PESTICIDE GENERAL PERMIT 2013 REISSUANCE TECHNICAL ADVISORY COMMITTEE (TAC)

DRAFT MEETING NOTES
TAC MEETING – THURSDAY, AUGUST 23, 2012
DEQ PIEDMONT REGIONAL OFFICE TRAINING ROOM

Meeting Attendees

TAC MEMBERS	*TECHNICAL SUPPORT*	*SUPPORT STAFF*
Randy Buchanan – Virginia Mosquito Control Association	Fred Cunningham – DEQ	Elleanore Daub - DEQ
Shannon Fowler – Virginia Forestry Association – Alternate for Bill Gillette	Doug Edwards – VDACS – Alternate for Liza Fleeson	Bill Norris - DEQ
Pat Hipkins – Virginia Cooperative Extension	Amy Ewing – DGIF	Burt Tuxford - DEQ
Shannon Junior – SOLITUDE Lake Management	Todd Groh - DOF	
Whitney Katchmark – Hampton Roads Planning District Commission	*INTERESTED PUBLIC*	
Peter Mcdonough – VGLSA/Virginia Agribusiness Council - Alternate for Katie Frazier & Blair Krusz		
Sarah Miller – SePRO Corp.		
C.B. Umphlette – City of Portsmouth		
Mark Vandevender – Spotsylvania County		
Tom Warmuth – Cygnet Enterprises, Inc.		
Alan Wood – American Electric Power		

NOTE: The following TAC members were absent from the meeting: Charles Abadam – Suffolk Mosquito Control; Liza Fleeson – VDACS; Katie Frazier – Virginia Agribusiness Council; Bill Gillette – Rock Springs Forestry, Inc.; Ron Harris – Newport News Waterworks; Butch Harrison – American Forestry Management; Kevin Heffernan – DCR – Natural Heritage Program; Lloyd Hipkins – Virginia Tech; Joe Simmons – Chesapeake Mosquito Control Commission

1. Welcome & Introductions (Bill Norris):

Bill Norris, Regulatory Analyst with the DEQ Office of Regulatory Affairs welcomed all of the meeting participants. He asked for introductions of all of the members of the Pesticide General Permit 2013 Reissuance Technical Advisory Committee and members of the "Interested Public". There were no members of the "interested public" in attendance. He asked for all attendees to sign the sign-in sheet so that we could have a record of attendance.

He noted that several members of the TAC have informed him that they had submitted comments electronically that they wanted included in the meeting materials. Any materials that were submitted for consideration prior to today's meeting will be included in the summary of notes that are prepared for this meeting so that all of the TAC members will be aware of the comments made, if there are no objections from the TAC. No objections were noted.

ACTION ITEM: Any materials received prior to today's meeting that has been submitted by TAC members will be included in the summary notes for today's meeting.

2. **Meeting Notes – June 28, 2012 (Bill Norris):**

Bill Norris informed the members of the Technical Advisory Committee that he had incorporated the comments and edits that had been received regarding the draft meeting notes from the June 28th meeting of the TAC. He asked whether there were any additional comments or edits that needed to be included. No additional comments or edits were offered.

ACTION ITEM: The June 28th Meeting Notes will be identified as "Final" and will be posted to Town Hall.

3. **Review and Discussion of Proposed Regulatory Changes – PGP Regulation Review By Section (Elleanore Daub and TAC):**

Bill Norris noted that the program staff had taken a close look at the EPA Pesticide General Permit to identify changes that had been made to their PGP which might need to be incorporated into the Virginia PGP and had reviewed the TAC's recommendations and discussions from the last meeting to come up with the proposed changes that will be discussed today. Elleanore Daub with DEQ's Office of Water Permit and Compliance Assistance, lead the group through a discussion of the proposed changes to the Pesticide General Permit for the 2013 Reissuance. The section-by-section review and the group's discussions are captured in the following materials:

4. **PGP Regulation Review by Section - Discussion Topic: Definitions (DEQ - 9VAC25-800-10/EPA GP - Appendix A):**

- Proposed Changes to definition of "Action threshold" – Definition changed to match EPA definition per TAC Request:

"Action threshold" means the point at which pest populations or environmental conditions ~~can no longer be tolerated necessitating~~ necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. ~~Sighting a single pest does not always mean control is needed.~~ An action threshold may be based on current or past environmental factors that are or have been demonstrated to be conducive to pest emergence. Action thresholds ~~help determine~~ are those conditions that indicate both the need for control actions and the proper timing of such actions. ~~Action thresholds are site specific and part of integrated pest management decisions.~~

- Proposed Changes to definition of "Adverse incident": Incorporates some of the terminology from the EPA PGP definition.

"Adverse incident" means an unusual or unexpected incident that the operator observes upon inspection or of which otherwise becomes aware~~,~~; in which there is evidence that:

The phrase "toxic or adverse effects" includes effects that occur within surface waters on nontarget plants, fish, or wildlife that are unusual or unexpected (e.g. effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue and may include ~~and of the following~~:

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes), domesticated animals or wildlife (e.g., vomiting, lethargy) that occur either ~~directly or indirectly~~ from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) or from a discharge to surface waters that are temporally and spatially related to exposure to a pesticide residue.

- Proposed Changes to definition of "Best management practices" or "BMPs": This definition will be removed since the term is not used in the document.

- Proposed Changes to definition of "Control measure": This phrase and definition is no longer used and has been replaced throughout the document with the phrase "Pest Management Measure" per the EPA Pesticide General Permit and a definition has been added.

- Definition of "Integrated pest management" or "IPM": No changes proposed. EPA does not use this term in their PGP, but it is used in this document.

"Integrated pest management" or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycle of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

- Proposed Changes to definition of "Minimize":

"Minimize" means to reduce or eliminate pesticide discharges to surface waters through the use of ~~control measures~~ pest management measures to the extent technologically available and economically practicable and achievable.

- Proposed Changes to definition of "Nontarget organisms": Changed to match the EPA PGP definition since it had more information contained in the definition.

"Nontarget organisms" means ~~any organisms that are not the target of the pesticide.~~ the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

- Proposed changes to definition of "Operator": Changed to match the definition in the EPA PGP. This term will come into play later in our discussions of who does what in the permit. The TAC last time wanted a little more clarification about who does what. The group discussed the difference between the terms "operator" and "applicator". The term "applicator" is not used in the document. This change broadens the definition somewhat compared to where we are in the current PGP.

"Operator" means…2. The person who performs the application of a pesticide or who has day-to-day control of ~~or performs activities that are necessary to ensure compliance with the permit~~ the application (e.g. they are authorized to direct workers to carry out those activities ~~required by the permit or perform such activities themselves~~ that results in discharges to surface waters).

- The TAC's discussions included the following:
  - Hypothetically, if you have a very large lake that is also used for power generation, and the power company issues the permit for treatments on this lake, but another entity actually pays for the treatment and hires an applicator to perform the treatment, wouldn't the power company need to be considered an operator since they are issuing permits, even though they are not making the decisions about specific applications? Wouldn't said power company be considered a decision-maker because they are giving permission for the treatment? Power companies in this situation would normally draw the line at what they are issuing permits for. They decided that this type of activity was not what they were issuing permits for, so their focus would be on the distribution – transmission line spraying. They draw the line on hydro-project control. They don't make the specific determinations about spraying. The permit is part of the "Operating License" requirements to manage the impoundment. Since they aren't in a decision role on the types or locations of treatment, they aren't the "decision-makers" in this case. Would this be the case, even if the permit asks what product is being used, how much area is being treated, and what the target vegetation is? Technically, if a power company were giving a permit to allow treatment of an area then wouldn't they, by default, be functioning as a "decision-maker"? In this case it is another decision-maker, the hydro-project folks, who are making the decision, not the power company as such. They are just giving permission for the treatment to occur. It is similar to giving permission for someone to put in a dock on a lake.

- Definition of "Person": No changes proposed - NOTE: The EPA PGP contains a longer definition.

"Person" means, for purposes of this chapter, an individual; a corporation; a partnership; an association; a local, state or federal governmental body; a municipal corporation; or any other legal entity.

- Proposed changes to definition of "Pest": NOTE: EPA's definition is slightly longer. This definition came out of VDACS. DGIF has proposed changes to this definition which are indicated below:

"Pest" means…Any organism classified by state or federal law or regulation as endangered~~,~~ or threatened, or any organism otherwise protected under federal ~~or state laws~~ law shall not be deemed a pest for the purposes of this chapter.

- Definition of "Pest management area": NOTE: EPA uses a longer definition.

"Pest management area" means the area of land, including any water, for which pest management activities covered by this permit are conducted.

- Proposed new definition of "Pest Management Measure": NOTE: This new definition replaces the term "control measure" which matches the EPA PGP usage, but uses the VDACS terminology. The proposed definition had included the phrase "waters of the United States". That phrase will be changed to "surface waters" to reflect common usage within the state's laws and regulations.

"Pest Management Measure" means any practice used to meet the effluent limitations that comply with manufacturers specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce or eliminate pesticide discharges to surface waters.

- Use of the phrase "and/or": Bill Norris noted that the Registrar does not like the phrase "and/or" and will normally change it to "or" or "or…or both". Staff will attempt to make those changes throughout the document as needed.

- Definition of "Pesticide product": The EPA PGP uses the term 'composition' rather than the phrase 'active and inert ingredients'.

"Pesticide product" means a pesticide in the particular form (including active and inert ingredients, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

- Proposed changes to definition of "Pesticide research and development": Revised to match the definition in the EPA PGP.

"Pesticide research and development" means activities undertaken on a systematic basis to gain new knowledge (research) or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development). ~~These types of activities are generally categorized under 5417 under the 2007 North American Industry Classification System (NAICS).~~

- Definition of "Pesticide residue": NOTE: The EPA PGP uses the phrase "is discharged" instead of "has been discharged".

"Pesticide residue" includes that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

- Definition of "Point source": The EPA PGP matches the VPDES definition used.

- Definition of "Pollutant": The EPA PGP definition is longer.

"Pollutant" means, for purposes of this chapter, biological pesticides and any pesticide residue resulting from use of a chemical pesticide.

- Definition of "surface waters": The TAC raised the following issues and had the following discussions regarding the term "surface waters":

  - "All other waters" - The TAC wanted to know if "ditches" were included in this definition. Roadside ditches? Irrigation ditches? Are they included as "surface waters"?
    - How does the VWP program address "ditches" and whether it is "surface water" or not?
  - "All impoundments" – Stormwater ponds designed to meet CWA requirements (designed to remove specific pollutants and have effluent limits) are considered treatment works and NOT surface waters. The TAC asked for clarification of stormwater BMP exemption from or coverage under the PGP.
    - This is of monumental importance to municipalities across the state. When are they included or not? If a stormwater pond is used as a treatment pond then it is not surface waters.
  - "Surface waters" – The definition contains the statement that "Surface waters do not include waste treatment systems, including ponds or lagoons designed to meet the requirements of the Clean Water Act (CWA) and the law…This comes from the Federal Definition of Surface Water.
    - The TAC asked if the phrase "waste treatment systems" should be "wastewater treatment systems".
    - If a stormwater pond is used as a treatment pond then it is not surface waters.
    - This is a huge critical issue, because currently approximately 75% of impoundments where pesticides are applied are stormwater management BMPs (ponds). They are in Homeowner Association areas where the only reason that the pond is there is for stormwater management, there is no perennial flow. The water might eventually, in a large rain storm, get into a stream. They were created solely to comply with the regulations. That is not to say that they aren't also used for other purposes by the Homeowners Association. In 90% of the cases, these features would not have been created if they weren't required. They do try to maintain them and make them look better by putting in fountains and walking paths, etc. The primary reason that pesticides are being applied to these stormwater structures is that the Association wants them to look good, even though it is a stormwater management pond. This issue really needs some clarification for calculating thresholds and whether applications are really covered under this PGP or are exempted from the requirements.
    - Most stormwater ponds are put in to satisfy DCR's Erosion and Sediment Control requirements during construction activities. They are not put in for Clean Water Act control of pollutants, per se. These have been a state requirement long before the feds got involved in the process. Most of these features will be counted towards meeting TMDL goals and requirements even though they weren't originally designed for that. However, they are not being permitted under the VPDES program. Only the MS4's have a permit for their operation.
    - There are over 1,000 stormwater management ponds (referred to as BMPs) in Henrico County. Their purpose is to remove nutrients from stormwater. Some of them are "shallow marshes"; some are "wet ponds"; and some are "dry ponds". Post construction

water quality control is why these ponds are left there after construction. Some of these structures also provide benefits for flood control and stormwater retention. Now they are also being touted as having an additional benefit for nutrient removal. The disagreement now is whether the stormwater ponds that were in existence prior to the TMDL requirements should count towards their reduction of nutrients. To make a determination whether a stormwater pond was constructed as a treatment system (stormwater management pond) or not would require an examination of the maintenance agreement for each structure. If they have effluent limits and sampling on the pond for their discharge from the pond then it will be a Clean Water Act permit requirement – that would be a treatment system, otherwise it will be "surface waters". The majority, if not all of these structures managed by a Homeowners Association, are likely to be "surface waters". That was probably the focus of the legislation to begin with – to get a handle on pesticide usage for these structures.

- Would the needed clarification be better included in guidance or a fact sheet on this topic or does the definition need to be changed? The definition could remain the same and the fact sheet could just clarify what is meant by the statement.
- Most of the ponds that you are seeing and dealing with are "surface waters" because they were put in to meet erosion and sediment control requirements. There may be a few that are actually permitted with effluent limitations - - then they are considered a "treatment unit" and permit coverage is not required. MS4 structures are "surface waters" even though they are being used to meet permit compliance. This is something that needs to be clarified.
- A question was raised about 9VAC25-800-30.D.1: This refers to the issuance of an individual permit for the discharge of pesticides which is likely to never occur.
- The statement in the definition of "surface waters" related to "waste treatment systems" could be modified to say "wastewater treatment systems". This change might help clarify the requirements. A reference to the fact that is does include "stormwater treatment" might also help clarify this statement. This needs to be revised to clarify exactly what is and what is not covered under the PGP.
- For simplicity you could say that "any water that is treated that is not in a container is surface waters". If not then you would need to make a determination in every case as to whether it is "surface waters" or not for every piece of water. If you are going to be treating it with pesticides then it should be considered as "surface waters" for simplicity sake and is covered under this permit. The only outstanding issue: is there some type of legislation or is there some liability issue that is not evident that someone could say "no, that is not covered under the permit and therefore you are in violation of NPDES".
- If it is not "surface waters" then you are not subject to the requirements of the permit.
- Smaller entities might not be completely comfortable with the interpretation that any waters that they are treating are "surface waters".
- Is this definition specific to this permit? The definition of "surface waters" is the same that is in the Federal permit and the same as is currently in the VPDES regulation. That is why we are reluctant to make changes to the definition. That doesn't, however, prevent us from putting clarifying language into guidance and fact sheets. Staff probably needs to have a discussion with DCR to try to clarify this definition and interpretation.
- The group discussed a court decision (Rapanos vs. United States) related to an interpretation of "what are surface waters"; "what waters of the United States are"; and "what are navigable waters". It is an interpretation of what areas the CORPS and EPA

have jurisdiction over. It references "ditches" and "wetlands adjacent to those" and who has jurisdiction. The issue of roadside ditches is an ongoing battle – the CORPS normally does not take jurisdiction over roadside ditches. Additional review of this decision is needed to determine its impact on state programs, if any, and any updates on EPA's interpretation of this will be forwarded to the group when it is available. It was noted that there was "Ditch Guidance" that was used by the state to make this determination – it is used in the VWP program.

- It sounds like what we have decided is that stormwater ponds are considered surface waters and are under the permit and count toward the acreage totals. Yes.
- It is likely that "ditches" may come out the same way, but staff will look at other available program guidance to see if there is a different interpretation that needs to be considered. We would probably not change the definition but would address in guidance. EPA didn't change their definition either; they just issued a 40 page guidance document.

- Proposed changes to the definition of "Target pest": Correct terminology.

"Target pest" means the organism toward which ~~pest control measures~~ pest management measures are being directed.

5. **PGP Regulation Review by Section - Discussion Topic: Authorization to discharge (DEQ - 9VAC25-800-30.B):** 9VAC25-800-30.B lists four use categories. Some of the wording was taken from the EPA PGP use categories. These categories included:

- 9VAC25-800-30.B.1: This is similar to what is found in the EPA PGP 1.1.1. They do not use the phrase "but are not limited to". They do say that "in this category are mosquitoes and black flies". But they did add insects into their animal pest control category found in #3. The use of the term "includes" usually means that it is "not exclusive", so the phrase "but are not limited to" is probably not needed.

"Mosquito and other flying insect pest control – to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include~~, but are not limited to,~~ mosquitoes and black flies.

- 9VAC25-800-30.B.2: This use category has been changed to reflect the revisions made in the EPA PGP. EPA doesn't use the "invasive" or "nuisance" but relies on the definition of "pest". EPA also refers to "and at water's edge, including ditches and/or canals".

"Weed~~, algae, and pathogens~~ and algae pest control – to control ~~invasive or other nuisance~~ weeds, algae, and pathogens that are pests in surface waters.

- 9VAC25-800-30.B.3: EPA does not use the term "invasive" here in their PGP so it has been removed. The EPA PGP uses the phrase "and at water's edge" instead of "in surface waters". The EPA PGP includes examples in this use category which is consistent with the use of examples in the other use categories.

"Animal pest control – to control ~~invasive or other~~ animal pests in surface waters. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.

- The TAC's discussions about this use category included the following:
  - What pathogens is an animal pest? Pathogens are microscopic things.
  - Maybe they meant to say "vector".
  - The changes proposed to the definition of "pests" by DGIF were discussed. When you add these examples in the "animal pest control" use category that gets worrisome. The wording "otherwise protected under federal or state laws" was of concern. The suggested wording is provided below. The TAC agreed to the revisions proposed to the definition of "pest".

"Pest" means…Any organism classified by state or federal law or regulation as endangered~~,~~ or threatened, or any organism otherwise protected under federal ~~or state laws~~ law shall not be deemed a pest for the purposes of this chapter.

  - The addition of this example in this use category raises other concerns and issues. There are lots of species of fish and mollusks that, although they are not "listed", are threatened or endangered in some way. The suggestion was to remove these examples. This doesn't give anyone the authority to kill anything that is not a pest. No one has the authority to violate state law. The intent is to not bring to attention to things that might be issues between DGIF; VDACS and DEQ related to wildlife protection. We will need to work to resolve any gaps in regulations that there might be. It is not critical that examples be included. The TAC agreed to the removal of the examples.

"Animal pest control – to control ~~invasive or other~~ animal pests in surface waters.

6. **PGP Regulation Review by Section - Discussion Topic: Annual Treatment Area Thresholds (DEQ - 9VAC25-800-30.C & Table 1):** Staff went over the changes proposed for this section of the regulations.

- Proposed changes to 9VAC25-800.C: Previously it was up to the operator as to how the treatment area threshold was calculated. The addition of the phrase "calendar year" removes any question about whether the operator should base the threshold numbers on annual or calendar year. EPA defines 'annual treatment area threshold' as a calendar year.

C. Operators applying pesticides are required to maintain a pesticide discharge management plan (PDMP) if they exceed the annual calendar year treatment area thresholds in Table 1 of this subsection:

- Proposed changes to 9VAC25-800.C Table 1: As per the TAC's request, examples of annual threshold acreages for states adjacent to Virginia have been added to the table for discussion purposes.

Table 1. Annual Treatment Area Thresholds

Pesticide Use	Annual Threshold
Mosquitoes and Other Flying Insect Pests	6400 acres of treatment area 15,000 NC adulticides only multiple apps to the same added together to determine threshold WVA, MD same as VA DE – no acreages requirements Permit applies Apply to restricted use applications, commercial for hire and not for hire although definition of 'operator' is the same as ours PA same as VA for 'other entities' but the following are required to submit NOI regardless of acreage: - Federal and State agencies with a responsibility to control mosquitoes for public health, nuisance control, and animal welfare - Mosquito control districts, or similar pest control districts
Weed, Algae, and Pathogen Control: - In Water - At Water's Edge	 80 acres of treatment area[1] 1,000 NC 20 linear miles of treatment at water's edge[2] 200 NC WVA, MD same as VA PA see above
Animal Pest Control: - In Water - At Water's Edge	 80 acres of treatment area[1] 200 NC WVA, MD same as VA PA see above 20 linear miles of treatment area at water's edge[2] 200 NC WVA, MD same as VA PA see above
Forest Canopy Pest Control	6400 acres of treatment area 10,000 NC WVA, MD same as VA PA see above
Intrusive Vegetation Control NC	500 linear miles NC
Utility Transmission and Distribution Line Vegetation Control NJ	20 miles NJ

- It was noted that NC said the following about how they came up with their "Mosquito and Other Flying Insect Pests" numbers: "Our pesticide section at the Dept. of Agriculture did a survey of the people operating in the various use patterns covered by the permit. We found that there was a distinct break point between the big guys and the mom and pop operations and that we could actually set the thresholds fairly high which we did and still cover a majority of the acres and miles that were being sprayed."

- It was noted that the NC definition of "surface waters" was much broader than that used in Virginia. It basically covers everything.
- For the "Weed, Algae, and Pathogen Control" use category – EPA does not use the term "At Water's Edge" in the table, but uses it in the pesticide use categories (mosquito, weed, animal, forest canopy) and the definition of annual treatment threshold. Staff noted that if you are spraying a ditch to get rid of vegetation in that ditch and the ditch is considered surface waters then it doesn't matter how far you are from the edge that counts towards your threshold total. If an applicator is doing a "terrestrial application" and by chance there is some spray-drift that gets into the water that does not count towards your threshold total.
- In EPA's definition of weed and algae pest control they use the term "at water's edge".
- Related to the "Forestry Canopy Pest Control" use category – Do we need to include a footnote on how to calculate forestry acres? The TAC didn't find a need to include this kind of footnote.
- Staff has had questions about an "Intrusive Vegetation Control" use category – Do we need to include this as a use in our PGP? The TAC didn't feel that this category would be needed.
- Staff has had questions about a "Utility Transmission and Distribution Line Vegetation Control use category – Do we need to include this as a use in our PGP? The TAC didn't feel that a separate category was needed.
- It was noted that for the utility industry there are two types of applications, one of which is "aerial", where you really can't control the application of pesticides precisely except for larger bodies of water. You can't avoid all of the little streams and creeks that may be in the right-of-way areas. The other type of application would be ground-level backpack spraying that can be controlled fairly precisely. This type of application is essentially classified as "terrestrial applications". Utilities normally exclude these types of terrestrial applications from calculation of threshold numbers since it can be controlled adequately enough so that it is not getting in the water. A question was raised as to where utilities fall under the existing use categories. EPA had indicated that the application of pesticides in right-of-way areas would be considered as being in the "weed and algae" category. The utility industry thinks that this type of application falls more into the "forest canopy" use category. The practice looks just like spraying a canopy or a forest, but the utility hopes that there is not a forest in the right-of-way. You are essentially dealing with an in-between growth (low growth species) not big forestry canopy coverage.
- Staff has worked with forestry over the past year and reached a cut-off point that, for juvenile stands, they can avoid surface water, and they can see where there is surface water, so therefore they can avoid contact and does not count towards their threshold levels. For large canopy forests the acreage does count towards that calculation.
- It was noted that the Utility Industry had asked EPA for a separate use category to cover the spraying of utility rights-of-way, but EPA refused to include one. It was noted that the state of Ohio uses 6 different use categories. It was suggested that the threshold levels used in New Jersey for utility rights-of-way is much too low to use in Virginia.
- Could the application of pesticides to Utility Rights-of-way fit into one of the existing 4 use categories? It was suggested that another category would require a major change in the regulation because of the cross references contained in the regulation.
- It was suggested that the 4th use category found at B 4 (Forest canopy pest control) could be revised to delete the word "canopy". This would make the use category broader. The use category could be reworded as follows:

4. Forest ~~canopy~~ pest control – application of a pesticide to the forest canopy or utility transmission right-of-ways and distribution lines to control population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.

- It was suggested that some wording relating to the "aerial application of pesticides" might clarify the category. Staff noted that EPA had taken the word "aerial" out of this use category in their PGP. Do we need to put the word "aerial" back into the regulation for this use category?
- Staff noted that the intent of the permit is to make sure that where you are applying pesticides that will unavoidably be applied over, and deposited to, surface waters you would need to have coverage under this permit. Any type of activity that is doing that needs to have permit coverage. Any activity where the application of pesticides will unavoidably be applied over and deposited to surface waters, you need to meet the requirements and have coverage under this permit. Another option for a revision of this use category might be:

4. Forest ~~canopy~~ pest control – application of a pesticide ~~to the forest canopy~~ to control population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.

- This would include "forest canopy" applications as well as a number of other activities related to forest pest control. This would make the use category broader. Drift and terrestrial applications would not be included in this use category. Power companies and utilities would fall under this category. This might provide a better fit then the "weed and algae" use category. Staff worked on the use category wording and presented the following to the TAC:

4. Forest ~~canopy~~ pest control – application of a pesticide to the forest ~~canopy~~ to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water. Unavoidable deposition of pesticide residue to surface waters includes aerial forest canopy pest control or utility transmission or distribution line pest control.

- Proposed changes to 9VAC25-800.C Table 1 – Footnote 1: The TAC had commented that for larger bodies of water that you don't know how many times you will need to treat.

[1]Calculations include the area of the application made to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a 10 acre site is counted as 20 acres of treatment area.

- Proposed changes to 9VAC25-800.C Table 1 – Footnote 2: Changes are proposed that will

make footnotes 1 and 2 the same type of calculation, i.e., count each of the application acreages). A ditch is just a linear feature so you don't have to count both sides of the ditch.

[2]Calculations include the linear extent of the application made along the water's edge adjacent to (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity or area ~~only once~~ as a separate activity. For example, ~~treating both sides of a 10 mile ditch twice a year is equal to 10 miles of treatment area~~ applying pesticides twice a year to a 1 mile linear feature (e.g. ditch) equals 2 miles of treatment area regardless of whether one or both sides of the ditch are treated. Applying pesticides twice a year along 1 mile of lake shoreline equals 2 miles of treatment area.

7. PGP Regulation Review by Section - Discussion Topic: Authorization to Discharge (9VAC25-800-30.D.1):

A question was raised regarding the language in 9VAC25-800-30.D.1 - The TAC asked the meaning of the regulation language - Staff noted that this was to have in place a mechanism to be able to issue an individual VPDES Permit for the "application of pesticides" even though it was unlikely that would ever occur.

D. An operator's discharge resulting from the application of pesticides is not authorized under this permit in the event of any of the following: 1. The operator is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation…

8. PGP Regulation Review by Section - Discussion Topic: Authorization to Discharge (9VAC25-800-30.E):

Staff noted that this section would need to be revised to reflect the effective date of the new PGP.

E. Discharge authorization date. Operators are not required to submit a registration statement and are authorized to discharge under this permit immediately upon the permit's effective date of ~~October 31, 2011~~ January 1, 2014.

9. PGP Regulation Review by Section - Discussion Topic: Authorization to Discharge (9VAC25-800-30.G):

Staff noted that this section would need to be revised to reflect that this would be a 5-year permit. The TAC noted that the expiration date for the 5-year permit should be 2018 instead of 2019. Staff noted that was correct and would make the change.

G. Continuation of permit coverage. 1. This general permit shall expire on ~~December 31, 2013~~ December 31, ~~2019~~2018, except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit…

10. PGP Regulation Review by Section - Discussion Topic: General Permit (9VAC25-800-60):

Proposed changes to the General Permit Section of the PGP (9VAV25-800-60) include the following:

General Permit No.: VAG87
Effective Date: ~~October 31, 2011~~ January 1, 2014
Expiration Date: ~~December 31, 2013~~ December 31, ~~2019~~2018

- The TAC noted that the expiration date should be 2018 to reflect a 5-year permit period.

9VAC25-800-60, Part I A 1: Change in terminology to reflect usage in EPA PGP – Replace phrase "site specific control measures" with "pest management measures".

1. Technology-based effluent limitations. To meet the effluent limitations in this permit, the operator shall implement ~~site specific control measures~~ pest management measures that minimize discharges of pesticides to surface waters.

9VAC25-800-60, Part I A 1 a: Addition of language to clarify the term "operator".

a. Minimize pesticide discharges to surface waters. All operators who perform the application of pesticides or who have day to day control of applications shall minimize the discharge of pollutants resulting from the application of pesticides, and:

9VAC25-800-60, Part I A 1 a (1): Staff noted that the EPA PGP states: "To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task." The Staff posed the following to the TAC: Do we want to say: "Use the label rates and ~~optimum~~ proper frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;"? The TAC indicated that the language should remain as it is currently written:

(1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;

9VAC25-800-60, Part I A 1 a (2) & (3): Staff noted that these paragraphs from the VA PGP are from the VDACS regulations. The EPA PGP says this: "Maintain pesticide application equipment in proper operation condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges." It was decided to leave the original regulation text in place for these paragraphs.

9VAC25-800-60, Part I A 1 a (4): Staff noted that the EPA PGP contains this additional requirement for "assessment of weather conditions". The question posed was: "What should we replace the phrase 'federal requirements' with? Should we reference label requirements?

(4) Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

- The TAC decided that the phrase "all applicable federal requirements" should be replaced with "all product label requirements". It doesn't hurt to include it.

(4) Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all ~~applicable federal~~ FIFRA Product Label requirements.

9VAC25-800-60, Part I A 1 b: Staff noted that the EPA PGP does not use the term "Integrated Pest Management (IPM)". The previous TAC discussions were to make it clear who implements the IPM. In this suggestion, it is the decision maker. It seems like the person who decides to make, or hires someone to do the pesticide application, should go through the decision process. Some decision makers will know what an IPM is. Others, like homeowners, will have to continue to be educated. Another idea was to make this optional or operators "shall consider" use of IPM. The EPA PGP has the operators who submit NOIS as the ones who do IPM (the larger operators.) Staff noted that a comment had also been received which suggested that the phrase "to the extent possible" be inserted to qualify the "consideration of integrated pest management practices". There may be need to clarify which "operator" is responsible. Proposed changes include the following:

b. Integrated pest management (IPM) practices. The operator with control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions, shall ~~implement~~ to the extent possible consider integrated pest management practices to ensure that discharges resulting from the application of pesticides to surface waters are minimized…

- The TAC discussed the IPM and PDMP documents. It was noted that it is difficult to develop a PDMP for operators who make applications to multiple sites to make a cohesive plan to apply to all of the sites; it is almost like you need to have an individual plan for each site. Can it be made more general? You don't have to use that template – it is just provided as an example. There is no requirement to have a specific IPM for each site within your threshold. As long as you have one IPM plan for all of your activities and one PDMP for all of your activities that is adequate. The PDMP should consider all of your sites. It is almost like a standard operating procedure manual for your business. Narrow it down to your area of work.
- It was noted that some operations are focused on the program level that describes how you would do integrated pest management by mechanical and chemical means. Normal business records would have the more site specific information about a particular site. Maps of service territories could be used to indicate treatment areas.
- PDMPs are essentially "operating procedures" based on specific conditions.

9VAC25-800-60, Part I A 1 b (1): These pesticide use definitions are from the EPA PGP (1.1.1). The phrase "but are not limited to" is not used in the EPA PGP. Insects are included in animal pest control in the EPA PGP.

(1) Mosquito and other flying insect pest control. This subpart applies to discharges resulting from the application of pesticides to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.

9VAC25-800-60, Part I A 1 b (1) (a): Staff asked the TAC whether we should keep language referencing the operator as the decision maker.

(a) Indentify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

9VAC25-800-60, Part I A1 b (1) (a) (i): Proposed changes:

(i) Identify target ~~mosquito or flying insect~~ pests;

9VAC25-800-60, Part I A 1 b (1) (a) (ii): Proposed changes:

(ii) Establish densities for ~~larval and adult mosquito or flying insect~~ pest populations or identify environmental conditions, either current or based on historical data, to serve as action thresholds for implementing pest management ~~strategies~~ measures;

9VAC25-800-60, Part I A 1 b (1) (a) (iii): Proposed changes to accommodate insertion of additional items in the list.

(iii) Identify known breeding sites for source reduction, larval control program, and habitat management; ~~and~~

9VAC25-800-60, Part I A 1 b (1) (a) (iv): Proposed changes:

(iv) Analyze existing surveillance data to identify new or unidentified sources of ~~mosquito or flying insect~~ pest problems as well as sites that have recurring pest problems~~.~~; and

9VAC25-800-60, Part I A 1 b (1) (a) (v): Proposed addition of item:

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in Part I A 1 b (1) (a) (Identify the problem).

9VAC25-800-60, Part I A 1 b (1) (b): The phrase "including a combination of these management options" has been added from the EPA PGP. Staff noted that the EPA PGP does not include the term "pest resistance". Proposed changes:

(b) Pest Management Options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective ~~means of~~ pest management measures that minimize discharges resulting from application of pesticides to control mosquitoes or other flying pests. In developing these pest management options, including a combination of these management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

9VAC25-800-60, Part I A 1 b (1) (c) (i): Proposed changes from the EPA PGP:

(i) Conduct larval or adult surveillance ~~or assess~~ in an area that is representative of the pest problem or evaluate existing larval surveillance date, environmental conditions ~~that can no longer be tolerated based on economic, human health, aesthetic, or other effects prior to each pesticide application to~~, or data from adjacent areas prior to each pesticide application to assess the pest management area and to determine when the action ~~thresholds are~~ threshold is met ~~that necessitate the need for pest management~~;

9VAC25-800-60, Part I A 1 b (1) (c) (ii): Proposed deletion:

~~(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area prior to each pesticide application to identify whether existing environmental conditions support development of pest populations and are suitable for control activities;~~

9VAC25-800-60, Part I A 1 b (1) (c) (iii); (iv); and (v): Renumber to (ii); (iii); and (iv) respectively to account for deletion of original item (ii).

9VAC25-800-60, Part I A 1 b (2): Revised based on the pesticide use definitions from the EPA PGP (1.1.1). Also the EPA PGP does not use the term "invasive". Instead of the term "surface waters", the EPA PGP says "and at water's edge, including ditches and/or canals". Proposed revisions:

(2) Weed ~~, algae, and pathogen~~ and algae pest control. This subpart applies to discharges resulting from the application of pesticides to control ~~invasive or other nuisance~~ weeds, algae, and pathogens that are pests in surface waters.

9VAC25-800-60, Part I A 1 b (2) (a) (i): Proposed revisions:

(i) Identify target ~~weed and algae~~ pest;

9VAC25-800-60, Part I A 1 b (2) (a) (ii): Proposed revisions:

(ii) Identify areas with ~~weed, algae, or pathogen~~ pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

9VAC25-800-60, Part I A 1 b (2) (a) (iii): Proposed revisions:

(iii) Identify possible factors causing or contributing to the ~~weed or algae~~ pest problem (e.g., nutrients, invasive species, etc); and

9VAC25-800-60, Part I A 1 b (2) (a) (iv): Staff noted that the EPA PGP says "Establish any pest- and site-specific action threshold, as defined in Appendix A, for implementing… (The next part which is Pest Management). Proposed revisions:

(iv) Establish past or present ~~weed, algae, or pathogen~~ pest densities to serve as action thresholds for implementing pest management strategies.

9VAC25-800-60, Part I A 1 b (2) (b): Staff noted that the EPA PGP includes the phrase "for each pest management area" to quantify the phrase "in developing these pest management strategies" found in this section. Proposed revisions:

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective ~~means of~~ pest management measures that minimize discharges resulting from application of pesticides to control ~~weeds, algae, or pathogens~~ pests. In developing these pest management ~~strategies~~ measures, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness;

9VAC25-800-60, Part I A 1 b (2) (c): Proposed revisions:

(c) Pesticide use. If a pesticide is selected to manage ~~weeds, algae, or pathogens~~ pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

9VAC25-800-60, Part I A 1 b (2) (c) (i): Proposed revisions:

(i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and

9VAC25-800-60, Part I A 1 b (3): The EPA PGP (1.1.1) uses the phrase "in water and at water's edge" instead of "surface waters". Staff suggested the addition of examples of "animal pests". Proposed revisions:

(3) Animal pest control. This subpart applies to discharges resulting from the application of pesticides to control ~~invasive or other~~ animal pests in surface waters. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.

- A concern was raised over the inclusion of specific animal pests examples. The group recommended that the examples not be included so the section would read:

(3) Animal pest control. This subpart applies to discharges resulting from the application of pesticides to control ~~invasive or other~~ animal pests in surface waters.

9VAC25-800-60, Part I A 1 b (3) (a) (i): Proposed revisions:

(i) Identify target ~~animal~~ pests;

9VAC25-800-60, Part I A 1 b (3) (a) (ii): Proposed revisions:

(ii) Identify areas with ~~animal~~ pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

9VAC25-800-60, Part I A 1 b (3) (a) (iii): Staff noted that the EPA PGP says "Establish any pest- and site-specific action threshold, as defined in Appendix A, for implementing… (The next part which is Pest Management.) Proposed revisions:

(iii) Identify possible factors causing or contributing to the problem (e.g., nutrients and invasive species); and

9VAC25-800-60, Part I A 1 b (3) (a) (iv): Note that the EPA PGP says "in the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet this requirement". No revisions proposed.

9VAC25-800-60, Part I A 1 b (3) (b): Correction of terminology. Proposed revisions:

(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, the operator shall select and implement, for each pest management area, efficient and effective ~~means of~~ pest management measures that minimize discharges resulting from application of pesticides to control animal pests. In developing these pest management ~~strategies~~ measures, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

9VAC25-800-60, Part I A 1 b (4): Punctuation errors and terminology correction. Proposed revisions:

(4) Forest canopy pest control. This subpart applies to discharges resulting from the application of pesticides to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface ~~water~~ waters.

9VAC25-800-60, Part I A 1 b (4) (a) (ii): Correction of terminology. Proposed revisions:

(ii) Establish target pest densities to serve as action thresholds for implementing pest management ~~strategies~~ measures; and

9VAC25-800-60, Part I A 1 b (4) (a) (iii): Correction of terminology. Proposed revisions:

(iii) Identify current distribution of the target pest and assess potential distribution in the absence of ~~control measures~~ pest management measures.

9VAC25-800-60, Part I A 1 b (4) (b): Correction of terminology. Proposed revisions:

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective ~~means of~~ pest management measures that minimize discharges resulting from application of pesticides to control forestry pests. In developing these pest management ~~strategies~~ measures, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

9VAC25-800-60, Part I A 2: Staff noted that the proposed revision would help to clarify this requirement because the discharge begins with the 'pesticide residue' which is the pollutant after the pesticide is no longer providing any pesticidal benefits. Proposed revisions:

2. Water quality-based effluent limitations. The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards for any discharges authorized under this permit, with compliance required upon beginning such discharge.

9VAC25-800-60, Part I B 1 a, b, and c: The EPA PGP does not have this as a monitoring requirement. These are similar to technology based limits anyway. Staff proposes to delete these subsections and renumber the remaining materials in the subsection accordingly.

9VAC25-800-60, Part I B 2: Staff noted that the TAC in their previous meeting had preferred the VA PGP wording for "visual monitoring". Both the EPA and VA PGP visual monitoring requirements are for all operators. This section will be renumbered to reflect the deletion of material. Staff noted that this is the same material that is included in the EPA PGP but is presented in a different order (it is the same order as the EPA original PGP). Staff also noted that this requirement didn't have a lot of teeth since it says "when feasibility and safety allow".

9VAC25-800-60, Part I C: Replacement of the term "control measure" with "pest management measures". An attempt was made to make it simpler. Staff noted that these changes may result in some changes to the template to be consistent. Proposed revisions:

…The PDMP does not contain effluent limitations; the limitations are contained in Parts I A 1 and I A 2 of the permit. The PDMP documents how the operator will implement the effluent limitations in Parts I A 1 and I A 2 of the permit, including the evaluation and selection of ~~control measures~~ pest management measures to meet those effluent limitations and minimize discharges. In the PDMP, the operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If other documents are being relied upon by the operator to describe how compliance with the effluent limitations in this permit will be achieved, such as a pre-existing integrated pest management (IPM) plan, a copy of any portions of any documents that are being used to document the implementation of the effluent limitations shall be attached to the PDMP. The ~~control measures~~ pest management measures implemented must be documents and the documentation must be kept up to date.

9VAC25-800-60, Part I C 1 a: Revised punctuation. Proposed revisions:

a. Pesticide discharge management team~~.~~;

9VAC25-800-60, Part I C 1 b: Reworded to match EPA's new PDMP language. Proposed revisions:

b. ~~Pest management area description.~~ Problem Identification;

9VAC25-800-60, Part I C 1 c: Reworded to match EPA's new PDMP language. Proposed revisions:

c. ~~Control measure description.~~ Pest Management Options Evaluation;

9VAC25-800-60, Part I C 1 d: Reworded to match EPA's new PDMP language. Proposed revisions:

d. ~~Schedules and procedures.~~ Response Procedures;

9VAC25-800-60, Part I C 1 d (1): Original language deleted and replaced to match EPA's new PDMP language. Proposed replacement language:

(1) Spill Response Procedures

9VAC25-800-60, Part I C 1 d (2): Original language deleted and replaced to match EPA's new PDMP language. Proposed replacement language:

(2) Adverse Incident Response Procedures

9VAC25-800-60, Part I C 1 e: Deleted.

9VAC25-800-60, Part I C 1 f: Renumbered to "e" to account deletion of previous text.

9VAC25-800-60, Part I C 2 d: Staff noted that EPA had taken this item out of their PGP.

d. Persons responsible for pesticide applications.

9VAC25-800-60, Part I C 3: Revision of heading to reflect headings used in EPA's PDMP language. Proposed revisions:

3. ~~Pest management area description.~~ Problem Identification. The operator shall document the following:

9VAC25-800-60, Part I C 3 a: Clarification of language. Proposed revisions:

a. Pest problem description. ~~A description of~~ Describe the pest problem at the pest management area ~~shall be documented to include~~, including identification of the target pest or pests, source or sources of the pest problem, and source or sources of data used to identify the problem in Parts I A 1 b (1), I A 1 b (2), I A 1 b (3), and I A 1 b (4).

9VAC25-800-60, Part I C 3 b: Staff noted that this language is not exactly like EPA's PGP but is much simpler. Clarification of language – Proposed revisions:

b. Action thresholds. ~~The~~ Describe the action thresholds for the pest management area ~~shall be described~~, including ~~a description of~~ how they were determined.

9VAC25-800-60, Part I C 3 c: Clarification of language – Proposed revisions:

c. General ~~service area~~ location map. ~~The plan shall include~~ Include a general ~~service area~~ location map that identifies the geographic boundaries of the ~~service~~ area to which the plan applies and location of major surface waters.

9VAC25-800-60, Part I C 3: Staff noted that the EPA PGP contains another requirement for T3 and Impaired Waters Identification which are not included in the VA PGP.

9VAC25-800-60, Part I C 4: Proposed revision: Deletion of current text. Replacement with the following proposed text: The TAC recommended inclusion of the term "integrated pest management plan" because what is being described here is IPM.

4. Integrated Pest Management Plan Options Evaluation: Operators must document the evaluation of the integrated pest management plan options, including combination of the pest management options to control the target pest or pests. Pest management options include the following: No action; prevention; mechanical or physical methods; cultural methods; biological control agents; and pesticides. In the evaluation, Decision-makers must consider the impact to water quality; impact to non-target organisms; feasibility; cost-effectiveness; and any relevant previous Pest Management Measures.

9VAC25-800-60, Part I C 5: Proposed revision: Deletion of current text. Replacement with the following proposed text:

5. Response Procedures. Document the following procedures in the PDMP:

Old 9VAC25-800-60, Part I C 5 b (1) – New 9VAC25-800-60, Part I C 5 a: Proposed revision:

~~(1)~~a. Spill response procedures. At a minimum the PDMP must have:

Old 9VAC25-800-60, Part I C 5 b (1) (a) – New 9VAC25-800-60, Part I C 5 a (1): Proposed revisions:

~~(a)~~(1) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to surface waters. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

Old 9VAC25-800-60, Part I C 5 b (1) (b) – Renumbered to 9VAC25-800-60, Part I C 5 a (2).

Old 9VAC25-800-60, Part I C 5 b (2) – Renumbered to 9VAC25-800-60, Part I C 5 b.

Old 9VAC25-800-60, Part I C 5 b (2) (a) – Renumbered to 9VAC25-800-60, Part I C 5 b (1).

Old 9VAC25-800-60, Part I C 5 b (2) (b) – Renumbered to 9VAC25-800-60, Part I C 5 b (2).

Old 9VAC25-800-60, Part I C 5 b (3) – Deleted.

9VAC25-800-60, Part I C 6: Staff noted that EPA had moved the signatory requirements in their PGP into Part II (which is where they are in other general permits).

9VAC25-800-60, Part I C 7 a: Staff noted that the VA PGP uses the phrase "as soon as possible thereafter" to quantify when changes to the PDMP must be made. The EPA PGP says they must be made within 90 days.

9VAC25-800-60, Part I C 7 a: Related to "operator review of the PDMP" – Staff noted that EPA requires calendar reporting for decision makers but does not require a yearly review of the PDMP. Proposed revisions – deletion of text:

~~The operator shall review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area.~~

9VAC25-800-60, Part I C 7 b: Staff noted that the EPA's PGP language related to "PDMP availability" was more complicated than what is included in the VA PGP. No proposed revisions.

9VAC25-800-60, Part I D: Staff noted that the "corrective action" requirements contained under "special conditions" is for all operators. Staff noted that this is not actually happening. One of the TAC members noted that they had to report a violation (a fish kill) and that there was not a clear process among the regions within DEQ for reporting and follow-up.

9VAC25-800-60, Part I D 1 a: Replaced the term "control measures" with "pest management measures". Proposed revisions:

a. Situations requiring revision of ~~control measures~~ pest management measures. If any of the following situations occur, the operator shall review and, as necessary, revise the evaluation and selection of ~~control measures~~ pest management measures to ensure that the situation is eliminated and will not be repeated in the future:

9VAC25-800-60, Part I D 1 a (2): Replaced the term "control measures" with "pest management measures". Proposed revisions:

(2) The operator becomes aware, or the board concludes, that the ~~control measures~~ pest management measures are not adequate or sufficient for the discharge of pollutants to meet applicable water quality standards;

9VAC25-800-60, Part I D 1 a (3): Replace the term "requirements" with "technology-based effluent limitation". Proposed revisions:

(3) Any monitoring activities indicate that the operator failed to meet the ~~requirements of~~ technology-based effluent limitations in Part ~~1~~ I A 1 a of this permit;

9VAC25-800-60, Part I D 1 a (4): Replaced the term "control measures" with "pest management measures". Proposed revisions:

(4) An inspection or evaluation of the operator's activities by DEQ, VDACS, EPA, or a locality reveals that modifications to the ~~control measures~~ pest management measures are necessary to meet the non-numeric effluent limits in this permit, or

9VAC25-800-60, Part I D 1 b: Replaced the term "control measures" with "pest management measures". Proposed revisions:

b. Corrective action deadlines. If the operator determines that changes to the ~~control measures~~ pest management measures are necessary to eliminate any situation identified in Part I D 1 a, such changes must be made before the next pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.

9VAC25-800-60, Part I D 1 c: Staff noted that the EPA PGP doesn't have the corrective action documentation requirements that are included in the VA PGP; it rather identifies a liability scenario and the possible imposition of additional requirements and identifies consideration of enforcement responses.

9VAC25-800-60, Part I D 2 b (3): The TAC discussed the wording of this exclusion from reporting of adverse incidents and suggested that the word "potential" be used to quantify the term "adverse incident". Proposed revisions:

(3) The operator receives notification of ~~an~~ a potential adverse incident but that notification and supporting information are clearly erroneous.

9VAC25-800-60, Part I D 2 b (4): Staff noted that the EPA PGP uses the phrase "on the FIFRA label" to quantify the phrase "potential targets". The TAC discussed the use of the FIFRA label reference and decided that it was not needed. It was noted that the "site" has to be on the FIFRA label, the pest doesn't. No changes proposed:

(4) An adverse incident occurs to pests that are similar in kind to pests identified as potential targets.

9VAC25-800-60, Part I D 4 b: Staff suggested changes to clarify the meaning of "operator" for the purposes of "recordkeeping and annual reporting". Proposed revisions:

b. Any operator ~~applying pesticides~~ performing the application of a pesticide or who has day-to-day control of the application and ~~exceeding~~ exceeds the annual application thresholds established in 9VAC25-800-30 C must also maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

9VAC25-800-60, Part I D 4 c: Staff noted that the VPDES Permit Regulation requires in 9VAC25-31-190 that "the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report, or application…" The VPDES Permit Regulation at 9VAC25-31-100 O says: "Recordkeeping…applicants shall keep all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed". The EPA PGP says three years from expiration. It was suggested that the difference in the time period for VDACS records retention (2 Years) and the DEQ Permit Regulation Requirements (3 Years) should be spelled out in guidance. Proposed revisions:

c. All required records must be assembled as soon as possible but no later than 30 days following completion of such activity. The operator shall retain any records required under this permit for at least three years from the date ~~that coverage under this permit expires~~ of the pesticide application. The operator shall make available to the board, including an authorized representative of the board, all records kept under this permit upon request and provide copies of such records upon request.

- It was noted that the difference in adverse incident reporting between DEQ and VDACS should also be spelled out in guidance.

11. Public Comment:

Bill Norris asked for public comment. There were no members of the general public in attendance. No public comment was given.

12. Other Topics or Comments from the TAC:

No additional topics or comments were brought up by the TAC members.

13. Distribution of Regulation Edits:

Bill Norris asked if the group felt like they needed to get back together as a group to discuss any additional changes made to the regulation or whether they could provide comments back via an email distribution. The TAC members decided that an additional meeting was not needed and that they could address their comments through emails. Bill Norris asked for TAC members to send any comments to him for inclusion.

14. Discussion of the use of "Dyes":

Staff and the TAC members discussed the "use of dyes". It was noted that there had been a set of comments that had been submitted following the last discussion of this topic by Kevin Tucker that had been routed to staff for review. Discussions included the following:

- Staff noted that they had received a pollution complaint about dyes being added to a pond for aesthetic reasons. Staff talked to VDACS regarding the product used and it was determined that it was not registered as a pesticide. It was just a product used to change the color of the pond, to make it bluer. Under the State Water Control Law, you cannot change the physical attributes of surface waters. A registered dye could be used for this purpose, but this product could not be used without being in violation of state law.
- It was noted that currently there is only one registered dye being used in the state, which is Aqua Shade. It is not a pesticide, but is a pond dye that is registered as a pesticide. It has an EPA registration number. Even though it is not a pesticide, they make pesticidal claims.
- A lot of the issue is what is the intent of the user? If it is the intent of the user to have blue water then it is not a pesticidal purpose. If the intent of the user is to put this product in the water to control a pest (the algae) then it is a pesticidal purpose and has to be a registered pesticide and used for that purpose.
- If a dye product is being marketed with the claim that it will shade out algae then it is making pesticidal claims and has to be registered as a pesticide. If the maintenance contracts wordings were changed to say that for aesthetic purposes the dye is being used to make a pond look pretty then it does not have to be registered as a pesticide. However, then the restrictions of the State Water Control Law come into effect regarding altering the physical attributes of surface water. The law states: "otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health or to animal or aquatic life or to the uses of such waters for domestic or industrial consumption or for recreation or other uses."
- Staff noted that in the past (prior to this PGP) they had received some complaints regarding different colored water - historically they had not taken any enforcement actions, they had just met with those involved regarding stopping the use of the product.
- Staff noted that if you are using the registered product then you are covered under the PGP for that one product.
- Staff noted that historically we have not gotten a lot of complaints about the use of dyes - most

are related to golf courses. We normally only hear about it or get complaints once it leaves the pond and gets into the streams.

- The State Water Control Law states that it is a violation to do this without a permit. The dye product has to be a registered pesticide to have coverage under the permit.
- The TAC noted that there would probably be additional input regarding this interpretation of the use of dyes that would be forwarded to staff for consideration.

ACTION ITEM: Staff will research the issue of the use of dyes further to determine how they will be addressed in the regulation.

15. Meeting Adjournment:

Bill Norris reminded the group that they should send any additional comments to him for consideration by the staff as they develop the final version of the amendments to the PGP.

The meeting was adjourned at approximately 12:30 P.M.