

Permitting Considerations for AIS Management



Lealdon Langley

Wetlands and Wastewater Program

Bureau of Water Resources

Massachusetts Department of Environmental Protection

What I want to cover

- Permitting requirements for invasive species control projects
- MassDEP's views on invasive species
- Useful information sources
- Recommendations for success
- Questions?

Law and Regulations

- “No person shall remove, fill, dredge or alter any...[wetland]without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed.” MGLc131, Section 40

Law and Regulations

- Activity means any form of ...the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of land.

Law and Regulations

- Alter means to change the condition of any Area Subject to Protection under M.G.L. c. 131, § 40. Examples of alterations include, but are not limited to, the following: ...(b) the lowering of the water level or water table; (c) the destruction of vegetation; (d) the changing of water temperature, biochemical oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water. Provided, that when the provisions of 310 CMR 10.03(6) and 10.05(3) or 333 CMR 11.03(9) have been met, the application of herbicides in the Buffer Zone in accordance with such plans as are required by the Department of Food and Agriculture pursuant to 333 CMR 11.00: Right of Way Management, effective July 10, 1987, is not an alteration of any Area Subject to Protection under M.G.L. c. 131, § 40.

Ecological Restoration Projects

- (4) Ecological Restoration Limited Projects. (a) Notwithstanding the requirements of any other provision ...the Issuing Authority may issue an Order of Conditions permitting an Ecological Restoration Project listed in 310 CMR 10.53(4)(e) as an Ecological Restoration Limited Project
- (e) Types of Ecological Restoration Limited Projects. The issuing authority may permit the following projects as Ecological Restoration Limited Projects in accordance with 310 CMR 10.53(4)(a) through (d)

Ecological Restoration Projects

- Other Restoration Projects. An Ecological Restoration Project... that will improve the natural capacity of a Resource Area(s) to protect the interests identified in M.G.L. c. 131, § 40, may be permitted as an Ecological Restoration Limited Project provided that the project meets the eligibility criteria set forth in 310 CMR 10.54(4)(a) through (d). Such projects include, but are not limited to...the removal of aquatic nuisance vegetation to retard pond and lake eutrophication, the thinning or planting of vegetation to improve habitat value... in-stream habitat enhancement...flow restoration, and the installation of fish passage structures.

Eutrophication and Aquatic Plant Management in Massachusetts Final Generic Environmental Impact Report

- Projects requiring state permits or receiving state funding that exceed MEPA environmental thresholds do not require MEPA filings if the proposed control technology is covered in the GEIR.
- GEIR covers:
 - Dredging – Sediment removal
 - Drawdown – Water Level Control
 - Harvesting, Hydroraking and Handpulling – Direct Plant Removal
 - Biological Control
 - Benthic Barriers – Plant Covering
 - Herbicide Treatment – Chemical Control
 - Dyes and Surface covers – Light limitation



GUIDANCE FOR AQUATIC PLANT MANAGEMENT IN LAKES AND PONDS

As It Relates to
the Wetlands
Protection Act

Department of Environmental Protection
Bureau of Resource Protection
Wetlands/Waterways Program
April 2004

- Applicants proposing a limited project under 310 CMR 10.53(4) must demonstrate that the project will improve the natural capacity of a resource area(s) to protect some or all of the interests of the Wetlands Protection Act (WPA)
- Best management practices (BMPs) to address pollutant loads contributed by the watershed should be commensurate with the size of the project and could include: working with local officials and others in the community to develop watershed management plans; educating area citizens; constructing, maintaining, and monitoring structural BMPs; upgrading septic systems and other wastewater treatment facilities; employing erosion control measures; and/or implementing local lake protection bylaws.

Vegetation Management Plan (VMP)

- Include the following:
 - 1. goals of the VMP;
 - 2. target Invasive Species;
 - 3. intended methods of vegetation management and rationale for use including control techniques, proposed equipment, timing of control procedures, and alternative control techniques;
 - 4. photo or other plan identifying Resource Areas where target Invasive Species are proposed to be controlled;
 - 5. operational guidelines for applicators relative to herbicide use;
 - 6. identification and qualifications of individuals submitting plan;
 - 7. measures to minimize frequency and amount of herbicide application;
 - 8. measures to address spills and related accidents; and
 - 9. a Yearly Operational Plan for each year the applicant intends to perform Invasive Species control that includes the application rates and techniques, the name, address and phone number of the persons who will perform herbicide treatment, and the procedures for and locations for handling, mixing and loading herbicide concentrations.
 - 10. Seek approval by DAR

Herbicide Application Permit

- proposed application of herbicides to aquatic systems and that includes application onto a bordering vegetated wetland (BVWs) – the WM04 Permit for Herbicide Application on Aquatic Systems is required. See: <http://www.mass.gov/eea/agencies/massdep/service/approvals/brp-wm-04.html>
- obtained after an Order of Conditions has been issued by conservation commission.
- Chemical treatments must be performed by an applicator currently licensed (in the aquatic weed category) by the Massachusetts Department of Food and Agriculture Pesticide Bureau.
- General Use Herbicides requires licensed applicator
- Restricted Use Herbicides require applicator to be Certified by DAR
- Robert Kubit @ Robert.Kubit@state.ma.us or (508) 767-2854

Success!

- Apply early
- Create flexibility in applications and permits to revise area for treatment and for techniques
- Address access points, staging, personnel and licensing/certifications
- Seek extensions to keep permits current

Questions?

Lealdon Langley

(617) 574-6882

lealdon.langley@state.ma.us

David Wong

(617) 292-5893

david.wong@state.ma.us