

Aquatic Nuisance Control (ANC) Rulemaking Focus Group Minutes from Meeting #3, March 16, 2023, 3:00 – 4:30 PM

Organizations Represented

- VTDEC
- Lake St. Catherine Association
- Lake Champlain Basin Program
- SOLitude Lake Management
- Town of Fairlee
- Conservation Law Foundation
- Woodard Marine
- FOVLAP
- Rutland Bass Club
- Lake Iroquois Association
- VDH
- VT F&W
- Vermont Natural Resource Council
- Botanist, unaffiliated

Topics Discussed

1. Opening Remarks

- DEC continues to believe that the rulemaking process has the ability to improve ANC permitting, perhaps by increasing public input, codifying the existing improvements Misha has made, and introduce new ideas from the focus group
- VTDEC has received 2 of 3 necessary signatures for the ANC internal review procedures (DEC and F&W), and are waiting for the approval from VDH Commissioner Dr. Levine
- Reminder regarding Chatham House Rules

2. VTDEC Presentation “ANC Permitting 101”

- The presentation is available on the [ANC Rulemaking Focus Group Website](#)
- ANC permit is required for pesticides, chemicals, bio controls, bottom barriers, structural barriers, structural control, or powered mechanical devices.
- DEC oversees ANC projects but do not actively apply for permits.
- Permit applicants and permit holders work with DEC and DEC makes sure projects comply with permits.
- AIS management project are typically the only projects permitted, but native species management projects may be permitted if deemed necessary.
- EWM, European water chestnut, and Sea lamprey are the most typical project targets.
- “Eradication is a highly unlikely result from pursuing control project.”
- Anyone can submit an application; the process is directed by 10 V.S.A. Chapter 170
- Applications are posted on Environmental Notice Bulletin, a 30-day public comment period is held, a public meeting is held if requested, and public can submit comments.
- Receive Application > Administrative Review > Tech Review > Draft decision > Public notice period > Final decision > Appeal period

- Issues with ENB
- Potentially have municipalities be notified during the process
- Should there be some sort of pre-application notification?
- Internal Review Procedure is put in place so that experts are contacted and have input on the procedure
- Transparency is key
- Examples given showing typical pesticide permit review procedure as comments are received by technical experts and public, and how those comments are reviewed and responded to
- Permit Conditions
 - Pesticide use
 - Certified Applicator
 - Agency Notification
 - Annual Request & Approval of Treatment Locations
 - Is anyone else involved with this annual review?
 - Generally, only brought in if conditions are to change
 - Annual Control Areas
 - Treatment Plan
 - Public Informational Notification
 - Treatment Concentration Monitoring
 - Water Use Advisories & Recommendations
 - Potable Water
 - Treatment Report
 - Aquatic Plant Surveys
 - Annual Report
 - Pesticide Minimization Measures
 - Pesticide Minimization Annual Report

3. Brief Discussion of the Reasonableness Definition

The group briefly reviewed and discussed the definition for reasonableness that one member shared after the last meeting. This definition, pasted below, started from what was in the straw proposal and added a number of elements that were raised during discussion at meeting #2.

- **A “reasonable” nonchemical alternative is a nonchemical control method that is available and capable of being implemented after consideration of cost, existing technology, potential success, logistics in light of the overall project purpose, and environmental impact.**
- **Also to be considered in evaluating the reasonableness is the scope and scale of the project.**
- **Finally, reference to the project purpose is important because a control practice could be viewed as not being reasonable if it does not address the problem at hand.**

The group felt that this definition is worthwhile to include in a future draft of rulemaking text but may need some additional discussion later once other elements of our work are complete.

4. General Discussion

- A number of members in the group raised ideas about whether or not DEC can add requirements through rulemaking regarding public consultation and public notice for proposed projects, including requirements that permit applicants must complete prior to submitting a permit application. DEC will seek legal counsel regarding our ability to add requirements (that aren't in statute explicitly) for State of Vermont entities, permit applicants, and other actors through rulemaking.
- Some discussion around pros and cons of the same party doing the pre and post treatment surveys as well as the treatment itself. Optics matter in regard to who is doing all of this work. In practice, there are some instances where the same lake management company does both the survey work and the treatment work on behalf of a lake association, although in these situations, there are different professionals performing the specific tasks identified above, and it has not led to any situations where DEC has identified inaccurate results through its own review of documents and survey work. As a related point, the importance of conducting baseline plant surveys prior to treatments was reinforced.
- There was some brief discussion about why certain conditions in the draft permits are changed/removed after the public review process, such as a condition in a draft lampricide permit requiring the applicant to do some population survey analysis for one of the non-target species that had experienced mortality in a previous treatment. The group decided that it would be best to table this discussion until an expert from the US FWS Sea Lamprey Control Program was available to share information on existing work that had been done on this subject, which influenced the change in permit conditions at the time.
- There was also some discussion about what extent the applicant's demonstrated financial capacity must be or should be, as well as to what extent can DEC review their financial capacity as part of the permit application review process. The concern raised is that both the treatment and the pesticide minimization plan require financial resources, and is there or should there be any burden of proof on the applicant to demonstrate they have the funding to do all of this work as part of their application materials? This point will be explored in more detail at a future meeting, perhaps when we get into permit application requirements.
- VNRC et al letter will be discussed in next meeting and DEC was reminded to opine on which elements of the letter could be addressed via rulemaking and which elements would require statutory change.