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H.589

Introduced by Representative Bongartz of Manchester

Referred to Committee on

Date:

Subject: Conservation and development; aquatic nuisance control; application
of chemicals

Statement of purpose of bill as introduced: This bill proposes to amend the
requirements for issuance by the Agency of Natural Resources of a permit for
application of chemicals in a water of the State.

An act relating to aquatic nuisance control

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Aquatic nuisance and invasive species are a threat to Vermont native
species as they compete with native species for habitat and resources. Further,
aquatic nuisance and invasive species can cause economic harm due to the loss
of commercial and recreational opportunities they can cause.

(2) According to the Lake Champlain Basin Program, as of 2020, there
are 51 known nonnative and invasive species identified in Lake Champlain and

1 as of 2022, there are 126 waterbodies in Vermont that have confirmed aquatic
2 invasive species.

3 (3) According to the 2019 U.S. Environmental Protection Agency
4 Greatlakes and Lake Champlain Invasive species report, prevention is the most
5 effective and least costly method for managing aquatic nuisance and invasive
6 species threats to Vermont’s waters.

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

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

13 § 1452. DEFINITIONS

14 As used in this chapter:

15 (1) “Agency” means the Agency of Natural Resources.

16 (2) “Aquatic nuisance” means undesirable or excessive substances or
17 populations that interfere with the recreational potential or aquatic habitat of a
18 body of water, including rooted aquatic plants and animal and algal
19 populations. Aquatic nuisances include zebra mussels (*Dreissena*
20 *polymorpha*), quagga mussels (*Dreissena bugensis*), Asian clam (*Corbicula*
21 *fluminea*), fishhook waterflea (*Cercopagis pengoi*), rusty crayfish (*Orconectes*

1 rusticus), spiny waterflea (*Bythotrephes longimanus*), or other species
2 identified by the Secretary by rule.

3 * * *

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

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

9 * * *

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

14 * * *

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

17 * * *

18 (23) “Lake” means a body of standing water, including a pond or a
19 reservoir, which may have natural or artificial water level control. Private
20 ponds shall not be considered lakes.

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

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

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

11 § 1455. AQUATIC NUISANCE CONTROL PERMIT

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

18 (b) Notwithstanding other requirements set forth in chapter 47 of this title
19 to the contrary, the ~~Secretary~~ Commissioner may issue permits under this
20 section, unless otherwise provided by this section.

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

5 (A) For a private pond, the owner of the property where the pond is
6 located may apply for a permit.

7 (B) For waters other than private ponds:

8 (i) If the water is a lake, the applicant shall be a lake association as
9 defined in 10 V.S.A. §1452(17) that is registered with the Commissioner, if a
10 lake association exists for the lake.

11 (ii) If the water is a lake and no lake association exists for that
12 lake, or if the waterbody is a river, the application shall include a petition of
13 support from any 30 Vermont residents.

14 (C) For applications under subdivisions (A) and (B) of this
15 subdivision (1), the municipal governments in which the proposed application
16 areas in the lake or river is located shall be required to provide a letter of
17 support for the application.

18 (2) Applications under this section shall be submitted on a form
19 prescribed by the Commissioner.

20 (3) When an application is for the use of a pesticide or chemical other
21 than a pesticide in Lake Champlain, the relevant water subject to review shall

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~~ Commissioner, after obtaining the additional
4 approvals required under subsection (f) of this section, may issue a permit for
5 the use of pesticides or chemicals other than pesticides in waters of the State
6 for the control of nuisance aquatic plants, insects, or other aquatic life,
7 including lamprey, when the applicant demonstrates and the ~~Secretary~~
8 Commissioner finds all of the 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 lake is
14 not feasible.

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 species at risk of
20 harm due to chemical exposure residing in the water, such as an amphibian or
21 macroinvertebrate, to be used as the baseline nontarget species.

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

4 ~~(5) there is a public benefit to be achieved from the application of a~~
5 ~~pesticide or, in the case of a pond located entirely on a landowner's property,~~
6 ~~no undue adverse effect upon the public good.~~

7 (e) A landowner applying to use a pesticide on a private pond located
8 entirely on the landowner's property is exempt from the requirement of
9 subdivision (d)(4) of this section. The burden shall be on the applicant to meet
10 the other permitting criteria set forth in subsection (d) of this section.

11 (f) The Commissioner of Environmental Conservation, the Commissioner
12 of Fish and Wildlife, and the Commissioner of Health shall jointly approve any
13 application to use pesticides or chemicals other than pesticides to treat aquatic
14 nuisance under this section.

15 ~~(g) The Secretary shall~~ Commissioner may, upon application of any person,
16 issue a permit for the control of aquatic nuisances by biological controls,
17 bottom barriers, structural barriers, structural controls, or powered mechanical
18 devices, ~~or chemicals other than pesticides~~ when the ~~Secretary~~ Commissioner
19 finds:

20 (1) there is ~~acceptable risk to the nontarget environment~~ a proven
21 negligible risk to the most sensitive nontarget species in the water;

1 (2) there is negligible risk to public health; and

2 (3) there is either benefit to or no undue adverse effect upon the public
3 good.

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

9 ~~(h)~~(i) When an application is filed under this section, the ~~Secretary~~
10 Commissioner shall proceed with a Type 2 notice and comment procedure in
11 accordance with ~~chapter 170~~ section 7713 of this title.

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

14 (1) ~~specify in writing the Secretary's~~ The Commissioner's findings, in
15 writing, under subsection (d) or ~~(f)~~ (g) of this section;

16 (2) ~~specify the~~ The location, manner, nature, and frequency of the
17 permitted activity;

18 (3) ~~contain~~ Any additional conditions, requirements, and restrictions as
19 the ~~Secretary~~ Commissioner deems necessary to preserve and protect the
20 quality of the receiving waters, to protect the public health, and to minimize

1 the impact on the nontarget environment. Such conditions may include
2 requirements concerning recording, reporting, and monitoring;

3 (4) ~~be~~ Be valid for the period of time specified in the permit, not to
4 exceed five years for chemical control, and not to exceed ~~ten~~ 10 years for
5 nonchemical control.

6 ~~(j)~~(k) An aquatic nuisance control permit issued under this chapter may be
7 renewed from time to time upon application to the ~~Secretary~~ Commissioner.
8 The process of permit renewal will be consistent with the requirements of this
9 section.

10 ~~(k)~~(l) An applicant for a permit under this section shall pay an application
11 fee as required by 3 V.S.A. § 2822. The Agency of Natural Resources shall be
12 exempt from this fee requirement.

13 ~~(l)~~(m) No permit shall be required under this section for mosquito control
14 activities that are regulated by the Agency of Agriculture, Food and Markets,
15 provided that:

16 (1) ~~Prior~~ prior to authorizing the use of larvicides or pupacides in waters
17 of the State, the Secretary of Agriculture, Food and Markets shall designate
18 acceptable control products and methods for their use and issue permits
19 pursuant to 6 V.S.A. § 1083(a)(5); and

20 (2) [Repealed.]

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

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

7 (a) Purpose; scope.

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

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

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

18 (B) [Repealed.]

19 (C) an individual shoreland permit under chapter 49A of this title;

20 (D) a public water system source permit under section 1675 of this
21 title;

- 1 (E) a provisional certification issued under section 6605d of this title;
2 ~~and~~
3 (F) a corrective action plan under section 6648 of this title; and
4 (G) an aquatic nuisance control permit under section 1455 of this
5 title.

6 Sec. 5. EFFECTIVE DATE

7 This act shall take effect retroactively on January 1, 2024, provided that the
8 permitting standards and requirements of 10 V.S.A. § 1455 enacted under Sec.
9 3 of this act shall not apply to:

10 (1) any proposed activity where the necessary State permit under 10
11 V.S.A. chapter 50 has been obtained prior to January 1, 2024, and the permit
12 holder takes no subsequent act that would require revision of the permit or a
13 new permit under 10 V.S.A. chapter 50; or

14 (2) a complete application for a proposed activity requiring a State
15 permit under 10 V.S.A chapter 50 has been submitted on or before January 1,
16 2024, provided that the applicant does not subsequently file an application for
17 a permit amendment and performance of the activity applied for commences
18 within two years of the date that the State permit becomes final.