

Aquatic Nuisance Control (ANC) Rulemaking Focus Group

Minutes from Meeting #1, January 18, 2023

Organizations Represented:

- Lake Champlain Committee
- Conservation Law Foundation
- VT Natural Resources Council
- Federation of Vermont Lakes and Ponds
- Lake Champlain Basin Program
- Lake Iroquois Association
- Lake St Catherine Association
- Fairlee Select Board
- Woodard Marine - Boating
- Thetford Legislator
- Rutland-Bennington Legislator
- Lake Champlain United
- Rutland Bass Club
- US Fish & Wildlife Service
- Solitude Lake Management
- Castleton University / Ecologist
- VT Dept of Health - Ecotoxicology
- VT Fish and Wildlife - Fish Biologist
- Private Sector - Bass oriented Fishing Shop
- VT Fish and Wildlife - Non-game
- Vermont DEC / Watershed Management Division
- Unaffiliated – former Lake Champlain United member

Topics Discussed

1. Introductions

- Discuss rationale for creation of ANC rulemaking focus group
- Introduced member organizations and individuals involved
- Decided to maintain hybrid meeting format
- First portion of meeting will be recorded, however discussion will not be
 - o Going forward, meetings would likely not be recorded but meeting minutes will be published on a DEC website

2. Rationale and purpose

- Statute gives DEC rulemaking ability. Pre-rulemaking phase allows us to go into actual rulemaking process on the same page and have useful discussions with experts and interested parties
- Rule will provide to clarify intentions of statute and to be applied in actual permitting decisions
- This focus group will not seek consensus, but rather the goal is to come to a broad understanding of the issues and incorporate as much feedback as possible from group members while also improving the process to issue ANC permits
- The Focus Group's work will be primarily focused on permits for on herbicide and pesticide use (Chemical treatments) but will spill over to other types of ANC permits as well

3. Process of Rulemaking

- Current statute [10 VSA Chapter 50, Subsection 1455](#)
- Rules must be consistent with statute. We do not have ability to amend statute through rulemaking

- During formal rulemaking, DEC will follow the prescribed process with a meeting at ICAR, filing the rule with secretary of state, holding a public hearing and a written comment period, DEC will respond to all comments, LCAR, and then, If successful the rule will be given an effective date and then take effect

4. Background of ANC Permitting (see accompanying presentation)

- Aquatic nuisances are undesirable or excessive substances that interfere with recreational potential or aquatic habitat
- Permit is required for chemicals, biological controls, barriers, structural controls, or mechanical devices
- Non-target review assesses impact of treatment on non-target environment, including native plant species (for which DEC does not typically authorize chemical treatments to control)
- Pesticides are regulated statewide by Agency of Agriculture Food and Markets
- ANR Secretary can include additional conditions, requirements, and restrictions on permits
- During review process, all 5 statutory findings must be made
- ANC Internal Review Process includes permit application review from other SOV entities including DoH, FPR, F&W, and DEC
- Control projects for native species are typically not permitted
- ProcellaCOR has replaced Sonar and Renovate as standard EWM herbicide
- 40% of littoral zone maximum treatment for all cumulative ANC Control Projects, including herbicide, each year

5. Rulemaking Themes

- Develop definitions in statute so that terms such as “reasonable” have a more precise definition, including possibly qualitative / quantitative definitions
- Terms such as “reasonable” are generally used so that programs can have latitude in how projects are overseen and what conditions must be met for permit to be authorized
- Determine what defines term “Public Good” by clarifying who the public is in that term
- In response to a question about who actually manages the lakes and ponds:
 - o DEC is guided by Surface Water Management Strategy and the Lakes and Ponds Program strategic plan which sets goals, objectives, and targets for management f lakes and ponds within the state. DEC is constricted by limited staff and availability for all 800+ bodies of water. State has certain programs that focus on certain things such as early detection and eradication, Water Chestnut management, and other regulatory roles. State relies on municipalities and other local groups to implement ANC control projects at the individual lake level, although we can always do this ourselves in certain situations. State also regulates whether or not projects can/should be implemented based on various factors

6. Future Meetings

- Will send polls for dates/times
- “Sanitized” minutes will be published on website
- Voluntary agreement of group members to use [Chatham House Rule](#) to guide how information about the work of the focus group is shared externally

7. Discussion

- State considers invasive species relationships with economy and native species during non-target portion of permit review
- Starting from scratch on definition for these rules
- Make sure scale of both lake and problem areas are considered in permitting decisions
- Lakes and Ponds voluntarily works with other departments through the ANC Internal Review Procedures so that various viewpoints are considered