



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC25-800
Regulation title	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters
Action title	New General Permit Regulation
Final agency action date	February 4, 2011
Document preparation date	January 12, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This final action is to issue a VPDES general permit for discharges from pesticides applied directly to surface waters to control pests, and/or applied to control pests that are present in or over, including near, surface waters. The general permit regulation is needed in order to comply with court ordered requirements for EPA and states to issue NPDES permits for both chemical pesticide applications that leave a residue or excess in water, and all biological pesticide applications that are made in or over, including near, waters of the United States.

Since the Court ruling, EPA collected and analyzed data on pesticide applications, including labeling requirements, pesticide uses, best management practices employed to minimize the impact of pesticides on water quality, and existing state water quality standards for pesticides. EPA proposed a NPDES Pesticides General Permit that will be issued by them for areas where EPA remains the NPDES permitting authority and for the delegated NPDES states (like Virginia) to use in drafting their permit.

The following pesticide uses are covered under the proposed EPA General Permit per the court order for operators that apply pesticides in or near water:

- Mosquito and other flying insect pest control
- Aquatic weed and algae control
- Aquatic animal pest control
- Forest canopy pest control

The regulation generally follows EPA’s proposed pesticide general permit with definitions, eligibility requirements (authorizations to discharge), technology effluent limitations (integrated pest management considerations), water quality based limitations, monitoring requirements, pesticide discharge monitoring plan, corrective actions, adverse incident and spills and leaks reporting, recordkeeping and annual reporting requirements and conditions applicable to all permits. However, the EPA proposed general permit was adjusted for Virginia users for clarification, flexibility and ease of implementation. Additionally, since the publication of the EPA proposed pesticide general permit, EPA has verbally informed the States that changes to the federal pesticide permit are eminent (including changes to the pesticide uses above). DEQ has taken some the verbal recommendations and incorporated them into the final draft and these are explained in ‘Changes made from the proposed stage’ below.

There is no existing regulation.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Water Control Board at its February 4, 2011 meeting approved the issuance of a new general permit entitled: Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC25-800-10	Definition: <u>“Treatment area”</u> : <u>Treatment area calculations for pesticide applications that occur at water’s edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied. For</u>	Example has been deleted: Text now reads: <u>Treatment area calculations for pesticide applications that occur at water’s edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied. [For example, treating both sides of a five mile long river,</u>	Revised for consistency with changes to information in Threshold table (Table 1. Annual Treatment Area Thresholds) in 0VAC25-800-30 C.

	<u>example, treating both sides of a five mile long river, stream, or ditch is equal to 10 miles of treatment area. Treating five miles of shoreline or coast would equal a five mile treatment area.</u>	<u>stream, or ditch is equal to 10 miles of treatment area. Treating five miles of shoreline or coast would equal a five mile treatment area.]</u>	
9VAC25-800-10	Definition: <u>“VDACS” means the Virginia Department of Agriculture and Consumer Services.</u>	<u>“VDACS” means the Virginia Department of Agriculture and Consumer Services. [VDACS administers the provisions of Virginia’s pesticide statute, Chapter 39 of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of the Federal Insecticide, Fungicide and Rodenticide Act-(FIFRA). As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.]</u>	Request by VDACS to clarify department responsibilities related to the provisions of the pesticide statute.
9VAC25-800-30 B 2	<u>2. Aquatic weed and algae control - to control invasive or other aquatic (emergent, floating or submerged) nuisance weeds and algae in surface waters. Aquatic nuisance weeds include, but are not limited to cattails, hydrilla and watermeal.</u>	<u>2. [Aquatic weed and algae-Weed, algae and pathogen] control - to control invasive or other [aquatic (emergent, floating or submerged) nuisance weeds and algae nuisance weeds, algae and pathogens] in surface waters. [Aquatic nuisance weeds include, but are not limited to cattails, hydrilla and watermeal.]</u>	Clarification of requirements based on information received from EPA.
9VAC25-800-30 B 3	<u>3. Aquatic Animal Pest Control – to control aquatic invasive or other aquatic animal pests in surface waters. Aquatic animal pests in this category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.</u>	<u>3. [Aquatic animal-Animal] pest control – to control [aquatic] invasive or other [aquatic] animal pests in surface waters. [Aquatic animal pests in this category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.]</u>	Clarification of requirements based on information received from EPA.
9VAC25-800-30 B 4	<u>4. Forest Canopy Pest Control – aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.</u>	<u>4. Forest canopy pest control – [aerial] application of a pesticide [ever a-to the] forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.</u>	Clarification of requirements based on information received from EPA.
9VAC25-800-30 C	<u>C. Operators applying pesticides are required to maintain a Pesticide Discharge</u>	<u>C. Operators applying pesticides are required to maintain a pesticide discharge management plan (PDMP)</u>	Clarification of requirements and incorporation of

<p>Management Plan (PDMP) if they exceed the annual treatment area thresholds in Table 1 of this subsection:</p> <p><u>Table 1. Annual Treatment Area Thresholds</u></p> <table border="1"> <thead> <tr> <th><u>Pesticide Use</u></th> <th><u>Annual Threshold</u></th> </tr> </thead> <tbody> <tr> <td><u>Mosquitoes and Other Flying Insect Pests</u></td> <td><u>640 acres of treatment area</u></td> </tr> <tr> <td><u>Aquatic Weed and Algae Control:</u></td> <td>-</td> </tr> <tr> <td>- <u>In Water</u></td> <td><u>20 acres of treatment area¹</u></td> </tr> <tr> <td>- <u>At Water's Edge:</u></td> <td><u>20 linear miles of treatment area at water's edge²</u></td> </tr> <tr> <td><u>Aquatic Animal Pest Control:</u></td> <td>-</td> </tr> <tr> <td>- <u>In Water</u></td> <td><u>20 acres of treatment area¹</u></td> </tr> <tr> <td>- <u>At Water's Edge</u></td> <td><u>20 linear miles of treatment area at water's edge²</u></td> </tr> <tr> <td><u>Forest Canopy Pest Control</u></td> <td><u>640 acres of treatment area</u></td> </tr> <tr> <td>-</td> <td></td> </tr> </tbody> </table> <p>¹ - Calculations include the area of the applications made to: (1) surface waters and (2) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide</p>	<u>Pesticide Use</u>	<u>Annual Threshold</u>	<u>Mosquitoes and Other Flying Insect Pests</u>	<u>640 acres of treatment area</u>	<u>Aquatic Weed and Algae Control:</u>	-	- <u>In Water</u>	<u>20 acres of treatment area¹</u>	- <u>At Water's Edge:</u>	<u>20 linear miles of treatment area at water's edge²</u>	<u>Aquatic Animal Pest Control:</u>	-	- <u>In Water</u>	<u>20 acres of treatment area¹</u>	- <u>At Water's Edge</u>	<u>20 linear miles of treatment area at water's edge²</u>	<u>Forest Canopy Pest Control</u>	<u>640 acres of treatment area</u>	-		<p>if they exceed the annual treatment area thresholds in Table 1 of this subsection:</p> <p><u>Table 1. Annual Treatment Area Thresholds</u></p> <table border="1"> <thead> <tr> <th><u>Pesticide Use</u></th> <th><u>Annual Threshold</u></th> </tr> </thead> <tbody> <tr> <td><u>Mosquitoes and Other Flying Insect Pests</u></td> <td><u>[640-6400] acres of treatment area</u></td> </tr> <tr> <td><u>[Aquatic Weed and Algae Weed, Algae and Pathogen] Control:</u></td> <td></td> </tr> <tr> <td>- <u>In Water</u></td> <td><u>[20-80] acres of treatment area¹</u></td> </tr> <tr> <td>- <u>At Water's Edge</u></td> <td><u>20 linear miles of treatment area at water's edge²</u></td> </tr> <tr> <td><u>[Aquatic] Animal Pest Control:</u></td> <td></td> </tr> <tr> <td>- <u>In Water</u></td> <td><u>[20-80] acres of treatment area¹</u></td> </tr> <tr> <td>- <u>At Water's Edge</u></td> <td><u>20 linear miles of treatment area at water's edge²</u></td> </tr> <tr> <td><u>Forest Canopy Pest Control</u></td> <td><u>[640-6400] acres of treatment area</u></td> </tr> </tbody> </table> <p>¹ Calculations include the area of the applications made to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a 10 acre site is counted as 20 acres of treatment area.</p> <p>² [Calculation-Calculations] include the linear extent of the application made along the water's edge</p>	<u>Pesticide Use</u>	<u>Annual Threshold</u>	<u>Mosquitoes and Other Flying Insect Pests</u>	<u>[640-6400] acres of treatment area</u>	<u>[Aquatic Weed and Algae Weed, Algae and Pathogen] Control:</u>		- <u>In Water</u>	<u>[20-80] acres of treatment area¹</u>	- <u>At Water's Edge</u>	<u>20 linear miles of treatment area at water's edge²</u>	<u>[Aquatic] Animal Pest Control:</u>		- <u>In Water</u>	<u>[20-80] acres of treatment area¹</u>	- <u>At Water's Edge</u>	<u>20 linear miles of treatment area at water's edge²</u>	<u>Forest Canopy Pest Control</u>	<u>[640-6400] acres of treatment area</u>	<p>anticipated revisions to the EPA permit based on information received from EPA.</p>
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	<p><u>application activity as a separate activity. For example, applying pesticides twice a year to a 10 acre site is counted as 20 acres of treatment area.</u></p> <p>² - <u>Calculations include the linear extent of the application made along the water's edge adjacent to: (1) surface waters and (2) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals count each pesticide application activity and each side of a linear water body as a separate activity or area. For example, treating both sides of a 10 mile ditch is equal to 20 miles of water treatment area.</u></p>	<p><u>adjacent to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity [and each side of a linear water body as a separate activity] or area [only once]. For example, treating both sides of a 10 mile ditch [twice a year] is equal to [20-10] miles of water treatment area.</u></p>	
9VAC25-800-60	<p><u>General permit:</u> <u>Any operator who is authorized to discharge shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.</u> <u>General Permit No: VAGxx</u></p>	<p><u>General permit:</u> <u>Any operator who is authorized to discharge shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.</u> <u>General Permit No: [VAGxx VAG87]</u></p>	Approval of general permit by EPA and issuance of General Permit Number.
9VAC25-800-60 Part I A 1 b (1) (c) (i)	<p><u>Mosquito control pesticide use pattern:</u> <u>(i) Conduct larval and/or adult surveillance prior to each pesticide application to assess the pest management area and to determine when action threshold(s) are met that necessitate the need for pest management;</u></p>	<p><u>Mosquito control pesticide use pattern:</u> <u>(i) Conduct larval and/or adult surveillance[, or assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects,] prior to each pesticide application to assess the pest management area and to determine when action thresholds are met that necessitate the need for pest management;</u></p>	Clarification of requirements and to correct inconsistencies within the regulation.
9VAC25-800-60 Part I A 1 b (2)	<p><u>(2) Aquatic weed and algae control. This subpart applies to discharges resulting from the application of pesticides to control invasive or other aquatic (emergent, floating, or</u></p>	<p><u>(2) [Aquatic weed and algae Weed, algae and pathogen] control. This subpart applies to discharges resulting from the application of pesticides to control invasive or other [aquatic (emergent, floating, or</u></p>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based

	<u>submerged) nuisance weeds and algae in surface waters. Aquatic nuisance weeds include, but are not limited to, cattails, hydrilla, and watermeal.</u>	submerged) nuisance weeds and algae nuisance weeds, algae and pathogens] in surface waters. [Aquatic nuisance weeds include, but are not limited to, cattails, hydrilla, and watermeal.]	on information received from EPA.
9VAC25-800-60 Part I A 1 b (2) (a) (ii)	Identify the problem: <u>(ii) Identify areas with aquatic weed or algae problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);</u>	Identify the problem: <u>(ii) Identify areas with [aquatic weed or algae weed, algae or pathogen] problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (2) (a) (iv)	Identify the problem: <u>(iv) Establish past or present aquatic weed or algae densities to serve as thresholds for implementing pest management strategies.</u>	Identify the problem: <u>(iv) Establish past or present [aquatic weed or algae weed, algae or pathogen] densities to serve as thresholds for implementing pest management strategies.</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (2) (b)	<u>(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control aquatic weeds or algae. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:</u>	<u>(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control [aquatic weeds or algae weeds, algae or pathogens]. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (2) (c)	<u>(c) Pesticide use. If a pesticide is selected to manage aquatic weeds or algae and application of the pesticide will result in a discharge to surface waters,</u>	<u>(c) Pesticide use. If a pesticide is selected to manage [aquatic weeds or algae weeds, algae or pathogens] and application of the pesticide will result in a discharge to surface</u>	Clarification of requirements and incorporation of anticipated revisions to the

	<u>the operator shall:</u>	<u>waters, the operator shall:</u>	EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (3)	<u>(3) Aquatic animal pest control. This subpart applies to discharges resulting from the application of pesticides to control aquatic invasive or other aquatic animal pests in surface waters. Aquatic animal pests in this use category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.</u>	<u>(3) Aquatic animal Animal] pest control. This subpart applies to discharges resulting from the application of pesticides to control aquatic invasive or other aquatic animal pests in surface waters. Aquatic animal pests in this use category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (3) (a) (i)	<u>(i) Identify target aquatic animal pests;</u>	<u>(i) Identify target aquatic animal pests;</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (3) (a) (ii)	<u>(ii) Identify areas with aquatic animal pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);</u>	<u>(ii) Identify areas with aquatic animal pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (3) (a) (iv)	<u>(iv) Establish past or present aquatic animal pest densities to serve as action thresholds for implementing pest management strategies.</u>	<u>(iv) Establish past or present aquatic animal pest densities to serve as action thresholds for implementing pest management strategies.</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
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	<u>control aquatic animal pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:</u>	<u>operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:</u>	
9VAC25-800-60 Part I A 1 b (3) (c)	<u>(c) Pesticide use. If a pesticide is selected to manage aquatic animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:</u>	<u>(c) Pesticide use. If a pesticide is selected to manage aquatic animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (4)	<u>(4) Forest canopy pest control. This subpart applies to discharges resulting from the aerial application of pesticides to the forest canopy to control the population of a pest species...</u>	<u>(4) Forest canopy pest control. This subpart applies to discharges resulting from the aerial application of pesticides to the forest canopy to control the population of a pest species...</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Cindy Schulz, US FWS	Amend 9VAC25-800-30.C to include a second requirement for operators: "Operators applying pesticides are required to maintain a Pesticide Discharge Management Plan (PDMP) if 1) they exceed the annual treatment areas thresholds in Table 1 below or 2) they are applying pesticides to threatened and endangered species waters as identified by the Virginia Department of Game and Inland Fisheries or to federally designated critical habitat as identified through the U.S. Fish and Wildlife Service review process (see 9VAC25-800-30. Authorization to discharge F.1)."	This represents a significant change for pesticide operators that was not required in the draft federal permit. It is our understanding that the EPA is also still negotiating Endangered Species Act requirements for the pesticide general permit. That is one reason why permit coverage for Virginia is only being issued for a 2-year period rather than the standard 5-year coverage. EPA is expected to issue their final pesticides general permit by April 2011. The use of this 2-year permit will allow Virginia to put in place a general permit by the court required deadline and also provide a reasonable time to evaluate the federal permit to incorporate appropriate changes for the reissuance of the Virginia general permit

		<p>in June 2013. It is expected that a Technical Advisory Committee will be reconvened this spring to address issues such as this and USFWS will be asked to join this discussion to determine if additional requirements are necessary in Virginia.</p>
<p>Cindy Schulz, US FWS</p>	<p>Add language to 9VAC25-800-30 D.2: “Discharges to Lake Drummond within the Great Dismal Swamp National Wildlife Refuge are not authorized by this general permit. Operators seeking coverage for a point source discharge to Lake Drummond that would result from the application of biological or chemical pesticide should apply for an individual VPDES permit.”</p>	<p>Since USFWS controls the Great Dismal Swamp National Wildlife, the Service may choose to apply for an individual VPDES permit in lieu of using the general permit; therefore, this suggested change is not necessary. VADEQ believes treating exceptional waters inconsistently in a regulation is not appropriate and that it is important to allow pesticide application in exceptional waters because there are situations where the pesticide application may be for the express purpose of protecting or restoring the exceptional waters. EPA has approved the Virginia approach to exceptional waters for the pesticide general permit.</p>
<p>Cindy Schulz, US FWS</p>	<p>Add language: 9VAC25-800-30.F: “1. To ensure compliance with the Federal Endangered Species Act, operators seeking coverage under this permit should review their project through the U.S. Fish and Wildlife Service’s project review website ... to ensure that impacts to federally listed threatened and endangered and proposed species and federally designated critical habitat do not occur and to ensure that any effects which cannot be avoided are minimized and coordinated with and/or authorized by the Service.”</p>	<p>This represents a significant change for pesticide operators that was not required in the draft federal permit. It is our understanding that the EPA is also still negotiating Endangered Species Act requirements for the pesticide general permit. That is one reason why permit coverage for Virginia is only being issued for a 2-year period rather than the standard 5-year coverage. The use of this 2-year permit will allow Virginia to put in place a general permit by the court required deadline and also provide a reasonable time to evaluate the federal permit to incorporate appropriate changes for the reissuance of the Virginia general permit in June 2013. It is expected that a Technical Advisory Committee will be reconvened this spring to address issues such as this and USFWS will be asked to join this discussion to determine if additional requirements are necessary in Virginia.</p> <p>The permit does state that operators are not relieved of their responsibility to comply with other federal statutes, including the product label. This includes the Endangered Species Act. The permit already requires minimization techniques, use of integrated pest management and a requirement to meet water quality standards. The fact sheet will include the web site you have provided for the permittees to consult for information about critical habitat or federal species.</p>

<p>Cindy Schulz, US FWS</p>	<p>Add language: 9VAC25-800-60. General Permit. Part I.D Special Conditions. 2. Adverse Incident Documentation and Reporting d.(1) (b) and (c): "Notify the U.S. Fish and Wildlife Service Virginia Law Enforcement Office at 804-771-2883, 5721 South Laburnum Avenue, Richmond, Virginia 23231 and the Virginia Field Office at 804-693-6694, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061 in the event of an adverse incident."</p>	<p>VADEQ will add this to the contact information form.</p>
<p>Todd A. Trowbridge, CLARKE</p>	<p>Suggest that the language at 2.c (11) (page 42) addressing criteria for an "adverse incident" is not consistent with other sections of the current draft and should be removed.</p>	<p>The section in question is actually a continuation of the Part I D 2 c requirements, and not one of the 11 pieces of information required to be in the adverse incident report. Part I D 2 c is the 5-day adverse incident report. The Department recognizes that the product label may indicate that adverse effects may occur, but the operator is still required to report any adverse incidents that actually do occur, unless the report is waived by the provisions of Part I D 2 b ("Reporting of adverse incidents is not required under this permit in the following situations:..."). The definition of "adverse incident" in the regulation at 9 VAC 25-800-10 details what constitutes "adverse effects", and provides the operator the information needed to determine if an adverse incident has occurred. The definition and permit requirements are consistent, and no changes to the permit or regulation are necessary.</p>
<p>Evelyn Mahieu, UOSA</p>	<p>(1) Is applying the pesticide "doughnuts" for mosquito control to a storm water pond, which discharges to a stream subject to the PGP? (2) While spraying a herbicide around fences close to a stream there is always a possibility of some of the spray reaching areas nearby the stream. Is that activity subject of the PGP? (3) Do you consider the example in (2) above "off target spray drift", which is outside the scope of the PGP? (4) For the same example as in (2) above, if after spraying during a dry day it rains and some of the herbicide/degradation products run into the stream, is this case subject to the PGP?</p>	<p>(1) The application of pesticide "doughnuts" for mosquito control to a storm water pond, which discharges to a stream, is subject to the PGP; (2) The draft PGP only addresses applications to water; spray drift associated with residual pesticides from land applications do not have coverage under this PGP; (3) "Off target spray drift" is outside the scope of this PGP; (4) The draft PGP only addresses applications to water; storm water contaminated with residual pesticides from land applications is not covered under this draft PGP.</p>
<p>Cindy Schulz, US FWS</p>	<p>Suggest that language be added to require applicants to refer to the US</p>	<p>This represents a significant change for pesticide operators that was not required in</p>

	<p>FWS project review website that provides the steps and information necessary to allow general VPDES permit applicants to review their project and reach a conclusion on the effects of their proposed biological or chemical pesticide application project on federally listed and proposed species and federally designated critical habitat.</p>	<p>the draft federal permit. It is our understanding that the EPA is also still negotiating Endangered Species Act requirements for the pesticide general permit. That is one reason why permit coverage for Virginia is only being issued for a 2-year period rather than the standard 5-year coverage. The use of this 2-year permit will allow Virginia to put in place a general permit by the court required deadline and also provide a reasonable time to evaluate the federal permit to incorporate appropriate changes for the reissuance of the Virginia general permit in June 2013. It is expected that a Technical Advisory Committee will be reconvened this spring to address issues such as this and USFWS will be asked to join this discussion to determine if additional requirements are necessary in Virginia.</p> <p>Until then, the permit states operators are not relieved of their responsibility to comply with other federal statutes, including the product label. This includes the Endangered Species Act. The permit already requires minimization techniques, use of integrated pest management and a requirement to meet water quality standards. The fact sheet will provide the web site given as information for the permittees to consult if they have concerns about critical habitat or federal species.</p>
<p>Katie K. Frazier, Virginia Agribusiness Council</p>	<p>We recognize that Virginia, acting within their EPA delegated authority for NPDES permitting, must issue this regulation to establish a pesticide general permit. We are encouraged that this proposed regulation is not more stringent than federal guidelines. This proposal also attempts to minimize the reporting and record keeping burden on permittees by not requiring submittal of "Notices of Intent" annually to DEQ during the current, shortened permit period. This will lessen regulatory burdens on permittees, while not impacting water quality protections, as the requirements for minimization, incident reporting, etc. are still in place.</p>	<p>VADEQ acknowledges the comment.</p>
<p>Katie K. Frazier, Virginia Agribusiness Council</p>	<p>While the Council opposes EPA's mandate to Virginia (and other states) to develop this pesticide general permit, we appreciate the</p>	<p>VADEQ acknowledges the comment. However, EPA has verbally informed the States that the scope for three of the four types of pesticide use patterns will likely be</p>

	<p>Commonwealth’s efforts to minimize impacts to our industry sectors (agriculture, forestry, and turfgrass), small businesses, and landowners while still meeting EPA requirements. The court ruling that has led to EPA’s mandate for States to develop a NPDES permit for four types of pesticide applications “to, over or near” waters of the United States has overturned decades of legal, legislative and regulatory precedence, and thus, fundamentally, we do not agree with the basic premise of this permit issuance at the federal level.</p>	<p>revised and VADEQ has made those revisions in anticipation of the EPA changes. For example, EPA has removed the restriction to ‘aquatic’ for two pesticide use patterns which widens the scope of these two use categories. This means that pesticides application for aquatic or terrestrial species to surface water is covered. Additionally, EPA included ‘pathogens’ in the weed and algae type of pesticide application. These pesticide use patterns now read ‘Weed, algae and pathogen control’ and ‘Animal pest control.’ For the third use pattern EPA has removed the ‘aerial’ qualifier from the federal forest canopy pest control definition so that both ground and aerial canopy spraying are covered under the permit.</p>
<p>Paul R. Howe, Virginia Forestry Association</p>	<p>VFA is aware of the federal government pressure directed at Virginia to establish a pesticide general permit, and we acknowledge DEQ’s considerable effort to keep the regulation as unobtrusive as possible according to the agency’s perception of mandated federal guidelines. Thank you for listening to the response of our citizen woodland owners and forestry professionals.</p>	<p>VADEQ acknowledges the comment.</p>
<p>Sarah C. Tarallo, City of Manassas</p>	<p>(1) Request that municipalities that are already regulated under the Department of Conservation (DCR) MS4 storm water program be exempt from this regulation; (2) Request an exemption for jurisdictions within the Commonwealth that own, maintain, and operate their own water supply reservoirs for drinking water purposes; (3) The City is monitoring and reporting under the DEQ Individual VPDES permit for discharges that occur at the outfall into Broad Run. Since the Algaecide applied at the Lake is housed on the Water Plan property, this chemical is reported in our current VPDES permit as a method of algae removal from our lake; (4) Request an exemption for municipalities currently under water quality monitoring programs to maintain water quality issues as they arise. Additional monitoring and testing is redundant.</p>	<p>The court ordered mandate requires some type of National Pollutant Discharge Elimination System coverage. Therefore, either a NPDES (VPDES) general permit or an NPDES (VPDES) individual permit may contain the requirements so no program that applies pesticides to surface waters can be waived. If DCR included the requirements of the pesticide general permit in the MS4 permits then coverage under this general permit would not be necessary. However, DCR may not have the authority to do so in the MS4 permits. If they did, the requirements would be similar.</p> <p>Regarding the DEQ individual permit at Broad Run, DEQ can incorporate the requirements of the pesticide general permit into that individual permit at reissuance or via a modification. However, given the April 10, 2011 deadline, the facility will need at least temporary coverage under the general permit. Coverage is automatic and the requirements are different from the Broad Run water treatment plant individual permit, so there is no duplication or redundancy of effort.</p>

		Regarding the monitoring in Lake Manassas, the current pesticide permit does not contain chemical monitoring requirements so there is no redundancy there.
Brian L. Ramaley, Newport News Waterworks	As the general permit guidance documentation is developed and finalized, we again ask that the unique status of terminal drinking water reservoirs be carefully recognized. This includes application of human health water quality standards for drinking water reservoirs in-lieu of the aquatic life standards currently applied.	We agree this is a challenge for VPDES permitting in terminal reservoirs. VADEQ has also questioned EPA about this issue and will address this issue further in Agency guidance.
Carl E. Garrison, Virginia Department of Forestry	There is an argument that can be made using the federal (NPDES) guidelines that we can exempt forestry silvicultural operations from the general permit requirements, but the exemption needs to be more explicit and defined in the VPDES.	Both the federal regulation (40 CFR 122.3 (3) and 122.27 (a) and (b) (1)) and State VPDES regulation (9VAC25-31-10, -40 (5), and -160) exempt non-point source silvicultural activities from the NPDES/VPDES permitting requirements, and specifically exclude silvicultural non-point pest and fire control activities from the definition of silvicultural point source discharges. However, the recent Court ruling that precipitated the development of this permit has clarified that pesticide application to surface water is a point source discharge. Any nonpoint source discharge associated with terrestrial pesticide application (e.g., storm water runoff containing pesticides as a result of pesticide terrestrial application) remains exempt from NPDES/VPDES permitting requirements.
Carl E. Garrison, Virginia Department of Forestry	On page 7 of the VPDES document, it indicates that forest canopy pest control as the "aerial application of a pesticide over a forest canopy to control the population of a pest species..." and specifically lists insects or pathogen. However, on page 4, the definition of "pest" includes "any plant growing where not wanted." This could easily be argued that herbaceous competition control in a loblolly plantation would be included in the eligibility requirements although it is not specifically implied under forest canopy pest control. Now the State and Federal fact sheets refer to "forest canopy spraying" as <u>over mature tree canopy</u> . Our interpretation is that silvicultural practices, including cutover, young stands and mid-age rotation stand herbicide treatments don't fit into this	The "Forest Canopy Pest Control" pesticide use pattern described in the draft regulation (9VAC25-800-30 B 4) addresses the "aerial application of a pesticide over a forest canopy to control the population of a pest species where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water." The regulation does not distinguish between mature tree canopies, and cutover, young stands and mid-age rotation stands. Consistent with the VPDES regulation, herbicide applications to all of these stands where the herbicide is applied over and deposited to surface waters are provided coverage in the VPDES permit. Additionally, EPA has told the states that the 'aerial' qualifier will be removed from the federal definition so that canopy spraying from the ground is also covered under the permit. This further supports our interpretation that applications to any type of canopy could

	<p>description and, therefore, would not be included in the VPDES permit.</p>	<p>unavoidably be deposited into surface water.</p>
<p>Paul R. Howe, Virginia Forestry Association</p>	<p>Through the TAC process, we have offered several arguments regarding the inappropriateness of including forestry (or silviculture) in this permit system. We have also shared how the potential reporting process and permit fee would be a cost burden upon forest landowners practicing forestry on their property, and on those small businesses applying forestry practices. Forest canopy pest control remains on the list of regulated activities in this proposed permit as prepared by DEQ. We believe this to be wrong. Generally VFA believes the court ruling and subsequent EPA mandate forcing Virginia to develop this proposed permit is an affront to long-standing legal, legislative and regulatory precedence. The state should challenge this mandate. Specifically, VFA urges Virginia to recognize that EPA itself has defined silvicultural activities, including pest control, as nonpoint sources of pollution (see 40 CFR 122.27). Under the Clean Water Act, nonpoint sources are not subject to NPDES permit requirements although potentially subject to best management practices and other control measures under state and federal programs. EPA did not amend or modify its silvicultural definition in its Draft NPDES General Permit, and the definition remains in force throughout the United States with limited exception. We therefore request specific recognition of the nonpoint status of silviculture in the VPDES, acknowledging forestry applications as nonpoint sources. Forestry pesticide applicators would therefore only need to comply with existing stringent pesticide product label requirements and any applicable Virginia requirements.</p>	<p>Both the Federal regulation (40 CFR 122.3 (e) and 122.27 (a) and (b)(1)) and State VPDES regulation (9VAC25-31-10, -40 (5), and -160) exempt non-point source silvicultural activities from the NPDES/VPDES permitting requirements, and specifically exclude silvicultural non-point pest and fire control activities from the definition of silvicultural point source discharges. However, the recent Court ruling that precipitated development of this permit has clarified that pesticide application to surface water is a point source discharge. Any nonpoint source discharge associated with terrestrial pesticide application (e.g., storm water runoff containing pesticides as a result of pesticide terrestrial application) remains exempt from NPDES/VPDES permitting requirements.</p>
<p>Tom Warmuth, Cygnet Enterprises, Inc.</p>	<p>The proposed state permit is able to acknowledge and observe the new NPDES regulations from EPA and still address parts of the new regulations that are easily found to be duplicative, costly and unnecessary. Having this</p>	<p>VADEQ acknowledges the comment.</p>

	<p>permit be for two years is a good idea. Keeps the commitment time to this permit fairly short while allowing regulators enough time to regroup to begin drafting a new general permit if needed. By eliminating registration statements, fee requirements, and minimizing reporting requirements, the proposed permit may prove to be of minimal costs to those involved in both time and money.</p>	
<p>Brian L. Ramaley, Newport News Waterworks</p>	<p>This regulation is basically unnecessary as it applies to terminal drinking water reservoirs, and increases operating costs for communities and businesses in the Commonwealth. The application of EPA and Department of Agriculture approved chemical products by certified operators, in full compliance with manufacturer guidelines and existing state and federal regulation is simply not a discharge of pollutants as defined in VPDES regulations. Even if it were, compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) more than adequately controls and regulates operators that apply and use these products.</p>	<p>The courts have decided that chemical pesticide residues and biological pesticides require a National Pollutant Discharge Elimination System permit.</p>
<p>Todd A. Trowbridge, CLARKE</p>	<p>Would like to note our support for the comments made by the Virginia Mosquito Control Association.</p>	<p>VADEQ notes the support for the comments made by the Virginia Mosquito Control Association.</p>
<p>Todd A. Trowbridge, CLARKE</p>	<p>Would like to commend you on the majority of the Draft Permit that sensibly expresses the requirement for consistent implementation of Integrated Pest Management in terms relevant to the Clean Water Act requirements.</p>	<p>VADEQ acknowledges the comment.</p>
<p>SD, Water Ltd.</p>	<p>General comment regarding “the solution to pollution”. The use of statistical methods in evaluating outcomes has given currency to the principle of probable harm in cases where assessment is warranted but resorting to deterministic models is impractical or unfeasible. Consideration of the environment beyond direct impact on human beings has gained prominence. Migration from pollution dilution to elimination in many cases is confronted by challenging economical</p>	<p>VADEQ acknowledges the comment.</p>

	and technological barriers.	
Brian L. Ramaley, Newport News Waterworks	Section 1.1.2.1 <i>Discharges to Water Quality Impaired Waters</i> of the noticed General Permit includes an important element that we believe should be retained in the Final Regulation. Specifically, this language allows an operator to provide evidence that a water is no longer impaired, even if the water is currently listed as impaired for a pesticide or its degradates. In cases where adequate, recent data exist confirming that the designated uses are fully supported by the current water quality, operators should be given the opportunity to use the General Permit.	VADEQ agrees and the regulation will retain this language.
Tom Warmuth, Cygnet Enterprises, Inc.	The VA version of the NPDES permit cannot begin to address other issues that will arise once the regulatory wheel is on motion. Possible future litigations will arise and now be held to the light of the Clean Water Act. Companies, who are trying to keep our aquatic habitats and resources clean, preserved and maintained to ensure continuity of those environments, could be greatly impacted by imposed legal costs under that type of legislation.	The courts have decided that chemical pesticide residues and biological pesticides require a National Pollutant Discharge Elimination System permit.
Jim Rindfleisch, York County Mosquito Control	York County Mosquito Control currently holds contracts for mosquito control service on the Yorktown Naval Weapons Station. This is a high-security installation and public disclosure is forbidden. The provisions of the proposed regulation calls for disclosure of maps and identification of names, addresses, and telephone numbers in treated areas. These records would contain a listing of who lives in officer's row, maps, and other intimate information not for public consumption. Is there an exemption for the military?	VADEQ does not require this level of detail. The Yorktown Naval Weapons Station in total is the customer, not individuals on the base. The map only shows the boundary of the facility and not intimate information. VADEQ does not expect operators to supply high-security information where public disclosure is forbidden.
Elijah Richardson, Yorktown Naval Weapons Station	Please provide more clarification on NPDES reporting for our base (Yorktown). Should the address for everything on the base be the base address?	Only the base address is required.
Todd A. Trowbridge,	The monitoring requirements at Part I.B.2 indicate: "Visual monitoring	Since these additional examples are listed in the fact sheet they are considered valid

<p>CLARKE</p>	<p>assessment is only required during the pesticide application when feasibly and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances.” US EPA lists a more robust set of conditions under which it might not be feasible to conduct monitoring noting: “Additionally, the following scenarios often preclude visual monitoring during pesticide application: 1. Applications made from an aircraft; 2. Applications made from a moving road vehicle when the applicator is the driver; 3. Applications made from moving watercraft when the applicator is the driver; 4. Applications made from a moving off-road wheeled or tracked vehicle when the applicator is the driver.” Strongly suggest the inclusion of the full list of scenarios noted by US EPA to avoid confusion and possible litigation of monitoring requirements in the final permit.</p>	<p>examples of scenarios where visual monitoring is not required and no change to the regulation is necessary.</p>
<p>Jim Rindfleisch, York County Mosquito Control</p>	<p>We have reviewed the contents of the proposed regulations concerning mosquito control. Unfortunately, no mosquito control district in Virginia has the ability to comply with the proposed rules, especially in relation to recordkeeping and the use of sustained release pesticides. Many statements in the proposed rules concerning mosquito control are incorrect and some recommendations are illegal. These proposed rules will invalidate several environmental assessments that are currently in force. In addition, the pre-season reporting requirements found in the PDMP are impossible to comply with without extensive GIS capability. Given this, we respectfully request consultation with the appropriate SWCB representative at your earliest opportunity. There are several points that are causing concern, but the most urgent are record keeping, public access, surveillance requirements, and conflicts with other environmental documentation. The</p>	<p>VADEQ has contacted York County for clarification on their concerns and provided the following responses with regards to: Recordkeeping (concern was about the requirement to provide detailed names and addresses) - Response - DEQ assumes the county is spraying an area as part of county mosquito control program. For this type of activity DEQ would view the county as the customer so only the county name and number would be required. There would need to be enough location information to know where the spraying occurred. Typically the detail of a USGS topographical map would suffice. Public Access to Records (concern was sharing sensitive information particularly in the Pesticide Discharge Management Plan) - Response -Typically the level of detail we would require for location information (mapping) is the USGS topographical map. Hopefully, this will address any concerns about sensitive information. Surveillance requirements (concern was geo-locating and mapping each pest</p>

	<p>regulation seems to preclude the use of sustained acting pesticides, which are applied preemptively before mosquitoes appear. Clarification of these issues would be appreciated.</p>	<p>management area with dipping, counts and examination documentation was not possible. Also, that it precluded the use of sustained acting pesticides, which are applied preemptively before mosquitoes appear) –</p> <p>Response- The operator defines the pest management area(s) and the level of larval or adult surveillance activity that is needed. Therefore, the county’s present surveillance activities should be sufficient to encompass the pest management area (or areas) the county defines. DEQ does not envision that the county would change it’s surveillance procedures to be in compliance with this general permit. We also plan to add to the fact sheet and the regulation that the operator shall “Conduct larval or adult surveillance, or assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects, prior to each pesticide application to assess the pest management area and to determine when action thresholds are met that necessitate the need for pest management” to better match the definition of an action threshold. In addition, the fact is being revised to recognize that the permit only requires larval and/or adult surveillance. The reference to establishing species presence will be removed.</p> <p>The operator defines action threshold through the use of the integrated pest management activities. DEQ does not believe that the general permit precludes the use of sustained acting pesticide products.</p> <p>Problems with existing environmental assessments (concern was that fact sheet seems to say that their method of environmental assessment (larval dip monitoring) was not an accurate indication of the potential adult population) –</p> <p>Response - DEQ recognizes that larval counts may be used as part of the integrated pest management practices and incorporated within the county’s Pesticide Discharge Management Plan to meet the requirements of this general permit.</p>
<p>Pam Dinkle, TLAC, Smith Mountain Lake</p>	<p>The “Operator” issue is quite confusing and I would greatly appreciate your assistance in better defining this issue. Here is our scenario: 1) Our office (TLAC) requests permission from</p>	<p>There are 3 separate operators. APCO is an operator because they are the decision maker that gives permission to apply the pesticide. The TLAC is an operator because the control the financing. The applicator contractor is an operator because they have</p>

	<p>Appalachian Power to contract for treatment of Hydrilla/Curlyleaf pondweed; 2) If we receive permission from APCO, then we instruct our applicator contractor to perform that treatment, and 3) Once the application is completed, the applicator provides APCO with a follow-up report noting when/where the treatment was done. In that scenario, who is the operator? APCO has the ultimate authority (TLAC can't treat if they say no), TLAC provides the funding and issues instructions for treatment, and the applicator contractor handles the treatment. Are there 3 separate operators in this scenario, and is each responsible for different portions of the permit? Does one of these 3 agencies have to "agree to accept" the role of operator and thus is responsible for all of the permit's responsibilities? Does one of those 3 agencies "accept" the operator role and then divvy out the responsibilities based upon the action each agency takes?</p>	<p>day to day control of the pesticide application. All three are operators and all three are responsible for any permit violation. However, the entities can decide among themselves who will be performing activities required by the permit. For example, TLAC could make this part of the contract with the pesticide applicator that they follow the requirements of the permit and keep the necessary documentation. The bottom line is that any and all operators covered under this permit are still responsible, jointly and severally, for any violation of shared responsibilities that may occur, though the Department may consider this division of responsibilities (e.g., the contract made with the pesticide applicator) when determining the appropriate enforcement response to a violation.</p>
<p>Matthew J. Lohr, VDACS</p>	<p>As currently defined, the term "Operator" could lead to confusion because it provides that more than one person could be responsible for the same discharge resulting from a pesticide application. VDACS recommends that responsibility for compliance with the requirements of the general permit be assigned to the person who actually makes the decision to apply a pesticide that results in a discharge.</p>	<p>We understand EPA is reviewing the definition. Accordingly, we believe a better time to adjust the definition would be during the 2013 reissuance.</p>
<p>Matthew J. Lohr, VDACS</p>	<p>VDACS recognizes the magnitude of the outreach efforts that will be necessary to ensure compliance by licensed pesticide businesses and certified pesticide applicators. VDACS stands ready to assist DEQ in these efforts.</p>	<p>VADEQ appreciates this commitment and all the assistance given by VDACS during this entire process.</p>
<p>Todd A. Trowbridge, CLARKE</p>	<p>Specific requirements for surveillance related to chemical application under the draft permit appear to be inconsistent. Since as the definition of "action threshold" and the federal PGP points out that environmental conditions may be (and often are) the determining factor in making</p>	<p>VADEQ agrees and will change the language at Part I, A.1.b.(1)(c)(i) to read as follows: (i) Conduct larval or adult surveillance <u>and/or assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects</u> prior to each pesticide application to assess the pest</p>

	<p>applications: Recommend that the language at Part I.A.1.b (1) (c) (i) (page 21) be changed to read: “Conduct larval and/or adult surveillance and/or assess environmental conditions prior to each pesticide application to assess the pest management area and to determine when action threshold(s) are met that necessitates the need for pest management.”</p>	<p>management area and to determine when action thresholds are met that necessitate the need for pest management.</p>
<p>Matthew J. Lohr, VDACS</p>	<p>The current thresholds in the general permit above which an operator must meet the requirements of the permit, including development of a pesticide discharge management plan, were not determined based upon actual data collected but rather were incorporated directly from the thresholds established in the draft federal permit. VDACS recommends that DEQ work with relevant Virginia stakeholders to determine appropriate thresholds in the Commonwealth.</p>	<p>This is one reason why permit coverage for Virginia is only being issued for a 2-year period rather than the standard 5-year coverage. EPA is expected to issue their final pesticides general permit by April 2011. The use of this 2-year permit will allow Virginia to put in place a general permit by the court required deadline and also provide a reasonable time to evaluate the federal permit to incorporate appropriate changes for the reissuance of the Virginia general permit in June 2013. A Technical Advisory Committee will be reconvened this spring to address the EPA changes, and this will certainly be one of the topics that will be discussed. However, EPA has verbally informed the States that the thresholds in the EPA permit will likely be revised and VADEQ has made those revisions to the Virginia thresholds in anticipation of EPA’s change. The 640 acre thresholds for mosquito control and forest canopy have been increased to 6400 acres and the 20 acre threshold for weeds and animal pests has been increased to 80 acres. Additionally, the method (in footnote 2 in Table 1) to calculate annual threshold acreages for weeds and animal pests has been revised to say ‘For calculating annual treatment totals, count each pesticide application activity [and each side of a linear water body as a separate activity] or area [only once]. For example, treating both sides of a 10 mile ditch [twice a year] is equal to [20-10] miles of water treatment area.’</p>
<p>Alan R. Wood, American Electric Power Service Corporation (AEP)</p>	<p>There exists significant uncertainty within the regulated community regarding the applicability of the NPDES permit program to the application of herbicides on utility right-of-ways, to the extent that this application could result in the direct discharge of the chemicals to water. This uncertainty has been</p>	<p>EPA has verbally informed the States that the scope for this type of application will be clarified in the final permit. EPA has removed the restriction to ‘aquatic’ for the weed and algae use pattern which widens the scope of this category. This means that pesticides right of way applications to surface water is covered and VADEQ has made this</p>

	<p>communicated to the US EPA during the comment period for the federal rulemaking. There remains insufficient direction from US EPA regarding the applicability of the decision by the Sixth Circuit Court of Appeals (National Cotton Council, et al. v. EPA) to utility vegetation management practices on right-of-way corridors. None of the four categories contained within the general permit proposed by DEQ are intended to provide eligibility of coverage for this category, and none target any form of terrestrial vegetation management practices. At most, AEP's vegetation management practices may only result in incidental, <i>de minimus</i>, discharges of pesticides to waters due to drift or during aerial spraying. Should US EPA clarify that utility vegetation management practices for rights-of-way may require NPDES permit coverage (if those practices would actually result in a point source discharge to waters of the state), then we request that DEQ actively engage the affected parties in Virginia to develop an additional general permit which provides eligibility for, and is tailored to, these practices.</p>	<p>revision in anticipation of the EPA changes.</p>
<p>Matthew J. Lohr, VDACS</p>	<p>The Virginia Department of Agriculture and Consumer Services (VDACS) administer the provisions of Virginia's pesticide statute, Chapter 39 of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth. The proposed regulation needs (i) to adequately reflect VDACS authority to administer the pesticide statute, (ii) to be compatible with the regulations promulgated by the Virginia Pesticide Control Board, and (iii) to impose on the regulated community only the administrative and financial burdens essential to complying with the Court's decision.</p>	<p>VADEQ will add the delegated authority details to the definition of VDACS in 9VAC25-800-10 Definitions as follows to reflect VDACS authority to administer the pesticide statute:</p> <p>"VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.</p> <p>VADEQ attempted to reflect the requirements of the Virginia Pesticide Control Board and to impose on the regulated community only the administrative and financial burdens essential to complying with the Court's</p>

		decision. For example, there is no permit fee and no registration requirement.
Carl E. Garrison, Virginia Department of Forestry	In the definitions section of VPDES, "surface water" (9VAC25-800-10, page 5) includes <u>adjacent</u> wetlands and that "Wetlands" (page 6) means those areas that are inundated...under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions." Silvicultural herbicide application operations do not take place over surface water, however, under the definition, even a dry, forested wetland would be considered "surface water". There are thousands of acres of loblolly pine being managed in the coastal plains of Virginia that would be included in that definition. Management of these plantations does include silvicultural vegetation control for forest establishment and maintenance. The forestry community needs to know how far from surface waters does "adjacent" mean, and the Department would suggest that forestry silvicultural herbicide application over dry wetlands (no standing or ponded surface water) be excluded from the permitting requirements.	The definitions of "surface water" and "wetlands" in the permit are the same definitions that are contained in the VPDES Permit Regulation (9VAC25-31), and have been in use for many years. By definition, all wetlands are included in the definition of surface waters, regardless of their landscape position. There was much discussion by the TAC relative to the potential for pesticide discharges to wetlands, with a general consensus that there should be water showing on the surface of the wetland for the regulation to apply to the pesticide discharge. However, to be consistent with the definitions of surface water and wetlands, the regulation was drafted to provide permit coverage for pesticide application over or into a wetland, whether there is water present or not. DEQ anticipates that the final EPA permit and fact sheet will further address this issue, and DEQ plans to revisit this issue with the TAC as part of the permit reissuance.

Several comments were also received regarding the draft Fact Sheet developed by DEQ as guidance for the regulation. A summary of those comments are provided below:

Commenter	Comment	Agency response
Cindy Kane, US FWS	Fact sheet comment: Suggest a slight re-wording of the sentence on page 4 of the draft Fact Sheet: "The permit requires annual <u>summary</u> reports by February 10 each year <u>listing all adverse events reported for the year.</u> "	VADEQ agrees and will make the change.
Randy B. Buchanan, Virginia Mosquito Control Association	Fact sheet comment: In reading the latest fact sheet, I have a question regarding "Resistance Management". I have never heard of reduced application rates as a way to help manage pesticide resistance. Is this an accepted method of "Resistance Management"?	VADEQ agrees and will revise that portion of the fact sheet.
Pat Hipkins,	Fact sheet comment: Reduced	VADEQ agrees and revised that portion of the

<p>Virginia Cooperative Extension</p>	<p>rates (to the point that efficacy is reduced) is not a resistance management tactic. Some of us on the TAC has "heartburn" about "reduced rates" and how the VPDES would be worded to require/encourage them. Both the 08-24-10 Working Draft and the draft Fact Sheet do have the word "effective" in there. I hope that as long as folks don't exceed the label rate, they will be okay. The worry is that someone will question a maximum-label rate application, and the applicator/operator will need to find research-based support for his or her decision to apply at a full (or top end of the range) rate. How will DEQ address this concern?</p>	<p>fact sheet.</p>
<p>Randy B. Buchanan, Virginia Mosquito Control Association</p>	<p>Fact sheet comment: The listing for Attachment B, Pesticide Business Licenses appears to be incorrect. It looks like this is a list of certain certified applicators. Recommend that DEQ consul VDACS for corrections needed.</p>	<p>We consulted VDACS to obtain this list and it was not intended to be all inclusive. The main purpose was to show EPA and the public that we had a good idea of pesticide businesses in Virginia and a registration statement was not needed. We will update the list from VDACS at the next reissuance in 2013.</p>

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

A new Chapter 800 entitled, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Water, has been developed.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	9VAC25-800-10		Section Title: <u>Definitions.</u>
	9VAC25-800-10		Introductory Language: <u>The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:</u>
	9VAC25-800-10		<u>"Action threshold" means the point at which pest populations or environmental conditions can no longer be tolerated</u>

			<p>necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. Sighting a single pest does not always mean control is needed. Action thresholds help determine both the need for control actions and the proper timing of such actions. Action thresholds are site specific and part of integrated pest management decisions.</p>
	9VAC25-800-10		<p>"Active ingredient" means any substance (or group of structurally similar substances if specified by EPA) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) sec. 2(a). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance.</p>
	9VAC25-800-10		<p>"Adverse incident" means an incident that the operator observes upon inspection or of which otherwise becomes aware, in which there is evidence that:</p> <ol style="list-style-type: none"> 1. A person or non-target organism has likely been exposed to a pesticide residue; and 2. The person or non-target organism suffered a toxic or adverse effect. <p>The phrase "toxic or adverse effects" includes effects that occur within surface waters on non-target plants, fish or wildlife that are unusual or unexpected as a result of exposure to a pesticide residue, and may include any of the following:</p> <ol style="list-style-type: none"> 1. Distressed or dead juvenile and small fishes; 2. Washed up or floating fish; 3. Fish swimming abnormally or erratically; 4. Fish lying lethargically at water surface or in shallow water; 5. Fish that are listless or nonresponsive to disturbance; 6. Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; and 7. Other dead or visibly distressed non-target aquatic or semi-aquatic organisms (amphibians, turtles, invertebrates, etc.). <p>The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes), domesticated animals or wildlife (e.g., vomiting, lethargy) that occur either directly or indirectly from a discharge to surface waters that are temporally and spatially related to exposure to a pesticide residue.</p>
	9VAC25-800-10		<p>"Best management practices" or "BMPs" means, for purposes of this chapter, schedules of activities, prohibitions of practices, maintenance procedures, preventative practices</p>

			<u>(pre-emergent applications) and other management practices to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks.</u>
	9VAC25-800-10		<u>"Biological control" means organisms that can be introduced to sites, such as herbivores, predators, parasites, and hyperparasites.</u>
	9VAC25-800-10		<p><u>"Biological pesticides" or "biopesticides" include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP).</u></p> <ol style="list-style-type: none"> <u>1. "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that:</u> <ol style="list-style-type: none"> <u>a. Is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;</u> <u>b. Is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or</u> <u>c. Is a parasitically replicating microscopic element, including but not limited to, viruses.</u> <u>2. "Biochemical pesticide" means a pesticide that:</u> <ol style="list-style-type: none"> <u>a. Is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance;</u> <u>b. Has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and</u> <u>c. Has a non-toxic mode of action to the target pest(s).</u> <u>3. "Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof.</u>
	9VAC25-800-10		<u>"Chemical pesticides" means all pesticides not otherwise classified as biological pesticides.</u>
	9VAC25-800-10		<u>"Control measure" means any best management practice (BMP) or other method used to meet the effluent limitations in this permit. Control measures must comply with label directions and relevant legal requirements. Additionally, control measures could include other actions, including non-chemical tactics (e.g., cultural methods), that a prudent operator would implement to reduce and/or eliminate discharges resulting from pesticide application to surface waters to comply with the effluent limitations in this permit.</u>
	9VAC25-800-10		<u>"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to</u>

			the pest.
	9VAC25-800-10		<p><u>"Declared pest emergency situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on:</u></p> <ol style="list-style-type: none"> <u>1. Significant risk to human health;</u> <u>2. Significant economic loss; or</u> <u>3. Significant risk to:</u> <ol style="list-style-type: none"> <u>a. Endangered species;</u> <u>b. Threatened species;</u> <u>c. Beneficial organisms; or</u> <u>d. The environment.</u>
	9VAC25-800-10		<u>"DEQ" or "department" means the Virginia Department of Environmental Quality.</u>
	9VAC25-800-10		<u>"Discharge of a pollutant" means, for purposes of this chapter, any addition of any "pollutant" or combination of pollutants to surface waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source.</u>
	9VAC25-800-10		<u>"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended.</u>
	9VAC25-800-10		<u>"Impaired water" or "water quality impaired water" or "water quality limited segment" means any stream segment where the water quality does not or will not meet applicable water quality standards, even after the application of technology-based effluent limitations required by §§ 301(b) and 306 of the CWA (33 USC § 1251 et seq. as of 1987). Impaired waters include both impaired waters with approved or established TMDLs, and impaired waters for which a TMDL has not yet been approved or established.</u>
	9VAC25-800-10		<u>"Inert ingredient" means any substance (or group of structurally similar substances if designated by EPA), other than an active ingredient, that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.</u>
	9VAC25-800-10		<u>"Integrated pest management" or "IPM" is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most</u>

			<u>economical means, and with the least possible hazard to people, property, and the environment.</u>
	9VAC25-800-10		<u>"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.</u>
	9VAC25-800-10		<u>"Labeling" means all labels and other written, printed, or graphic matter:</u> <ol style="list-style-type: none"> <u>1. Upon the pesticide or device or any of its containers or wrappers;</u> <u>2. Accompanying the pesticide or device at any time; or</u> <u>3. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.</u>
	9VAC25-800-10		<u>"Mechanical/physical methods" means mechanical tools or physical alterations of the environment, for pest prevention or removal.</u>
	9VAC25-800-10		<u>"Minimize" means to reduce and/or eliminate pesticide discharges to surface waters through the use of control measures to the extent technologically available and economically practicable and achievable.</u>
	9VAC25-800-10		<u>"Non-target organisms" means any organisms that are not the target of the pesticide.</u>
	9VAC25-800-10		<u>"Operator" means, for purposes of this chapter, any person involved in the application of a pesticide that results in a discharge to state waters that meets either or both of the following two criteria:</u> <ol style="list-style-type: none"> <u>1. The person has control over the financing for, or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or</u> <u>2. The person has day-to-day control of or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).</u>
	9VAC25-800-10		<u>"Person" means, for purposes of this chapter, an individual, corporation, partnership, association, a local, state, or federal governmental body, a municipal corporation, or any other legal entity.</u>
	9VAC25-800-		<u>"Pest" means, any deleterious organism that is:</u>

	10		<p><u>1. Any vertebrate animal other than man;</u> <u>2. Any invertebrate animal excluding any internal parasite of living man or other living animals;</u> <u>3. Any plant growing where not wanted, and any plant part such as a root; or</u> <u>4. Any bacterium, virus, or other microorganisms (except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs as defined by the Federal Food, Drug, and Cosmetic Act at 21 U.S.C. §321(g)(1), and cosmetics as defined by the Federal Food, Drug, and Cosmetic Act at 21 U.S.C. §321(i)).</u></p> <p><u>Any organism classified as endangered threatened, or otherwise protected under federal or state laws shall not be deemed a pest for the purposes of this chapter.</u></p>
	9VAC25-800-10		<p><u>"Pest management area" means the area of land, including any water, for which pest management activities covered by this permit are conducted.</u></p>
	9VAC25-800-10		<p><u>"Pesticide" means:</u></p> <p><u>1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Commissioner of Agriculture and Consumer Services shall declare to be a pest;</u> <u>2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and</u> <u>3. Any substance which is intended to become an active ingredient thereof.</u></p> <p><u>Pesticides that are used/applied shall only be those that are approved and registered for use by the Virginia Department of Agriculture and Consumer Services.</u></p>
	9VAC25-800-10		<p><u>"Pesticide product" means a pesticide in the particular form (including active and inert ingredients, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.</u></p>
	9VAC25-800-10		<p><u>"Pesticide research and development" means activities undertaken on a systematic basis to gain new knowledge (research) and/or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development). These types of activities are generally categorized under 5417 under the 2007 North American Industry Classification System (NAICS).</u></p>
	9VAC25-800-		<p><u>"Pesticide residue" includes that portion of a pesticide</u></p>

	10		<p><u>application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.</u></p>
	9VAC25-800-10		<p><u>"Point source" means, for purposes of this chapter, any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, container, from which pollutants are or may be discharged. This includes biological pesticides or pesticide residuals coming from a container or nozzle of a pesticide application device. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.</u></p>
	9VAC25-800-10		<p><u>"Pollutant" means, for purposes of this chapter, biological pesticides and any pesticide residue resulting from use of a chemical pesticide.</u></p>
	9VAC25-800-10		<p><u>"Surface waters" means:</u></p> <ol style="list-style-type: none"> <u>1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;</u> <u>2. All interstate waters, including interstate wetlands;</u> <u>3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:</u> <ol style="list-style-type: none"> <u>a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;</u> <u>b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;</u> <u>or</u> <u>c. Which are used or could be used for industrial purposes by industries in interstate commerce.</u> <u>4. All impoundments of waters otherwise defined as surface waters under this definition;</u> <u>5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;</u> <u>6. The territorial sea; and</u> <u>7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.</u> <p><u>Surface waters do not include waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act</u></p>

			jurisdiction remains with the EPA.
	9VAC25-800-10		"Target pest" means the organism toward which pest control measures are being directed.
	9VAC25-800-10		"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations.
	9VAC25-800-10		<p>"Treatment area" means the area of land including any waters, or the linear distance along water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area.</p> <p>Treatment area includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.</p> <p>Treatment area calculations for pesticide applications that occur at water's edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied.</p>
	9VAC25-800-10		"VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.
	9VAC25-800-10		"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
	9VAC25-800-20		<p>9VAC25-800-20. Purpose; delegation of authority; effective date of permit.</p> <p>A. This general permit regulation governs discharges resulting from the application of pesticides to surface waters.</p> <p>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-</p>

		<p>44.14 of the Code of Virginia. <u>C. This general VPDES permit will become effective on April 10, 2011, and expire on June 30, 2013.</u></p>								
	<p>9VAC25-800-30</p>	<p><u>9VAC25-800-30. Authorization to discharge.</u></p> <p><u>A. Any operator that meets the eligibility requirements in subsection B of this section is hereby authorized for their discharges resulting from the application of pesticides to surface waters of the Commonwealth of Virginia.</u></p> <p><u>The definition of operator in 9VAC25-800-10 provides that more than one person may be responsible for the same discharge resulting from pesticide application. Any operator authorized to discharge under this general permit is responsible for compliance with the terms of this permit for discharges resulting from the application of pesticides.</u></p> <p><u>B. Eligibility. This permit is available to operators who discharge to surface waters from the application of: (1) biological pesticides; or (2) chemical pesticides that leave a residue (hereinafter collectively “pesticides”), when the pesticide application is for one of the following pesticide use patterns:</u></p> <ol style="list-style-type: none"> <u>1. Mosquito and other flying insect pest control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include but are not limited to mosquitoes and black flies.</u> <u>2. Weed, algae and pathogen control - to control invasive or other nuisance weeds, algae and pathogens in surface waters.</u> <u>3. Animal Pest Control – to control invasive or other animal pests in surface waters.</u> <u>4. Forest Canopy Pest Control – application of a pesticide to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.</u> <p><u>C. Operators applying pesticides are required to maintain a Pesticide Discharge Management Plan (PDMP) if they exceed the annual treatment area thresholds in Table 1 below:</u></p> <p style="text-align: center;"><u>Table 1. Annual Treatment Area Thresholds</u></p> <table border="1" data-bbox="706 1640 1430 1875"> <thead> <tr> <th><u>Pesticide Use</u></th> <th><u>Annual Threshold</u></th> </tr> </thead> <tbody> <tr> <td><u>Mosquitoes and Other Flying Insect Pests</u></td> <td><u>6400 acres of treatment area</u></td> </tr> <tr> <td><u>Weed, Algae and Pathogen Control:</u></td> <td><u>-</u></td> </tr> <tr> <td><u>- In Water</u></td> <td><u>80 acres of treatment</u></td> </tr> </tbody> </table>	<u>Pesticide Use</u>	<u>Annual Threshold</u>	<u>Mosquitoes and Other Flying Insect Pests</u>	<u>6400 acres of treatment area</u>	<u>Weed, Algae and Pathogen Control:</u>	<u>-</u>	<u>- In Water</u>	<u>80 acres of treatment</u>
<u>Pesticide Use</u>	<u>Annual Threshold</u>									
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<u>Weed, Algae and Pathogen Control:</u>	<u>-</u>									
<u>- In Water</u>	<u>80 acres of treatment</u>									

			area ¹
		- At Water's Edge:	20 linear miles of treatment area at water's edge ²
		Animal Pest Control:	-
		- In Water	80 acres of treatment area ¹
		- At Water's Edge	20 linear miles of treatment area at water's edge ²
		Forest Canopy Pest Control	6400 acres of treatment area
		-	
<p>¹ - Calculations include the area of the applications made to: (1) surface waters and (2) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a 10 acre site is counted as 20 acres of treatment area.</p> <p>² - Calculations include the linear extent of the application made along the water's edge adjacent to: (1) surface waters and (2) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity or area only once. For example, treating both sides of a 10 mile ditch twice a year is equal to 10 miles of water treatment area.</p> <p>D. An operator's discharge resulting from the application of pesticides is not authorized under this permit in the event of any of the following:</p> <ol style="list-style-type: none"> 1. The operator is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation; 2. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards. Discharges resulting from the application of pesticides are temporary and allowable in exceptional waters (see 9VAC25-260-30 A.3(b)(3)); 3. The operator is proposing a discharge from a pesticide application to surface waters that have been identified as impaired by that pesticide or its degradates. Impaired waters include both impaired waters with board adopted, EPA approved or EPA imposed TMDLs, and impaired waters for which a TMDL has not yet been approved, established, or imposed. <p>If the proposed discharge would not be eligible for</p>			

			<p><u>coverage under this permit because the surface water is listed as impaired for that specific pesticide, but the applicant has evidence that shows the water is no longer impaired, the applicant may submit this information to the board and request that coverage be allowed under this permit.</u></p> <p><u>E. Discharge authorization date. Operators are not required to submit a registration statement, and are authorized to discharge under this permit immediately upon the permit's effective date of April 10, 2011.</u></p> <p><u>F. Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general VPDES permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation. For example, this permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling.</u></p> <p><u>G. Continuation of permit coverage.</u></p> <p><u>1. This general permit shall expire on June 30, 2013, except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.</u></p> <p><u>2. General permit coverages continued under this section remain fully effective and enforceable.</u></p> <p><u>3. When the operator that was covered under the expiring or expired pesticides general permit is not in compliance with the conditions of that permit, the board may choose to do any or all of the following:</u></p> <p><u>a. Initiate enforcement action based upon the pesticides general permit which has been continued;</u></p> <p><u>b. Issue a notice of intent to deny coverage under a reissued pesticides general permit. If the general permit coverage is denied, the operator 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;</u></p> <p><u>c. Issue an individual permit with appropriate conditions; or</u></p> <p><u>d. Take other actions authorized by the VPDES permit Regulation (9VAC25-31)</u></p>
	9VAC25-800-		<u>9VAC25-800-40. Registration statement.</u>

	40		<p><u>Operators are not required to submit a registration statement to apply for coverage under this general VPDES permit for discharges resulting from the application of pesticides to surface waters.</u></p>
	9VAC25-800-50		<p><u>9VAC25-800-50. Termination of permit coverage.</u></p> <p><u>Operators are not required to submit a notice of termination to terminate permit coverage under this general VPDES permit for discharges resulting from the application of pesticides to surface waters.</u></p>
	9VAC25-800-60		<p><u>9VAC25-800-60. General permit.</u></p> <p><u>General permit:</u></p> <p><u>Any operator who is authorized to discharge shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.</u></p> <p style="text-align: center;"><u>General Permit No: VAG87</u></p> <p style="text-align: center;"><u>Effective Date: April 10, 2011</u></p> <p style="text-align: center;"><u>Expiration Date: June 30, 2013</u></p> <p style="text-align: center;"><u>GENERAL PERMIT FOR DISCHARGES RESULTING FROM THE APPLICATION OF PESTICIDES TO SURFACE WATERS OF VIRGINIA</u></p> <p style="text-align: center;"><u>AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW</u></p> <p><u>In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, operators that apply pesticides that result in a discharge to surface waters are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia.</u></p> <p><u>The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth herein. Coverage under this general VPDES permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation, including the pesticide product label.</u></p>
	9VAC25-800-60 Part I		<p style="text-align: center;"><u>Part I</u></p> <p style="text-align: center;"><u>Effluent Limitations, Monitoring Requirements and Special Conditions</u></p> <p><u>A. Effluent limitations.</u></p> <p><u>1. Technology-based effluent limitations. To meet the effluent limitations in this permit, the operator shall implement site-specific control measures that minimize discharges of pesticides to surface waters.</u></p> <p style="padding-left: 20px;"><u>a. Minimize pesticide discharges to surface waters. All operators shall minimize the discharge of pollutants resulting from the</u></p>

			<p>application of pesticides, and:</p> <p><u>(1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;</u></p> <p><u>(2) No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material. All pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall be leak proof. All spray distribution systems shall be leak proof, and any pumps which these systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of pesticide application;</u></p> <p><u>(3) All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over non-target areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are not required for separate water storage tanks used to fill pesticide application equipment by gravity systems when the fill spout, tube, or pipe is not allowed to contact or fall below the water level of the application equipment being filled, and no other possible means of establishing a back siphon or backflow exists.</u></p> <p><u>b. Integrated Pest Management (IPM) practices. The operator shall implement integrated pest management practices to ensure that discharges resulting from the application of pesticides to surface waters are minimized. Operators that exceed the annual treatment area thresholds established in 9VAC25 800-30 C are also required to maintain a Pesticide Discharge Management Plan (PDMP) in accordance with Part 1 C of this permit. The PDMP documents the operator's IPM practices.</u></p> <p><u>The operator's IPM practices shall consider the following for each pesticide use pattern:</u></p>
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			<p><u>(Note: If the operator's discharge of pollutants results from the application of a pesticide that is being used solely for the purpose of "pesticide research and development," as defined in 9VAC25-800-10, the operator is only required to fully implement IPM practices to the extent that the requirements do not compromise the research design.)</u></p> <p><u>(1) Mosquito and other flying insect pest control. This subpart applies to discharges resulting from the application of pesticides to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include but are not limited to mosquitoes and black flies.</u></p> <p><u>(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:</u></p> <ul style="list-style-type: none"> <u>(i) Identify target mosquito or flying insect pests;</u> <u>(ii) Establish densities for larval and adult mosquito or flying insect pest populations to serve as action thresholds for implementing pest management strategies;</u> <u>(iii) Identify known breeding sites for source reduction, larval control program, and habitat management; and</u> <u>(iv) Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems.</u> <p><u>(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control mosquitoes or other flying insect pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to non-target organisms, pest resistance, feasibility, and cost effectiveness:</u></p>
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			<p><u>(i) No action;</u></p> <p><u>(ii) Prevention;</u></p> <p><u>(iii) Mechanical or physical methods;</u></p> <p><u>(iv) Cultural methods;</u></p> <p><u>(v) Biological control;</u></p> <p><u>(vi) Pesticides.</u></p> <p><u>(c) Pesticide use. If a pesticide is selected to manage mosquitoes or flying insect pests and application of the pesticide will result in a discharge to surface waters, the operator shall:</u></p> <p><u>(i) Conduct larval and/or adult surveillance, or assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects, prior to each pesticide application to assess the pest management area and to determine when action thresholds are met that necessitate the need for pest management;</u></p> <p><u>(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area prior to each pesticide application to identify whether existing environmental conditions support development of pest populations and are suitable for control activities;</u></p> <p><u>(iii) Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold has been met;</u></p> <p><u>(iv) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when larval action thresholds have been met; and</u></p> <p><u>(v) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when adult action thresholds have been met.</u></p> <p><u>(2) Weed, algae and pathogen control. This subpart applies to discharges resulting from the application of pesticides to control invasive or other nuisance weeds, algae and pathogens in surface waters.</u></p> <p><u>(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for</u></p>
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			<p><u>each pest management area:</u></p> <p><u>(i) Identify target weed and algae;</u></p> <p><u>(ii) Identify areas with weed, algae or pathogen problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);</u></p> <p><u>(iii) Identify possible factors causing or contributing to the weed or algae problem (e.g., nutrients, invasive species, etc); and</u></p> <p><u>(iv) Establish past or present weed, algae or pathogen densities to serve as action threshold(s) for implementing pest management strategies.</u></p> <p><u>(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control weeds, algae or pathogens. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to non-target organisms, pest resistance, feasibility, and cost effectiveness:</u></p> <p><u>(i) No action;</u></p> <p><u>(ii) Prevention;</u></p> <p><u>(iii) Mechanical or physical methods;</u></p> <p><u>(iv) Cultural methods;</u></p> <p><u>(v) Biological control;</u></p> <p><u>(vi) Pesticides.</u></p> <p><u>(c) Pesticide use. If a pesticide is selected to manage weeds, algae or pathogens and application of the pesticide will result in a discharge to surface waters, the operator shall:</u></p> <p><u>(i) Conduct surveillance prior to each pesticide application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and</u></p> <p><u>(ii) Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.</u></p> <p><u>(3) Animal pest control. This subpart applies to discharges resulting from the application of</u></p>
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			<p><u>pesticides to control invasive or other animal pests in surface waters.</u></p> <p><u>(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:</u></p> <p><u>(i) Identify target animal pests;</u></p> <p><u>(ii) Identify areas with animal pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);</u></p> <p><u>(iii) Identify possible factors causing or contributing to the problem; and</u></p> <p><u>(iv) Establish past or present animal pest densities to serve as action threshold(s) for implementing pest management strategies.</u></p> <p><u>(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, the operator shall select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control animal pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to non-target organisms, pest resistance, feasibility, and cost effectiveness:</u></p> <p><u>(i) No action;</u></p> <p><u>(ii) Prevention;</u></p> <p><u>(iii) Mechanical or physical methods;</u></p> <p><u>(iv) Biological control;</u></p> <p><u>(v) Pesticides.</u></p> <p><u>(c) Pesticide use. If a pesticide is selected to manage animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:</u></p> <p><u>(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and</u></p> <p><u>(ii) Reduce the impact on the environment and non-target organisms by evaluating site</u></p>
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			<p><u>restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold has been met.</u></p> <p><u>(4) Forest canopy pest control. This subpart applies to discharges resulting from the application of pesticides to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.</u></p> <p><u>(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the operator shall consider the following for each pest management area:</u></p> <p><u>(i) Identify target pests;</u></p> <p><u>(ii) Establish target pest densities to serve as action threshold(s) for implementing pest management strategies; and</u></p> <p><u>(iii) Identify current distribution of the target pest and assess potential distribution in the absence of control measures.</u></p> <p><u>(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control forestry pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to non-target organisms, pest resistance, feasibility, and cost effectiveness:</u></p> <p><u>(i) No action;</u></p> <p><u>(ii) Prevention;</u></p> <p><u>(iii) Mechanical or physical methods;</u></p> <p><u>(iv) Cultural methods;</u></p> <p><u>(v) Biological control;</u></p> <p><u>(vi) Pesticides.</u></p> <p><u>(c) Pesticide use. If a pesticide is selected to manage forestry pests and application of the pesticide will result in a discharge to surface waters, the operator shall:</u></p>
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			<p><u>(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the pest action threshold is met that necessitates the need for pest management;</u></p> <p><u>(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to identify conditions that support target pest development and are conducive for treatment activities;</u></p> <p><u>(iii) Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met; and</u></p> <p><u>(iv) Evaluate using pesticides against the most susceptible developmental stage.</u></p> <p><u>2. Water quality-based effluent limitations. The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards.</u></p> <p><u>If at any time the operator become aware, or the board determines, that the operator's discharge of pollutants causes or contributes to an excursion of applicable water quality standards, corrective action must be taken as required in Part I D 1 of this permit.</u></p> <p><u>B. Monitoring Requirements.</u></p> <p><u>1. Monitoring requirements for pesticide applicators.</u></p> <p><u>(a) The amount of pesticide applied shall be monitored to ensure that the lowest effective amount is used to control the pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label.</u></p> <p><u>(b) Pesticide application activities shall be monitored to ensure that regular maintenance activities are being performed, and to ensure that application equipment is in proper operating condition to reduce the potential for leaks, spills, or other unintended discharge of pesticides to surface waters.</u></p> <p><u>(c) Pesticide application activities shall also be monitored to ensure that the application equipment is in proper operating condition by adhering to any manufacturer's conditions and industry practices, and by calibrating, cleaning, and repairing equipment on a regular basis.</u></p> <p><u>2. Visual monitoring assessment requirements for all operators. All operators covered under this permit must conduct a visual monitoring assessment (i.e., spot checks in the area to and around where pesticides are applied) for possible and observable</u></p>
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			<p><u>adverse incidents caused by application of pesticides, including but not limited to the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.</u></p> <p><u>A visual monitoring assessment is only required during the pesticide application when feasibility and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances. Visual monitoring assessments of the application site must be performed:</u></p> <p><u>(a) During any post-application surveillance or efficacy check that the operator conducts, if surveillance or an efficacy check is conducted.</u></p> <p><u>(b) During any pesticide application, when considerations for safety and feasibility allow.</u></p> <p><u>C. Pesticide Discharge Management Plan (PDMP).</u></p> <p><u>Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must prepare a PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration of coverage under this general permit, even if discharges subsequently fall below the annual application threshold levels. The operator applying pesticides shall develop a PDMP consistent with the deadline outlined in Table I-1 below.</u></p> <table border="1" data-bbox="708 1150 1429 1896"> <thead> <tr> <th colspan="2" data-bbox="708 1150 1429 1224"><u>Table I-1. Pesticide Discharge Management Plan Deadline</u></th> </tr> <tr> <th data-bbox="708 1224 1154 1283"><u>Category</u></th> <th data-bbox="1154 1224 1429 1283"><u>PDMP Deadline</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="708 1283 1154 1478"><u>Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.</u></td> <td data-bbox="1154 1283 1429 1478"><u>Prior to first pesticide application covered under this permit.</u></td> </tr> <tr> <td data-bbox="708 1478 1154 1673"><u>Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.</u></td> <td data-bbox="1154 1478 1429 1673"><u>Prior to exceeding an annual treatment area threshold.</u></td> </tr> <tr> <td data-bbox="708 1673 1154 1896"><u>Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.</u></td> <td data-bbox="1154 1673 1429 1896"><u>No later than 90 days after responding to declared pest emergency situation.</u></td> </tr> </tbody> </table>	<u>Table I-1. Pesticide Discharge Management Plan Deadline</u>		<u>Category</u>	<u>PDMP Deadline</u>	<u>Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.</u>	<u>Prior to first pesticide application covered under this permit.</u>	<u>Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.</u>	<u>Prior to exceeding an annual treatment area threshold.</u>	<u>Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.</u>	<u>No later than 90 days after responding to declared pest emergency situation.</u>
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			<p>The PDMP does not contain effluent limitations; the limitations are contained in Parts I A 1 and I A 2 of the permit. <u>The PDMP documents how the operator will implement the effluent limitations in Parts I A 1 and I A 2 of the permit, including the evaluation and selection of control measures to meet those effluent limitations and minimize discharges. In the PDMP, the operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If other documents are being relied upon by the operator to describe how compliance with the effluent limitations in this permit will be achieved, such as a pre-existing integrated pest management (IPM) plan, a copy of any portions of any documents that are being used to document the implementation of the effluent limitations shall be attached to the PDMP. The control measures implemented must be documented and the documentation must be kept up-to-date.</u></p> <p><u>1. Contents of the Pesticide Discharge Management Plan. The PDMP must include the following elements:</u></p> <ul style="list-style-type: none"> <u>a. Pesticide Discharge Management Team</u> <u>b. Pest Management Area Description</u> <u>c. Control Measure Description</u> <u>d. Schedules and Procedures</u> <ul style="list-style-type: none"> <u>(1) Pertaining to Control Measures Used to Comply with the Effluent Limitations in Part I A 1</u> <ul style="list-style-type: none"> <u>(a) Application Rate and Frequency Procedures</u> <u>(b) Spill Prevention Procedures</u> <u>(c) Pesticide Application Equipment Procedures</u> <u>(d) Pest Surveillance Procedures</u> <u>(e) Assessing Environmental Conditions Procedures</u> <u>(2) Pertaining to Other Actions Necessary to Minimize Discharges</u> <ul style="list-style-type: none"> <u>(a) Spill Response Procedures</u> <u>(b) Adverse Incident Response Procedures</u> <u>(c) Pesticide Monitoring Schedules and Procedures</u> <u>e. Documentation to Support Eligibility Considerations under Other Federal Laws</u> <u>f. Signature Requirements</u> <p><u>2. PDMP team. The operator shall identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:</u></p> <ul style="list-style-type: none"> <u>a. Persons responsible for managing pests in relation to the pest management area;</u> <u>b. Persons responsible for developing and</u>
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			<p>revising the PDMP;</p> <p><u>c. Persons responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements; and</u></p> <p><u>d. Persons responsible for pesticide applications.</u></p> <p><u>3. Pest management area description. The operator shall document the following:</u></p> <p><u>a. Pest problem description. A description of the pest problem at the pest management area shall be documented, to include identification of the target pests, source of the pest problem, and source of data used to identify the problem in Parts I A 1 b (1), I A 1 b (2), I A 1 b (3), and I A 1 b (4).</u></p> <p><u>b. Action thresholds. The action thresholds for the pest management area shall be described, including a description of how they were determined.</u></p> <p><u>c. General service area map. The plan shall include a general service area map that identifies the geographic boundaries of the service area to which the plan applies and location of major surface waters.</u></p> <p><u>4. Control measure description. The operator shall document an evaluation of control measures for the pest management area. The documentation shall include the control measures that will be implemented to comply with the effluent limitations required in Parts I A 1 and I A 2. The operator shall include in the description the active ingredients evaluated.</u></p> <p><u>5. Schedules and procedures. The operator shall document the following schedules and procedures in the PDMP:</u></p> <p><u>a. Pertaining to control measures used to comply with the effluent limitations in Part I A 1. The following must be documented in the PDMP:</u></p> <p><u>(1) Application rate and frequency. (See Part I A 1 a (1)) Procedures for determining the lowest effective amount of pesticide product per application (without exceeding the maximum allowable rate of the product label) and the optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance.</u></p> <p><u>(2) Spill prevention. (See Part I A 1 a (2)) Procedures and schedule of maintenance activities for preventing spills and leaks of pesticides associated with the application of pesticides covered under this permit.</u></p>
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			<p><u>(3) Pesticide application equipment. (See Part I A 1 a (3)) Schedules and procedures for maintaining the pesticide application equipment in proper operating condition, including calibrating, cleaning, and repairing the equipment per 2VAC20-20-170.</u></p> <p><u>(4) Pest surveillance. (See Parts I A 1 b (1) (c), I A 1 b (2) (c), I A 1 b (3) (c) and I A 1 b (4) (c)) Procedures and methods for conducting pre-application pest surveillance.</u></p> <p><u>(5) Assessing environmental conditions. (Parts I A 1 b (1) (c) (ii) and I A 1 b (4) (c) (ii)) Procedures and methods for assessing environmental conditions in the treatment area.</u></p> <p><u>b. Pertaining to other actions necessary to minimize discharges resulting from pesticide application. The following must be documented in the PDMP:</u></p> <p><u>(1) Spill response procedures. At a minimum the PDMP must have:</u></p> <p><u>(a) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.</u></p> <p><u>(b) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.</u></p> <p><u>(2) Adverse incident response procedures. At a minimum the PDMP must have:</u></p> <p><u>(a) Procedures for responding to any incident resulting from pesticide applications; and</u></p> <p><u>(b) Procedures for notification of the incident, both internal to the operator's agency/organization and external. Contact information for DEQ, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.</u></p> <p><u>(3) Pesticide monitoring schedules and procedures. The operator shall document procedures for monitoring consistent with the requirements in Part I B including:</u></p> <p><u>(a) The process for determining the location of any monitoring;</u></p> <p><u>(b) A schedule for monitoring;</u></p> <p><u>(c) The person (or position) responsible for</u></p>
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			<p><u>conducting monitoring; and</u></p> <p><u>(d) Procedures for documenting any observed impacts to non-target organisms resulting from your pesticide discharge.</u></p> <p><u>6. Signature requirements.</u></p> <p><u>a. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department, must be signed by a person described in this subsection, or by a duly authorized representative of that person described in subsection 6 b below.</u></p> <p><u>(1) For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.</u></p> <p><u>(2) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or</u></p> <p><u>(3) For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency.</u></p> <p><u>b. A person is a duly authorized representative only if:</u></p> <p><u>(1) The authorization is made in writing by a person described in subsection 6 a above:</u></p>
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			<p><u>(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and</u></p> <p><u>(3) The signed and dated written authorization is included in the PDMP. A copy of this authorization must be submitted to the department, if requested.</u></p> <p><u>c. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.</u></p> <p><u>d. Any person signing documents in accordance with subsections 6 a or 6 b above must include the following certification:</u></p> <p><u>“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”</u></p> <p><u>7. PDMP modifications and availability.</u></p> <p><u>a. PDMP modifications. The operator shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part I D 1 a of this permit, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with Part I C 6 of this permit.</u></p> <p><u>The operator shall review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for</u></p>
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			<p><u>the pest management area.</u></p> <p><u>b. PDMP availability. The operator shall retain a copy of the current PDMP, along with all supporting maps and documents. The operator shall make the PDMP and supporting information available to the department upon request. The PDMP is subject to the provisions and exclusions of the Virginia Freedom of Information Act, Chapter 37 of Title 2.2.</u></p> <p><u>D. Special Conditions.</u></p> <p><u>1. Corrective Action.</u></p> <p><u>a. Situations requiring revision of control measures. If any of the following situations occur, the operator shall review and, as necessary, revise the evaluation and selection of control measures to ensure that the situation is eliminated and will not be repeated in the future:</u></p> <p><u>(1) An unauthorized release or discharge associated with the application of pesticides occurs (e.g., spill, leak, or discharge not authorized by this or another VPDES permit);</u></p> <p><u>(2) The operator becomes aware, or the board concludes, that the control measures are not adequate/sufficient for the discharge of pollutants to meet applicable water quality standards;</u></p> <p><u>(3) Any monitoring activities indicate that the operator failed to meet the requirements of Part 1 A 1 a of this permit;</u></p> <p><u>(4) An inspection or evaluation of the operator's activities by DEQ, VDACS, EPA, or a locality, reveals that modifications to the control measures are necessary to meet the non-numeric effluent limits in this permit, or</u></p> <p><u>(5) The operator observes (e.g., during visual monitoring that is required in Part I B 2) or is otherwise made aware of an adverse incident.</u></p> <p><u>b. Corrective action deadlines. If the operator determines that changes to the control measures are necessary to eliminate any situation identified in Part I D 1 a, such changes must be made before the next pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.</u></p> <p><u>c. Corrective action documentation. For situations identified in Part I D 1 a, other than for adverse incidents (see Part I D 2), or reportable spills or leaks (see Part I D 3), the operator shall document the situation triggering corrective action and the planned corrective action within five (5) days of becoming aware of that situation, and retain a copy of this documentation. This</u></p>
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			<p><u>documentation must include the following information:</u></p> <ul style="list-style-type: none"> <u>(1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;</u> <u>(2) Brief description of the situation;</u> <u>(3) Date the problem was identified;</u> <u>(4) Brief description of how the problem was identified and how the operator learned of the situation and date the operator learned of the situation;</u> <u>(5) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and</u> <u>(6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.</u> <p><u>2. Adverse incident documentation and reporting.</u></p> <ul style="list-style-type: none"> <u>a. Twenty-four (24) hour adverse incident notification. If the operator observes or is otherwise made aware of an adverse incident that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the department (see subpart Part I D 5). This notification must be made by telephone within 24 hours of the operator becomes aware of the adverse incident and must include at least the following information:</u> <ul style="list-style-type: none"> <u>(1) The caller's name and telephone number;</u> <u>(2) Operator name and mailing address;</u> <u>(3) The name and telephone number of a contact person, if different than the person providing the 24-hour notice;</u> <u>(4) How and when the operator became aware of the adverse incident;</u> <u>(5) Description of the location of the adverse incident;</u> <u>(6) Description of the adverse incident identified and the EPA pesticide registration number for each product that was applied in the area of the adverse incident; and</u> <u>(7) Description of any steps the operator has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.</u> <p><u>If the operator is unable to notify the department</u></p>
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			<p><u>within 24 hours, notification shall be made as soon as possible, and the rationale for why the notification was not possible within 24 hours shall be provided.</u></p> <p><u>The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.</u></p> <p><u>b. Reporting of adverse incidents is not required under this permit in the following situations:</u></p> <p><u>(1) The operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application.</u></p> <p><u>(2) The operator has been notified in writing by the board that the reporting requirement has been waived for this incident or category of incidents.</u></p> <p><u>(3) The operator receives notification of an adverse incident but that notification and supporting information are clearly erroneous.</u></p> <p><u>(4) An adverse incident occurs to pests that are similar in kind to pests identified as potential targets.</u></p> <p><u>c. Five (5) day adverse incident written report. Within five (5) days of a reportable adverse incident pursuant to Part I D 2 a, the operator shall provide a written report of the adverse incident to the appropriate DEQ regional office at the address listed in Part I D 5. The adverse incident report must include at least the following information:</u></p> <p><u>(1) Information required to be provided in Part I D 2 a;</u></p> <p><u>(2) Date and time the operator contacted DEQ notifying the department of the adverse incident and who the operator spoke with at DEQ and any instructions you received from DEQ;</u></p> <p><u>(3) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);</u></p> <p><u>(4) A description of the circumstances of the adverse incident including species affected, estimated number of individuals and approximate size of dead or distressed organisms;</u></p> <p><u>(5) Magnitude and scope of the effected area (e.g., aquatic square area or total stream distance affected);</u></p> <p><u>(6) Pesticide application rate, intended use site, method of application, and name of pesticide</u></p>
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			<p><u>product, description of pesticide ingredients, and EPA registration number;</u></p> <p><u>(7) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);</u></p> <p><u>(8) If laboratory tests were performed, indicate what test(s) were performed, and when, and provide a summary of the test results within 5 days after they become available;</u></p> <p><u>(9) If applicable, explain why it is believed the adverse incident could not have been caused by exposure to the pesticide;</u></p> <p><u>(10) Actions to be taken to prevent recurrence of adverse incidents; and</u></p> <p><u>(11) Signed and dated in accordance with Part I C 6.</u></p> <p><u>The operator shall report adverse incidents even for those instances when the pesticide labeling states that adverse effects may occur.</u></p> <p><u>d. Adverse incident to threatened or endangered species or critical habitat.</u></p> <p><u>(1) Notwithstanding any of the other adverse incident notification requirements of this section, if the operator becomes aware of an adverse incident to threatened or endangered species or critical habitat that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the:</u></p> <p><u>(a) National Marine Fisheries Service (NMFS) and the Virginia Department of Game and Inland Fisheries (DGIF) in the case of an anadromous or marine species; or,</u></p> <p><u>(b) U.S. Fish and Wildlife Service (FWS) and the DGIF in the case of an animal or invertebrate species; or,</u></p> <p><u>(c) U.S. Fish and Wildlife Service (FWS) and the Virginia Department of Agriculture and Consumer Services in the case of plants or insects.</u></p> <p><u>(2) Threatened or endangered species or critical habitats include the following:</u></p> <p><u>(a) federally-listed threatened or endangered species,</u></p> <p><u>(b) federally-designated critical habitat,</u></p> <p><u>(c) state-listed threatened or endangered species,</u></p> <p><u>(d) Tier I (critical conservation need), or Tier II (very high conservation need) Species of Greatest Conservation Need (SGCN) as defined</u></p>
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			<p>in Virginia's Wildlife Action Plan (www.bewildvirginia.org).</p> <p><u>(3) This notification must be made by telephone immediately upon the operator becoming aware of the adverse incident and must include at least the following information:</u></p> <p><u>(a) The caller's name and telephone number;</u></p> <p><u>(b) Operator name and mailing address;</u></p> <p><u>(c) The name of the affected species, size of area impacted, and if applicable, the approximate number of animals affected;</u></p> <p><u>(d) How and when the operator became aware of the adverse incident;</u></p> <p><u>(e) Description of the location of the adverse incident;</u></p> <p><u>(f) Description of the adverse incident, including the EPA pesticide registration number for each product the operator applied in the area of the adverse incident;</u></p> <p><u>(g) Description of any steps the operator has taken or will take to alleviate the adverse impact to the species; and</u></p> <p><u>(h) Date and time of application.</u></p> <p><u>Additional information on federally-listed threatened or endangered species and federally-designated critical habitat is available from NMFS (www.nmfs.noaa.gov) for anadromous or marine species or FWS (www.fws.gov) for terrestrial or freshwater species. Additional information on state listed-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service (www.dgif.virginia.gov). Listing of state threatened or endangered plants and insects can be found in Section 3.2-1000-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code (both the Code of Virginia and the Virginia Administrative Code must be referenced in order to obtain the complete plant and insect list). (Contact information for these agencies can be found on the Contact Information Form or through the DEQ website.)</u></p> <p><u>3. Reportable spills and leaks.</u></p> <p><u>a. Spill, leak, or other unauthorized discharge notification. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Parts 110, 117, or 302 occurs in any 24-hour period, the operator shall notify the department (see Part I D 2) as soon as the operator has knowledge of</u></p>
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			<p><u>the release. Department contact information must be kept in locations that are readily accessible and available in the area where a spill, leak, or other unpermitted discharge may occur.</u></p> <p><u>b. Five-day spill, leak, or other unauthorized discharge report. Within five (5) days of the operator becoming aware of a spill, leak, or other unauthorized discharge triggering the notification in subsection a above, the operator shall submit a written report to the appropriate DEQ regional office at the address listed in Part I D 5. The report shall contain the following information:</u></p> <p><u>(1) A description of the nature and location of the spill, leak or discharge;</u></p> <p><u>(2) The cause of the spill, leak or discharge;</u></p> <p><u>(3) The date on which the spill, leak or discharge occurred;</u></p> <p><u>(4) The length of time that the spill, leak or discharge continued;</u></p> <p><u>(5) The volume of the spill, leak or discharge;</u></p> <p><u>(6) If the discharge is continuing, how long it is expected to continue, and what the expected total volume of the discharge will be;</u></p> <p><u>(7) A summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and</u></p> <p><u>(8) Any steps planned or taken to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.</u></p> <p><u>Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.</u></p> <p><u>The Board may waive the written report on a case-by-case basis for reports of noncompliance if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.</u></p> <p>4. Recordkeeping and annual reporting.</p> <p><u>The operator shall keep records as required in this permit. These records must be accurate and complete and sufficient to demonstrate compliance with the conditions of this permit. The operator can rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided all requirements of this permit are satisfied. The board recommends that all operators covered under this permit keep records of acres or linear miles treated</u></p>
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			<p><u>for all applicable use patterns covered under this general permit.</u></p> <p><u>a. All operators must keep the following records:</u></p> <p><u>(1) A copy of any Adverse Incident Reports (see Part I D 2 c).</u></p> <p><u>(2) The operator's rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part I D 2 a.</u></p> <p><u>(3) Any corrective action documentation (see Part I D 1 c).</u></p> <p><u>b. Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must also maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:</u></p> <p><u>(1) Name, address, and telephone number of customer and address or location, if different, of site of application;</u></p> <p><u>(2). Name and VDACS certification number of the person making the application or certification number of the supervising certified applicator;</u></p> <p><u>(3) Day, month and year of application;</u></p> <p><u>(4) Type of plants, crop, animals, or sites treated and principal pests to be controlled;</u></p> <p><u>(5) Acreage, area, or number of plants or animals treated;</u></p> <p><u>(6) Brand name or common product name;</u></p> <p><u>(7) EPA registration number;</u></p> <p><u>(8) Amount of pesticide concentrate and amount of diluting used, by weight or volume, in mixture applied; and</u></p> <p><u>(9) Type of application equipment used.</u></p> <p><u>c. All required records must be assembled as soon as possible but no later than 30 days following completion of such activity. The operator shall retain any records required under this permit for at least 3 years from the date that coverage under this permit expires. The operator shall make available to the board, including an authorized representative of the board, all records kept under this permit upon request and provide copies of such records, upon request.</u></p> <p><u>d. Annual reporting.</u></p> <p><u>(1) Any operator applying pesticides that reports an adverse incident as described in Part I D 2 must submit an annual report to the department no later than February 10th of the following year</u></p>
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			<p><u>(and retain a copy for the operator's records).</u></p> <p><u>(2) The annual report must contain the following information:</u></p> <p><u>(a) Operator's name:</u></p> <p><u>(b) Contact person name, title, e-mail address (where available), and phone number;</u></p> <p><u>(c) A summary report of all adverse incidents that occurred during the previous calendar year; and</u></p> <p><u>(d) A summary of any corrective actions, including spill responses, in response to adverse incidents, and the rationale for such actions.</u></p> <p><u>5. DEQ contact information and mailing addresses.</u></p> <p><u>a. All Incident Reports under Part I D 2 must be sent to the appropriate DEQ regional office within five (5) days of the operator becoming aware of the adverse incident.</u></p> <p><u>b. All other written correspondence concerning discharges must be sent to the address of the appropriate DEQ regional office listed in subpart 5 c below.</u></p> <p><u>NOTE: The immediate (within 24-hours) reports required in Parts I D 2 may be made to the department's regional office. Reports may be made by telephone, fax, or online (http://www.deq.virginia.gov/prep/h2rpt.html). For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.</u></p> <p><u>c. DEQ regional office addresses.</u></p> <p><u>(1) Blue Ridge Regional Office - Lynchburg (BRRO-L)</u> <u>7705 Timberlake Road</u> <u>Lynchburg, VA 24502</u> <u>(434) 582-5120</u></p> <p><u>(2) Blue Ridge Regional Office - Roanoke (BRRO-R)</u> <u>3019 Peters Creek Road</u> <u>Roanoke, VA 24019</u> <u>(540) 562-6700</u></p> <p><u>(3) Northern Virginia Regional Office (NVRO)</u> <u>13901 Crown Court</u> <u>Woodbridge, VA 22193</u> <u>(703) 583-3800</u></p> <p><u>(4) Piedmont Regional Office (PRO)</u></p>
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			<p><u>4949-A Cox Road</u> <u>Glen Allen, VA 23060</u> <u>(804) 527-5020</u> <u>(5) Southwest Regional Office (SWRO)</u> <u>355 Deadmore St.</u> <u>P.O. Box 1688</u> <u>Abingdon, VA 24212</u> <u>(276) 676-4800</u> <u>(6) Tidewater Regional Office (TRO)</u> <u>5636 Southern Blvd.</u> <u>Virginia Beach, VA 23462</u> <u>(757) 518-2000</u> <u>(7) Valley Regional Office (VRO)</u> <u>4411 Early Road</u> <u>Mailing address: P.O. Box 3000</u> <u>Harrisonburg, VA 22801</u> <u>(540) 574-7800</u></p>
	<p>9VAC25-800-60 Part II</p>		<p style="text-align: center;"><u>Part II</u></p> <p style="text-align: center;"><u>Conditions Applicable to all VPDES Permits</u></p> <p><u>A. Monitoring.</u></p> <p><u>1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.</u></p> <p><u>2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.</u></p> <p><u>3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.</u></p> <p><u>B. Records.</u></p> <p><u>1. Records of monitoring information shall include:</u></p> <ul style="list-style-type: none"> <u>a. The date, exact place, and time of sampling or measurements;</u> <u>b. The individual(s) who performed the sampling or measurements;</u> <u>c. The date(s) and time(s) analyses were performed;</u> <u>d. The individual(s) who performed the analyses;</u> <u>e. The analytical techniques or methods used; and</u> <u>f. The results of such analyses.</u>

			<p><u>2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and copies of all reports required by this permit for a period of at least three years from the date that coverage under this permit expires. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.</u></p> <p><u>C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the department request that the operator submit monitoring results, the following subsections would apply.</u></p> <p><u>1. The operator shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.</u></p> <p><u>2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.</u></p> <p><u>3. If the operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.</u></p> <p><u>4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.</u></p> <p><u>D. Duty to provide information. The operator shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The operator shall also furnish to the department, upon request, copies of records required to be kept by this permit.</u></p> <p><u>E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule</u></p>
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			<p><u>of this permit shall be submitted no later than 14 days following each schedule date.</u></p> <p><u>F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:</u></p> <ol style="list-style-type: none"> <u>1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or</u> <u>2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.</u> <p><u>G. Duty to comply. The operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.</u></p> <p><u>The operator shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.</u></p> <p><u>H. Duty to reapply.</u></p> <ol style="list-style-type: none"> <u>1. If the operator wishes to continue an activity regulated by this permit after the expiration date of this permit, and the operator does not qualify for automatic permit coverage renewal, the operator shall submit a registration statement at least 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.</u> <u>2. An operator qualifies for automatic permit coverage renewal and is not required to submit a registration statement if:</u> <ol style="list-style-type: none"> <u>a. The operator information has not changed since this general permit went into effect on April 10, 2011; and</u> <u>b. The board has no objection to the automatic permit coverage renewal for this operator based on performance issues or enforcement issues. If the board objects to the automatic renewal, the operator will be notified in writing.</u>
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			<p><u>Any operator that does not qualify for automatic permit coverage renewal shall submit a new registration statement in accordance with Part II H 1.</u></p> <p><u>I. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.</u></p> <p><u>J. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by Section 510 of the Clean Water Act. Nothing in this permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.</u></p> <p><u>K. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.</u></p> <p><u>L. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the operator to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this permit.</u></p> <p><u>M. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.</u></p> <p><u>N. Duty to mitigate. The operator shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.</u></p> <p><u>O. Need to halt or reduce activity not a defense. It shall not be a defense for a operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.</u></p> <p><u>P. Inspection and entry. The operator shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by</u></p>
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			<p>law, to:</p> <ol style="list-style-type: none"> 1. <u>Enter upon the operator premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;</u> 2. <u>Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;</u> 3. <u>Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and</u> 4. <u>Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.</u> <p><u>For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.</u></p> <p><u>Q. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.</u></p> <p><u>R. Transfer of permits.</u></p> <ol style="list-style-type: none"> 1. <u>Permits are not transferable to any person except after notice to the department. Except as provided in Part II R 2, a permit may be transferred by the operator to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.</u> 2. <u>As an alternative to transfers under Part II R 1, this permit may be automatically transferred to a new operator if:</u> <ol style="list-style-type: none"> a. <u>The current operator notifies the department within 30 days of the transfer of the title to the facility or property;</u> b. <u>The notice includes a written agreement between the existing and new operator's containing a specific date for transfer of permit responsibility, coverage, and liability between them; and</u> c. <u>The board does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the permit. If this</u>
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			<p><u>notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II R 2 b.</u></p> <p><u>S. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.</u></p>
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Enter any other statement here

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are several alternatives for compliance with the court ordered requirement to permit pesticides discharges. One is to issue individual VPDES permits to each pesticide applicator. Due to the magnitude of pesticide applicators that are potentially required to be permitted, it is not practical to issue individual permits to each of these applicators. The agency decided to pursue the alternative to issue a VPDES general permit to cover this category of discharger.

The agency also considered various thresholds at which to require permit registration and decided to simplify that process by requiring no registration. All operators falling under one or more of the four pesticide ‘uses’ are automatically covered for discharge to surface waters. This is allowed under the VPDES permit regulation at 9VAC25-31-17- B 2 a. Since there is no registration requirement, there is also no fee requirement.

The proposed regulation contains a requirement for operators exceeding an annual pesticide application threshold to develop a pesticide discharge management plan. The threshold limits identified in 9VAC25-800-30 C Table 1 were generally considered by the technical advisory committee and other interested stakeholders to be too low and several alternatives were discussed. It was decided to increase some of the annual pesticide application thresholds acreages to match the increases EPA anticipated to the national permit. For two of the pesticide application types, acreages increased 10-fold (from 640 to 6,400 acres) and for two of the other pesticide application types, acreages increased 4-fold (from 20 acres to 80 acres). Additionally, the method of calculating the annual linear miles at water’s edge has been simplified to include the stream as a single calculation of linear stream miles rather than calculating two stream edges and to count each pesticide application activity for those linear miles only once rather than for each application during the year.

The agency also considered the level of detail recommended by EPA in the annual report requirement and decided that only adverse incidents needed to be reported annually. All other records would be

maintained on site and would be consistent with and not exceed the current recordkeeping required by the Virginia Department of Agriculture and Consumer Services.

The Board worked closely with the Virginia Department of Agriculture and Consumer Services, the EPA and the public in a technical advisory committee capacity in order to consider many other alternatives for achieving the court's requirements in the most cost-effective manner.

As stated above, the agency decided to not require registration statements. This will eliminate a registration fee and minimize the adverse impact on small business. Also, the agency decided on a less stringent reporting requirement than those recommended by EPA. The agency also exempted pesticide operators that treat below a certain acreage of surface water from developing a pesticide discharge monitoring plan. The agency also consolidated certain reporting requirements present in Part I of the permit (reports of non-compliance) and eliminated certain requirements in Part II that did not apply to pesticide operators (reports of unusual or extraordinary discharges from treatment works, notice of planned changes for treatment works, signatory requirements, bypass and upset).

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability.