

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

**FINAL MEETING NOTES
TAC MEETING – WEDNESDAY, JULY 28, 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	Tom Tracy - VA Turfgrass Council	Burt Tuxford - DEQ CO
Liza Fleeson - VDACS	Sherry Williams – Newport News Waterworks	
Melanie Frisch - Fort Belvoir		
Bill Gillette - Rock Springs Forestry, Inc.		
Todd Groh - VDOF		
Pat Hipkins – VA Cooperative Extension (Alternate for P.L. Hipkins - VA TECH)		
Shannon Junior - VA Lake Management (Alternate for Kevin Tucker)		
Whitney Katchmark - Hampton Roads PDC		
Marcus Leeper – City of Newport News (Alternate for Ron Harris - City of Newport News)		
Peter McDonough - VA Golf Course Superintendent's Association		
Joe Simmons - Chesapeake Mosquito Control		
Mark VanDevender - Spotsylvania County		
Tom Warmuth – Cygnet Enterprises (Alternate for Sarah Miller – SEPRO)		
Joe Will – Southern State Cooperative (Alternate for Katie Frazier - VA Agribusiness Council)		

NOTE: The following PGP TAC Members were absent from the meeting: Andrea Coron – VA PMA; Amy Ewing - DGIF; Katie Kyger Frazier – VA Agribusiness Council; Ron Harris – City of Newport News; Perry Lloyd Hipkins – VA Cooperative Extension; Larry Land – VACO; Gigi Meyer, VDOH; Sarah Miller – SEPRO; 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 14, 2010 TAC Meeting (Bill Norris):

Bill Norris asked for any comments on or edits needed for the July 14, 2010 Pesticide GP TAC meeting notes. He noted that he had received several editorial comments from program staff that would be incorporated into the "final" meeting notes.

CONSENSUS: The TAC members agreed to the wording of the July 14, 2010 Pesticide GP TAC Meeting Notes.

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

3. Follow-up from July 14, 2010 TAC Meeting (Bill Norris and Program Staff):

Bill Norris provided a summary of follow-up items from the July 14, 2010 TAC meeting:

Follow-Up Items:

- Provide a copy of the July 14th Staff presentation – This had been routed via email to the Pesticide GP TAC members and distribution list.
- Status of staff findings related to definition of "near" – Staff had made some inquiries to adjoining states regarding their interpretations of "near" and had asked for clarification from EPA in their comments on the draft GP.
- Status of staff findings related to the definitions of "canopy" and "irrigation ditch" – Staff had asked for clarification from EPA.
- Future Meeting Locations – Staff has made arrangements to hold the next TAC meetings at the DEQ Piedmont Regional Office (Friday, August 6th and Wednesday, August 18th from 10:00 to 4:00)
- TAC recommendation to include "impaired waters" relief language in the VA GP – Staff noted that the draft language of the VA GP includes that relief language.
- Staff findings related to the application of "copper sulfate" in water supply reservoirs – Staff still needs to get clarification on this concern.
- Availability of enforcement representative from DEQ – Staff will make arrangement to have an enforcement representative at a TAC meeting once we get further into the actual wording of the General Permit.
- Copy of VA Draft GP to TAC prior to the July 28th meeting – A copy of the draft GP was distributed via email to TAC members and the distribution list.
- Copy of DEQ's comments to EPA on the draft GP – A copy of DEQ's comments to EPA were distributed via email to the TAC members and to the distribution list.

4. Draft PGP Regulation Review – General Comments (TAC Members and Program Staff):

Staff noted that we had already received comments regarding the organization and the readability of the proposed VA Pesticide Discharge GP. An effort will be made to make it less EPA-like and more readable.

Bill Norris asked that the members of the TAC keep in mind the possibility of making some of the items in the draft GP more useful and readable by moving them into guidance or into a form of layman information sheet for use by staff and the applicants.

Fred Cunningham noted that it was the intent of staff to proceed line by line through the proposed GP. He asked members of the TAC for any comments; concerns and questions that they had before undertaking this process. Items raised included the following:

- Definition of surface water – Are stormwater ponds considered “waters of the US”? – Staff noted that staff had asked for clarification of this issue in their comments to EPA.
- The TAC noted that they would like to see a definition of what is meant by the “waters of the state”. All terms need to be defined.
- Don’t want to require an applicant to conduct “wetland delineation” on every project site.
- Surface water connectivity is referenced in the EPA fact sheet – how does that apply in Virginia (i.e., dry drainage ditches)?
- What is the difference between consideration of an “irrigation ditch” and a “drainage ditch”? How will they be handled under the VA GP?
- Applicable definitions that are in standard use for other permit programs within DEQ should be included in the definitions section of this GP to clarify meanings. It was noted that some of the applicants seeking coverage under this GP may not be used to standard usage of terms from existing DEQ permitting programs since they may be applying for permit coverage for the first time.
- How will “isolated wetland” be addressed?
- “Surface waters” is a pretty inclusive term. Farm ponds that are isolated may not be considered surface water. All ponds with an outflow and an inflow are considered as surface water. Wetlands are considered “surface water” under state statute.
- It was noted that the process for the delineation of wetlands is an extremely complicated process.
- A request was made for consideration of a possible exception for “terminal reservoirs” in water supply systems where the only discharge is to a water treatment plant, since it is already regulated under a different set of regulations and requirements.
- It was noted that reservoirs are considered as “surface waters of the state”.
- Water supply impoundments currently must meet drinking water standards not necessarily the “aquatic standards” required under this GP. The highest use of the reservoir is for drinking water. Need to determine how a water supply reservoir can continue to protect drinking water quality while providing the “aquatic life protection” required under this GP.
- Staff noted that the proposed definitions included in the VA draft GP are directly from the EPA GP and are included to establish starting discussions points.
- It was suggested that the definition of “pesticide” should include some language addressing

- the special conditions related to water supply reservoirs and the application of pesticides.
- It was suggested that an exemption for water supply impoundments should be considered.
 - Questions were raised regarding the use of “copper sulfate” in water supply reservoirs and the impact of these GP requirements on that usage, especially in those reservoirs that are on the impaired list for the use of “copper sulfate”. It was noted that for most reservoirs that the application of copper sulfate is not done on the entire reservoir but is applied specifically in those locations where there are algae problems.
 - It was suggested that the “potential to discharge” should also be part of the consideration of an exemption for water supply impoundments. This year, due to the lack of rain, a lot of reservoirs water levels are far below their discharge points. It was noted that most applications of an algaecide occur at times of year when water levels are low and there is little potential for discharge.
 - It was suggested that a definition of “what is a discharge” is needed. Consideration should be given to a distinction between a “potential to discharge” and an “actual discharge”. Staff noted that if we include a definition of “discharge” it would need to conform to the definition currently used in other DEQ regulations.
 - Are there other definitions from the EPA draft GP included in the VA GP that are not actually used in the VA GP?
 - It was noted that we will need to have guidance or a fact sheet to accompany this GP. Need to have all the information and references that are needed readily available to the applicant. People are not likely to be willing to search through other regulations to determine what a term actually means; they need to be able to find what they need in this GP.
 - It was noted that the reservoir issue is a lot broader than “terminal” versus “non-terminal”. The issue is can we structure the GP in terms of when a reservoir is “overflowing” and making a pesticide application versus a situation where there is no impact on downgradient surface waters because everything is contained in the reservoir?
 - It was noted that the term “waters of the US” is included in the text on page 14 of the draft GP while the term “waters of the state” is used through out the GP. Staff noted that they would search the document to ensure that terms are used consistently throughout the document.
 - “Waters edge” needs to be defined. Does this refer to “at the time of application” or at “high tide” or some other reference point or time? “At waters edge” needs to be clarified and as quantitative as possible.
 - Staff noted that there have been a number of questions raised in comments to EPA on their draft GP regarding the meaning of “at waters edge” and requesting a quantification of distance for the GP requirements.
 - This is a NPDES permit, which relates to the discharge from a “point source”. The issue is how it gets into the water. Staff noted that the real issue is the “application of a pesticide” at such a rate as it has the potential to reach “surface waters”. What is the point source? Is it the spraying application or is it the “nozzle”?
 - A layman’s fact sheet needs to be developed as well as programmatic guidance for staff. The guidance and fact sheet needs to be developed simultaneously with the development of the GP language.
 - Clarification is needed as to who is eligible for coverage under this GP and who is meant to be covered under this GP. Need to be clear as to who this GP applies to. Who is exempted? Are turf operations covered under the GP and required to apply?

- Additional concerns and questions related to wetlands; dry wetlands; and constructed wetlands and requirements under this GP were raised. TAC members asked for a clarification of the definition of “surface waters” which includes the reference to wetlands being considered as “surface waters”.

ACTION ITEM: Staff will provide a copy of the current definition of “surface water” to the TAC to clarify the inclusion of “wetlands” as part of Virginia’s “surface waters”.

- It was noted that the FIFRA label contained restrictions on the use of the product such as “do not apply to standing water”.
- It was suggested that the delineation of a wetland line is more of a political line than a ground line.
- A question was raised regarding the determination of buffers along ditches or streams used in forestry treatment operations (forest canopy treatment). It was noted that State BMP Harvesting Guidelines for Forestry operations guide the determination of buffers for aerial and terrestrial operations/applications. Buffers are required along “channelized” branches. If there is no channel then there is “no water”. The concept is to avoid “standing water”.
- A concern was raised over the paperwork requirements of this GP and the impact on a small business owner or applicator.
- Concerns were raised over the reporting and monitoring requirements of the GP.
- TAC members recommended that the reporting requirements of this GP should mirror the current VDACS reporting requirements.
- The GP needs to be clear as to who this regulation applies to and who is required to get coverage under this GP as well as who is required to file the required Notice of Intent (NOI). Also clarification is needed on how many NOIs would be required to be filed under what conditions.
- It was noted that it is unclear from the wording of the “registration statement” portion of the GP what “establishment” meant. Does this mean that a business just files a registration statement or NOI for its principle place of business or does this apply to every site where an application of pesticides is made? Also are records of application locations required at time of application for coverage or can the records be maintained for possible examination after the fact?
- The TAC members reiterated that the reporting and record keeping requirements should be the same as the current VDACS requirements.
- It was noted that there was a steep learning curve involved in this process even at the federal level, because the EPA Office of Water historically has not been involved in “pesticides”.
- Can the language of the GP contain references to the current VDACS requirements? The TAC members suggested that references to VDACS rules and regulations would be appropriate to include in this GP.
- It was noted that the concept is to prevent the discharge of pesticides to surface water. No permit is required if there is no discharge to “standing water”.
- A concern was raised regarding the concept of “connectivity” referenced in the GP. The terms “standing water” versus “surface water connectivity” need to be clarified.

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

Fred Cunningham led the TAC in a line-by-line review and discussion of the proposed draft Virginia Pesticide Discharge General Permit. Discussions starting with the definitions section included the following:

- “Action threshold” – A concern over who makes the determination of the “action threshold” was raised. Clarification should be included in guidance. The determination should be at the “discretion of the applicator”. The definition is pretty open since it includes reference to conditions that “can no longer be tolerated” and “aesthetic or other effects”. Action thresholds are referenced in the draft GP on page 14 (9VAC25-110-60 A 1 b (1) (c)). (NOTE TO TAC: This was an error on the handout and is supposed to be 9VAC25-800-60 A 1 b (1) (c)). This reference seems to refer to each individual permittee making this determination. A question was raised over the concept of “pretreatment applications” and how those tie in with the “action threshold” concept since this is a necessary treatment strategy that is done prior to reaching an “action threshold”. It was noted that an applicant should be able to refer to previous application history and protocols as part of standard operating procedures. Staff noted that they would look at this language to see if it could be clarified. It was suggested that “pretreatment” might also fall into the definition of a BMP.

ACTION ITEM: Staff will look to see if the definition of “action threshold” can be clarified to account for who makes the determination and for situations where “pretreatment applications” are a part of standard operating procedures.

- Staff noted that the references noted by the brackets are included in this version of the draft GP just as information for the TAC and to help structure the discussions. Those references will be deleted from the final language.
- It was suggested that for some definitions that a statement could be included that read “for the purposes of this chapter” to clarify that the term is used differently in this GP.
- The TAC suggested that the terms “facility” and “establishment” need to be clarified. The ultimate meaning of those terms could have an impact on what information and what level of detail is required to get coverage under this GP.
- “Control measures” – The TAC recommended that this definition be rewritten to exclude reference to “industry standards and recommended industry practices”. It should refer only to “manufacturer specifications” or “label directions”.
- “Cultural measures” would include such practices as “draining a ditch instead of treating it”.
- “Establishment” should refer to the place where an applicator conducts business, his place of business, the office. This definition needs to be clarified because it can be interpreted to mean every site where a pesticide application is made. It should refer only to administrative offices or “place of business”. A question was raised as to whether a map of the counties where applications were going to occur or could occur would be sufficient to address the requirements noted in the registration statement language. It was suggested that existing records should count; a separate unique submittal should not be required. This general level of information, such as required under the current VDACS requirements should be maintained for each establishment and should be “available upon request”.
- “For-hire applicator” – Why is this defined and “not-for-hire” not? Do we need a separate

distinction or would a definition of “applicator” suffice? A definition of “applicator” should be developed and included in the GP.

ACTION ITEM: Liza Fleeson with VDACS will provide a definition of “not-for-hire applicator” for consideration by the group.

- “Impaired waters” – It was suggested that this definition is not very well worded and needs to be clarified. It was suggested that consideration should also be given to consideration of wording the definition to refer to “impaired for specific pesticides”.

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

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

- "Impaired water" - Need to look at wording to clarify. A question was raised as to what was entailed with getting "a water" off of the "impaired water" list.

ACTION ITEM: Staff will provide a clarification of the process involved with the "delisting" of "a water" from the "impaired waters" list.

- "Monitoring" - A question was asked as to whether "monitoring" should be defined. It is unclear as to what is required for monitoring in the permit. Staff noted that EPA requires that there are a number of conditions that have to go in all DEQ permits. These conditions are in part II of the permit. Staff suggested that there be a placeholder for a "monitoring definition" but the real issue may be in the text of the regulation where monitoring is specifically addressed.
- "Pesticide label" - A questions was raised as to whether "pesticide label" or "label" should be defined.

ACTION ITEM: Liza Fleeson with VDACS will provide the current VDACS definitions of "label" and/or "pesticide label".

- "Non-target organisms" - It was suggested that this could be simplified and clarified by rewording it to read "non-target organisms" are those organisms that are not the target of the pesticide.
- "Operator" - It was noted that nowhere in the definition is it identified that the person applying the pesticide is a "certified pesticide applicator". It reads that anyone can apply. You do not need to be certified to apply pesticide. Discussions referred back to the definition of "applicator" where a commercial for-hire applicator or someone applying on his own property or a not-for-hire applicator. An "operator" might not necessarily be the "applicator". Staff noted that EPA only defined "operator". An "operator" is required to have coverage under this permit. It is the "operator" that is responsible. This needs to be clarified. Staff noted that on page 7 of the GP that there are two types of operators identified: those that are in control of financing for or over the decision to perform pest control activities and those that apply pesticides that result in a discharge. The definition doesn't match what is

identified on page 7. The wording of the text on page 7 and the definition on page 3 need to be consistent. It was recommended that this definition should mirror what the Virginia requirements related to owner/operator/applicator currently are.

- "Pest" - Is there another citation that needs to be included in addition to the federal citation? VDACS has a definition.

ACTION ITEM: VDACS will provide a definition of pest that they currently use.

- "Pesticide" - This is the federal definition of pesticide and is different from that used in Virginia.

ACTION ITEM: VDACS will provide their definition of "pesticide" which has been approved by EPA that might be easier to understand than the full federal definition contained in the draft general permit language.

- "Pesticide product" - A suggestion was made to revise the definition to read "means a pesticide in the particular form (including active and inert ingredients and packaging and labeling) in which..."
- "Pesticide residue" - It was suggested that it should be "has been discharged" instead of "is discharged" because it can't be a residue unless it has been discharged.
- "Pollutant" - The important part of the definition is the "for purposes of this definition" section. It was suggested that the definition should be reworded or revised to put the "for purposes of this definition" section at the first of the definition. This definition is not helpful. It should be specific to pesticides. The statement included in the section "for the purposes of this definition" is directly from the court decision and is the reason that we are here. A suggestion was made that the definition used in the EPA GP should be used instead of the one included in this draft.

ACTION ITEM: Staff will look at possible rewording of the definition of "pollutant" or the use of the EPA definition from their draft GP.

- "Treatment area" - A concern was noted about the use of the phrase "whether over land or water". It was a pretty general term. It was suggested that it should be "over forest canopy" instead of "over land". A concern was raised that this is confusing and might cause confusion in the agricultural community. It was suggested that the general statement "whether over land or water" should be kept.

7. Other Suggested Definitions (Fred Cunningham)

Fred Cunningham asked for suggestions for additional definitions:

- "FIFRA" - A question was raised as to whether there should be a definition of "FIFRA" included.
- "Other VDACS definitions" - Staff noted that it would be helpful to see other definitions currently in use in the pesticide program under VDACS. Definitions of terms currently in use by applicators would be helpful to understanding of these new requirements.

ACTION ITEM: VDACS will provide a copy of their current definitions to DEQ for possible inclusion in the pesticide discharge GP.

- It was suggested that both the federal and Virginia requirements references should be included.
- Definitions that are being considered for addition to the Pesticide GP include: "surface waters"; "discharge"; "at water's edge"; "for-hire applicators"; "not-for-hire applicators"; "pesticide label"; "FIFRA"; "Monitoring (Placeholder)"; "applicator"; and "owner-operator".

8. Draft PGP Regulation Review Continued (TAC and Program Staff):

The continued draft PGP Regulation Review discussions included the following:

- **9VAC25-800-20. Purpose; delegation of authority; effective date of permit:**
 - This permit applies to "surface waters".
 - A concern about "standing water" was noted.
 - A request was made for staff to look at the difference between the definition of "Waters of the US" and "State Waters".
 - A question was asked whether there was a separate definition of "wetlands" in Virginia regulations.
 - It was suggested that both the Virginia definitions of "surface water" and "wetlands" should be included in the pesticide GP for clarification.

ACTION ITEM: Staff will look at the definitions of "waters of the US" and "state waters" to determine the extent of the differences as to what they actually include and share this information with the TAC.

- **9VAC25-800-30. Authorization to discharge:**
 - It was suggested that in B.4 that the term "standing" be added to the end of the section to quantify "water".
 - A question was raised in B.2 regarding applications along road-side ditches and the need to clarify the requirements included in this section. Does this refer to all ditches? How are other types of ditches, i.e., road-side ditches, in addition to "irrigation ditches or canals" covered under this GP? What types of "ditches" are covered under the Virginia GP? Are roadside ditches covered under the GP or not? When are they considered state waters?
 - The concept is keeping the pesticide out of surface waters. A clear definition of surface waters and how they apply to this GP would be helpful.

ACTION ITEM: Staff will look at the concept of roadside ditches and irrigation ditches and drainage ditches and to when and whether they are covered under this permit and/or whether they are included as part of "state waters".

- **9VAC25-800-30. Authorization to discharge (cont.):**
 - Is the definition statement related to "operator" that is included in A necessary since

it is defined in the definition section?

- The most important part of this section is the last sentence: "As such, more than one operator may be responsible for compliance with this permit for any single discharge from the application of pesticides." Staff noted that this might need to be clarified.
- There is some inconsistency between the categories of operators included on page 6 and that on page 7.
- There are differences between the definition of operator in the definition section and its uses on pages 6 and 7. It was suggested that these needed to be consistent.
- A concern was raised over the use of the term "or" in C.1 and C.2. Staff noted that it is confusing to include "or". Staff noted that it might make more sense to have the second category of "operator" ("operators that apply pesticides") be the one required to file the NOI and have everyone else be responsible under the previous requirements on page 6.
- A question was raised related to a locality with a public works department and roads and their responsibilities. It was suggested that it was up to the locality as to how they wanted to file their NOI, whether they wanted to cover it all under one NOI or under separate NOIs to cover different types of applications. The recordkeeping for reporting of separate applications and NOIs might be complicated so that there is no double counting.
- It was suggested that it might be clearer if the second operator type ("operators that apply pesticides") be the one responsible for filing the NOI. Would this make it easier to implement? It was suggested that both categories of "operator" are probably required, so that all different application scenarios can be addressed under the GP. This needs to be clarified.
- If you require it to be the "applicator" that files the NOI then you could eliminate the possibility of double-counting. There is a difference between someone being responsible to meet the requirements of the GP and those who are required to file the NOI. It would be simpler to make it only one type of "operator" (those that apply) responsible to file the NOI.
- Staff noted that the big question is are we going to keep the two separate "operator" categories that EPA has or are we going to do something different? It was suggested that it should be the "applicator".

ACTION ITEM: Staff will look at the definitions and clarification statements related to "operator" and "applicator" used in this section and the definitions section to make them consistent.

ACTION ITEM: Staff asked TAC members to think about how the NOI filing requirements as written by EPA would impact their operations and how the designation of one type of operator (the applicator) would be handled in their current operating scheme. This will be discussed at the next TAC meeting.

- **9VAC25-800-30. Authorization to discharge (cont.):** A question was raised as to whether we are talking about the actual applicator in the field or is it the entity that holds the applicator business license? Staff noted that it was the business not the actual in-the-field applicator. It would be the business that would be enforced against.
- **9VAC25-800-60.A.b (1) (a) (ii) - General Permit: Page 13 -** A concern was raised

regarding the permit requirements for a species-specific pest management strategy for each species of mosquito or flying insect pest species. There are over 55 species of mosquitoes in Virginia. An applicator may come across 40 different species in a summer. What type of plan are we looking for? The request was made that this requirement should either be struck from the requirements or modified greatly. Staff requested that TAC members impacted by this requirement provide some revised language to use in this section. More practical language is needed to clarify this requirement. Staff noted that there is a lot of flexibility at the state level as to how these issues will be handled.

ACTION ITEM: TAC members impacted by the permit requirements related to mosquito control and the development of species-specific pest management strategies are asked to provide suggestions for revised language for this section.

ACTION ITEM: The TAC will discuss the question of who is required to file the NOI at the next TAC meeting.

- **9VAC25-800-30. Authorization to discharge (cont.) - Table 1 - Page 7:**
 - Staff noted that there had been comments made that these thresholds were too low.
 - A suggestion was made that to be consistent with current practices that the annual threshold limits for aquatic weed and algae control both "in water" and "at water's edge" should be 500 acres of treatment area and 500 linear miles of treatment area at water's edge.
 - Another suggestion was made that the national level for this category is 10,000 acres of treatment area.
 - It was suggested that the key concept to look at is the "cause or contribute to water quality problems" clause.
 - A concern was noted over a "homeowners association" doing their own applications. If the levels are maintained at the levels currently listed in the draft GP, and you specify that the applicator is the one that is responsible for meeting the requirements of the GP, do we have concerns over small entities doing it on their own?
 - If the level is kept at the current levels, the question is whether DEQ really wants all of that data? DEQ would need to be able to provide justification for higher threshold levels.
 - A question was raised as to the source of the 640 acres of treatment area annual threshold. A suggestion was made that it should be "zero" so that everyone (small homeowner associations; homeowners) would have to meet the requirements. It was noted that mosquito control the 640 acre threshold doesn't matter since they are doing all of the requirements already.

ACTION ITEM: TAC Members who have available data will provide a rationale for higher threshold levels to staff for distribution to the TAC for discussion at the next TAC meeting.

- **9VAC25-800-30. Authorization to discharge (cont.) - Section D:**
 - A question was raised as to whether this section contained any language to allow the denial of coverage for a certified applicator that are in a mode of enforcement or that have judgments against them? VDACS noted that they don't have that ability in their regulations. VDACS can revoke or suspend a license.

- It was suggested that the draft permit could require that the applicator should be in good standing with VDACS (duly licensed and certified by the Department of Agriculture) and have a current certification.
- It was suggested that a requirement should be added that pesticides that are used/applied should only be those that are approved and registered for use in Virginia. It was suggested that this should be added as a clarification to the definition of "pesticide" or "pesticide product".
- VDACS "certifies" applicators; "licenses" businesses and "registers" pesticide products. The key is that coverage is provided for applicators certified by VDACS. Staff needs to work with VDACS to clarify this language.

ACTION ITEM: Staff will clarify the definition of "pesticide" or "pesticide product" to indicate that only pesticides that are approved and registered for use in Virginia are covered under this general permit.

ACTION ITEM: Staff will work with VDACS to clarify the "certification" language of the draft GP.

- **9VAC25-800-30. Authorization to discharge (cont.) - Section D:** Staff noted that items 1 and 3 are standard in all DEQ general permits. Section 4 contains language related to discharge to "impaired waters" or "TMDLs" and the relief language from the EPA draft permit. This language needs to be clarified.
- **9VAC25-800-30. Authorization to discharge (cont.) - Section E - Table 2:**
 - Staff noted that this section which deals with "discharge authorization date" is confusing as currently written. The only category that really makes sense is the first one for operators not required to submit a registration statement. A clarification of the requirements noted in this table is needed.
 - A question was raised as to whether these applications would be posted on the internet? Staff noted that there were no current plans to post to the internet or website.
 - The second box is for those operators who know that they will exceed the annual threshold would be required to file an NOI at least 10 days prior to the commencement of discharge. A concern was noted that the actual acreage of coverage might not be known far in advance of the applications.
 - It was suggested that the wording "or shown have reasonably known" should be deleted from Table 2. The wording of these requirements needs to be clarified.
 - Staff suggested that the wording for the second category in Table 2 should be revised to read "Prior to commencement of discharge, operators who will exceed an annual threshold identified in subsection C of this section for that year." The third category of Table 2 should read "after commencement of discharge, operators who determine that they will exceed an annual threshold identified in subsection C of this section for this year."
 - A question was raised as to whether this should be 20 days instead of 10 days.
 - Staff noted that one concept that is being considered is once you file you have coverage under the general permit unless DEQ contacts you to tell you otherwise. The specific wording for these requirements needs to be worked out.
 - Staff noted that there a lot of resource issues that need to be worked through.

- The concept is that as long as you file according to this schedule then you have coverage under the general permit. Staff is considering the idea that there is "automatic" coverage for an application once the NOI is submitted unless the applicant is notified otherwise.
- It was suggested that some form of "acknowledgement" mechanism should be incorporated into the process. The idea of an electronic email submittal and acknowledgement process was discussed. It is likely that the applicant would need to submit a "paper copy" of the application, but DEQ could have the ability to respond to the applicant electronically via email.
- Staff noted that the key is that if an applicant is going to break the threshold then permit coverage is needed.
- The permit coverage is for a fixed 5-year period. In Virginia a General Permit is a regulation. There is a federal requirement that general permits can't exceed five-years. They have to be renewed every five-years.
- Staff noted that there is language that provides for an "administratively continuance" so that an applicant who has coverage under this permit remains covered until a new permit is issued.
- Staff noted that the concept is for this permit cycle to allow a grace-period at the beginning of the process to provide coverage while allowing additional time for filing of the initial registrations (NOIs). The permit will go into effect on April 10, 2011 and applications will be covered under the permit and then there will be a window where registrations statements are submitted and coverage under the new general permit is issued.

9. Next TAC Meeting

The next meeting of the TAC is scheduled for Friday, August 6, 2010 and will be held from 10:00 AM to 4:00 PM at the DEQ Piedmont Regional Office Training Room.

10. Meeting Adjournment:

The meeting was adjourned at approximately 4:05 P.M.