

**Vermont DEC – Lakes and Ponds Program**  
**Aquatic Nuisance Control Permitting under 10 VSA § 1455**  
**Public Benefit Determination Process**

Vermont’s lakes and ponds are a public trust resource managed for the benefit of all Vermonters. They are not owned by the State or any other regulatory, municipal, or private entity; rather the Agency of Natural Resources is the trustee of Vermont’s surface waters. As trustees of these natural resources, the state, through the Department of Environment Conservation<sup>1</sup>, has an obligation to manage the lakes and ponds of the state in a manner which preserves and protects aquatic habitat as well as aquatic biota and wildlife that may utilize or are present in the waters, a healthy environment, which preserves and protects the rights of Vermont citizens to hunt, fish, boat, swim and enjoy other recreational opportunities, and which provides the greatest benefit to the people of the state.

In the context of the Secretary reviewing an Aquatic Nuisance Control permit application, public benefit means that the proposed control activity is anticipated to have positive effects (or to reduce negative effects) on the public good that outweigh the potential negative effects on the public good from the control activity or the potential negative effects on the public good from not controlling the targeted aquatic nuisance.

As a determination on the absence or presence of public benefit from a control activity requires a certain degree of subjective judgment, the Secretary has developed a series of considerations to help determine whether there is a public benefit from the proposed control activity. This review operates on a sliding scale such that as the potential adverse impacts of a proposed control activity increase, the burden on the applicant to demonstrate that the control activity provides a public benefit also increase. An applicant must demonstrate that the public benefits outweigh any adverse impact the project may have in order to meet this finding.

To identify whether there is a public benefit from the proposed control activity, the Secretary will consider the following:

1. Whether the control activity is excessive for its stated purpose. This includes:
  - A. An assessment of the targeted aquatic nuisance and how the targeted aquatic nuisance affects the recreational potential and aquatic habitat of the body of water.
  - B. An assessment of the proposed control activity (e.g., scale and scope of the project) and whether:

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<sup>1</sup> Per 3 V.S.A. 2823, “DEC is the successor to and continuation of the Department of Water Resources and Environmental Engineering *and shall administer the Water Resources Programs contained in Title 10*, air pollution control and abatement as provided in 10 V.S.A. Chapter 23, and waste disposal as provided in 10 V.S.A. Chapter 159.

- i. The control activity is a reasonable technical solution to address adverse impacts from the documented aquatic nuisance issue.
    - ii. The control activity is in response to a new introduction of a non-native aquatic invasive species.
    - iii. The control activity is a continuation of a previously implemented aquatic nuisance control management strategy.
    - iv. The control activity supports a broader aquatic nuisance management strategy for the body of water in question or a region of the state.
    - v. The public benefits from controlling the aquatic nuisance outweigh the adverse effect of the proposed control activity.
2. Whether there is a feasible alternative to achieve the stated purpose of the control activity that is less intrusive. This includes:
  - A. An assessment of aquatic nuisance management options, including 1) no action, 2) prevention, 3) mechanical or physical methods, 4) cultural methods, 5) biological control agents, and 6) pesticides.
3. Whether measures to reduce impacts on the body of water have been taken. This includes:
  - A. An assessment of how targeted the control activity is at controlling the aquatic nuisance.
  - B. An assessment of how the project has been designed to avoid and/or reduce potential immediate and cumulative impacts on the non-target environment and public good uses (e.g., implementation of this project will be coordinated with other active aquatic nuisance management projects in the body of water, control locations are prioritized to areas of impacted public good uses or shoreline development, control locations will avoid known locations of rare, threatened, or endangered species).
4. What the degree of public benefit is. This includes consideration of:
  - A. The anticipated degree of short- and long-term effects on the recreational potential (i.e., public good uses) and aquatic habitat of the body of water should the proposed control activity be successfully implemented or if it did not occur.
  - B. The consistency with any federal, state, or municipal plan.
  - C. Public accessibility to the body of water and the use of those waters by persons outside the municipality in which the waters are located.
  - D. The importance to commercial, agricultural, or other interests.

- E. The degree of local interest, as manifested by municipal input or other contributions to the project.
  - F. Other considerations affecting feasibility, probability of achieving long-term control, and necessity or advantage of the proposed control activity.
  - G. The extent to which the control activity is a developmental rather than a maintenance program.
  - H. The extent to which the control activity may affect the public that utilizes those waters (i.e., impacts on the operation of public infrastructure or other encroachments, impacts on drinking water, and whether the control activity would result in water use restrictions).
  - I. Whether there are impacts on the recreational potential (i.e., public good uses) and aquatic habitat of waters beyond the project area.
5. The Secretary will make a cumulative assessment of the previous findings to determine whether the proposed control activity provides a public benefit that outweighs negative impacts. If the proposed control activity does not provide enough of a public benefit that outweighs negative impacts, this finding cannot be made, and the application will be denied.