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By Charlie Breitrose

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## State DEP to hold hearing on Lake Cochituate herbicide use

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The fate of a plan to use herbicides on Lake Cochituate to kill invasive milfoil plants will be discussed at a preliminary hearing at the state Department of Environmental Protection regional headquarters in Wilmington today.

Town officials and residents opposed to using chemicals in the lake, and officials from the Department of Conservation and Recreation which applied to use the chemicals, will meet in front of a DEP hearing officer to discuss potential witnesses and the possibility of resolving the matter without having a formal hearing, said DEP spokesman Joe Ferson.

Natick Conservation Agent Bob Bois said he hopes to see a quick end to the appeal.

"We are hoping to reach a settlement, and we are hoping not to go through projected and long process," Bois said. "One of the things I think they may offer is dispute resolution to see if we can settle amongst ourselves."

Should the groups fail to come up with an agreement, a formal hearing has been scheduled for Dec. 15, Ferson said.

Natick's Conservation Commission appealed the DEP's decision in August, which included a Superseding Order of Conditions that put a new set of rules on using herbicides.

Commissioners objected to the removal of conditions they included in their decision, including: requiring DCR officials to return to the commission annually for approval to use the herbicide, testing water in the lake and town wells to see if any chemicals remain, and a requirement to post signs around the lake warning of the use of chemicals.

The ruling came after the citizen group Protect Our Water Resources appealed the Conservation Commission's vote to allow the DCR to use the herbicide diquat on five acres of the lake around the public beach and boat ramp.

The group also appealed the DEP ruling, because it allowed the use of chemicals. The residents oppose using the herbicide because the town's drinking wells sit near the area where the treatment would occur.

DEP officials combined the two appeals.

Martin Levin, the attorney representing the citizens group, said he hopes to get the chance to present some of the issues his clients have about using herbicides.

"I expect all sides will have an opportunity to air their views," Levin said.

This will actually be the second time the issue of using chemicals in Lake Cochituate has reached this level of appeal, Levin said.

"The first time (in 2003) it did get to this level," Levin said. "(The procedure) was just short of hearing on merits of the case when the DCR withdrew the notice of intent."

In 2006, the commission denied another proposal to use a different chemical, a decision that DEP officials upheld after the DCR appealed, Levin said.

"If it goes to a hearing on the merits, that certainly will have a clear final decision from the DEP," Levin said.

Another factor could soon become part of the discussion, Levin said.

"There is evolving law on the federal side," Levin said. "A recent case on the use of herbicide ruled that it would trigger the requirements of the federal Clean Water Act."

Herbicides would be treated as pollutants, and under the ruling by the California Federal Circuit Court those seeking to use them in areas covered by the Clean Water Act would need to apply for a waiver.

"That's out there, but the order of the court has not gone into effect yet in Massachusetts," Levin said. "By the time (DCR officials) get to the point of applying the order, they may have to be worrying about that."

*(Charlie Breitrose can be reached at 508-626-3964 or cbreitro@cnc.com.)*

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