

Virginia Pollution Abatement Regulation and General Permit for Poultry Waste
 Management

Technical Advisory Committee Meeting

October 31, 2019 - 9:30 A.M.

DEQ - Piedmont Regional Office – Training Room

Meeting Notes from Technical Advisory Committee Meeting

Meeting Attendees

TAC Members	Representing
Tony Banks	Virginia Farm Bureau
Hobey Bauhan	Virginia Poultry Federation
Betsy Bowles	Department of Environmental Quality
Darrell Marshall (technical support)	Virginia Department of Agriculture and Consumer Services
Adrienne Kotula	Chesapeake Bay Commission
Seth Mullins (technical support)	Department of Conservation and Recreation
Phillip Musegaas (alternate for Mark Frondorf)	Shenandoah Riverkeeper/ Potomac Riverkeeper Network
Mark Patterson (alternate for Steve Levitsky)	Perdue Foods
Holly Porter	Delmarva Poultry Industry, Inc.
James E. Riddell	Poultry Waste End-User/ Agronomist
Kyle Shreve	Virginia Agribusiness Council
Michael Thompson	Poultry Grower
Pete Watson	Poultry Grower
Joe Wood	Chesapeake Bay Foundation

Others Present	Representing
David Grandis	Office of the Attorney General

DEQ Staff Present	
Kevin Cline	Bob Peer
Melanie Davenport	Neil Zahradka
Drew Hammond	

Absent TAC Members

TAC Members	Representing
Doug Baxter	Tyson Foods, Inc.
Kevin Dunn	Peter Francisco SWCD/ Poultry Grower
Jacki Easter	Poultry Grower/ Poultry Waste Broker

Welcome and Introductions

The meeting was opened at 9:35 AM by Betsy Bowles, the Animal Feeding Operations Program Coordinator for the State and Technical Advisory Committee Lead. Betsy began the meeting by welcoming the group and thanking the committee members for devoting the time to participating in this process.

Betsy provided instructions for meeting space logistics. Betsy introduced the DEQ staff and asked the TAC members to introduce themselves.

Betsy reviewed the TAC meeting protocols.

Final Call for Comments from TAC Members on (7/18) Meeting Notes

Betsy asked the group if anyone had any comments or revisions on the meeting notes that she had distributed by email prior to today's meeting. No one from the group offered comments or edits.

Brief Summary of Proposed Revisions to Regulation

Betsy provided a handout "Highlights of Proposed Amendments" and summarized each item. The items are listed below.

- Added definitions
- Amended dates to continue the general permit term
- Added clarification related to determining flood plain for the purposes of siting storage
- Reorganized conditions for better clarity: Site conditions, Poultry waste transfer and utilization conditions, and Other Conditions
- Added new condition related to - site management i.e., impervious surfaces
- Added new condition related to land application in cases where an emergency threatens waste storage
- Amended storage language
- Corrected citations
- Amended Broker reporting requirements
- Added new amended storage language to the technical regulations
- Added language concerning the commercial poultry processor
- Amended Registration Statements and Fact Sheet

A question was asked regarding whether the primary substantive changes were in the three topics listed for detailed discussion. Betsy noted that was true with the exception of the language related to impervious surfaces/site management, and emergency management.

A question was asked regarding the addition of the definition of "commercial poultry processor". Betsy noted that this definition is exactly the same as that in the statute, and was brought into the regulation for clarity.

Detailed Summary and Discussion Related to Proposed Changes to VPA GP Storage Requirements

Betsy reviewed a powerpoint diagram outlining permanent and temporary storage, and further described “option 1” (aligned with current requirements) and “option 2” (gleaned from Delaware study)

A question was asked as to if under option 2, the pile was not spread within 30 days, that the pile be transitioned to option 1. Discussion followed as to the practicality of not being able to transition into option 1, due to weather conditions that would preclude spreading, and the fact that option 1 is more protective than option 2.

A question was asked as to the basis of removing the 1” of soil. Discussion followed regarding the practicality and need to renovate the storage site.

A comment was made that option 1 would now require covering immediately versus after 14 days, and that this would not be as practical as the current regulation that allows for management of the pile during the first few days when spreading is occurring. Betsy noted that the immediate covering would not be necessary if it met option 2.

Discussion followed regarding whether litter would be stored in the field or in an area adjacent that was not in the crop field. Comments from the group indicated that both options were being used.

A question was asked as to the logic behind the 5% crust out material. DEQ staff was unaware of the basis and the study did not provide details. Some members of the group recommended deleting the 5% restriction.

The group discussed covering immediately or shaping the pile conically, and whether the two options could be combined. A question was asked regarding whether the current storage option of covering with 14 days or the proposed Option 2 was more protective. DEQ noted and some members of the group agreed that the two options seemed equally protective. Further conversation about practical management of litter from the time it is placed to the time that land application is possible.

The group discussed the intent of the 5% crust out, and the need to ensure that the surface of the conical pile is relatively smooth and free of large pieces of crust out material to ensure that the pile will crust appropriately and shed water.

A comment was made that the storage requirements be as simple to understand as possible. DEQ affirmed that simplicity assists with compliance determination as well as increasing the likelihood that the requirements will be followed.

A suggestion that items (2) stormwater and (3) groundwater separation be added to option 2 to ensure that if land application cannot occur within 30 days, that the solution is to simply cover the material. A comment was made that current practice under the existing rules has growers storing the litter in places with the groundwater separation anyway.

The group further discussed the need to remove soil under the pile. The goal of removing all residual material from the storage site was discussed, as well as the practical need of removing residual material from field areas. DEQ noted that the language needed to be refined so that it would function well for temporary piles in the field, in areas near but outside field areas, as well as areas that were used repeatedly for litter storage.

A member of the Committee commented that the practicality of storage options was important, but that the study indicated that litter storage piles were a source of nutrient loss, both in leaching and ammonia. Another member noted that the losses included in the study were low. DEQ staff noted that the storage rules are in place primarily to be able to enforce poorly managed piles, and that the impact from litter storage should be minimal due to the economic disincentive to temporary storage vs. land application as soon as practicable.

A suggestion was made to make the 180 days mandatory for all temporary storage, and to clarify that if the storage began as option 2 but became option 1 with a cover, that the total time in storage would not exceed 180 days.

In discussion regarding the 30 day limit, Seth (DCR staff) clarified that the NMP regulation restricts land application to no greater than 30 days prior to planting if the field being land applied on is “environmentally sensitive” based on NMP Standards and Criteria.

Betsy noted that she had made notes and will be adjusting language based on the discussion.

Detailed Summary and Discussion Related to Proposed Changes to Broker Recordkeeping and Reporting Requirements

Betsy provided a handout with a summary of the Broker Recordkeeping and Reporting Requirements and discussed the content.

Betsy noted the change for broker reporting on a State fiscal year instead of a calendar year no later than Sep 15 to accommodate CB Bay model reporting timelines.

Betsy noted the addition of the requirement to report the original sources of the-waste if the waste is commingled in storage or transport. Betsy pointed out that there was already a requirement related to commingling in the regulation.

Betsy reminded the members that at this time the recordkeeping and reporting will remain on paper until the agency can manage to move to a digital or electronic means to capture the data. The regulation will not need to be changed to allow an electronic system to capture the data.

Detailed Summary and Discussion Related to Proposed Changes - Commercial Poultry Processors

Betsy provided a handout with a summary of the new section related to commercial poultry processor activities.

Betsy noted that the commercial poultry processors have always had a stake in the poultry waste management program, as evidenced by the requirements in the statute.

Betsy explained that she had to add a definition to the regulation, a subsection related to duty to comply. This language has not been added to the general permit section and have nothing to

do with the poultry grower or the broker, that it is strictly related to the activities of the commercial poultry processor. We know that the commercial poultry processor has to come to the farm to deliver and pick up the birds as well as deliver feed. She further explained that this section is being added to make it clear that the activities completed by the commercial poultry processor are done in a manner that does not risk the VPA permit (no-discharge); that does not risk compliance with the VPA for the poultry grower (permittee); and does not risk other required permits such as the water withdrawal permit.

A member of the Committee expressed concern regarding a contracted entity that does not meet the requirements, and with respect to 9VAC25-630-90.B., that this language may cause confusion regarding who is responsible for compliance.

Betsy read the requirements that are contained in the new section. She also stated that the new section includes the submittal of an operation and maintenance (O & M) manual by each commercial poultry processor. This allows input from the processors to the way things will be performed on the site.

A member of the Committee asked if DEQ had discussed this issue with the Office of Attorney General (OAG). David Grandis, the OAG representative, indicated that one of his roles is to review the proposed language to determine if it is within the authority of State Water Control Board. David indicated that he has not yet reviewed the proposed requirements.

Betsy stated that the intent of this section is not to cover the commercial poultry processors under a permit but to ensure that the activities completed by the processor meet the requirements of the VPA general permit (no-discharge).

A member of the Committee expressed concern regarding the impetus for these new requirements based on isolated observations, and the alternative to work it out outside of a regulation.

Betsy stated that this regulation is not just the general permit that it does contain technical regulations within the regulation but outside of the contents of the general permit. This section is a technical regulation just like the sections for poultry waste end-use and the brokers. Betsy further explained that there has been a Federal [EPA] interest in the poultry processors in the last ten years to the extent that there have been inquiries made to the processors, the inspectors ask the permitted growers about their contracts with the processors. The EPA inspectors ask the growers about the processor activities and responsibilities. Adding this section will keep the integrators (processors) on the same level so one processor is not at a disadvantage.

DEQ staff noted that another broader reason for the proposed section is in response to federal concerns, including observations by EPA inspectors regarding poultry catching and hauling, and discussions nationally about whether or not commercial poultry processors should be permitted. DEQ staff stated that as Betsy had said, the agency does not intend nor see a need to permit commercial poultry processors. Furthermore, there is value in bolstering the state program to avoid discharges and thus any need to operate under a VPDES CAFO permit.

A question was asked whether the processors will have a say in the addition of this language. Betsy reiterated that the processors have input by being on this Committee and will have input by the submittal of the O & M manuals.

A question was asked regarding the scope of the definition of poultry waste. Betsy noted that spilled feed was included because it is a nutrient source when spilled. Betsy stated that feed spilled under a bin is a nutrient laden source that needs to be cleaned up. Litter and manure spilled on the ground needs to be cleaned up. Betsy also stated that DEQ does cover oil and other fluids such as hydraulic fluids. And fluids used on the farm in relation to these activities left on the farm or spilled on the ground need to be cleaned up.

A question was asked regarding whether EPA had included any of these requirements in their NPDES CAFO general permits. Betsy noted that EPA is trying to figure out who is responsible for the activities. When EPA staff visit the farms, they ask about the activities such as cleanouts, bird placement and removal, etc. The farmers tell EPA staff that the hydraulic oil was left there or that spillage beyond the concrete pads was due to the trucks not using the pad. Betsy stated that taking care of these concerns now is the preference rather than waiting for requirements to come from the federal government.

Another question was asked regarding the inclusion of oil, and whether or not DEQ was applying this requirement broadly to other entities. Betsy further stated that the poultry waste management regulation covers nutrients and feed is definitely a nutrient. DEQ staff reiterated that the poultry waste management regulation, as with other specific activities such as biosolids, are developed because of the directives in State Water Control Law to develop regulations pertaining to these activities, and that the VPA rules include broad prohibitions against discharges to state waters, that is not limited to poultry waste (i.e. oil). Further discussion ensued regarding clarification of responsible parties (i.e. between processor and contracted entities that haul).

A question was asked if the Murphy-Brown (livestock integrator) is required to do this. DEQ staff noted that they are covered by the VPA AFO permit (a separate permit and regulation than this one). Betsy stated that there is no inclusion in the Law for the AFO general permit regulation to cover the integrators. She further stated that when issues are found on the site, the integrator has to manage the site. Additionally, the integrator has an environmental management system in place to keep these items in check.

DEQ staff noted that federal law limits EPA's restrictions to the owner of the CAFO, which is the reason why federal regulations do not cover end-users of litter. A question was raised if the processors are covered under the federal requirements. Betsy stated that they were not covered under the CAFO Rule. A follow up question was raised as to why is DEQ concerned with the stalling the federal concerns. Betsy explained that EPA can decide that the poultry grower would need a VPDES permit because of activities that they are not responsible for.

Questions were asked regarding the extent of the issue and whether it would be better resolved through education. DEQ staff responded by emphasizing that observations of this type of activity was not the only reason for inclusion, but also to bolster the state program, and that it should not be that onerous to comply with.

A member of the Committee suggested that if it strengthens the program, and it is not overly burdensome, that it should be a good idea to include.

A member of the Committee suggested that it may introduce other aspects to the commercial processor that may be burdensome.

A member of the Committee asked if this requirement would apply to other entities (e.g. fuel delivery trucks and companies that do clean-outs). Betsy noted that it would not be covered by this section; instead, it would be covered by other regulations. The group discussed the separate regulations that apply to petroleum. Betsy noted that as far as the companies or the individuals that are contracted to clean out the growing houses, the farmer has control over whether they are going to contract to them again.

One member that if it closes a loop-pole and is not a regulatory burden, does not take more inspector time and keeps EPA at bay then why not.

One member asked if the issue been identified across the state. Betsy said that we share some of the same integrators across the state. Betsy acknowledged that these integrators would have different contractors. This section promotes for a level playing field for the processors statewide.

Betsy explained that alternatively, DEQ would have to go into an agreement with each of the processors (integrators). She stated that she believed that having an education program to address the issues would not provide DEQ with the authority needed to eliminate the concerns.

Betsy stated that the addition of this section is protective of our growers, protective of the VPA program and is protective of the processors that are doing the right thing or that need a mechanism to get things corrected in the field. The processor will have the ability to have input with the O & M manual.

Another member stated they did not disagree with what Betsy is asking to be done but questions the mechanism. Betsy stated that since the regulation is now open, adding the section to the regulation is the method that she promotes. This mechanism will provide DEQ with the ability to address the issue if a processor is not following the O&M manual.

One member asked if Betsy has any ideas on addressing the concerns related to biosecurity. Betsy stated the goal was not to eliminate the ability to restrict biosecurity procedures. Betsy will look at the language to ensure that biosecurity procedures will not be hampered. The member asked if there was anything in the language to restrict the power washing of the growing houses [inside], Betsy explained that this section does not pertain to the grower and none of the language in this section was included in the contents of the general permit.

Next Steps

Betsy stated that she will have to look at Section 90 (Commercial Poultry Processors) to revise.

Betsy stated that it is a possibility of taking the proposed language to the December State Water Control Board. If the proposed regulation does not go to the December meeting, Betsy will take

it to the spring meeting. Betsy will let the Committee know when the proposed regulation will be presented to the State Water Control Board.

Final Comments or Concerns from Members of the TAC

Betsy asked each of the members to voice any final concerns or comments on the draft proposed regulatory language. The following are the responses from the members.

Philip: wants to make sure about language defining commercial processor will accomplish what DEQ needs and the concerns about biosecurity

Seth: none

Tony: disinfection allowance-C&D

Mark: language needs to be more defined, potential use of water in cases of disease

Holly: adding language in commercial processor section to address biosecurity, concern that the issue of washing trucks on farms was not communicated to the industry earlier in a different mechanism other than through draft regulations; obviously know that growers must comply with the permit and would not want see that VPDES permits for the growers wished there had been more communication

Kyle: concerns with implications on the supply chain with regards to the commercial poultry processor; concurred with Holly,

Joe: reservations what is being proposed is fully consistent with the CB WIP with regard to tracking and reporting of litter, that is not going to result in something that DEQ would like to do but that DEQ does not have the resources to do it, wants to make sure that it is adequate to achieve the goal; reservations about the storage requirements not opposed of the two options for storage but he is not necessarily on board yet either, these are two places that he is comfortable but wants to think about it more

Hobey: do not want to preclude management practices with the new section; expressed thanks to DEQ's hard work on this and for thoughtful and practical solutions on a lot of this

Jim: thinks there has been a lot of give and take, simplified the storage-practical ideas; would encourage DEQ to regularly communicate (e.g. annual report) with integrators and growers, regarding violations and compliance-communication/education-it makes a difference

Mike: noted how regulation has grown and become more specific in the requirements, has noted progress

Pete: had already voiced concerns

Darrell: none

Adrienne: wants to see what the final language regarding storage, wants to make sure regulation is consistent with Bay model; feels nutrient management concern has been addressed from her viewpoint has been addressed

Public Participation

There were no comments from the public.

Adjourn

Betsy thanked everyone for their time and participation on the Technical Advisory Committee.
Betsy adjourned the meeting at 12:45 PM.

Action Items:

1. Betsy will provide to the TAC members, Alternates and Interested Parties – a final draft of amendments to the Regulation language.