with a maximum width of no more than 30 feet measured along the shoreline provided that any piers, boatlifts, swimrafts and other recreational and water use devices are located within that 30-foot wide zone and may not be in a new area or additional to an area where plants are controlled by another method.

(b) Is not located in a sensitive area as designated by the department under ch. NR 107, or in an area known to contain threatened or endangered resources or floating bogs.

(c) Does not interfere with the rights of other riparian owners.

(4) Control of purple loosestrife by manual removal or use of mechanical devices when performed in a manner that does not harm the native aquatic plant community or result in or encourage re-growth of purple loosestrife or other nonnative vegetation.

(5) Any aquatic plant management activity that is conducted by the department and is consistent with the purposes of this chapter.

(6) 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.

(7) Incidental cutting, removal or destroying of aquatic plants when engaged in angling, boating, swimming or other navigational or recreational water use activity.

**NR 109.07 Invasive and nonnative aquatic plants.** (1) The department may designate any aquatic plant as an invasive aquatic plant for a water body or a group of water bodies if it has the ability to cause significant adverse change to desirable aquatic habitat, to significantly displace desirable aquatic vegetation, or to reduce the yield of products produced by aquaculture.

(2) The following aquatic plants are designated as invasive aquatic plants statewide: Eurasian water milfoil, curly leaf pondweed and purple loosestrife.

(3) Native and nonnative aquatic plants of Wisconsin shall be determined using "Checklist of the Vascular Plants of Wisconsin", Technical Bulletin 192, (WI DNR, 2001 including updates) and other scientifically valid publications and findings as determined by the department. *incorp. by ref 4 updates*

**NR 109.08 Prohibitions.** (1) No person may distribute an invasive aquatic plant, <sup>as descr. in</sup> under s. NR 109.07.

(2) No person may intentionally introduce Eurasian water milfoil, curly leaf pondweed or purple loosestrife into waters of this state without the permission of the department.

(3) No person may intentionally cut aquatic plants in public/navigable waters without removing cut vegetation from the body of water.

(4)(a) No person may place equipment used in aquatic plant management in navigable water if the person has reason to believe that the equipment has any aquatic plants or zebra mussels attached.

(b) This subsection does not apply to equipment used in aquatic plant management when re-launched on the same body of water without having visited different waters, provided the re-launching will not introduce or encourage the spread of existing aquatic species within that body of water.

**NR 109.09 Plan specifications and approval.** (1) Applicants required to submit an aquatic plant management plan, under s. NR 109.04 (3), shall develop and submit the plan in a format specified by the department.

(2) The plan shall present and discuss each of the following items.

(a) The goals and objectives of the aquatic plant management and protection activities.

(b) A physical, chemical and biological description of the waterbody.

(c) The intensity of water use.

(d) The location of aquatic plant management activities.

(e) An evaluation of chemical, mechanical, biological and physical aquatic plant control methods.

(f) Recommendations for an integrated aquatic plant management strategy utilizing some or all of the methods evaluated in par. (e).

(g) An education and information strategy.

(h) A strategy for evaluating the efficacy and environmental impacts of the aquatic plant management activities.

(3) The approval of an aquatic plant management plan <sup>does</sup> may not represent an endorsement for plant management, but represents that adequate considerations in planning the actions have been made.

**NR 109.10 Other permits.** Permits issued under s. 30.12, 30.20, 31.02 or 281.36, Stats., or under ch. NR 107 may contain provisions which provide for aquatic plant management. If a permit 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 shall explicitly state that it is intended to comply with the substantive requirements of this chapter.

**NR 109.11 Enforcement.** (1) Violations of this chapter may be prosecuted by the department under chs. 23, 30 and 31, Stats.

(2) Failure to comply with the conditions of <sup>a permit issued under ch. 109 in acc. with this ch</sup> the permit may result in cancellation of the permit and loss of permit privileges for the subsequent year. 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. ?

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provides in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Darrell Bazzell, Secretary

(SEAL)

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to create ch. NR 109 relating to aquatic plant management.

FH-28-02(E)

Summary Prepared by Department of Natural Resources

Statutory authority: ss. 23.24, 30.715, 227.11 and 227.24, Stats..  
Statutes interpreted ss. 23.24 and 30.715, Stats.

2001 WI Act 16 included new legislative language for the protection of native aquatic plant communities and control of invasive aquatic plant species. The department is directed, under Section 23.24, Stats., Aquatic plants, to establish a program for the waters of this state to: 1. Protect and develop diverse and stable communities of native aquatic plants; 2. Regulate how aquatic plants are managed; and 3. Provide education and conduct research concerning invasive aquatic plants. The department is further directed to designate by rule which aquatic plants are invasive species and to administer and establish by rule procedures and requirements for issuance of aquatic plant management permits.

Under the new law, traditional aquatic plant control activities that previously have been unregulated, such as manual removal and control using mechanical devices, now require a permit from the department. To allow traditional aquatic plant management activities to continue through the 2002 growing and open-water use season (May through October), an emergency rule is proposed. The rule, NR 109, will regulate the introduction, manual removal, burning and the use of mechanical means or plant inhibitors to control aquatic plants and designate invasive aquatic plants. The rule will assert that if a permit issued by the department under other authorities contains the appropriate conditions as required under this chapter for aquatic plant management, a separate permit is not required under this chapter.

2001 WI Act 16 included new legislative language to prevent the spreading of nuisance aquatic plants between waters of the state. Section 30.715, Stats., prohibits the launching of boats or boating equipment or trailers in navigable water if the person has reason to believe that the boat, boat trailer, or boating equipment has any aquatic plants or zebra mussels attached.

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SECTION 1. Chapter NR 109 is created to read:

**Chapter NR 109**  
**AQUATIC PLANTS: INTRODUCTION, MANUAL REMOVAL & MECHANICAL CONTROL**  
**REGULATIONS**

- NR 109.01 Purpose.
- NR 109.02 Applicability.
- NR 109.03 Definitions.
- NR 109.04 Application requirements and fees.
- NR 109.05 Permit issuance.
- NR 109.06 Waivers.
- NR 109.07 Invasive and nonnative aquatic plants.
- NR 109.08 Prohibitions.
- NR 109.09 Plan specifications and approval.
- NR 109.10 Other permits.
- NR 109.11 Enforcement.

**NR 109.01 Purpose.** The purpose of this chapter is to establish procedures and requirements for the protection and regulation of aquatic plants pursuant to ss. 23.24 and 30.715, Stats. Diverse and stable communities of native aquatic plants are recognized to be a vital and necessary component of a healthy aquatic ecosystem. This rule establishes procedures and requirements for issuing aquatic plant management permits for introduction of aquatic plants or control of aquatic plants by manual removal, burning, use of mechanical means or plant inhibitors. This rule identifies other permits issued by the department for aquatic plant management that contain the appropriate conditions as required under this chapter for aquatic plant management no separate permit is required under this chapter. Introduction and control of aquatic plants shall be allowed in a manner consistent with sound ecosystem management, shall consider cumulative impacts, and shall minimize the loss of ecological values in the body of water. The purpose of this chapter is also to prevent the spread of invasive and non-native aquatic organisms by prohibiting the launching of watercraft or equipment that has any aquatic plants or zebra mussels attached.

**NR 109.02 Applicability.** A person sponsoring or conducting manual removal, burning or using mechanical means or aquatic plant inhibitors to control aquatic plants in public/navigable waters, or introducing non-native aquatic plants to waters of this state shall obtain an aquatic plant management permit from the department under this chapter.

**NR 109.03 Definitions.** (1) "Aquatic community" means lake or river biological resources.

(2) "Body of water" means any lake, river or wetland that is a water of this state.

(3) "Complete application" means a completed and signed application form, the information specified in s. NR 109.04 and any other information which can reasonably be required from an applicant and which the department needs to make a decision under applicable provisions of law.

(4) "Department" means the Wisconsin department of natural resources.

(5) "Manual removal" means the control of aquatic plants by hand or hand-held devices without the use or aid of external or auxiliary power.

(6) "Permit" means aquatic plant management permit.

(7) "Plan" means aquatic plant management plan.

(8) "Public/navigable waters" means those waters defined as navigable under s. 30.10, Stats.

(9) "Wetlands" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

**NR 109.04 Application requirements and fees.** (1) Permit applications shall be made on forms provided by the department and shall be submitted to the regional director or designee for the region in which the project is located.

Note: Applications may be obtained from DNR regional headquarters or service centers.

(2) The application shall be accompanied by all of the following:

(a) A nonrefundable application fee. The application fees for an aquatic plant management permit is:

1. \$30 for a proposed project to manage aquatic plants on less than one acre in a single riparian area.

2. \$30 per acre to a maximum of \$300 for a proposed project to manage aquatic plants on one acre or larger, partial acres shall be rounded up to the next full acre for fee determination. An annual renewal of this permit may be requested with an additional application fee of one-half the original application fee, but not less than \$30.

(b) A legal description of the body of water including township, range and section number.

(c) One copy of a detailed map of the water body with the proposed introduction or control area dimensions clearly shown. Private individuals doing plant introduction or control shall provide the name of the owner riparian to the management area, which includes street address or block, lot and fire number where available and local telephone number or other pertinent information necessary to locate the property.

(d) One copy of any existing aquatic management plan for the body of water, or detailed reference to the plan, citing the plan references to the proposed introduction or control area, and a description how the proposed introduction or control of aquatic plants is compatible with any existing plan.

(e) A description of the impairments to water use caused by the aquatic plants.

(f) A description of the aquatic plant community and the plants causing the impairment.

(g) The type of equipment and methods to be used for introduction, control or removal.

(h) A description of other introduction or control methods considered and an explanation of why alternative methods are not selected.

(i) A description of any other method being used or intended for use for plant management by the applicant or on the area abutting the proposed management area.

(j) The area used for removal, reuse or disposal of harvested aquatic plants.

(k) The name of any person or commercial provider of control or removal services.

(3)(a) The department may require that an application for an aquatic plant management permit contain a plan for the department's approval as to how the aquatic plants will be introduced, controlled, removed or disposed. Requirements for an aquatic plant management plan shall be made in writing stating the reason for the plan requirement.

(b) Within 30 days of receipt of the plan, the department shall notify the applicant of any additional information or modifications to the plan that are required. If the applicant does not submit the additional information or modify the plan as requested by the department, the department may dismiss the aquatic plant management permit application.

(c) The department shall approve the aquatic plant management plan before an application may be considered complete.

(4) The permit sponsor may request an annual renewal in writing from the department under s. NR 109.05 if there is no change proposed in the conditions of the original permit issued.

**NR 109.05 Permit issuance.** (1) The department shall issue or deny issuance of the requested permit within 15 working days after receipt of a completed application and approved plan as required under s. NR 109.04(3).

(2) The department may specify any of the following as conditions of the permit.

(a) The quantity of aquatic plants that may be introduced or controlled.

- (b) The species of aquatic plants that may be introduced or controlled.
  - (c) The areas in which aquatic plants may be introduced or controlled.
  - (d) The methods that may be used to introduce or control aquatic plants.
  - (e) The times during which aquatic plants may be introduced or controlled.
  - (f) The allowable methods used for disposing of or using aquatic plants that are removed or controlled.
  - (g) Annual or other reporting requirements to the department that may include information related to pars. (a) to (f).
- (3) The department may deny issuance of the requested permit if the department determines any of the following:
- (a) Aquatic plants are not causing significant impairment of beneficial water use activities.
  - (b) The proposed introduction or control will not provide effective relief of the water use impairment caused by aquatic plants.
  - (c) The proposed introduction or control will result in a hazard to humans.
  - (d) The proposed introduction or control will cause significant adverse impacts to threatened or endangered resources.
  - (e) The proposed introduction or control will result in a significant adverse effect on water quality, aquatic habitat or the aquatic community including the native aquatic plant community.
  - (f) The proposed introduction or control is in locations identified by the department as sensitive areas, under s. NR 107.05, except when the applicant demonstrates to the satisfaction of the department that the project can be conducted in a manner that will not alter the ecological character or reduce the ecological value of the area.
  - (g) The proposed management will result in significant adverse long-term or permanent changes to a plant community or a high value species 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*, *Stuckenia pectinata* (*Potamogeton pectinatus*), *Potamogeton illinoensis*, *Potamogeton robbinsii*, *Eleocharis* spp., *Scirpus* spp., *Valisneria* spp., *Zizania aquatica*, *Zannichellia palustris* and *Brasenia schreberi*.
- (4) The department may approve the application in whole or in part consistent with the provisions of sub. (3). Denials shall be in writing stating the reasons for the denial.
- (5)(a) The department may issue an aquatic plant management permit on less than one acre in a single riparian area for a 3-year term.
- (b) The department may issue an aquatic plant management permit for a one-year term on more than one acre or more than one riparian area. The permit may be renewed annually for up to a total of 3 years in succession at the written request of the permit holder, provided no modifications or changes are made from the original permit.
  - (c) The department may issue an aquatic plant management permit containing a department-approved plan for a 3 to 5 year term.



(6) The approval of an aquatic plant management permit may not represent an endorsement of the permitted activity, but represents that the applicant has complied with all criteria of this chapter.

**NR 109.06 Waivers.** The department waives the permit requirements under this chapter for any of the following:

(1) Manual removal or use mechanical devices to control aquatic plants from 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.

(2) Manual removal of nonnative or invasive aquatic plants as designated under s. NR 109.07 when performed in a manner that does not harm the native aquatic plant community.

(3) A riparian owner who manually removes aquatic plants from a body of water or uses mechanical devices designed for cutting or mowing vegetation to remove aquatic plants from an exposed lake bed that abuts the owner's property provided that the removal meets all of the following:

(a) Is limited to a single area with a maximum width of no more than 30 feet measured along the shoreline provided that any piers, boatlifts, swimrafts and other recreational and water use devices are located within that 30-foot wide zone and may not be in a new area or additional to an area where plants are controlled by another method.

(b) Is not located in a sensitive area as designated by the department under ch. NR 107, or in an area known to contain threatened or endangered resources or floating bogs.

(c) Does not interfere with the rights of other riparian owners.

(4) Control of purple loosestrife by manual removal or use of mechanical devices when performed in a manner that does not harm the native aquatic plant community or result in or encourage re-growth of purple loosestrife or other nonnative vegetation.

(5) Any aquatic plant management activity that is conducted by the department and is consistent with the purposes of this chapter.

(6) 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.

(7) Incidental cutting, removal or destroying of aquatic plants when engaged in angling, boating, swimming or other navigational or recreational water use activity.

**NR 109.07 Invasive and nonnative aquatic plants.** (1) The department may designate any aquatic plant as an invasive aquatic plant for a water body or a group of water bodies if it has the ability to cause significant adverse change to desirable aquatic habitat, to significantly displace desirable aquatic vegetation, or to reduce the yield of products produced by aquaculture.

(2) The following aquatic plants are designated as invasive aquatic plants statewide: Eurasian water milfoil, curly leaf pondweed and purple loosestrife.

(3) Native and nonnative aquatic plants of Wisconsin shall be determined using "Checklist of the Vascular Plants of Wisconsin", Technical Bulletin 192, (WI DNR, 2001 including updates) and other scientifically valid publications and findings as determined by the department.

**NR 109.08 Prohibitions.** (1) No person may distribute an invasive aquatic plant, under s. NR 109.07.

(2) No person may intentionally introduce Eurasian water milfoil, curly leaf pondweed or purple loosestrife into waters of this state without the permission of the department.

(3) No person may intentionally cut aquatic plants in public/navigable waters without removing cut vegetation from the body of water.

(4)(a) No person may place equipment used in aquatic plant management in navigable water if the person has reason to believe that the equipment has any aquatic plants or zebra mussels attached.

(b) This subsection does not apply to equipment used in aquatic plant management when re-launched on the same body of water without having visited different waters, provided the re-launching will not introduce or encourage the spread of existing aquatic species within that body of water.

**NR 109.09 Plan specifications and approval.** (1) Applicants required to submit an aquatic plant management plan, under s. NR 109.04 (3), shall develop and submit the plan in a format specified by the department.

(2) The plan shall present and discuss each of the following items.

(a) The goals and objectives of the aquatic plant management and protection activities.

(b) A physical, chemical and biological description of the waterbody.

(c) The intensity of water use.

(d) The location of aquatic plant management activities.

(e) An evaluation of chemical, mechanical, biological and physical aquatic plant control methods.

(f) Recommendations for an integrated aquatic plant management strategy utilizing some or all of the methods evaluated in par. (e).

(g) An education and information strategy.

(h) A strategy for evaluating the efficacy and environmental impacts of the aquatic plant management activities.

(3) The approval of an aquatic plant management plan may not represent an endorsement for plant management, but represents that adequate considerations in planning the actions have been made.

**NR 109.10 Other permits.** Permits issued under s. 30.12, 30.20, 31.02 or 281.36, Stats., or under ch. NR 107 may contain provisions which provide for aquatic plant management. If a permit 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 shall explicitly state that it is intended to comply with the substantive requirements of this chapter.

**NR 109.11 Enforcement.** (1) Violations of this chapter may be prosecuted by the department under chs. 23, 30 and 31, Stats.

(2) Failure to comply with the conditions of the permit may result in cancellation of the permit and loss of permit privileges for the subsequent year. 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.

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Many lake communities traditionally manage aquatic plants on the waters of the state to allow navigation and other beneficial recreational water use activities and to control invasive aquatic species. Without aquatic plant management, many bodies of water would be inaccessible due to excessive growth of invasive aquatic plants like Eurasian water milfoil and purple loosestrife and native aquatic plant communities would be threatened. 2001WI Act 16 included new statutory language, s. 23.24, Stats., for the protection of native aquatic plant communities and control of invasive plant species. The new law prohibits a person from managing aquatic plants without a valid aquatic plant management permit issued under this chapter. This order is designed to allow beneficial aquatic plant management activities to continue on waters of state through the 2002 open-water, growing season. Normal rule-making procedures will not allow the establishment of these rules for the 2002 open-water, aquatic plant-growing season. Failure to create NR 109 will result in unnecessary threats to valued native aquatic plant communities by invasive species and loss of navigation and beneficial recreational activities on WI lakes, rivers and wetlands.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on April 24, 2002.

The rules shall take effect upon publication in the official state newspaper.

Dated at Madison, Wisconsin

May 2, 2002

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

Darrell Bazzell  
Darrell Bazzell, Secretary

(SEAL)