

The Vermont Statutes Online

The statutes were updated in November, 2018, and contain all actions of the 2018 legislative session.

Title 10: Conservation And Development

Chapter 50: Aquatic Nuisance Control

§ 1451. Findings

The General Assembly finds that:

(1) It is the policy of the State of Vermont that the water resources of the State shall be protected, regulated, and where necessary controlled under the authority of the State in the public interest to promote the general welfare and to protect public health and the environment.

(2) It is the policy of the State of Vermont to prevent the infestation and proliferation of invasive species in the State that result in negative environmental impacts, including habitat loss and a reduction in native biodiversity along with adverse social and economic impacts and impacts to the public health and safety.

(3) The Agency of Agriculture, Food and Markets and the Department of Forests, Parks and Recreation have established an informal working group to address invasive and noxious weeds, but additional authority is necessary for the Agency of Natural Resources to adequately respond to invasive aquatic nuisance species.

(4) The ability to initiate quickly a response to contain and control a new aquatic species introduction before it can spread is critical to reduce future management costs and protect the integrity of Vermont's ecosystems.

(5) Infestations of new aquatic species must be detected early and acted upon swiftly to minimize economic, social, and ecological impacts as well as to increase the probability of a successful eradication effort. (Added 2009, No. 46, § 1, eff. July 1, 2010.)

§ 1452. Definitions

As used in this chapter:

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

(2) "Aquatic nuisance" means undesirable or excessive substances or populations that interfere with the recreational potential or aquatic habitat of a body of water, including rooted aquatic plants and animal and algal populations. Aquatic nuisances include zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), Asian clam (*Corbicula fluminea*), fishhook waterflea (*Cercopagis pengoi*), rusty crayfish (*Orconectes rusticus*), spiny waterflea (*Bythotrephes longimanus*), or other species identified by the Secretary by rule.

(3) "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.

(4) "Biological controls" means multi-cellular organisms.

(5) [Repealed.]

(6) "Lessee" means a person who acquires the right to occupancy or use of property under a lease or rental agreement.

(7) "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.

(8) "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.

(9) "Secretary" means the Secretary of Natural Resources.

(10) "Water resources" means the waters and the values inherent or potential in waters and their uses.

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

(12) "Baitbox" means a receptacle, not exceeding 25 cubic feet in volume, used for holding or keeping baitfish alive for personal use.

(13) "Live well" means a well for keeping fish alive in a vessel by allowing water to circulate through the well.

(14) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(15) "Bilge area" means the lowest point in the vessel where water can collect when the vessel is in its static floating position.

(16) "Decontaminate" means a process used to kill, destroy, or remove aquatic nuisance species and other organic material that may be present in or on a vessel, motor vehicle transporting the vessel, trailer, or other equipment. Decontamination may include washing a vessel, motor vehicle transporting the vessel, trailer, or other equipment with water at a sufficiently high temperature to kill or remove aquatic nuisance species.

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

(18) "Marina" means a property, other than a public access or landing area regulated under section 4145 of this title, on the shoreline of a water of the State that contains a dock, basin, or ramp that, at no cost or for remuneration, provides to the public secure moorings or vessel access to the water.

(19) "Motor vehicle" means any vehicle propelled or drawn by power other than muscular power, including a snowmobile, motorcycle, all-terrain vehicle, farm tractor, or tracked vehicle.

(20) "Personal watercraft" shall have the same meaning as set forth in 23 V.S.A. § 3302.

(21) "Transport" means to move motor vehicles, vessels, personal watercraft, seaplanes, trailers, and other equipment over land, but does not include movement within the immediate area required for loading and preparing vehicles, vessels, personal watercraft, seaplanes, trailers, and other equipment prior to movement into or away from a body of water.

(22) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water, including personal watercraft. (Added 2009, No. 46, § 1, eff. July 1, 2010; 2017, No. 67, § 1, eff. June 8, 2017.)

§ 1453. Aquatic nuisance control program

(a) The Agency of Natural Resources shall establish and maintain an aquatic nuisance control program.

(b) The aquatic nuisance control program shall perform the following services:

(1) receive and respond to aquatic nuisance complaints;

(2) work with municipalities, local interest organizations, private individuals, and agencies of the state to develop long-range programs regarding aquatic nuisance controls;

(3) work with federal, state, and local governments to obtain funding for aquatic nuisance control programs;

(4) implement an aquatic species rapid response program under this chapter;

(5) administer a grant-in-aid program under section 1458 of this title;

(6) place a sign at least two feet by two feet in size that states that the water is infected with an aquatic nuisance and that a person transporting the nuisance in violation of section 1454 of this title may be subject to a penalty of up to \$1,000.00 pursuant to 23 V.S.A. § 3317, so that the sign is easily visible from a ramp used to launch vessels at any fish and wildlife access area on a body of water infected with an aquatic nuisance;

(7) provide the Commissioner of Fish and Wildlife and the Commissioner of Motor Vehicles with written educational information about aquatic nuisances that can be included in an envelope containing a boat registration and in a Department of Fish and Wildlife publication pertaining to fishing and boating. (Added 2009, No. 46, § 1, eff. July 1, 2010.)

§ 1454. Transport of aquatic plants and aquatic nuisance species

(a) Transport of aquatic nuisance species; prohibition. A person shall not transport an aquatic plant, aquatic plant part, or aquatic nuisance species to or from any Vermont water. This section shall not restrict:

(1) proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic nuisance species; or

(2) proper collection of water samples for the purpose of water quality monitoring.

(b) Inspection of vessel entering or leaving water. A person transporting a vessel to or from a water shall, prior to launching the vessel and upon leaving a water, inspect the vessel, the motor vehicle transporting the vessel, the trailer, and other equipment, and shall remove and properly dispose of any aquatic plants, aquatic plant parts, and aquatic nuisance species.

(c) No-cost boat wash; aquatic nuisance species inspection station. It shall be a violation of this section for a person transporting a vessel to or from a water to not have the vessel, the motor vehicle transporting the vessel, the trailer, and other equipment inspected and decontaminated at an approved aquatic nuisance species inspection station prior to launching the vessel and upon leaving a water if:

(1) an aquatic nuisance species inspection station is maintained at the area where the vessel is entering or leaving the water;

(2) the aquatic nuisance species inspection station is open; and

(3) an individual operating the aquatic nuisance species inspection station identifies the vessel for inspection or decontamination.

(d) Draining of vessel; transport.

(1)(A) When leaving a water of the State and prior to transport away from the area where the vessel left the water, a person operating a vessel shall drain the vessel, trailer, and other equipment of water, including water in live wells, ballast tanks, and bilge areas. A person is not required to drain:

(i) baitboxes when authorized under 10 App. V.S.A. § 122(5) to transport bait in a baitbox away from a water; or

(ii) vehicles and trailers specifically designed and used for water hauling.

(B) A person operating a vessel shall drain the vessel, trailer, and other equipment of water in a manner to avoid a discharge to the water of the State. This subdivision (d)(1) does not authorize a person to discharge waste, as defined in section 1251 of this title, to waters of the State. A person shall dispose of waste in the manner required by law.

(2) When a person transports a vessel, the person shall remove or open the drain plugs, bailers, valves, and other devices that are used to control the draining of water from ballast tanks, bilge areas, and live wells of the vessel, trailer, and other equipment, except for vehicles and trailers specifically designed and used for water hauling and emergency response vehicles and equipment.

(e) Presumption of compliance; aquatic nuisance species inspection station. A person transporting a vessel to or from a water will be presumed to have not violated subsections (a), (b), and (d) of this section if, upon launching a vessel and upon leaving a water, the

vessel is decontaminated at an approved aquatic nuisance inspection station. If staff of an approved aquatic nuisance inspection station observe a violation of subsection (a), (b), or (d) of this section, staff shall notify the person transporting the vessel.

(f) Exceptions to transport prohibition. The Secretary may allow the transport of aquatic plants, aquatic plant parts, or aquatic nuisance species for scientific purposes, educational purposes, or other purposes specifically authorized by the Secretary. When allowing the transport of aquatic plants, aquatic plant parts, or aquatic nuisance species under this subsection, the Secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the Secretary authorizing the transport must accompany the specimens during transport.

(g) Signage; access areas and marinas. Signage shall be posted at all public access and landing areas regulated under section 4145 of this title and at all marinas regarding the requirements of subsections (a)-(d) of this section relating to aquatic nuisance transport and inspection and decontamination of vessels, motor vehicles transporting vessels, trailers, or other equipment. The Secretary shall provide marinas with the signs required under this section.

(h) Violations. Pursuant to 4 V.S.A. § 1102, a violation of this section may be brought in the Judicial Bureau by any law enforcement officer, as that term is defined in 23 V.S.A. § 3302(2), or, pursuant to section 8007 or 8008 of this title, a violation of this section may be brought in the Environmental Division of the Superior Court. If a violation of this section is adjudicated in the Judicial Bureau or the Environmental Division, the violation shall not be addressed or adjudicated a second time in the other court. (Added 2009, No. 46, § 1, eff. July 1, 2010; amended 2013, No. 172 (Adj. Sess.), § 8; 2015, No. 61, § 10, eff. June 17, 2015; 2017, No. 67, § 2, eff. June 8, 2017.)

§ 1455. Aquatic nuisance control permit

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

(b) Notwithstanding other requirements set forth in chapter 47 of this title to the contrary, the Secretary may issue permits under this section.

(c) Persons desiring a permit under this section shall make application to the Secretary on a form prescribed by the Secretary.

(d) The Secretary shall issue a permit for the use of pesticides in waters of the State for the control of nuisance aquatic plants, insects, or other aquatic life, including lamprey, when the applicant demonstrates and the Secretary finds:

- (1) there is no reasonable nonchemical alternative available;
- (2) there is acceptable risk to the nontarget environment;

(3) there is negligible risk to public health;

(4) a long-range management plan has been developed which incorporates a schedule of pesticide minimization; and

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

(e) A landowner applying to use a pesticide on a pond located entirely on the landowner's property is exempt from the requirement of subdivision (d)(4) of this section.

(f) The Secretary shall issue a permit for the control of aquatic nuisances by biological controls, bottom barriers, structural barriers, structural controls, powered mechanical devices, or chemicals other than pesticides when the Secretary finds:

(1) there is acceptable risk to the nontarget environment;

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

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

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

(h) When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.

(i) An aquatic nuisance control permit issued under this section shall:

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

(2) specify the location, manner, nature, and frequency of the permitted activity;

(3) contain additional conditions, requirements, and restrictions as the Secretary deems necessary to preserve and protect the quality of the receiving waters, to protect the public health, and to minimize the impact on the nontarget environment. Such conditions may include requirements concerning recording, reporting, and monitoring;

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

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

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

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

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

(2) [Repealed.]

(m) The Secretary may issue general permits for the use of nonchemical aquatic nuisance control activities provided that the Secretary makes the findings required in subsection (f) of this section. A general permit issued under this subsection is not required to specify the exact location or the frequency of the permitted activity. (Added 2009, No. 46, § 1, eff. July 1, 2010; amended 2013, No. 142 (Adj. Sess.), § 89; 2015, No. 150 (Adj. Sess.), § 21, eff. Jan. 1, 2018; 2017, No. 67, § 3, eff. June 8, 2017.)

§ 1456. Aquatic species rapid response general permits

(a) Notwithstanding the requirements of section 1455 of this title, the Secretary may issue an aquatic species rapid response general permit under this section for a term not to exceed ten years for the control of a nonindigenous new aquatic species. This general permit shall identify the control technique, including the use of biological controls, pesticides, and any other control techniques for the nonindigenous new aquatic species for which coverage may be sought under the permit.

(b) Applications for coverage under this general permit shall be limited to the Commissioner of Environmental Conservation and the Commissioner of Fish and Wildlife. The application shall state the grounds for declaring an emergency situation as defined in subsection (f) of this section. The application shall identify the nonindigenous new aquatic species and control techniques selected to respond to the emergency.

(c) When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.

(d) The Secretary may issue an authorization under an aquatic species rapid response general permit only when the Secretary finds:

(1) that an emergency exists; and

(2) that the proposed control technique meets the requirements of the general permit and is acceptable when considering the emergency situation.

(e) Authorization to act under the terms of a general permit issued under this section shall not exceed three years.

(f) Prior to determining that a nonindigenous new aquatic species 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 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;

(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. (Added 2009, No. 46, § 1, eff. July 1, 2010; amended 2015, No. 150 (Adj. Sess.), § 22, eff. Jan. 1, 2018.)

§ 1457. Entrance upon lands to prevent the introduction and spread of new aquatic species

(a) The aquatic nuisance control program shall take reasonable steps to prevent the introduction and spread of new aquatic species that may become invasive in the State. To accomplish this objective, 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 of this title;

(3) to conduct or use control techniques that are available under or authorized by a rapid response general permit issued under section 1456 of this title; and

(4) to determine whether the rules of the agency adopted or issued under this chapter are being complied with.

(b) If a land owner refuses to grant the Secretary or his or her agent permission to enter onto the owner's land under this section, 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. (Added 2009, No. 46, § 1, eff. July 1, 2010.)

§ 1458. Grant-in-aid to municipalities and agencies of the State

(a) A municipality or agency of the State that desires State assistance to control aquatic nuisances may apply in writing to the Agency of Natural Resources in a manner prescribed by the Agency of Natural Resources.

(b) When the Agency finds that a proposed aquatic nuisance control program is suitable to control or minimize the effect an aquatic nuisance has on water quality and water use, it may award a grant of 75 percent or less of the project costs as determined by the Agency.

Recurring maintenance projects may be awarded grants of 75 percent or less of the annual project cost. In approving requests and determining the amount of any grant, the Agency shall consider the following:

- (1) the use of the waters by persons outside the municipality in which the waters are located;
- (2) the long-range effect of the control project;
- (3) the recreational use of the waters; and
- (4) the effectiveness of municipal shoreland zoning and other controls in minimizing or preventing existing or new development from having any adverse effects on the waters subject to the control program.

(c) The Agency shall make awards to priority projects to the extent funds are available. First priority shall be projects to manage incipient infestations of aquatic nuisances, second priority shall be projects to prevent or control the further spread of aquatic nuisances, and third priority shall be recurring maintenance projects. In establishing priorities for individual projects, the Agency shall consider the following:

- (1) public accessibility and recreational uses;
- (2) the importance to commercial, agricultural, or other interests;
- (3) the degree of local interest, as manifested by municipal or other contributions to the project;
- (4) local efforts to control aquatic nuisances;
- (5) other considerations affecting feasibility, probability of achieving long-term control, and necessity or advantage of the proposed work; and
- (6) the extent to which the control project is a developmental rather than a maintenance program.

(d) With the approval of the Secretary, the Agency may use funds provided under this section as well as other funds for restoration, management, or protection projects or for studies in the best interests of the State when the appropriate municipal applicant is not available or not eligible to receive a grant.

(e) When the Agency finds that a proposed aquatic nuisance control program is necessary and involves construction or installation of permanent facilities designed to control or minimize the effect that an aquatic nuisance has on water quality or water use, it may award a grant of up to 50 percent of the nonfederal costs of the project provided that evidence is received that the project applicant has voted funds in a specific amount to undertake the project. The applicant shall demonstrate it has or will acquire adequate interests in the site of the project to provide undisturbed possession and use during the life of the project and shall demonstrate ability to operate and maintain the project. The applicant may enter into agreements with the Agency for prosecution of all or any portion of the project. For purposes of this subsection, corporations registered with the Secretary of State may be eligible applicants.

(f) The Agency may make periodic grant payments upon submission by the grantee showing that costs for which reimbursement is requested have been incurred and paid by the grantee. Partial payments shall be made not more frequently than monthly. After the project has been completed and its costs audited by the Agency, the Agency shall certify the remainder of the award to the Commissioner of Finance and Management who shall issue his or her warrant for payment. Interest costs incurred in local short-term borrowing of the grant amount may be reimbursed as part of the grant. (Added 2009, No. 46, § 1, eff. July 1, 2010.)

§ 1459. Joint municipal participation

Should the shorelands of waters for which funds are requested under sections 1451-1460 of this title be under more than one municipal governmental jurisdiction, the provisions herein shall apply to the respective municipalities under a joint application, except that the required municipal contribution shall be apportioned among the respective municipalities. (Added 2009, No. 46, § 1, eff. July 1, 2010.)

§ 1460. Rulemaking

The Secretary may adopt rules to implement the requirements of this chapter. (Added 2009, No. 46, § 1, eff. July 1, 2010.)

§ 1461. Aquatic nuisance inspection stations; training program

(a) The Secretary of Natural Resources shall establish a training program regarding how to conduct inspection of vessels, motor vehicles, trailers, and other equipment for the presence of aquatic plants, aquatic plant parts, and aquatic nuisance species. The training program shall include online training, recorded material, training manuals, or other material that allows a person to complete training remotely.

(b) The Secretary of Natural Resources shall establish a training program regarding how to decontaminate vessels, motor vehicles, trailers, and other equipment to prevent the spread of aquatic plants, aquatic plant parts, and aquatic nuisance species. The training program shall instruct participants regarding how to address noncompliance with the requirements of section 1454 of this title, including how:

(1) operators of the inspection station do not have authority to board a vessel unless authorized by the vessel owner; and

(2) operators of the inspection station do not have law enforcement authority to mandate compliance with the requirements of section 1454 of this title.

(c) In order to establish an aquatic nuisance species inspection station for the purposes of the vessel inspection and decontamination requirements of subsection 1454(c) of this title, a lake association, municipality, or the Commissioner of Environmental Conservation shall apply to the Secretary for approval. As a condition of approval, a representative of a lake association or municipality shall complete the training programs established under subsections (a) and (b) of this section. A lake association or municipality seeking to operate an aquatic nuisance species inspection station shall designate a representative to complete the training programs established under subsections (a) and (b) of this section.

(d) A lake association or municipality approved to operate an aquatic nuisance species inspection station under subsection (c) of this section shall provide persons who will operate the aquatic nuisance species inspection station with training materials furnished by the Secretary regarding how to conduct the inspection and decontamination of vessels, motor vehicles, trailers, and other equipment for the presence of aquatic plants, aquatic plant parts, and aquatic nuisance species.

(e) The Secretary may adopt rules under section 1460 of this title to implement the training requirements of this section, including an annual schedule of available training. (Added 2017, No. 67, § 4, eff. June 8, 2017.)