

**Public Review and Comment Procedures for
Aquatic Nuisance Control Permit Applications
and General Permits**

Title 10 Chapter 50 Subsection 1455

Vermont Agency of Natural Resources
Department of Environmental Conservation

January 30, 2003

Public Review and Comment Procedures for Aquatic Nuisance Control Permit Applications and General Permits

Under the provisions of 10 V.S.A., Chapter 50, Subsection 1455, a permit is required from the Secretary of the Agency of Natural Resources to use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural controls or powered mechanical devices in waters of the state to control nuisance aquatic vegetation, insects or other aquatic life including lamprey. The Secretary has designated the Commissioner of the Department of Environmental Conservation or the Commissioner's designated representative to act on the Secretary's behalf in the issuance or denial of these permits.

As required by 10 V.S.A., Chapter 50, Subsection 1455(h), this document describes the procedures followed by the Department of Environmental Conservation to provide an opportunity for the public to review and comment on aquatic nuisance control permit applications and general permits.

Section 1. Definitions

Negligible Environmental Risk - The risk to the environment and public health is so minimal that only inconsequential harm is expected to occur as a result of the proposed control activity.

Minor Modification to an Existing Permit - A minor modification is typically a change to some detail contained in a permit condition. It does not require a review of the findings of the permit to be approved.

Major Modification to an Existing Permit - A major modification typically requires the Department to re-visit one or more of the permit findings to assure that the finding(s) can still be made if the modification is approved.

Section 2. Modifications to Existing Permits

If a request to modify an existing permit is received and the modification is determined by the Department to be major, the Permittee shall be required to submit an aquatic nuisance control permit application, and written notice as described below shall be given. If the modification is determined by the Department to be minor in nature, a letter of request is sufficient and the Department is not required to give notice of the modification.

Section 3. Classifying Control Activities Proposed in Applications by the Degree of Environmental Risk

Upon receipt of a complete application for an individual aquatic nuisance control permit, the Department shall classify the proposed control activity as posing either **negligible or more than negligible environmental risk**.

A proposed control activity shall be determined to pose negligible environmental risk if the conditions outlined in a. or b. below are met.

- a. In Private Waters (as set forth in 10 V.S.A., Chapter 119, Section 5210)
 - (1) The applicant owns the private waters;
 - (2) The area to be controlled is not located in a Class I or II wetland;
 - (3) There are no known occurrences of threatened or endangered plants or animals in the area to be controlled; and,

- (4) If the request for control is for the use of a biological control, a pesticide, or a chemical other than a pesticide, the water has either no outlet flow or an outlet structure capable of stopping the outflow.

b. In All Other Waters

- (1) The applicant is a waterfront property owner and the area to be controlled is in front of the applicant's property;
- (2) The proposed control technique is bottom barrier or a powered mechanical device;
- (3) The area to be controlled does not extend linearly along more than 50 percent of the applicant's shoreline frontage and does not exceed 1,500 square feet;
- (4) The area to be controlled is not located in a Class I or II wetland; and,
- (5) There are no known occurrences of threatened or endangered plants or animals in the area to be controlled.

If the conditions outlined in a. or b. above are not met, the proposed control activity shall be determined to pose more than negligible environmental risk.

Section 4. Public Participation if Control Activity Proposed in Application Poses Negligible Environmental Risk

When the Department classifies a proposed control activity as posing negligible environmental risk, the Department shall give written notice to the municipality(ies) in which the activity is proposed to occur.

Section 5. Public Participation if Control Activity Proposed in Application Poses More Than Negligible Environmental Risk

When the Department classifies a proposed control activity as posing more than negligible environmental risk, the Department shall give written notice to the following persons:

- a. municipality(ies) in which the activity is proposed to occur;
- b. lake association(s) associated with the lake in which the activity is proposed, if known;
- c. abutting property owners to the proposed activity (if the proposed activity is of a lakewide nature, advertisement in a newspaper(s) of general circulation in the project area may be given in lieu of notice to all abutting property owners);
- d. VT Department of Environmental Conservation District Wetlands Ecologist;
- e. VT Department of Health;
- f. VT Department of Agriculture, Food and Markets if the proposed control activity is to use a pesticide or a chemical other than a pesticide;
- g. VT Department of Fish and Wildlife District Fisheries Biologist;
- h. VT Department of Fish and Wildlife District Wildlife Biologist;
- i. VT Department of Fish and Wildlife Nongame and Natural Heritage Program; and
- j. other persons as appropriate.

Section 6. Public Notice for Individual Aquatic Nuisance Control Permit Applications and Decisions

The written notice regarding a proposed control activity shall give a brief description of the proposed control activity and the address and telephone number where complete information may be obtained. The notice shall

provide not less than 10 days from the date of notice issuance for the filing of written comments by any interested persons.

In the event the Commissioner of the Vermont Department of Health declares a public health emergency related to an aquatic nuisance proposed for control, the Department may shorten the public notice period to less than 10 days.

At the discretion of the Department or upon receipt within the notice period of a request from a municipality or 25 or more persons in interest, the Department shall hold a public information meeting. At least two weeks advance notice of the meeting shall be given to all persons receiving earlier notice, to all persons who have filed written comments within the notice period, and to other persons as considered appropriate. In the event the Commissioner of the Vermont Department of Health declares a public health emergency related to an aquatic nuisance proposed for control, the Department may shorten the notice period.

If comments are received by the Department during the notice period or at a public information meeting, they shall be taken into consideration in the decision to issue or deny a new permit or a major modification of an existing permit.

Immediately upon taking action to issue or deny a new permit or a major modification of an existing permit, the Department shall mail **either** a notice of its decision **or** a copy of the decision to all persons receiving earlier notice of the application under Section 4 above, all persons who commented during the notice period or requested to be placed on the decision mailing list, and other persons as considered appropriate.

Section 7. Public Notice for General Permits Developed Pursuant to 10 V.S.A., Chapter 50, Subsection 1455(m)

The Department shall release a draft of any general permit developed pursuant to 10 V.S.A., Chapter 50, Subsection 1455(m) and give notice to the public statewide via newspapers and the Department's web page. The notice shall provide not less than 30 days from the date of notice issuance for the filing of written comments by any interested persons.

At the discretion of the Department or upon receipt within the notice period of a request from a municipality or 25 or more persons in interest, the Department shall hold a public information meeting. At least two weeks advance notice of the meeting shall be given to all persons who have filed written comments within the notice period, and shall also be given statewide via newspapers and the Department's web page.

If comments are received by the Department during the notice period or at a public information meeting, they shall be taken into consideration in the decision whether to issue a general permit.

The Department shall distribute a notice of its decision to issue or not issue a general permit to all persons who commented during the notice period or requested to be placed on the decision mailing list, and to other persons as considered appropriate. Such distribution may be by mail or electronic means.

Section 8. Appeals of Decisions

In accordance with 10 V.S.A., Chapter 47, Section 1269, any person or party in interest aggrieved by the decision of the Department may appeal to the Vermont Water Resources Board within thirty days.

PUBLIC REVIEW AND COMMENT PROCEDURES FOR AQUATIC NUISANCE CONTROL
PERMIT APPLICATIONS AND GENERAL PERMITS - TITLE 10 CHAPTER 47 SECTION 1263a

Approved:

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Vermont Department of Environmental Conservation

By Wallace McLean
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1/30/03
Date

Concurrence:

Elizabeth McLain
Elizabeth McLain, Secretary
Vermont Agency of Natural Resources

2-18-03
Date