



Aquatic Vegetation Management in Texas: A Guidance Document

Appendix B. 31 Texas Administrative Code subchapter K, Aquatic Vegetation Management Rules, §§ 57.930-57.934 and 57.936 (includes the State Plan as § 57.932).

SUBCHAPTER L: AQUATIC VEGETATION MANAGEMENT

RULE §57.930 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this subchapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Canal--an artificial waterway used for the transportation of water for agricultural and/or industrial purposes but for no other purpose.

(2) EPA--the United States Environmental Protection Agency.

(3) Governing entity--the state agency or other political subdivision with jurisdiction over a public body of surface water.

(4) Integrated pest management--the coordinated use of pest and environmental information and pest control methods to prevent unacceptable levels of pest damage by the most economical means and in a manner that will cause the least possible hazard to persons, property, and the environment. Integrated pest management includes consideration of ecological, biological, chemical, and mechanical strategies for control of nuisance aquatic vegetation.

(5) Licensed Applicator--a person who holds a valid license for aquatic herbicide application from the Texas Department of Agriculture.

(6) Local plan--a local aquatic vegetation management plan authorized by Parks and Wildlife Code, §11.083 and meeting the requirements in §57.933 of this title (relating to Adoption and Applicability of Local Aquatic Vegetation Plans) and §57.934 of this title (relating to Local Aquatic Vegetation Plan).

(7) MCL--maximum contaminant level.

(8) NPDES--National Pollutant Discharge Elimination System. The NPDES Permit Program is administered by EPA under the Clean Water Act.

(9) Nuisance aquatic vegetation--any non-native or native vascular plant species that is determined, in consideration of TPWD guidance, to have the potential to substantially interfere with the uses of a public body of surface water.

(10) Public body of surface water--any body of surface water that is not used exclusively for an agricultural purpose. The term does not include impounded water on private property or water being transported in a canal.

(11) Public drinking water provider--any person who owns or operates a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals at least 60 days out of the year.

(12) State plan--the state aquatic vegetation management plan authorized by Parks and Wildlife Code, §11.082, and described in §57.931 of this title (relating to State Aquatic Vegetation Plan Applicability) and §57.932 of this title (relating to State Aquatic Vegetation Plan).

(13) TCEQ--Texas Commission on Environmental Quality.

(14) TDA--the Texas Department of Agriculture.

(15) TPWD--the Texas Parks and Wildlife Department.

(16) Treatment proposal--a submission to TPWD on a TPWD-approved form that describes intended measures to control nuisance aquatic vegetation.

(17) Water district--a conservation and reclamation district or an authority created under authority of Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, that has jurisdiction over a public body of surface water. The term does not include a navigation district or a port authority.

Source Note: The provisions of this §57.930 adopted to be effective February 6, 2001, 26 TexReg 1152; amended to be effective June 29, 2005, 30 TexReg 3728; amended to be effective June 12, 2013, 38 TexReg 3644

RULE §57.931 State Aquatic Vegetation Plan Applicability

The state plan governs throughout the state except where a governing entity has adopted an approved local plan.

Source Note: The provisions of this §57.931 adopted to be effective February 6, 2001, 26 TexReg 1152

RULE §57.932 State Aquatic Vegetation Plan

(a) Requirements Applicable to All Measures to Control Nuisance Aquatic Vegetation.

(1) Purpose. The purpose of the state aquatic vegetation plan is to provide for the coordination, oversight, guidance and where applicable public notice and enforcement of all activities related to the management of nuisance aquatic vegetation on public bodies of surface water. This includes, but is not limited to, coordination, oversight, public notification and enforcement of all aquatic herbicide use to protect state fish and wildlife resources and habitat and to prevent unreasonable risk from the use of any aquatic herbicide.

(2) Standards. All measures that a person undertakes to control nuisance aquatic vegetation shall be consistent with the principles of integrated pest management as defined in §57.930 of this title (relating to Definitions). A guidance document prepared by TPWD will describe measures to control nuisance aquatic vegetation, and the minimum standards applicable to governing entities that regulate a public body of surface water and persons who propose to treat nuisance aquatic vegetation. The guidance document will include:

(A) Encouragement of the growth and, where lacking, establishment of native aquatic vegetation that provides habitat for fish, the food chain that supports desirable fish populations,

other desirable aquatic organisms and wildlife without interfering with reasonable recreational use, navigation, drinking water supply, flow of water to power plants, industrial use, irrigation, or other beneficial uses;

(B) Encouragement of efforts to address the root causes supporting the overgrowth of nuisance aquatic vegetation;

(C) Support for continued monitoring and assessment activities to identify new nuisance aquatic vegetation species and act appropriately to eliminate or minimize ecological impacts;

(D) Support for continued research and evaluation of vegetation control methods that will cause the least possible hazard to persons, property and the environment as required by application of integrated pest management principles;

(E) Encouragement of public input in decision-making processes;

(F) Encouragement of ongoing education and outreach efforts as to the importance of managing aquatic vegetation to assure the ecological health of public waters;

(G) Information to guide individuals wishing to treat nuisance aquatic vegetation; and

(H) Criteria for choosing management responses to nuisance aquatic vegetation problems based on the uses of the water body and the nature of the problem. These criteria may take the form of a three-tier system: Tier I, which calls for immediate response and eradication; Tier II, which calls for ongoing control where nuisance aquatic vegetation is well-established; and Tier III, which calls for monitoring and a contingency plan in case the problem worsens. The three-tier system is subject to change as provided in paragraph (3) of this subsection.

(3) Modification of Guidance. TPWD will publish notice in the Texas Register and seek input from interested parties when it proposes major modifications to the guidance document such as changes in procedures and notification. Notice shall be provided at least 60 days prior to the effective date of any changes to the guidance document. The notice shall describe the proposed modifications and the reasons for the modifications, and how comments on the proposed modifications may be made to TPWD. Minor modifications such as changes of address, typographical corrections, and addition of species or approved herbicide may be published on the TPWD website without submission to the Texas Register.

(4) Review by TPWD. Prior to undertaking any measures to control nuisance aquatic vegetation in a public body of surface water, a person operating under the state plan (exclusive of TPWD personnel or its contractors) shall provide to TPWD a treatment proposal, on a form included in the guidance document, no later than the 14th day before the measures are to begin. TPWD will review and may disapprove or amend any treatment proposal and will respond no later than the day before the proposed control measures are to begin. Where appropriate, TPWD will provide technical advice and recommendations regarding prevention of nuisance aquatic vegetation problems. The person submitting the treatment proposal shall have the burden of demonstrating compliance with the state plan. Where a local plan governs, treatment proposals are not subject to TPWD review, approval, and amendment, but are to be submitted to TPWD (pursuant to §57.934(b) of this title, relating to Local Aquatic Vegetation Plan) for informational purposes.

(b) Additional Requirements Applicable to the Use of Aquatic Herbicides to Control Nuisance Aquatic Vegetation.

(1) No person shall apply aquatic herbicide in a public body of surface water where the state plan governs unless the herbicide is applied in a manner consistent with the state plan. No person shall apply aquatic herbicide in a public body of surface water where a local plan governs unless the herbicide is applied in a manner consistent with the local plan. Where a local plan has been adopted and approved, the requirements of the local plan supersede the requirements of this subsection.

(2) All persons intending to apply an aquatic herbicide shall provide written notice to the governing entity, TPWD, all public drinking water providers that have an intake within two river miles of a site at which an application of aquatic herbicide is proposed to occur, and all persons who have requested notice (TPWD will maintain a list) no later than the 14th day before the application is to occur. The notice shall include:

(A) the dates of the proposed application;

(B) all label information for the aquatic herbicide to be applied;

(C) a statement that TPWD's guidance document has been reviewed and the proposed herbicide application is consistent with the principles of integrated pest management as set forth in subsection (a)(2) of this section and that document;

(D) information demonstrating that the proposed application will not result in exceeding:

(i) the maximum contaminant level of the herbicide in finished drinking water as set by the TCEQ and the EPA; or

(ii) if the aquatic herbicide does not have an MCL established by the TCEQ and the EPA, the maximum label rate; and

(E) TDA applicator license number, if any.

(3) In Tier I or emergency situations TPWD and/or its contractors may conduct herbicide treatment with only 24 hours notice to controlling authorities and persons on the notification list, provided the treatment is at least two river or lake miles away from an active potable water intake.

(4) An individual who is not a licensed applicator may not apply aquatic herbicides unless the governing entity affirmatively finds, after receiving the proper notice as provided in subsection (b)(2) of this section, that the application will be consistent with the state plan. The governing entity shall respond to the notice given by an individual who is not a licensed applicator no later than the day before the date the application is scheduled to occur.

(5) An individual who is a licensed applicator may apply aquatic herbicide after notice consistent with subsection (b)(2) of this section if the governing entity finds that the application would be consistent with the state plan or does not disapprove the application no later than the day before the application is to occur.

(6) After receiving notice of a proposed application of aquatic herbicide, a governing entity, or TPWD in the absence of such an entity, shall:

(A) provide the individual proposing the application with the state plan;

(B) notify the individual in writing that it is a violation of state law to apply aquatic herbicides in a public body of water in a manner inconsistent with the state plan; and

(C) determine whether the proposed application is consistent with the state plan.

(7) The governing entity shall prohibit the proposed application of aquatic herbicide if the governing entity finds that the proposed application is inconsistent with the state plan.

(8) State money shall not be used to pay for treatment of a public body of surface water with an aquatic herbicide unless the application of the herbicide is performed by an applicator licensed for aquatic herbicide application by the TDA.

(9) Any application of aquatic herbicide shall comply with label rates approved by the EPA.

(10) Any application of aquatic herbicide shall comply with applicable federal NPDES requirements under the Clean Water Act.

Source Note: The provisions of this §57.932 adopted to be effective February 6, 2001, 26 TexReg 1152; amended to be effective June 29, 2005, 30 TexReg 3728; amended to be effective June 12, 2013, 38 TexReg 3644

RULE §57.933 Adoption and Applicability of Local Aquatic Vegetation Plans

A local aquatic vegetation plan may be adopted and shall apply to particular public bodies of surface water as provided in Texas Parks and Wildlife Code, §11.083. A governing entity intending to operate under a local aquatic vegetation plan shall seek approval of its proposed local aquatic vegetation plan under §57.934 of this title (relating to Local Aquatic Vegetation Plan).

Source Note: The provisions of this §57.933 adopted to be effective February 6, 2001, 26 TexReg 1152

RULE §57.934 Local Aquatic Vegetation Plan

(a) To be approvable by TCEQ, TPWD, and TDA, a local plan must meet the minimum standards set forth in §57.932 of this title (relating to State Aquatic Vegetation Plan). Additional or more specific requirements are approvable.

(b) A local plan may take into account the particular needs and uses of the public body or bodies of surface water to which it will apply. The local plan may allow herbicide use if the person proposing to apply the herbicide notifies the governing entity not later than the 14th day before the proposed date of application. The local plan shall provide that treatment proposals shall be submitted concurrently to TPWD and the governing entity (on the form provided in the guidance document) no later than the 14th day before the measures are to begin and that the governing entity will review and may disapprove or amend any treatment proposal and will respond no later than the day before the proposed control measures are to begin. The person submitting the treatment proposal shall have the burden of demonstrating compliance with the local plan.

(c) Proposed local plans should be developed in cooperation with TPWD, TDA, and TCEQ, and shall be submitted to TPWD on a form prepared by TPWD. TPWD will coordinate review of the plan by TCEQ and TDA.

(d) Governing entities shall seek and encourage public participation in the creation and review of local plans. At a minimum, TPWD, TCEQ, or TDA will hold at least one public meeting in the area affected by the local plan. Public comment will be received by TPWD, TCEQ, and TDA for 30 days after the local plan is submitted for agency approval. TPWD, TCEQ, and TDA will review and respond to local plan submittals within 60 days of receipt.

Source Note: The provisions of this §57.934 adopted to be effective February 6, 2001, 26 TexReg 1152; amended to be effective June 29, 2005, 30 TexReg 3728

RULE §57.936 Recordkeeping

Governing entities shall retain copies of the following documents generated under this subchapter for a minimum of five years from generation: all local plan submissions and approvals, all treatment proposals submitted to TPWD, all notices received and provided, all control measures taken by the governing entity (including records of date, place, location, type, and amount of all aquatic herbicide applications), and any other information relevant to a particular individual request for shoreline treatment.

Source Note: The provisions of this §57.936 adopted to be effective February 6, 2001, 26 TexReg 1152