

**From:** [ANR - WSMD Lakes](#)  
**To:** [Jensen, Kimberly](#)  
**Subject:** FW: Proposed Changes to 10 VSA 1045 REVISED 9:10 am  
**Date:** Monday, October 30, 2023 6:02:44 PM  
**Attachments:** [Proposed Changes to 10 VSA 1045 REVISED 910 am.pdf](#)

---

Hi Kim,

I believe this is Act 57 related.

Thank you,

Kelcie Bean (she/her)

*You may now submit permit applications, compliance reports and fee payments through our online form to expedite its receipt and review: [ANR Online Intake Form](#)*



---

**Kelcie Bean (she/her)**, Environmental Technician  
Vermont Agency of Natural Resources | Department of Environmental Conservation  
Watershed Management Division | Business & Operation Support Services (BOSS)  
1 National Life Drive, Davis 3 | Montpelier, VT 05620-3522  
802-490-6195 (o/c) | [Kelcie.bean@vermont.gov](mailto:Kelcie.bean@vermont.gov)  
<http://dec.vermont.gov/watershed>

*The Agency of Natural Resources supports telework, and I work primarily remotely. I am available to connect by phone and email.*

*Public Records Statement: Written communications to and from state officials regarding state business are considered public records and may be subject to public scrutiny.*

---

**From:** [REDACTED]  
**Sent:** Monday, October 30, 2023 4:00 PM  
**To:** ANR - WSMD Lakes <[ANR.WSMDLakes@vermont.gov](mailto:ANR.WSMDLakes@vermont.gov)>  
**Subject:** Proposed Changes to 10 VSA 1045 REVISED 9:10 am

You don't often get email from [REDACTED]. [Learn why this is important](#)

**EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.**

To the members of the Study Committee formed under the passage of H. 31,

Good afternoon, I hope to finally be able to join you for tomorrow afternoon's meeting. I've been able to watch your last meeting on YouTube and would like to respond with some written comments attached.

Looking forward to attending your meeting tomorrow afternoon.

Thank you,

[Redacted]

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Testimony for the Aquatic Nuisance Control Study Committee  
Tuesday, October 31, 2023

Dear Committee members,

Thank you for allowing me the opportunity to share my thoughts with you on proposed changes to 10 VSA 1045. I have not been able to participate in your recent hearings as I've been on a road trip with my wife celebrating our 50th wedding anniversary. Yes, that took precedence.

I'm back now and would like to share some observations on previous testimony and then my suggestions for much needed changes to the law.

From what I've been able to determine, many of the folks who have spoken in favor of the use of chemicals and against the need for any changes in the law are the same folks who testified last winter before the House & Senate Environmental Committees opposing H.31; the legislation that created this Study Committee.

In my years as a member of the House and later as a lobbyist for many years one thing I learned was that if a few people think that a statute is working great they will see no need for a change. If a lot of people believe that a statute is not working then it most likely needs changing.

The current process for the issuance of a permit to use toxic chemicals in our state's waters very much favors the minority. As I learned in a meeting with Sec. Moore on March 15, 2021, an application to spray a lake can be filed by only one person. Current law does not distinguish between a small backyard pond and the state's largest lake.

Current law also allows for other agencies to offer suggestions, but in the end it's the Department of Environmental Conservation (the DEC) that makes the final decision. I requested and received information from the Fish & Wildlife Department that clearly shows the conflict between the two divisions when it comes to using toxic chemicals in our state's waters to control milfoil. Over twenty years the DEC has dismissed out of hand and/or overruled the F&W Department. The denial of the permit to treat Lake Bomoseen was the exception; not the rule. The law needs to change to give the experts in the field not only a seat at the table, but a vote as to whether or not a permit should be issued.

I would ask that the committee take a step back and reconsider milfoil as an invasive species. Milfoil was first discovered in the 1940's. It arrived in Vermont in the early 1960's. It's been with us longer than many Vermont residents. According to the USDA: "Can milfoil be eradicated? Chemical control can be effective, however, long-term eradication of larger infestations is unlikely and chemical controls can be expensive. Chemical controls also often need to be repeated every year to every three years."

Do chemicals work? Yes, they do, but at what costs? Once we go down the road of chemical use there appears to be no turning back. In the past the DEC has authorized

the use of some pretty nasty chemicals such as SONAR and RENOVATE which native plants as well as milfoil. Although the damage was ongoing the use of these chemicals continued to be allowed until the new and improved ProcellaCOR came into being a few years ago. ProcellaCOR has now become the favorite choice of chemicals, notwithstanding the fact that there is no long term data on its usage. It should be noted that the chemicals used have been created by the same company, Sepro. I, and I believe most Vermonters, feel that we can do better than to continue to attempt to poison our way out of what we perceive to be a problem.

Current law does not dictate that an applicant must show that there is a problem. All they need to do is to demonstrate that milfoil is present for an application to move forward.

Two years ago this past August I purchased a camp on Lake Bomoseen. Three months later I learned second hand that the lake association was applying for a permit to spray this lake with chemicals to deal with milfoil. I did not hear about this action from the applicants. Frankly, had I not heard about this and not taken the actions that I took I have no doubt that Lake Bomoseen would have been sprayed with toxic chemicals by now.

I never received any notice and/or any information from the Lake Bomoseen Association and/or the Lake Bomoseen Preservation Trust as to their intentions. I did watch the recording of your previous meeting and heard Mr. Luca Conte, the president of the LBPT, stated that everyone on the lake was notified along with the municipalities. I do not believe that this is the case. Many people who live on the lake, including myself, did not receive any notice that an application was being submitted.

As a matter of fact the Selectboard of the Town of Hubbardton was initially a co-applicant until they discovered that the request put before them was not for the annual approval of the use of the harvester, but now for the use of chemicals. Immediately upon learning what the permit was for they requested that their name be removed from the application. At that point I assumed that would be the end of this misguided effort. It wasn't, because as previously stated it only takes one person to file for an application. Municipalities do not have to be co-applicants, but they should.

In his testimony before the legislative committees, Mr. Conte stated the following:

*"The Real Costs of Controlling Milfoil on Lake Bomoseen"*

*Castleton Hubbardton – No. 2616 • Luca Conte • Rustics Road, Castleton*

*Posted to: Castleton Hubbardton*

*Apr 26, 2022*

*Discussion*

*In the ongoing discussion about possible use of a chemical to control Milfoil in our lake, many people have asked why alternative methods, such as Diver Assisted Suction Harvesting, (DASH), Benthic Barriers and/or Mechanical Harvesting aren't sufficient. Here are the facts:*

*All DASH permits limit homeowners to 1500sf maximum around their shorelines. LBPT DASH services have averaged between \$600 and \$1100 per lakefront, depending on how many square feet are cleared (very few get full 1500sf max pulled). Given 43,560 sf per acre, a maximum of 29 lakefronts per acre could be cleared at a cost range of \$17,400 per acre (at \$600/lakefront) to \$31,900 per acre (at \$1100/lakefront).*

*Benthic Barriers are much more expensive. Assuming \$300 install/removal fee and \$440 commercial cost of two 10x30' barriers (for only 600sf coverage), it would cost \$740 for 600 sf or \$1480 for 1200sf. With 43,560 sf per acre, that equates to about \$54,000 per acre (73 parcels of 600 sf each, or 36 parcels of 1200sf each).*

*Neither estimate includes the permitted allowance for "navigation lanes." For example, if the LBA decided to use DASH to open up a navigation lane in just 3 critical boating areas (one-quarter mile long by 20 feet wide for two boats to pass=26,400 square feet or .6 acre each), the cost alone would range between about \$31,320 to \$57420 (3x .6 acre=1.8 acre).*

*(This of course, all assumes there would be enough divers with enough time to pull almost 2 acres of EWM. It took the LBPT's 2 divers 10 days to do 14 properties averaging 1000 sf. each, so 43,560 sf would take them roughly 31 days (43,560 divided by 1400sf/day) just to do the navigation lanes). (The cost for this same area using Mechanical Harvesting on a fee for service basis would be about \$17,000 per acre--see below).*

*Mechanical Harvesting is also very expensive, with a typical lakefront (e.g. 15' x 100') costing anywhere from \$400-\$800 (with or without public subsidies) and beyond, as there is no limit to either the size of the area cut or the number of times the harvester may return. However, mechanical harvesting typically cuts only 2-3 feet of the upper milfoil, which means that there is a high likelihood of the plant growing back to original crowning height after 2-3 weeks. Finally, mechanical harvesting is least likely to access the very shore areas which are most desirable for swimming etc., with limitations placed*

*on the movement of the harvester by boat docks, floats, and obstructive underwater features (e.g. boulders, anchoring blocks, water intake structures, etc.).*

*As a practical indicator of how expensive these services are to the average lakefront homeowner, only 14 people signed up for DASH in 2021, with an additional 8 people using Benthic Barriers. Similarly, only approximately 50-75 persons have hired mechanical harvester services on Lake Bomoseen when offered on a fee for service basis.*

*For more facts on this discussion, please go to the LBPT website, or visit us on Facebook.”*

I would like to point out that these numbers are inaccurate and misleading. Here is a letter that I received from AE Commercial Divers regarding the cost of removing milfoil:

*“February 13, 2022*

*Dear Mr. Stannard:*

*Thank you for your recent inquiry into our services, specifically Diver Assisted Suction Harvesting (DASH), for the removal of invasive Eurasian Watermilfoil from Lake Bomoseen, Vermont.*

*Our 2022 day-rate is \$1750 per day, which includes one DASH boat, two certified divers, and one certified boat tender, working for eight hours. If an additional work barge is needed to ferry the removed biomass to shore throughout the day, the cost for that boat is \$100 per day. If a survey is needed to determine the scope of the infestation, that rate is also \$1750 per day.*

*Duration of removal is contingent on the scope of the infestation. It takes approximately five working days to clear one acre of moderately dense growth, though it will vary with the weather, native plant dispersal, water visibility, and boat traffic. Logistics for mooring, dockage, dedicated biomass disposal sites, and staff parking would need to be discussed and agreed upon prior to the commencement of work. We are fully insured and can provide proof of insurance upon request.*

*Permitting needs to be obtained from the State of Vermont prior to the commencement of any DASH work. Many of our clients apply for permits on their own. If you should require the assistance of our permit consulting professional, their rate is \$50 an hour for research and office work and \$100 an hour for field study.*

*Please let me know if you have any questions or if we can assist you further in this process.*

*Sincerely,  
Christopher H. Sheldon President & Owner*

According to the professional commercial company it takes roughly 5 days at \$1,750/day to do DASH one acre. That translates to \$8,750 per acre; not \$32,000. Mr. Conte also opined that the one and only public hearing in the Lake Bomoseen area was held by the Castleton and was "one sided". It's true that the Castleton Selectboard decided to hold a public hearing, because the public was becoming quite agitated that they were not afforded an opportunity to share their thoughts.

The meeting was well attended and well run. Both the proponents and opponents of chemical use were afforded equal opportunity to present their case. At the end of this meeting those who wished to speak publicly were allowed to do so. One gentleman took to the stage and asked for a show of hands of those who supported chemical use. Only one person, the presenter for the LBA, raised his hand.

Mr. Conte was incorrect in saying that the meeting was lopsided. The meeting was not, but the vote sure was. As a result the Selectboards of the towns of Castleton, Hubbardton, Fair Haven and Shrewsbury voted to oppose the application.

I would also like to point out that those of us who have the luxury of owning a place on the state's largest, in-state lake do not own the lake. All bodies of water are owned by all Vermonters. Over the years the DEC has yielded to lake associations when it comes to dealing with issues like milfoil. This creates a conflict when the lake associations are out of sync with the population.

Case in point. The Lake Bomoseen Preservation Trust is a group of approximately five people. To the best of my knowledge they are not a membership organization. The Lake Bomoseen Association is a membership organization. Their membership has decreased from roughly 500 members down to around 100 members. The LBA did not put their decision to apply for an application to use herbicides to a vote of its membership, nor did they or the LBPT ever call for public input. It's clear why they didn't as I do believe that they knew the overwhelming majority of people opposed their initiative.

I share all of this with you to demonstrate why I worked with my representatives to get H.31 introduced and create this study committee. When Vermonters learn that a process is not working for them they will speak up. What's need is changes to the current law that works for the majority of Vermonters and not for the few who run lake associations. Lake associations work best when they include not only their members, but all of the public.

Below please find my suggestions for changes to 10 VSA 1045 and thank you for your hard work and for listening. Listening is what truly matters.

Regards,



#### Proposed Changes to 10 VSA 1045 Aquatic Nuisance Law

1. Chemicals should be the option of last resort for controlling milfoil
2. Modify the "One person" can file for an application
  - a. One person could file for an application provided:
    - i. The body of water is 100% on their land
    - ii. Treating the body of water in question would not impact the state's water resources in other areas.
3. Filing for an application for chemical use for controlling milfoil shall include the following:
  - a. Must be a lake organization or a group of no less than fifty citizens.
    - i. In the event that there is more than one lake organization all organizations must be supportive of any application for chemical use. If there is opposition then the state shall not authorize the use of chemicals.
  - b. Shall include as co-applicants all municipalities affected by the body of water in question.
  - c. Shall include at least one properly warned public hearing prior to submitting the application
  - d. If the public opposes an application the DEC shall consider the public's input as a reason to deny the application
4. Should an application be submitted it shall not be approved by the DEC until and unless the following occurs
  - a. The Fish and Wildlife Department concurs that the use of chemicals is the only viable alternative after all other alternatives have been exhausted.
  - b. Should it be determined that said chemicals are deemed less harmful to the environment than milfoil, including but not limited to the native plants and wildlife.
  - c. The Health Department concurs that the chemicals suggested for use pose no long term health consequences for humans

The five criteria that shall be met prior to any permit being issued should be amended as follows:

- - - - -

Current Law -



- **§ 1455. Aquatic nuisance control permit**

(a) A person shall not use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices in waters of the State to control nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey, unless that person has been issued a permit by the Secretary.

(b) Notwithstanding other requirements set forth in chapter 47 of this title to the contrary, the Secretary may issue permits under this section.

(c) Persons desiring a permit under this section shall make application to the Secretary on a form prescribed by the Secretary.

(d) The Secretary shall issue a permit for the use of pesticides in waters of the State for the control of nuisance aquatic plants, insects, or other aquatic life, including lamprey, when the applicant demonstrates and the Secretary finds:

- 

(1) there is no reasonable nonchemical alternative available;

(2) there is acceptable risk to the nontarget environment;

(3) there is negligible risk to public health;

(4) a long-range management plan has been developed which incorporates a schedule of pesticide minimization; and

(5) there is a public benefit to be achieved from the application of a pesticide or, in the case of a pond located entirely on a landowner's property, no undue adverse effect upon the public good.

- 

(e) A landowner applying to use a pesticide on a pond located entirely on the landowner's property is exempt from the requirement of subdivision (d)(4) of this section.

- 

(f) The Secretary shall issue a permit for the control of aquatic nuisances by biological controls, bottom barriers, structural barriers, structural controls, powered mechanical devices, or chemicals other than pesticides when the Secretary finds:

- - (1) there is acceptable risk to the nontarget environment;
  - (2) there is negligible risk to public health; and
  - (3) there is either benefit to or no undue adverse effect upon the public good.
  - (g) The use of bottom barriers, structural barriers, structural controls, powered mechanical devices, and copper compounds as an algaecide in waters with a surface area of one acre or less located entirely on a person's property and with an outlet where the flow can be controlled for at least three days is exempt from the permit requirements of this section.
  - (h) When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.
  - (i) An aquatic nuisance control permit issued under this section shall:
    - (1) specify in writing the Secretary's findings under subsection (d) or (f) of this section;
    - (2) specify the location, manner, nature, and frequency of the permitted activity;
    - (3) contain additional conditions, requirements, and restrictions as the Secretary deems necessary to preserve and protect the quality of the receiving waters, to protect the public health, and to minimize the impact on the nontarget environment. Such conditions may include requirements concerning recording, reporting, and monitoring;
- - (4) be valid for the period of time specified in the permit, not to exceed five years for chemical control, and not to exceed ten years for nonchemical control.
- - (j) An aquatic nuisance control permit issued under this chapter may be renewed from time to time upon application to the Secretary. The process of permit renewal will be consistent with the requirements of this section.

- (k) An applicant for a permit under this section shall pay an application fee as required by 3 V.S.A. § 2822. The Agency of Natural Resources shall be exempt from this fee requirement.
- (l) No permit shall be required under this section for mosquito control activities that are regulated by the Agency of Agriculture, Food and Markets, provided that:
  - (1) Prior to authorizing the use of larvicides or pupacides in waters of the State, the Secretary of Agriculture, Food and Markets shall designate acceptable control products and methods for their use and issue permits pursuant to 6 V.S.A. § 1083(a)(5); and
  - (2) [Repealed.]
- (m) The Secretary may issue general permits for the use of nonchemical aquatic nuisance control activities provided that the Secretary makes the findings required in subsection (f) of this section. A general permit issued under this subsection is not required to specify the exact location or the frequency of the permitted activity. (Added 2009, No. 46, § 1, eff. July 1, 2010; amended 2013, No. 142 (Adj. Sess.), § 89; 2015, No. 150 (Adj. Sess.), § 21, eff. Jan. 1, 2018; 2017, No. 67, § 3, eff. June 8, 2017.)

- - - - -  
 -

Suggested changes to current law -

1. (d) The Secretary shall only issue a permit for the use of pesticides in waters of the State for the control of nuisance aquatic plants, insects, or other aquatic life, including lamprey, as a last resort when the applicant demonstrates and the Secretary finds:

2.

(1) there is no nonchemical alternative available;

(2) there is no risk to the nontarget environment;

(3) there is no risk to public health;

(4) If a long-range management plan has been developed AND APPROVED BY THE LAKE ASSOCIATION MEMBERSHIP AND THE AFFECTED MUNICIPALITIES which incorporates a schedule of pesticide minimization. The applicant shall provide proof that they are able to perform the long range management plan including, but not limited to funding the plan and contractors necessary to implement the plan. Currently there are few, if any, repercussions for not following a plan other than possibly having the permit revoked, which would still allow the use of chemicals for years before a permit would be revoked.

(5) THE PUBLIC AGREES THAT THERE IS no adverse effect upon the public good.

(6) The applicant shall provide proof that milfoil is actually creating a problem such as limiting recreational use. The applicant shall prove that aquatic animals, fish are being negatively impacted by milfoil and that the water quality is getting worse.