

 <p><b>NEW YORK</b> STATE OF OPPORTUNITY.</p> <p><b>Adirondack Park Agency</b></p> <p>P.O. Box 99 • Ray Brook, New York 12977 (518) 891-4050 Fax: (518) 891-3938 www.apa.ny.gov</p>	<p><b>APA General Permit 2015G-2</b></p>	Effective Date:
	In the Matter of the Issuance of a General Permit for the Management of Aquatic Invasive Species Using Benthic Barriers and Hand Harvesting Techniques	

### **SUMMARY AND AUTHORIZATION**

Pursuant to Environmental Conservation Law (ECL) Article 24, Executive Law § 809(13)(e) and 9 NYCRR § 572.23, this general permit authorizes qualified individuals and entities the use of benthic barriers and hand harvesting techniques to control the following aquatic invasive species:

Eurasian watermilfoil (*Myriophyllum spicatum*), curlyleaf pondweed (*Potamogeton crispus*), water chestnut (*Trapa natans*), yellow floating heart (*Nymphoides peltata*), European frog-bit (*Hydrocharis morsus-ranae*), fanwort (*Cabomba caroliniana*), hydrilla (*Hydrilla verticillata*), Brazilian elodea (*Egeria densa*), parrot-feather (*Myriophyllum aquaticum*), broadleaf watermilfoil (*Myriophyllum heterophyllum*), zebra mussel (*Dreissena polymorpha*), quagga mussel (*Dreissena rostriformis bugensis*), Asian clam (*Corbicula fluminea*), and those other aquatic invasive species identified by the Deputy Director, Regulatory Programs (DDRP).

This general permit shall be in effect throughout the Adirondack Park from the date of issuance and shall remain valid unless modified or revoked by the Adirondack Park Agency ("Agency").

### **ELIGIBILITY FOR APPLICATION**

Qualified individuals and entities include the New York State Department of Environmental Conservation (NYSDEC), Lake George Park Commission (LGPC), Hudson River Black River Regulating District (HRBRRD), Adirondack Park Invasive Plant Program (APIPP), Adirondack Watershed Institute, (AWI), qualified lake associations, local municipalities, certified lake managers, and, subject to the approval of the DDRP, other qualified organizations and experienced lake managers. A qualified lake association is defined as: (i) a Not-For-Profit Corporation; (ii) recognized by the local municipality; (iii) that can demonstrate that it represents the majority of lakeshore owners.

Qualified individuals and entities are eligible to apply to undertake specified regulated activities in wetlands involving management or containment of aquatic invasive species in the Adirondack Park. In order to be eligible for this general permit, the proposed activity must: (1) apply only to the aquatic invasive species noted in the Summary and Authorization above or otherwise identified by the DDRP; (2) use only benthic barriers and hand-harvesting techniques; (3) not require additional detailed engineering or environmental studies; and (4) be able to meet the terms and conditions of this general permit and the Application and Certification for this general permit.

### **ADIRONDACK PARK AGENCY JURISDICTION**

The Agency requires permits for activities involving wetlands in the Adirondack Park pursuant to §§ 809 and 810 of the Adirondack Park Agency Act [Executive Law, Article 27] and Part 578 of Agency regulations implementing the Freshwater Wetlands Act [Article 24 of the New York State Environmental Conservation Law]. Pursuant to 9 NYCRR §§ 578.2 and 578.3(n)(1)(ii),(iii) and (2)(ii) of Agency regulations, any form of excavation, or removal of soil, peat, mud, or sand, the placement of any fill, or any other activity that substantially impairs the functions served by or the benefits derived from freshwater wetlands requires a permit from the Agency.

### **PROCEDURES**

1. To use this general permit, the applicant must fully complete and submit to the Agency a General Permit 2015G-2 Application and Certification, including all required attachments. The application may be submitted in person to the Agency or by mail at:

Adirondack Park Agency  
Deputy Director, Regulatory Programs  
NYS Route 86, PO Box 99  
Ray Brook, New York 12977

2. Within 15 calendar days of receipt of an application, the Agency will review the application for completeness, confirm jurisdiction, determine whether the proposed activity meets the eligibility criteria and contact the applicant to arrange a meeting at the site of the proposed activity.
3. If the application is incomplete, the Agency will inform the applicant by certified mail indicating what specific information is missing. On the day the Agency receives the missing information from the applicant, a new 15 calendar-day review period begins for determining completeness.

4. If the application is approvable, within 10 business days of the site visit or when the application is deemed complete, whichever is later, the Agency will, by certified mail, issue a signed General Permit 2015G-2 Application and Certification approving the activity.
5. Where an application has been determined to be ineligible for authorization pursuant to this general permit, the Agency will send a letter by certified mail briefly explaining why the activity is ineligible and stating that the activity may be reviewed again upon receipt of a new application for an individual project permit.
6. By signing the application, the applicant:
  - a. confirms that the information contained in the application is true, accurate and complete;
  - b. agrees that if a jurisdictional activity has been determined to be ineligible for approval under this general permit, the appropriate major permit application must be submitted to the Agency and a permit issued before that activity can be undertaken; and
  - c. agrees that the time period for review for completeness of any subsequent application for an individual permit will not begin to run until the Agency has received the individual permit application.
7. The review time periods established in Executive Law § 809 shall not apply to Agency review of an application pursuant to this general permit, except that if the Agency does not issue a certification within ten business days of the site visit or the date the application is deemed complete, whichever is later, the procedures established in Executive Law § 809(6)(a) shall apply.
8. All work on lands classified as lands underwater owned by the State of New York and not classified as State Forest Preserve requires approval from the NYS Office of General Services. All work on lands classified as Forest Preserve requires approval from the New York State Department of Conservation (NYSDEC). Work on underwater lands owned by private individuals requires authorization from all owners of record of that land.

### **CONDITIONS**

All activities undertaken pursuant to this general permit must be in compliance with the following conditions:

1. The general permit authorizes the NYSDEC, LGPC, HRBRRD, APIPP, AWI, qualified lake associations, local municipalities, certified lake managers, and, subject to the approval of the DDRP, other qualified organizations and experienced lake managers to undertake specified regulated activities in wetlands involving the management of aquatic invasive species.

2. The general permit authorizes the management of aquatic invasive species including Eurasian watermilfoil (*Myriophyllum spicatum*), curlyleaf pondweed (*Potamogeton crispus*), water chestnut (*Trapa natans*), yellow floating heart (*Nymphoides peltata*), European frog-bit (*Hydrocharis morsus-ranae*), fanwort (*Cabomba caroliniana*), hydrilla (*Hydrilla verticillata*), Brazilian elodea (*Egeria densa*), parrot-feather (*Myriophyllum aquaticum*), broadleaf watermilfoil (*Myriophyllum heterophyllum*), zebra mussel (*Dreissena polymorpha*), quagga mussel (*Dreissena rostriformis bugensis*), Asian clam (*Corbicula fluminea*), and those other aquatic invasive species identified by the DDRP
3. The regulated activities in wetlands authorized by the general permit shall be undertaken and completed only as described in the submitted and approved application and certification and in compliance with the terms and conditions of the general permit and with the application and certification. In the case of conflict, the general permit controls.
4. The aquatic invasive species management activities described in the application and certification and required attachments may not be undertaken unless and until the application and certification is signed by the DDRP, and the signed application and certification is returned to the permittee.
5. Failure to comply with the general permit is a violation and may subject the permittee and its agents to civil penalties and other legal proceedings, including suspension or revocation of the permit.
6. Nothing contained in the general permit shall be construed to satisfy any legal obligations of the permittee to obtain any governmental approval or permit for any entity other than the Agency, whether federal, state, regional or local.
7. The Agency may conduct on-site investigations, examinations and evaluations as it deems necessary to ensure compliance with the terms and conditions of the general permit and the application and certification. Such activities shall take place at reasonable times and upon advance notice where possible.
8. At the written request of the Agency, the permittee shall report in writing the status of the project, including details of compliance with any terms and conditions of this permit.
9. The permittee shall be required to provide 15 days advance mail notice to all shoreland property owners located adjacent to or within 500 feet of sites where benthic barriers will be used. The notice shall describe the proposed management activity, date(s) and duration of the control activity, and the name of the individual, including daytime telephone number, responsible for supervising the control effort.

10. The permittee shall require that any agent, contractor, certified lake manager, or other person responsible for the overall supervision of this project read and understand the permit and approved plans and all terms and conditions prior to undertaking the project. Copies of the signed general permit, application and certification, and approved plans shall be kept at the project site during all control activities.
11. Additional special conditions, if any, may be added to the application and certification as determined by the DDRP, and shall be enforceable under the general permit.
12. For Forest Preserve lands, all biomass material should be removed from the area and properly disposed of at a site off of Forest Preserve. If removing harvest materials off site proves to be difficult due to volume and or distance, permission from the Agency may be requested to scatter these materials. Harvest materials may be scattered on adjacent upland Forest Preserve areas at a minimum distance of 50 horizontal feet from the shoreline and in a manner that the biomass material is not clumped or piled which will eliminate or impede growth of native vegetation.
13. Unless authorized by the DDRP, benthic barrier installations greater than one acre in size within the treatment area shall not be treated with benthic barriers more than two times within any consecutive three year period.
14. Prior to the installation of benthic barriers, the permittee shall survey each proposed treatment area for the presence of NYS rare, threatened or endangered species. Unless authorized by the DDRP, if any site contains rare, threatened or endangered or exploitably vulnerable species, benthic barriers shall not be used and management shall be limited to hand harvesting around the protected species. Also, prior to the installation of any benthic barrier, the permittee shall survey the proposed treatment area to determine if any water supply intakes, discharges, or other manmade features, including archeological resources, exist. If present, only hand harvesting activities are authorized around the feature unless the owner of the intake/discharge/other feature provides written consent for the use of benthic barriers.
15. Installation of benthic barriers at any single treatment area shall not exceed 3 acres without prior approval from the DDRP. Multiple 3 acre installations may be made within a waterbody provided that no more than 10 percent of the littoral area is matted at any one time. If multiple locations are to be treated in the same waterbody a minimum of 200 linear feet of untreated area shall remain between treatment areas. Following removal of benthic barriers, the site shall be monitored for invasive plant species for a minimum of 3 years and, if found, aggressively hand-harvested in order to prevent recolonization.
16. Benthic barriers deployed through the winter months shall be removed by May 31 of the year following installation. The permittee shall be responsible for inventorying and retrieving all benthic barriers, including those which were displaced by wave, wind, ice movement, or other forces.

17. All benthic barriers placed on Forest Preserve shall be removed by October 1st of the year in which they were originally installed unless otherwise authorized by the DDRP and NYSDEC.
18. The general permit does not grant the permittee any right to trespass upon the lands of, or interfere with the riparian rights of others in order to perform the permitted work, nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.
19. An electronic (pdf or similar) annual report shall be submitted to the Agency by February 28th each year following each field season and shall include at a minimum the following:
  - a. A map, or series of maps, showing all treatment locations. The map(s) shall be annotated to a table or other written report which provides the following:
    - i. a site location for all treatment locations undertaken during the year;
    - ii. target species, date(s) and methods of treatment (including dates of installation and removal for all benthic barriers);
    - iii. estimated total area treated by hand harvesting (if available) and estimated total area treated with benthic barriers;
    - iv. assessment of the volume of material removed by hand harvesting including total dive hours or other quantification of the amount of effort expended during the season to control the targeted species, and, in addition, provide a qualitative assessment of the treatment activities including any problems and/or difficulties associated with the treatment; and
    - v. location of all rare, threatened, endangered, or exploitably vulnerable species.
  - b. A second map for benthic barriers with overlays showing all areas treated within the prior four years. If available, a second map for hand harvesting with overlays showing all areas treated within the prior four years. The map must clearly delineate each treatment effort by year and must differentiate between hand harvesting and benthic barrier installations.
  - c. Provide detailed information which demonstrates compliance with the notification requirement in condition 9 above and any special conditions .
  - d. Provide updates regarding the primary point of contact for the permittee .

### **FINDINGS OF FACT**

1. Freshwater wetland covertypes potentially affected by activities involving the management of aquatic invasive species include the following as described in the ECL § 24-0107(1)(a): emergent vegetation, rooted, floating-leaved vegetation, free-floating vegetation, bog mat vegetation, and submergent vegetation. These covertypes form the wetlands defined in 9 NYCRR §§ 578.3(i) and (j) as “emergent marsh” and “deep water marsh.”

2. The wetlands potentially affected by implementation of activities involving management of aquatic invasive species provide important benefits valued by society such as flood and storm control and abatement, wildlife habitat, surface and subsurface water resource protection, recreation, erosion control, education and scientific research, open space and aesthetics and nutrient cycling.
3. Aquatic invasive species have demonstrated severe negative effects on native wetland systems including loss of habitat, negative changes in hydrology and nutrient cycling and loss of biodiversity. This general permit is issued to allow qualified individuals and entities to implement activities to eradicate or reduce population numbers or otherwise control the growth and spread of the aquatic invasive species noted in the Summary and Authorization above.
4. Invasive species management on Forest Preserve is identified as an approved activity in the June 2015 Inter-Agency Guidelines for Implementing Best Management Practices for the Control of Terrestrial and Aquatic Invasive Species on Forest Preserve Lands in the Adirondack Park.
5. Implementation of management practices to eradicate or reduce population numbers or otherwise control the growth and spread of the noted aquatic invasive species in accordance with this general permit will not result in undue adverse impacts on Park resources.
6. The project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR § 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

### **CONCLUSIONS OF LAW**

The Agency has considered all statutory and regulatory criteria for project approval set forth in Executive Law § 809(10), the Freshwater Wetlands Act and 9 NYCRR Part 578. The Agency hereby finds that all regulated activities authorized by this general permit and a certification issued pursuant to this general permit that are undertaken as authorized:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the land use area(s) involved;
- c. will be consistent with the overall intensity guidelines for the land use area(s) involved;
- d. will comply with the shoreline restrictions of Executive Law, § 806;
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the economic and social or other benefits that might be derived therefrom;

- f will secure the natural benefits of wetlands associated with the project, consistent with the general welfare and beneficial economic, social, and agricultural development of the state; and
- g. will comply with the statutory and regulatory criteria set forth in the Freshwater Wetlands Act and 9 NYCRR Part 578.

GENERAL PERMIT issued this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

ADIRONDACK PARK AGENCY

BY: \_\_\_\_\_  
Richard E. Weber, III  
Deputy Director, Regulatory Programs

STATE OF NEW YORK)  
) ss.:  
COUNTY OF ESSEX )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber, III personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

September 2015