



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

SUBJECT: Technical Advisory Committee (TAC) Meeting to Discuss the 2024 Reissuance of 9VAC25-800, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting From the Application of Pesticides to Surface Waters

TO: TAC Members and DEQ Staff (listed below)

FROM: Peter Sherman, Office of VPDES Permits

DATE: April 26, 2022 (DRAFT)

A TAC meeting was held on April 15, 2022 at the DEQ PRO office, 4949-A Cox Rd., Glen Allen, VA 23060. The meeting, which was the first TAC meeting for this general permit reissuance, began at 10:00 am. Participants attending the meeting were:

<u>Name</u>	<u>Organization</u>
Judith Hinch	Citizen
Mark Eversole	VA Marine Resources Commission
Dean Cumbia	VA Dept. of Forestry
Corey Connors	VA Forestry Association
Randy Buchanan	VA Mosquito Control Association
Shannon Junior	Solitude Lake Management
Liza Fleeson Trossbach	VA Dept. Ag. & Consumer Services, Office of Pesticide Services
Allan Brockenbrough	DEQ - CO
Peter Sherman	DEQ - CO
Elleanore Daub	DEQ - CO

Information provided before the meeting included:

- Regulation with draft amendments, VPDES General Permit Regulation for Discharges Resulting From the Application of Pesticides to Surface Waters, 9VAC25-800
- Role of TAC overview
- TAC approval form.

Discussion

Department of Environmental Quality (DEQ) staff reviewed the agenda and presented information (10 slides) regarding the TAC and the exempt general permit/ regulation process, an overview of the Pesticide General Permit (VAG87), and initial changes.

DEQ indicated that VPDES general permits are published as regulations and noted that the Notice of Intended Regulatory Action (NOIRA) was published 9/27/2021 (there were no substantive comments in response to the NOIRA). At present, DEQ is hoping to present the proposed regulation at the fall 2022 State Water Control Board (SWCB) meeting, and the final regulation mid-2023. The public comment period and public hearing for the proposed regulation is expected to be during late fall 2022. The current general permit expires February 29, 2024.

DEQ briefly reviewed the *Role of the TAC* handout and reiterated that the role of the TAC is advisory, to assist DEQ in developing a draft regulation/ general permit, based on a range of perspectives, that is in the best interest of the Commonwealth as a whole.

DEQ provided an overview of the Pesticide General Permit. Key points included:

- Applicable to:
 - Operators who discharge to surface waters from the application of biological pesticides or chemical pesticides that leave a residue
 - For any of five use patterns:
 - Mosquito/ Flying Insects;
 - Weed/ Algae;
 - Animal Pests;
 - Forest Canopy Pests;
 - Intrusive Vegetation.
- Pesticide discharge does not include agricultural stormwater runoff or irrigation return flow.
- This general permit was developed in coordination with VDACS pesticide regulations (2VAC5-670 to 690).
- This general permit follows the framework of U.S. EPA's Pesticide General Permit, which was most recently reissued in 2021.
- This general permit does not require the submittal of a registration statement or notice of termination (it operates as a permit-by-rule, such that if an operator meets the applicability criteria, he or she must meet the permit requirements).
- Effluent limits (Part I A) focus on:
 - Minimizing pesticide discharges to surface waters;
 - Consider Integrated Pest Management (IPM) practices as practicable;
 - Evaluate/ select options: No action; Prevention; Mechanical/ physical; Cultural; Biological controls; Pesticide use.
- Discharges must meet water quality standards.
- Monitoring requirements (Part I B):
 - No discharge monitoring or discharge monitoring report is required;
 - Must conduct visual monitoring for adverse impacts during application, and during post application surveillance or efficiency check (if conducted).
- Pesticide Discharge Monitoring Plan (PDMP) requirements address larger applications (Part I C):

- Operators must develop and maintain a PDMP when discharges exceed specified annual treatment thresholds;
 - PDMP must include: PDMP Team; Problem identification; Pest management options evaluation; Response procedures; Signatures;
 - PDMP must be kept up to date.
- Special conditions (Part I D) address:
 - Corrective action;
 - Adverse incident reports;
 - Reportable spills;
 - Recordkeeping and
 - Annual reporting.
- Standard conditions (see Part II).

One participant asked what are “cultural” methods. Another participant explained these are behavioral practices that help reduce the pest problem, such as minimizing leaf litter in a pond or dumping standing water from containers.

DEQ reviewed the edits within the draft 2024 Pesticide General Permit. DEQ pointed out that we are proposing to add a definition of “pesticide discharges to surface waters” based on language EPA added to the 2021 federal pesticide general permit (see, <https://www.epa.gov/npdes/pesticide-permitting>). We are also proposing to amend the definition of pesticide residue to reflect changes EPA has made.

One participant asked about differences between the EPA pesticide general permit and DEQ’s permit. DEQ pointed out that the VPDES Pesticide General Permit does not require the submittal of a Notice of Intent (NOI)/ Registration Statement, and the VPDES permit includes five use patterns, whereas, the federal permit includes four. The additional category, intrusive vegetation control, was added in response to comments by state utilities. Nevertheless, the scope and requirements of the VPDES Pesticide General Permit are highly consistent with the federal general permit. Under the federal permit, NOIs are required for larger pesticide applications. In Virginia, the Department of Agriculture & Consumer Services, Office of Pesticide Services, has regulations and licensing and certification programs for pesticides, pesticide businesses, and pesticide applicators (see, 2VAC5-670 to 690; also see, <https://www.vdacs.virginia.gov/pesticides.shtml>). Based on the VDACS programs, DEQ has a list of registered pesticide applicators, so we have access to information regarding the entities that operate under this permit. In addition, some elements of the permit reflect VDACS requirements.

One participant pointed out that not requiring the submittal of an NOI makes a huge difference in allowing operators to address pest problems in a timely manner while still ensuring environmental protection. Applicators often don’t know in advance what they will need to treat, often they are reacting to a problem. Other states delay action by imposing a slow application/ approval process.

DEQ pointed out that the agency has attempted to not duplicate or contradict existing VDACS pesticide regulations with this general permit, and has incorporated VDACS requirements where appropriate.

One participant asked if recently passed Senate bill 657 (which removes certain permit matters from being presented to the SWCB) affects the Pesticide General Permit. DEQ responded that this general permit is a regulation, and regulations must still be presented to the SWCB for proposal and final approval.

DEQ reviewed other draft changes. The revised permit term will be March 1, 2024 – February 28, 2029. For animal pest control, we have added “cultural methods” as a method that must be evaluated when selecting pest management measures. This is based on the same change being made on EPA’s 2021 pesticide general permit. DEQ has also updated several links in the permit (including noncompliance reporting, which now can occur after business hours), and some regional office contact information.

One DEQ participant asked if the total maximum daily load (TMDL) language (9VAC25-800-30 D 3) should be made consistent with other VPDES general permits, which is simpler. DEQ will review this language and make any appropriate changes.

DEQ indicated that at this point further changes are not anticipated, however, EPA Region 3 staff (new to this review) will have an opportunity to review (90-day) the general permit and if they have questions about any aspect of the permit, including any differences from the federal pesticide general permit, DEQ will need to explain the basis for our permit requirements.

DEQ noted that the proposed permit/ regulation could be presented at the late August SWCB meeting. If it is not presented then, it would be presented at the December SWCB meeting.

Next steps include drafting and circulating a TAC meeting summary, posting that summary, and preparing documents to present at the SWCB meeting. If substantive issues arise, we could have another TAC meeting, however, at present there do not appear to be any issues that warrant meeting again. Following proposal, there is a 60-day public comment period and a public hearing, where comments and suggestions can be submitted to DEQ and will be considered. Notices are posted for each of these. As noted, EPA Region 3 also will have an opportunity to review the draft revisions and provide comments. So the general expected timetable at present is:

- Present revised Pesticide General Permit to SWCB for authorization of public comment period and public hearing – August 25, 2022;
- Public comment period and public hearing for the Pesticide General Permit – September-October 2022;
- DEQ considers and responds to comments, and finalizes revised general permit and supporting documents – January-March 2023;
- Present revised Pesticide General Permit to SWCB for final approval – Mid-2023.

One participant indicated she was interested in conducting further research. DEQ indicated that Mr. Sherman remains fully available to address questions or discuss aspects of the permit.

DEQ indicated that the fact sheet for the general permit has been updated to reflect the draft general permit/ regulation presented today to the TAC.

One participants asked if adverse incidents have been reported under the permit. DEQ is not aware of such reports (a general search in ECM did not identify any such reports), but will check with our compliance staff (including VPDES and Prep). The participant from VDACS indicated that VDACS requires and receives referrals for significant adverse incidents, and that she was not aware of big incidents such as fish kills (VDACS indicated that there are no known issues regarding this general permit). VDACS can track different types of complaints and can track those related to an aquatic pesticide application if needed. VDACS also can help provide information regarding pesticide certifications if EPA Region 3 has any questions. The general permit includes specific information regarding how to report and document any adverse incidents.

One participant noted that a fish-kill can occur due to low dissolved oxygen. She noted that different states use a range of approaches as to how aquatic pesticide use is regulated and permitted.

DEQ will keep TAC members informed of the schedule going forward. Please call or email Peter Sherman (peter.sherman@deq.virginia.gov) with questions. Thank you for your time and participation today