

Sylvia Lake Milfoil Task Force Update (May 11, 2023)

Based upon the nearly 70 percent of survey respondents being in favor of using an herbicide to control milfoil, Sylvia Lake Association Officers and Board members (SLA) engaged the Town of Fowler for administrative and financial support for the submission of an application to the NYS DEC for permitted use of the herbicide ProcellaCor to control milfoil. The Township Board declined to be the signatory for the application but did offer financial assistance (\$5000.00) using a herbicide to address milfoil.

The SLA had asked the Township to consider being the signatory because, in addition to being the local governing authority, the Township is a riparian owner and could judiciously represent all the lake property (riparian) owners concerned with effectively, and in a fiscally responsible manner, address the spread of milfoil in our lake. In accordance with DEC Program Policy DSHM-PES-05-05, "Aquatic Pesticide Permit Program," the applicant must be a riparian owner but may represent other riparian owners with a similar interest in managing an invasive species via a NYS DEC-approved herbicide.

A survey of the lake in 2022 identified that milfoil infestations were evident in varying degrees along most of the shallow shoreline areas (see survey posted on the website). At the observed encroachment rate, dense milfoil clusters such as the areas on the South end of the lake and in front of the Sipher's property on the East shore will likely intensify and multiply if left unchecked.

On February 25, 2023, the SLA Officers and Directors were copied a letter from an attorney representing South Shore Lane owners who are opposed to using an herbicide to control milfoil in Sylvia Lake. The letter states that litigation would be initiated for any application by any applicant, to use an herbicide in Sylvia Lake.

The SLA believes that any Sylvia Lake property owner has the right to oppose using herbicides in the lake as we are all riparian owners. However, the SLA has conducted extensive reviews regarding the successful use of ProcellaCor in other lakes in the state and carefully considered all other available milfoil control and mitigation options. We believe the use of ProcellaCor provides the most efficient, effective, and cost-beneficial option, as opposed to the exorbitant and recurring cost and futility of manual or mechanical harvesting.

The results of our voluntary survey show that the majority of the lake property owners favor this proposed approach, and the SLA Officers and Directors have been acting on behalf of that majority view. That said, NYS law and DEC Program Policy provide the framework for any riparian owner to apply for an aquatic herbicide use application permit to address an invasive species threat. Assuming the riparian owner properly completes the application and pays the associated application fees, the approval and granting of the permit rests with the NYS DEC. The DEC's detailed review and approval process stipulates that any stated opposition to the granting of the permit must be considered and appropriately dispositioned. Challenges to the granting of herbicide use permits must be submitted in writing.

Based upon the lengthy application review process and necessary extensive coordination between the chosen contractor and NYS DEC staffs, the SLA postponed their efforts to obtain a permit for 2023, but intends to support the application for an herbicide permit in 2024. The SLA proposes to use Solitude Lake Management, Inc. a licensed contractor with experience using ProcellaCor throughout New York State, New England and the Mid-West. The contractor's fee for this service is \$1500.00, but does not guarantee NYS DEC approval. With the Town of Fowler declining to be a signatory, the SLA had hoped to have one

of the South Shore Lane property owners be a signatory, because their waterfront is significantly impacted by an ever-expanding infestation of milfoil that has been impeding their water access and recreational use for years. Over the past several years, fellow lake property owners have unselfishly volunteered their time and energy to manually harvest milfoil and move cumbersome Benthic mats to help maintain a reasonably clear waterway for these South Shore Lane owners.

However, based upon the letter from their attorney earlier this year, their signature as an applicant and support for using an herbicide will not be forthcoming. The SLA will continue its efforts to secure another volunteer riparian owner or group of owners willing to be permit applicants. The SLA intends to pay for the cost of the DEC permit application and hopes to have sufficient funds available in 2024 to cover the cost of the ProcellaCor deployment by the licensed contractor. Costs of deployment is based upon the number of surface water acres treated with the herbicide. Targeted areas have been identified and prioritized but will not be finalized until funding has been obtained and the application submitted.

The use of aquatic herbicides is strictly controlled by the NYS DEC as detailed in NYS DEC Program Policy DSHM-PES-05-05. Because Sylvia Lake is less than 500 acres and has multiple riparian owners, the Program Policy and application (Form AQV 1/2022) stipulate that all riparian owners and users shall be notified in writing of the application and afforded the opportunity to support or oppose the herbicide use permit. Objections to the issuance of the permit must be submitted in writing and may be adjudicated by the DEC staff or, if warranted, by an Administrative Law Judge.

The DEC states that the application process takes approximately three months to process, assuming the applicant and designated contractor have adequately prepared and provided the necessary supported documentation. A copy of the Program Policy and the Application Form can be read (and downloaded) via the NYS DEC website homepage (dec.ny.gov) under Regulations and Enforcement/Guidance and Policy Documents.

Should the SLA successfully gain a permit from the NYS DEC to use ProcellaCor, we expect Solitude Mgmt Inc. to apply the herbicide in early June 2024. We will keep the lake community posted on our progress via periodic updates to the website.

Any lake property owner (riparian owner) or owners willing to volunteer to be an applicant for the permit, please contact any of the SLA Officers or Directors.