

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

**FINAL MEETING NOTES
TAC MEETING – FRIDAY, AUGUST 6, 2010
DEQ PIEDMONT REGIONAL OFFICE TRAINING ROOM**

Meeting Attendees

<i>TAC Members</i>	<i>Interested Public</i>	<i>DEQ Staff</i>
Randy Buchanan - VA Mosquito Control Association	Charles Abadam - VA Mosquito Control Association (Alternate for Randy Buchanan)	Elleanore Daub - DEQ CO
Paul Clarke - DCR	Will Bullard - DOD	Bill Norris – DEQ CO
Fred Cunningham - DEQ	Tim DuBois - City of Hampton Public Works (Alternate for Mike Elberfeld)	Carl Thomas – DEQ TRO
Mike Elberfeld - City of Hampton	Pat Hipkins – VA Cooperative Extension (Alternate for P.L. Hipkins - VA TECH)	Burt Tuxford - DEQ CO
Amy Ewing - DGIF	Marcus Leeper – City of Newport News (Alternate for Ron Harris - City of Newport News)	
Liza Fleeson - VDACS	Joe Will – Southern State Cooperative (Alternate for Katie Frazier - VA Agribusiness Council)	
Katie Frazier - VA Agribusiness Council		
Melanie Frisch - Fort Belvoir		
Bill Gillette - Rock Springs Forestry, Inc.		
Todd Groh - VDOF		
Ron Harris - Newport News Waterworks		
Lloyd Hipkins - VA Cooperative Extension		
Shannon Junior - VA Lake Management (Alternate for Kevin Tucker)		
Peter McDonough - VA Golf Course Superintendent's Association		
Joe Simmons - Chesapeake Mosquito Control		
Tom Warmuth – Cygnet Enterprises (Alternate for Sarah Miller – SEPRO)		

NOTE: The following PGP TAC Members were absent from the meeting: Andrea Coron – VA PMA; Whitney Katchmark - Hampton Roads PDC; Larry Land – VACO; Gigi Meyer, VDOH; Sarah Miller – SEPRO; Mark VanDevender - Spotsylvania County; Kevin Tucker - VA Lake Management

1. Welcome & Introductions (Bill Norris):

Bill Norris, Regulation Writer with the DEQ Office of Regulatory Affairs welcomed all of the meeting participants and reminded the group that we have an ambitious task ahead of us. He noted that there is a very short time frame to put this permit together.

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

2. Notes from July 28, 2010 TAC Meeting (Bill Norris):

Bill Norris asked for any comments on or edits needed for the July 28, 2010 Pesticide GP TAC meeting notes. He noted that he had received several editorial comments from program staff and TAC members that would be incorporated into the "final" meeting notes.

CONSENSUS: The TAC members agreed to the wording of the July 28, 2010 Pesticide GP TAC Meeting Notes.

ACTION ITEM: The notes as revised by staff and TAC member comments will be posted as final to Town Hall.

3. Follow-up from July 28, 2010 TAC Meeting (Fred Cunningham):

Fred Cunningham reviewed action items from the July 28th meeting and noted that where appropriate the status of certain "action items" would be addressed as those sections of the proposed General Permit was reviewed. He provided the following information to the TAC:

Action Items:

- Staff will look at the definitions of "waters of the US" and "state waters/surface waters" to determine the extent of the differences as to what they actually include and share this information with the TAC - *The definitions of "surface waters" as identified in the general permit are the same as the definition of "waters of the US" identified in the EPA General Permit.*
- Staff will provide a copy of the current definition of "surface water" to the TAC to clarify the inclusion of "wetlands" as a part of Virginia's "surface waters". - *The definition of "surface waters" in now included in the general permit. "Surface waters" does include "wetlands". The definition of "wetlands" has also been included in the general permit. All wetlands are "surface waters". If a pesticide is applied to a designated wetland (it doesn't matter whether there is water on the surface or not) it would be classified as a "discharge to surface water".*
- Staff will look at the concept of roadside ditches and irrigation ditches and drainage ditches as to when and whether they are covered under this permit and/or whether they are include as part of "state waters" or "surface waters". - *A dry ditch is not surface water. A ditch with water that flows to a stream is surface water. Seasonal streams are surface water. "Irrigation ditches" that divert surface water are covered under this permit. - A stormwater pond would also be classified as "surface water". If existing permits (i.e., MS4) for stormwater ponds does not specifically address the pesticide requirements then a separate permit for discharge of pesticides would be needed if that acreage is being counted as part of the total threshold limits.*
- Staff will provide a clarification of the process involved in the "delisting" of "a water" from the "impaired waters" list. - *The monitoring data has to be collected by an entity that DEQ has approved for quality assurance and SOP sampling design. There are two aspects to the*

process: analysis and sampling. For the analysis part of it, if the samples are analyzed by the State Laboratory (DCLS) or is a certified laboratory for that particular parameter that you are analyzing for then you meet the requirements in terms of QA. The only thing that you would have to then is to work with DEQ in terms of your sampling technique. DCLS has issued interim certification to most commercial laboratories that have applied for certification. The information once collected is provided to the DEQ regional offices for inclusion in the materials for the next "impaired waters" delisting.

- *VDACS will provide a definition of "pest" that they currently use. Staff noted that this definition is not included in the current version of the general permit being review today, because staff was just able to locate the definition. The VDACS definition of "pest" will be included in the next version of the document.*

ACTION ITEM: Staff will incorporate the VDACS definition of 'pest' in the next version of the general permit.

4. Draft PGP Regulation Review - Definitions (TAC Members and Program Staff):

Fred Cunningham noted that the goal of today's meeting is to get through all of Part I of the General Permit by the end of the day. Staff recognizes that there is some apparent duplication and conflicts between Part I and Part II. Staff will work on deleting some of the sections of Part II or at least revise them so that they don't conflict with Part I. Fred Cunningham lead the TAC through a discussion of the changes that had been proposed in this version of the general permit. The items identified and comments made included the following:

- Definition of "action threshold" - Added a clarification statement to the end of the definition. "Action thresholds are site specific and part of integrated pest management decisions."
 - *It was noted that there had been some discussions about designation of "who determines the "action threshold" as part of the definition. Staff had determined that it would be too difficult to try to identify that in a why that would fit all cases and situations.*
- Definition of "active ingredient" - A question had been raised as to whether the determination was the responsibility of EPA or VDACS.
 - *It was noted that it should be EPA because they register pesticides and have the list of active and inert ingredients. VDACS just registers the pesticide and does not determine the active ingredients.*
- Definition of "adverse incident" - Staff noted that the only thing that was changed was the replacement of the term "permittee" with the term "operator".
 - *Staff noted that they are moving away from the use of the term "permittee" to operator. In VPDES the term "permittee" is used. Staff noted that there were still ongoing internal discussions as to what the appropriate term should be and whether one or the other could be used throughout the document or whether one was more appropriate to use in some cases. It was suggested by the TAC that it should be as consistent as possible and that only one term should be used if possible to avoid confusion.*
 - *It was suggested the term "adverse incident" should read "...means an unusual or*

unexpected incident..." It was noted that the phrase "unusual or unexpected" was already included as part of the definition (i.e., the phrase "toxic or adverse effects" includes effects that occur within surface waters on non-target plants, fish or wildlife that are unusual or unexpected...)"

- *It was noted that the pesticide label is site specific. It was suggested that the example included as "e.g., effects are to organisms not otherwise described on the pesticide label product label or otherwise not expected to be present) should be deleted. FIFRA is a risk benefit act so if the benefit of the pesticide outweighs the risk then it is approved for use. There is a risk associated with the application of any pesticide that is mitigated through the label. It is site specific.*
- *It was suggested that the definition be revised to include reference to "semi-aquatic" organisms (i.e., "7. Other dead or visibly distressed non-target aquatic or semi-aquatic organisms...").*
- *It was also suggested that the definition be revised to include reference to "wildlife" (i.e., "The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals or wildlife that occur..."*

CONSENSUS: The TAC agreed to revise the definition of "adverse incident" to read "Adverse incident" means an unusual or unexpected incident..." The TAC agreed to delete the example in the second paragraph of the definition. The TAC agreed to revise item 7 of the definition to include reference to "semi-aquatic" organisms. The TAC agreed to revise the last paragraph of the definition of "adverse incident" to include a reference to "wildlife".

- Definition of "Best management practices" was clarified to include a reference to "for purposes of this chapter" since the policy is for any definition that is altered from the VPDES permit regulation to have this clarification statement included. Staff noted that based on TAC discussions that the phrase "preventative practices (pre-emergent applications)" was added. In addition, based on the TAC recommendation the phrase "sludge or waste disposal, or drainage from raw material storage" was removed from the definition.
- A definition of "commercial applicator for-hire" was added. Staff noted that in the previous version this was included as the definition of "applicator for-hire".
 - *It was suggested that the word "contractual" should be deleted from this definition.*

CONSENSUS: The TAC agreed to revise the definition of "commercial applicator for-hire" by deleting the term "contractual".

- A definition of "commercial applicators not-for-hire" was added from the VDACS regulation.
- Definition of "Control measure" was revised based on previous TAC suggestions.
 - *It was suggested that the definition should be revised to read "...including non-chemical tactics (e.g. cultural methods)..."*
- Definition of "Discharge of a pollutant" was added.
 - *Staff noted that the phrase "for the purpose of this chapter" needed to be added since the definition was modified from what exists in the VPDES regulation.*
- The definition of "establishment" has been deleted. All references to "establishment" have

also been removed from the text of the general permit.

- A definition of FIFRA has been added.
- The definition of "For-hire applicator" has been renamed and moved as "Commercial applicator for-hire".
- The definition of "impaired water" has been revised to clarify the last sentence of the definition. It was noted that there had been discussions in previous meetings regarding two reservoirs that are listed as impaired for which no TMDL for copper has been developed yet. The thought is to be able to add the requirements of this general permit into existing individual permits for those types of facilities.
 - *A question was raised as to what was meant by the term "applicable water quality standards". It might have different meaning to different facilities.*
 - *It was noted that there could be problems not just with water supply reservoirs, but could also impact stormwater ponds and recreational waters.*
 - *A concern was noted over the signing of a "water quality standard" statement that "applicable water quality standards" have been met.*
 - *It was noted that the current wording (from EPA's draft general permit) might be flexible enough to work, but it is the wording of later parts of the VA General Permit that need to be looked at to ensure that flexibility is maintained in the regulation.*

ACTION ITEM: Staff will look into the "applicable water quality standards" issues/concerns and the idea of this regulation setting/identifying the "beneficial" use.

- The VDACS definition of "label" was added.
- The VDACS definition of "labeling" was added.
- The definition of "Non-target organisms" has been clarified based on TAC discussions to read "Non-target organisms" means any organisms that are not the target of the pesticide."
 - *It was recommended that this definition be further clarified to reference the "pesticide application" instead of just the pesticide.*
- The need to define the term "monitoring" was discussed. Staff noted that Part I of the General Permit tells you what you need to do for monitoring. Part II adds to the confusion because of the way it is written for sampling. Staff will be looking at Part II for areas of possible clarification. This would be a topic discussed at the next TAC meeting.
- The definition of "Operator" was revised to replace the term "entity" with the term "person".
 - *The use of the owner versus operator was discussed by the TAC.*
 - *Staff noted that they had kept the same definition used by EPA in order to match up with the anticipated required categories in the final EPA general permit.*
 - *Staff noted that the clarification statement "for the purposes of this chapter" also needed to be included in the definition of "operator".*
- A definition of "person" was added.
- The VDACS definition of "pest" will replace the current definition out of the Virginia Pesticide Control Act.
- The definition of "pesticide" has been revised to match the wording of the current VDACS definition.
 - *It was recommended that the statement "Pesticides that are used/applied shall only be those that are approved and registered for use in Virginia" should be revised to read "Pesticides that are used/applied shall only be those that are approved and*

registered by the Virginia Department of Agriculture and Consumer Services (VDACS)."

- *It was noted that experimental pesticides also have to be registered through VDACS.*
- The definition of "pesticide product" was revised according to TAC recommendations to at the phrase "active and inert ingredients."
- The definition of "pesticide residue" has been revised based on TAC recommendations to reads "pesticide residue includes that portion of a pesticide application that has been discharged from a point source to surface waters..."
- The definition of "point source" as modified from the VPDES regulations has been added. It was noted that the portion of the definition that reads "This includes biological pesticides or pesticide residues coming from a container or nozzle of a pesticide application device. This term does not include return flows from irrigated agriculture or agricultural storm water run-off" has been added to this definition but is not currently used in any other regulations.
- The definition of "pollutant" as modified from the VPDES regulations has been added. The definition now reads: "Pollutant means, for the purposes of this chapter, biological pesticides and any pesticide residue, resulting from the use of a chemical pesticide."
- The definition of "surface water" from the VPDES regulation has been added.
- The definition of "treatment area" has been revised based on TAC comments. The examples that have been removed will become part of the guidance document that is being developed.
- The definition of "VDACS" was added.
- The definition of "wetlands" was added.

5. Draft PGP Regulation Review - Section-by-Section Review(TAC Members and Program Staff):

Following completion of the discussions of the proposed definitions, Fred Cunningham led the TAC in a section-by-section review and discussion of the proposed changes to the draft Virginia Pesticide Discharge General Permit. Discussions included the following:

- **9VAC25-800-20: Purpose; delegation of authority; effective date of permit: No changes proposed.**
- **9VAC25-800-30.A: Authorization to discharge:** Page 8 - The original second paragraph of the section related to "operator" has been replaced with the statement: "The definition of operator in 9VAC25-800-10 provides that more than one person may be responsible for the same discharges of pesticides. Any operator provided permit coverage under this section is responsible for their permit compliance for the discharges resulting from the application of pesticides."
 - *It was suggested that the proposed language should be revised to read: "The definition of operator...may be responsible for the same discharge resulting from the application of pesticides..."*
 - *It was recommended that this terminology should be used throughout the wording of the general permit: Replace "discharge of pesticide" with "discharge resulting from the application of pesticides"*

ACTION ITEM: Staff will search through the wording of the general permit and replace the phrase "discharge of pesticide" with "discharge resulting from the application of pesticides" where appropriate.

- **9VAC25-800-30.B - Eligibility:**

- *A question was raised over the wording of the section and the inclusion of the phrase "hereinafter collectively pesticides".*
- *The wording of this section was discussed at length.*
- *Suggested rewording: "This permit is available to operators who discharge pesticides (including both biological pesticides and chemical pesticides that leave a residue) when the application is for one to the following pesticide use patterns..."*
- *Suggestion: Add wording to definition of pesticide: "The term pesticide includes both biological pesticides and chemical pesticides that leave a residue."*

ACTION ITEM: Staff will look at the wording of the court decision and the EPA draft general permit to determine viable options for rewording this section.

- **9VAC25-800.B.2 - Aquatic weed and algae control:**

- *This section has been revised based on TAC recommendations and the concept of "at water's edge" has been deleted since terrestrial applications are not included. However, the concept of "At Water's Edge" is still included in the acreage calculations in Table 1.*
- *Examples of aquatic nuisance weeds were added. Staff asked the TAC whether these examples were correct. It was noted that the areas of "emergent"; "submerged" and "floating" are covered by these examples. It was noted that we don't normally have a problem with water hyacinth. It was suggested that "water meal" was a significant floating plant that might be a better example to use.*
- *A question was raised regarding exemptions from existing law regarding nuisance list species for control by application of pesticides. The question of DGIF's authority in the area of listed nuisance animal species control. Is there already some mechanism in place to treat wildlife pests legally? Staff noted that a statement had been added on page 15 in the actual permit language related to compliance with other applicable federal, state, or local statute, ordinance, or regulation. It was noted that this may have to be reworked to cover this instance/concern.*

ACTION ITEM: Amy Ewing from DGIF will discuss the control and authorization to control animal species on their nuisance lists and or species that require a permit from DGIF to treat wildlife pests legally.

- *Staff noted that the general term mollusks had been replaced with a specific reference to "zebra mussels".*
- *A question was raised regarding the inclusion of "lampreys" on the list. DGIF noted that there is a very short list of "nuisance" wildlife.*

ACTION ITEMS: Amy Ewing will provide the DGIF lists of "nuisance" and "invasive" lists and what legally can be done for species on either one of the lists.

- **9VAC25-800.C:**

- *Staff noted that this section had been put together as advisory to try to clarify who has to file the required registration statements. Based on the last TAC meeting discussions the current language is being proposed. Not sure if this is the right priority order or sequence, but it is being presented for discussions.*
- *Staff noted that what we want to say is the organization not the person (individual).*
- *There is an apparent conflict between the current VDACS definition and interpretation of "persons" and "for-hire" and "not-for-hire" applicators. Staff needs to clarify this difference in definitions.*
- *It was suggested that it might be better to use the term "persons" in this hierarchical list in state law and included in the definitions section of the general permit. It was discussed that each of these terms and categories are a specific category of "persons". In this case it is a business not an individual. Staff noted that it is not the intention that it is an "individual". The suggestion was made that it might be better to use the terms: "Person who utilize commercial applicators not-for-hire; Persons who utilize commercial applicators for-hire; other persons".*
- *It was noted that the goal is to have the least amount to registration statements. Need to clarify.*
- *It was noted that if you do any of the 4 listed activities you are covered under this general permit. If you then exceed the threshold limits through any of these activities then a NOI or registration statement is required to be filed.*
- *Staff noted that for a person, who uses commercial applicators for-hire, you calculate how many individuals and the entire area you are doing work in and if you are exceeding the threshold limits then you would need to file a registration statement/Notice of Intent (NOI) that tells DEQ what your activities are and that you are breaking the threshold. That covers you for all of those individuals you are doing work for. If you are a person who utilizes commercial applicators for-hire and you are doing work for a commercial applicator not-for-hire, i.e., a local government, then it is expected that because of the proposed hierarchy that the local government would include you and your work area in their calculations. If you are not doing any work for these not-for-hire individuals then you would just need to figure out what you are doing for everyone else.*
- *It was noted that the language and hierarchy needs to be clarified.*
- *The question was raised as to whether the right term to use in this section is "operator" or "person". Staff noted that the only persons that have coverage under this permit are "operators" as defined under the permit.*

- **9VAC25-800-40. Registration Statement:**

- *Changed the "operator" information. A question was raised as to the need for a "certified commercial applicator number" to be included. It was suggested that this should be deleted.*
- *A suggestion was made to add "type" of business to the requested information list. What type of business? Staff noted that this could be addressed with the use of a checkbox that could contain various options: military installation; golf course; municipality, private business treating ponds; etc. This would replace the current item d.*
- *Staff noted that the "establishment" information section had been deleted.*

- *Looking for a high-level of information on the registration statement.*
- *Staff noted that "receiving waters" is being requested on a large scale (county level or receiving stream level, whichever best covers the pesticide application).*
- *It was noted that any changes in coverage areas or amended reporting could be reported in the annual report.*
- *It is up to the operator to determine the best scale (i.e., county level, receiving stream level) of the "receiving waters" reporting requirement. An operator could list all of the counties that they are applying pesticides in and then update that list annually to note any changes in application areas.*
- *Staff noted that we do need to know what receiving waters are on a high level; need to know the location of your records and need to know the pesticide use patterns.*
- *Staff noted that the changes to this section were being proposed because we don't know what we would do with all of the additional information that EPA was asking for in their draft GP. In addition, the expectation is that an operator/facility would have the records necessary to document what was being done and if there is a problem then we would check those records. There is no need to have this information upfront. Tried to match up the VDACS record keeping requirements with what is required in this general permit.*
- *VDACS noted that business licenses are tied to a physical location. Might have to be able to list multiple licenses and multiple locations on the registration statement.*
- *Staff noted that for the purpose of the registration statement that we just want to know the general areas where you are doing work. Under this permit, after you have done the work (made those applications) there is specific documentation that needs to be maintained as to what was done at those locations. This is the same kind of information that is currently required by VDACS.*
- *Staff noted that it is anticipated that when we would be looking at your records would be based on "adverse incident reports". We would then be looking at what you are doing; where your records are; and make sure you are complying with the permit.*
- *It was noted that there may be some recordkeeping difficulties with water supply reservoirs because they were originally exempted from these types of reporting requirements in the Clean Water Act. Records could be few and far between for these types of activities for water supply reservoirs and water treatment plants.*
- *Staff noted that at the levels of those requiring registration statements, when you as a locality file an NOI and you as a for-hire business file an NOI we will be able to tell where you apply and where but won't be able to tell if there is any overlap. The only issue is that for those filing NOIs is that you have the per-location records.*
- *If a homeowner was doing the application themselves and would exceed the threshold levels then they would need to file the registration statement.*
- *When you break the thresholds then you are required to file a registration statement. If you are required to file a registration then there are more comprehensive requirements for you to follow.*
- *Staff noted that the determination of compliance is based on visual monitoring. From a practical standpoint we will only know when there is a problem is through the adverse incident reports; when there is an adverse incident.*
- *Staff noted that any adverse incidents have to be reported whether you have filed a registration or not.*

- *The expectation is that if you are in the “primary” position then you would be responsible for keeping all the records. If not, then you still have coverage under this permit because you are an operator that applies pesticides; there can be more than one operator.*

6. Draft PGP Regulation Review – Continued (TAC Members and Program Staff):

Fred Cunningham noted that conceptually everyone understands what we are trying to do with the establishment of a hierarchy of operator categories for filing a registration statement. He noted that the language may not be clear, but that staff will revisit the language to clarify the requirements.

ACTION ITEM: Staff will revisit the wording of the hierarchy structure to clarify who has to file a registration statement and in what categories.

The Program Staff and members of the TAC continued their discussions of the draft pesticide discharge general permit. These discussions included the following:

- **Annual Treatment Area Thresholds:**
 - *The threshold limits were kept as originally proposed by EPA.*
 - *The “RISE” document presents some suggestions for revisions to these threshold limits. (Copies of the “RISE” document were distributed at the meeting.) A number of other organizations have also filed comments with EPA regarding the threshold limits.*

ACTION ITEM: Peter McDonough with the VA Golf Course Superintendent’s Association will provide copies of other recommendations on threshold limits that were submitted to EPA through comments by other organizations.

- *Staff noted that we probably don’t want to change anything related to the threshold limits until we see what EPA is going to do with all of the suggestions and recommendations that they have gotten through comments made on their General Permit.*
- *Staff noted that there had been comments made by environmental organizations who commented to EPA that thresholds are illegal and everyone should have to apply. Staff has submitted a request to EPA Region III regarding flexibility for changing the thresholds. There has been no response to date.*
- *Staff noted that the “RISE” document presents lots of sound rational as to why the limits should be raised, but it would have to be approved at the national level.*
- *It was suggested that raising the thresholds slightly would protect some smaller applicators and focus more on larger businesses who can do the extra paperwork.*
- *An example was presented that if only a ½ acre of a 10 acre lake was treated that it is counted as treatment of 10 acre.*
- *All applicators still have to follow the labeling requirements. Even if you increase the thresholds you are still providing the same basic level of environmental protection. If there is a scientific basis and rational for raising the thresholds then it should be considered. By automatically accepting EPA’s thresholds we may be missing some important economic considerations.*

- *It was noted that the current threshold of 20 acres would bring just about everyone into the registration process. EPA's stated intent is to capture the larger applications.*
- *It was noted that the EPA threshold limits came out of the Office of Water and they don't have any experience with working with pesticides. It was suggested that the Office of Water just doesn't understand pesticides and pesticide applications.*
- *Staff noted that North Carolina has filed comments that recommend 200 acres for aquatic weeds and 50 miles at water's edge. Another group made a recommendation to count applications along both sides of a ditch as one application not two.*
- *It was suggested that if the "RISE" document recommended thresholds were followed who would be missed. It was noted that a lot of local mosquito control programs would be missed.*
- *It was suggested that the "RISE" document recommendation of 10,000 acres is too high.*
- *It was noted that based on the court ruling that we are not going to be less stringent than that proposed by EPA. Suggestions for differences in the threshold limits is worthy of submitting as comments but in the end we will probably end up using the limits proposed by EPA.*
- *It was suggested that the permit fee (\$600 for a five-year period) is not really an issue.*
- *If VA decided to propose a threshold of 160 acres instead of 20 acres and could provide data to support that change, would EPA consider it? Staff noted that they would likely take it into consideration and it could influence the final outcome.*
- *Staff noted that when EPA asked for comments that they suggested that they wanted to be flexible and not hamper the states in the development of their general permits.*
- *It was noted that ultimately we will have to wait for the final EPA proposal for threshold limits.*
- *It was suggested that if Virginia's threshold limits are dramatically different than EPA's that we would be opening up the door for lawsuits from environmental groups.*
- *It was suggested that the acreage cumulative counting should be reconsidered and it should only be the acreage that is being treated. Still have to follow permit conditions without lowering of water quality conditions. The accounting should not be cumulative: Acreage that has been applied to versus the size of the water body.*

ACTION ITEM: Fred Cunningham asked for comments from the TAC members related to the establishment of threshold limits. He noted that we are looking to create a permit that is acceptable so we need as much input and rationale for the use of certain limits.

- *Staff noted that Virginia is on the cutting edge of the development of this general permit (one of the first states to develop the GP if not the first state).*
- **9VAC25-800-20.D:**
 - *Staff noted that this section had been clarified through the addition of a sentence in D.3 that reads: "Pesticide discharges are temporary and allowable in exceptional waters (see 9VAC25-260-30 A 3 (b) (3))"; (Suggestion based on TAC discussions – Revise to read: "Discharges resulting from the application of pesticides are temporary and allowable in exceptional waters..." NOTE: Virginia classifies*

- exceptional waters as Tier III waters.*
 - *A question was raised regarding the requirement in D.2 that references “other board regulations that prohibit such discharges. Staff noted that there are some such board restrictions in Northern Virginia.*
 - *It was noted that D.2 was very important and should be maintained in the general permit.*
 - *Staff noted that D.4 had been revised to clarify discharges to “impaired” waters.*
- **9VAC25-800-20.E – Discharge authorization date:**
 - *Staff noted that this section had been revised and simplified by removing reference to the April 10, 2011 date.*
 - *Staff noted that based on TAC discussions that the categories of operators in Table 2 had been revised. The 10 day limits were removed from the table since that was originally put in by EPA since they are planning to post the registration statements and DEQ doesn’t need that additional time. The discharge authorization date categories had also been revised. Staff intends to include some form of notification to all those submitting registration statements, but that language will be included in guidance.*
 - *It was noted that according to this proposed language that a person submitting a NOI could begin application of pesticides as soon as it is postmarked. If the statement was found to be incomplete then the operator would be instructed to stop the application. Staff noted that the normal problem that results in an incomplete application is an issue with the signature requirements, which can be corrected quickly.*
- **9VAC25-800-20.F:**
 - *Staff recommended that DGIF look over the wording of this section to make sure that it covers the concerns raised by DGIF about meeting other regulatory requirements.*

ACTION ITEM: Amy Ewing with DGIF will look over the language in 9VAC25-800-20.F for consistence with requirements of other regulations.

- **9VAC25-800-20.G – Continuation of permit coverage:**
 - *Staff noted that item G.4 had been added to this section because this general permit is coming out so late that even if you are required to submit a registration statement that you will have until July to submit the required registration statement for this first permit cycle. This will allow for more time to submit the required information during this first permit cycle.*
- **9VAC25-800-40. Registration statement:**
 - *Staff noted that we had covered this section in the morning's discussions.*
 - *Staff informed the TAC that this language is in the permit and that the actual registration statement will have more helpful information; instructions; checkboxes and examples. It is easier to change the registration statement then the regulation language.*
 - *A question was raised regarding “receiving waters” and “impaired waters” status. Is there enough information in the registration statement for the board to make this*

determination? Staff noted that the list of “impaired waters” could be included in the guidance document. Staff noted that since there are so few that a question could be included in the registration statement so to whether you are discharging to any of the following waters. It was suggested that the question could be asked directly of the applicant as to whether they are discharging to impaired waters and leave the burden of proof up to the person filing the registration statement.

- *A question was also raised as to “other waters” requirements from the Health Department. It was noted that there was a limitation based on Health Department regulations that prevented certain activities within “5 miles of a water intake”.*

ACTION ITEM: Staff will look at the wording of the Health Department regulations to clarify their requirements.

ACTION ITEM: Staff will look at the issue of situations that were not originally a “surface water discharge” but now because of this general permit will be classified as a “surface water discharge” and the potential impacts of that change (i.e., the Occoquan Reservoir restrictions).

- **9VAC25-800-50. Termination of permit coverage:**
 - *Staff noted that no changes had been proposed for this section.*
 - *A question related to the hiring of a contractor. If there is a change in personnel or contractor that would be addressed in an update to the management plan.*
- **9VAC25-800-60. General Permit:**
 - *Staff noted the addition of a clarification statement to the second paragraph of the general permit language: “Approval for coverage under this general VPDES permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation that pertains to the application of pesticides including the pesticide product label.”*
- **9VAC25-800-60.A 1 a (1):**
 - *Staff noted that a clarification statement had been added: “...without exceeding the maximum allowable rate of the product label.”*
 - *Staff noted that there had been some comments made to EPA that the word “lowest” should be removed as a qualifier for “effective amount of pesticide product”.*
 - *The TAC discussed the pros and cons regarding the removal of the term “lowest”.*
 - *It was noted that most applicators are going to use the “lowest effective” amount of the pesticides because of costs.*
 - *Staff noted that it as the applicator determines to be the lowest effective amount but you can go up to the maximum. In order to protect the environment that language should be retained.*
 - *The TAC noted that the addition of the language regarding “without exceeding the maximum allowable rate of the product label”.*
 - *It was noted that an applicator’s “lowest effective amount” could be as high as the “maximum allowable rate”.*

CONSENSUS: The TAC agreed to the revisions proposed for this section, i.e., the retention of the

term “lowest effective rate” and the insertion of the statement: “without exceeding the maximum allowable rate of the product label”.

- *Staff noted that the next two sections A.1.a (2) and A.1.a (3) were taken from existing VDACS regulations to clarify the requirements for maintenance and to make them consistent with current practices. The overriding intent is for the equipment to do what it is designed and supposed to do.*
- *It was suggested that the term “discharge” has a different meaning under the VDACS regulations and therefore the phrase at the end of A.1.a (2) should be changed to “adequate rate of application” or “adequate application rate”.*
- *It was suggested that the wording proposed in A.1.a (3) should be revised to remove reference to “agricultural pesticide application equipment” and just refer to “any pesticide application equipment”.*
- **9VAC25-800-60.A 1 b – Integrated Pest Management (IPM) practices:**
 - *A comment was made that according to NRCS there is no one in Virginia that is qualified or authorized to write an Integrated Pest Management Plan for forestry operations.*
 - *Staff suggested that the applicator/operator could write the plan since the regulation doesn’t say that it has to be certified.*
 - *It was noted that there are a number of websites and sources for sample “integrated pest management plans” that could be used to write these plans.*
 - *Staff noted that the way that it is set up at the federal level that unless you file a NOI you are not required to submit an Integrated Pest Management plan.*
 - *A concern was raised because with this interpretation a small operation would not be required to use Integrated Pest Management practices. If they are not required to use IPM then are they protecting the environment? We are supposed to be using “cultural methods” whenever possible. If an applicator is not required to follow IPM practices which are “cultural methods” then they are not protecting the environment.*
 - *A question was raised as to why the last part of the second sentence in b was being deleted. Staff noted that they were not sure why this deletion was suggested.*
 - *A question was raised as to the wording for the revision to the NOTE in the section on research. This needs to be clarified. There are no requirements in IPM there are only suggestions for risk reduction. Staff noted that these are examples of what IPM practices may include. (A possible solution might be to – Revise the Note to read: The Pesticide Discharge Management Plan (PDMP) required in Part 1 B documents the IPM practices used for (1) mosquito and other flying insect pest control; (2) aquatic weed and algae control; (3) aquatic nuisance animal control; and (4) forest canopy pest control. And to put - All of the other text that is included in these sections in guidance to clarify the requirements and eliminate confusion.)*

ACTION ITEM: Staff will review this section of the regulations and will attempt to rewrite them to clarify them.

- *It was suggested that the term “ought to be changed to “should”. The use of the word “shall” seems to indicate that all of these things are to be done.*
- *(2) (a) (1): A question was raised as to whether the term “aesthetics” should be*

- *included. Staff noted that it was included through the use of the word “recreation”.*
- *The use of the phrase “identify target weed species” was discussed by the TAC.*

CONSENSUS: The TAC agreed that the proper wording for (2) (a) (ii) on page 18 should be “Identify target weeds and algae”.

- *The TAC discussed the use of the term “shall” in (2) (b) on page 18. It was noted that “shall” is the regulatory “have to” while “should” is something that is “not required”. Staff noted that EPA likes to use the word “must” and that DEQ revised those instances to the word “shall” in this general permit. A concern was noted that through the use of the word “shall” that we may be creating an unfunded mandate for requiring Integrated Pest Management Practices.*
 - *A question was raised regarding the requirement related to forest canopy pest control. If an application is done every 15 years instead of every year, you would only fulfill the requirements in the calendar year prior to each application. It was suggested that the phrase in (4) (a) be revised to read “...and at least once each calendar year thereafter in which the pesticide application will occur...” The sentence does need to be revised since it only requires the list of items “...prior to first pesticide application.”*
 - *The TAC discussed the phrase “Identify target aquatic nuisance animal species” on page 19. It was suggested that the term should be “aquatic nuisance animals”.*
 - *The inclusion of the term “nutrients” in (iii) on page 19 was discussed. Staff will look at either removing the term or replacing it with a better example.*
- **9VAC25-800-60.A 2 Water quality-based effluent limitations.**
 - *It was suggested that item 2 on the bottom of page 20 should be deleted in order not to conflict with other existing regulations. Staff noted that the VPDES regulation requires compliance with Water Quality Standards so the statement can’t be dropped. The TAC discussed the impact of these requirements on Water Supply Utilities that use any copper based pesticides. It was noted that any use of copper based pesticides will exceed or contribute to exceeding the water quality standards. Staff noted that we need to look at how EPA is going to address the comments that they have gotten related to the application of copper sulfate and any copper based pesticides.*
 - *It was noted that publicly owned treatment works are specifically exempted from the definition of a “discharge” in the Clean Water Act. Any discharge to a POTW is excluded from the definition of discharge in the Clean Water Act.*
 - *This exemption is determined through CFR 122.1– Definitions; Purpose; and Scope.*
 - *Staff noted that there is an old AG opinion that doesn’t agree with this interpretation. Staff needs to look into. Is a treatment work not really state waters?*

ACTION ITEM: Staff will look into the interpretation of the discharges from publicly owned treatment works being exempted from the definition of “discharge” in the Clean Water Act and any Health Department interpretations.

- **9VAC25-800-60.A 3 – Monitoring Requirements:**
 - *A suggestion was made to revise item 3 a (1) on page 21 to read “...to ensure that the*

lowest amount is used to effectively control the pest, without exceeding the product label, consistent..."

- **9VAC25-800-60.B – Pesticide Discharge Management Plan (PDMP)**
 - *It was suggested that Table I-1 should be changed to agree with the revisions made to the previous table (Table 2 - Page 10).*

ACTION ITEM: Staff will revise table I-1 to agree with the revisions made to the previous table (Table 2).

- *Page 22 - 1.e was identified as a possible placeholder for T&E requirements. EPA did not define further in their General Permit.*
- *A suggestion was made to revise 60.B.2.d related to the PDMP Team - Identification of team members is not required and should be deleted since the identification of all team members and their responsibilities is already include in 60.B.2.*
- *What kind of general location map is required? What sort of information are we looking for? Staff noted that this is not something that you submit, it is something tat you maintain. The Discharge Management Plan is maintained by the operator, but is not submitted. It is only used if there is an adverse incident and is requested by DEQ to review. Staff noted that this is supposed to be at the "plan" level not at the "location" level.*
- *It was noted that the way the permit is written that "if you didn't have to register then you wouldn't be doing a PDMP."*

CONSENSUS: The TAC agreed that the paragraph related to "Identification of team members" on page 23 should be deleted.

- *Page 23 - item 3.d - The TAC discussed the need for the paragraph related to "water quality standards". It was noted that an operator might not know that information. It was suggested that this requirement should be deleted.*

CONSENSUS: The TAC agreed to the deletion of the paragraph related to "water quality standards" - Page 23 - Item 3.d.

- *The TAC discussed the FOIA aspects of business information or information found in the Pesticide Discharge Management Plan (PDMP). It was suggested that there should only be general information included in the plan and do it at a level where no business specific sensitive information would be required.*
- *Need to revise the wording of 5.a (1) on page 23 to be consistent with previous language revisions.*
- *It was noted that the requirement was for procedures for determining the application rate and frequency. It would be more of a statement on the rational. It was agreed that only general information should be required.*
- *Staff noted that the signature requirements are located in both this section and in Part II k of the general permit. It will be removed from Part II and left here.*

- **9VAC25-800-60.C - Corrective Action**

- *C. Corrective Action - Page 26 - Item 1.c (1) should read: "Use the lowest amount of pesticide product instead of "produce". It was noted that this paragraph should also be revised to reflect the terminology agreed to in previous discussions related to "use according to label requirements" and "lowest effective" amount.*

ACTION ITEM: Staff will revise C.1.c (1); (2); and (3) to reflect changes made on page 15 A.1.a (1); (2); and (3). Staff will replace with VDACS language for consistence.

- *It was noted that this permit requires the operator to use the "lowest effective" amount.*
- *It was noted that if you don't have any adverse impacts then DEQ would not get reports of any problems.*
- *The assumption is that the applicator is using the lowest effective amount as he/she determines.*
- *It was suggested that the language on page 26 and 27 related to the "effect of corrective action" is confusing and needs to be clarified. Staff noted that this wording is not consistent with DEQ's current enforcement strategy.*

ACTION ITEM: Staff will get legal consul and CO enforcement to look at the wording of C.3 related to "Effect of corrective action".

- *It was noted that VDACS and DEQ have different definitions of an "incident".*
- *A question was raised as to why the word "banks" is included as an example on page 28 - Item b (6) related to Pesticide application rate. It was suggested that this example should be deleted.*
- *Page 29 - c: Staff noted that there is nothing specific to Virginia; the only references are to federal-listed threatened or endangered species. In addition to paragraph after c (7) also only refers to additional information on "federally-listed threatened or endangered species" and "federally-designed critical habitat".*

ACTION ITEMS: Amy Ewing with DGIF will look at their regulations to identify Virginia specific references for inclusion in this section. DEQ staff will coordinate with DGIF to include Virginia specific information references in the general permit.

- **9VAC25-800-60.D - Recordkeeping and annual reporting**

- *Page 30 - Item D.2 - Staff noted that the intent is to make the records the same records that are currently required by VDACS. Items that are not in the VDACS requirements are Item a (Maintain a copy of the registration statement) and Item b (note the date on which the permittee knew or reasonably should have known that an annual treatment area threshold would be exceeded...)*
- *It was recommended that the phrase "or reasonably should have known" should be deleted from 2.b.*
- *Staff discussed the need for an annual report and what is important to DEQ as an agency to be looking at in an annual report. What staff is looking for is if you have adverse incidents that you would have to summarize all of the adverse incidents over the year. It was noted that if there were no adverse incidents that a report of "No*

adverse incidents" would be filed.

- *Need to know where there are impacts on water quality from applications of pesticide.*
- *Staff will work on revisions to this section.*

7. Next TAC Meeting

The next meeting of the TAC is scheduled for Wednesday, August 18, 2010 and will be held from 10:00 AM to 4:00 PM at the DEQ Piedmont Regional Office Training Room.

8. Meeting Adjournment:

The meeting was adjourned at approximately 4:20 P.M.