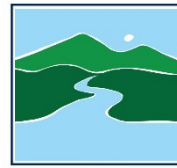


Draft Aquatic Nuisance Control Individual Permit

Under 10 V.S.A. § 1455



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

<p>Permittee: Town of Franklin</p> <p>Control Activity: Powered Mechanical Device (Mechanical harvester)</p>	<p>Permit Number: 2016-H10</p> <p>Waterbody: Lake Carmi, Franklin</p>
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Based upon the Findings contained in this permit, the Secretary of the Agency of Natural Resources has determined that the proposed aquatic nuisance control activities will comply with 10 V.S.A. § 1455, and is hereby approved under the following conditions and specifications.

a. Specific Conditions

1. **Powered Mechanical Devices.** Aquatic plant harvesting shall occur with an Aquamarine Model H5-200 or an equivalent approved by the Secretary.
2. **Locations.** All mechanical harvest activity approved by this permit shall only occur in Area F as identified on the Approved Application and in accordance with the following location conditions:
 - A. Mechanical harvesting shall not take place in any location outside of the approved area without first obtaining approval from the Secretary.
 - B. Mechanical harvesting shall not extend beyond the ten-foot water depth contour.
3. **Dates.** Harvest activity shall only occur between June 1st and October 1st of any calendar year during the effective period of this permit, unless otherwise authorized by the Secretary. Harvesting activity shall not commence until receiving approval from the Secretary confirming Specific Condition a.9.A. has been met.
4. **Target Species.** The Permittee shall only target Eurasian watermilfoil (*Myriophyllum spicatum*) for harvesting.
5. **Public Notification.** Informational notifications shall be provided to abutting shoreline property owners within the approved harvest area at least one week prior to the activity occurring. Harvesting shall not occur if, upon receiving notice, a shoreline property owner informs the Permittee that he/she wants to be excluded. The informational notification shall include:
 - A. Approximate date of harvest activity;
 - B. Brief description of the activity;
 - C. Contact name(s), address(es), and telephone number(s) for all Permittees; and,
 - D. Statement informing abutting property owners how to be excluded.
6. **Operation & Maintenance.** Only qualified professionals or individuals under the supervision and guidance of qualified professionals shall operate the authorized powered mechanical device while other, unauthorized individuals are not in the immediate harvest area. All powered mechanical devices shall be properly maintained.
7. **Daily Recording.** All harvest activity shall be recorded daily on a Powered Mechanical Device Report Form (Report Form), or on an equivalent approved by the Secretary.
8. **Reporting.** An annual harvest activity report shall be submitted to the Secretary by December 31st of the calendar year in which harvesting occurred and shall include at a minimum the following information:
 - A. Date(s) harvesting activity occurred;
 - B. Approximate volume of harvested material removed per area as identified on the site plan map;
 - C. Disposal method(s) and location(s); and,
 - D. A summary of harvesting activity.
9. **Nontarget Impact Mitigation.** All powered mechanical device use shall occur in accordance with the following condition to mitigate non-target impacts:
 - A. An aquatic plant assessment prior to harvesting shall occur in order to identify potential populations of Vasey's Pondweed (*Potamogeton vaseyi*). The results of the assessment shall be shared with the Secretary prior to harvesting in Area F. All encountered populations of Vasey's Pondweed, as well as any additional populations of rare, threatened, or endangered species shall not be harvested and the areas avoided.

- B. All powered mechanical device operators shall be capable of identifying the following submerged aquatic plant: Vasey's Pondweed. The Permittee may seek assistance from the Secretary to help identify aquatic plant species if requested.
- C. All aquatic animals shall be avoided. Harvest activity shall not result in injured/killed turtles. All turtles found during harvest activity shall be safely and immediately returned to the water outside of the immediate harvest area.
10. Disposal. All harvested aquatic vegetation shall be disposed at upland, non-wetland locations where it cannot return to any waterbody, except for transport authorized separately under 10 V.S.A. § 1454(b).
11. Transport. Any vehicles transporting harvested spoils (e.g. vegetation, mud, etc.) to a disposal location shall be covered and shall not lose any material during transport.
12. 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.
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 sixty (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. Public Access Area. In accordance with Fish and Wildlife Board Rule 641, pursuant to 10 V.S.A. § 4145(a), Vermont Department of Fish & Wildlife Access Areas shall not be used for this activity without proper authorization from the Secretary.
15. Reopener. If after granting this permit the Secretary determines, at his or her discretion, 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.
16. 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-H10, involves the use of a powered mechanical devices within Lake Carmi in Franklin. Therefore, the Department has jurisdiction under 10 V.S.A. Chapter 50.
2. Application Receipt & Review. A permit application submitted by the Town of Groton was received on April 22, 2016 for an Aquatic Nuisance Control Permit for the use of a powered mechanical device, and 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. Eurasian watermilfoil, *Myriophyllum spicatum*, (EWM) was first discovered in the Lake Carmi in the 1970's and is now found throughout lake. The Town of Franklin has been issued the following Aquatic Nuisance Control permits for the use of a mechanical harvester to

reduce EWM growth in Lake Carmi: #1987-H09, #1988-H03, #1989-H02, #1990-H03, #1995-H05, #2000-H01, #2005-H03, and #2015-H03. This permit approves an additional area for harvesting EWM (Area F) that was not included in permit #2015-H03, which is currently active and expires on June 10, 2025.

4. Project Purpose. The purpose of the project is to remove the aquatic invasive plant EWM from near-shore areas to improve public recreational uses, such as boating and swimming and to reduce the growth and spread of the species.
5. 10 V.S.A. § 1455(f)(1) – Nontarget Environment. The greatest risk to the non-target environment from mechanical harvesting is habitat alteration resulting from the removal of plants, fish, macro-invertebrates, periphyton, reptiles, and amphibians. There is one aquatic plant of concern known from the lake, Vasey's pondweed (*Potamogeton vaseyi*), which is rare in Vermont. It was last observed in 2010 in three locations: the northwest (Area E), the southwest (Areas A & B), and the central-western shore (Area F). The Permittee acting in accordance with Specific Condition a.9. will assess if this species or other rare, threatened, or endangered species are present in order to avoid harvesting encountered populations and avoiding the areas where populations may be found. The injuring or killing of any turtles is prohibited by permit condition. Harvesting activity is to adhere to the conditioned timeframe in order to minimize disturbance to fish spawning. 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 harvesting 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. The control activity should result in negligible risk to public health as long as proper precautions are taken to ensure that individuals not involved with project implementation are not within the harvesting area during operation and all equipment is properly maintained. 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 powered mechanical device when operated 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