

## **Guidance for Implementing Manual Code 9183.1: Boat, Gear, and Equipment Decontamination and Disinfection Protocol**

Manual Code 9183.1 – Boat, Gear and Equipment Decontamination Protocol was revised effective April 10, 2015. The revision directed employees to require manual code compliance by agents, service providers and some types of permittees regarding boat, gear, and equipment decontamination/disinfection procedures to control and prevent the spread of aquatic invasive species (AIS).

This Question and Answer (Q&A) guidance document provides further information for DNR employees on when the requirements contained in the manual code apply to DNR staff and projects, non-DNR staff, and how the manual code relates to compliance with ch. NR 40, Wis. Adm. Code.

This guidance document helps clarify:

- What types of agents, grantees, service providers, partners and externals need to comply with Manual Code 9183.1 to control and prevent the spread of AIS;
- When grants, contracts and permits should include AIS decontamination and disinfection provisions consistent with Manual Code 9183.1; and
- Expectations for DNR staff and affected externals on identifying the appropriate best management practices (BMPs) to use for the disinfection of AIS.

### Questions and Answers

1. Are parties to a land use agreement considered “agents” as defined in Manual Code 9183.1?

No. Land use agreements (LUAs) usually don’t confer “agent” status unless language is included to specifically provide that status. However, activities conducted by LUA parties in waterways that require waterway permits would be required to comply with the disinfection provisions of the permit process.

2. Are parties to a Cooperative Agreement considered “agents” as defined in Manual Code 9183.1?

Generally no. Agent status would need to be expressly laid out in a statute or in the agreement. There may be circumstances when an agreement waives certain statutory requirements; and a legal review should be made to determine if that constitutes “agent” status.

3. Are participants in Friends Groups considered “agents” as defined in Manual Code 9183.1?

Generally no. Participants in Friends Groups are not considered “agents” unless they are under the direction of a DNR employee. When they are under the direction of a DNR employee, they need to complete a DOA volunteer agreement and they are considered agents of the state. See the DNR Risk Management Standard for Volunteers at:

[http://intranet.dnr.state.wi.us/int/at/af/safety/RMStandardforVolunteers\\_June\\_2015.pdf](http://intranet.dnr.state.wi.us/int/at/af/safety/RMStandardforVolunteers_June_2015.pdf). Volunteers under the direction of a DNR employee that are an agent of the state would then need to comply with Manual Code 9183.1 for decontaminating/disinfecting boats, equipment and gear.

Note: Some volunteers sign volunteer agreements with other organizations and the DNR provides training on how to conduct activities but they do not “direct/or supervise” the volunteers. Under these circumstances the volunteers are not agents of the state because they are volunteers with another entity.

4. Do grant recipients meet the definitions of “agents” or “service providers” in Manual Code 9183.1?

No. Grant contracts typically do not delegate authority to act on behalf of the department, and therefore, are not considered agents of the state. Grant recipients generally do not meet the definition of service providers.

5. Are there situations when grant recipients need to comply with the decontamination/disinfection requirements in Manual Code 9183.1?

Yes. The terms and conditions of the grant agreements should be reviewed to determine if there are other general types of conditions that require the recipient to meet department requirements, or if the scope of the grant is related to the control of AIS.

An example would be grant recipients of Aquatic Invasive Species Control Grants administered under ch. NR 198, Wis. Adm. Code. These grant recipients can be expected to comply with Manual Code 9183.1 because the primary purpose of the grant is to control the spread of AIS. Knowles-Nelson Stewardship Grants that include contract work for AIS should also include language requiring the contractor to perform AIS decontamination/disinfection in accordance with the provisions of Manual Code 9183.1. In both of these instances, since the scope of the contracted work is directly related to the control of AIS, the department would want to ensure that reasonable precautions for preventing the spread of AIS are taken on grant-funded projects.

Most boat ramps will likely need a Chapter 30 permit for the construction of the ramp and the permit contains AIS disinfection requirements (similar to manual code 9183.1). However, recreational boat grants for the construction of a boat ramp could contain added requirements for grantees to include compliance with the disinfection manual code requirements in their contracts so contractors are aware they need to comply with disinfection practices when entering and leaving the construction area.

Compliance with the revised decontamination/disinfection procedures in Manual Code 9183.1 cannot be required of parties to aid agreements in effect prior to the effective date of Manual Code 9183.1, which is April 10, 2015.

6. When a Knowles-Nelson Stewardship Grant provides recreational training for a naturalist, should a grant condition be added to require training on Manual Code 9183.1 compliance?

No. Knowles-Nelson Stewardship grantees that provide recreational training for naturalists would need to reference AIS decontamination procedures as prescribed by ch. NR 40, Wis. Adm. Code, which are required of the general public – see <http://dnr.wi.gov/topic/Invasives/disinfection.html>. Grantees would not be expected to train naturalist volunteers on compliance with Manual Code 9183.1 as AIS disinfection BMPs are not required of general park visitors participating in fishing or boating recreation.

7. Can the department require its contractors and/or subcontractors to comply with the requirements in Manual Code 9183.1?

Yes. When the contracted work involves waterways and waterbodies, it would be helpful to provide information to bidders that include examples of the types of equipment needed to perform the decontamination/disinfection requirements in Manual Code 9183.1, and an estimate of the time and costs to comply with different disinfection options. Additionally, the contract should include a provision that expressly requires the contractor to comply with the decontamination/disinfection requirements in Manual Code 9183.1. The manual code and BMPs can be provided as an attachment to the contract.

When contractors employ sub-contractors to perform the work, then sub-contractors would need to comply with the decontamination/disinfection procedures that were included in the bid. An example would be Trout Unlimited acting as a sub-contractor for stream habitat restoration when the department has contracted out that work that included compliance with the disinfection procedures in the bidding documents.

Compliance with the revised procedures in Manual Code 9183.1 cannot be required of parties to contracts in effect prior to the effective date of Manual Code 9183.1, which is April 10, 2015.

8. Are permittees required to comply with the disinfection requirements in Manual Code 9183.1?

Not necessarily. Compliance may be written into the terms of a particular permit where allowed by the underlying regulatory authority or agreed to with the permittee; but the intent of the Manual Code 9183.1 is not to have the manual code apply to all DNR permittees at this time. The manual code was intended to identify the decontamination /disinfection procedures DNR staff/projects, agents, contractors and service providers are to follow.

Manual Code 9183.1 does not set a higher bar in general for permittees beyond what the express regulatory authority is for those permits, but compliance may be factored in to an analysis of the impacts of the activity necessary to meet a permit standard (i.e. “not detrimental to the public interest”, Wis. Stat. s. 30.12(3m).) In addition, certain

regulations for exemptions and general permits expressly require compliance with an equivalent procedure<sup>1</sup>.

There are types of permits for work in waterways for which the program may choose to explore the ability to have standard language developed in alignment with manual code decontamination/disinfection requirements including:

- Waterways and Wetlands permits, chs. 30 and 281, Wis. Stats.
- Dam Water Quality certifications, ch. 31, Wis. Stats.
- Fishing Tournament permits, Scientific Collector permits, Bait Harvester permits, ch. 29, Wis. Stats.
- AIS control (chemical applicators) permits, ch. NR 107, Wis. Adm. Code.
- Invasive species permits, ch. NR 40, Wis. Adm. Code.

Each permitting program is subject to its own statutory and code standards that must be assessed when considering decontamination/disinfection requirements.

9. Is compliance with the decontamination/disinfection requirements in Manual Code 9183.1 necessary for the public or permittees to meet the “reasonable precautions” definition in s. NR 40.02(44), Wis. Adm. Code?

No, there is no independent requirement to take “reasonable precautions.” However, because taking “reasonable precautions” provides an exception to liability under ch. NR 40, Wis. Adm. Code, where possession, transport, or introduction are incidental or unknowing, it may be in the best interest of a member of the public or permittee to comply with the manual code. In cases where the manual code is followed, the protection of having taken “reasonable precautions” will generally apply.

Depending on the activity involved, there may be other precautions the department determines are reasonable. The department works with regulated entities to determine both requirements and recommendations.

10. Are DNR staff, agents, service providers and applicable permittees required to determine if an AIS is present on the waterbody they will be conducting work on and use specific best management practices (BMPs) listed in the appendix of the manual code?

Yes. The manual code includes this provision: **“When working in waterbodies known to contain specific invasive species, it is mandatory to use a disinfection method that is effective for that species.”**

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<sup>1</sup> Chapters NR 320, 323, 328, 329, 341, 343 and 345, Wis. Adm. Code, relating to general navigable waters permit criteria for certain activities, set out equipment decontamination requirements to stop the spread of invasive species from one waterway to another. It is generally required to remove all plants, animals, mud, debris, etc., before and after use. The criteria also include following standards comparable to the most recent department approved disinfection protocols or department approved best management practices for infested waters.

If staff are aware of AIS in a waterbody, they are expected to use the appropriate specific AIS BMPs in Manual Code 9183.1 to control the AIS. If staff suspect an AIS is in an area, but it is not yet documented on the website, they should use the BMP that is effective in disinfecting the suspected AIS. If staff are uncertain if AIS exist in a waterbody, staff are expected to look up information on the specific AIS in waterbodies they are working in via this link -

<https://dnrx.wisconsin.gov/swims/downloadDocument.do?id=126471317>.

Water quality monitoring staff and fisheries staff check to see what AIS is in a work area and apply BMPs listed in the appendix of the manual code for disinfection of those specific AIS. Waterways staff writing certain types of permits that already contain disinfection requirements would be expected to look up AIS in the area of proposed work and incorporate BMPs in the permit where needed and allowed administratively.

Agents, such as DOT and service providers conducting work on DNR projects, would also be expected to comply with checking the DNR website to determine if AIS is documented in a proposed work area and then apply the appropriate BMPs if an AIS is listed.

Permittees issued permits that contain language in conformance with Manual Code 9183.1 disinfection requirements would also be required to determine the presence of specific AIS in the work area of the permit and use appropriate BMPs for a listed AIS.

If there are no specific AIS listed on the web site for the waterbody, and there are no other AIS suspected where work or an activity will be conducted, compliance with any of the disinfection procedures in proposed Manual Code 9183.1 revision at section IV.A.2. (a., b., c., or d.) is sufficient.

11. Do enforcement options exist for failure to use reasonable precautions to prevent the possession, transport or introduction of AIS?

Yes. When there is sufficient evidence that AIS has been possessed, moved from one location to another, or introduced in violation of ss. NR 40.04(3) and 40.05(3), Wis. Adm. Code, enforcement may be warranted. Section NR 40.08, Wis. Adm. Code, contains enforcement actions that include citation authority under ss. 23.50-23.99, Wis. Stats.

When the species involved is a prohibited invasive species and control of the species is required, there are additional enforcement options found in s. NR 40.04(4), Wis. Adm. Code. The department also follows publicly-available stepped enforcement guidance when handling potential violations of ch. NR 40, Wis. Adm. Code.

12. Is there a preferred standard language for requiring compliance with the decontamination/disinfection procedures in Manual Code 9183.1 in contracts and permits where procedures for preventing AIS are warranted?

The preferred method for including the decontamination/disinfection procedures in the manual code in an applicable individual permit or contract is to specifically list the steps to be followed in the language of the permit or contract. This also allows flexibility to modify the procedures where necessary. For general permits or rules for exemptions,

specific steps or a cross-reference to the manual code may be appropriate depending on the context.

### **Information Resources:**

- Refer to [Manual Code 9183.1](#) for disinfection best management practices.
- Manual Code 9813.1 and disinfection best management practices and are also posted on this web page for the public:  
<http://dnr.wi.gov/topic/Invasives/disinfection.html>.
- For more information on disinfection processes contact the individual that issued the contract, agreement, or permit or contact Maureen Ferry, Bureau of Water Quality, at 608-261-6450 or [Maureen.Ferry@Wisconsin.gov](mailto:Maureen.Ferry@Wisconsin.gov).
- Guidance for how to find locations of aquatic invasive species:  
<https://dnrx.wisconsin.gov/swims/downloadDocument.do?id=126471317>.
- Find photos and fact sheets on AIS plants and animals at:  
<http://dnr.wi.gov/topic/Invasives/species.asp?filterBy=Aquatic&filterVal=Y>  
Also see the fact sheet on 16 regulated AIS plants at:  
<http://dnr.wi.gov/topic/Invasives/documents/NR40Aquatics.pdf>
- To report AIS: <http://dnr.wi.gov/topic/Invasives/report.html>.

Contact for Q&A Guidance Document:

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