

For: The House Committee on Environment and Energy

From: Rob Steele

Subject: Testimony H.31

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Good morning, and thank you for allowing me to speak.

My name is Rob Steele. I am a lifelong resident of Bomoseen, Vermont, and I own and operate Toms Bait and Tackle. The bait shop is currently starting its 50th year in business, 26 of which I have been a part of, 18 as the owner. We serve a large area in mid and southern Vermont and interact with lots of people who use and enjoy our waterbodies throughout the state. I'm speaking today because I feel that H.31 is needed to reevaluate the process in which our lakes and ponds are being managed with chemicals.

After learning that the LBA/LBPT applied for a permit to use herbicides in Lake Bomoseen, I have spent the past year trying to learn as much as possible on the process. Throughout the year, I have learned that in my opinion, the process is quite flawed. The start of the permit process involves the applicant sending a form letter out to landowners who will be affected by the actions being applied for. This is the same as applying for a lake encroachment permit where you must notify your neighbors you are building a retaining wall or putting a large dock in. When it comes to chemicals being put in the lake, this letter is supposed to be sent to all property owners on the lake, as they will be affected. I have learned that this is not always the case as there are times when many of the landowners do not receive any notification. This notification directs the effected landowners to follow the Vermont DEC environmental notice bulletin to track the progress of the permit. This is the first major problem.

If you are not one of the select few who received a letter, the only way you would be able to know if a permit to use herbicide in any lakes or ponds in Vermont was applied for would be to check the environmental notice bulletin daily. If you ask 100 people what the environmental notice bulletin is, 99 of them will have no idea. If any of you have ever tried to navigate the environmental notice bulletin, it's almost impossible. Once a permit is drafted, it gets put on the ENB, and a 30-day public comment period is started. It is ONLY during this public comment period that the public can offer any questions, concerns or comments and be recognized by the DEC. It is also the only time that the public can request a public hearing. How can we continue with a system that makes it such a challenge for the public to have a voice?

It should also be noted that the statute does not require any public notification to inform the lake users of water restrictions or even a date when the lakes are treated. The DEC has created a special permit condition in which the applicant must put a sign at the end of each road leading to the lake and at the fishing accesses. These signs are only required to be the size of a sheet of notebook paper. Sometimes these signs are buried in tall grass, or just simply stapled to a tree. Just this past year, a lake in my area was treated with ProcellCor on June 21<sup>st</sup>. The signs that were posted stated that it would be treated June 16. According to the sign, swimming, wading, boating, fishing and domestic household use may resume on Friday June 17. By not indicating the correct day of treatment, anyone who happened to read the sign would have thought it was safe to utilize that lake on June 21. How many people do you think swam, fished, etc within hours of that lake being treated? How is this fair to the public? When I asked the DEC what could happen to the applicant who failed to notify the public of the correct day, I was told that although they violated a permit condition, because the statute requires no public notification, that there was little that could be done. How is this not a clear representation of a failed system? Are we to accept that chemicals can be put in our public waterbodies without notice?

We heard yesterday from Mr. Pierson that they work closely with Fish and Wildlife. While the current administration may do just that, many past comments and concerns of the Fish and Wildlife department have been overruled and permits granted anyway. We do not know what future administrations may do. I think it is safe to say that Fish and Wildlife will never have a formal say with the current statute. In the letter that Jon Groveman sent to Mr. Pierson, he refers to a comment made during the stakeholder rule group, "One challenge with the ANC program is that one Department of Environmental Conservation staff person has the burden of making complicated and often controversial permit decisions." This was a quote from Mr. Pierson. Why would we not want to formally involve Fish and Wildlife in this process? This would ease the burden on the one staff person from DEC who must make the decisions.

During the process, the DEC uses 40% of the littoral zone as the max threshold for treatment area. I would like to note that this is 40% annually. The point of the 40% is to leave suitable habitat for fish and other species to use. The problem is that the trend has been to use chemical treatments year after year. If you do 40% one year, yes that leaves 60% for fish cover. The next year you do another 40%. The area you did the first year has not had significant time to regrow native vegetation to levels to support warm water fish species. While some may have grown back, you have severely limited available vegetation lake wide. Now on to the next year where you do another 40%. Now in 3 years you have treated all of the littoral zone. Not getting into the toxicology of things, the continued suppression and changes of available habitat is having an effect on warm water fish species.

Last October the DEC put out a 14-page document regarding the use of ProcellaCor and the process in our lakes. One of the comments made was that there has been a shift in the bass population in Lake Saint Catherine over the past 20 years from largemouth to smallmouth bass. While it appears that the DEC finds this acceptable, I do not. We are completely aware, through studies done by our own Fish and Wildlife department, that there has been a significant decrease in largemouth bass, but an increase in smallmouth bass due to continued suppression of aquatic vegetation. While some may find it acceptable to alter an ecosystem with chemicals and shift a fish population, is that what is really supposed to be happening during these projects. Although Fish and Wildlife focuses primarily on studying Largemouth and smallmouth bass due to the fact that largemouth bass are the second most targeted species of residents and first most targeted species with tourists to Vermont, What about the other warmwater species of fish that rely on aquatic vegetation? What about the sunfish, crappies, and all the other fish that share habitat with largemouth bass that aren't being studied. There is no shift in population to another species for them, they just decrease in population. Why must we be forced to accept the decrease and potential loss of a fish species because someone deemed it to be an acceptable risk?

I'd like to note that in permit decision for ProcellaCor use in Lake Iriquois in 2020, under the public benefit section, the secretary states, "This temporary decrease is anticipated to result in tangible benefit for boating and swimming in the treatment locations. Regarding fishing as a public good, it remains undetermined as to whether the project will produce a long- or short-term benefit." This quote can be found word for word in many of the other permits issued for chemical use across the state. Fish and Wildlife have been stating for years that the loss of aquatic vegetation will have a negative effect on fish populations, resulting in less angler opportunity. These are comments that have been made since the early 2000's and the DEC won't acknowledge that fishing will be impacted.

We also heard comments yesterday from the DEC about long-term management plans. As Mr. Pierson mentioned, they are currently dealing with a lake association that has failed to follow its long-term management plan. In the comment period for Lake Iriquois, a comment was made about the lack of funding available for the lake association's long-range plan. The response from the DEC was "It is beyond the scope of permitting to look at funding.". We currently have a system that bases part of its permit decision on a long-range plan. There is nothing in the process to make the applicant show that they can actually follow through with it. In the comments by the DEC, it is stated that "The long-term plan does not need to identify a point at which pesticides will no longer be used, as eradication is not an anticipated outcome for management activities.". This leaves the management plan open ended as far as how long they can use chemicals for. Are we to just accept that the use of chemicals has

the possibility of going on forever. In the case of Lake Saint Catherine, chemicals have been used for 20 years and the advice of Solitude Lake Management is that more chemicals are needed this year. When will it stop, or will it never?

One of the 5 criteria in the statute is that there is no reasonable nonchemical method. While the definition of this is being reviewed in the stakeholder group that I am a part of, I would agree with Jon Groveman that a statute written with words like these leaves too much for interpretation. I came across a comment once again in the Lake Iriquois comments that reads, "Statute requires the secretary to determine if there are no reasonable nonchemical alternatives available to achieve the purpose of the control activity. This does not require that all reasonable non-chemical alternatives be exhausted prior to that finding." You don't have to use all the tools in the toolbox or by the sounds of it any of them to be granted a permit for herbicide. If the DEC decides that DASH for example won't be effective in the area the permit calls for, then they can justify the criteria by saying it's unreasonable, without even giving it a shot. My hobby is old cars. If I have a rusted bolt that will not come out, I am going to use every tool I have to try and get it out before I go to the cutting torch. Is the torch the fastest and easiest, it sure is. Has it been proven in the past to work, yes it has. Am I going to grab it first, absolutely not. Just because it has worked in the past doesn't mean that it doesn't have the possibility of causing more damage. At the minimum, all methods should be incorporated to see if a threshold can be reached that doesn't require the use of chemicals. This also goes back to the point that what is reasonable for whoever is in the permit analysis position at any particular time might not be reasonable for the next person.

We have heard testimony that the DEC requires a significant amount of information from the applicant each year of their permit to determine if they will allow chemical use again and in what area. In talking last week with Eric Palmer from Fish and Wildlife, I was informed that they have no ability to submit comments or concerns after the permit is issued the first year. Because Fish and Wildlife do not have a formal role in this process, they have no input until the applicant files for another application at the end of the 5-year period. Fish and Wildlife should have a very active role throughout the entire period. Why would you not want Fish and Wildlife involved every year? Why wouldn't they be part of the process? The DEC gets to review information on a yearly basis to make decisions. Why not give Fish and Wildlife the same information so their specialists can review how the project is doing?

During the presentation yesterday, we were told many things about milfoil and the problems associated with it. I am not trying to downplay the impacts of milfoil, but I believe that the conclusion that milfoil is causing x,y,z problems is something that isn't necessarily true. While we can show studies that milfoil is bad for fish habitat, there are

also studies that show that milfoil is good habitat and, in some cases, better than native vegetation. The problem with studies is that there is always a study that contradicts it. There are so many variables in this world that saying this is what is happening or what can happen based on a certain study or studies is questionable. A major flaw in the current system is that the applicant can say milfoil hurts fish, milfoil is causing declines in boating, milfoil is causing the beaches to be used less frequently. The applicant can simply state this and say here is a list of studies from 1991 that back up our claim. I have yet to see where an applicant must actually provide any studies of their body of water that prove that is the case. Where are the studies on lake X that say fish population is down? Where are the studies that show that milfoil is the reason nobody is using the beach? I can tell you that my business gives me the opportunity to talk with thousands of anglers a year, both resident and nonresident. Although anecdotal, many of the comments I receive are that the lakes that have been treated are showing a significant decrease in fish catch and size. Arguments can be made that smallmouth fishing is better, or that trout fishing is great. Trout fishing in most of these lakes is maintained because the state of Vermont stocks them. To say that trout fishing is great after 5000 brown trout are dumped into a lake is a given. The real question is are the fish that are not being stocked healthy and thriving? We know from our own Fish and Wildlife Scientists that largemouth are suffering, and we know that the other species that anglers are reporting a decline in, share the same habitat. While there are possible negative effects of milfoil, are they happening to an extent that requires chemical use, and are we willing to live with the negative effects?

We have also heard from not only associations but also the DEC that decreased property values are a problem caused by milfoil. I am sure most of you have seen the housing market, lake homes are at an all-time high. Has anyone actually proved this or are we still relying on a study done 20 years ago? I can tell you from personal experience that the price of home on Lake Bomoseen are going for double and triple of what they assess for if not more. That being said, I did come across an interesting comment by the DEC, in once again, the comments and responses for the Lake Iriquois ProcellaCor permit. The DEC states "Potential economic impacts from treatment of or from not treating a waterbody with an herbicide are beyond the scope of review under Aquatic Nuisance Control Permitting.". If the DEC cannot take economic impact into consideration, then why do we keep hearing the price of real estate is negatively impacted? According to that comment, economic impacts cannot be considered when issuing a permit, therefore making the real estate comment an invalid comment.

During testimony yesterday we heard that it is basically impossible to win an appeal should someone try. A statute that creates a situation that locks in a permit so tight that the public stands no chance of appealing is crazy to me. I have read a significant number of memorandums between Fish and Wildlife and DEC. One thing

that has been stated more than once is the fact that they have already issued many herbicide permits that it is tough to deviate from that path. My takeaway on these comments, and I did paraphrase, is that an appeal from an applicant has the potential to get the permit denial overruled based on past practices. How is this a fair system that an appeal of a permit is almost impossible, while a appeal of a denial stands a good chance of winning? This is where I think that H.31 would really make a difference. We could have a clean slate to start with. Any past concerns or issues could be addressed, and we would no longer have to use prior permits as a base line for what is allowed. We would no longer have to have a system that follows a path that was the direction the one permit analysis employee at the DEC chose to follow years before.

I think it is safe to say that there are some flaws in the current system. As Mr. Grovman pointed out, rulemaking might not go far enough. A study group goes through all the information available, looks at how the process was utilized in the past, and decides what statutory changes are needed to bring the statute up to current times. We are not talking about lake encroachment permits, we are talking about permits to put chemicals, some of which have no long-term data at the time of use, into our public bodies of water to control what is called by statute a nuisance. Which a nuisance is defined as a person, thing, or circumstance causing inconvenience or annoyance.

There was a lot of talk yesterday about what will happen with current projects should this pass, and a moratorium be put into place. It is only a 2-year period of time. Should the secretary believe there is an emergency, I interpret it as an option for her to issue a permit should it meet the current criteria. I don't think that 2 years will make or break a lake. However, should the DEC provide sufficient evidence that in that 2-year period of time milfoil will get to a place where management will not be an option and the lake will completely die so to speak, then an emergency permit can be issued. For the lakes that are in a permit period already, then I believe nonchemical methods should at minimum allow them to maintain at the status they are at currently.

I believe that we are at a point now where more and more lakes are setting up associations, which is an excellent thing to help manage lakes if done properly. I am concerned that 10 permits for herbicide are already out and that there is the possibility of 3 more this year. I feel that as we continue from here on out that more and more permits will be submitted in the future as development on lakes and ponds continues to grow. We are at a point where we can get ahead of whatever may come. I'd rather not see things progress to the point of "We should have done something sooner". We know that chemicals don't always show their danger for years. We used Sonar for 15 years until it was determined that its use made it impossible to meet the 5 criteria in the statute. We used Renovate for years until ProcellaCor came out and was marketed as a better chemical than SONAR. I have no doubt that in a few years we will see another

chemical that is sold as even better than ProcellaCor. It is very apparent that we are in a cycle. There will always be something that is marketed to be safer, better, and has less impact on the non-target environment. Do we continue this path or do we stop, take a breather and really think things through? 15 years and multiple whole lake treatments on several lakes occurred before the DEC started denying SONAR permits due to it not allowing the 5 statute criteria to be met. What changed? The chemical didn't change, the impacts of the chemical didn't change, the statute requirements didn't change. The only thing that changed was the opinion of the DEC and the way they interpret the statute.

The DEC claims they are not the herbicide users. This is true. The lake associations hire a management company, the management company does a plant survey and then directs the lake association in what the best management method is. Most of the time it is to use chemicals, along with a small amount of non-chemical control. Many times it is the management company that recommends the use of herbicides that actually applies the herbicides. They also happen to be co applicant on a lot of the applications. They are also the ones who do the post treatment surveys. After the treatments are done, the lake association members take water samples from various parts of the lake. They then give the water samples to the management company who injected the chemical. The samples are then sent to SEPRO, the chemical manufacturer, for testing. At no point is the DEC or any third party involved in the testing process. The chemical manufacturer is the only one who can test water for ProcellaCor. The fact that the management company, for the lack of a better word pushes herbicide use, presents the study that states that milfoil needs to be managed, collects a substantial amount of money from applying the chemical, and then handles the testing of the water is bothersome to me. The fact that all this is done by the same company is something we could use H.31 to look at. Do we want the contractor, lake association member, and the chemical manufacturer to be the only ones involved in the testing process?

I've heard comments from supporters of using herbicides that we need to restore the lakes and ponds to what they once were before milfoil was introduced into Vermont. Milfoil first appeared in Vermont over 60 years ago. Eradication is viewed as impossible. Dumping chemicals in our lakes will never restore these lakes back to what they were 60 years ago. It isn't hard to see changes that have occurred across our state. Many of these lakes have seen drastic increase in development over the years. Undeveloped shoreline is becoming a thing of the past. Small weekend summer getaways have been transformed into large year-round homes. Things can never be returned to what they were, and we need to accept that. Many of the lake's ecosystems have changed over the years and applying chemicals to them for the unforeseeable future is not the answer. We need H.31 to put a temporary halt on what has been going on for the past 20 years and make sure we are doing the right thing.

Thank you for your time,

Rob Steele