

# PRO'S & CON'S OF PROCELLACOR VS. MILFOIL IN LAKE GEORGE HAS NEW DAY IN COURT

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By Cathy DeDe, Chronicle Managing Editor

The two factions advocating and opposing application of the herbicide ProcellaCOR to address invasive Eurasian Milfoil at two locations on Lake George were back in court last Friday.

NYS Supreme Court Judge Robert Muller heard arguments from lawyers representing the Adirondack Park Agency and Lake George Park Commission for, versus the Lake George Association, LGA Waterkeeper, Town of Hague and others against the herbicide.

The hour-long hearing — what Judge Muller termed an exploration of “Where do we go from here?” — ended with his joking, “I will issue a decision before Lake George freezes over.”

Last year, the APA approved the Park Commission’s application to apply ProcellaCor on two targeted locations, both in the Town of Hague. It led to a court case and temporary injunction prohibiting use of the herbicide.

The Park Commission is re-applying for permits to use ProcellaCOR this spring. The Lake George Association is seeking a permanent injunction to stop them, or at least slow the process for at least another season by forcing an APA hearing.

Friday’s central question was: Should the APA have made the decision it did allowing the Park Commission to use ProcellaCOR, or should the decision have gone to a public hearing, to be weighed in a judicial setting on the merits of both sides’ arguments?

## **LGA: Too fast, not the right thing**

Thomas West, representing the LGA, questioned the speed at which the APA rendered its decision last year. “What’s the compelling reason? What’s the rush to put a chemical in Lake George for the first time ever?”

Mr. West questioned whether such an intervention was truly the last resort at the noted locations, versus hand-harvesting as is currently done.

He asked why the APA disregarded the LGA's Jefferson Project mapping potential impact and spread of the chemical beyond the targeted location, as well as the impact of the herbicide on other non-target species at the site.

Mr. West said emailed letters of public comment — including some making substantial scientific arguments — did not reach APA board members during the decision making process, either diverted to “spam” or read by staff but not shared.

### **APA: ‘The science is clear’**

Representing the APA and Lake George Park Commission was Assistant NYS Attorney General Joshua Tallent.

He argued a hearing wasn't called for, that the APA based its decision on scientific information. “Why hold a hearing when the record is so clear?” he said.

Mr. Tallent said the APA disregarded the Jefferson Project mapping because the maps did not take into account the dilution of a fast-degrading chemical in the water. Rather, the APA relied on Department of Environmental Conservation maps that showed any chemical drift beyond the target site would be “negligible.”

Mr. Tallent said hand-harvesting milfoil over some 20 years has equal if not more impact on other plant life at the lake bottom, and that applying the herbicide early in the growing season, as the LGPC plans, also limits its impact.

As to the question of withheld emails, Mr. Tallent said, “Every comment made its way to the (APA) board.” He said, “Absolutely, as a representative of the court, nothing was withheld. There is no truth to the conspiracy theory that staff diverted information from the Board.”

### **Reading Judge Muller**

If any clue is to be gleaned as to Judge Muller's decision, it might be from his comments and questions for clarification.

The attorneys argued technical issues of “mootness” and “standing,” but those didn't seem to sway the judge.

From Mr. West, Judge Muller requested additional description of “the kinds of expert witnesses” that might be called to testify in a public hearing.

Judge Muller, apparently impressed by the LGA argument, turned to Mr. Tallent and said, “Well, sir, you have your hands full.” The judge told him, “If you’re aware of contradictory science, why would you not want a hearing?”

“I think I’ve had it on the science part,” the judge later quipped, as Mr. Tallent defended the APA decision-making.

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