

**VIRGINIA POLLUTION ABATEMENT GENERAL PERMIT &
VIRGINIA POLLUTION ABATEMENT PERMIT REGULATION
AMENDMENTS RELATED TO ANIMAL FEEDING OPERATIONS
TECHNICAL ADVISORY COMMITTEE (TAC)**

**DRAFT MEETING NOTES
TAC MEETING – THURSDAY, OCTOBER 25, 2012
DEQ PIEDMONT REGIONAL OFFICE TRAINING ROOM**

Meeting Attendees

| <i>TAC MEMBERS</i> | <i>TECHNICAL SUPPORT</i> | <i>SUPPORT STAFF</i> |
|-------------------------------------------|-----------------------------------------|------------------------|
| Bill Bailey - Swine Producer | Robert Long - DCR | Bill Norris - DEQ |
| Hobey Bauhan - VA Poultry Federation | Darrell Marshall - VDACS | Neil Zahradka - DEQ |
| Betsy Bowles - DEQ | <i>INTERESTED PARTIES</i> | <i>OTHER DEQ STAFF</i> |
| Jamie Brunkow - James River Association | Tony Banks - VA Farm Bureau | James Golden |
| Jason Carter - VA Cattleman's Association | John Fowler - Chesapeake Bay Foundation | Gary Flory |
| Katie Frazier - VA Agribusiness Council | Kathleen VanDerHyde - Dairy Producer | Seth Mullins |
| Ann Jennings - Chesapeake Bay Foundation | | Bob Peer |
| Jeff Kelble - Shenandoah River Keeper | | Julia Wellman |
| John Parker - VA Pork Industry Board | | |
| Eric Paulson - VA Dairymen's Association | | |
| Wilmer Stoneman - VA Farm Bureau | | |
| Roy VanDerHyde - Dairy Producer | | |
| | | |

NOTE: All members of the TAC were in attendance.

1. Welcome & Introductions (Bill Norris):

Bill Norris, Regulatory Analyst with the DEQ Office of Regulatory Affairs welcomed all of the meeting participants. He asked for introductions of all of the members of the VPA General Permit & VPA Permit Regulation Amendments Related to Animal Feeding Operations Technical Advisory Committee and other meeting attendees. He asked for all attendees to sign the sign-in sheet so that we could have a record of attendance.

He noted that there had been some confusion as to the actual start time for the meeting. He asked the group for their recommendation for start times for the remaining meetings. The group decided that the start time for the balance of the meetings should be 9:30. Bill Norris noted that 9:30 would be listed as the official start time with sign-in for the meetings starting at 9:15 A.M. so that the meeting could start promptly at 9:30 A.M.

ACTION ITEM: Staff will make sure that the officially posted start time for the remaining meetings of the TAC is listed as 9:30 A.M., with sign-in for the meeting at 9:15 A.M.

2. Logistics and Meeting Guidelines and Protocols (Bill Norris):

Bill Norris reviewed the logistics and protocols for the Technical Advisory Committee (TAC) meetings. The following items were briefly reviewed:

- The purpose of the action is to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) General Permit (GP) Regulation for Animal Feeding Operations (AFOs) and to amend the VPA Permit Regulation in order to facilitate consistency with the other regulations which govern the pollutant management activities at AFOs.
- We have a 12 member TAC which will be involved in these joint regulatory actions. In addition, both VDACS and DCR will be providing technical support to the TAC. Betsy Bowles, DEQ's Animal Feeding Operations Program Coordinator will be serving as a member of the committee. Bill Norris and Neil Zahradka will be providing support throughout the process.
- All of the meetings of the TAC are public meetings and are publically noticed.
- Notes for each of the TAC meetings will be developed and distributed to the group for review and comment.
- Generally, DEQ staff responsible for the program area will coordinate the TAC's activities. Betsy Bowles, DEQ's Animal Feeding Operations Program Coordinator, will serve as a member of the TAC and will provide background materials and information on needed amendments to the group. Neil Zahradka will be assisting in the coordination and facilitation of the meetings. I will be assisting the technical program staff during this process.
- The two-fold function of the TAC will be to develop recommended amendments to the VPA General Permit Regulation for AFOs and the amendment of the VPA Permit Regulation related to AFOs.
- The role of the TAC is advisory only.
- The primary responsibility of the TAC is to collaboratively contribute to the development of any needed amendments to the VPA GP for AFOs and the development of amendments related to AFOs to the VPA Permit Regulation that are in the best interests of the Commonwealth as a whole.
- The goal is to reach a consensus on proposed regulatory language for these amendments. Consensus is defined as a willingness of each member of the TAC to be able to say that he or she "can live with the decisions reached and recommendations made and will not actively work against them outside of the process."
- Because TAC meetings are public meetings, any member of the public may attend and observe the proceedings. Those persons not on the TAC are encouraged to work with and through the TAC members that have a common interest to ensure that their concerns are heard.
- We will be using an "Open Chair" approach to provide an opportunity for those persons not on the TAC to come to the table to offer a brief comment or to raise an issue pertinent to the discussions at the time.

Bill Norris briefly went through some guidelines for the meeting:

- Please put cell phones on vibrate so that the discussions are not disrupted.
- Listen with an open mind.
- Speak one at a time - interruptions and side-discussions can be distracting and disruptive.
- Be concise and try to speak only once on a particular issue.

He also noted the following:

- Please make sure that you sign in on the sheets provided. You only need to sign in on the sheets in the meeting room - they will be copied and shared with the DEQ PRO program staff for their records.
- We have a lot to cover today, so there are no officially planned breaks, but please feel free to take a break as needed.
- If conditions warrant, we may also call a break at some point during the day to provide an opportunity for the conclusion of any side-discussions.
- Betsy Bowles will provide information on the regulatory actions and will lead the discussions on the "strawman" documents that were distributed to the group.
- We will try to break for lunch around 11:30 if possible. We hope to be able to resume the discussions then around 12:30.
- There will be a public participation opportunity towards the end of the meeting - the agenda shows a 3:45 - 4:00 time slot.
- We hope to finish up with the day's discussions around 4:00.

3. Summary of Regulatory Actions (Betsy Bowles):

Betsy Bowles provided a brief summary of the regulatory actions related to AFOs. She noted the following:

- The main focus of for this action is the reissuance of the General Permit which is a 10 year permit, so that we can still allow coverage under the permit.
- At the same time the permit is reviewed to make corrections of any inconsistencies with other regulatory actions that have taken place during the 10 year permit window.
- We are also looking at possible regulatory language revisions to address transfer of waste as well as looking at possible additional provisions for new treatment technologies. For example, for food sources for a digester, what new requirements would be needed?
- The second NOIRA was for revisions to the main VPA Permit Regulation. This is the main regulation that DEQ uses to issue Individual Permits. It has been awhile since we have reviewed and revised the regulation components for animal feeding operations. The approach is to take the same actions that are being proposed in the GP Regulation and make sure that consistent changes are made in the Permit Regulation relative to Animal Feeding Operations.
- There were two comments received during the two comment periods related to these regulatory actions. Both of those comments were for consideration of membership on the Technical Advisory Committee. One of those was from the Chesapeake Bay Foundation and the other was from the James River Association. Both organizations are represented on the TAC.

4. Review and Discussion of Proposed Regulatory Changes – Amend and Reissue AFO General Permit - Project 3285 (Betsy Bowles & TAC):

Betsy Bowles reviewed the proposed edits and revisions to the Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations. She noted the following changes:

9VAC25-192-10. Definitions: "Agricultural storm water discharge" means ~~storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied~~ a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; ~~a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation is an agricultural storm water discharge.~~

Discussions included the following:

- This definition has been revised to make it consistent with the definition in the Poultry Regulations.
- Clarifies the definition.
- In the federal regulation the definition is actually in the text of the regulation and not separated out as a definition. This change is being proposed as a clarification to the federal definition.
- The same changes were made to the poultry regulation in 2010.
- Was there a court case related to this? *Staff Response: Not related to the agricultural stormwater exemption.*
- The agricultural stormwater definition is an important component of the regulation in that it specifies which runoff is exempt from being considered a discharge. If you follow an NMP then the stormwater that leaves the field is exempt. The only thing that gives you an exemption is having and following a Nutrient Management Plan.
- This definition does not include silage leachate or parlor discharge water as agricultural stormwater so they would not be eligible for an exemption.
- The proposed modifications do not substantively change the definition - it just moves some of the wording around as a way to clarify it.
- *Staff Comment: Regarding the changes that we are proposing in these discussion drafts - normally when we start a TAC process we don't hand out amendments that we are already thinking about - the reason that these changes are being presented to you is that they are consistent with changes that have been made to other regulations that have gone through similar public participation process. These are being suggested as a way to bring some consistency to the regulations. That doesn't mean we can't have discussions about them. We are very early in the process so any suggestions are welcome. Please feel free to look at the other documents being referenced.*
- It was suggested that there might have been a power point presentation that clarified what was included and what was not included in the definition of "agricultural storm water discharge" that might be helpful - related to the court case.
- *Staff Comment: We do need to make it clear that we are looking at changes being proposed to the VPA program not the federal discharge program. Facilities under this category are essentially operating as "no-discharge" operations, with no question as to whether there is a discharge in the production area. This is the state program not the federal one.*

- It was noted that there is potential litigation on the federal level that may impact how the federal program is operated as well as previous litigation that has resulted in changes to the federal program. *Staff Response: If there are changes at the federal level related to definitions, we can undertake a "final-exempt" action to incorporate those changes into the Virginia program.*
- It was noted that a number of the changes at the federal level have focused on the definition of a "discharge".
- It was suggested that it might be useful for the group to be aware of what pieces of litigation and decisions at the federal level that are ongoing and what areas of Virginia's regulations that might be impacted by any resulting changes. *Staff Response: Most of the litigation is focused on "who has the duty to apply" for a federal permit rather than a state permit. Our goal is to have livestock and poultry facilities operating so that there is "no-discharge" and to ensure that they can continue to operate under a state program instead of having to seek a federal permit.*

ACTION ITEM: Staff will develop a summary of the current litigation and decisions at the federal level for consideration by the TAC.

- One of the cases challenges EPA's order that an operation is discharging from the production area.
- There also is some discussion about whether it is an "actual" or a "planned discharge" or whether it is an "actual discharge" or has the "intent to discharge". The court has struck the language "proposes to discharge". What is left is an "actual discharge".
- It was suggested that it might be useful for the group to get some clarification as to how this program fits with the federal program. *Staff Response: This is a state program. Part of the reason we need a definition of "agricultural stormwater" is that the federal language addresses more than just "agricultural stormwater." Discharges from the production area are not included in the exemption, and must be covered by a federal permit. The "agricultural stormwater" exemption pertains to the VPA regulation in that it specifies which discharges are allowed, i.e. discharges from land application fields where a nutrient management plan has been followed.*
- Where else is this term referenced in the regulation? *Staff Response: The term "agricultural stormwater discharge" is used in 9VAC25-192-50 A 2. This section identifies who is authorized to manage pollutants and under what requirements.*
- *Staff Comment: This VPA General Permit has been around since the 90's. This is what Virginia used as a no discharge program for operations that had 300 animal units or greater and liquid waste. The changes that came about when the federal rule changed in 2003 was that the EPA said that if you have a discharge (there were some permutations as to whether you had a discharge or a proposed discharge or planned a discharge) even if it is the 25 year - 24 hour storm event type of discharge you cannot discharge from one of these operations without a federal permit. The state went through a lot of discussions with EPA as to whether the state program could be modified to meet the federal requirements and not have to do a separate permit, but because we still have the 25 year – 24 hour storm exemption within this program it didn't meet the requirements for the federal program. We therefore created a mechanism for permitting an AFO that has a discharge through the VPDES program. The VPA program still*

exists for those operations that don't have a discharge. The fuzzy area is still around what is happening in the production areas and when do those typical operational practices cause you to have a duty to apply for the federal permit. Those discussions are ongoing and will be ongoing for some time. EPA has said, from inspections of facilities in Virginia, that by and large those facilities that are permitted under this program are doing a good job and that they are satisfied with the BMPs that these farms through the state program have in place to avoid discharges. It doesn't fully meet the federal requirements if there is a discharge, but EPA has supported state programs such as VPA to make sure that operations are implementing appropriate BMPs.

9VAC25-192-10. Definitions: "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: 1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and 2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes.

A question was raised regarding the meaning of the phrase "any portion of the operation of the lot or facility" in the definition of "animal feeding operation". Should this be "any portion of the operation or the lot or facility"? *Staff Response:* The VPA AFO statute (§[62.1-44.17:1](#)) specifically uses the wording "any portion of the operation of the lot or facility", so the wording is correct.

~~9VAC25-192-10. Definitions: "Operator" means any person who owns or operates an animal feeding operation.~~

The VPA AFO statute (§[62.1-44.17:1](#)) discusses "owner". Phrases such as "the owner shall" are used. The term "operator" is currently used throughout the AFO General Permit. In order to clarify these terms, we have struck the definition of "operator". It is clearer to just revise the terms within the general permit to read "owner or operator". This change makes it consistent with the language used in the statute.

Discussions included the following:

- A question was raised regarding the need then to include a definition of "owner" if the definition of "operator" was being struck? *Staff Response:* Typically, if there is a definition in the main regulation, then that would take precedent and not have to be repeated in the general permit, unless the definition is specific to that general permit regulation.

9VAC25-192-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the pollutant management activities of animal wastes at animal feeding operations not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit, and having 300 or more animal units utilizing a liquid manure collection and storage system. These animal feeding operations may operate and maintain treatment works for waste storage, treatment or recycle and may perform land application of manure, wastewater, compost, or sludges.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on November 16, ~~2004~~2014. This general permit will expire 10 years from the effective date.

The change being proposed for this section of the General Permit is the change of the effective date from 2004 to 2014 to reflect the new 10 year permit period.

Discussions included the following:

- A question was raised regarding the requirement for the "10 year permit period". *Staff Response: The permit period is not in the statute for the regulation but is in the "Powers and Duties" statute that it has to be a 10 year permit (§62.1-44.15(5a)). This is specific to VPA AFO program. The VPDES program permits have to be for no more than 5 years. The same statute specifies that for an Individual VPA permit the time period can be up to 10 years. But the AFO General Permit has to be for a 10-year period, not more or less. As a matter of practice all VPA Individual and General Permits are for 10 years.*

New Section Added: 9VAC25-192-25. Duty to comply.

A. Any person who manages or proposes to manage pollutants regulated by 9VAC25-192 shall comply with the applicable requirements of this chapter.

B. In order to manage pollutants from an animal feeding operation, the owner or operator shall be required to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual VPA permit provided that the owner or operator has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit. The owner or operator shall comply with the requirements of this chapter and the permit.

This is a new section that is being proposed for inclusion in the general permit language to clarify who has the "duty to comply". Based on the Attorney General's Office review of the Poultry regulation, a section was added to the Poultry Regulation to clarify the requirements. A similar section is being proposed to clarify the requirements in the AFO General Permit.

9VAC25-192-30 to 9VAC25-192-40 [Repealed]

Discussion included:

- A question was raised as to what was repealed in these sections?

ACTION ITEM: Staff will identify what was actually repealed in these sections and provide that information to the TAC. [Staff Response provided following the meeting: Language in the repealed sections was moved to other sections. 9VAC25-192-30 was titled "Delegation of authority" and contained the language now at 9VAC25-192-20.B. 9VAC25-192-40 was titled "Effective date of the permit" and the date was changed to be what is now at 9VAC25-192-20.C and additional language was moved to 9VAC25-192-50.A.]

9VAC25-192-50. Authorization to manage pollutants.

A. Any owner governed by this general permit is hereby authorized to manage pollutants at animal feeding operations provided that the owner files the registration statement of 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and provided that:

1. The owner or operator has not been required to obtain a VPDES permit or an individual permit according to 9VAC25-32-260 B;

2. The operation of the animal feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges are permitted. Domestic sewage ~~or industrial waste~~ shall not be managed under this general permit.

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid Virginia Pollution Abatement (VPA) permit or Virginia Pollutant Discharge Elimination System (VPDES) permit must attach to the registration statement a notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

4. The owner or operator shall obtain Department of Conservation and Recreation ~~must approve approval of~~ a nutrient management plan for the animal feeding operation prior to the submittal of the registration statement. The owner or operator shall attach to the registration statement a copy of the approved Nutrient Management Plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan, ~~and if the plan was written after December 31, 2005, that the plan~~ was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The owner or operator shall implement the approved nutrient management plan.

5. a. The owner or operator shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. Such notice shall include (i) the types and maximum number of animals which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under the permit and no expansion is proposed and the department has not issued any special or consent order relating to violations under the existing permit.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the director's sole

discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.

6. Each owner or operator of a facility covered by this general permit shall have completed the training program offered or approved by the ~~Department of Conservation and Recreation~~ department in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All owners or operators shall complete the training program at least once every three years.

B. Receipt of this general permit does not relieve any owner or operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance, or regulation.

Discussions included the following:

- A question was raised regarding the term "domestic sewage" and whether that term included "biosolids"? *Staff Response: No, what this means is that you can't pipe your sanitary sewer to your AFO operation storage pit.*
- A question was raised regarding what was originally considered when the term "industrial waste" was included in the general permit? *Staff Response: The VPA permit regulation allows DEQ to address industrial waste. A plant that processes something, their waste could be considered industrial waste. Industrial waste is essentially a "dated term" that refers to anything that doesn't have a domestic quality that would require disinfection by the Health Department standpoint. It was used as a broad category to define anything that might reach state waters and cause a problem. As the programs have evolved and we have better defined specific types of waste the term "industrial waste" has become too broad and too general a term to use.*
- Is it clearer to just strike it from the section or to add clarifying language specifying that industrial waste wouldn't be covered under these regulations? Would this be a better approach? *Staff Response: It might be better to return to this discussion when we get into the discussion of "feed stocks" that might be allowed for digesters. We need to specifically define what would be allowed rather than have a broad disallowance.*

ACTION ITEM: Staff will include this question as part of future discussions on "feed stocks for digesters".

9VAC25-192-50 A 4: The specific dates originally included in this section are being deleted since they are "out-of-date" and the obligation is to the owner or operator to obtain approval from DCR for their Nutrient Management Plan. These changes mirror the changes made in the Poultry Regulation. The requirement is on the "owner or operator" to get a plan that can be approved by DCR.

Discussions included the following:

- Does that mean that if someone has a Nutrient Management Plan and DCR has a backlog of plans to be approved that they are then out of compliance with the regulation, because the plan has not been approved through no fault of the owner or operator? *Staff Response: This is specific to when a registration statement; an application is submitted. An application is not considered complete until the approval letter has been received. DEQ does not process a permit*

application until all of the components have been submitted. DEQ does have discretion that can be used so in the case where someone already has a permit and they have gone through and done the best they can do to get everything needed to DCR and they are still following an approved plan – the department would be mindful of any delays in getting those approvals that were outside of the purview of the owner or operator. They would need to continue to follow the last approved plan until the new plan was approved. A new application – a new registration statement could not be processed until all of the required components have been submitted. For a reissue, if the applicant has submitted all information they remain covered under the existing general permit if there is a delay in approval of the new Nutrient Management Plan by DCR.

- *If you are a currently covered operation with an approved Nutrient Management Plan and you are expanding the facility, what is required? Staff Response: If you are a current operation and you are expanding your operation, i.e., putting in a new building or increasing number of animals, you have to have a modified nutrient management plan approved. Notification (14-day prior to) to DEQ is required prior to construction or addition of animal, but will also would need to see the engineering plans. This would also require the submittal of a new registration statement. Also have to send in the current Nutrient Management Plan unless DEQ already has the current one on file. An approval letter for the plan would also have to be submitted. If an operation is expanding the number of animals of increasing waste storage, DEQ will have to know that the expanded operation can be handled under the current Nutrient Management Plan.*
- DCR noted that when the operation changes then the Nutrient Management Plan has to be updated.
- Re: 9VAC25-192-50 A 3 – This section only refers to "the owner" instead of "the owner or operator". *Staff Response: That is a VPA concept. It is common in the VPA regulation to talk about the "owner of an activity", that is the reason that this is different. The concept that needs to be clear is that "you can own an AFO or you can operate an AFO" and still have coverage under the general permit.*
- A concern was raised about the possibility of excluding someone with this usage of terms. It was suggested that it might be clearer to make the changes consistent across the general permit, i.e., "owner or operator" in all cases unless the statute spells it out otherwise. It was also noted that the "fix" of taking out the definition of "operator" might cause more trouble than it fixes. *Staff Response: There need to be consistent usage throughout the regulation.*

ACTION ITEM: Staff will look through the regulation and make the usage consistent throughout the regulation unless the statute requires specific terminology related to "owner or operator".

- It was suggested that the staff should also look at the definition of "permittee" to make sure that there was consistency in the use of terms.
- *Staff noted that in 9VAC25-192-50 A 6, there was a change related to training (also changed in the Poultry Regulation) that deleted the reference to the Department of Conservation and Recreation and replaced it with "the department" as to not place a requirement on DCR in a DEQ regulation. [Staff noted after the TAC meeting that this wording may need to change since the statute does put a requirement on DCR related to training.]*

- A question was raised as to why the training requirement identified was "at least once every three years" when the poultry regulation is "at least once every five years". *Staff Response: The statute (§ 62.1-44.17:1.E.10) specifically says that training related to the AFO General Permit has to be "at least every three years". With the current risk-based inspection strategy there is an opportunity to expand this time frame depending on circumstances but the statute does specify once every three years.*
- A member of the TAC raised a question about the guidance document related to DEQ's risk-based inspection strategy and whether that document could be provided to the TAC.

ACTION ITEM: Staff will provide a copy of the guidance document related to DEQ's Risk-Based Inspection Strategy to the TAC.

9VAC25-192.50:

C. Continuation of permit coverage.

1. Any owner that was authorized to manage pollutants under the general permit issued in 2004, and that submits a complete registration statement on or before November 15, 2014, is authorized to continue to manage pollutants under the terms of the 2004 general permit until such time as the board either:

- a. Issues coverage to the owner under this general permit; or
- b. Notifies the owner that coverage under this permit is denied.

2. When the permittee that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the existing or expired general permit;
- b. Issue a notice of intent to deny coverage under the amended general permit. If the general permit coverage is denied, the owner would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

9VAC25-192.50 C has been added to clarification of the continuation of permit coverage. This provides an explanation how "continuation of permit coverage" is addressed. This is the same language that was included in the Poultry regulations except for the dates.

Discussion included the following:

- Does a complete registration statement mean that a NMP has been approved and is included? *Staff Response: It means that a NMP has been approved and that a Certified Plan Writer has prepared the plan.* DCR noted that the issuance of a letter does not mean that all of the plans will be rewritten and approved by November of 2014. It will not be possible to have all NMP rewritten by 2014. *If DEQ is in possession of the current plan, then the applicant does not have to send in a new one. It is complete when DEQ has all of the components. An applicant does not*

have to make copies or resubmit something that DEQ already has in hand/in the files, as long as the information is current.

- 9VAC25-192-50 C 2 – refers to "the board may choose". What does this mean? *Staff Response: This means that the applicant still remains covered under the general permit if there is some delay on the department's side, until coverage is provided. The language of "C 2 b" provides a mechanism for the board to require coverage under an individual permit instead of the general permit if conditions warrant. The language "C 2 a" provides that the board can enforce conditions under an expired general permit because it is still in play.*

9VAC25-192-60. Registration statement. A. In order to be covered under the general permit, the owner operator shall file a complete VPA General Permit Registration Statement for the management of pollutants at animal feeding operations in accordance with this chapter. The registration statement shall be deemed complete for registration under the VPA General Permit if it contains the following information: 1. The animal feeding operation owner's name, mailing address, email address (if available) and telephone number; 2. The animal feeding operation operator's name, mailing address, email address (if available) and telephone number of the operator or contact person other than the owner, if necessary; 3. The farm name (if applicable) and location of the animal feeding operation; 4. The name and telephone number of a contact person other than the operator, if necessary; 5. The owner or operator of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or Virginia Pollutant Discharge Elimination System (VPDES) permit must attach to the registration statement, the Local Government Ordinance Form, the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia; 6. A copy of the nutrient management plan approved by the Department of Conservation and Recreation; and a copy of the letter certifying approval of the plan, and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and 7. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

B. The registration statement shall be signed in accordance with ~~9VAC25-32-50~~ 9VAC25-32-70.

ACTION ITEM: Staff will check the references to "owner or operator" to make sure that there are no exclusions specified in statute that dictate the use of one specific term instead of the phrase "owner or operator".

9VAC25-192-60. Registration statement – This section has been modified to clarify the information needed for a complete registration statement. More information was needed than is identified in the current general permit. 9VAC25-192-60 A 7 has been revised to clarify what form needs to be used related to "local government notification" – "the Local Government Ordinance Form". This is a form that is attached as part of the regulation. 9VAC25-192-60 A 8 has been revised to delete reference to plan approval after 2005. A new 9VAC25-192-60 A 9 has been added to clarify the requirements for a DCR NMP approval letter and certification of the plan by a certified nutrient management planner.

9VAC25-192-70. Contents of the general permit.

Any owner or operator whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA permit regulation, 9VAC25-32.

General Permit No.: VPG1

Effective Date: November 16, ~~2004~~ 2014

Modification Date:

Expiration Date: November 15, ~~2014~~ 2024

9VAC25-192-70 specifies the contents for the general permit. The dates have been revised to reflect a new ten-year permit term.

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations ~~or policies~~ prohibit such activities.

In discussions with the AG's Office during the Poultry Regulation discussions, an issue was raised with the use of the term "policies". This deletion is being proposed to make it consistent with the changes made to the Poultry Regulation.

B. Other requirements or special conditions...5. All liquid waste storage or waste treatment facilities shall maintain at least one foot of freeboard at all times, ~~except in the case of a storm event greater than a~~ up to and including 25-year, 24-hour storm.

B. Other requirements or special conditions...6. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The owner or operator shall periodically inspect for leaks on equipment used for land application of waste. 7. The owner or operator shall implement a nutrient management plan (NMP) ~~approved by the Department of Conservation and Recreation. All NMPs written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia: and approved by the Department of Conservation and Recreation and maintain the plan~~ The NMP shall be maintained on site. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground and surface waters. NMPs written after December 31, 2005, and NMPs implemented after December 31, 2006, shall also include provisions to minimize phosphorus loss to ground and surface waters

~~according to the most current standards and criteria developed by DCR at the time the plan is written. The terms of the NMP shall be enforceable through this permit...~~

The phrase "waste treatment" is being proposed as an addition to 9VAC25-192-70 B 5 because the general permit addresses more than just "liquid waste storage", there is some "waste treatment facilities" that will also be included.

Discussions included the following:

- What types of "waste treatment" is being considered? *Staff Response: Waste treatment lagoons are included. Some are just storage but in some there is some level of treatment. This is only applicable to something with an open surface; if a structure is enclosed there would not be any "freeboard".*

ACTION ITEM: Staff will look at the concept and definition of "freeboard" to see whether further clarification is needed in this section. Staff will look at the statutory language related to waste treatment and the concept of freeboard. Staff will also look at the use of the term waste storage" as it relates to the concept of "freeboard".

~~B. Other requirements or special conditions...7...The NMP shall contain at a minimum the following information: g. A plan for waste utilization in the event the operation is discontinued.~~

The language related to "waste utilization plan" has been deleted here and is now addressed in a new 9VAC25-192-70 B 11.

Discussions included the following:

- The code says that "waste utilization plan" needs to be included in the Nutrient Management Plan. *Staff Response: Section B 11 addresses this requirement. The code related to DEQ says it has to be included but the DCR code sections do not identify it as a requirement. The AG's Office has recommended that since it is not contained as a requirement within DCR's code sections that they can't require it as part of the plan. DEQ is addressing this requirement through the addition of new language in Section B 11.*

ACTION ITEM: Staff will look at the specific Code section references to make sure that the proposed changes are consistent with the Code requirements. A discussion of the legal requirements related to this provision will be undertaken within DEQ.

B. Other requirements or special conditions... 8. Waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows: a. Distance from occupied dwellings not on the owner's permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone) b. Distance from water supply wells or springs: 100 feet ~~e. Distance from surface water courses(1) 100 feet (without a vegetated buffer); or (2) 35-foot wide vegetated buffer; or~~ c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). ~~(3) Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer, or 35-foot wide vegetated buffer.~~ d. Distance from rock outcropping (except limestone): 25 feet e. Distance from limestone outcroppings: 50 feet f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

The language in 9VAC25-192-70 B 8 related to "buffers" to clarify the requirements that you are not to land apply in the buffers.

Discussion included the following:

- Is there any definition anywhere as to what a buffer is as it relates to this general permit? *Staff Response: The addition of the first sentence in B 8 was to clarify that "waste could not be applied in the buffer". Prior to that addition, it wasn't clear. This was also revised in the poultry regulation.*
- It was noted that the important concept to emphasize is to ensure that the buffer function properly and that there is not an ability to "ditch" the buffer. In order for a vegetated buffer to function properly, it would have to be intact and vegetated buffer – it cannot be ditched. Does the definition provide assurance that it would be prohibited to ditch through the buffer?

ACTION ITEM: The definition of "buffer" will be looked at to determine applicability of this concept.

B. Other requirements or special conditions... 9. ~~Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. The following records shall be maintained:~~

- a. The identification of the land application field sites where the waste is utilized or stored;
- b. The application rate;
- c. The application dates; and
- d. What crops have been planted.

9VAC25-192-70 B 9 provides a list of what specific records are to be maintained in a bulleted format instead of inclusion in one sentence.

Discussions included the following:

- A question was raised over the change in the terms from "application schedule" to "application dates"? *Staff Response: The only way to determine whether the schedule has been followed is to know the dates. The schedule is the time frame when you are allowed to apply and when you are not allowed to apply. This is an effort to clarify the requirement.*
The application schedule is in the NMP and reflects planned manure applications; recording application dates reflects what applications were actually made.
- Why is the nutrient content of the manure not included in this list? *Staff Response: This information is covered by the analysis report. This is required under the waste management requirements that currently exist in the general permit.*

B. Other requirements or special conditions...10. The permittee shall notify the department's regional office at least 14 days prior to: (i) animals being initially placed in the confined facility or (ii) utilization of any new waste storage or waste treatment facilities.

B. Other requirements or special conditions...11. When the waste storage or waste treatment facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all waste residue from the waste storage or waste treatment facility. Removed waste materials shall be utilized according to the NMP.

The requirements originally included in B 7 g are addressed in this new regulation language at B 11. This is now the "waste utilization plan" requirement and provides for the proper closure of the facility.

B. Other requirements or special conditions...12. Each owner or operator of a facility covered by this general permit shall have completed the training program offered or approved by the ~~Department of Conservation and Recreation~~ Department in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All owners or operators shall complete the training program at least once every three years.

5. Permit Conditions Discussions:

Discussions included the following:

- A question was raised regarding the decision made by the state in the VA WIP (Watershed Improvement Plan) to combine the AFO load allocations with the CAFO waste load allocations? How would you, under a permit scenario ensure that there is compliance with that waste load allocation? How do you assure compliance? *Staff Response: The BMPs that are required in the General Permit are what ensures that the load allocations are consistent with what is in the WIP. This General Permit is the regulatory mechanism DEQ uses to ensure*

compliance.

- The assumption is then that the Best Management Practices listed in being in compliance. Should it be stated either in the General Permit or in the Regulation? *Staff Response: Waste allocations change – not sure we would want to specify then in the regulation. The purpose in saying that the AFOs that are permitted would be considered to be allowed to have a waste load allocation as a CAFO was make sure that there would be a piece of that pie to cover these operations whether they are considered as a CAFO or have a federal permit issued in the future or if there was an accidental discharge. Wanted to make sure that there was a sufficient allocation to cover AFOs in the future in case there was an expansion or the designation as a CAFO in the future.*
- Were the waste load allocations for AFOs and CAFOs combined? *Staff Response: As an AFO under the state program it is not a point source and therefore would not have a waste load allocation. This is an area that the state needs to look at to ensure that the efficiencies of the BMPs are such that the waste load allocations can be achieved. The relationship to the WIP will need to be further examined. This will be an evolving discussion over the next couple of years.*
- Section 8.3.3 in the Chesapeake Bay TMDLs requires the assumptions for agricultural point sources waste load allocations. *Staff Response: The VPDES CAFO regulation is not currently open. We want to make sure that we are in compliance with the WIP.*

6. Part II – Staff noted that there are currently no changes proposed for this section.

7. Part III – Staff noted that there are currently no changes proposed for this section.

8. Document: Project 3345 – NOIRA – Chapter 32 – Virginia Pollution Abatement (VPA) Permit Regulation – Amendments Related to Animal Feeding Operations (Betsy Bowles and TAC Members)

Betsy Bowles presented the proposed changes to the VPA regulations. She noted that there were only a couple of sections in the VPA regulations where changes are being proposed. The purpose of these amendments is to get some consistency in the regulations. The first of the proposed amendments is in the definitions section (9VAC25-32-10). The following proposed changes or additions are being suggested to this section:

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| <p><u>"Agricultural storm water discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater.</u></p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes.

~~"Concentrated confined animal feeding operation" means an animal feeding operation at which:-~~

~~1. At least the following number and types of animals are confined:-~~

~~a. 300 slaughter and feeder cattle;-~~

~~b. 200 mature dairy cattle (whether milked or dry cows);-~~

~~e. 750 swine each weighing over 25 kilograms (approximately 55 pounds);-~~

~~d. 150 horses;-~~

~~e. 3,000 sheep or lambs;-~~

~~f. 16,500 turkeys;-~~

~~g. 30,000 laying hens or broilers;- or~~

~~h. 300 animal units; and-~~

~~2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm.-~~

~~"Confined animal feeding operation" means a lot or facility together with any associated treatment works where the following conditions are met: ,for the purposes of this regulation, has the same meaning as an "animal feeding operation."~~

~~1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and-~~

~~2. Crops, vegetation forage growth, or post-harvest residues are not sustained over any portion of the operation of the lot or facility.-~~

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys regardless of animal age or sex.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.

Discussions included the following:

- It was noted that the term "waste storage facility" includes "waste treatment facility", if that is the case why do you need to also add the term "waste treatment facility" since it is already in the definition? *Staff Response: Staff will look at these definitions to make sure that they are consistent and are not redundant. The intent was clarity, but the result may be more confusing.*

ACTION ITEM: Staff will revisit this definition and the proposed inclusion of "clarifying language" in the general permit regulation to make sure that it is actually clarifying the meaning and not confusing the issue.

"300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

General Note: The sections of the Individual Permit being looked at today are only those sections where amendments are being proposed to address Animal Feeding Operations. There are many more sections that address other "individual permits" that the department issues, including Biosolids, which are not being considered.

General Questions: How many individual permits for AFOs are there? *Staff Response: There are 10.* Under an Individual Permit you can have a rolling 10 year permit and are not limited to the 2014 deadline. You can open up specific sections of a regulation without opening the whole regulation. *Staff Response: Yes, it depends on how specific that the NOIRA is written. This NOIRA is specific to AFOs.*

General Question: What would be an example of a situation where you would opt to require an Individual Permit versus a General Permit? *Staff Response: If there was a lack of ability to comply with the regulation requirements of the General Permit or if there was a compliance issue history, then the department has the flexibility to require an Individual Permit. Once you open up a General Permit Regulation and the changes are finalized there are no further changes to the requirements until there is another NOIRA developed to make further changes and we go through this process again. Under an*

Individual Permit, the department has the flexibility to make the changes to the requirements as they are needed on a site specific basis.

9VAC25-32-140. Public notice of VPA permit action and public comment period.

A. Every draft VPA permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity.

1. Except for animal feeding operations as defined in 9VAC25-32-10, when the modifications are to the Nutrient Management Plan.

This change/exemption provides that every time there are modifications to the NMP, which is at least every three years, that they don't have to renotify the public as a "public notice". This is consistent with changes made to the VPDES regulations for these specific operations. There would still be public notice but it would be done through the DEQ website versus having to provide a notice in a newspaper.

Discussions included the following:

- It was suggested that changes to numbers of animals that would result in notification requirements should be based on a percentage changes not on the specific number of animals. *Staff Response: Under the DCR NMP special conditions, if you expand your operations above 10% then another approval is required; if the expansion in animal numbers is under 10% it would just require a new NMP or modified NMP which is submitted.*

ACTION ITEM: Specific questions related to public notification requirements should be sent to Bill Norris for routing to program staff for responses.

9VAC25-32-250. ~~Confined animal~~ Animal feeding operations.

A. All ~~confined~~ animal feeding operations shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. ~~Concentrated confined animal~~ Animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system or having 200 or more animal units of poultry are pollutant management activities subject to the VPA permit program. Two or more ~~confined~~ animal feeding operations under common ownership are ~~considered, for the purposes of this regulation, to be a single~~ confined animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case ~~designation~~ determination ~~of concentrated confined animal feeding operations.~~

1. The board may ~~designate~~ determine that any ~~confined~~ animal feeding operation which does not otherwise qualify for coverage under the VPA general permit and has not been required to obtain a VPDES permit fall under the definition of concentrated confined animal feeding operation as defined in 9VAC25-20-10 upon determining that it is a potential or actual contributor of pollution to state waters. In making this ~~designation~~ determination the following factors shall be considered:

- a. The size of the operation;

- b. The location of the operation relative to state waters;
 - c. The means of conveyance of animal wastes and process waters into state waters;
 - d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters;
 - e. The compliance history and the ability to make corrections in order to comply with the VPA permit conditions;
 - ef. The means of storage, treatment, or disposal of animal wastes; ~~and~~
 - fg. Other relevant factors.
2. A VPA permit application shall not be required for ~~a concentrated confined~~ an animal feeding operation ~~designated subject to~~ under subdivision 1 of this subsection until the board has conducted an on-site inspection of the operation and determined that the operation shall be regulated under the VPA permit program.

Discussions included the following:

- A question was raised about the wording of 9VAC25-32-250 B 1 – what is the board to "determine"? *Staff Response: There appears to be a verb missing from this statement.*

ACTION ITEM: Staff will review this wording and make the necessary corrections and clarify what they are determining. The missing language is "determining that they need coverage under the VPA permit regulation."

- It was noted that the addition of the word "general" to 9VAC25-32-250 B 1 e might clarify the statement to show that it applies to the "VPA general permit conditions".
- Could this apply to a facility that is under the 300 Animal Unit level? *Staff Response: Yes.*
- 9VAC25-32-250 B 2 contains a reference to the "board", is this actually the Director or DEQ staff? *Staff Response: In this case it refers to DEQ staff and would not have to be taken before the board. In this case the board has delegated the authority to the Director and the staff would be responsible.*
- *Staff Note: The State Water Control Law is very broad in managing pollutants that they don't cause a discharge.*

9. Plans for Afternoon Discussions (Neil Zahradka):

Neil Zahradka welcomed everyone back for the afternoon's session and provided a brief overview of the plan for the rest of the meeting. He noted that the materials that would be discussed this afternoon did not have any draft language associated with them. The plan is to get feedback from the group as to possible options for regulatory amendments to address Permitting Options for Owners with Poultry and Livestock AFOs; Permitting Options to cover the activities related to manure/residuals transfer; and Options for covering operations which may use off-site generated materials to feed a digester. The goal is to have draft language based on this feedback prepared for review and presentation at the TAC meeting in November.

10. Discussion of Additional Potential Amendments – Permitting Options for Owners with

Poultry and Livestock AFOs (Betsy Bowles and TAC):

Betsy Bowles provided a summary of the existing and proposed permitting options. The existing permitting options include:

- A dry poultry operation is permitted under the VPA General Permit for Poultry
- A livestock operation with liquid waste is permitted under the VPA General Permit for AFOs
- For an owner that has both poultry and livestock operations, permitting options are
 - 1) Obtain two general permits, or
 - 2) Obtain one individual permit that combines the operations

The proposed permitting options would require that the VPA General Permit for AFOs be modified to include the language from the VPA General Permit Regulation for Poultry that is specific to poultry operations. The result of that modification would be that:

- A dry poultry operation could still be permitted under the VPA General Permit for Poultry
- A livestock operation with liquid waste could still be permitted under the VPA General Permit for AFOs
- For an owner that has both poultry and livestock operations, permitting options could be
 - 1) Obtain one general permit, or
 - 2) Obtain one individual permit that combines the operations

Discussions included the following:

- Would these options add anything new to dry poultry management operations? Management of their dry litter? *Staff Response: Based on the initial review, there would only be an inconsistency between the number of years between training requirements (3 for AFO; 5 for Poultry).*
- How would the transfer of the litter concerns be addressed? *Staff Response: The requirements that would allow for that in the poultry operations would be included in this general permit so that the requirements would be consistent between the poultry and livestock operations for those with both or adjacent operations.*
- This is essentially an administrative fix to address those instances where there are both poultry and livestock operations and would provide a means managing both manure sources under one permit.
- A question was raised about liability issues if you have a joint permit that had both poultry and livestock and one of the operations had a compliance issue and the other didn't. If you have two permits and one operation fails you can still continue with the other while resolving the one, but with one, you would have to shut down until the issue is resolved. What is the benefit then of having only one permit for a dual operation? If you have a dairy and a poultry operation and have a serious compliance issue with the dairy (some extreme situation) but not with the other, how do you segregate the issues if you have a joint permit? *Staff Response: In that situation, we could go back to having an individual permit for both operations or convert one back to a General Permit on its own. As a whole the approach with this type of situation would be to work with them to get them back into compliance. Regardless of the permitting structure the goal would be to have both operations in compliance with the regulation and the requirements.*

- A question was raised about why the poultry and livestock general permits were two separate permits? It was noted that there were two separate legislative actions and there was a period of time that separated the two actions.
- In addition there is a clear difference between the management of dry manure versus liquid manure that needed to be addressed.
- A question was raised about the calculation of "animal units" under the proposed combined permit? *Staff Response: The definition of "animal feeding operation" contains the statement that "Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes." In addition the definition section also contains a definition of "300 animal units" and how those figures are calculated for specific animal types. It was also noted that staff was not proposing and adjustments in the animal threshold numbers.*
- If there are two separate operations under one permit and one operation has compliance issues, is there an option for them to revert back to separate General Permit or to an Individual Permit? Can they opt to shift to a less prescriptive permit option? *Staff Response: That is the option that is being considered. It was noted that the language currently doesn't say that they have that option, but should be considered. Staff Response: The language for these options has not been developed yet and will be compiled after today's discussions.*
- Is the concept that there would be an option to go under a single permit for the two operations or would this be required? *Staff Response: The current concept is to provide the operations with an option to operate under a single permit, not to require them to. Administratively it would be easier to have to deal with only one permit in those instances but at this stage we are not thinking of making it a requirement. It would depend on the operation and what makes sense to them.*
- Is the idea that there would be three permit options under this proposal, one for poultry; one for integrated all animal and one individual permit? *Staff Response: Yes, with the proposal presented today, there would be three permitting options.*
- Would the "integrated permit" be any different from the current AFO General Permit? *Staff Response: It would allow for the coverage of dry poultry operations. The requirements that were specific to the dry poultry operations would be incorporated into the AFO General Permit.*
- The group discussed the public notice and neighbor notification requirements. *Staff Response: The Public Notice requirements are spelled out in the VPA permit while the "neighbor notification requirements for poultry (i.e., notification of neighbors if adding a new growing house) are spelled out in the poultry regulation and would need to be carried through the integrated permit.*
- Which training period sequence is correct? *Staff Response: The 3 year period is specified in the AFO statute. The 5 year training period is included in the Poultry General Permit but is not spelled out in statute.*
- A question was raised as to whether any of the stakeholder groups had heard any requests from the farmers for a single permit from DEQ for their joint poultry and livestock operations? It was noted that they were not aware of any such requests. The question then becomes is there a benefit to the farmer to have an integrated permit?
- How many instances are there operations where there are two permits? *Staff Response: There are not a lot, but we would need to get back to the group with the actual numbers.*

ACTION ITEM: Staff will get information from the Regions on how many farms would fall into this category of having two operations and two permits that could opt for a single permit rather than two.

- Why would this make it easier? What is the benefit of only having one permit rather than two? *Staff Response: It would allow for the flexibility of a farmer to have one permit rather than two.*
- The stakeholders noted that it would be useful for them to take to their members to see if there is any interest in having the flexibility to have only one permit rather than two.

ACTION ITEM: TAC members/stakeholders will contact their members and other stakeholders and discuss this proposal for an integrated permit option and bring that information back to the rest of the group for discussion. TAC members should provide that information to Bill Norris so that it can be distributed to the group.

- It was noted that DEQ was not trying to bring any current unpermitted operations (operations that didn't need these permits to operate due to their size, etc.) into the permitting program. *Staff Response: There are no plans to require facilities that currently don't need a permit to have to obtain one.*
- A question was raised regarding the small AFO strategy and its impact? *Staff Response: The 4 options of the "Small AFO Strategy" include: voluntary practices to address a site specific issue; work with the Agricultural Stewardship Act Plan; be permitted under the VPA permit program; and be permitted under the VPDES permit program.*
- The group raised questions about the applicability of various portions of the General Permit for Poultry that would be moved into the AFO General Permit.

ACTION ITEM: Staff will develop a listing of the applicable portions of the General Permit for Poultry that would be incorporated into the integrated AFO General Permit that would cover both poultry and animal operations and share that with the TAC for their discussions with their members and stakeholders.

- For operations with both poultry and animal feeding operation general permits, there would be one permit that would cover both operations with the only difference that would have to be dealt with being the difference in training sequence requirements (3 years versus 5 years). The record keeping and management requirements would be merged into the one permit. *Staff Response: There would be one Nutrient Management Plan and one permit that would cover both – would make it easier to manage.*
- A question was raised regarding the CAFO requirements for neighbor notification if adding a field and the Poultry requirements for adding growing houses. *Staff Response: The notifications would be based on the NMP for the field in question (it would be those neighbors that would need to be notified). The overall notification requirements would be based on the livestock side of the equation if there were an integrated permit.*
- If there are differences between having separate general permits for poultry and animal operations versus only having a single integrated permit to cover both operations, then DEQ staff should provide that information to the landowner so that they can make an informed decision. *Staff Response: The real difference is the training period, but if a landowner had*

both of those operations they would be in the training every 3 years anyway. The training could be combined for those with integrated operations so that the training requirements would be met.

- It doesn't appear that this is a water quality related fix but more of an administrative issue. *Staff Response: The intent is administrative, not necessarily adding or deleting but trying to provide an option to make it easier to manage the operations and requirements.*

11. Discussion of Additional Potential Amendments – Permitting Options to Cover the Activities Related to Manure/Residuals Transfer (Betsy Bowles and TAC):

Betsy Bowles presented the following information to the TAC: Item # 1 listed in the NOIRA:

Emerging manure handling and treatment technology has made the transfer and possible marketing of manure based products off the farm more common and necessary in cases where manure land application is limited by phosphorus soil test levels. The current regulation does not address manure transfer. This regulatory action will consider the addition of language that would specify requirements for the transfer of manure from the permitted facility.

PROPOSED OPTIONS FOR HANDLING MANURE/WASTE RESIDUAL TRANSFERS FROM OPERATIONS PERMITTED UNDER THE VPA GP FOR AFOS AND VPA IP

- The VPA AFO General Permit could be amended so that transferred manure/waste residuals could be handled under:
 - the VDACS Certification Program for fertilizers and soil amendments;
 - the Permittee's NMP;
 - another NMP that is enforceable through the Permittee's permit; or
 - technical regulations (similar to those written for Poultry Waste).

Discussions included the following:

- What is the VDACS Certification Program? *VDACS Response: This is essentially when a fertilizer product is registered or certified by VDACS, it guarantees the analysis of the nutrients and contents of the fertilizer and that the labeling of the product meets all of the regulations.*
- *Staff Comment: The material can either be a fertilizer or a soil amendment. If it is a soil amendment then it doesn't have to meet the analysis necessarily. One of the things that we are thinking about is are you talking about a material of high nutrient content or a material that has been separated out from the digester that is low in nutrient content and you are not really concerned about land application rates. Under that option, VDACS does not have any land application restrictions on it, there is a label and there are marketing restrictions but there are no enforceable requirements related to land application.*
- What types of products are we talking about? *Staff Response: The term that has been used is "value added". There is some treatment process where you are doing something else or adding*

some value, for example, a phosphorus extraction process where you are creating a pelletized phosphorus product, essentially the same as a commercial fertilizer product. Again we are talking about options that could be used not requirements. The need for a nutrient management plan is another part of the conversation. We are talking about materials that would meet the VDACS criteria for what would be a fertilizer or a soil amendment.

- The group discussed the other options identified.
- The concept of moving/transferring sludge from one farmer's field to another farmer's field, under a different NMP was discussed.
- The idea of having a technical regulation similar to that used under the Poultry regulation. The concept of a "permit by rule" was raised. *Staff Response: The term "permit by rule" is a term of art that is not used in this program – it is simply referred to as a "technical regulation" which identifies those technical requirements that must be followed to conduct this activity.*
- The limitation of manure land application due to phosphorus levels was discussed. It was noted that as we see fields that have some phosphorus issues and see further need to reduce nutrients given the bay restoration effort, a way to factor in some flexibility in transferring wastes makes sense and has to be part of our future management concepts. We just need to ensure that the material is applied properly, however that is spelled out (i.e., nutrient management plan) and making sure that there is a responsibility (i.e., that landowner or the original permittee) for the proper application of the material. DEQ needs to have the ability to take action if the material is not applied properly.
- A question regarding technical regulations was raised. *Staff Response: Technical requirements written in a regulation that specifies requirements not related to the grower but are requirements on the end-user and are related to storage, recordkeeping, land application etc. The question then becomes, if we follow this option, what are those requirements that the end-user would need to follow?*
- It was suggested that the requirements would be more complicated than those contained in the poultry technical regulation requirements. *Staff Response: The requirements would be specific to the specific facility. There would need to be requirements for an analysis, specific storage and handling measures required. The requirements would be source specific. Specific application rates might need to be considered.*
- Is the idea that all four of these options would be available for use depending on your product type or needs of the particular operation that you could choose from? *Staff Response: Yes, these would be options that the operator could choose from depending on his situation and operation and could have flexibility to handle different types of manure. The technical regulations/requirements would still have record keeping requirements. What we are trying to do is provide flexibility.*
- A question was raised about by-products that might be created during any of these processes – In the agency's eyes is the by-product still on the books. *Staff Response: The goal is not to "double regulate" something. If the particular material is covered under an existing regulation or another option, it would not have to be regulated as a new product.*

- Need to define what constitutes a "new product" and what requirements would apply. *Staff Response: We would evaluate products and analyze what is in it. Need to determine if this material is being used in an environmentally sound manner if it is being transferred off-site. We would need to look at what categories of materials would be needed and if we need threshold levels and what would they be? Products and materials would need to be evaluated on a case-by-case basis. There needs to be flexibility in the requirements.*
- The group discussed the need for the farmer who is receiving the transferred materials should incorporate that transferred materials into their Nutrient Management Plan and the transfer of the materials out of the original NMP should be documented.
- *Staff Comment: There needs to be flexibility – don't want it to get complicated.*
- It was suggested that these requirements should be a good fit for a technical regulation similar to what was done in the Poultry Regulation.
- It was noted that it would be helpful for someone from VDACS to come before this group to discuss the types of products that are already under the VDACS certification program.

ACTION ITEM: Staff will make arrangements for a VDACS representative to make a presentation regarding products and materials included in the VDACS Certification Program at the next TAC meeting.

- The group discussed various options for the transfer of materials and use of materials off-site. *Staff Response: One option that might be considered is if the materials is transferred to a facility that is covered under another water permit then that would be the end of coverage or concern under this program – currently if it would be transferred to a facility or operation with its own Nutrient Management Plan that DEQ staff would need to look carefully at the wording and contents of that plan to make sure that the materials is adequately addressed and covered under the plan.*

12. Discussion of Additional Potential Amendments - Options for Covering Operations Which May Use Off-Site Generated Materials to Feed a Digester (Betsy Bowles and TAC):

Betsy Bowles presented the following information to the TAC: Item # 2 listed in the NOIRA:

Farm owners and operators are more commonly considering the use of digesters as alternative manure treatment technology and for potential energy production. As a result, the owners and operators may consider importing other wastes to supplement the digester gas production. This regulatory action will consider the addition of language that would specify requirements for this practice.

Language would specify requirements related to:

- siting, construction and storage of the off-site generated materials; and
- the management of the digester or management of that new technology.

Discussions included the following:

- One of the things that needs to be addressed is how are you going to handle the extra outflow from the digester. *Staff Response: It would be handled on a site specific basis and should be addressed through the Nutrient Management Plan. Right now the regulation does not specifically address off-site generated materials coming onto the site.*
- The group discussed the current requirements/restrictions related to "industrial" waste. *Staff Response: The definition of "industrial waste" is so inclusive; it seems that everything already in the regulation could be "industrial" especially something like "food waste". Since there seems to be the potential for the use of this type of material in the future, the thought is to provide flexibility in the AFO General Permit to allow for the possible use of "industrial" off-site generated waste as part of the feed stock for a digester. Program staff would work with the Solid Waste Group to establish as well as the TAC to develop language to be added to this general permit to set those requirements to allow the use of this material.*
- The group discussed the operation of a digester and the change in nutrients in the materials. Solids from the process are hauled further out to the fields while the liquids are spread closer to the digester. It was noted that 100% of the bacteria is usually killed through the process. Nutrients are adjusted in the NMP as needed.
- There needs to a mechanism to be able to handle "organic wastes" under the AFO General Permit instead of having a solid waste permit or having to operate under an Individual Permit.
- The group discussed the possibility of the aggregation of waste from several farming operations into a single facility as a cost-saving mechanism. *Staff Response: Once the "digester" was not located on a farm and was operating as its own separate business it would no longer be covered under the AFO General Permit but would have to be covered under a Solid Waste Permit. The plant itself would not be covered the permit unless it was located and operated on the farm. This could also include a dairy farm that is composting and wants to get off-site materials to add to their composting operation. The primary purpose of the operation would have to be an animal feeding operation.*
- How have other states addressed this issue? *Staff Response: We have not looked at other states to see how they are addressing this issue. This is really a complex issue. We are looking at a way to do this under the general permit rather than an individual permit. What we are trying to determine is what the concerns are? What controls are needed? What are the environmental concerns?*
- A concern was noted that these are complicated issues and is the resolution of these issues going to be an anchor that will derail the efforts to make the other needed amendments to the regulations and renewed permits in place? *Staff Response: We have a regulatory time frame in which to get these actions completed.*
- Is there a potential, if we get bogged down in the details of the required language to address these options, to move ahead with the reissuance of the General Permits with the language changes and then come back to make additional changes? *Staff Response: Given that these don't expire until 2014, we are in a comfortable situation and there should be plenty of time to resolve any issues and be able to resolve them and incorporate any needed language changes into the general permits. Our goal was to complete discussion on the proposed regulation prior to the 2013 General Assembly session and then get comments during 2013 and have this action completed by the end of next year.*
- It was also noted that there was going to be a gubernatorial election in the middle of this

timeframe that could complicate getting any proposed regulations approved. *Staff Response: This particular general permit regulation does not need executive review, however the VPA Permit Regulation does.*

- Should we make the changes that we have been discussing this afternoon would both the VPA Regulation and the VPA AFO General Permit Regulation need to be revised to accomplish that? *Staff Response: No, only the AFO General Permit. We are contemplating that these changes would only be made in the general permit.*
- The VPA Permit Regulation (requiring Executive Review) then could move forward in the process with the amendments that are being proposed for it without completion of the final wording of amendments to the General Permit. *Staff Response: Yes. The VPA Permit Regulation amendments are not going to hold up anyone from maintaining coverage.*
- *Staff Comment: Regarding priority of issues, as noted we have not had anyone approach us about the joint permit concept, but we have had numerous inquiries over the years about the transfer issues. That is something that definitely needs to be addressed. We have a timetable to meet so that the General Permit can be reissued in 2014.*
- Is the idea that we would be finished with Item #1 and Item #2 discussed this afternoon by January of 2013? *Staff Response: We would hope to be finished with the proposed language for those items and the needed amendments by that time. Once it is proposed, it would go out for public comment; then we would receive public comment and make any needed changes based on those comments. We have 180 days by Executive Order from the time the NOIRA Public Comment Period ends to get proposed language out. The goal is to go to the March Board meeting with the proposed language for Board approval. Following the comment period on that approved language, there is another 180 day period to get to final.*
- *Staff Comment: Staff noted that one of the remaining concerns is regarding what the "threshold figures" should be? Staff asked for thoughts from the group as to what the cutoff amounts should be? At what point are we going to cut it off? A liquid cutoff is a big issue. This has to do with the identification of a minimum threshold amount of when requirements would kick in. If we went the technical regulation option route, when would those technical regulation requirements kick in? When does the requirement on the end-user kick in? From the producer's perspective, what are their responsibilities for tracking this material?*
- In the absence of feedback, what are you going to use as threshold limits? *Staff Response: At this stage we don't know. Different thresholds for different types of waste would need to be generated.*

13. Other Thoughts or Comments from the TAC:

Neil Zahradka asked for other thoughts or comments from the TAC members:

- There a lot of hogs and operations along the state lines with North Carolina and Maryland. What specific requirements exist? What is being required in other states? *Staff Response: Manure transferred or land applied in an adjoining state must meet that state's regulatory requirements.*
- Worried about a one-time deal and having to meet a bunch of special requirements when it may only happen once.
- Don't see any reason to have a unified/integrated permit process. A unified permit would not be wanted from the perspective of beef operations.

- Regarding thresholds – there would be a "low level" for material for personal use only; a "medium level" for landscape usage (report how much is leaving a site) and a "large level" for removal of a large amount of material (reporting on both ends). There would also probably be some farm to farm for composting or bedding.
- Need to read more on the multiple permit concepts the effect of adjacent operations and how one permit versus 2 permits would impact the operations.
- There is not likely to be any objection to a voluntary system where an AFO identification process remained that way and was easy to understand. There seems to be a lack of appeal for the unified permit that didn't really improve the situations that they already had in place with their poultry operations. It might instill some concerns that their beef operation would be viewed as an outlet for their poultry litter. The flexibility that they enjoy now might be compromised. *Staff Response: There are very few beef operations that would fall under the VPA permitting requirements, mainly because of the size of the operations and the definition of confinement.*
- There are operations in the valley that have both poultry and cattle operations, with the poultry operation being clean while there are some "winter feeding operations" on the cattle side of the operation that have some issues. *Staff Response: There are 35 VPA permitted AFO operations in the Valley Region.*
- The James River Association is working on a project with Waste Water Engineers looking at state of technology for various options for harvesting of nutrient streams. Need to look at ways to incentivize these activities. Need to look at the development of possible options for marketing to offset costs.
- Glad that DEQ is looking at transfer options.
- The VDACS program manager for certification of fertilizers and soil amendments will be available for a presentation at the next meeting. Might be helpful to look at left over materials that are left over but are not considered a fertilizer material product but a soil amendment. How does VDACS make that determination? *Staff Response: We do not want to get into a situation of requiring someone to get a VDACS certification it needs to remain as an option for them to pursue.*
- What do you mean by "management of the digester" as included in the last line of Item #2? *Staff Response: There is a feed rate. But the standard language is "such that it does not pollute" or "be out of compliance with State Water Control Law". The concept was that rather than requiring someone to get a separate "solid waste permit" what would need to be included in these requirements so that only the AFO General Permit would be required? There may be specific things that need to be considered for inclusion as an amendment. The movement of the material off-site is the important thing. Transfer off-site is important to consider. The reason that this topic didn't receive a lot of discussion is that the range of options is not fully understood by the group. There is a need for some draft language related to this topic.*

14. Public Comment:

Bill Norris asked for public comment. Public comment included the following:

- Kathleen VanDerHyde: "I am tired of talking about the transfer of the liquids. I would like to make a suggestion. Could we have a separate permit where you would go to your neighbors and say here are the rules and that I can bring you 100 acres worth or some kind of acreage and you

sign this paper and we go to our nutrient management or to DEQ to get permission from them to accomplish that? I'm not putting it out there as a rule; I'm just suggesting something to move it along." *Staff Response: That is what we are shooting for – something that would be that simple. There could be a list that you would hand to your neighbors telling them what they would have to do. It would identify the state requirements similar to what is done under the Poultry general permit. "Then the neighbor signs off on the paperwork and the farmer is relieved of responsibility for the material." That is essentially what is being done with the poultry waste transfer depending on whether you hit a threshold then you meet these storage and land application requirements. They sign a piece of paper saying that they got this information and that they have to comply with these requirements. As long as that grower kept the records that's what they have to do.*

- Tony Banks: "With the transfer flexibility – it is going to take a little more effort to develop those because depending on the technology that is being employed and where it is being employed and who owns it, it is going to have an effect on where that permit holder's (the GP permit holder) responsibilities should continue and where they should end. There are dozens of different combinations that could come into play. If you want to be friendly to biomass and renewable energy, in addition to addressing transfers for the guy who wants 10 acres across the road who wants the material, you also need to be looking at something that is going to be technology neutral and still arrive at what you are hoping to achieve. There are other technologies out there – there are more than just digesters. There are different types of combustion methods out there that create different types of end-products. There are methods of holding back some of the liquid for use in a filtration process in order to enhance the nutrient transfer – to create a better product."

The group briefly discussed the statutory requirements for the use of the "Local Government Form".

15. Next Meeting:

The next meeting of the TAC is scheduled for Monday, November 26, 2012 at 9:30 at the DEQ Piedmont Regional Office Training Room. Sign-In for the meeting will start at 9:15 A.M.

Bill Norris requested that any member of the TAC who had any comments; questions or information that they wanted to share with the group should send that information to him, so that it can be distributed to the group.

16. Meeting Adjournment:

The meeting was adjourned at approximately 3:30 P.M.