

DEP File No. 90-535 Amended Special Conditions
Control of Aquatic Nuisance Vegetation in Foster's Pond

A. Special Conditions Sections 12.1 through 12.15, as incorporated in the Order of Conditions for this project originally issued on May 5, 1992, and extended through January 4, 2010, shall remain in full force and effect until the expiration date set forth in Special Condition 12.36, below.

B. The following additional Special Conditions shall apply to the herein-approved supplemental components of an integrated management plan to control nuisance vegetation in Foster's Pond:

12.16 This Order approves (a) the application of Sonar (fluridone), as referenced in Special Condition 12.23, in an effort to control *Cabomba caroliniana* ("fanwort"); (b) the application of Reward (diquat) in an effort to control *Najas minor* ("spiny naiad"); and (c) the utilization of annual winter drawdowns not to exceed 18".

12.17 The application of Sonar and Reward and the utilization of winter drawdowns shall be undertaken in a manner consistent with the Final Generic Environmental Impact Report on *Eutrophication and Aquatic Plant Management in Massachusetts* (EOEA, 2004).

12.18 The Foster's Pond Corporation ("FPC") is hereby designated and responsible for the implementation of the supplemental components of the integrated management plan, in the manner set forth herein.

12.19 The FPC's designated contractor for the application of Sonar and/or Reward shall obtain from the DEP Division of Watershed Management, Bureau of Resource Protection, a valid BRP WM 04 permit to apply Sonar and/or Reward to Foster's Pond. A copy of such BRP WM 04 permit shall be submitted to the Conservation Commission prior to initiating Sonar or Reward herbicide treatment.

12.20 The FPC's designated contractor for the application of Sonar or Reward pursuant to this Order shall be an applicator licensed in the aquatic weed category by the Massachusetts Department of Agricultural Resources, Pesticide Bureau. Applications shall follow all product label directions.

12.21 In the event of any fish kill within Foster's Pond, the FPC and licensed applicator shall immediately cease and desist and contact the DEP's Emergency Response section at 978-682-0416; the Department of Fish and Game's Westborough office at (508) 792-7270 (during normal working hours); or the Boston 24-hour response line at 1-800-632-8075.

12.22 Refueling, servicing, and repair of motorized watercraft and service vehicles associated with lake surveys and treatments shall take place at least 100 feet from the boundary of the resource area. Equipment operators shall be prepared immediately to respond to, and contain, accidental releases of fuel, motor oil, and/or aquatic herbicides. On-site absorbent materials shall be readily available in sufficient quantity and maintained for use in containing accidental spills. If an accidental release of fuel, motor oil, lubricating oils, etc. occurs, the issuing authority shall be immediately notified, and contaminated areas shall be treated according to guidelines established by DEP's Bureau of Waste Site Cleanup (BWSC). Staging and long-term storage of aquatic herbicides and/or algacides shall take place outside the jurisdiction of the Department and the Conservation Commission.

12.23 The Sonar herbicide treatment program shall be performed in accordance with the "*Aquatic Plant Survey and Nuisance Aquatic Plant Management Plan/Foster's Pond*" (2004) prepared for the

FPC by Aquatic Control Technology, Inc., which is incorporated herein by reference.

12.24 Prior to the initial Sonar herbicide treatment, the designated applicator shall attend a meeting of the Andover Board of Health and Conservation Commission for the purpose of reviewing the treatment schedule, application procedures, and temporary water use restrictions.

12.25 Following the coordination meeting referenced in Special Condition 12.24 above and prior to the initial Sonar herbicide treatment, the FPC shall mail a written notice to all abutters, with a copy to the Commission, containing the treatment schedule and any temporary water use restrictions.

12.26 At the time of any Sonar or Reward herbicide treatment, shoreline areas of the pond must be posted, particularly at beaches and areas of common access, with signs warning the general public of any water use restrictions stated on the chemical label. These signs shall clearly state that the chemical treatment is being conducted pursuant to a license issued by the Department of Environmental Protection.

12.27 On or before December 31 of any year during which Sonar or Reward herbicide treatment has been applied pursuant to this Order, the FPC's designated applicator shall file with the Commission a report which shall include post-treatment plant survey data; results of Sonar or Reward testing/monitoring during the treatment process; effectiveness of the treatment program on the targeted plant species; and any observations or reports of adverse effects of treatment on fish, wildlife, or other nontarget organisms.

12.28 No Sonar or Reward herbicide treatment shall be applied unless the Conservation Commission shall, by majority vote, have approved in advance the schedule and program for Sonar or Reward herbicide treatment for that year.

12.29 The FPC shall notify in writing the Department of Fish & Game, Division of Fisheries and Wildlife ("MassWildlife") and the Conservation Commission prior to commencing annual winter drawdowns and any drawdown in connection with Sonar herbicide treatment. All drawdowns shall be subject to such additional conditions and requirements as may be imposed by MassWildlife.

12.30 During annual winter drawdowns, water levels shall be reduced gradually over a two- to three-week period or longer (typically, between November 1 and December 1) to allow wildlife to move to deeper water, locate alternate lodge sites, or relocate food caches prior to ice formation and substrate freezing, and to minimize impacts to fish spawning and other non-target organisms that may have water level requirements for reproduction. Annual winter drawdowns shall not exceed 18", measured from the bottom of the permanent spillway of the Foster's Pond dam.

12.31 Subject to Special Condition 12.29, above, the FPC may draw down the level of the pond by not more than 12" (or, subject to the approval of MassWildlife, may extend the duration of a winter drawdown) for the purpose of minimizing the escape of Sonar from the pond and the introduction of Sonar into downstream wetlands, during a period of treatment.

12.32 [Deleted.]

12.33 The FPC shall maintain the dam, shall keep it clear of woody brush, and shall cooperate with the Andover Department of Public Works in keeping the Rattlesnake Hill Road outlet culverts clear of debris as necessary.

12.34 The FPC shall notify the Conservation Commission, in writing, 48 hours before the commencement of any Sonar or Reward application or any drawdown and shall advise the Conservation Commission of the name(s) and telephone number(s) of the person(s) responsible for site compliance with this Order. This list shall be resubmitted if any changes are made to it.

12.35 As a component of the integrated management program to control nuisance vegetation, the FPC shall maintain on-going efforts to educate pond abutters, other residents in the area of the pond, and the general public on watershed management practices to reduce the introduction of nutrients to the pond.

12.36 EXPIRATION DATE. Pursuant to General Conditions #4(b), the Commission finds that special circumstances warrant an extended period for undertaking the work authorized herein. This Amended Order of Conditions authorizes an ongoing, long-term integrated management plan to control aquatic nuisance vegetation, in particular the control of an invasive species including fanwort and spiny naiad. Accordingly, this Order of Conditions, as amended, shall expire on January 4, 2013.