

Bold Text – Act 57 Study Findings

Highlighted Text – Terms identified in ANC Pre-Rulemaking Group for potential revision

Highlighted Text – Terms identified in Act 57 Study Committee for potential revision

A. Scope:

The Aquatic Nuisance Control Study Committee is created to assess the environmental and public health effects of the use of pesticides, chemicals other than pesticides, biological controls, and other controls in comparison to the efficacy of their use in controlling aquatic nuisances. Report to the VT General Assembly on or before December 15, 2023.

B. Study Committee Members and Affiliations

C. Overview of Meetings and Discussions: dates of the meetings held, link to the webpage with summary of meeting notes.

D. [Overview of Title 10, Chapter 50](#)

- § 1452. Definitions
- § 1453. Aquatic Nuisance Control Program
- § 1454. Transport of Aquatic Plants and Aquatic Nuisance Species
- § 1455. Aquatic Nuisance Control Permit
- § 1456. Aquatic Species Rapid Response General Permits
- § 1457. Entrance upon Lands to Prevent the Introduction and Spread of New Aquatic Species
- § 1458. Grant-in-Aid to Municipalities and Agencies of the State
- § 1459. Joint Municipal Participation
- § 1460. Rulemaking
- § 1461. Aquatic Nuisance Inspection Stations; Training Program

[§ 1455. Aquatic Nuisance Control Permit](#)

(a) A person shall not use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices in waters of the State to control nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey, unless that person has been issued a permit by the Secretary.

(b) Notwithstanding other requirements set forth in chapter 47 of this title to the contrary, the Secretary may issue permits under this section.

(c) Persons desiring a permit under this section shall make application to the Secretary on a form prescribed by the Secretary.

(d) The Secretary shall issue a permit for the use of pesticides in waters of the State for the control of nuisance aquatic plants, insects, or other aquatic life, including lamprey, when the applicant demonstrates and the Secretary finds:

- (1) there is **no reasonable** nonchemical alternative available;
- (2) there is **acceptable risk** to the nontarget environment;
- (3) there is **negligible risk** to public health;
- (4) a long-range management plan has been developed which incorporates a schedule of pesticide minimization; and
- (5) there is a **public benefit** to be achieved from the application of a pesticide or, in the case of a pond located entirely on a landowner's property, no undue adverse effect upon the public good.

(e) A landowner applying to use a pesticide on a pond located entirely on the landowner's property is exempt from the requirement of subdivision (d)(4) of this section.

(f) The Secretary shall issue a permit for the control of aquatic nuisances by biological controls, bottom barriers, structural barriers, structural controls, powered mechanical devices, or chemicals other than pesticides when the Secretary finds:

- (1) there is acceptable risk to the nontarget environment;
- (2) there is negligible risk to public health; and
- (3) there is either benefit to or no undue adverse effect upon the public good.

(g) The use of bottom barriers, structural barriers, structural controls, powered mechanical devices, and copper compounds as an algaecide in waters with a surface area of one acre or less located entirely on a person's property and with an outlet where the flow can be controlled for at least three days is exempt from the permit requirements of this section.

(h) When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.

(i) An aquatic nuisance control permit issued under this section shall:

- (1) specify in writing the Secretary's findings under subsection (d) or (f) of this section;
- (2) specify the location, manner, nature, and frequency of the permitted activity;
- (3) contain additional conditions, requirements, and restrictions as the Secretary deems necessary to preserve and protect the quality of the receiving waters, to protect the public health, and to minimize the impact on the nontarget environment. Such conditions may include requirements concerning recording, reporting, and monitoring;
- (4) be valid for the period of time specified in the permit, not to exceed five years for chemical control, and not to exceed ten years for nonchemical control.

(j) An aquatic nuisance control permit issued under this chapter may be renewed from time to time upon application to the Secretary. The process of permit renewal will be consistent with the requirements of this section.

(k) An applicant for a permit under this section shall pay an application fee as required by 3 V.S.A. § 2822. The Agency of Natural Resources shall be exempt from this fee requirement.

(l) No permit shall be required under this section for mosquito control activities that are regulated by the Agency of Agriculture, Food and Markets, provided that:

- (1) Prior to authorizing the use of larvicides or pupicides in waters of the State, the Secretary of Agriculture, Food and Markets shall designate acceptable control products and methods for their use and issue permits pursuant to 6 V.S.A. § 1083(a)(5); and
- (2) [Repealed.]

(m) The Secretary may issue general permits for the use of nonchemical aquatic nuisance control activities provided that the Secretary makes the findings required in subsection (f) of this section. A general permit issued under this subsection is not required to specify the exact location or the frequency of the permitted activity. (Added 2009, No. 46, § 1, eff. July 1, 2010; amended 2013, No. 142 (Adj. Sess.), § 89; 2015, No. 150 (Adj. Sess.), § 21, eff. Jan. 1, 2018; 2017, No. 67, § 3, eff. June 8, 2017.)

E. The recommendations of the Committee shall include the types of pesticides, chemicals other than pesticides, or biological controls approved for use and why they were approved instead of nonchemical controls for aquatic nuisances in Vermont. The recommendations of the Committee shall include:

(1) Summary of pesticides, chemicals other than pesticides, and biological controls used in Vermont lakes and ponds 2000-2023

a. Types of pesticides, chemicals other than pesticides, and biological controls types, descriptions, specifications, and approved uses (*instead of nonchemical controls*)

1. Agricultural Innovation Board (AIB) Overview and the Use of Pesticides in VT Waters
Agency of Agriculture approves for certain pesticides to be used. VTDEC evaluates the use of pesticides that can be used in Vermont waters and chooses these based on their efficacy and benefit
2. Pesticides
 - a.) Sonar
 - b.) Renovate
 - c.) Procellacor
 - d.) TFM
 - e.) Bayluscide
3. Chemicals other than pesticides

- a.) Pond Dyes – Not species specific, may impact water downstream, not permitted in Vermont
 - b.) Copper-based Algaecides – Algae specific, used in small ponds
 - c.) Aluminum sulfate and sodium aluminate – Used in 2014, moved over to Wastewater under NPDES permitting
4. Biological controls – May be targeted, resource intensive, potential new invasives
 - a.) Weevils
 - b.) Others not permitted (?)

b. Nonchemical controls descriptions, specifications, approved uses, and limiting factors

1. Handpulling - No permit needed, practical only for new introductions/small populations
2. Bottom Barriers – Not species specific, works for small populations, high maintenance
3. Diver Assisted Suction Harvesting – Highly targeted, expensive, lack of providers
4. Hydoraking – Not species specific, creates immense turbulence, disrupts benthic layer
5. Mechanical Harvesting Vessels – Not targeted, may spread invasive plants, “mowing”
6. Structural Controls – Targeted, barrier to inhibit movement of treatment or species

Notes: Slide from Presentation #1: Include a description of each pesticide (herbicides, lampricides, alum), when they were used, and the specifications for their use, i.e. target approach, number of lakes, label specifications. Information on nonchemical controls and limiting factors

(2) Assessment of the use of pesticides on the nontarget environment or nontarget species

1. Pesticides Assessment
 - a.) Sonar
 - b.) Renovate
 - f.) Procellacor
 - g.) TFM
 - h.) Bayluscide
2. Present Requirements and Gaps
 - a.) What protections are in place presently
 - b.) Limitations for the use of pesticides (or not using?)
 - c.) Potential Gaps

F. Recommended legislative changes to 10 V.S.A. Chapter 50

1. Implementing the use of pesticides, chemicals other than pesticides, and biological controls in a more precautionary manner that ensures the protection of State waters and is designed to protect fish, reptiles, amphibians, and all other aquatic biota

- a.) Impacts and precautions needed
 - 1.) Fish**

- 2.) Reptiles
- 3.) Amphibians
- 4.) All other aquatic biota

2. Establish the appropriate standard for approval of the use of pesticides for aquatic nuisance control

- a.) Present Standards (10 V.S.A. § 1451a and 1455b)
 - 1.) Historical Context
 - 2.) ANC Individual Permit Internal Review Procedure
 - 3.) Agricultural Innovation Board (AIB) and Other Agencies
- b.) What additional standards or data should be included?
 - 1.) Improving terminology/definition of Aquatic Nuisance, reasonable, acceptable
 - 2.) Public Good? Public benefit?
 - 3.) Revision of Applicants – Local municipality, Agent of State (including DEC for RR) similar to ANC GIA

Notes: Examples from other states?

Federal Definition: Aquatic Nuisance Species are organisms that produce harmful impacts on aquatic ecosystems or activities or dependent on these ecosystems such as agricultural, aquacultural, or recreation.

3. Proposed Process Amendments for ANC Application (*amend the process for the application of an aquatic nuisance control permit in a manner that improves the opportunity for interested parties to participate in the permitting process and that ensures full transparency in the permitting process*)

- a.) Public Participation at Present
 - 1.) Public notice process with Environmental Notice Board
 - 2.) Public Comment Period
 - 3.) Concerns of lengthening process
- b.) Suggestions/Recommendations
 - 1.) Identification of Interested Parties
 - 2.) Pre-permitting process? Applicants need to notify landowners pre-application (can be included in permit application process)
 - 3.) Other State Examples?

Notes: ME has a committee of internal agencies similar to tANC Individual Permit Internal Review Procedure

How to ensure that their participation would not lengthen the permitting process/disrupt the ability for ANR/Partners to be complicit with future ANC projects, particularly those that are necessary and historically utilized

4. Recommendations for proposed changes to Title 10 Chapter 50 Summary

5. Other Changes (that the Study Committee determines are necessary or appropriate for implementation of effective aquatic nuisance control in the State.)

G. Public Comments Compilation