# *Draft* Aquatic Nuisance Control Individual Permit

**Under 10 V.S.A. § 1455**

VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WATERSHED MANAGEMENT DIVISION
LAKES & PONDS PROGRAM

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| **Permittee(s): David & Kelli Brown** | **Permit Number: 2016-B08** |
| **Control Activity: Bottom Barriers** | **Waterbody: Lake Iroquois, Hinesburg** |

Based upon the Findings contained in this permit, the Secretary of the Agency of Natural Resources has determined that the proposed aquatic nuisance control activity will comply with 10 V.S.A. § 1455, and is hereby approved under the following conditions and specifications.

**a. Specific Conditions**

**1.** Location. Installation of all bottom barriers (barriers) shall only occur at the authorized locations indicated within the Approved Application.

**2.** Material & Weights. Only commercial grade synthetic geotextile or similar type of material (i.e. Lake Bottom Blanket® by Derma-Safe, LLC) shall be installed as a bottom barrier. Up to 1,600 square feet of commercial grade synthetic geotextile or similar type of material shall be installed and weighted with 3/8-inch rebar, sandbags, or an equivalent material.

**3.** Dates. Installation of any barriers shall occur after June 15th of any calendar year during the effective period of this permit, unless otherwise authorized by the Secretary.

**4.** Duration. All barriers shall be installed in accordance with the following, unless otherwise approved by the Secretary:

A. Shall not be moved for a minimum of eight weeks from the original date of installation;
B. Shall be installed in accordance with the sequence outlined within the Approved Application; and,
C. Shall be removed annually by October 1st, or unless otherwise authorized by the Secretary.

**5.** Maintenance. All barriers shall be maintained in accordance with following:

A. Shall be securely weighted to the lake bottom and shall not billow;
B. Any aquatic vegetation growing on top of the barrier shall be removed immediately;
C. Shall not accumulate sediment of more than 4 centimeters (1 5/8 inches) deep; and,
D. All material and weighting devices shall be removed prior to the expiration of this permit, unless otherwise approved by the Secretary.

**6.** Notification. The Secretary shall be notified one week in advance of any scheduled installation.

**7.** Inspections. All bottoms barriers shall be inspected and maintained in accordance with the following:

A. The Permittee shall conduct inspections on a monthly basis from June 15th until October 1st, which shall be recorded on the Bottom Barrier Inspection Report Form (Inspection Form) to ensure the bottom barrier is securely weighted to the lake bottom and is not billowed.
B. The Permittee shall at all times properly maintain the barriers to achieve compliance with the conditions of this permit.

**8.** Reporting. An Inspection Form shall be submitted to the Secretary by October 31st of each year that this permit is in effect.

**9.** Nontarget Impact Mitigation. The following actions shall be taken to mitigate nontarget impacts:

A. A search for aquatic organisms, such as mollusks and turtles, shall be conducted prior to installation. Any found shall be safely moved outside of the authorized installation area.
B. The installation or removal of bottom barriers shall not result in injured/killed aquatic animals, and, not interfere with the eggs, nests, or reproductive behavior of any such aquatic animals.
C. A search for rare, threatened, or endangered aquatic plant species shall be conducted prior to installation. If any observations are made, barriers shall not be installed overtop those populations. The Permittee may consult with the Secretary to confirm speciation.

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**10.** Approved Application. The project shall be completed as shown on the application, plans, and support documents as submitted by the Permittee, and approved by this permit.

**b. Standard Conditions**

**1.** Reporting & Correspondence. All aforementioned, requisite correspondence directed to the Secretary pertaining to this permit, including notifications, surveys and reports, shall be (preferably) submitted via email to ANR.WSMDShoreland@vermont.gov or mailed to the following address:

Lake & Shoreland Permitting
Watershed Management Division
1 National Life Drive, Main 2
Montpelier, VT 05620-3522

**2.** Aquatic Invasive Species Spread Prevention. Prior to any control activity occurring, all equipment, including but not limited to boats, trailers, vehicle, and gear, that has been in or on any other waterbody, 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.

**3.** Decision-makers & Operators as Permittees. A Permittee is defined to mean any person associated with aquatic nuisance control activities (activity) (1) who performs the activity or who has day-to-day control of the activity; or, (2) any person with control over the decision to perform the activity including the ability to modify those decisions. Permittees identified as (1) are referred to in this permit as Operators while Permittees identified as (2) are referred to in this permit as Decision-makers. More than one Operator may be responsible for complying with this permit. Permittees are defined as a Decision-maker, as an Operator, or as both. When a Permittee is both a Decision-maker and an Operator, the Permittee must comply with all applicable requirements.

**4.** Authorization Modification or Amendment. This permit may be modified or amended upon request by the Permittee or by the Secretary. Any modification under this condition shall be performed in accordance with the *Public Review and Comment Procedures for Aquatic Nuisance Control Permit Applications and General Permits*, January 30, 2003, or its replacement.

**5.** 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 activity.

**6.** Compliance with Other Regulations. This permit does not relieve the Permittee from obtaining all other approvals and permits prior to commencement of activity, or the responsibility to comply with any other applicable federal, state, and local laws or regulations.

**7.** Access to Property. By acceptance of this permit, the Permittee agrees to allow representatives of the state of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with Vermont's statutes, regulations, and permit conditions.

**8.** Legal Responsibilities for Damages. The Secretary, by issuing this individual permit, accepts no legal responsibility for any damage direct or indirect of whatever nature and by whoever suffered arising out of the approved activity.

**9.** Rights & Privileges. This permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

**10.** Duty to Comply & Enforcement. The Permittee shall comply with all terms and conditions of this permit. Any permit noncompliance shall constitute a violation of 10 V.S.A. § 1455 and may be cause for any enforcement action and revocation, modification, or suspension of the 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 permit.

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**11.** Duty to Reapply. If the authorized activity is anticipated to continue after the expiration date of this permit, the Permittee shall reapply for coverage under a new permit 60 days prior to the expiration date of this permit.

**12.** Twenty-four Hour Non-compliance Reporting. Unless provided otherwise by this 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.

**13.** Official Duties. This permit shall not restrict law enforcement of emergency operations or the performance of official duties by a government agency.

**14.** Reopener. If after granting this permit the Secretary determines that there is evidence indicating that an authorized activity does not comply with the requirements of 10 V.S.A. Chapter 50, the Secretary may reopen and modify this permit to include different limitations and requirements.

**15.** Appeals. Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be 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 Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings available at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry Street; 2nd Floor, Suite 303; Burlington, VT 05401 Telephone: 802-951-1740.

**c. Findings**

**1.** Jurisdiction - 10 V.S.A. § 1455(a). Within waters of the state, no person may use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices to control nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey, unless that person has been issued a permit by the Secretary. The project, as described in permit application #2016-B08, involves the use of a bottom barrier to control Eurasian watermilfoil (EWM), *Myriophyllum spicatum,* within Lake Iroquois in Hinesburg. Therefore, the Department has jurisdiction under 10 V.S.A. Chapter 50.

**2.** Application Receipt & Review. A permit application prepared/submitted by David & Kelli Brown was received on April 6, 2016 for an Aquatic Nuisance Control Permit for the installation of bottom barriers totaling up to 1,600 square feet. It was reviewed in accordance with the Department of Environmental Conservation's *Permit Application Review Procedure*, adopted May 22, 1996.

**3.** Background; Aquatic Nuisance Control Permit History. Numerous control methods for EWM have been used in Lake Iroquois, which include the use of bottom barriers, powered mechanical devices, and the use of a biological control. ANC permits #1994-B01 and #2009-B04 permitted the use of a bottom barrier. ANC permits #1999-H03, #2005-H07, and #2014-H02 permitted the use of a powered mechanical device. ANC permit #2005-W01 permitted the use of a biological control (*Eurychiopsis lecontei*). All of the above mentioned ANC permits were issued for the control of the aquatic invasive plant EWM that was first identified in Lake Iroquois in 1990.

**4.** Project Purpose. The purpose of the project is to control populations of EWM in an area that is immediately adjacent to a dock and swimming area to improve access and reduce the potential fragmentation and spread of EWM caused by boating.

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**5.** 10 V.S.A. 1455(f)(1) – Nontarget Environment. Numerous rare macrophyte species have been recorded as being present in Lake Iroquois. Species observed include prickly hornwort (S2S3), *Ceratophyllum echinatum*, last observed 9/14/2012; Nuttall's waterweed (S3), *Elodea nuttallii*, last observed 8/30/2012; slender naiad (S2), *Najas gracillima*, last observed 9/17/1968; straight-leaf pondweed (S2S3), *Potamogeton strictifolius*, last observed 8/2/1993; Vasey's pondweed (S2), *Potamogeton vaseyi*, last observed 8/2/1993; and lesser bladderwort (S3), *Utricularia minor*, last observed 9/14/2012. The Permittee will report any observation of rare, threatened, or endangered species in accordance with this permit and barriers will not be installed overtop these populations. The Permittee may consult with the Secretary to confirm speciation.

A search for aquatic organisms, such as mollusks and turtles, will be conducted prior to installation. Any found will be safely moved outside of the authorized installation area. The installation or removal of bottom barriers will not result in injured/killed aquatic animals, and, not interfere with the eggs, nests, or reproductive behavior of any such aquatic animals.

Barriers control aquatic plants by reducing sunlight and smothering plant material. The greatest risk to the nontarget environment from barriers is to the aquatic biota that will be covered by it. While the Secretary recognizes that other, native organisms may be adversely impacted by the installation of barriers, no information has been received indicating that undue adverse impacts will occur to nontarget organisms if barriers are installed.

To mitigate the risk of introduction or transport of non-native, aquatic invasive species proper spread prevention measures must be taken. Thus, prior to any control activity occurring, all equipment (such as a boat, trailer, vehicle, and gear) that has been in or on any other waterbody, will 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.

The Secretary has determined that there is acceptable risk to the nontarget environment.

**6.** 10 V.S.A. 1455(f)(2) – Public Health. Provided the barriers are properly installed and maintained in accordance with the conditions of this permit, the Secretary has determined that there is negligible risk to public health.

**7.** 10 V.S.A. 1455(f)(3) – Public Good. Based upon findings c.5. & c.6., the Secretary has determined that there is no undue adverse effect upon the public good from the use of a bottom barrier when installed, maintained, and removed in accordance with this permit and the Approved Application.

**8.** 10 V.S.A. 1455(h) – Public Notification. An opportunity for the public to review and comment on this application was provided in accordance with the Department of Environmental Conservation's *Public Review and Comment Procedures for Aquatic Nuisance Control Permit Applications and General Permits*, adopted per 3 V.S.A. Chapter 25, on January 30, 2003.

**d. Authorization**

By delegation from the Secretary, the Vermont Department of Environmental Conservation has made a determination that the above activity qualifies for an individual aquatic nuisance control permit. The Permittees are authorized per 10 V.S.A. § 1455(i) subject to the conditions herein specified.

This permit shall be effective on the day of signing, and expire ten years thereafter.

Alyssa B. Schuren, Commissioner
Department of Environmental Conservation

By: _____

Perry Thomas, Manager
Lakes & Ponds Management and Protection Program
Watershed Management Division

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