

**GENERAL VPDES PERMIT FOR PESTICIDE DISCHARGES (9VAC25-800)  
TECHNICAL ADVISORY COMMITTEE**

**MEETING NOTES - FINAL  
TAC MEETING – WEDNESDAY, JULY 14, 2010  
DEQ CENTRAL OFFICE 2ND FLOOR CONFERENCE ROOM**

**Meeting Attendees**

<i>TAC Members</i>	<i>Interested Public</i>	<i>DEQ Staff</i>
Ernie Aschenbach - DGIF (Alternate for Amy Ewing)	Charles Abadam - VA Mosquito Control Association (Alternate for Randy Buchanan)	Cindy Berndt - DEQ CO
Randy Buchanan - VA Mosquito Control Association	Jim Buffey - VA Turfgrass Council	Elleanore Daub - DEQ CO
Paul Clarke - DCR	Will Bullard - DOD	Ellen Gilinsky - DEQ CO
Jerre Creighton - VDOF (Alternate for Todd Groh)	Tim DuBois - City of Hampton Public Works (Alternate for Mike Elberfeld)	Carl Thomas – DEQ TRO
Fred Cunningham - DEQ	Marcus Leeper - City of Newport News (Alternate for Ron Harris )	Burt Tuxford - DEQ CO
Mike Elberfeld - City of Hampton	Tom Tracy - VA Turfgrass Council	
Liza Fleeson - VDACS		
Katie Frazier - VA Agribusiness Council		
Melanie Frisch - Fort Belvoir		
Bill Gillette - Rock Springs Forestry, Inc.		
Ron Harris - City of Newport News		
P.L. Hipkins - VA TECH		
Shannon Junior - VA Lake Management (Alternate for Kevin Tucker)		
Whitney Katchmark - Hampton Roads PDC		
Larry Land - VACO		
Peter McDonough - VA Golf Course Superintendent's Association		
Sarah Miller - SEPRO		
Joe Simmons - Chesapeake Mosquito Control		
Mark VanDevender - Spotsylvania County		

NOTE: The following VRP TAC Member was absent from the meeting: Amy Ewing - DGIF; Gigi Meyer, VDOH; Todd Groh - VDOF; Kevin Tucker - VA Lake Management

## **1. Welcome; Meeting Objectives; & Overview (Fred Cunningham):**

Fred Cunningham, Program Manager, VA DEQ, welcomed all of the meeting participants and noted that we have an ambitious task ahead of us. He noted that there is a very short time frame to put this permit together. There is an education issue both from DEQ in terms of learning how pesticide application occurs and what all of the present requirements under VDACS are and trying to fold that into a permit process. We have to learn a lot from the TAC members and interested parties to understand how pesticide application works in Virginia. On the other hand DEQ is pretty experienced in writing permits and we need to educate the TAC on the types of things that we will need to address from the permitting side. We will be looking for a lot of interchange of information at these TAC meetings to be able to come up with a workable general permit that will be suitable to the Commonwealth. We will also need to get EPA's approval for the wording of the general permit that is developed through this process.

He asked for introductions from TAC members and "Interested Parties" at today's meeting.

He noted that this meeting was being held prior to the end of the federal comment period so that we could get input from the TAC to consider before drafting DEQ's comments to EPA.

### **Meeting Objectives:**

- To make sure that the TAC has a good understanding of the regulatory process to adopt this general permit and the time schedule associated with that process.
- To provide background information to the TAC on what EPA is thinking in terms of their federal draft permit and to get feedback and comments from the TAC on any comments on that general permit.

### **Overview of Regulatory Process (Technical Advisory Committee Guidelines):**

- DEQ takes a participatory approach to regulation development. All stakeholders and interested parties are asked to be involved in the development of the regulation.
- All TAC meetings are public meetings.
- Minutes/notes will be developed for each of the TAC meetings and TAC members will have an opportunity to comment on the draft TAC Meeting minutes/notes before they are finalized.
- The role of the TAC is to assist DEQ in the development of a VPDES general permit for discharges from pesticides.
- We have a very large TAC and there are a number of "interested parties" at today's meeting. Encourage "interested parties" who are not members of the TAC to work through TAC members to ensure that their concerns are addressed through the TAC. At each of the TAC meetings there will be an opportunity for those who are not members of the TAC to make a statement or to express their concerns about a particular issue.
- The TAC is advisory in nature. The goal if the TAC is to reach consensus. "Consensus is defined as a willingness of each member of the TAC to be able to say that he or she *can live*

*with the decisions reached and recommendations made and will not actively work against them outside of the process." If the TAC cannot reach consensus or the Department decides not to follow a recommendation of the TAC, the Department staff will present the differing opinions to management and the Board.*

- Guidelines (Last page of the TAC Guidelines document) - In general be courteous to each other and we all need to listen to each other because everyone has a different point of view that needs to be considered.

## **2. Timeline Overview (Fred Cunningham):**

Fred Cunningham provided a brief overview of the timeline for the regulation development process.

- First TAC Meeting - July 14th
- Have to issue the permit by April 10, 2011
- Next State Water Control Board (SWCB) Meeting - September 27th and 28th
- Draft General Permit for review by the Board - August 27th
- Also have to get EPA's approval in this process.
- EPA may also be revising their draft general permit based on comments received.
- Need to have SWCB approval of Final Permit Regulation no later than February 8, 2011 to meet the other notice requirements as part of this regulation to get this permit issued no later than April 10, 2011. (The April 10, 2011 is a non-negotiable date.)

In order to meet the mandatory April 10, 2011 date the TAC meeting and distribution schedule is as follows:

- Draft of General Permit to TAC - July 22nd
- TAC Meeting - July 28th to discuss draft
- Revised Draft of General Permit to TAC - August 4th
- TAC Meeting - August 6th
- Revised Draft of General Permit to TAC - August 16th
- Final TAC Meeting - August 18th
- Draft General Permit Information Packet to SWCB - August 27th

**ACTION ITEM: Staff will distribute an electronic version of the presentation to the TAC Members and the "Interested Parties" list.**

**QUESTION: At what point in time will agencies be able to file a "notice of intent" under the general permit?**

**RESPONSE:** This is something that we need to discuss as part of the development of the general permit. One of the things that the department is looking at is a registration deadline that is after the effective date of the permit (e.g. the general permit becomes effective in April, but that you might not need to register until July). We won't have a regulation for everyone to look at until just before April, so you would have coverage but recognize, for this first issuance, a grace period to get your registration statement submitted. DEQ believes something similar was done with the federal vessel general permit.

### 3. Program Background - EPA Draft Permit Review (Elleanore Daub)

Elleanore Daub, DEQ Office of Water Permit and Compliance Assistance, provided a brief overview of the EPA Draft General Permit Process. Her presentation included the following information:

- November 2006 - Final Clean Water Act (CWA) Pesticide Rule stated that the application of a pesticide to waters of the United States consistent with FIFRA does not constitute the discharge of a pollutant that requires a NPDES permit.
- In December 2006 petitions for review were filed in all 11 Circuit Courts. Petitions were consolidated in the 6th Circuit Court of Appeals.
- On 01/07/09 the 6th Circuit vacated the CWA pesticides rule, stating that the rule was not a reasonable interpretation of the CWA.
- On 06/08/09, the 6th Circuit Court granted EPA's request and ordered a two-year stay of the mandate until 04/09/11.
- EPA's rule stating that NPDES permits are not required for pesticide applications applied to or over, including near waters of the US, remains in effect until April 9, 2011.
- As of April 9, 2011, discharges into a water of the US from pesticide applications will require coverage under a NPDES permit.
- Delegate NPDES states (Virginia - VPDES) are subject to the results of these court actions.
- Activities covered under the general permit include:
  - Direct application to water of insecticides and other agents to control animal pests
  - Direct application to water of herbicides to control aquatic weeds and algae
  - Aerial spray over forest canopy
  - Applications for weed and insect control near water
  - Mosquito and other flying insect pest control applications
- General Permits are issued to classes of discharges and require the submittal of a Notice of Intent (NOI) or Registration by each permittee.
- The EPA General Permit for Pesticide Discharges language was developed after extensive input from the states.
- EPA General Permit Contents include:
  - Scope
  - Notice of Intent (NOI) or Registration
  - Effluent Limits - Technology-Based/Water Quality Based
  - Monitoring
  - Pesticide Discharge Management Plan
  - Corrective Action - Adverse Incident Documentation and Reporting/Reportable Spills and Leaks
  - Annual Reporting
  - Recordkeeping
- The Scope of the EPA General Permit includes:
  - Coverage under the permit generally includes pesticide applications covered by the 2006 Rule
  - Pesticide uses covered under the permit include: mosquito and other flying insect control; aquatic weed and algae control; aquatic nuisance animal control; and forest

canopy pest control

- Outside of the Scope of the EPA General Permit are:
  - Terrestrial applications to control pests on agricultural crops or forest floors
  - Off-target spray drift
  - Activities exempt from permitting under the Clean Water Act: Irrigation Return Flow; Agricultural Storm Water Runoff
- Discharges NOT authorized under the Pesticide General Permit include:
  - Discharges of pesticides to waterbodies that are impacted under CWA §303(d) for that pesticide or its degradates
  - Discharges to Tier 3 water bodies (In Virginia - Exceptional Waters)
  - Discharges from other pesticide uses not specifically eligible for coverage.
- Who has to file a NOI or Registration Statement:
  - NOIs will be required for entities that exceed a pesticide application threshold
  - The NOI filer, in most cases, would be the entity responsible for deciding to conduct the pesticide applications, as opposed to the person performing the applications, if different
  - However, any applicator would need to file a NOI, if it exceeds the application threshold for applications not already covered under another NOI.
- EPA Proposed Thresholds:

<b>PGP Part</b>	<b>Pesticide Use</b>	<b>Annual Threshold</b>
Part 2.2.1	Mosquitoes and Other Flying Insect Pest Control	640 acres of treatment
Part 2.2.2	Aquatic Weed and Algae Control	
	In Water	20 acres of water treatment area <sup>(1)</sup>
	At Water's Edge	20 linear miles at water's edge <sup>(2)</sup>
Part 2.2.3	Aquatic Nuisance Animal Control	
	In Water	20 acres of water treatment area <sup>(1)</sup>
	At Water's Edge	20 linear miles at water's edge <sup>(2)</sup>
Part 2.2.4	Forest Canopy Pest Control	640 acres of forest canopy
<sup>(1)</sup> Application areas made to waters of the US and conveyances with a hydrologic surface connection to waters of the US at the time of pesticide application. Count each pesticide application as a separate activity.		
<sup>(2)</sup> Application areas made at water's edge adjacent to waters of the US and conveyances with a hydrologic surface connection to waters of the US at the time of pesticide application. Count each pesticide application activity as a separate activity. Treating both sides of a ten mile ditch is equal to twenty miles of treatment area.		

- Technology Based Effluent Limits - Best Management Practices - No numeric limits in the general permit
- Water Quality Based Effluent Limits - Narrative - Meet applicable water quality standards.
- Monitoring - Visual monitoring for adverse effects
- Pesticide Discharge Management Plan for pest management areas
- Corrective Action Reporting - adverse incident documentation - reportable spills and leaks
- Reporting and Recordkeeping
  - Annual Reporting
  - Adverse Incident Reporting
  - Records
- EPA Comment Period is open until Monday, July 19th.

#### 4. General Discussions (TAC and Program Staff)

The Program Staff and members of the TAC discussions included the following:

- **Definition of "near":** Comment received suggested that "near" should be defined "to indicate waters up to the water's edge, or below the high tide edge, or only in moving or flowing streams and ditches." EPA is not intending on defining 'near'. It is essentially up to the applicator to determine or identify the potential for discharge into water. We can define in our general permit with EPA's approval. "Near" depends on where you are; a pond on a golf course or a major water body. "Near" is important in regard to how close you are to the water body, but in terms of use, this permit is for any waters, the use of the waters is not the key concern. "Near" is not mentioned in the EPA PGP, it is mentioned in the fact sheet and the Court decision. The general term used is "in the waters of the United States". This concern would probable best be addressed by the applicant on a "case-by-case" basis. Need to keep it simple. From a regulatory perspective a specified distance from the water is easier to enforce. It was suggested that this issue be covered under guidance that could be useful to both the applicator and the department. It was suggested that "near" addresses the high likelihood and possibility of discharges to waters of the US.

**ACTION ITEM: Staff will research the proposed draft general permit versus the EPA fact sheet and the court decision to identify the use of the term "near" to determine if it needs to be considered for definition in the Virginia General Permit.**

**ACTION ITEM: Staff will discuss the concept of "near" with other states to see how they are addressing this concept.**

- **Canopy:** Permit coverage required to pesticide applications in or over waters of the US. A question was raised about how "irrigation ditches" effect this interpretation. It was suggested that if an applicator is not spraying into water, then a permit would not be needed. If there are streams under the canopy that is being sprayed then one could assume that there are going to be discharges to water. Canopy applications are usually over low trees not high trees.

**ACTION ITEM: Staff will look at the available definitions of "canopy" and of "irrigation ditch" for consideration for inclusion in the general permit.**

- **Coverage Thresholds:** Is the threshold 640 acres of application, or is it 640 acres of "water application". "Treatment area" is the entire treatment area (land and water). This is included in the definitions of the permit.
- **Waters of the United States:** Are we covering "waters of the United States" or "surface waters"?
- **Monitoring:** The required monitoring is all "visual".
- **Discharge:** Should be "at the time of application" and should not mean "after a rain event" or "inadvertent". It was suggested that we are permitting the discharge not the application.

We are permitting the residue after its intended purpose is carried out. The question was raised as to how you would catch anyone if the interpretation is "only at the time of application".

- **Application/Misapplication:** Applied according to label directions. Should comply with FIFRA requirements. Applications should be "appropriate applications". Some FIFRA labels currently allow application over water. General Permit coverage is required for applications over or in waters of the US if the thresholds are reached.

## 5. Future TAC Meetings Change of Location Request (Fred Cunningham)

Fred Cunningham noted that there had been a request to hold future meetings of the TAC outside of the downtown area.

**ACTION ITEM: Staff will look to see if the DEQ Piedmont Regional Office has meeting space available for the future TAC meetings.**

## 6. General Discussions Continued (TAC and Program Staff)

The continued general discussions included the following:

- **Who has to file a Notice of Intent or Registration Statement:** NOIs will be required for entities that exceed a pesticide application threshold. The NOI filer, in most cases, would be the entity responsible for deciding to conduct the pesticide applications, as opposed to the person performing the applications, if different. However, any applicator would need to file an NOI, if it exceeds the application threshold for applications not already covered under another NOI. If the treatment area is under the threshold of 640 acres then no NOI is required, but they would still be covered under the requirements of the General Permit. The applicator would need to file an NOI if the total of all of his clients exceed the threshold limit. Is the application threshold applicable to only those acreage near a stream or waterbody or is it all of the acreage of the treatment area? There needs to be flexibility to adapt to individual localities as to who has to apply for a NOI. Does the locality or agency or the applicator needs to file the NOI? Is it the owner or the operator?
- **Thresholds:** There are different thresholds for different types of activities. An option could be to have on NOI that would identify the different activities and would track the number of acres in the treatment area for those different activities.
- **Treatment Area:** Needs to be better defined.
- **Impaired Waters:** An application site is not eligible for coverage under the general permit if there are "impaired waters". EPA's general permit contains language that in those cases where a water that is identified as "impaired waters" but is no longer "impaired" that if evidence is provide that the water is no longer "impaired for that pesticide" then coverage could be obtained under the GP. Need to make sure that this option is clearly stated in the general permit. Impaired for a specific pesticide.

**Consensus: The TAC would like the "impaired waters" language that EPA has put in for "relief" put in the Virginia GP.**

- **Degradates:** What happens when pesticide kills plants and the plants die and cause impairments and then degradates. Degradates have toxic properties. Degradates not defined. Ask EPA to define in terms of pesticide discharge.
- **Off-Target Drift:** What is off-target drift? Off-target drift is not covered by the General Permit. Off-target drift is when a pesticide application "drifts" off of the intended target or treatment area onto an adjoining site. EPA is working on a policy to address spray-drift.
- **Meeting Standards** - Section 3.0 of the federal permit - narrative. Meeting Water Quality Standards; meeting FIFRA label requirements. EPA collecting information on practices being used. If you do everything that you need to do then you are meeting the standards (FIFRA Label and permit requirements). Meeting standards through practices.
- **Copper Sulfate** - Widely used pesticide to control aquatic weeds and algae. EPA guideline is 1 to 2 mg/l over 48 hours. The water quality standards is 8 -9 ppb. The instant that you apply at the established guideline rate, you have exceeded Virginia's Water Quality Standards. If you apply for coverage under this permit and you are applying copper sulfate according the standards and guidelines then you would be in violation. From one minute to 72 hours of application you would be in violation, since there would be a residue. The EPA general permit references 24 hours and 5 days.

**ACTION ITEM: Staff will seek clarification from EPA on how this type of application will be addressed in their General Permit.**

- **Military/Federal Facilities** - The military would be covered under the Virginia General Permit.
- **Bio-ration Pesticides** - Residues are not left, but the Clean Water Act considers them as biological and is considered pollutants.
- **Minimum application rate and lowest effective rate:** Application should result in a minimum discharge using the lowest effective rate and minimum amount notwithstanding you have to comply with the FIFRA label. There needs to be some differentiation between minimum application rate and lowest effective rate. Use should be in compliance with the FIFRA label.
- **Terrestrial Applications** - Usually implies the use of ground based applications. Does the exemption address aerial applications or ground applications when dealing with terrestrial pests?
- **Forest Canopy** - Concerns were raised regarding hydrologic surface connections and isolated wetlands. These are referred to in the EPA fact sheet. Refers to waters of the US.
- **Wetlands** - There are only a certain portion of the Waters of the US that are mapped. How do we deal with the limitation of the existing mapping? At the state level; state waters is "all waters". All surface water in Virginia would be covered under this permit program.
- **VDACS Reporting** - Currently reporting mechanism includes roadside ditches, etc.
- **Thresholds** - Should be based on all Virginia surface waters.
- **Guidance** - Guidelines should be included to indicate who has to get the permit and report based on the treatment area threshold. Identify who is the responsible party.
- **Enforcement Actions** - Who files the report and who gets the enforcement actions? Both the applicant and the applier would be responsible. Needs to be looked at to see how it would be addressed under the Virginia General Permit.



**ACTION ITEM: Staff will arrange for an enforcement representative to be available at the next TAC meeting to address the question of enforcement of the requirements of the general permit.**

- **Cost** - NOI cost - \$600 for a 5-year permit with no annual maintenance fee.
- **Coverage** - There needs to be an educational effort as to who is and who is not covered under the general permit.

#### **7. Next TAC Meeting**

The next meeting of the TAC is scheduled for Wednesday, July 28, 2010 and will be held from 10:00 AM to 4:00 PM at the DEQ Piedmont Regional Office Training Room.

#### **8. TAC Assignment**

A copy of the draft Virginia General Permit for Pesticide Discharges will be sent to the TAC by Thursday, July 22nd. Comments on the draft permit will be discussed at the July 28th TAC meeting.