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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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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.]**

#### 1. 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.