

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

**MEETING NOTES - FINAL
TAC MEETING – MONDAY, NOVEMBER 26, 2012
DEQ PIEDMONT REGIONAL OFFICE TRAINING ROOM**

Meeting Attendees

<i>TAC MEMBERS</i>	<i>TECHNICAL SUPPORT</i>	<i>SUPPORT STAFF</i>
Hobey Bauhan - VA Poultry Federation	Robert Long - DCR	Angela Neilan - DEQ
Betsy Bowles - DEQ	Darrell Marshall - VDACS	Bill Norris - DEQ
Jamie Brunkow - James River Association	<i>INTERESTED PARTIES</i>	Neil Zahradka - DEQ
Jason Carter - VA Cattleman's Association	Tony Banks - VA Farm Bureau	<i>OTHER DEQ STAFF</i>
Katie Frazier - VA Agribusiness Council	John Fowler - Chesapeake Bay Foundation	James Golden
Ann Jennings - Chesapeake Bay Foundation	Alicia Ketchem - NRCS	Gary Flory
John Parker - VA Pork Industry Board	Kathleen VanDerHyde - Dairy Producer	Kathleen O'Connell
Eric Paulson - VA Dairymen's Association		
Wilmer Stoneman - VA Farm Bureau		
Roy VanDerHyde - Dairy Producer		

NOTE: TAC members not in attendance included the following: Bill Bailey – Swine Producer and Jeff Kelble – Shenandoah River Keeper.

1. Welcome & Introductions (Bill Norris):

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

2. Items from Last Meeting (Meeting Notes – Comments/Changes) (Bill Norris):

Bill Norris asked if any member of the TAC had any comments or edits related to the Meeting Notes from the October 25th meeting. He noted that he was aware of some comments made by DEQ staff that would be incorporated into the "final" meeting notes.

Ann Jennings noted that she had language to clarify a statement that she had made during the previous meeting related to "waste load allocations for AFOs and CAFOs" and the Chesapeake Bay Watershed Improvement Plan (WIP). She requested that the following be added to the meeting notes from the October 25th meeting:

"The 'Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment' (dated December 29, 2010) indicates in Section 8 (page 28) that Virginia 'shifted the entire AFO load into the

WLA and assumed full implementation of barnyard runoff control, waste management, and mortality composting practices that would be required under a CAFO permit."

ACTION ITEM: The meeting notes from the October 25th meeting of the AFO TAC will be revised to incorporate this clarifying language and edits provided by staff.

3. VDACS Certification Program for Fertilizers and Soil Amendments – Presentation (Don Delorme – VDACS:

Neil Zahradka noted that in our previous discussions about manure one of the options that had been briefly discussed was having the product potentially covered under the VDACS Certification Program and the laws associated with Fertilizers and Soil Amendments. In order for us to be speaking the same language and the right terminology, a request was made to have someone from that VDACS program here to make a presentation to the TAC on how that program works. He introduced Don Delorme with the Virginia Department of Agriculture and Consumer Services' Ag Commodity Program in the Office of Plant Industry Services. Mr. Delorme provided an overview and explanation of the VDCAS Certification Program. His presentation included the following:

Slide#1: Overview of the Fertilizer Registration Program – Virginia Department of Agriculture and Consumer Services – Office of Plant Industry Services

Slide #2: Program Components:

- Annual business license (520 businesses)
- Annual product registration (3,630 registered products) – Commercial fertilizer (agricultural use fertilizers) are not required to be registered in Virginia.
 - Specialty fertilizers
 - Soil amendments
 - Horticultural growing media
- Label review and acceptance
- Annual Inspection fee (tonnage fees) (750,000 tons) (25 cents/ton)
- Enforcement
 - Field inspection and investigations

Slide #3: History – VDACS Involvement in Waste Products

- In the early 1990's, VDEQ developed new beneficial use guidelines for coal combustion by-products that included labeling by VDACS as one way to "de-list" fly ash, etc. as solid waste.
- VDACS was contacted to accept a wide range of CCB's, wood ash and other residuals for soil applied uses. Landfill costs were believed to be driving these requests.
- In 1991, VDACS requested formal guidance from Virginia Tech on what appropriate testing and screening protocols should be employed for industrial residuals.

Slide #4: Multi-step Approach proposed by Virginia Tech – In a letter dated, March 30, 1995, Virginia Tech wrote the following: "... While the beneficial reuse of waste materials such as fly ash, FGD scrubber sludges, etc. is certainly in the best interest of the Commonwealth, we must insure that

our soils will not be damaged by land application practices and that the food chain is not endangered. Hence, we will take a conservative approach to evaluating any material as a potential soil amendment for agricultural lands...First of all, we will assume that the materials of interest (e.g. fly ash) is eligible for beneficial re-use consideration and meets the standards for such as set by DEQ...Secondly, we must assume that the use of the material as a soil amendment must represent a beneficial addition to the plant/soil environment and not just a "legal" disposal option...

Slide #5: Guidelines: The Virginia Department of Agriculture and Consumer Services (VDACS) recognized in 1991 that many industries were interested in identifying agricultural uses for waste products and process residuals, including coal combustion products (CCPs), paper mill sludge, wood ash, kiln dust, tobacco dust and foundry sand, that chemically contained plant nutrients. In 1994, the Virginia Fertilizer Law and Agricultural Liming Materials Laws were amended to allow waste products, referred to as industrial co-products, to be used as a fertilizer, soil amendment, soil conditioner, horticultural growing medium or liming material. Businesses were required to demonstrate that these waste products provided a clearly observable benefit to plants and/or soils, were safe to use and apply, and met the definition and criteria for one of these regulated products as defined in the Virginia Fertilizer and Agricultural Liming Materials laws. Currently, industrial co-products may include, but are not limited to coal combustion products (CCPs), exceptional quality biosolids (wastewater sewage sludge), and other organic and inorganic matrices.

The VDACS Office of Plant Industry Services (OPIS), in cooperation with environmental scientists at Virginia Tech developed a set of guidelines to assist those businesses requesting approval to distribute an industrial by-product in the Commonwealth for agricultural use. These guidelines establish the data development requirements necessary for VDACS to complete the review, approval and registration of waste products prior to their commercial distribution in the Commonwealth.

Slide #6: Cooperating Agencies:

- Virginia Department of Environmental Quality – establishes waste definitions and allows for specific wastes to be excluded if labeled/licensed/registered by VDACS.
- Virginia Tech – provides screening, data review and "advice".
- Virginia Department of Agriculture and Consumer Services (VDACS) – reviews all product data and inputs and accepts/rejects materials as a commercial product.

Slide #7: Industrial Co-Product: Any industrial waste or by-product, including exceptional quality biosolids and waste treatment residuals, that can be beneficially recycled for its plant nutrient content or soil amendment characteristics that meets the definition of fertilizer, soil amendment, or horticultural growing medium (Virginia Fertilizer Law 2012).

Slide #8: Screening Protocol:

- The industry or firm must provide evidence such as TCLP and total elemental analysis results that the product is not hazardous/toxic per DEQ and EPA criteria.
- Depending on material properties, part or all of a prescribed three-step screening procedure must be followed and reported to VDACS.

Slide #9: Screening Protocols:

- A full analysis of the basic physical and chemical analysis of the proposed material.
- Greenhouse screening bioassay. The bioassay is run with tall fescue (tolerant) and soybeans (sensitive) in a standard Virginia topsoil at either the proposed material loading rates or a range of rates.
- Replicated field trials.

Slide #10: Screening Protocols:

- VT provides recommendations to VDACS that may include label guidance, loading rate max, and other application restrictions.
- VT may report back directly to client, they may or may not continue pursuit of labeling with VDACS.
- VT usually isolates what the issues may be in a given product and offers recommendation to modify the product.

Slide #11: Criteria for Approval:

- Beneficial use to the soil and plants.
- No potential adverse effects to the soil, plants, livestock, or human health.
- Commercial use of the product. Program is not simply a low-cost means for disposal of waste or a low-cost alternative to land-filling.

Slides #12 & 13: Requirements of the Laws: The following sections of the Virginia Fertilizer Law, Virginia Agricultural Liming Materials Law and regulations promulgated under these laws describe the authority by which VDACS can request and review additional data before allowing an industrial co-product to be registered and distributed in the Commonwealth.

§3.2-3613.A.1 of the Virginia Fertilizer Law prohibits distribution of a regulated product if it contains any deleterious or harmful ingredient, in sufficient amount to render it injurious to beneficial plant life, when applied in accordance with directions for use on the label.

§3.2-3607.D of the Fertilizer Law states, "The consumer may require verification of any labeling claims for any regulated product."

Sections 3.C.3 and 3.C.4 of 2VAC5-400-30 "Rules and Regulations for the Enforcement of the Virginia Fertilizer Law" state that the Commissioner may require proof of any claims made for any soil conditioner or soil amendment or one of its labeled ingredients. If no claims are made, the Commissioner may require proof of usefulness and value. For evidence of proof, the Commissioner may rely on experimental data, evaluation, including evaluations of data submitted or advice from such sources as the Agricultural Experiment Station and Extension Service of VPI & SU.

Slide #14: Advantages of Program:

- Promotes a beneficial use vs. simply disposing of viable material in the landfill.
- Provides an economic benefit as alternative soil amendments, limes, and fertilizers.
- Offers a clear marketing advantage against non-labeled and more viable materials.

Slide #15: Contact Information: Donald R. Delorme; Ag Commodity Program Supervisor; 804.371.2303; donald.delorme@vdacs.virginia.gov

Discussions by the TAC included the following:

- The term "certification" is used differently in this program. Fertilizer applicators are certified. A business license is required for anybody or firm involved in manufacturing or selling of a product, whether it is an industrial product; or a waste or a regular fertilizer or soil amendments. There is also a requirement in some cases for product "registration". Specialty fertilizers; soil amendments; and horticultural growing media products require "registration". Commercial fertilizers (agricultural use fertilizers) are not covered under this program and are not required to be registered. VDACS doesn't receive or review product labels for agricultural use fertilizers and so does not deal with these types of products at the registration level.
- The VDACS law only deals with commercial products.
- The one issue with manures would be potential pathogens that might be contained in the product.
- Since this is a commercial program, a material that is not being sold but is being given away would not fall under this program. This is more of a consumer protection related effort. The VDACS program is focused on the quality of the product and the content of the product – if the product label says the grade is a 10-10-10 the program is designed to try and ensure that the 10-10-10 grade and guarantee is met. They look at the label and the directions from the perspective of consumer protection.
- A question was raised about "specialty fertilizers" and whether that category of fertilizer would cover "manipulated manures" that are pertinent to the topic of discussions for this group. "Manipulated manure" is manure where something has been added to it or something has been done to it. *VDACS Response* "This type of product would be included under the definition of "soil amendment". Unmanipulated manures whether vegetable or animal are not considered as part of the "soil amendment" definition and would not be required to be registered. The current definitions don't work as well with the current state of art in the program. A "soil amendment" has to be registered. If someone has a manure that they say has been manipulated (other than the traditional method of simply drying and composting) then it has to go to VDACS for registration before it can be sold and used. If there is a manure that is not manipulated, according to the current VDACS definitions, it is exempted from the definition of a soil amendment and would not be required to be reviewed and registered. The VDACS Law was changed 2 years ago but there is still additional f wordsmithing needed to bring it current with the state of the science in the industry.
- It was noted that pathogens was a concern. If it is a commercial product, does VDACS want the product to be pathogen free or low in pathogen concentrations? *VDACS Response: We would want to see the same equivalence treatment as in composted products; composted manure.* What would be the VDACS requirements for the producer of that bagged composted manure if it was registered as a soil amendment; a composted manure? *VDACS Response: First, VDACS*

would need to know if it is exempted through the DEQ process, laws, and guidelines. If it is then VDACS would look at the product. If it is a composted manure, they can pretty much bag it up and sell it. if they are selling the product as a fertilizer for agricultural use, about the only thing that VDACS would see is a request for a business license. If is being used as a soil amendment VDACS would see everything, because they would have to submit a label for product registration. All products that are sold as soil amendments are required to be registered, regardless whether they are agricultural or not.

- Neil Zahradka noted that the question before the TAC is whether we want to create an exemption for a product from an AFO that would be a registered product through VDACS. *VDACS Response: This process has been gone through for the biosolids regulation. It is an awkward process, everyone needs to be licensed but not every product is registered.*
- For a commercial agriculture fertilizer that has a guaranteed analysis, is that product still subject to periodic inspections by VDACS? *VDACS Response: Yes, any commercial product is subject to VDACS inspections and requirements. Currently most of the inspections have to do with the quality of the product; there is not sufficient manpower or expertise to check for pathogens on a regular basis. Soil amendments are a little more difficult (tricky) to deal with, because of the number of claims for bacteria additions to "enhance" the product. Language is coming out to try to address those claims and provide a mechanism so that VDACS can verify them during their periodic inspections.*
- It was noted that in terms of terminology used: "You register a product; you certify a person."

4. Discussion of Additional Potential Amendments - Permitting Options to Cover Activities Related to Manure/Residuals Transfer (Neil Zahradka; Betsy Bowles; Angela Neilan and TAC Members)

Neil Zahradka noted that essentially the language and concepts that had been developed for the Poultry Regulation had been moved into the AFO General Permit with slight changes for consideration in this section addressing "manure/residuals transfers". The handout put together by Betsy Bowles is an outline of the changes that might be used to allow for permitting options to cover these activities.

The handout designated, "Discussion Draft - Animal Waste Transfers-Language - 11/26/12 - TAC Meeting" was discussed by the group. The handout included the following information:

Additions to the VPA GP for AFOs if we include language to allow for animal waste transfers off-site

Item # 1 listed in the NOIRA:

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

specify requirements for the transfer of animal waste from the permitted facility.

- The VPA AFO General Permit could be amended so that transferred animal waste/waste residuals could be handled under:
 - the VDACS Certification Program Program for fertilizers and soil amendments;
 - the Permittee's NMP;
 - another NMP that is enforceable through the Permittee's permit; or
 - technical regulations (similar to those written for Poultry Waste).
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Section 10. Definitions:

Add the following to the definition section:

1. "Animal waste" means liquid, semi-solid, and solid animal manure, poultry waste, process wastewater, compost and sludges associated with livestock and poultry animal feeding operations.
2. "Animal waste end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.
3. "Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of animal waste and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for a animal waste end-user who is not subject to the general permit, the requirements of 9VAC25-192-90 constitute the NMP.

Amend:

1. "Permittee" means the owner or operator of an animal feeding operation that is covered under this general permit or an animal waste end-user whose activities are covered under the general permit.

Staff noted the following:

- The term "animal waste" is defined to identify that product that is being transferred - this definition would pull in anything that might be a potential by-product.
- To follow the procedure set up in the Poultry Regulation, a definition of the end-user, the person who would be using the end product is also being proposed for addition, i.e., "animal waste end-user".
- The concept of an "animal waste broker" or "broker" as incorporated into the Poultry Regulations is not being proposed for the AFO Regulations. This program is not as broad as those on the poultry side, there are currently no operations that are producing enough livestock materials to require the use of a third party to move or transfer the materials.

- The definition of "nutrient management plan" is added as it was under the Poultry Regulations, to provide options that lead you to a more conservative application rate than a NMP would require. This would provide certain criteria and technical requirements that an individual would have to follow if they weren't required to follow the requirements of a DCR approved NMP. This is not the same definition as contained in DCR's regulations but provides a basis for how nutrients are being managed.
- The proposed amendment to the definition of "permittee" goes back to the previous discussions about "owner or operator". There was a big discussion in the Poultry Regulation TAC on whether the end-user needed to be covered under the general permit or permitted in any way. The model that is used in the Poultry Program is that the General Permit Regulation has a certain list of technical regulation requirements that an end-user has to follow, that doesn't mean that they have a permit, but they have to follow certain technical regulatory requirements. If an end-user is found to consistently not to be following those requirements and it appears that they need some additional oversight to make sure that they follow those requirements, then the Poultry Regulation gives DEQ the option of requiring that end-user to be covered under the General Permit. There is an option for DEQ to step up the regulatory presence to a certain degree. This option has not yet been exercised under the Poultry Regulation, but the option is available if needed.

Discussions by the TAC included the following:

- A question was raised regarding the use of the term "any recipient" in the definition of "animal waste end-user". Under the Poultry Regulations there was an identified de minimus amount that could be spread without triggering the regulatory requirements is there a similar amount of this product that could be spread in the AFO program and fall under the radar? There should be. *Staff Response: In this proposed material, the term is "any recipient" so that they are included as an "end-user". Later on in the proposed language, depending on how much that end-user receives dictates whether that end-user has a requirement for recording keeping or has to report, etc. The concept of the use of a de minimus amount has been considered and will be part of discussions later in the proposed amendments. That "de minimus" amount has not been determined yet.*
- The concept of a "permit-by-rule" was raised. *Staff Response: The term "permit-by-rule" is a term of art that is not used under this program. The concept is one of following certain technical requirements and regulations. If a permittee or end-user doesn't follow the required technical requirements then the option is available to require them to come under a General Permit or an Individual Permit. Staff Response: The regulation is written to provide that flexibility if needed.*
- A concern was raised about including the term "animal waste end-user" in the definition of "permittee". There needs to be a condition such as "an end-user who is causing trouble or consistently not following the technical requirements" could be required to get a permit. The

way that the sentence is written it seems to imply that the end-user would have to have a permit upfront. Conditions under which an end-user would be required to get a permit should be identified. Under what circumstances would they become a permittee? Clarity is needed. The suggestion was made that language was needed to clarify under what conditions an end-user would become a permittee.

- It was suggested that the definition of "permittee" needed to be reworded to insert the word "that", i.e., "Permittee" means the owner or operator of an animal feeding operation that is covered under this general permit or an animal waste end-user whose activities are covered under the general permit.
- The use of that animal waste for an AFO would be covered by a permit. If we are moving that animal waste elsewhere so that it is no longer covered by a general permit or an individual permit, what is DEQ's authority to do that? Historically, for the life of the permit program, any use of this animal waste has been covered under the general permit or an individual permit. *Staff Response: There have been some scenarios where a producer was producing some product and wanted to distribute that product. The specifications would be covered in the nutrient management plan. The product has to be covered under a nutrient management plan and the nutrient management plan describes how that material is to be distributed, etc. The concept was to make sure that there were adequate controls on that product. What is being raised is a concern that we should look closely at the statute for the AFO piece. In the process of this wordsmithing, the staff needs to determine if the product and this activity covered under the existing AFO Permit regulations. Can we take it further and carve it out so that it is not covered under the general or individual permit and therefore has to be covered through a different mechanism? Staff Response: In the Water Law, we have sections on other wastes (industrial waste) that speak to the user of that material (someone who stores and manages that material) would need to potentially have a permit from DEQ. We are looking at the Water Law broadly to be able to cover this activity. The statute doesn't mandate coverage under the general permit for an AFO. The Water Law provides us with some options as to how you would manage that material.*
- It was suggested that the language in the definition of "Permittee" should be revised from "or an animal waste end-user whose activities are covered under the general permit" to "or an animal waste end-user whose activities require coverage under the general permit". Then under section 25 you could define what would require coverage.

Section 20. Purpose; delegation of authority; effective date of permit.

Amend to include animal waste end-users as follows:

A. This general permit regulation governs the pollutant management activities of animal wastes at animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit, and having 300 or more animal units utilizing a liquid manure collection and storage system and animal waste utilized or stored by animal waste

end-users. These animal feeding operations may operate and maintain treatment works for waste storage, treatment or recycle and may perform land application of manure, wastewater, compost, or sludges. It establishes requirements for proper nutrient management, waste storage, and waste tracking and accounting of animal waste.

Staff noted that this section (Section 20), which identifies the purpose of the general permit regulation, has been revised to add additional language to clarify "animal feeding operations" that are covered under the general permit. It also has been revised to include "animal waste users". In addition, the last sentence has been added as clarification for requirements for proper nutrient management; waste storage; and waste tracking and accounting (a similar sentence was also included in the Poultry Regulations).

Discussions by the TAC included the following:

- As mentioned in the previous section, there needs to be a clarification of who is covered and who requires coverage under this permit.

Section 25. Duty to comply:

Add animal waste end-user to section as follows:

E. Any animal waste end-user shall comply with the technical requirements outline in 9VAC25-192-80 and 9VAC25-192-90. Any animal waste end-user who does not comply with the technical requirements outlined in 9VAC25-192-80 and 9VAC25-192-90 may be required to obtain coverage under the general permit.

Staff noted that the current proposal is to add additional language to Section 25 to clarify the animal waste end-users duty to comply conditions. Language has been added to indicate that they have to comply with technical requirements and if they fail to comply with those requirements they "may be required to obtain coverage under the general permit". It provides the department with the option and flexibility of requiring coverage.

Section 50. Authorization to manage pollutants.

Add animal waste end-user to section as follows:

B. Animal waste end-user. Any animal waste end-user shall comply with the requirements outlined in 9VAC25-192-80 and 9VAC25-192-90 or the general permit as applicable.

1. Any animal waste end-user who does not comply with the requirements of 9VAC25-192-80 and 9VAC25-192-90 may be required to obtain coverage under the general permit.

2. Any animal waste end-user governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of animal waste provided that the animal waste end-user complies with the requirements of 9VAC25-192-70, and:

a. The animal waste end-user has not been required to obtain a Virginia Pollution Abatement individual permit according to subdivision 2 b of 9VAC25-32-260;

b. The activities of the animal waste end-user shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage shall not be managed under this general permit;

c. The animal waste end-user shall obtain Department of Conservation and Recreation approval of a nutrient management plan for land application sites where animal waste will be utilized or stored and managed prior to the submittal of the registration statement. The animal waste end-user shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The animal waste end-user shall implement the approved nutrient management plan; and

d. Each animal waste end-user covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted animal waste end-users shall complete a training program at least once every three years.

C. Receipt of this general permit does not relieve any animal feeding operation owner or operator or animal waste end-user of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

Staff noted that additional language was being proposed to clarify the requirements for "animal waste end-users". It was noted that B 2 c is the requirement for any "animal waste end-user" who has to get a general permit (i.e., has failed to meet the technical requirements) to have a nutrient management plan.

Discussions by the TAC included the following:

- A question was raised about the "25-year, 24-hour storm" and its relationship to the "end-user". Isn't this a storage requirement? There is no production facility. *Staff Response: It could be a storage facility.* It was noted that on the one hand as an end-user there is an agricultural stormwater exemption for application to the fields. How does an end-user play into the "25-year, 24-hour storm" requirement? Do we need to say that is for storage? It seems to be more of a storage issue for an end-user not a production facility issue. *Staff Response: If they are not storing then they will not have any problem with complying with that requirement.* The agricultural stormwater exemption covers everything else. Should we clarify that this refers to storage only? It doesn't seem to make sense, when there is an exemption on one hand and I have a "25-year, 24-hour storm" event requirement on the other. *Staff Response: That is why we have defined "agricultural stormwater" in the regulation. That definition speaks to "land application". In the statute, it is pretty broad; it is not intended to be limited.* But the statute is

not getting at end-users, it is addressing production areas. It was suggested that since normally an end-user doesn't include a production area, is it appropriate to include this sentence here?

Staff Response: There could be an area akin to a production area with an end-user. They also have a prohibition under Water Control Law, not to discharge to state waters.

- This issue is pretty well covered by the definitions of "point source" and "agricultural stormwater".

ACTION ITEM: Staff asked the group for any additional language that might help clarify this section. Any suggestions should be send to Bill Norris for compilation and distribution to the staff and to the TAC.

- It is still confusing for item 50.B.2.a,b,c &d to address the requirements for end-users covered by a general permit while 50.B.1 address an end-user who does not follow the technical requirements and therefore may be required to obtain a general permit. The sentence structure needs to be reworked to clarify the requirements. An additional heading for those "end-users requiring coverage under the general permit" and a restructuring of the current requirements might help clarify this section.

If adding option for covering an animal waste end-user under the GP in Sections 60 and 70.

Section 60. Registration statement.

Add the specific items related to animal waste end-use permitting:

Section 70. Contents of the general permit.

Amend as follows:

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

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR ANIMAL FEEDING OPERATIONS AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

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

The authorized pollutant management activities shall be in accordance with the registration statement, supporting documents submitted to the Department of Environmental Quality, this cover page, Part I, Part II, and Part III, as set forth herein.

B. Other requirements or special conditions.

1. Waste transfer requirements Thresholds to be determined

X. Animal waste generated by this facility shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

X. Animal waste generated by this facility may be transferred from the permittee to another person, if one or more of the following conditions are met.

a. Animal waste generated by this facility may be transferred off-site for land application or another acceptable use approved by the Department, if:

(1) The sites where the animal waste will be utilized are included in this permitted facility's nutrient management plan or;

(2) The sites where the animal waste will be utilized are included in another permitted facility's nutrient management plan.

b. Animal waste generated by this facility may be transferred off-site without identifying in the permittee's approved nutrient management plan the fields where such waste will be utilized, if the following conditions are met:

(1) The animal waste is certified under the VDACS Certification Program for fertilizers and soil amendments; or

(2) When the permittee transfers to another person more than XX tons/gallons of animal waste in any 365-day period, the permittee shall maintain records in accordance with Part I.B.X. *(recordkeeping requirements-see below)*

2. Waste transfer records

X. Animal waste may be transferred from a permittee to another person without identifying the fields where such waste will be utilized in the permittee's approved nutrient management plan if the following conditions are met:

a. When a permittee transfers to another person **more than XX tons or XXXX gallons** of animal waste in any 365-day period, the permittee shall provide that person with:

(1) Permittee's name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the animal waste; and

(3) A fact sheet.

b. When a permittee transfers to another person **more than XX tons or XXXX gallons** of animal waste in any 365-day period, the permittee shall keep a record of the following:

(1) The recipient name and address;

(2) The amount of animal waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the animal waste; and

(5) The signed waste transfer records form acknowledging the receipt of the following:

(a) The animal waste;

(b) The nutrient analysis of the animal waste; and

(c) A fact sheet.

c. When a permittee transfers to another person more than XX tons or XXXX gallons of animal waste in any 365-day period, the permittee shall keep a record of the following:

(1) The locality in which the recipient intends to utilize the animal waste (i.e., nearest town or city and zip code); and

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

d. Permittees shall maintain the records required by Part I B X a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.

Staff noted that this section would include the contents of the general permit. These would be the requirements to cover both transfers and end-users if they were permitted. Section 70 B which addresses other requirements or special conditions contains several placeholders for identification of possible di minimus threshold limit figures.

The language "Animal waste generated by this facility shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the facility's approved nutrient management plan." was added to the Poultry Regulation in 2004 to deal with a potential loophole where a permitted operator could create a separate legal entity to which they would transfer the manure and then not be required to manage the manure according to the GP.

Staff reviewed the proposed additions related to "other requirements and special conditions".

In regard to waste transfer records, what would be a reasonable threshold for this material? In the Poultry Regulation, the threshold limits were easier to identify because of the material involved and the existence of standard units in terms of how the material is transferred, i.e., sizes of trucks. With this material there are a variety of ways in which the material could be transferred.

Discussions by the TAC included the following:

- A concern was noted about the lack of guarantees under the transfer options identified above under the certification program that whoever gets that product and applies it under the same standards as a farmer who is applying fertilizer under an approved nutrient management plan?
Staff Response: We need to consider the entire potential scope of products that might fall into this category and how they might be used. This gets into the concept that the product has a value and there are other things driving how that product is being used other than a need to get rid of it. It is anticipated that this would be a relatively small universe of products. The criteria for meeting the requirements for this material would be significant. This would be a material that had been composted or otherwise pathogens had been reduced.
- If it is an agricultural product, it is not registered with VDACS. VDACS certification program addresses commercial products. If it is not a commercial product then VDACS doesn't see the

label to begin with, but is available to help with the development of what information should be included on the label.

- What is the threshold limit for Poultry? *Staff Response: The threshold limit for poultry litter is more than 10 tons and in certain circumstances it is more than 5 tons.*

The group was asked for their ideas on what the threshold limit for transfer of agricultural manure should be. The discussions included the following:

- What was the basis for the limitation poultry litter? If the limit is 5 and 10, then is there an equivalent reasoning that could be applied to a threshold for animal manure, rather than just guessing?
- Would you need to go on a nutrient basis (i.e., pounds of nitrogen or phosphorus concentration) rather than tons per gallons basis? The problem is that you don't know what the concentrations will be. There are such a variety of products that could be involved that it would be difficult to come up with a single threshold number. The threshold should probably need to focus on the amount of plant available nitrogen or phosphorus transferred.
- *Staff Comment: In the poultry regulation as far as storage requirements go the number is "zero". If you store any amount then you still have to meet the requirements.*
- When the 5 and 10 ton threshold limits for poultry litter was determined was there an assumed nutrient concentration that was considered? No, it was just the result of trying to come up with a reasonable exemption.
- *Staff Comment: The use of a nutrient concentration figure might be easier to understand if you have the analysis available. You could use the average concentration figure from the poultry regulation fact sheet to determine a possible equivalent figure that could be used as a threshold number. Use of plant available nitrogen might be a viable option for consideration. In the technical requirements for the poultry regulations, the number is "zero" for storage and if "more than 10 tons" for records requirements and then for land application is was "5 tons or more" then land application requirements would need to be followed.*
- *Staff Comment: Under the poultry regulation the allowance of a number of transfers was contemplated, so that a number of individuals with pickup trucks could get poultry litter. Under the AFO we may need to look at this as a total of the transfers not a lot of individual transfers.*
- These transfers should be based and tracked on a 365 day cycle for individual transfers for calculation of total amount transferred.
- There are a multiple of products that could be transferred off of any given dairy operation that need to be considered.
- How would a cumulative figure be determined? *Staff Response: You would have a limit for both plant available nitrogen and phosphorus. For discussion purposes, say the limit is 400 pounds. If you transfer off of the farm less than 400 lbs of nitrogen or 400 lbs of phosphorus then that could be done without tracking that transfer or coming under the requirements for the use of that manure. The 400 lbs limit would be a cumulative amount over a 365-day period.*

This could be one neighbor getting that amount once as a bulk amount or the operator has small increments of materials that are leaving the farm over that period.

- The cumulative figure would be for the individual recipient. The threshold limit should be per recipient. It was also suggested that a cumulative total number from the farm not per individual recipient would be preferred.
- The threshold number needs to be fairly large.
- Should use an equivalent to that used on the poultry regulation.
- There are a variety of dry products that could come from each AFO.
- Could there be a de minimus acre size? It was suggested that 10 acres might be a de minimus size consideration as the amount of land that would make it feasible for a farmer to go and spread the material, depending on how far the sites are separated. Have to make it worthwhile and make sure that it is used wisely. It was suggested that 10 acres of whatever material at an agronomic rate might be a good threshold limit. It should be simple for the end-user and the farmer to understand. *Staff Response: Under this concept, you couldn't say one neighbor with 5-10 acre tracks could get that amount; you would have to have 5 separate recipients. But cumulatively there would be no upper threshold. The incentive is that there is a value to this material.*
- It was suggested that one of the main purposes of this is to provide for transfers of small amounts of material for use on individual garden sites for neighbors for PR purposes.
- *Staff Comment: The other scenario that needs to be considered other than liquid dairy manure is a composted product that is bagged. The record keeping requirements and land application requirements that we are talking about are basically that we know exactly where it went and exactly how much was applied and what was used to apply it. There are going to be multiple recipients. The goal for use of a bagged product is to have a bunch of people using the product in that form.*
- At what point do you stop tracking the bagged product? Is it once the product is loaded on a truck? Do you just track to the "distribution center"?
- Did we resolve the question of the de minimus threshold amount? *Staff Response: No, what we have is essentially a difference of opinion. The conversation has moved into consideration of the use of a bulk liquid material versus the use of a bagged product and whether the same concerns and considerations of a de minimus threshold amount apply.*

ACTION ITEM: The group was asked for any additional suggestions and recommendations related to the identification of a de minimus threshold amount.

- How do you ensure that the material is being land applied is not put down in excess?
- How would it be different from poultry litter?
- The concern is related to multiple transfers.
- *Staff Comment: It appears that the question is what is the smallest unit of management that should fall below the radar as far as mandating that certain requirements are followed?*

- How are we going to manage the possible impacts that individuals might have if they over apply?
 - *Staff Comment: There is currently no consensus on the de minimus threshold amount.*
 - It was noted that at some point there needs to be a conversation about storage.
-

Staff discussed the requirements for waste transfer records being proposed.

Discussions by the TAC included the following:

- Are these requirements designed for tracking or are they for enforcement? *Staff Response: What these end up being is the requirements for the end-user to use the materials according to the technical requirements. DEQ would not be inspecting those end-users on a regular basis, but if there is a large amount of material going to one place, it might help identify an area where there might be issues or problems. It basically becomes a "complaint based system for end-users" for inspections. It would give information of where the material is going and where there may be problems.*
- A question was raised about notification requirements for transfer of this material. In other regulations you have to notify adjoining landowners before you spread. Does the adjacent land owner need to be notified? *Staff Response: Under what is currently being proposed there would not be a requirement for neighbor notification for land application of transferred manure.*

If adding option for covering an animal waste end-user under the GP:

Add new part to permit to cover animal waste end-user similar to the requirements added for poultry waste end-user and broker part of VPA GP for Poultry Waste Management

Staff Comment: These are the technical requirements for an "end-user".

Technical Regulations:

Section 80. Tracking and accounting requirements for animal waste end-users. {Could add categories based on waste handling (dry, semi-solid, liquid)}

Add new section:

A. When an animal waste end-user is the recipient of **more than XX tons** of animal waste in any 365-day period, the end-user shall maintain records regarding the transfer and land application of animal waste.

1. The animal waste end-user shall provide the permittee with the following items:

a. End-user name and address;

b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city and zip code);

c. The name of the stream or waterbody if known to the end-user that is nearest to the waste utilization or storage site; and

d. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) A fact sheet.

2. The animal waste end-user shall record the following items regarding the waste transfer:

a. The source name, address, and permit number (if applicable);

b. The amount of animal waste that was received;

c. The date of the transaction;

d. The final use of the animal waste;

e. The locality in which the waste was utilized (i.e., nearest town or city and zip code); and

f. The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

Records regarding animal waste transfers shall be maintained on site for a period of three years after the transaction. All records shall be made available to department personnel upon request.

3. If waste is land applied, the animal waste end-user shall keep a record of the following items regarding the land application of the waste:

a. The nutrient analysis of the waste;

b. Maps indicating the animal waste land application fields and storage sites;

c. The land application rate;

d. The land application dates;

e. What crops were planted;

f. Soil test results, if obtained;

g. NMP, if applicable; and

h. The method used to determine the land application rates (i.e., phosphorus crop removal, soil test recommendations, or a nutrient management plan).

Records regarding land application of animal waste shall be maintained on site for a period of three years after the recorded application is made. All records shall be made available to department personnel upon request.

B. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

Staff discussed the requirements on the end-user for tracking and accounting.

Discussions by the TAC included the following:

- This information and accounting applies to those end-users who don't have a permit.
-

Section 90. Utilization and storage requirements.

Add new section:

A. Any animal waste end-user who receives animal waste shall comply with the requirements outlined in the following sections.

B. Storage requirements. Any animal waste end-user who receives animal waste shall comply with the requirements outlined in this section regarding storage of animal waste in their possession or under their control.

Could add categories based on waste handling (dry, semi-solid, liquid)

1. Animal waste shall be stored in a manner that prevents contact with surface water and ground water. Animal waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Animal waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored animal waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10⁻⁶ centimeters per second); and

d. For animal waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

2. Any liquid animal waste collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

3. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain.

4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

5. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of

the waste must be maintained at a level of at least two feet above the water table.

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

C. Land application requirements. Any animal waste end-user who (i) receives **XX or more tons** of animal waste in any 365-day period and (ii) land applies animal waste shall follow appropriate land application requirements as outlined in this section. The application of animal waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the table below:

Region Soil test P (ppm)

VPI & SU Soil test (Mehlich I) *

Eastern Shore and Lower Coastal Plain 135

Middle and Upper Coastal Plain and Piedmont 136

Ridge and Valley 162

* If results are from another laboratory the Department of Conservation and Recreation approved conversion factors must be used.

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field or fields in the last three years;

(2) The analytical results are from procedures in accordance with 4VAC5-15-150 A 2 f; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with 4VAC5-15-150 A 2 a.

c. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of animal waste shall be appropriate for the crop, and in accordance with 4VAC5-15-150 A 4, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated.

3. Animal waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

D. Animal waste end-users shall maintain the records demonstrating compliance with the requirements of subsections B and C for at least three years and make them available to department personnel upon request.

E. The activities of the animal waste end-user shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

F. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

Staff discussed the requirements on the end-user for storage. It was noted that there are no thresholds here, since this applies to all end-user who receives this transferred material. This section addresses storage of liquid waste - these are the same requirements that a permitted grower would be required to follow. These are all requirements from the general permit regarding liquid waste storage. The section on land application provides the options in lieu of a nutrient management plan. The timing of manure applications and setback requirements are the same as a nutrient management plan. The only item that is different from the concept in the poultry regulation is that an end-user must obtain a soil test. Under the poultry regulation, a standard rate for poultry litter was identified that could be land applied without getting a soil test. Because there is such a range of products from animal feeding operations, staff did not feel that it was appropriate to propose a similar standard rate for animal waste. If you are receiving transferred animal waste from one of these permitted facilities you are going to have to get a soil test and apply according to that soil test or get a nutrient management plan and follow those requirements.

Discussions by the TAC included the following:

- How would the end-user know the threshold limits and for those that are over the de minimus amount how would DEQ know that and how would you enforce the requirements? *Staff Response: It is anticipated that a fact sheet similar to that used for the poultry regulation would be developed. Hopefully not as complicated as that but similar in content. Information would also be posted on the DEQ program web page. So anyone storing any of this material would receive a fact sheet on storage requirements? Staff Response: That would be a good way to provide that information. The fact sheet is required as part of the Poultry Regulation. Storage would need to be addressed. Enforcement and tracking would initially be a complaint driven process.*

5. Identification of "Open Chair" Process (Bill Norris)

Bill Norris informed the group that for the balance of the day's discussions that an "open-chair" option was available for those members of the public who were unable to work through a member of the TAC or had pertinent information relevant to the topic being discussed. Anyone who has information that they would like to share that is pertinent to the current discussions can come to the "open-chair" to be recognized for their comments. Having provided their comments, they are then asked to return to their chair so that others could have the same opportunity. This is in addition to the opportunity for public comment at the end of the meeting.

6. Section 90. Utilization and storage requirements - Continued Discussions (Staff and TAC Members)

Discussions by the TAC included the following:

- It is not clear that the storage requirements would apply to anyone receiving waste regardless of the amount - there needs to be additional clarification provided. The remainder of the requirements appears to be appropriate. Appreciate their similarity to the poultry litter regulations. A concern was noted about compliance regarding ensuring that there is adequate opportunity for the end-user to be aware of the requirements and applying those requirements identified in the regulations. *Staff Response: Are there any specific wording suggestions?*

ACTION ITEM: TAC members were asked to provide any specific wording changes or additions to Bill Norris for incorporation into the next version of the regulation amendments for consideration by the TAC.

- *Staff Comment: With regard to the fact sheet, that is something that would not be included in the regulation. It would be a separate document that would be published in the Virginia Register and would be public noticed. It would include the requirements that are in the regulation as well as some "how to meet those requirements" language. It would be very similar to the one developed for the Poultry Regulation.*
- Would the requirements in the fact sheet be enforceable? *Staff Response: The provisions of the regulation would be enforceable. The fact sheet is essential designed as a tool to communicate those requirements - an explanatory document for the end-user. It is not guidance.*
- It was noted that the permittee would have to maintain a record of the end-user of waste transferred from their operation.

Angela Neilan took a poll of the TAC members regarding this section of the regulations. Comments included the following:

- Still need to come back the threshold concept.
- As a practical matter, one of these materials if it is a liquid then storage is a no brainer - reserve the right to comment.
- Storage and ensuring enforcement and compliance.

- Regarding threshold - needs to be clear that it is not a lot of smaller end-users - it is accumulative for each end-user.
- Modeled after the Poultry Regulation - OK.
- Small farmers need to have this option.
- Storage issues are a financial issue - if they are going to spend the money to acquire this material and not land apply it immediately then storage will be required so that they don't lose the value in the material.

CONSENSUS: The TAC members arrived at a consensus on the need for this section and the proposed language with the needed areas of clarification noted in the discussions.

- It was noted that the concern is that from a cumulative perspective there is an avenue to allow for the application of material that doesn't meet the same requirements that individuals that are operating under a general permit are being held to under this program.

ACTION ITEM: Staff will develop proposed language to address the issue of a de minimus threshold amount and provide that to the TAC for consideration and discussion at the next TAC meeting.

7. Discussion of Additional Potential Amendments - Permitting Options for Owners with Poultry and Livestock AFOs (Neil Zahradka; Betsy Bowles; Angela Neilan and TAC Members)

The handout designated, "Discussion Draft - Allowing Coverage of Poultry Operations-Language - 11/26/12 - TAC Meeting" was discussed by the group. The handout included the following information:

Additions to the VPA GP for AFOs if we include language to allow for coverage of a dry poultry operation in conjunction with a liquid livestock operation under this GP

Section 10. Definitions.

Add: (NEW)

1. Animal waste

“Animal waste” means liquid, semi-solid, and solid animal manure, poultry waste, process wastewater, compost and sludges associated with livestock and poultry animal feeding operations.

2. Nutrient management plan

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of animal

waste and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters.

Amend the following definitions:

1. Permittee

"Permittee" means the owner or operator whose animal feeding operation is covered under this general permit.

Add the following to the definition section (from the Poultry GP regulation):

1. Confined poultry feeding operation

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

2. Fact sheet

"Fact sheet" means the document prepared by the department that summarizes the requirements set forth in this chapter regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers.

3. Organic source

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

4. Poultry grower

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

5. Poultry waste

"Poultry waste" means dry poultry litter and composted dead poultry.

6. Poultry waste broker

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and who transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

7. Poultry waste end-user

"Poultry waste end-user" or "end-user" means any recipient of transferred poultry waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

Add from the Statute §62.1-44.33:

1. Owner

"Owner" means the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5.

Possibly add:

1. Poultry waste hauler

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

2. Standard rate

"Standard rate" means a land application rate for poultry waste approved by the board as specified in this regulation.

Section 20. Purpose; delegation of authority; effective date of permit.

Amend to include poultry waste at confined poultry feeding operations, as follows:

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

Section 25. Duty to comply. (NEW)

Add must comply with poultry waste end-use technical requirements in VPA Poultry Waste Regulation and General Permit, as follows:

C. Any poultry waste end-user or poultry waste broker shall comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80. Any poultry waste end-user or poultry waste broker who does not comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

Section 50. Authorization to manage pollutants.

A. Add subsection catchline for “Animal feeding operation owner or operator.”

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

1. The owner or operator has not been required to obtain a VPDES permit or an individual permit according to 9VAC25-32-260 B;
2. The operation of the animal feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges are permitted. Domestic sewage ~~or industrial waste~~ shall not be managed under this general permit.
3. The owner or operator of any ~~proposed pollutant management activities or those~~ animal feeding operation which ~~have~~ has not previously been issued a valid Virginia Pollution Abatement (VPA) permit or Virginia Pollutant Discharge Elimination System (VPDES) permit must attach to the registration statement, the Local Government Ordinance Form, a notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.
4. The owner or operator shall obtain Department of Conservation and Recreation ~~must approve approval of~~ a nutrient management plan for the animal feeding operation prior to the submittal of the registration statement. The owner or operator shall attach to the registration statement a copy of the approved Nutrient Management Plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan, ~~and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.~~ The owner or operator shall implement the approved nutrient management plan.
5. a. The owner or operator shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. Such notice shall include (i) the types and maximum number of animals which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under the permit and no expansion is proposed and the department has not issued any special or consent order relating to violations under the existing permit.
 - b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.
6. Each owner or operator of a facility covered by this general permit shall have completed the training program offered or approved by the ~~Department of Conservation and Recreation~~ department in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All owners or operators shall complete the training program at least once every three years.

B. Add Poultry grower section from VPA Poultry Waste Regulation and General Permit.

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

1. The poultry grower has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual permit according to 9VAC25-32-260 B;
2. The activities of the confined poultry feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;
3. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia;
4. The poultry grower shall obtain Department of Conservation and Recreation approval of a nutrient management plan for the confined poultry feeding operation prior to the submittal of the registration statement. The poultry grower shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry grower shall implement the approved nutrient management plan;
5. Adjoining property notification.
 - a. Prior to filing a general permit registration statement for a confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, the poultry grower shall give notice to all owners or residents of property that adjoins the property on which the proposed confined poultry feeding operation will be located. Such notice shall include (i) the types and maximum number of poultry which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted.
 - b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the poultry grower not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement; and
6. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry growers shall complete a training program at least once every three years.

Amend B. to make it C. and to include animal feeding operation owner

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

Move newly proposed C. to D.

D. Continuation of permit coverage.

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

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

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

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

Section 60. Registration statement.

Add the specific items related to poultry operations as follows:

1. name of the integrator
Indicate whether the poultry are grown under contract with a poultry integrator and give the name of the integrator, (if applicable).
2. poultry type and the maximum numbers
The types of poultry and the maximum numbers of each type to be grown at the facility at any one time;
3. method of dead bird disposal;
Identification of the method of dead bird disposal;
4. construction of new poultry growing houses
An indication of whether new poultry growing houses are under construction or planned for construction;
5. Amend the certification statement
Amend the certification statement as follows:
"I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. I certify that for any confined poultry feeding operation that proposes construction of new poultry growing houses, notice of the registration statement has been given to all owners or residents of property that adjoins the property

on which the confined poultry feeding operation will be located. This notice included the types and numbers of animals or poultry which will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under the general permit and no expansion of the operation is proposed and the department has not issued any special or consent order relating to violations under the existing permit.) I certify under penalty of law that all the requirements of the board for the general permit are being met and 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 gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted 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."

Section 70. Contents of the general permit.

Amend to first paragraphs to include poultry grower:

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

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR ANIMAL FEEDING OPERATIONS AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

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

The authorized pollutant management activities shall be in accordance with the registration statement, supporting documents submitted to the Department of Environmental Quality, this cover page, Part I, Part II, and Part III, as set forth herein.

B. Other requirements or special conditions.

Add the following:

1. NMP items

Add to B.7.a.

The location of fields as identified in Part I B 4 e shall also be included; (should point to the transfer records requirements below:

e. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

2. Confined poultry operation design and operation requirements

X. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

3. Waste storage requirements

X. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1×10^{-6} centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

4. Waste storage construction requirements

X. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.

5. Waste transfer requirements

X. Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person with:

(1) Grower name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the poultry waste; and

(3) A fact sheet.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

(1) The recipient name and address;

(2) The amount of poultry waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the waste; and

(5) The signed waste transfer records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:

(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code); and

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

d. Poultry growers shall maintain the records required by Part I B 4 a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.

e. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

6. Daily mortality disposal prohibition

X. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

7. Application rates (possibly add)

X. Nitrogen application rates contained in the NMP shall be established in accordance with 4VAC5-15-150 A 2. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

X. Phosphorus application rates contained in the NMP shall be established in accordance with 4VAC5-15-150 A 2. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

8. Land application timing requirements specific to poultry waste

X. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

Discussions by the TAC included the following:

- *Staff Comment: The number of facilities that are currently operating that have both a dry poultry operation as well as a liquid livestock operation and are therefore operating under two separate permits is a total of 18 facilities that have the same owner. This language is being provided to allow for an option.*
- Have people been asking for this option? *Staff Response: No, this is not a reaction to something that has been requested, it is based on administrative efficiency. This is a way to allow for another option for those using these general permits. There is nothing new if there are two permits versus "one". This is essentially an identification of those portions of the poultry regulation that would have to be included in the AFO permit to allow for the option to have one permit in these instances instead of two.*
- Not sure what the benefits to the operator would be.
- The concern would be if there is an issue with one and not with the other operation it may be more difficult to work out then having the two separate permits.
- This would be provided as an option for those operations with both poultry and animal feeding operations.
- Don't see that anyone is asking for this.
- Better to keep these as separate permits.
- The small AFO strategy was mentioned – These operations may not have enough land.
- Most poultry operations are already being covered under the poultry regulation.
- Don't see any downside if this is just an option - as long it is just an additional option in the tool box.
- It was noted that some individuals probably would not want their poultry operations tied into a permit for their dairy operations.
- It was suggested that this proposal was not ready for this round of permit considerations - there are other issues that need to be discussed and resolved. It was suggested to wait until this general permit is reexamined in the next 10 year cycle.

- *Staff Comment: It has been suggested that we not go through this process at this time and put this proposal into a "parking lot" for discussion at a later date. This would give opportunity for the TAC to read over and to determine whether there is any interest in pursuing this at this time.*
- In an operation wants to consolidate into one permit, what would they have to do to apply for this new joint permit? What would the process look like? It might be good to have that process identified in addition to the proposed language to review to allow for an informed decision on this proposal.
- If this is strictly an administrative process and really doesn't change any requirements other than a new application form then this would be just another option that was available - don't see anything wrong with this proposal. How would this option be rolled out? *Staff Response: Envision this being handled through the regions during inspections or as an operator reapplies for their permit.*
- It was noted that there is no identified push to have this combined permit. If we have not been asked for it then why are we pursuing it? If no one is pushing this then why are we trying to fix something that is not broken? *Staff Response: This is just an effort to provide another option that could be used. The proposed language is taken directly out of the poultry regulation so there is no need to discuss the specific requirements.*

8. Discussion of Additional Potential Amendments - List of Additions to the VPA GP for AFOs if We Include Language to Cover Off-Site Generated Materials (Neil Zahradka; Betsy Bowles; Angela Neilan and TAC Members)

The handout designated, "Discussion Draft - Off-Site Generated Materials-List - 11/26/12 - TAC Meeting" was discussed by the group. The handout included the following information:

List of additions to the VPA GP for AFOs if we include language to cover off-site generated materials

Item # 2 listed in the NOIRA:

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

Language would specify requirements related to:

- siting, construction and storage of the off-site generated materials; and
- the management of a digester or other alternative manure treatment technology; and

- the management of the additional material coming out of a digester or other alternative manure treatment technology.
-

Section 10. Definitions:

*Add the following to the definition section: (**this is a different animal waste definition)*

4. Animal waste

“Animal waste” means liquid, semi-solid, and solid animal manure, poultry waste, process wastewater, compost and sludges associated with livestock and poultry animal feeding operations including the final material generated by a digester or alternative treatment technologies.

Section 50. Authorization to manage pollutants.

Add specific items related to off-site generated materials

Section 60. Registration statement.

Add specific items related to off-site generated material

Section 70. Contents of the general permit.

Add specific items related to off-site generated material (see below)

B. Other requirements or special conditions.

1. Treatment/ storage requirements (e.g., requirements for a manure digester)

X. For new waste storage or waste treatment facilities, the facilities shall be constructed, operated and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the United States Department of Agriculture.

2. Off-site material requirements

X. Animal waste generated by this facility shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

X. All materials generated by a digester or other alternative manure treatment technology shall be managed in accordance with this permit.

3. Add requirements to include siting, construction and storage of the off-site generated materials;

4. Add requirements to include requirements regarding feeding of off-site materials;

If adding option for covering animal waste transfers:

X. All materials generated by a digester or other alternative manure treatment technology must be managed through a Nutrient Management Plan, or transferred to another entity in accordance with waste transfer requirements in Part 1. B. x.

5. Off-site material records

X. When a facility covered under this permit generates a material through the use of further or alternative treatment technologies from animal waste and other feedstock, the permittee shall maintain records related to the production of the material.

1. The permittee shall record the following items:

- a. The amount of waste generated;
- b. The nutrient analysis of the waste; and
- c. The final use of the waste.

2. Records related to the material produced as a result of further or alternative treatment technologies managed at the facility shall be maintained on site for a period of three years. All records shall be made available to department personnel upon request.

Staff discussed the proposed language for addition to the VPA GP for AFOs if we were to include language to cover off-site generated materials. This language is being proposed to address Item #2 that was listed in the NOIRA. The definition of "animal waste" has been revised to include off site generated materials. We may need to further revise this definition to clarify it. It was suggested that we might want to revise it to refer to "animal byproducts" rather than "animal waste". Section 50 dealing with "authorization to manage pollutants" would need to be revised to add specific items related to off-site generated materials. Section 60 on "registration statement" would need to be revised to add specific language related to off-site materials. There may be a need to include language regarding whether the operator is receiving off-site materials and what they are planning to do with the material. Section 70 which addresses the requirements for the "contents of the general permit" would need to be revised to include specific items related to off-site generated material such as "treatment/storage requirements"; "siting, construction and storage of off-site materials" and "requirements regarding feeding of off-site materials. In addition if an option for covering animal waste transfers was added there would be the need to a requirement for "off-site material records".

Discussions by the TAC included the following:

- What time sequence is being considered for recording this information? Would be in tonnage?
Staff Response: It would probably relate to how often you would be feeding material and how much is generated. It would depend on the operation. Basically just accounting for how much material is brought in and how often you are running the digester.
- Would this language added to the general permit be authorizing the alternative technologies or would additional authorizations be needed? *Staff Response: You don't currently need an additional authorization if you are just managing animal manures. The additional authorizations would be needed if you are bringing in some materials that might be managed under the solid waste regulations. This is related to not requiring a solid waste permit for something that is basically handling animal waste.*
- This discussion is better suited for a "digester" rather than other forms of alternative technologies since it is the one operation that doesn't trigger the need for an air permit.

- What are examples of types of feedstock that could be used? Response: Any type of organic waste, Carbon 6 or less would be broken down by the digester. Potato skins work. Brewer's yeast works well. Anything that you can feed a cow, you can feed a digester.
- If you are generating energy, you would need an air permit.
- It was noted that salad bar scraps were also ideal for feeding a digester.
- *Staff Comment: This might not be addressing just a digester; the operation may also have a composting component. These amendments are focused on those facilities that begin as an AFO not for a facility, such as a composting facility.*
- A question was raised regarding the managing the nutrient content of the end products. What are the nutrient requirements for any type of animal waste? Would a separate permit be needed to address the water regulations? *Staff Response: This GP would cover both the waste and the water requirements. This is for farming operation and would be doing this as part of their operation. This deals with those operations that are AFOs.*
- Is what we are talking about is that the material transferred onto the site has to be similar to what is already being produced on the farm? *Staff Response: We want them to be able to use other organic materials in the digester. This is designed to apply to an operation that starts as an AFO. This does not apply to an industrial operation.*
- Where do we say that this meets the waste requirements? Where are the waste requirements included? *Staff Response: These requirements are being developed through collaboration with the Waste Group within DEQ and will be included as part of the siting, construction and storage requirements for off-site generated materials and requirements related to feeding of off-site materials. An effort is being made to not be duplicative if we don't have to. We don't want to pigeon hole it to just a digester. This may require a revision to the Waste Law or a clarification of the allowable exemptions.*
- In regard to Section 70 B 1 related to "new waste storage or waste treatment facilities" – does this mean any waste storage or does it mean just the ones we are talking about here for these types of operations? *Staff Response: This includes any type of waste storage or waste treatment facility that we are not already addressing in the regulations. We address liquid waste, earthen facilities, concrete, etc. We don't currently address any requirements for facilities such as digesters. With the way that this amendment is worded it seems to add additional requirements, i.e., meeting the NRCS requirements. Staff Response: You are already required under the existing regulations to meet the NRCS requirements. Just trying to make sure that we are not doubling up on the requirements with the proposed amendment language.*
- Do we need to include all of the specifics that are in the regulations? Is there a better way to identify the requirements without having to include so much detail in the regulations? Are there some standards that could be used? *Staff Response: We will need to look back at the existing language to see if there is a way to streamline the verbiage. Some of the requirements in the existing regulation discuss siting concerns and requirements. Other address construction requirements. Some of it is not new language but was added back in 1998. These materials being reviewed and discussed by the TAC are all discussion drafts and have not been compiled*

into a single document so the actual placement and location of the language within the regulations still remains to be determined. The ideal situation would be to have all of the similar requirements, i.e., for storage, in the same section of the regulations. We may have an opportunity to reword and restructure some of the requirements in the final document.

- There were times when there was a difference between NRCS standards and specifications. Response: An effort is being made that the NRCS standards meet state law. Currently the effort is for there not to be any conflicts or differences between the two. One thought that had been discussed was the use of the NRCS Standards or having an Engineers Stamp, saying a proposed project would work. The idea is to meet the NRCS standards and design. A lot of farmers are getting their own engineers to design their facilities to meet the standards.
- Need to avoid duplication and conflicts were possible. Do we need all of the specifications that are included in the regulation? We should try to be broad enough to cover everything and everybody.
- The language should specify that these requirements are "other than what is already stipulated". *Staff Response: This language is a "first draft" and needs to be refined. In addition it might be advisable to include a set of dates, "after which" certain requirements would be in place.*
- *Staff Comment: The intent would be to flush out this language further to make sure that the waste exemptions are accounted for and to provide that language to the TAC for consideration and discussion at the next meeting.*
- A question was raised regarding a third party operation of a facility on the site of the animal feeding operation to generate energy. They would be using the material from the AFO as feed stock and returning the material to the landowner for use on the land. *Staff Response: If it was a totally separate operation, not an AFO, then they would fall under the waste regulations. This type of operation would not be covered under the AFO General Permit. The digester in this case would be under a waste permit and the AFO would operate under the AFO General Permit.*
- There could be a Co-Op that could operate this type of facility. *Staff Response: This would not qualify as an AFO and would not qualify for a general permit. There are certain requirements under the waste regulations that could not be addressed in these water regulations. There are threshold levels that need to be considered.*
- The group discussed the situation of a third party operation of a facility that was only associated because of the materials being transferred back and forth.
- The sharing of resources related to the transfer of waste materials was discussed. *Staff Response: The primary purpose of the operation still needs to be animal operations (AFOs).*
- Is it the size of the operation that matters or is it the amount of material that governs whether an operation would be covered under the regulations or not? *Staff Response: It is the amount of material that is being transfer off the site and coming off the site. If there are other things that are being added that are not from the farm that need to be considered. There are threshold levels that need to be considered and accounted for. Then that should be stated and clarified in the regulations that the primary purpose needs to be an AFO.*

- It was noted that this is a transfer of materials so the ownership of the manure changes. It would depend on the ownership of the facility. The farmer transfers the material to an energy generating company, so that company now owns the manure. That company is not an AFO so cannot be permitted under the AFP GP. The material would be a transfer. So the farmer shows a transfer of a certain amount of material off-site to a separate company that he is not a share holder of. Then that farmer is getting product back from that "digester" for land application that would be accounted for in his nutrient management plan. If the farmer owned 1% of the company, then it could probably fall under the AFO regulations, because he is technically selling manure to himself. Would that scenario be any different from a Co-Op? If the farmer is a party to both entities then he is not transferring the material, he is just taking it out of his left hand and putting it in his right. It would still be in the same plan. But isn't it still a transfer?
Staff Response: The facility would operate under one permit and the farmers operating under the AFO general permit would be required to follow the transfer requirements identified in the regulations. A lot depends on the ownership of the facility and the ownership of the AFO operations. If it is a totally separate legal entity then it would not be covered under the AFO general permit. The business connections related to these operations would need to be carefully considered and who is permitted under the AFO General Permit. The sole business needs to be animal feeding operations to be covered under the AFO General Permit. If it is a separate legal entity then it would not fall under the AFO General Permit if it were not an animal feeding operation.
- The liabilities of setting up these types of businesses would need to be considered.
- *Staff Comment: The current regulations don't allow any industrial waste.*
- Need to have a definition of what can go into the digester to link with what is coming out of it. There needs to be some indication of what can be accepted without triggering the waste regulation. If you are trying to go down this path then you need to define what can go into the digester. There is currently no defined link as to what can go into a digester. The question is how did the off-site generated material get to the farm to begin with and does it belong there?
Staff Response: The question is depending on how the digester and the AFO are operated and owned what dictates whether an operation can be covered under the AFO General Permit or not?
- Do we need a definition of "final material"?
- Is the presumption that the farmer owns the digester?

ACTION ITEM: There needs to be clarification on ownership related to any interrelationship between a digester and the AFO. There needs to a clarification on what triggers compliance with the general permit and when the "waste" regulations would apply.

- A concern is to make sure that we have considered all of the possibilities and made sure that there are no loop holes that are inadvertently left open. *Staff Response: Program staff is*

working closely with the waste program staff to make sure that there are no loopholes created through the development of these amendments.

- Regarding the records - how will they be used? *Staff Response: The information would be used primarily for nutrient management purposes.*
- Ought to know what is going in as well as what is coming out of the process. *Staff Response: Knowing what is going in is related to the management and storage of material. That would provide verification of that information.*

9. BMP Issue - Storage in the Floodplain (Neil Zahradka):

Staff raised the issue related to the storage of manure in the floodplain: In the Poultry Regulation there is a requirement of where the material is located in relation to the floodplain. The regulation states that if the landowner has no other land other than the 100 year floodplain then they can construct the facility along with any inundation measure to ensure that the facility is not flooded. The AFO regulation does not contain any such provision for construction of a waste storage facility in a 100-year floodplain. Should this be allowed if the flood protection provisions could be engineered?

It was noted that the statute states that no waste storage structure can be located on the 100 year floodplain so this provision cannot be granted.

10. BMPs Required by the AFO General Permit (Neil Zahradka):

Staff brought up the issue of the BMPS required by the AFO General Permit. This issue was raised at the last meeting related to the Watershed Implementation Plan for the Chesapeake Bay TMDL. There are certain requirements for BMPs. Whatever AFO you are it is anticipated that they would all have the same BMPs. There are some other BMPs that are in the Voluntary categories that are not required in the AFO General Permit.

- There some specific BMPs that are identified and specified in the WIP for AFOs. There are also a set of voluntary BMPs that could be included. The two that should be considered for inclusion in the AFO GP are: "livestock exclusion" and "soil conservation plans". The WIP is calling for essentially a 100% increase of the current use of "livestock exclusions" and a 50% increase in the use of "soil conservation plans" over the levels in 2009. Incorporating these into the AFO GP would provide an opportunity to have more farmers implement these measures. Phase-in allowances could be provided for over the course of this 10-year permit. The consideration of the Bay TMDL and the WIP provide an avenue to bring more farmers into the fold for other BMPs that have not been considered in the past.
- It was suggested that this be part of the permit requirements and therefore mandated not just encouraged.
- Cost-sharing similar to that used for the upgrade of wastewater treatment plants could be used.
- Biggest concern is the level of cost-sharing that would be required and the requirement for a long-term agreement/commitment by the landowner. Agricultural operations today utilize a large amount of long-term leases of property and rental agreements. The assumption is that

farmers operation on 100% of their own property when in reality probably less than 15% own all of the land that their operations utilize.

- The concern was noted that the WIP being referenced in for the Chesapeake Bay while this program is a statewide program. So there would need to be consideration of the differences in implementation of BMPs in different areas of the state. *Staff Response: The original thought in not including these additional BMPs was that whatever mechanism caused implementation of those BMPs within the Chesapeake Bay that those operators that also owned and operated an AFO would fall under those same implementation strategies, for example the RMP program.*
- Need to closely look at the statute to identify the specific requirements related to the TMDL implementation language and small AFO strategies and the RMP program requirements and the identification of specific mandates on DEQ. *Staff Response: The statute that calls for permits for AFO is of course focused on AFOs. How far that authority extends comes into question here.*
- It would seem more appropriate to focus on BMPs that address "nutrient management" rather than "behavioral management". *Staff Response: When you talk about the use of BMPs you are not referring to one particular practice, you are usually referring to a suite of practices that could be implemented. Under the federal CAFO program, stream exclusion is not required outside of the requirements that are placed on the production area. It is focused on the production areas not on the pasture areas. Their nutrient management section has certain components that specify that the NMP must focus on certain issues. Those components are not very specific as to what the NMP has to include. EPA's approach has been to look to the states to provide their nutrient management technical criteria. DEQ provides that technical criteria to EPA for Virginia's program, which is housed in the DCR regulations for Nutrient Management as to which criteria are required in the NMP for fields where manure is applied. At this time, EPA has said that Virginia's technical criteria meet the requirements in EPA regulations.*
- TAC members were encouraged to look at the list of BMPs identified in the WIP to identify any other BMPs that might be useful in the AFO regulations.
- Need to clarify what BMPs would apply to the production areas versus the operation areas.

11. Summary (Neil Zahradka/Bill Norris):

Staff noted that the intent is to take the discussions from today's meeting and work the suggestions and comments into proposed language for the regulation amendments and then to bring that material back to the TAC for their review and discussion at the next meeting of the TAC. The purpose of the December meeting of the TAC would be to look at the proposed language to identify any remaining concerns.

Are there any other issues that we have not talked about or addressed that the group feel need to be brought up? Are there any additional thoughts?

- The discussion on the WIP ended with a lot of questions. How will that discussion be handled? How are we going to move forward? *Staff Response: We will take the discussions back to the*

agency and look at the issue closely and develop a proposal as to how to address the concerns raised. We will bring that back to the group for consideration.

- Related to the WIP discussions, it is a mistake to look at that as strictly a Chesapeake Bay issue, it needs to be addressed on a statewide basis. It is important to include these in the regulation especially given the timing of the required goals.

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

12. Public Comment:

Bill Norris asked for public comment. No public comments were given.

13. Next Meeting:

The next meeting of the TAC is scheduled for Thursday, December 20, 2012 at 9:30 at the DEQ Piedmont Regional Office Training Room. Sign-In for the meeting will start at 9:15 A.M.

14. Meeting Adjournment:

The meeting was adjourned at approximately 3:00 P.M.