

I. Purpose

The Secretary of the Agency of Natural Resources (Secretary) is issuing this general permit for the use of nonchemical aquatic nuisance and rapid response control activities, pursuant to 10 V.S.A. § 1455(m) and Section 9 of Act 67 of 2017. This general permit is limited to the use of benthic barriers and powered mechanical devices that utilize diver assisted suction harvesting as nonchemical aquatic nuisance control activities in waters of the State. Control activities include: aquatic nuisance control activities that target only aquatic plants determined to be an aquatic nuisance; and rapid response control activities that target only nonindigenous new aquatic species that are aquatic plants, which have been discovered within the past two years in a waterbody, or rediscovered if the aquatic plants had not been observed in a waterbody for more than five years, provided the Secretary finds that an emergency exists. Authorization under this general permit is limited to aquatic nuisance control activities undertaken by an individual shoreline property owner or lake association and rapid response control activities undertaken by a lake association only. Under 10 V.S.A. Chapter 170, aquatic nuisance control activities require Type 4 notice (minimum 14-day public comment period) and rapid response control activities require Type 5 notice (emergency permits – no public comment period).

II. Definitions

- A. “Agency” means the Agency of Natural Resources.
- B. “Aquatic nuisance” means undesirable or excessive substances or populations that interfere with the recreational potential or aquatic habitat of a body of water, including rooted aquatic plants and animal and algal populations. Aquatic nuisances include zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), Asian clam (*Corbicula fluminea*), fishhook waterflea (*Cercopagis pengoi*), rusty crayfish (*Orconectes rusticus*), spiny waterflea (*Bythotrephes longimanus*), or other species identified by the Secretary by rule.
- C. “Aquatic plant” means a plant that naturally grows in water, saturated soils, or seasonally saturated soils, including algae and submerged, floating-leafed, floating, or emergent plants.
- D. “Benthic barrier” means a natural or synthetic material used to control aquatic plants through blocking sunlight from reaching a waterbody’s sediment layer.
- E. “Control activity” means the use of a benthic barrier or diver assisted suction harvesting to control an aquatic nuisance that is an aquatic plant.
- F. “Control area” means the location in which a control activity occurs.
- G. “Diver assisted suction harvesting” means a control activity where aquatic plants are pulled and removed from the sediment by hand and fed into a suction nozzle. The suction nozzle must not be used to directly remove vegetation from the benthic sediments.
- H. “Individual shoreline property owner” means a property owner with property directly abutting a waterbody or one with an easement granting access or deeded right-of-way access to a waterbody, who proposes to implement a control activity adjacent to their point of access to the waterbody.
- I. “Lake association” means a lake protection organization registered with the Secretary of Natural Resources on a form provided by the Secretary.
- J. “New aquatic species” means an aquatic species that was not known to occur in a surface water of Vermont or in a segment of Lake Champlain as of January 1, 2007.
- K. “Nonindigenous” means an aquatic plant species existing outside of its native distributional range and includes all species identified as Class A and Class B noxious weeds under the [Noxious Weeds](#)

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[Quarantine](#) designated by the Secretary of Agriculture, Food and Markets under 6 V.S.A. Chapter 84 and species identified within the [Vermont Invasive Exotic Plant Committee's watch list](#).

- L. "Rapid response" means a control activity in response to a nonindigenous new aquatic species in a waterbody.
- M. "Secretary" means the Secretary of Natural Resources or the Secretary's duly authorized representative.
- N. "Waterbody" means the water where the project will occur.
- O. "Waters" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, and springs and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the State or any portion of it.

### III. Limitations on Coverage

The following activities are not eligible for coverage under this general permit:

- A. The removal of threatened or endangered species.
- B. An Aquatic Nuisance Control Activity within a Class I or Class II wetland or its associated buffer.
- C. A control activity underway that required a permit and an individual shoreline property owner or lake association did not obtain coverage prior to project initiation.
- D. A control activity proposed in an area already subject to a jurisdictional control activity.
- E. A control activity that targets anything other than an aquatic plant.
- F. Conducting rapid response control activities on a nonindigenous new aquatic species that has been known to exist in a waterbody for more than two years, unless that species has not been observed in the waterbody for more than five years.

### IV. Findings and Activities Eligible for Coverage

- A. This general permit limits eligible activities in the amount of square footage impacted; authorizes only limited types of control activities, none of which are chemical or biological controls; includes best management practices that must be followed when conducting control activities; and will provide a mechanism to more quickly authorize the control of nonindigenous new aquatic species that are aquatic plants. Based on the foregoing, compliance with this general permit will ensure the risk to the non-target environment is acceptable, the risk to public health is negligible, and there is no undue adverse effect upon the public good.
- B. The Secretary may issue an authorization under this general permit for a Rapid Response Control Activity only when the Secretary finds that an emergency exists and that the proposed control technique meets the requirements of this general permit and is acceptable when considering the emergency situation.

Prior to determining that an emergency exists, the Secretary shall consider the following factors:

- i. the likelihood that the nonindigenous new aquatic species will cause harm to human health, safety, or the environment;
- ii. the likelihood that the nonindigenous new aquatic species will cause significant harm to the economy;
- iii. the magnitude of the potential adverse impact of the nonindigenous new aquatic species upon public health, safety, the environment, native biodiversity, waterbodies, outdoor recreation, or

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- any other use of the State’s water resources;
  - iv. the likelihood that the nonindigenous new aquatic species would naturalize in the State if not immediately controlled;
  - v. the rate at which the invasion would spread throughout the State; and
  - vi. the difficulty to control the spread of the nonindigenous new aquatic species in the State.
- C. **Eligible Control Activities.** To qualify for coverage under this general permit, the proposed control activity must be located within a waterbody and not exceed the threshold limit for each project type over the course of a calendar year. In calculating the size of the control area, an applicant shall include the entirety of the proposed area for a control activity, which can include the use of benthic barriers, diver assisted suction harvesting, or a combination of the two. Eligible activity thresholds for the different project types are listed in Table 1. Categories of projects and associated terms are described below:
- i. An Aquatic Nuisance Control Activity is a control activity targeting aquatic plants determined to be an aquatic nuisance. An authorization to act under the terms of this general permit shall not authorize activities past the expiration date of this general permit.
  - ii. A Rapid Response Control Activity is a control activity that the Secretary has determined is necessary to address an emergency and targets either a nonindigenous new aquatic species in a waterbody or the rediscovery of a nonindigenous new aquatic species that has not been observed in a waterbody for more than five years. An authorization to act under the terms of this general permit shall not exceed three years and shall not authorize activities past the expiration date of this general permit.
  - iii. An Individual Shoreline Property Owner shall not be eligible for more than one current authorization per parcel, easement, or deeded right-of-way under this general permit.

**Table 1. Eligible Control Activity Thresholds.** The project must not result in impacts greater than the thresholds listed for each category of project over the course of a calendar year.

<b>Project Type</b>	<b>Individual Shoreline Property Owner – Control Area</b>	<b>Registered Lake Association – Control Area</b>
<b>Aquatic Nuisance Control Activity</b>	The proposed control activity does not exceed a cumulative surface area of 1,500 square feet and is at least 50 feet from previously authorized control activities	The proposed control activity does not exceed a cumulative surface area of 1,500 square feet and is at least 50 feet from previously authorized control activities
<b>Rapid Response Control Activity</b>	Not eligible	Not to exceed 5% of the surface area of the waterbody or 5 acres, whichever is less

V. Required Best Management Practices

Permittees that have received authorization to conduct a control activity under the terms of this general permit shall adhere to the following required best management practices.

- A. Best management practices applicable to all project types:
  - i. Prior to starting a control activity, all equipment, including boats, trailers, vehicles, and gear,

that has been in or on any other water, shall be decontaminated in accordance with the [Voluntary Guidelines to Prevent the Spread of Aquatic Invasive Species through Recreational Activities, Aquatic Nuisance Species Task Force, November 2013](#), or its replacement.

- ii. A control activity shall not unreasonably impede boating, navigation, or similar public good uses.
- iii. Rocks, boulders, and woody debris shall not be removed from the waterbody.
- iv. Prior to initiating the control activity, the control area shall be searched for turtles, mussels, or other aquatic wildlife and those animals shall be safely moved to a location outside of the control area.
- v. Benthic barriers
  - Benthic barriers shall:
    1. be of a natural or synthetic material specifically designed and marketed to block sunlight from reaching a water's sediment layer.
    2. be securely weighted to the waterbody's sediment layer, not billow, and be adjusted as soon as possible if billowing occurs.
    3. have no more than 4 centimeters (1 5/8 inches) of sediment accumulate on top of the benthic barrier.
    4. not be used past the life expectancy of the material used.
    5. not deteriorate to the point of leaving debris in the waterbody.
    6. not discharge concrete, epoxy coatings, fuels, leachate, lubricants, paints, sediments, solvents, suspended solids, or any other environmentally deleterious material into waters.
  - Permittees shall:
    7. remove aquatic plants immediately found growing on top of the benthic barrier.
    8. remove all weighting devices and potential materials used to fill a weighting device from the waterbody when the benthic barriers are no longer in use.
- vi. Diver assisted suction harvesting
  1. Turbidity curtains:
    - a. During diver assisted suction harvesting, a turbidity curtain shall be installed to completely enclose the control area so that turbidity and plant fragments are contained within the control area. The turbidity curtain shall extend to above the surface of the water and be secured to the sediment layer.
    - b. If turbidity is observed beyond the control area, work shall be stopped immediately and shall not recommence until the source of the turbidity is identified and corrected.
    - c. The turbidity curtain shall not be installed in a way that blocks navigation.
    - d. The turbidity curtain shall remain in place and be maintained until diver assisted suction harvesting is complete and observations indicate turbidity within the barrier has decreased to the level of turbidity outside the barrier.

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2. All aquatic plants that have been removed shall be disposed of in an upland, non-wetland location (which includes the 50-foot wetland buffer for Class I and Class II wetlands), from which aquatic plant material cannot return to any surface water. Vehicles transporting removed material (e.g. vegetation, mud, etc.) to a disposal location shall be covered and shall not lose material during transport.

### B. Specific project type best management practices:

#### i. Aquatic Nuisance Control Activity:

1. The control activity shall occur between July 1<sup>st</sup> and October 1<sup>st</sup> only.
2. If benthic barriers are used, all barriers shall be inspected at least once a month to ensure compliance with condition V.A.v. of this general permit.
3. If benthic barriers are used, all barriers and weighting devices associated with the project shall be removed annually by no later than October 1<sup>st</sup> and shall not be left in the waterbody past the expiration of authorization under this general permit.

#### ii. Rapid Response Control Activity:

1. The control activity shall not exceed three years from the original project implementation date.
2. The control activity shall not occur between May 15<sup>th</sup> and June 30<sup>th</sup> within a Class I or Class II wetland or wetland buffer.
3. The control activity shall only target the identified nonindigenous new aquatic species.
4. If benthic barriers are used, all barriers shall be inspected at least once a month during May through October to ensure compliance with condition V.A.v. of this general permit.
5. If benthic barriers are used, all barriers shall not be moved for a minimum of eight weeks from the original date of installation.
6. If benthic barriers are used, barriers shall not be left in the same location for more than two years from the original date of installation.
7. Prior to initiating the control activity, the Permittee shall provide notification to shoreline property owners adjacent to the control activity location. Notification shall contain information on the control activity, the nonindigenous new aquatic species, and the Permittee's contact information.
8. Individuals conducting the rapid response control activity shall be able to identify the target nonindigenous new aquatic species and be able to distinguish it from native aquatic plants.

## VI. Application for Authorization

### A. General Permit Application Notice of Intent (NOI). The NOI shall at a minimum include:

- i. The name and contact information for the applicant, and if the applicant is a lake association, a copy of its approved registration form, or if not previously registered, a new registration form.
- ii. The name of the waterbody in which the control activity will occur in.
- iii. A description of the control area in which the control activity will occur, including a map, and the anticipated total surface area in which control activities are proposed. After a Permittee

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receives an authorization under this general permit, any proposed changes to the control area or increases to the total surface area in which control activities are proposed shall be submitted as a request to modify the authorization.

- iv. Whether the control activity will consist of the use of benthic barriers, diver assisted suction harvesting, or a combination of the two.
  - v. Whether the control activity is an Aquatic Nuisance Control Activity or a Rapid Response Control Activity. For a Rapid Response Control Activity, the following shall be provided:
    1. The target nonindigenous new aquatic species that is an aquatic plant.
    2. Date of first discovery of the target nonindigenous new aquatic species in the waterbody.
    3. A description of the emergency created by the nonindigenous new aquatic species, including:
      - a. the likelihood that the nonindigenous new aquatic species will cause harm to human health, safety, or the environment;
      - b. the likelihood that the nonindigenous new aquatic species will cause significant harm to the economy;
      - c. the magnitude of the potential adverse impact of the nonindigenous new aquatic species upon public health, safety, the environment, native biodiversity, waterbodies, outdoor recreation, or any other use of the State's water resources;
      - d. the likelihood that the nonindigenous new aquatic species would naturalize in the State if not immediately controlled;
      - e. the rate at which the invasion would spread throughout the State; and
      - f. the difficulty to control the spread of the nonindigenous new aquatic species in the State.
  - vi. Any other information required by the Secretary.
- B. Submission and Fees. The NOI shall be signed by the applicant. All fees required under 3 V.S.A. § 2822 shall be submitted with the application.
- C. Additional Information upon request from the Secretary. Following review of the NOI, the Secretary may require the applicant to submit additional information that the Secretary considers necessary in order to make a decision on the eligibility for, or the issuance or denial of, an authorization to conduct a control activity pursuant to this general permit.
- D. Public Notice and Comment. Public notice and comment shall be provided pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder. NOIs to conduct an Aquatic Nuisance Control Activity shall comply with Type 4 Procedures. NOIs to conduct a Rapid Response Control Activity shall comply with Type 5 Procedures.
- E. Amendment to an Authorization. Applications requesting a modification to an authorized NOI shall proceed in accordance with 10 V.S.A. Chapter 170 and the rules adopted thereunder.
- F. Requiring an Aquatic Nuisance Control Individual Permit. The Secretary may require an applicant who files an NOI under this general permit to apply for an individual permit, if the proposed control activity does not qualify for coverage under this general permit, or if the Secretary determines that an

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individual permit is more appropriate.

- G. Authorization to Conduct a Control Activity. An applicant who files an NOI under this general permit shall be authorized to conduct the proposed control activity upon receipt of written authorization from the Secretary.
- H. Failure to Obtain Authorization. Any person who conducts a control activity jurisdictional under 10 V.S.A. Chapter 50 on aquatic plants determined to be an aquatic nuisance in waters of the State without first receiving coverage under this general permit or an individual permit is in violation of 10 V.S.A. Chapter 50 and is potentially subject to enforcement proceedings.

### VII. General Conditions

- A. Access to Property. By acceptance of this general permit, the Permittee agrees to allow representatives of the state of Vermont, at reasonable times and upon presentation of credentials, to enter upon the Permittee's property, or to otherwise access the authorized project, to inspect to determine compliance with this general permit.
- B. Application, Installation, Operation, and Maintenance of Control Activities. An approved control activity shall be completed, operated, and maintained in accordance with the Permittee's NOI and the conditions of this general permit. No material or substantial changes shall be made to the project without the written approval of the Vermont Department of Environmental Conservation's Lakes and Ponds Program.
- C. Automatic Termination of Coverage. Authorization to conduct a Rapid Response Control Activity under the terms of this general permit shall be automatically terminated three years from the date that authorization is issued unless an earlier date is specified within the authorization.
- D. Compliance with Other Regulations. This general permit does not relieve the Permittee from obtaining all other approvals and permits prior to commencement of activity, or from the responsibility to comply with all other applicable federal, state, and local laws or regulations. In accordance with Fish and Wildlife Board Rule 641, adopted pursuant to 10 V.S.A. § 4145(a), a Special Use Permit from the Commissioner of Fish and Wildlife is required if a Vermont Department of Fish & Wildlife Access Area is used for the access of equipment or removal of aquatic plants associated with conducting an authorized control activity under this general permit.
- E. Duty to Comply and Enforcement. The Permittee shall comply with all terms and conditions of this general permit. Any noncompliance shall constitute a violation of 10 V.S.A. Chapter 50 and may be cause for any enforcement action and revocation, modification, or suspension of the authorization to conduct a control activity under this general permit. It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this general permit.
- F. Duty to Reapply. If the authorized activity is anticipated to continue after the expiration date of the Permittee's authorization under this general permit, the Permittee shall reapply for coverage prior to the authorization's expiration.
- G. Legal Responsibilities for Damages. The Secretary, by issuing this general permit, accepts no legal responsibility for any damage direct or indirect of whatever nature and by whoever suffered arising out of the approved activity.
- H. Location of Operation. The Permittee shall conduct the control activities covered by this general permit only in those areas described and mapped in the Permittee's NOI filed with, and approved by, the Secretary.

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- I. Modification. This general permit or any authorization under this general permit may be modified for cause by the Secretary. If the Secretary determines that modification is appropriate, only the conditions subject to modification shall be reopened. Any modification under this condition shall be pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder. Cause for modification of this general permit or any authorization thereunder includes:
  - i. alterations to the activities authorized under this general permit; or
  - ii. the receipt of information concerning the activities authorized under this general permit which would have justified different permit requirements at the time of the issuance of the general permit or authorization.
- J. Operation by Others on Behalf of Permittee. If a person other than the Permittee is conducting control activities covered by this general permit on behalf of the Permittee, the Permittee shall ensure that the person conducting the activities has a copy of this general permit and is familiar with the terms and conditions of this general permit.
- K. Rare, Threatened, or Endangered Species. Encounters with any rare, threatened, or endangered species shall be reported to the Secretary immediately. If determined necessary by the Secretary, an Endangered & Threatened Species Taking Permit, per 10 V.S.A. § 5408, shall be obtained prior to commencement or continuance of the control activity.
- L. Rights and Privileges. This general permit does not authorize any damage to public or private property or invasion of private rights or the violation of federal, state, or local laws or regulations. In addition, this general permit does not convey any title or interest to the lands lying under public waters or waters affected.
- M. Suspension or Revocation. Any authorization issued under this general permit may be suspended or revoked for cause in whole or in part by the Secretary. Cause for suspension or revocation includes:
  - i. violation of any of the terms or conditions of this general permit or any authorization issued thereunder;
  - ii. failure by the Permittee to disclose all relevant facts during the general permit and NOI application process;
  - iii. misrepresentation of any relevant fact or providing false information at any time during the NOI application process;
  - iv. a determination by the Secretary that an emergency under 10 V.S.A. §1456 does not exist; or
  - v. a determination by the Secretary that the proposed control activity does not meet the requirements of this general permit.
- N. Twenty-Four Hour Non-compliance Reporting. Unless provided otherwise by this general permit, the Permittee shall report any noncompliance which may endanger public health or the environment. Any such information shall be provided within 24 hours from the time the Permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance, its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; as well as steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

## VIII. Appeals

Right to Appeal to Environmental Court. Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be

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filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. The appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings available at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The address for the Environmental Division is: 32 Cherry Street; 2nd Floor, Suite 303; Burlington, VT 05401 Telephone #: 802-951-1740.

IX. Terms

This general permit shall be effective for a period of ten years beginning on the day of signing.

State of Vermont  
Agency of Natural Resources

Emily Boedecker, Commissioner  
Department of Environmental Conservation



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Permit signed and shall be effective on: 5/1/2018  
Permit shall expire at midnight on: 4/30/2028