

The Department of Natural Resources (DNR) is seeking public input on a proposal to:

1. Refine and clarify procedures for notification of proposed pesticide treatments in applicable waters of the state.
2. Refine and clarify procedures for posting of pesticide treatment areas in applicable waters of the state.

The DNR is being proactive in notifying potential applicants now about these anticipated changes so that they can be implemented for the 2014 treatment season. The DNR has authority through s. 227.11(2)(a) and interpreting s. 281.17(2) to establish procedures for the management of aquatic plants and other organisms. Chapter NR 107 of Wisconsin Administrative Code outlines the permitting process. However, ponds that meet the definition of a licensed fish farm under s. 95.60, stats., or waste treatment facilities which received approval under s. 281.41 or 283.31, Stats., are exempt from these requirements. The proposed guidance does not make any changes in rule or interpretation of s. ATCP 29.15.

The proposed guidance describes posting and notification requirements the wide array of treatment scenarios, including:

**Private Ponds**

**Small-scale Public Water Shoreline Treatments**

**Small-scale Public Water Offshore Treatments**

**Large-scale Treatments**

**Whole Lake Treatments or Impacts**

Combination of the above

**A. Why Are We Doing This?**

- Improve communication between applicators, applicants and regulatory agencies
- Simplify and standardize notification and posting across the State.
- Better allocation of DNR staff time between field work and working with sponsors on projects.
- Improved customer service.

**B. Background.** Since NR 107 was revised in 1989, application methods of herbicides have evolved where there is more holistic management than in the past. Aquatic plant management has been shifting from nuisance control to using herbicides as an invasive species management tool. There has been ambiguity and different interpretations as to how riparian owners and non-riparian owners are notified and/or alerted of proposed treatments in waters of the state. The proposed guidance will eliminate ambiguity and clarify notification/posting requirements long sought by commercial applicators, applicants and regulatory agencies.

**C. Summary of Proposed Changes.**

1. **Definition of posting and notification scenarios.** The six possible treatment scenarios are described and clearly identify what the posting and notification requirements are for each type of treatment. The proposed guidance also outlines what requirements when scenarios overlap.
2. **Allows for the use of electronic notification.** Since 1989, technological advances with computers and with the advent of the internet, have allowed for more efficient means of communication. This guidance outlines when electronic notification is acceptable
3. **Allows for summarized information to be disseminated more efficiently in scenarios where adjacent riparian owners are not well defined.** This guidance will outline the proper steps for notification and posting to standardize code interpretations and will increase awareness of the public in affected areas.

**D. Remaining Steps.** Once the 21-day comment period is complete, all comments will be considered, revisions will be made to this draft guidance document as warranted, a *Response Summary* will be

prepared, then both the *Response Summary* and *Final Guidance* will be made available using the existing DNR Program Guidance web page (<http://dnr.wi.gov/news/input/guidance.html> ) and will be posted on the specific web pages for all five surface water grant programs.

Please forward your comments about this proposed policy no later than April 29, 2014, to:	<b>Name:</b> Scott Provost, Acting Aquatic Plant Management Coordinator	<b>Phone:</b> (715) 421-7881
	<b>E-mail address:</b> <a href="mailto:scott.provost@wisconsin.gov">scott.provost@wisconsin.gov</a>	

**Aquatic Plant Management Handbook**  
**CHAPTER xx**  
**Notification of Proposed Pesticide Treatment Application**

**Guidance Purpose and Disclaimer**

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule apply. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance cannot be relied upon and does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decision made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes, common law and administrative rules to the relevant facts.

**Applicable Administrative Code Language**

NR107.04(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...

(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.

NR 107.04(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.

NR 107.04(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.

## **Regulating notification of pesticide permit applications**

Pesticide permit application notification guidance is outlined below for the different types of pesticide treatment outlined in the DNR Administrative Code for Aquatic Plant Management (NR 107).

- I. **Private Ponds:** Private Ponds are defined according to NR 107.11(3)(a) as, *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.*

Those waters that meet this definition are not exempt from notification (NR 107.04(4)) according to NR 107.11(3). However, an applicant must own all the land around the pond according to NR 107.11(3)(a) to be considered a private pond.

Steps for proper notification:

1. Private pond owners are under most circumstances not required to give notice to adjacent property owners because they do not by definition have adjacent riparian property owners.
  2. Private pond owners are not required to provide notice to unaffected inland lake districts.
  3. If the private pond is owned by a property owners association or other private entity for which multiple parties share ownership, the applicant is required to follow NR 107.04(4) and notify the property owners association of a proposed treatment. A notification card summarizing permit application must be sent.
  4. The notification must include:
    - a. Pesticide product(s) to be applied,
    - b. Size of proposed treatment,
    - c. Approximate treatment date(s),
    - d. Map of proposed treatment areas (if not the whole pond) and
    - e. Any additional application materials at the request of the department.
  5. Private pond applications are not exempt from NR 107.04(5), thus notice of treatment shall continue to be provided by the Department to any person or organization indicating annually in writing a desire to receive such notification. This notice will be provided for treatments of rooted plants or algae.
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- II. **Small-scale Public Water Shoreline Treatments:** For the purpose of this guidance, any water not meeting the definition of Private Pond per NR 107.11(3)(a), will be considered public water. Small-scale treatments are those not considered large-scale under NR 107.04(3). However, even small-scale

treatments can have whole-lake impacts in small lakes. If the proposed treatment will result in lakewide impacts, then the whole-lake treatment guidance in section V below must be followed. Public Water Shoreline Treatments would include all treatments within 150 feet from shore. The 150 foot limit as a definition of shoreline treatments is due to the Department's ability to deny treatments greater than 150 feet from shore according to NR 107.05(3)(f). Also, this section makes no differentiation between invasive and native species treatment, or whether there is an approved plan; notification is required regardless of the situation. NR 107.04(4) clearly states that any riparian owner adjacent to and within a treatment area must be provided a copy of the APM application.

Steps for proper notification:

1. A copy of the permit application must be given as a notification to riparian owners adjacent to or within the area to be treated.
  - a. The notification must include the treatment map and if applicable the large-scale treatment worksheet. The notification does not need to include a list of riparian landowners contacted. However, the list of riparian owners contacted must be included as part of the permit application to DNR.
  - b. The copy of the application may be sent in its entirety or,
  - c. Sent as a hyperlink or website address containing an electronic copy of the permit application. The application or website address may be sent via US mail or email and a return receipt is preferred for either method.
2. Notice of treatment shall be provided by the Department to any person or organization indicating annually in writing a desire to receive such notification. This notice will be provided for treatments of rooted plants or algae.

III. **Small-scale Public Water Offshore Treatments:** For the purpose of this guidance, any water not meeting the definition of Private Pond per NR 107.11(3)(a) *and* greater than 150 feet from shore will be considered Public Water Off-Shore Treatment. Small-scale treatments are those not considered large-scale under NR 107.04(3). These types of treatments are occasionally conducted for navigational lanes or for control of invasive aquatic plants. Notification of "adjacent riparian owner" is currently undefined for off-shore treatments. However, if the proposed treatment will result in whole-lake impacts, then the whole-lake treatment guidance in section V below must be followed.

Steps for proper notification:

1. A notification summarizing the permit application must be sent to all riparian landowners, affected property owners association, or inland lake district, or
2. Posted in two of the following ways:
  - a. at all public access points,
  - b. at all adjacent town halls,
  - c. in the lake district or association newsletter or website,
  - d. in the local newspaper following NR 107.04(3)(f)
3. The notification must include:
  - a. Pesticide product(s) to be applied,
  - b. Size of proposed treatment,
  - c. Approximate treatment date(s),
  - d. Map of proposed treatment areas,
  - e. Proposed pesticide concentration for the treatment area and whole-lake, and
  - f. Instructions detailing how to obtain a complete copy of the application.
4. Any off-shore pesticide applications are not exempt from NR 107.04(5), thus notice of treatment shall continue to be provided by the Department to any person or organization indicating annually in writing a desire to receive such notification. This notice will be provided for treatments of rooted plants or algae.

IV. **Large-scale Treatments:** Large-scale treatments are defined in NR 107.04(3) as exceeding 10 acres in size or 10% of the area of the water body that is 10 feet or less in depth. The appropriate guidance for notification will be determined by location of the treatments (e.g. five acres of treatment along the shore and 5 acres of treatment >150 feet from shore follows guidance for near shore and off shore treatments). However, if the proposed treatment will result in whole-lake impacts, then the whole-lake treatment guidance must be followed.

Steps for proper notification:

1. A copy of the permit application must be given as a notification to all affected riparian owners if the treatment will be within 150 feet of the riparian shoreline.
2. If treatment includes off-shore treatment area(s) the off-shore guidelines for notification in section III above must also be followed.
3. If it is known that pesticide concentrations will be great enough to prompt the label's water use restrictions across an entire bay of a lake, notification must be given to all riparian property within this area.
4. The notification must include...
  - a. Large-scale treatment worksheet,
  - b. Map outlining treatment areas, and
  - c. Proposed pesticide concentration for the actual treatment area.

- d. The notification does not need to include a list of riparian landowners contacted. However, the list of riparian owners contacted must be included as part of the permit application to DNR.
  - e. The copy of the application may be sent in its entirety or sent as a hyperlink or website address containing an electronic copy of the permit application. The application, hyperlink or website address may be sent via US mail or email and a return receipt is preferred for either method.
5. Public notification requirements of NR 107.04(3)(f) must be followed. Proof of the public notice must be included as part of the permit application to DNR.
    - a. In addition, the applicant must hold a public informational meeting if properly requested to do so under NR 107.04(3)(f)2. If a public informational hearing is to be held, the applicant is required to provide notice of the hearing as specified in NR 107.04(3)(f)2.b.
  6. Notice of treatment shall be provided by the Department to any person or organization indicating annually in writing a desire to receive such notification. This notice will be provided for treatments of rooted plants or algae.

**V. Whole Lake Treatments or Impacts:** Whole-lake treatments are considered treatments in which the concentration of pesticide after complete dissipation will impact aquatic plants lakewide, based on the most recent pesticide residual/plant data. They may or may not be intentional. These treatments may be shoreline, off-shore or a combination of both. Small scale treatments may have whole lake impacts. Generally, treatments exceeding 5% of the lake area may have whole-lake impacts. Consult with the Department Aquatic Plant Management Coordinator if you aren't sure if the treatment will have whole lake impacts.

Since the revision of NR 107, aquatic plant management has shifted priorities to concentrate on managing invasive species throughout a lake utilizing a holistic lake management approach. Although nuisance control for navigational lanes and small-scale treatments still occur, they have become less frequent as the focus of lake groups, partners and the Department have shifted to the more holistic management where Aquatic Plant Management Plans and citizen awareness of management within the lake tends to be higher. "Adjacent riparian owner" is currently undefined for whole-lake treatments, but it is reasonable to conclude that under these treatment circumstances "adjacent riparian owners" include everyone with riparian property on the lake.

Steps for proper notification:

1. A copy of the permit application must be given as a notification to all riparian owners.
2. The notification must include:

- a. Large-scale treatment worksheet,
  - b. Map outlining treatment areas, and
  - c. Proposed target pesticide concentration for the actual treatment area and whole-lake
  - d. The notification does not need to include a list of riparian landowners contacted. However, the list of riparian owners contacted must be included as part of the permit application to DNR.
  - e. The copy of the application may be sent in its entirety or sent as a hyperlink or website address containing an electronic copy of the permit application. The application or hyperlink may be sent via US mail or email and a return receipt is preferred for either method.
3. Public notification requirements of NR 107.04(3)(f) must be followed. Proof of the public notice must be included as part of the permit application to DNR.
    - a. In addition, the applicant must hold a public informational meeting if properly requested to do so under NR 107.04(3)(f)2. If a public informational hearing is to be held, the applicant is required to provide notice of the hearing as specified in NR 107.04(3)(f)2.b.
  4. Notice of treatment shall be provided by the Department to any person or organization indicating annually in writing a desire to receive such notification. This notice will be provided for treatments of rooted plants or algae.

# **Aquatic Plant Management Handbook**

## **CHAPTER xx**

### **Caution/Warning Sign Posting for Pesticide Treatment**

#### **Guidance Purpose and Disclaimer**

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#### **Applicable Administrative Code Language**

NR107.08(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.

Pesticide treatment posting guidance is outlined below for the different types of pesticide treatment strategies outlined in the DNR Administrative Code for Aquatic Plant Management (NR 107). NR 107.08(7) makes the permit holder responsible for complying with posting requirements. The Department considers proper posting by contractors to meet this requirement, as posting may be accomplished by a “representing agent”. In addition to DNR authority under (adm code NR 107), permittees may be required to post additional signs if pertinent under adm code [ATCP 29.52](#) or required by the product label.

- I. **Private Ponds:** Private Ponds are defined according to NR 107.11(3)(a) as, *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.* Those waters that meet this definition are exempt from posting according to NR 107.11(3), however permit applicants may still be required by DATCP or label directions to post warning signs.

Steps for proper posting:

1. DNR does not require posting of private pond treatments.
2. Signs will not be provided by the department free of charge for private pond treatments.
3. Applicants may request standard pesticide treatment signs from the department at code rates.

- II. **Public Water Small-scale Shoreline Treatments:** For the purpose of this guidance, any water not meeting the definition of Private Pond per NR 107.11(3)(a), will be considered public water. Small-scale treatments are those not considered large-scale under NR 107.04(3). However, even small-scale treatments can have whole-lake impacts in small lakes. If the proposed treatment will result in lakewide impacts, then the whole-lake treatment guidance in section V below must be followed. Public Water Shoreline Treatments would include all treatments within 150 feet from shore, based on the language of NR 107.05(3)(f). Also, this section makes no differentiation between invasive and native species treatments.

Steps for proper posting:

1. Signs shall be posted at each property along treated shoreline and at each riparian property immediately adjacent to treated properties.
2. Signs may be required at all commercial and public boat landings and beaches at the discretion of the Department.

- III. **Public Water Small-scale Off-Shore Treatments:** For the purpose of this guidance, any water not meeting the definition of Private Pond per NR 107.11(3)(a) *and* greater than 150 feet from shore will be considered Public Water Off-Shore Treatment. Small-scale treatments are those not considered large-scale under NR 107.04(3). These types of treatments are occasionally conducted for navigational lanes or for control of invasive aquatic plants. Posting is currently undefined for off-shore treatments, but left to the discretion of the Department. If the proposed treatment will result in whole-lake impacts, then the whole-lake treatment guidance in section V below must be followed.

Steps for proper posting:

1. Signs shall be posted at each riparian property directly inshore (to the nearest shoreline) from the treatment area at the discretion of the Department if the chemical is expected to move that distance.
2. Signs may be required at all commercial and public boat landings and beaches at the discretion of the Department.

- IV. **Large-scale Treatments:** Large-scale treatments are defined in NR 107.04(3). The appropriate guidance for posting will be determined by location of the treatments (e.g. five acres of treatment along the shore and 5 acres of treatment >150 feet from shore follows guidance for near shore and off shore treatments). However, if the proposed treatment will result in whole-lake impacts, then the whole-lake treatment guidance must be followed.

Steps for proper posting:

1. If the treatment is to occur within 150 feet of shore then the posting requirement for small-scale shoreline treatments in section II above will be followed.
2. If the treatment is to occur beyond 150 feet of shore then the posting requirement for small-scale off-shore treatments in section III above will be followed.
3. If it is known that concentrations will be great enough to prompt the label's water use restrictions across an entire bay of a lake, signs will be posted on each riparian property within this area.

- V. **Whole-lake Treatments:** Whole-lake treatments are considered treatments in which the concentration of chemical after complete dissipation will impact aquatic plants lakewide, based on the most recent chemical residual/plant data. They may or may not be intentional. These treatments may be shoreline, off-shore or a combination of both. Small scale treatments may have whole lake impacts. Generally, treatments exceeding 5% of the lake area may have whole-lake impacts. Applicants should consult with the Department Aquatic Plant Management Coordinator if they are uncertain if the treatment will have whole-lake impacts.

Since the revision of NR 107, aquatic plant management has shifted priorities to concentrate on managing invasive species throughout a lake utilizing a holistic lake management approach. Although nuisance control for navigational lanes and small-scale treatments still occur, they have become less frequent as the focus of lake groups, partners and the Department have shifted to more holistic management where Aquatic Plant Management Plans and citizen awareness of management within the lake tends to be higher. "Adjacent riparian owner" is

undefined for whole-lake treatments, but under these treatment circumstances it is reasonable to consider “adjacent riparian owners” to include everyone with riparian property on the lake.

Steps for proper posting:

1. If it is known that concentrations will be great enough to prompt water use restrictions throughout the lake, signs will be posted at each riparian property.
2. Signs will be posted at all commercial and public boat landings and beaches.