

## Aquatic Nuisance Control (ANC) Rulemaking Focus Group

### Minutes from Meeting #2, February 23, 2023

#### Organizations Represented:

- VT DEC/Watershed Management Division
- Lake Iroquois Association
- US Fish and Wildlife Service
- Lake St. Catherine Association
- Vermont Fish & Wildlife Department
- VT Department of Health
- Lake Champlain Committee
- Federation of Vermont Lakes and Ponds
- Ecologist, unaffiliated
- Vermont Natural Resource Council
- Lake Champlain Basin Program
- Woodward Marine
- Fairlee Town
- Toms Bait and Tackle
- Solitude Lake Management
- Rutland Bass Club

#### Topics Discussed

##### 1. **Introductions**

##### 2. **ANC Permitting Overview**

- Develop definitions used in statutory findings and redefine definitions in statute
- 10 VSA 1455 (d) Overview of five findings for approval of pesticide/herbicide use
- Term #1: There is no reasonable nonchemical alternative available
- Term #2: There is acceptable risk to the nontarget environment
- Review letter

##### 3. **Discussion #1 – Definition of Term Reasonable**

- VTDEC goes over previous approach to term “reasonable” in recent permit
- Approach has been to understand targeted proposed species to be controlled & purpose of project
- How can we know the history of what the species being controlled is? Should a third party be required to contribute and a recent survey?
  - Some kind of baseline is required. If a non-target impact is known the life history should be looked at
- Is the life history just a consideration or is that requirement put on the applicant? What is the intent of the question?
  - Should the applicant be required to know this answer?
- How do we know that the pre and post studies are being done in favorable conditions? Are plants being missed? How can we trust these studies?
  - Biological survey methodology are impacted by various conditions. How do we define “Unfavorable Conditions” in a survey? No matter what tool is used, something may be missed

- VTDEC uses industry standard rake-toss methodology. Plants may be missed but it is the only reasonably used methodology. Purpose is to generally understand plant population locations and trends
- VTDEC should move past studies that are problematic
- Are the questions in the statute actually getting to the point? Should we be asking the harms the invasives cause or the impacts of the herbicide/pesticide? The applicant has to answer the questions to meet burden of production for Public Trust Waters. There will always be subjectivity in these terms.
  - We do want to create a better understanding of these terms. We are trying to work within the framework of the current statute rather than rewrite it.
  - Is asking for reasonably alternative an appropriate threshold question?
  - Should we create a determination of if this is an aquatic nuisance? Both Invasive and native can be a nuisance. Maybe in one of VTDEC findings this can be decided
  - The impact of aquatic nuisance is required for the applicant to provide
  - VT Agency of Ag does provide noxious weed quarantine rule that provide questions to define a noxious weed
  - Can VTDEC further define what an aquatic nuisance is?
- Nuisance does not justify pesticide, but rather it should be an aquatic threat. Should VTDEC change the process in which the solution to aquatic nuisances be met? Applicant needs to provide more detail on the actual harm aquatic nuisances is causing. If permit is not approved, it should be understood what will happen to the bodies of water in the future. Every body of water is different, can a generalized understanding of aquatic nuisances be applied to all.
  - These permits are generally in place for EWM and VTDEC does have an understanding of impacts. Permit includes baseline understanding of current health of bodies of water
  - VT F&W studies at St. Catherine have shown alteration in lake ecosystem, so what will we see in absence of projects?
- Process for permit in VT is thorough compared to many other states. VTDEC should be focusing on how things are managed via a structured process especially when management should happen. Wheel does not need to be reinvented. If state creates more rigor, then the management tool may not be useable
  - How does VTDEC not create barriers of entry for permit project. Surface water strategy includes control for ANC. VTDEC is working on creating comprehensive AIS plan
- Is there something other than herbicides to use? Are there non-chemical EFFECTIVE methods with reasonable costs to manage scale and scope of issue? Do those alternatives also have negative impacts?
  - VTDEC considers a handful of management methods that build in scale and impact.
  - Scope and scale are important criteria in decision process.

- Scale is important to understand ecosystem impact
- Important to keep in mind that rules need to be answerable by members of public. Cost and time requirements for permit need to not become prohibitive for applicants.
  - VTDEC tries to write permit conditions that are able to be met by applicants but also maintain scientific integrity.
  - VTDEC should consider community understanding of and position on application as part of the public good determination, but also recognize that any one lake is a water of the state, and not subject to governance by any one local entity
- Is flow being considered in permit decision and impact on ecosystems downstream from application of herbicide/pesticide?
  - VTDEC does consider flow and impact during permit process. Cumulative impact assessment is created to understand ecosystem impact. ProcellaCOR was approved and registered by VT Agency of Ag
  - Public may not agree that side effects of pesticide use are negligible. VTDEC requires risks to be mitigated based on previous findings.
- Who pays for the herbicide that is used?
  - Applicant is typically required to pay for project. ANC GIA is something that applicants can apply for. Should applicant prove they can provide adequate funding for long term mitigation of ANC?

#### 4. **Discussion #2**

- Group led by VNRC rep wants to have a full response/time in meeting to fully discuss issues raised in letter.
- Next meeting can discuss “acceptable risk” as well as dive in to points made in letter.
- This conversation may need to begin to tackle statutory change. This topic may need to be viewed in a different lens.
- VTDEC goal is to create general definitions for terms so that applicants are clear on how rule adjudicates permits. Burden of proof needs to not be a barrier of entry for applicants.
- Burden of proof needs to be met, but maybe if applicant cannot fulfil them then a third party/state needs to meet them.
- Some burden of proofs do need to be required
- Group needs to really approach problems posed by letter
- Public participation can be helpful to have support for management projects

#### 5. **Next Steps**

- How can VTDEC improve format for next meeting? Next meeting will look at acceptable risk.
- VTDEC will add an animal example