

1 H.879  
2 Introduced by Representatives Harvey of Castleton, Coffin of Cavendish,  
3 Labor of Morgan, Malay of Pittsford, Morgan, M. of Milton,  
4 Nielsen of Brandon, Pinsonault of Dorset, Powers of Waterford,  
5 and Pritchard of Pawlet  
6 Referred to Committee on  
7 Date:  
8 Subject: Conservation and development; aquatic nuisance control; application  
9 of chemicals  
10 Statement of purpose of bill as introduced: This bill proposes to amend the  
11 requirements for the issuance by the Agency of Natural Resources of a permit  
12 for the application of chemicals in a water of the State.

13 An act relating to aquatic nuisance control  
14 It is hereby enacted by the General Assembly of the State of Vermont:  
15 Sec. 1. FINDINGS

16 The General Assembly finds that:  
17 (1) Aquatic nuisance and invasive species are a threat to Vermont native  
18 species as they compete with native species for habitat and resources. Further,  
19 aquatic nuisance and invasive species can cause economic harm due to the loss  
20 of commercial and recreational opportunities they can cause.

1                   (2) According to the Lake Champlain Basin Program, as of 2020, there  
2                   were 51 known nonnative and invasive species identified in Lake Champlain  
3                   and, as of 2022, there were 126 waterbodies in Vermont that had confirmed  
4                   aquatic invasive species.

5                   (3) According to the 2019 U.S. Environmental Protection Agency's *The*  
6                   *Great Lakes and Lake Champlain Invasive Species Program* report, prevention  
7                   is the most effective and least costly method for managing aquatic nuisance  
8                   and invasive species threats to Vermont's waters.

9                   (4) It is the policy of the State of Vermont to follow the precautionary  
10                  principle and use pesticides as a measure of last resort in aquatic nuisance  
11                  control after other nonchemical methods have failed and it has been proven by  
12                  the applicant that there will be no or negligible harm to nontarget species, be  
13                  they reptiles, amphibians, fish, or aquatic biota.

14                  Sec. 2. 10 V.S.A. § 1452 is amended to read:

15                  § 1452. DEFINITIONS

16                  As used in this chapter:

17                  (1) "Agency" means the Agency of Natural Resources.

18                  (2) "Aquatic nuisance" means undesirable or excessive substances or  
19                  populations that interfere with the recreational potential or aquatic habitat of a  
20                  body of water, including rooted aquatic plants and animal and algal  
21                  populations. Aquatic nuisances include zebra mussels (*Dreissena*

1 polymorpha), quagga mussels (*Dreissena bugensis*), Asian clam (*Corbicula*  
2 *fluminea*), fishhook waterflea (*Cercopagis pengoi*), rusty crayfish (*Orconectes*  
3 *rusticus*), spiny waterflea (*Bythotrephes longimanus*), or other species  
4 identified by the Secretary by rule.

5 \* \* \*

6 (8) “Pesticide” means any substance produced, distributed, or used for  
7 preventing, destroying, or repelling nuisance aquatic plants, insects, or other  
8 aquatic life, including lamprey. ~~Pesticide~~ “Pesticide” includes unicellular  
9 organisms or extracts from unicellular organisms and does not include  
10 biological controls.

11 (9) “Secretary” means the Secretary of Natural Resources.

12 \* \* \*

13 (11) “Waters” means all rivers, streams, creeks, brooks, reservoirs,  
14 ponds, lakes, and springs and all bodies of surface waters, artificial or natural,  
15 that are contained within, flow through, or border upon the State or any portion  
16 of it.

17 \* \* \*

18 (17) “Lake association” means a lake protection organization registered  
19 with the Secretary of Natural Resources on a form provided by the Secretary.

20 \* \* \*

1                   (23) “Lake” means a body of standing water, including a pond or a  
2                   reservoir that may have natural or artificial water level control. Private ponds  
3                   are not considered lakes.

4                   (24) “Lake segment” means the segments of Lake Champlain identified  
5                   in the U.S. Environmental Protection Agency’s publication *Phosphorus*  
6                   *TMDLs for Vermont Segments of Lake Champlain.*

7                   (25) “Private pond” means a body of standing water that is a natural  
8                   waterbody of not more than 20 acres located on property owned by a person or  
9                   an artificial waterbody of any size located on property owned by a person. A  
10                  “private pond” includes a reservoir specifically constructed for one of the  
11                  following purposes: snowmaking storage, golf course irrigation, stormwater  
12                  management, or fire suppression.

13                  Sec. 3. 10 V.S.A. § 1455 is amended to read:

14                  § 1455. AQUATIC NUISANCE CONTROL PERMIT

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

4 (c)(1) Persons desiring a permit under this section shall make application to  
5 the Secretary on a form prescribed by the Secretary. The following may apply  
6 for a permit for the use of pesticides or chemicals other than pesticides in a  
7 water:

1       be the lake segment or lake segments in which the pesticide or chemical other  
2       than a pesticide is proposed for use.

3           (d) The Secretary shall, after obtaining the additional approvals required  
4       under subsection (f) of this section, may issue a permit for the use of pesticides  
5       or chemicals other than pesticides in waters of the State for the control of  
6       nuisance aquatic plants, insects, or other aquatic life, including lamprey, when  
7       the applicant demonstrates and the Secretary finds or requires all of the  
8       following:

9               (1) there is no reasonable nonchemical alternative available; The use of  
10       pesticides or chemicals other than pesticides is needed to address significant  
11       ecological harm in the water.

12               (2) there is acceptable risk to the nontarget environment; The use of  
13       nonchemical methods to address the significant ecological harm in the water is  
14       not feasible and there would be negligible risk to public health.

15               (3) there is negligible risk to public health; The risks of using pesticides  
16       or chemicals other than pesticides to address significant ecological harm do not  
17       outweigh the benefits of using the pesticides or other chemicals. When  
18       determining the risk of ecological harm, the Department of Fish and Wildlife  
19       shall be responsible for selecting the most sensitive nontarget plant species and  
20       the most sensitive animal species that reside in the water and that would be at

1       risk of harm due to chemical exposure to be used as the baseline nontarget  
2       species.

3           (4) If the use of pesticides or chemicals other than pesticides is  
4       authorized, a long-range management plan has been developed which  
5       incorporates a schedule of pesticide minimization; and

6           (5) there is a public benefit to be achieved from the application of a  
7       pesticide or, in the case of a pond located entirely on a landowner's property,  
8       no undue adverse effect upon the public good If the use of pesticides or  
9       chemicals other than pesticides is authorized, staff of the Agency of Natural  
10       Resources shall be present for any application of the pesticide or chemical to  
11       monitor for the proper application location, application rates, and frequency of  
12       application.

13       (e) The burden of meeting the permitting criteria set forth under subsection  
14       (d) of this section shall be on the applicant. A landowner applying to use a  
15       pesticide on a private pond located entirely on the landowner's property is  
16       exempt from the requirement of subdivision (d)(4) of this section.

17       (f) The Commissioner of Environmental Conservation, the Commissioner  
18       of Fish and Wildlife, and the Commissioner of Health shall jointly approve any  
19       application to use pesticides or chemicals other than pesticides to treat an  
20       aquatic nuisance under this section.

1       (g) The Secretary shall, upon application of any person, may issue a permit  
2 for the control of aquatic nuisances by biological controls, bottom barriers,  
3 structural barriers, structural controls, or powered mechanical devices, ~~or~~  
4 ~~chemicals other than pesticides~~ when the Secretary finds:

5               (1) ~~there is acceptable risk to the nontarget environment a proven~~  
6 negligible risk to the most sensitive nontarget species in the water;  
7               (2) there is negligible risk to public health; and  
8               (3) there is either benefit to or no undue adverse effect upon the public  
9 good.

10       (g)(h) The use of bottom barriers, structural barriers, structural controls,  
11 powered mechanical devices, and copper compounds as an algaecide in waters  
12 with a surface area of one acre or less located entirely on a person's property  
13 and with an outlet where the flow can be controlled for at least three days is  
14 exempt from the permit requirements of this section.

15       (h)(i) When an application is filed under this section, the Secretary shall  
16 proceed with a Type 2 notice and comment procedure in accordance with  
17 chapter 170 of this title.

18       (i)(j) An aquatic nuisance control permit issued under this section shall  
19 include all of the following:

20               (1) ~~specify in writing the~~ The Secretary's findings under subsection (d)  
21 or (f)(g) of this section;

11       ~~(j)~~(k) An aquatic nuisance control permit issued under this chapter may be  
12       renewed from time to time upon application to the Secretary. The process of  
13       permit renewal ~~will~~ shall be consistent with the requirements of this section.

14           (k)(1) An applicant for a permit under this section shall pay an application  
15        fee as required by 3 V.S.A. § 2822. The Agency of Natural Resources shall be  
16        exempt from this fee requirement.

17       ~~(4)(m)~~ No permit shall be required under this section for mosquito control  
18       activities that are regulated by the Agency of Agriculture, Food and Markets,  
19       provided that:

20 (1) Prior prior to authorizing the use of larvicides or pupacides in waters  
21 of the State, the Secretary of Agriculture, Food and Markets shall designate

1 acceptable control products and methods for their use and issue permits

2 pursuant to 6 V.S.A. § 1083(a)(5); and

3 (2) [Repealed.]

4 ~~(m)~~(n) The Secretary may issue general permits for the use of nonchemical  
5 aquatic nuisance control activities provided that the Secretary makes the  
6 findings required in subsection ~~(f)~~(g) of this section. A general permit issued  
7 under this subsection is not required to specify the exact location or the  
8 frequency of the permitted activity.

9 Sec. 4. 10 V.S.A. § 7713(a) is amended to read:

10 (a) Purpose; scope.

11 (1) The purpose of this section is to establish the public notice and  
12 comment requirements that the Department must follow when considering  
13 applications for individual permits, except for individual permits specifically  
14 listed in other sections of this subchapter, and when considering other permits  
15 listed in this section.

16 (2) The procedures under this section shall be known as Type 2  
17 Procedures. This section governs an application for each of the following:

18 (A) an individual permit issued pursuant to the Secretary's authority  
19 under this title and 29 V.S.A. chapter 11, except for permits governed by  
20 sections 7712 and 7714–7716 of this chapter;

21 (B) [Repealed.]

## Sec. 5. EFFECTIVE DATE

10                   Notwithstanding 1 V.S.A. § 214, this act shall take effect retroactively on  
11                   January 1, 2026, provided that the permitting standards and requirements of  
12                   10 V.S.A. § 1455 enacted under Sec. 3 shall not apply to:  
13                   (1) any proposed activity where the necessary State permit under  
14                   10 V.S.A. chapter 50 has been obtained prior to January 1, 2026, and the  
15                   permit holder takes no subsequent act that would require revision of the permit  
16                   or a new permit under 10 V.S.A. chapter 50; or  
17                   (2) a complete application for a proposed activity requiring a State  
18                   permit under 10 V.S.A chapter 50 that has been submitted on or before January  
19                   1, 2026, provided that the applicant does not subsequently file an application  
20                   for a permit amendment and performance of the activity applied for  
21                   commences within two years after the date that the State permit becomes final.