

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

1. Refine and clarify procedures for permitting the use of dyes in public waterways.

The DNR is being proactive in notifying potential applicants now about this anticipated change so that they can be implemented for the 2016 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 describes when permits are not needed for the use of dyes in waters of the state, including:

Private Ponds

When conducted by the Department

When conducted by a governmental agency to investigate public health

When used for research purposes

A. Why Are We Doing This?

- Improve communication between applicators, applicants and regulatory agencies
- Simplify the permitting process for the use of dyes.
- Better allocation of DNR staff time between field work and working with sponsors on projects.
- Improved customer service.

B. Background. Use of dyes in waters of the state may require an Aquatic Plant Management Permit from the Department of Natural Resources. When the use of dyes poses the risk of inhibiting or controlling aquatic plants and organisms, a permit is required under Chs. NR 107 or NR 109, Wis. Adm. Code, with certain exceptions. In general, the Department will only issue permits for those dyes that are labeled under EPA regulations for algae and plant control, and will not approve off-label uses. In addition, use of dyes may be subject to WPDES permitting requirements and regulation by the Department of Agriculture, Trade, and Consumer Protection (DATCP).

C. Summary of Proposed Changes.

1. **Defines when an Aquatic Plant Management permit is not needed.** Four possible treatment scenarios are described that do not require a permit, but require notification to the department.
2. **Defines what information is needed for notification.** Clearly identifies what information is needed to properly notify the Department. Notification relieves the applicator of a permit, but allows the department to notify staff of a pending use of dye. This will help share information to avoid public complaints of spills or unsightly aesthetics.
3. **Allows the Department to review WPDES requirements.** This guidance will allow the Department to review compliance of proposed dye use with WPDES requirements and if additional toxicity testing is needed.

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 July 11, 2016 , to:	Name: Scott Provost, Acting Aquatic Plant Management Coordinator	Phone: (715) 421-7881
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Aquatic Plant Management Handbook
CHAPTER 10
PERMITTING THE USE OF DYES IN PUBLIC WATERWAYS

GUIDANCE PURPOSE AND DISCLAIMER

The purpose of this chapter is to provide process guidance to Department staff for consistently responding to the requests for the discharge and permitting of dyes in surface waters.

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.

INTRODUCTION

Administrative Code NR 107 and NR 109 require permits to control aquatic plants or other aquatic organisms. Generally, only chemicals registered and labeled for intended use by the USEPA may be issued permits¹. Some dyes may not be registered as a pesticide, but still have pesticidal qualities that have the effect of controlling aquatic plants or other organisms. This chapter is intended to provide guidance on how to comply with NR 107 and 109 for the use of dyes in waters of the state. The Department exercises its enforcement discretion to limit the permitting of dyes to waters of the state that are not considered private ponds.

Applicable Administrative Code Language

NR 107.02 Applicability. Any person sponsoring or conducting chemical treatment for the management of aquatic plants or control of other aquatic organisms in waters of the state shall obtain a permit from the department. Waters of the state include those portions of Lake Michigan and Lake Superior, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other ground or surface water, natural or artificial, public or private, within the state or its jurisdiction as specified in s. 281.01 (18), Stats.

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

¹ The Department may consider an application for a field evaluation use permit under s. NR 107.10 for chemical products that are not labeled for aquatic nuisance control if the applicant has obtained an experimental use permit from USEPA.

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.

APPLICATION

Applications for the use of dyes should be routed through Central Intake using the Chemical Aquatic Plant Control Application (Form 3200-004). Questions about the use of dyes should be routed to District Aquatic Plant Management (APM) program staff.

A NR 107 Chemical Aquatic Plant Control permit is required for most discharges of dye into the waters of the State regardless of whether the applicant claims that the intended use is for aesthetics or non-pesticide purposes. Dyes impart color and may act to manage, inhibit or control aquatic plants and organisms and therefore fall under the regulatory purview of NR 107 and NR 109. Dye in a lake or stream will limit light penetration inhibiting photosynthesis in rooted and free floating plants and algae. Prolonged use will suppress primary production and negatively affect food web interactions. In addition to a NR 107 permit, the applicant must be also covered by WPDES permit².

The use of dyes does not require an Aquatic Plant Management permit in the following situations:

1. In private ponds as defined by NR 107.11(3)(a).
A private pond is 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.
2. When conducted by the Department, or under the direction of, and consistent with the provisions of NR 107 or NR 109. Notification to District APM coordinator is required.
3. When used by, or under the direction of a governmental agency as a “tracer” for investigating public safety and health issues. This could include checking the structural integrity of dams, identification of illegal or unwanted discharges from sanitary sewers or other facilities. Notification to District APM coordinator is required consistent with WPDES requirements. In the event of an emergency where the public or property may be in danger, the Department of Natural Resources or an entity working under the Department’s guidance does not need prior approval, but needs to contact the APM coordinator and Spills Hotline within 24-hours.
4. When used for research purposes by a government agency or educational institution. Notification to District APM coordinator is required consistent with WPDES requirements.

² See for example, WPDES general permit number WI-0064556-1 for discharges of excess or residual pesticide, due to activities to control nuisance or invasive aquatic plants, algae, or bacteria.

Department Notification for activities not requiring a permit

When a governmental agency or educational institution applies dyes, the Department shall be notified at least 7-days in advance if the dye has not been approved for use by the Department. If the dye has been approved for use, the Department shall be notified at least 48 hours prior to introduction to waters of the state. The APM Coordinator will send a copy of the notification via e-mail to the DNR Spills Hotline at DNRLEHotline@wisconsin.gov. The following information is required for each receiving water body (i.e. change in WIBIC):

1. Project scope summary
2. Name of product and associated Safety Data Sheet
3. Location and proposed date(s) of dye application
4. Estimated quantity and duration of dye application
5. Method of dye application
6. Method of release (if retained in a system for testing as is the case of surcharging storm sewers to detect private lateral and sanitary sewer I/I)
7. Outfall location and name of receiving waterway
8. Name and contact information of applicator
9. Expected color of dye

After review, the District APM Coordinator may require WPDES permit coverage if there is reasonable potential for the dye activity to:

1. Introduce toxic substances, objectionable deposits, floating or submerged material, and materials producing color, odor, taste, or unsightliness that may violate general surface water standards (ch. NR 102.04 Wis. Adm. Code)
2. Cause a violation of any groundwater standard in ch. NR 140 Wis. Adm. Code
3. Cause harm to endangered or threatened resources as specified in s. 29.604, Wis. Stats. and ch. NR 27, Wis. Adm. Code

The use of dyes may require department approval in the following situation:

When applied on ice bound waters such as marking for an event, notification of District APM coordinator is required consistent with WPDES requirements. Interested parties should be advised that such a use could be subject to a citation for defacing natural resources under s. 23.095(1m)(a), Wis. Stats., or other local authorities.

WPDES Permit Conditions

While most dyes are vegetable-based and not environmentally harmful, some may contain substances considered a pollutant. If the dye is not registered with EPA further evaluation would be required as per water quality review procedures for additives.

INTERNAL ROUTING OF NOTIFICATION

After the APM Coordinator is notified of a proposed dye application, the APM coordinator will route to all appropriate staff or their appointees and a copy of notification materials to the DNR Spills Hotline e-mail at DNRLEHotline@wisconsin.gov. Consultation with the local wastewater engineer may be needed to determine if a WPDES permit is required.

Education or Research

Streams: Streams biologist, fishery biologist, conservation warden

Lakes: Lakes biologist, fishery biologist, conservation warden

Stormwater applications

Streams: Streams biologist, stormwater specialist or engineer, conservation warden

Lakes: Lakes biologist, stormwater specialist or engineer, conservation warden

Wastewater applications

Streams: Streams biologist, wastewater specialist or engineer, conservation warden

Lakes: Lakes biologist, wastewater specialist or engineer, conservation warden

Dam safety or infrastructure integrity

Streams: Streams biologist, dam safety/floodplain engineer, conservation warden

Lakes: Lakes biologist, dam safety/floodplain engineer, conservation warden