

# Aquatic Nuisance Control (ANC)

## Individual Permit Application

### Internal Review Procedure

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#### Purpose

The Department of Environmental Conservation (DEC) Lakes and Ponds Program (Lakes) is responsible for the review and issuance of decisions on ANC Individual Permit applications under [10 V.S.A. § 1455](#) on behalf of the Secretary of Agency of Natural Resources (Secretary). However, technical determinations of the findings outlined under 10 V.S.A. §§ 1455(d) & (f) may require additional technical experts internal to the State of Vermont (ANC Internal Technical Experts) to support the Secretary in reviewing certain aspects of a project. This procedure is to ensure specific internal technical experts can participate in the decision-making process as various project types may overlap with other jurisdictions, impact operations of state infrastructure, impact management goals of other state entities, or require specific technical expertise beyond what Lakes can independently conduct. ANC permits do not relieve the permittee from obtaining all other approvals and permits prior to commencement of the control activity, or from the responsibility to comply with all other applicable federal, state, and local laws or regulations. The list of ANC Internal Technical Experts is an addendum to this procedure. This list will be managed and updated by Lakes as needed to ensure complete review of the statutory findings occurs.

#### Section A. ANC Internal Technical Expert Application Review Process

When the DEC receives an application for an ANC Individual Permit or major amendment under 10 V.S.A. § 1455, the following process shall occur:

1. Upon completion of the administrative review of the application, Lakes will conduct preliminary technical review of the application (e.g., [Vermont Natural Resources Atlas](#), [Lake Score Card](#), [IWIS](#)). After completion of preliminary technical review and based on how the project interacts with the criteria identified in Section b., Lakes shall notify the applicable ANC Internal Technical Expert(s) via email when the application is ready for such review. An ANC Internal Expert does not have to submit comments on an application if they are not notified by Lakes.
2. Following notification from Lakes of an application for review, the ANC Internal Technical Expert(s) shall submit comments to Lakes during the following internal review periods:
  - A. For applications proposing the use of **pesticides, chemicals other than pesticides, structural barriers, structural controls, or biological controls**, where the specifically proposed control technique **has** been reviewed and/or approved under the ANC Individual Permit application process within the past ten years

(e.g., review of a specific pesticide as identified by a unique EPA registration number), the internal review period will be for 30 calendar days beginning the day of Lakes' notification to the ANC Internal Technical Expert(s), unless specified otherwise.

- B. For applications proposing the use of **pesticides, chemicals other than pesticides, structural barriers, structural controls, or biological controls**, where the specifically proposed control technique **has not** been reviewed and/or approved under the ANC Individual Permit application process within the past ten years, the internal review period will be for 90 calendar days beginning the day of Lakes' notification to the ANC Internal Technical Expert(s), unless specified otherwise.
  - C. For applications proposing the use of **bottom barriers or powered mechanical devices**, the internal review period will be for 14 calendar days beginning the day of Lakes' notification to the ANC Internal Technical Expert(s), unless specified otherwise.
  - D. Regarding comments generated during reviews of permit applications performed by staff at VDH, DEC, FWD, and FPR that are not the designated experts on the ANC Internal Review Procedures Internal Experts List, the designated expert for each area of expertise will review and approve these comments as needed prior to submitting them to the DEC Lakes Program.
3. Prior to the close of the prescribed internal review period, an ANC Internal Technical Expert may request that Lakes extend the internal review period. Lakes may extend or restart the internal review period if sufficient reason exists. If the internal review period is extended or restarted, Lakes shall notify the ANC Internal Technical Expert(s) of the new internal review period via email as soon as reasonably possible. If an extension is not requested and comments are not received by the expiration of the internal review period, Lakes will proceed with the technical review of the application.
  4. Upon completion of the internal review period, Lakes will review comments received and exercise discretion whether to incorporate a comment into its technical review and draft decision. If a comment is not incorporated into the draft decision or if there are comments with conflicting recommendations, Lakes will produce a response to comments that explains its position and also convene a meeting with the appropriate ANC Internal Technical Expert(s) prior to finalizing a draft decision and beginning the public comment period.
  5. Public notice of the draft decision shall proceed in accordance with 10 V.S.A. Chapter 170, or any rules adopted thereunder.

### **Section B. Internal Technical Expert Input on Statutory Permit Findings**

Upon notification from Lakes (Section a.2.), an ANC Internal Technical Expert is responsible for providing comments on a specific aspect of a project in relation to the following statutory

findings. The following identifies the baseline expectation of review for an ANC Internal Technical Expert.

1. 10 V.S.A. § 1455(d)(2) & (f)(1): there is acceptable risk to the non-target environment
  - A. For a project proposed to occur within waters known or suspected to have a rare, threatened, or endangered species, the Fish & Wildlife Department shall submit a comment on whether the project poses an acceptable risk to rare, threatened, or endangered species, whether a species inventory is warranted, whether a Threatened & Endangered Species Takings Permit is required, and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact (e.g., time of day restrictions – to be protective of musk turtles).
  - B. The Department of Environmental Conservation, Wetlands Program shall submit a comment on how the project interacts with the Vermont Wetlands Rules, whether the project poses an acceptable risk to the Class I or II wetland or associated buffer, and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact.
  - C. For a project proposing to control an aquatic animal or a project that may impact fish, wildlife, and/or their habitats (e.g., aquatic plant control projects, stream alteration), the Fish & Wildlife Department shall submit a comment on whether the project poses an acceptable risk to fish, wildlife, and/or their habitats, and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact (e.g., time of year restriction – spring spawning protection).
  - D. For a project proposing to physically alter or alter the natural flow of a stream/river, the Department of Environmental Conservation, Rivers Program shall submit a comment on whether the potential impact on the stream/river is acceptable and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact.
  - E. For a project proposing to control an aquatic animal, the Department of Environmental Conservation, Monitoring and Assessment Program shall submit a comment on whether the project poses an acceptable risk to non-target aquatic animals and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact.
  - F. For a project proposing the use of a pesticide or chemicals other than a pesticide, the Department of Environmental Conservation, Monitoring and Assessment Program shall submit a comment on whether the proposed use of a pesticide or chemical other than a pesticide poses an acceptable risk to the aquatic animals of that waterbody and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact.
2. 10 V.S.A. § 1455(d)(3) & (f)(2): there is negligible risk to public health
  - A. For a project proposing the use of a pesticide or chemicals other than a pesticide, the Vermont Department of Health shall submit a comment on whether there is

negligible risk to public health and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact.

3. 10 V.S.A. § 1455(d)(5) & (f)(3): public good assessment

- A. For a project proposing to control an aquatic animal or a project that may impact fish, wildlife, and/or their habitats, the Fish & Wildlife Department shall submit a comment on how the project may affect fishing as a public good use and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact.
- B. For a project proposing the use of a pesticide or chemical other than a pesticide in a waterbody that is within a Groundwater Source Protection Area or a Surface Water Source Protection Area or for a project that may impact a potable or public drinking water supply, the Department of Environmental Conservation, Drinking Water & Groundwater Protection Division shall submit a comment on how the proposed project may affect the water resource and the public that utilizes that resource, and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact.
- C. For a project proposing the use of a pesticide or chemical other than a pesticide in waters that may impact operations of a Vermont State Park, the Department of Forests, Parks and Recreation shall submit a comment on how the proposed project may affect the Vermont State Park and the public that utilizes that resource, and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact.
- D. For a project proposed to occur in waters adjacent to a Fish & Wildlife Department Fishing Access Area, the Fish & Wildlife Department, Fish Division shall submit a comment on how the proposed project may affect the Fishing Access Area and the public that utilizes that resource, and whether any mitigating actions can/should be taken to avoid and/or reduce the potential impact.

**Section C. Process for Reviewing a Permittee’s Annual Control Location Request**

ANC Individual Permits may have a specific condition that requires the permittee to submit an annual request for specific aquatic nuisance control locations (e.g., a request for the targeted use of herbicide). The following process shall occur when Lakes receives this annual request:

- 1. Lakes will technically review the request in consideration of the conditions and findings in the permit.
- 2. Should the request be within the specific conditions and findings of the permit, no additional technical review beyond Lakes is required. If the request is approved, the final approval will be forwarded to the ANC Internal Technical Expert(s) involved under Section b.

3. Should the request exceed a specific condition of the permit where additional technical review is required (e.g., the permittee is requesting to begin the control project before the conditioned start date, which may impact the fish and wildlife of the waterbody or wetlands) or the requested control location overlaps with a known or suspected area inhabited by a Threatened or Endangered species or a previously unknown rare species (e.g., a rare species that was not a part of the original review of the permit), Lakes shall send the request to the ANC Internal Technical Expert associated with the permit condition in question. Due to the potentially time sensitive nature of a request, the ANC Internal Technical Expert should submit technical feedback on the request within 14 calendar days beginning the day of Lakes' notification to the ANC Internal Technical Expert(s), unless specified otherwise. Lakes will work with the ANC Internal Technical Expert on determining whether the request should be approved, denied, or revised, based on the findings of the permit and the conditions of the waterbody under review. Lakes is the final authority on approving or denying this request.

#### **Section D. Adoption and Effective Date**


This procedure is hereby adopted for the internal review of Aquatic Nuisance Control Individual Permit or major amendment applications under 10 V.S.A. § 1455. This procedure is effective as of the latest date signed below.



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Christopher Herrick, Commissioner  
Vermont Fish and Wildlife Department

3/14/2023

Date



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John Beling, Commissioner  
Vermont Department of Environmental Conservation

3/14/2023

Date



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Mark Levine MD, Commissioner  
Vermont Department of Health

3/21/2023

Date