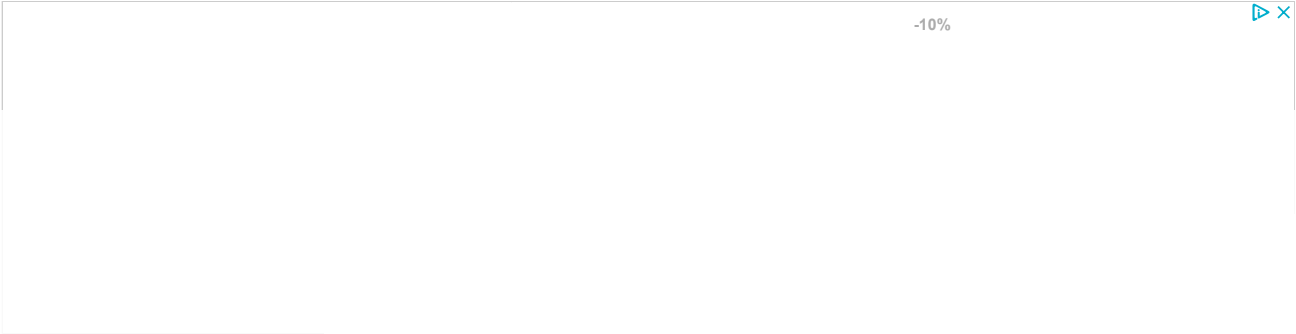


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## Court hears case for and against herbicide on Lake George

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Protestors against the use of ProcellaCOR EC in Lake George, N.Y. stand outside Warren County Court on Friday morning. A judge heard arguments on Friday for and against the use of the herbicide, following an injunction against the Adirondack Park Agency last year. Last month, the APA applied to use the herbicide in 2023, targeting Eurasian Watermilfoil.

by: [Jay Petrequin](#)

Posted: Feb 17, 2023 / 04:24 PM EST

Updated: Feb 17, 2023 / 04:25 PM EST

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LAKE GEORGE, N.Y. (NEWS10) – On Friday morning, a small group of area residents stood outside Warren County Court holding signs with similar messages. One reported that “4,596 petitioners SAY NO to ProcellaCOR.” Another asks, “Is ProcellaCOR the new DDT?” And the people behind those messages?

“The signs speak for themselves,” said one.

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On Friday, the Adirondack Park Association (APA), Lake George Park Commission (LGPC), Lake George Association (LGA) and other relevant groups were represented in county court to argue their sides of whether herbicide [ProcellaCOR EC should be used](#) on two bays in Lake George. Blairs Bay and Sheep Meadow Bay, both located in the town of Hague, are both home to a population of invasive Eurasian watermilfoil. Last



George residents and other invested parties from the public.

The APA and LGPC were represented by Assistant Attorney General Josh Tallent, who argued for the herbicide’s impact falling within state and national safety regulations, and against the petition’s choice of target. The petitioners – including the LGA, Lake George Waterkeeper Chris Navitsky, the town of Hague and lakeside property owner Helena G. Rice – were represented by environmental lawyer Thomas West argued for the risks posed to Lake George’s wetlands, species and residents – and called into question the validity of the state’s argument entirely.

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**The wetlands at hand**

The petitioners had two choices when deciding how to take legal action against ProcellaCOR. The groups chose to take on the rules of the APA’s wetland permits, rather than the DEC permits allowing the herbicide’s use. Tallent said that, in order to make a proper case, tangible damages would have to be shown and proved in the wetlands – impact or injury related to the wetland themselves or their impact on human life. Dissatisfaction from LGA members living in the Lake George basin doesn’t fit the bill. An argument made regarding the herbicide’s impact on drinking water would fall under the jurisdiction of the DEC.

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“Presumption of injury isn’t enough,” said Tallent. “They didn’t sue to challenge the DEC permits. Those claims do not apply to the permits challenged.”

For the LGA, their allies, and their legal defense, the wetlands are at the heart of everything. West cited the association’s direct involvement in the control of watermilfoil. The LGA provides funding for the LGPC’s current milfoil management program, which involves employees harvesting invasive growths by hand. Additionally, petitioner Rice lives and owns property within what is considered the “zone of interest.”

The invocation of the wetlands was also made relevant to the town of Hague, where both bays reside. Hague has been a vocal opponent of ProcellaCOR’s usage, going so far as to [pass a resolution](#) opposing the practice by unanimous town board vote. The state has suggested that Hague would not have grounds to sue if the herbicide were used. According to West, the wetlands act in question demonstrates otherwise.

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Further points were raised regarding what lives in Blairs Bay and Sheeps Meadow Bay. Both are home to wildlife big and small, from fish down to plankton. West pointed out that the APA acknowledged some amount of impact on those species – including a protected species.

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The state argues that any footprint would be effectively free of danger. ProcellaCOR has been used for similar control projects at water bodies such as Minerva Lake, where the chemical was found to be undetectable within the water three days after application. Petitioners also raised concerns about the resulting dead milfoil plants serving as food for a bumper crop of new algal blooms, which can cause potentially toxic harm to the lake's ecology. Tallent said that the herbicide would be applied early in the season before those plants have a chance to grow far.

### **‘What’s the rush?’**

By some metrics – including the petitioners’ – the application process to get ProcellaCOR in use in 2022 happened fast. [The Lake George Park Commission approved the herbicide’s use](#) in April of last year, following [Adirondack Park Agency OK](#) earlier that same month.

“What’s the compelling reason here? What’s the rush to put a chemical in Lake George without an adjudicatory hearing,” West asked.

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That type of hearing would have created an opportunity for the public, and groups like the LGA, to weigh in on the science and safety of the herbicide. Muller asked why the public was never given a proper forum to present their contradictory evidence to the state organizations.

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“This is not about fact-finding. This is an agency proceeding,” Tallent said. “The agency is the expert, and it is their job to decide whether the project meets regulatory proceedings.”

That stance – that the state groups alone carry the relevant expertise – emerged again during Friday’s hearing, in response to a central talking point of the LGA. The association works with IBM and Rensselaer Polytechnic Institute on the [Jefferson Project](#), which maps out the state of local weather and deepwater conditions, as well as the state of tributaries running into the lake.

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herbicide would be applied at a maximum of 8 parts per billion along both bays, which is already far below what the state recognizes as a hazard level for other wildlife. The only other plant that would be impacted would be non-invasive milfoil, but cases on other lakes have seen the native varieties survive the process and bounce back.

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The current hand-harvesting approach has been in effect on Lake George for decades, and according to the LGA, it works. Tallent characterized the process as a struggle, describing places where plucked milfoil has left gaps inviting regrowth, at rates between 20% and 60%. That means more LGPC resources get spent on reharvesting. The LGA says that harvesting costs have risen, a fact used to justify the usage of ProcellaCOR – but that the hike is only due to the efficacy of the process so far, meaning that employees are having to work harder to find what’s left.

### Who’s hearing who?

The necessity of an adjudicatory hearing wasn’t the only way that public comment became a point of contention on Friday. Judge Muller brought up the topic of a collection of emails sent to the state by members of the public, speaking against the use of ProcellaCOR. These emails were all found in the spam folders of relevant state email accounts, leaving the judge to ask whether they were ever brought to the attention of the APA board.

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Tallent said that those comments were put in that folder inadvertently, but repeatedly stated his certainty that each one submitted prior to the April 14, 2022 deadline had made it to the board. That included an email from the LGA containing much of the contradictory science named throughout the meeting.

Tallent described that LGA information as a “last-minute diatribe of 11th-hour findings.” Muller adopted that phrase, quickly and pointedly, asking if that “last-minute diatribe” ever made it to the board. Tallent first said it most likely hadn’t made it to those eyes, but then that it had – with the understanding that the state was not taking those findings into account.

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Near the end of Friday’s arguments, Muller asked why the Adirondack Park Agency solicits comments at all. Tallent said that, quite simply, there is value in knowing what people think. He also remarked that, of over 300 emails received relating to ProcellaCOR, at least 225 were form letters sent through an LGA webpage seeking community support against the chemical’s usage. When asked why that mattered, he said that many clicked send without highlighting any specific issues.

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### In search of alternatives

West’s ultimate argument against the state’s proposed usage of ProcellaCOR was that, under wetland regulations, solutions such as herbicide should only be employed as a last result. In a case like Lake George, where hand-harvesting has been employed for years, the LGA could find little evidence that an “only other option” needed to be found, let alone had been isolated. According to the state, a regulated herbicide is the only way to find an alternative, and lessen the amount of resources placed in the pair of bays.

Meanwhile, the Lake George Park Commission is already in the process of applying for a permit for 2023 – effectively starting the whole conversation all over again. A letter to Hague-area property owners was sent out in the weeks prior to the hearing, declaring that an application had been filed to have herbicide considered once again – [much to the chagrin of the LGA](#).

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Muller ended Friday’s arguments without an indication of exactly when a final decision could be made on whether to cast a proper injunction on the use of the herbicide on Lake George. He did, however, give a nod to the current state of Lake George during the [ongoing mild winter](#).

“Tell your clients I will issue a decision before Lake George freezes,” he said.

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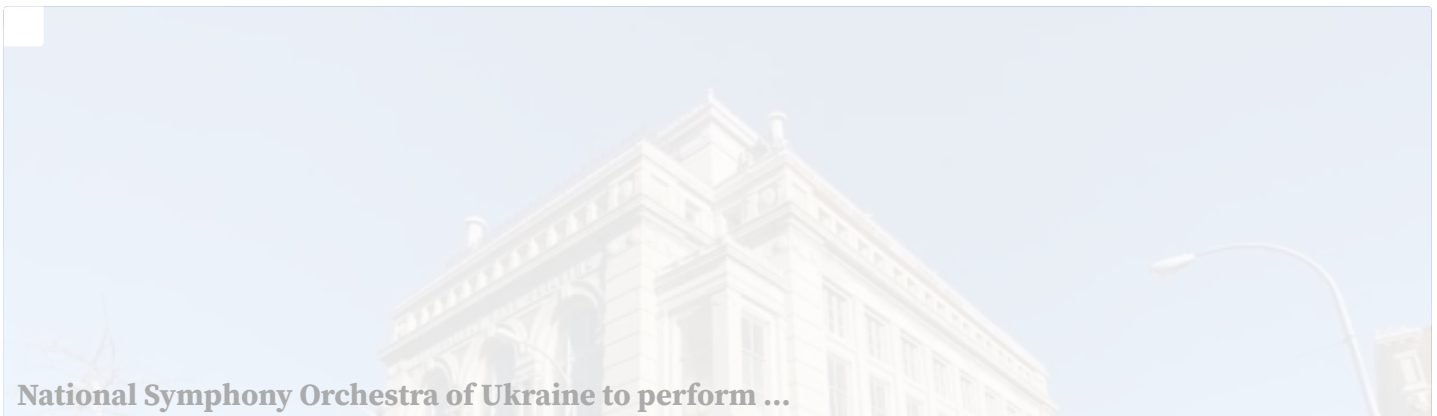
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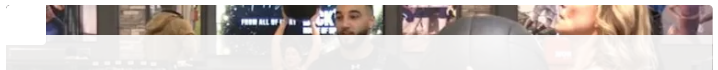
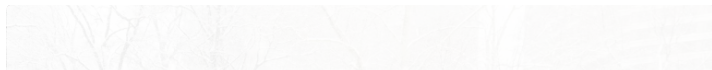
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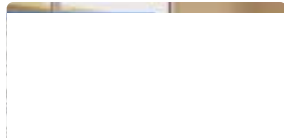
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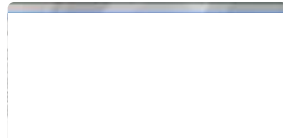
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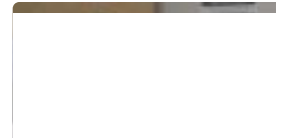
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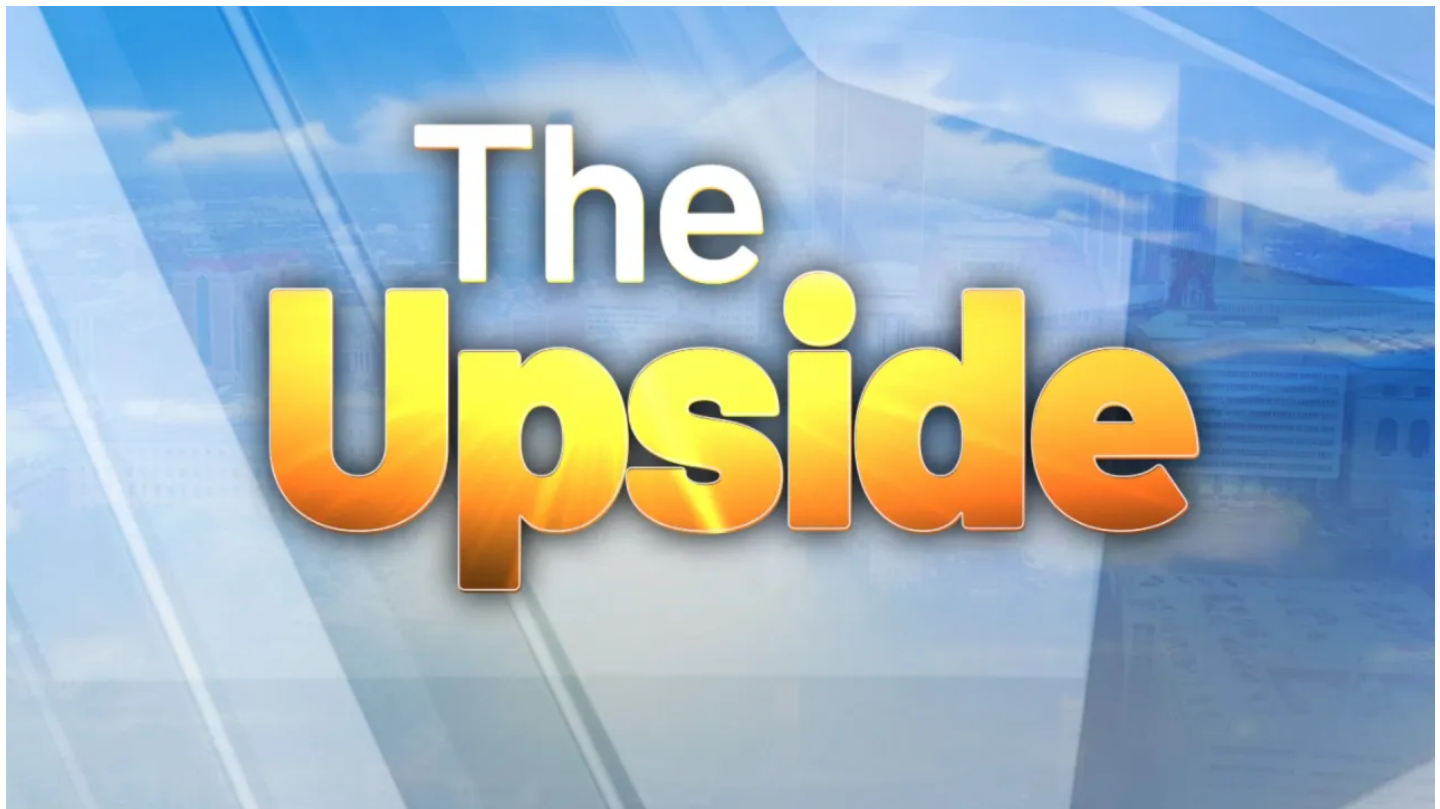
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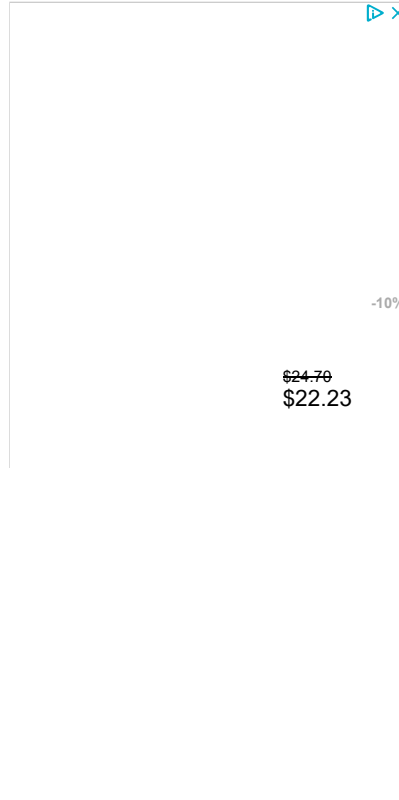
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