

**New York State Department of Environmental Conservation
Division of Materials Management / Region 9 / Bureau of Pesticides Management
270 Michigan Ave, Buffalo, NY 14203
(716) 851-7220**

**TITLE 6 NEW YORK CODE OF RULES AND REGULATIONS PART 327
PERMIT TO USE A PESTICIDE FOR THE CONTROL OR ELIMINATION OF AQUATIC VEGETATION**

PERMIT NUMBER: **AV92020-035**

TARGET SPECIES: **Eurasian Watermilfoil**

PERMITTEE: **Town of Ellery**

WATER TO BE TREATED: **Chautauqua Lake**

TOWN: **Ellery**

COUNTY: **Chautauqua**

Pursuant to the Rules and Regulations governing the use of pesticides for controlling or eliminating aquatic vegetation adopted by the New York State Department of Environmental Conservation, permission is granted to the permittee or his/her agent(s) pursuant to the provisions of Article 15 of the Environmental Conservation Law to apply the listed pesticide(s) to the waters identified above located in the town and county identified above in conformance with all statements and agreements set forth in the application .

I. THIS AQUATIC PESTICIDE PERMIT IS ISSUED SUBJECT TO THE FOLLOWING CONDITIONS:

1. DATE(S) OF TREATMENT: **June 22 through June 30, 2020**
2. AUTHORIZED CHEMICAL (Product & EPA Reg. No.): **ProcellaCOR EC (EPA Reg # 67690-80)**
3. % OR WEIGHT OF ACTIVE INGREDIENT: **2.7%** Florpyrauxifen-benzyl: 2-pyridinecarboxylic acid, 4-amino-3-chloro-6- (4-chloro-2-fluoro-3-methoxy-phenyl)-5-fluoro-, phenyl methyl ester
4. MAXIMUM AMOUNT OF CHEMICAL AUTHORIZED: **199.71 oz**
5. MAXIMUM NUMBER OF ACRES TO BE TREATED: **7 acres**
6. NOT TO EXCEED PERMISSIBLE DOSAGE RATE: **6.34 oz/ac-ft (2 PDU)**
7. METHOD OF APPLICATION: **Subsurface injection**
8. AUTHORIZED AREAS TO BE TREATED: The following MMS zones are permitted to a water depth of six feet. Treated areas must be buoyed prior to treatment. Updated maps from the registered business must be provided and attached to permits prior to treatment.

MMS ZONES PERMITTED: **N156 and N157**
9. NAME OF REGISTERED BUSINESS/AGENCY: **Solitude Lake Management LLC**
10. BUSINESS/AGENCY REGISTRATION NO.: **16505**
11. NAME OF CERTIFIED APPLICATOR(S): **Glenn Sullivan**
12. CERTIFIED APPLICATOR ID NO.: **C0680740**
13. A Prescription Dose Unit (PDU) is equal to 3.17 fluid ounces.
14. This permit is valid for one application.
15. Undeveloped shorelines cannot be treated with pesticide.
16. Wind speeds the day of treatment cannot be, or forecasted to be, above 10 MPH.

II. USE OF THE TREATED WATERS AND THOSE WATERS AFFECTED BY THE TREATMENT WILL BE PROHIBITED OR RESTRICTED AS FOLLOWS:

1. Do not use water from treated areas for irrigation of agricultural crop, greenhouse, nursery, and hydroponic irrigation until concentrations are below 1 ppb (<1 ppb) active ingredient as determined by FasTest or determined by the Department approved model to have degraded/diluted to below 1 ppb unless an activated

carbon or similar filtration process is utilized prior to the water use.

2. Do not use water for irrigation of landscape vegetation or other forms of non-agricultural irrigation (excluding greenhouse, nursery and turf) until concentrations are below 2 ppb (<2 ppb) as determined by FasTest or for 5 days following in-water application.
3. To minimize potential exposure in compost, do not use water from treated areas for livestock watering until concentrations are below 1 ppb (<1 ppb) active ingredient as determined by FasTest.
4. Warning signs approved by the Department must be posted as described in the attached conditions. Signs must remain posted until all restrictions are removed as determined by sample results and agreed upon by the Department.
5. Water use restrictions will remain in effect until sample analysis determines concentrations are at or below the labeled limit.

III SAMPLING REQUIREMENTS

1. To remove the water use restrictions and take down the notification signs a sample must be taken from each treatment area and at the outlet and results must be below 1 ppb active ingredient. The first sample shall be taken 5 days following treatment. If initial sample exceeds 1 ppb additional sampling shall occur at least every 5 days until levels drop below 1 ppb. Sample locations are designated on maps provided with the application and are labeled: ELL7, ELL6, NH7, BU2, BU1, LKWD1, LKWD 4, and O1 (outlet).
2. All sampling results must be reported immediately (within 24 hours) to Bureau of Pesticides Management, NYSDEC, 270 Michigan Ave, Buffalo, NY 14203 and robert.freese@dec.ny.gov when received by permittee.
3. All sampling results must also be reported immediately (within 24 hours) to William Boria, Chautauqua County DOH, Senior Water Resource Specialist, at boriaw@co.chautauqua.ny.us .

IV. NOTIFICATION REQUIREMENTS:

1. **Riparian Owner and User Notification:** Prior notice of the actual date(s) of treatment and water use restrictions must be given to any party likely to be adversely affected.
2. **Posting of Warning Signs Prior to Treatment:** Warning/Notification signs must be posted conspicuously along the shoreline of the pond. These signs shall be approved by the Department and must be posted as described.

There must be at least two (2) signs at each required posting location, posted no more than fifty feet (50') apart from each other. Signs shall be posted at a minimum height of thirty inches (30") above the ground to the top of the sign; and shall be > 6" x 8" in size; made of suitable weather-resistant, rigid material with a background color of yellow and black lettering. The signs are to be posted before the application and remain posted and legible until all water use restrictions are removed as determined by sample results and agreed upon by the Department.

3. **This sign shall include the following information in an acceptable format to the Department:** "NOTICE. This waterbody has been treated with a pesticide for aquatic weed control. (Name of pesticide shall be included) Do not enter treatment area until after treatment."
The signs posted must include:
 - a. Date and time of treatment
 - b. All water use restrictions
 - c. Description of treatment area
 - d. Contact person's name and cell phone number
 - e. If applicable, statement that signs will be updated as water use restrictions are lifted

3. **Agency Notifications:** The following must be notified at least seven (7) days and no more than fourteen (14) days prior to the date of each pesticide treatment:
Robert Freese, Pesticide Control Specialist 2, NYSDEC, 270 Michigan Ave, Buffalo, NY 14203
P: 716-851-7220 | robert.freese@dec.ny.gov

The permittee must also provide seven to fourteen-day notice to the **Regional Office of the New York State**

Health Department, where the water body or outflow waters serve as water supplies.

- a.) Representative(s) of the DEC (Pesticide Control Specialist) maintain the right to be present during all pesticide treatments.
- b.) In the event conditions necessitate rescheduling of the treatment, the Department must be notified 24 hours prior to the date the rescheduled treatment will occur. If treatments are rescheduled, the permittee must make a new request to the Department if a waiver is desired.
- c.) Any waiver must be explicitly granted by the Department in writing and may not be implied by the absence of the Department's representative. Any waiver granted by the Department shall be effective only for the specific application and treatment date/time for which it was granted.
- d.) In the event conditions necessitate rescheduling the pesticide treatment, the following must be notified 24 hours prior to the date the rescheduled treatment will occur:
Robert Freese, Pesticide Control Specialist 2, NYSDEC, 270 Michigan Ave, Buffalo, NY 14203
P: 716-851-7220 | robert.freese@dec.ny.gov
- e) If no treatment is made, and the permit is not used, the following must be notified:
Robert Freese, Pesticide Control Specialist 2, NYSDEC, 270 Michigan Ave, Buffalo, NY 14203
P: 716-851-7220 | robert.freese@dec.ny.gov

V. REPORTING

1. **Final Report Required:** Permittee must submit a Final Report by November 30, 2020. The Report shall contain the following information for **each application site**: product name; active ingredient; EPA registration number; the total quantity of each pesticide used; number of acres or acre feet treated; targeted concentration; dosage rate; target organism; and date of application(s). **GPS maps of the exact treatment areas must also be included with each report.** The report must be submitted to Robert Freese, Pesticide Control Specialist 2, NYSDEC, 270 Michigan Ave, Buffalo, NY 14203.

This permit requirement does not preclude the statutory obligation of the permittee, or other pesticide applicator registered agency or registered business to comply with Annual Reporting requirements expressed at Section 33-1205 of the ECL.

2. **Post Treatment Evaluation Required:** A post treatment evaluation done in late Summer or early Fall, of each treatment area describing the status of aquatic plant species present and an estimate of their abundance shall also be reported before November 30, 2020.

VI. ADDITIONAL CONDITIONS OR RESTRICTIONS:

1. **No Right to Treat Lands and Waters under Department Control** This permit grants no right to treatment of lands under control of the Department nor relieves the permittee of the responsibility to obtain permission from the Department for any treatment of waters lying under their control, unless a specific signed authorization appears on this permit.
2. **No Right to Treat Non-Target Areas** Issuance of the permit does not authorize the treatment or the drift of pesticides to non-target water or water lying on or passing through the property of others without their consent, nor relieve the permittee/applicator of any legal necessity to obtain such consent before treatment, nor relieve them of responsibility for damages to riparian owners or others.
3. **Follow Product Label Directions** The applicator must follow all product label directions. A copy of the product labeling, including any applicable Special Local Need (SLN) or supplemental labeling, must be on site during all treatments. The applicator, and all others handling the product, must wear appropriate personal protective clothing as required by label directions.
4. **Possession of a Valid Commercial Pesticide Applicator Certification** The applicator must possess valid Commercial Pesticide Applicator Certification in Category 5A with the permit issuing agency. The certified applicator must be on site during all treatments. The use of individuals now referred to as "Pesticide Technician" and/or "Pesticide Apprentice" in current regulation, is permitted as described in Title 6 NYCRR Part 325.7. In addition, the applicator, if contracted to complete the treatment, must possess valid registration as a Pesticide Application Business with the Bureau of Pesticides Management.

5. **Special Authorization Required for Multiple Treatments** This permit is valid for only one treatment, or a split treatment, during the calendar year and the treatment may not be repeated without special authorization from the Department.
6. **State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.
7. **Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project. Spill recovery materials shall be maintained at the temporary pesticide storage area.
8. **No Interference with Navigation** There shall be no unreasonable interference with navigation by the work herein authorized.

VII. GENERAL CONDITIONS – APPLY TO ALL AUTHORIZED PERMITS:

1. **Facility Inspection by the Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. **Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.
3. **Applications for Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer is to be submitted to: NYS DEC, Bureau of Pesticides Management, 207 Genesee Street, Utica, NY 13501.
4. **Permit Modifications, Suspensions and Revocation by the Department** The Department reserves the right to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:
 - a. materially false or inaccurate statements in the permit application or supporting papers;
 - b. failure by the permittee to comply with any terms or conditions of the permit;
 - c. exceeding the scope of the project as described in the permit application;
 - d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
 - e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.
5. **Permit Transfer** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

VIII. NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suites, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands 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.

By acceptance of this permit, the permittee agrees that failure to comply with the permit terms and all New York State Department of Environmental Laws, Rules and Regulations subjects the permittee to prosecution under these laws, and will be deemed sufficient reason for denial of future permit applications.

Issuing Officer's Signature: _____
Robert Freese
Pesticide Control Specialist 2

Issue Date: June 17, 2020
Expiration Date: **December 31, 2020**

Distribution:

Permittee: Town of Ellery, Arden Johnson, ellerysupervisor@gmail.com
Applicator: Solitude Lake Management LLC, Glenn Sullivan, gsullivan@solitudelake.com

- Abby Snyder, NYS DEC Region 9 Regional Director
- Dave Denk, NYS DEC Region 9 Permit Administrator
- Maureen Brady, NYS DEC Region 9 Regional Attorney
- Kenneth Baginski, NYS DEC Region 9 Natural Resources Supervisor
- Charles Rosenburg, NYS DEC Region 9 BOH Supervisor
- Michael Clancy, NYS DEC Region 9 Fisheries Supervisor
- Justin Brewer, NYS DEC Region 9 Fisheries
- Christopher Wainwright, NYS DEC Pesticide Control Specialist 3
- William Boria, Chautauqua County DOH, Senior Water Resource Specialist
- Dave McCoy, Chautauqua County Department of Planning and Economic Development, Watershed Coordinator