

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

AQUATIC SPECIES RAPID RESPONSE GENERAL PERMIT #RR-GP01

AQUATIC SPECIES RAPID RESPONSE

10 V.S.A. Chapter 50 Section 1456

PART I. COVERAGE UNDER THIS GENERAL PERMIT

A. Introduction/Jurisdiction:

The Secretary of the Agency of Natural Resources (Secretary) is issuing this aquatic species rapid response general permit (RR-GP01) pursuant to 10 V.S.A. Chapter 50 §1456 for the use of any and all of the following control methods: aquatic pesticides, biological controls, structural controls, powered mechanical devices, bottom barriers or other appropriate methods (exempting handpulling) to control nonindigenous new aquatic species in waters of the State of Vermont.

10 V.S.A. Chapter 50 §1456 authorizes the Secretary to issue a general permit for the control of nonindigenous new aquatic species in waters of the State of Vermont for a period not to exceed ten years.

B. Definitions:

1. Agency means the Vermont Agency of Natural Resources.
2. Aquatic plant means a plant that naturally grows in water, saturated soils, or seasonally saturated soils, including algae and submerged, floating-leafed, floating, or emergent plants.
3. Biological controls mean multi-cellular organisms.
4. Board means the Water Resources Panel of the Natural Resources Board.
5. Lessee means a person who acquires the right to occupancy or use of property under a lease or rental agreement.
6. New aquatic species means an aquatic species that was not known to occur in a surface water of Vermont or in a segment of Lake Champlain as of January 1, 2007.
7. Pesticide means any substance produced, distributed, or used for preventing, destroying, or repelling nuisance aquatic plants, insects, or other aquatic life, including lamprey. Pesticide includes unicellular organisms or extracts from unicellular organisms and does not include biological controls.
8. Secretary means the Secretary of the Vermont Agency of Natural Resources.
9. Water resources means the waters and the values inherent or potential in waters and their uses.

10. Waters means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, and springs and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.

C. Activities Covered By This General Permit:

The activities authorized by this general permit shall include the use of any or all of the following control methods: aquatic pesticides, biological controls, structural controls, powered mechanical devices, bottom barriers or other appropriate methods (exempting manual removal) to control nonindigenous new aquatic species in waters of the State of Vermont when the Secretary finds that an emergency exists and that the proposed control technique meets the requirements of this general permit and is acceptable when considering the emergency situation.

D. Activities Not Eligible For Coverage Under This General Permit:

Coverage is not available under this general permit when the Secretary finds that an emergency does not exist under 10 V.S.A. §1456 or the proposed control technique does not meet the requirements of this general permit or is not acceptable when considering the emergency situation.

PART II. APPLICATION REQUIREMENTS

A. Permit Application Notice of Intent (NOI):

Applications for coverage under this general permit shall be limited to the Commissioner of the Vermont Department of Environmental Conservation and the Commissioner of the Vermont Department of Fish & Wildlife. An applicant for coverage under this general permit shall file a Notice of Intent (NOI). A Notice of Intent for coverage under this general permit shall consist of a completed NOI Form including the information seen below (1 through 5) as well as, specific information on the proposed project:

1. A completed Notice of Intent (NOI) application form;
2. Identification of the nonindigenous new aquatic species;
3. A description of the emergency created by the nonindigenous new aquatic species including:
 - a. the likelihood that the nonindigenous new aquatic species to cause harm to human health, safety, or the environment;
 - b. the likelihood that the nonindigenous new aquatic species will cause significant harm to the economy;
 - c. the magnitude of the potential adverse impact of the nonindigenous new aquatic species upon public health, safety, the environment, native biodiversity, water bodies, outdoor recreation, or any other use of the state's water resources;
 - d. the likelihood that the nonindigenous new aquatic species would naturalize in the state if not immediately controlled;
 - e. the rate at which the invasion is anticipated to spread throughout the state; and

- f. the difficulty to control the spread of the nonindigenous new aquatic species in the state.
4. A description of the control technique(s) selected to respond to the emergency and why they are appropriate in the particular situation.
5. A list of all of the municipality or municipalities in which the proposed control activity will be conducted or in which there are waters that will be affected by the proposed control method and a mailing address for the municipal clerk(s).

B. Submission and Fees:

The NOI form shall be signed by the Applicant. There will be no fee required with the application pursuant to 3 V.S.A. Chapter 51 Section 2822(j). The Applicant shall file a completed NOI form, including all required attachments and submit the Application and related materials to:

Secretary of the Vermont Agency of Natural Resources
103 South Main Street, Center Building
Waterbury, VT 05671-0408

C. Notice to the Vermont Department of Fish and Wildlife:

Concurrently with filing the NOI, the Applicant shall notify the Vermont Department of Fish and Wildlife of the proposed activity. Notification shall consist of a copy of the NOI form and all required attachments submitted to the Secretary. Notification shall be submitted to the following address:

VT Department of Fish and Wildlife
Nongame and Natural Heritage Program
103 South Main Street, 10 South
Waterbury, VT 05671-0501

Such notification shall give Department of Fish and Wildlife staff the opportunity to review the project and inform the Applicant and the Secretary of any rare, threatened (T), and/or endangered (E) species in the project area. Upon completion of the review (within five days of receipt of the NOI), staff will provide comments to the Applicant and the Secretary on the proposed project. If T&E species are identified in the project area and a determination is made that an Endangered and Threatened Species Taking Permit is required, the Secretary shall require that an Endangered and Threatened Species Taking Permit Application is submitted within appropriate timeframe for the emergency situation. No control activity shall take place until such a permit is issued.

D. Notice to Municipal Clerk(s):

The Secretary shall provide notice of the application to the municipal clerk of the municipality or municipalities in which the proposed control activity will be conducted or in which there are waters that will be affected by the proposed control method at the time the request for authorization is filed with the Secretary. The Secretary shall provide an opportunity for written comment regarding whether the request complies with the terms and conditions of this general permit for ten days following receipt of the request for authorization and notice of the request to Municipal Clerk(s) which is to occur concurrently.

E. Notice to Vermont Department of Health:

Concurrently with filing the NOI, the Applicant shall notify the Vermont Department of Health (DOH) of the proposed activity. DOH notification shall consist of a copy of the NOI form and all required attachments submitted to the Secretary. DOH notification shall be submitted to the following address:

VT Department of Health Lab
c/o Razelle Hoffman-Contois
195 Colchester Avenue
Burlington, VT 05402

F. Filing Deadlines:

The NOI form (including all required attachments), should be filed at least in time to allow for the required 10 day public notice/comment period to municipalities in which the proposed control activity will be conducted, or sooner as deemed necessary by the Secretary.

G. Additional Information:

Following review of the NOI, the Secretary will determine whether the information provided is sufficient to determine eligibility for coverage under this general permit. In the event that the Secretary is unable to determine eligibility for coverage, the Secretary may require the Applicant to submit additional information that the Secretary considers necessary in order to make a decision on the eligibility for, or the issuance or denial of, an authorization to conduct a control activity pursuant to this general permit. A request for additional information will be transmitted to the Applicant within two (2) days of receipt of the NOI or sooner as deemed necessary by the Secretary. Additional information must be submitted to the Secretary within two (2) days from date of request or sooner as deemed necessary by the Secretary.

H. Requiring an Individual Aquatic Nuisance Control Permit:

The Secretary may require an Applicant who files an NOI to apply for an individual permit under 10 V.S.A. Chapter 50 Section 1455 if the activity does not qualify for coverage under this general permit.

I. Authorization to Conduct Rapid Response Control Activity:

An Applicant who files an NOI shall be authorized to commence rapid response control activity under the terms of this general permit upon the receipt of a written authorization by the Secretary determining that the NOI filing is complete and that the rapid response control activity is eligible for coverage under the terms and conditions of this general permit. Authorizations to act under the terms of this permit shall not exceed three (3) years.

J. Failure to Obtain Authorization:

Any person who conducts a rapid response control activity on nonindigenous new aquatic species in waters of the State without first receiving an individual permit or coverage under this general permit is in violation of 10 V.S.A Chapter 50 and is potentially subject to enforcement proceedings.

PART III. FINDINGS

The Secretary may issue an authorization under this general permit only when the Secretary finds that an emergency exists and that the proposed control technique meets the requirements of this general permit and is acceptable when considering the emergency situation. Prior to determining that an emergency exists, the Secretary shall consider the following factors:

1. the likelihood that the nonindigenous new aquatic species will cause harm to human health, safety, or the environment;
2. the likelihood that the nonindigenous new aquatic species will cause significant harm to the economy;
3. the magnitude for potential adverse impact of the nonindigenous new aquatic species upon public health, safety, the environment, native biodiversity, water bodies, outdoor recreation, or any other use of the state's water resources;
4. the likelihood that the nonindigenous new aquatic species would naturalize in the state if not immediately controlled;
5. the rate at which the invasion would spread throughout the state; and
6. the difficulty to control the spread of the nonindigenous new aquatic species in the state.

PART IV. PROHIBITIONS**A. Threatened and Endangered Species:**

The removal of threatened or endangered species is prohibited without an Endangered and Threatened Species Taking Permit issued pursuant to 10 V.S.A. Chapter 123.

PART V. CONDITIONS

The following terms, conditions, requirements, limitations and restrictions set forth in this part are binding upon the Permittee and are enforceable under 10 V.S.A. Chapter 50.

- A. Location of Operation:** The Permittee shall conduct the emergency control activities covered by this general permit only in the areas described and mapped in the Permittee's Notice of Intent filed with, and approved by, the Secretary.
- B. Rare Species:** If the Vermont Department of Fish and Wildlife identifies rare species located specifically in the area to be controlled or in an area to be affected by the control, the Permittee shall, prior to initiating or continuing any control activity covered by this general permit, take steps to minimize impacts on the rare species as approved by the Secretary.
- C. Threatened and Endangered Species:** If the emergency control activities will likely result in the taking of threatened or endangered species or impact the habitat of threatened or endangered species, the Permittee shall obtain an Endangered and Threatened Species Taking Permit pursuant to 10 V.S.A. Chapter 123 prior to initiating any control activity covered by this general permit. If such species are discovered after emergency control activities has been initiated, the Permittee shall immediately cease the activity and contact the Vermont

Department of Fish and Wildlife for consultation. Work shall recommence only after a Threatened Species Taking Permit is obtained.

- D. Pesticides:** The Vermont Department of Health (DOH) has conducted a risk assessment on the use of some pesticides. In the event that a pesticide having a completed risk assessment is selected as the appropriate control technique, the Permittee shall make every attempt to adhere to existing DOH recommendations. Whether or not a risk assessment has been conducted, the Permittee shall strictly adhere to all Federal and State law regulating the use of the pesticide.
- E. Public Notification of Control Technique:** The Permittee shall conduct a public notification process in accordance with the Agency's Public Review and Comment Procedures Regarding Application to Aquatic Nuisance Control Permits, Non-Chemical Control General Permits and Rapid Response General Permits.
- F. Entrance Upon Lands:** The Secretary or his or her agent may, after first obtaining the permission of the landowner or lessee, enter upon lands for the following purposes: (1) to survey for, inspect, or investigate conditions relating to new aquatic species that may become invasive; (2) to collect information to issue coverage under rapid response general permits under section 1456; (3) to conduct or use control techniques that are available under or authorized by a rapid response general permit issued under section 1456; and (4) to determine whether the rules of the Agency adopted or issued under 10 V.S.A. Chapter 50 are being complied with. If a land owner refuses to grant the secretary or his or her agent permission to enter onto the owner's land, the Secretary or the duly authorized representative of the Secretary may apply for and obtain a warrant or subpoena to allow such entry, surveying, collection, and control as is necessary to protect human health, safety, and the environment or prevent economic loss.
- G. Automatic Termination of Coverage:** Authorization under the terms of this general permit shall be automatically terminated three years from the date that the Authorization is issued.
- H. Operation by Others on Behalf of Permittee:** If a person other than the Permittee is conducting the aquatic nuisance control activities covered by this general permit on behalf of the Permittee, the Permittee shall ensure that the person conducting the activities has a copy of this general permit and is familiar with the terms and conditions of this general permit.
- I. Application, Installation, Operation & Maintenance of Control Activities:** The Permittee shall adhere to the approved plan as submitted with the Notice of Intent (NOI) regarding the Application, Installation, Operation & Maintenance associated with the control technique(s).
- J. Duty to Comply:** The Permittee shall comply with all terms and conditions of this general permit. Any noncompliance shall constitute a violation of 10 V.S.A. Chapter 50 and is grounds for an enforcement action and/or revocation, modification or suspension of the Permittee's authorization under this general permit.
- K. Duty to Reapply:** If the authorized control activity is to continue after the expiration date of this general permit, the Permittee shall reapply for coverage under a new applicable general permit, if any, at least twenty-one (21) days prior to the expiration date of this general permit. If there is no applicable general permit, then the Permittee shall apply for authorization under an individual permit at least seventy-five (75) days prior to the expiration date of this general permit.

L. Continuation of the Expired General Permit: Provided the Permittee has reapplied in accordance with Part V, Condition K of this general permit and is in full compliance with all terms and conditions of this general permit, the authorization to control nonindigenous new aquatic species under the expired general permit shall continue in force and effect until an authorization under a new general permit or an individual permit is issued or denied. Only those Permittees previously authorized to conduct control activities under the expired general permit may continue to conduct control activities until such a new general permit or individual permit is issued or denied.

M. Modification: This general permit and/or any authorization under this general permit may be modified for cause by the Secretary. If the Secretary determines that modification is appropriate, only the conditions subject to modification shall be reopened. Cause for modification of this general permit or any authorization thereunder includes, but shall not be limited to:

- a. Alterations to the activities authorized by this general permit which occurred after issuance of an authorization and which justify the application of conditions that are different from those in the general permit and/or authorization issued thereunder; or
- b. The receipt of information concerning the activities authorized under this general permit which information was not available at the time the general permit or authorization was issued and which would have justified different permit requirements at the time of the issuance of the general permit or authorization.

Any modification under this condition shall be performed in accordance with applicable public notice requirements in the *Public Review and Comment Procedures Regarding Application to Aquatic Nuisance Control Permits, Non-Chemical Control General Permits: and Rapid Response General Permit* dated (include date of revision, 2010) and approved by the Secretary of the Agency of Natural Resources on (include date of revision, 2010).

N. Suspension or Revocation: After notice and opportunity for a hearing, and any authorization issued under this general permit may be suspended or revoked for cause in whole or in part by the Secretary. Cause for suspension or revocation includes:

- a. violation of any of the terms or conditions of this general permit or any authorization issued thereunder;
- b. failure by the Permittee to disclose all relevant facts during the general permit and NOI application process;
- c. misrepresentation of any relevant fact or providing false information at any time during the general permit and NOI application process;
- d. a determination by the Secretary that an emergency under 10 V.S.A. §1456 does not exist;
- e. a determination by the Secretary that the proposed control technique does not meet the requirements of this general permit and is not acceptable when considering the emergency situation.

O. Limitations:

1. Nothing in this general permit shall be construed to relieve the Permittee or its agent(s) from civil or criminal penalties for noncompliance with the conditions of this permit.
2. Nothing in this general permit shall be construed as having relieved, modified, or in any manner affected the Permittee's obligation to comply with all other federal, state or local statutes, regulations or directives applicable to the Permittee, nor does it relieve the Permittee of the obligation to obtain all necessary state, local and federal permits.
3. Issuance of this general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.
4. The provisions of this general permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

PART VII. APPEALS

Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be filed with the Clerk of the Environmental Court within 30 days of the date of the decision. The appellant must attach to the Notice of Appeal the entry fee of \$250.00, payable to the State of Vermont.

The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Court; and must be signed by the appellant or their attorney. In addition, the appeal must give the address or location and description of the property, project or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal.

The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is 2418 Airport Road, Suite 1, Barre, VT 05641-8701 (Tel. #802-828-1660).

PART VIII. GENERAL PERMIT TERM

Pursuant to 10 V.S.A. Chapter 50 §1456 (a), this general permit is valid on the date of signing and shall remain in effect for a period of ten years from the date of signing.

Dated at Waterbury, Vermont this day of 2010

Jonathan Wood, Secretary
Agency of Natural Resources

By _____