

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

**FINAL MEETING NOTES
TAC MEETING – WEDNESDAY, AUGUST 18, 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	Will Bullard - DOD	Bill Norris – DEQ CO
Fred Cunningham - DEQ	Pat Hipkins – VA Cooperative Extension (Alternate for P.L. Hipkins - VA TECH)	Carl Thomas – DEQ TRO
Tim DuBois - City of Hampton Public Works (Alternate for Joe Simmons)	Paul Howe – VA Forestry Association	Burt Tuxford - DEQ CO
Mike Elberfeld - City of Hampton	Tom Tracey – Virginia Turfgrass Council	
Amy Ewing - DGIF	Tom Warmuth – Cygnet Enterprises (Alternate for Sarah Miller – SEPRO)	
Liza Fleeson - VDACS	Joe Will – Southern State Cooperative (Alternate for Katie Frazier - VA Agribusiness Council)	
Katie Frazier - VA Agribusiness Council		
Melanie Frisch - Fort Belvoir		
Bill Gillette - Rock Springs Forestry, Inc.		
Todd Groh - VDOF		
Ron Harris - Newport News Waterworks		
Lloyd Hipkins - VA Cooperative Extension		
Shannon Junior - VA Lake Management (Alternate for Kevin Tucker)		
Whitney Katchmark – Hampton Roads PDC		
Larry Land - VACO		
Marcus Leeper – City of Newport News (Alternate for Ron Harris - City of Newport News)		
Peter McDonough - VA Golf Course Superintendent's Association		
Sarah Miller - SEPRO		
Mark VanDevender – Spotsylvania County		

NOTE: The following PGP TAC Members were absent from the meeting: Paul Clarke – DCR; Andrea Coron – VA PMA; Ron Harris – Newport News Waterworks; Gigi Meyer, VDOH; Joe Simmons – Chesapeake Mosquito Control; 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. He asked for introductions from TAC members and "Interested Parties" at today's meeting.

2. Notes from August 6, 2010 TAC Meeting (Bill Norris):

Bill Norris asked for any comments on or edits needed for the August 6, 2010 Pesticide GP TAC meeting notes. No edits or additions were suggested.

CONSENSUS: The TAC members agreed to the wording of the August 6, 2010 Pesticide GP TAC Meeting Notes.

ACTION ITEM: The notes will be posted as Final to Town Hall.

3. Follow-up from August 6, 2010 TAC Meeting (Bill Norris):

Bill Norris noted that after a conversation with Fred Cunningham regarding the action items from the August 6, 2010 Pesticide GP TAC meeting that all of the action items had been addressed in the new version of the draft general permit that the TAC members received via email and will be addressed during the review of the current version of the draft General Permit. He noted that there were copies of two versions of the draft permit available for use by the TAC today. There is a version of the draft GP that is dated 08/16/2010 (this is the version that was emailed to the TAC) and a version dated 08/17/2010 (this is essentially the same version but the strikethroughs have been deleted to make the draft more readable.)

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

Fred Cunningham noted that the staff had taken a step back and looked at the development of the general permit language from a practical standpoint. The approach was what can we put together to meet the terms of the required permit but doesn't go too far because of the potential changes that might be coming out of EPA as a result of comments made to their General Permit and because of pending legislation at the federal level. The ultimate goal is to still maintain the minimum requirements so that the permit will be approved by EPA. In summary, DEQ's current approach to meeting the minimum requirements so that the permit will be approved by EPA is to:

- Redraft our PGP to be a simplified short-term permit that expires mid-2013 (06/30/2013).
- Do not require anyone to submit a Registration Statement (RS) (NOI). Applicators would be automatically covered if they do any of the four (4) categories (no thresholds to calculate).
- Require the use of IPM practices, and the development a PDMP. Label requirements must be followed but are not effluent limits.
- Only require VDACS required records.
- Require corrective actions for adverse incidents, but only require the reporting of these adverse incidents and associated corrective actions annually.
- Modify the definition of "adverse incident" based on comments received.
- Begin development of a 5-year PGP after EPA issues their final PGP, with an effective date of 07/01/2013.
- Keep the TAC together (or even solicit additional members based on the final EPA GP) and use

the current draft GP as our starting point at that time.

Staff noted that what we need is a final PGP that is meaningful, not just something that was thrown together to meet a court-ordered EPA requirement.

The current schedule is:

- Final TAC Meeting – August 18, 2010
- August 27
 - Draft GP Information Sent to SWCB
- Sept 27 and 28
 - SWCB Authorize Draft Permit Regulation for Notice of Public Comment and Hearing (NOPC)
- October - November
 - NOPC with Public Hearing(s)
- DEQ will provide a copy of the Virginia Proposed General Permit before EPA finalizes their GP.
- EPA to finalize their General Permit by the end of 2010.
- No Later than February 8, 2011
 - SWCB Approval of Final Permit Regulation
- February 9
 - General Permit Filed with VA Register
- February 28
 - General Permit Published in VA Register
- No Later than April 10
 - General Permit Effective
 - End of Mandated Stay - Coverage Required
- Reconvene TAC to address development of a 5-year permit if the initial 2-year permit is approved by EPA.

The items identified and comments made included the following:

- Definition - "action threshold" – This is site specific. It was decided that it would be difficult and too inflexible if we try to say exactly who might make this decision or what the action threshold should be.

*“Action threshold” means...the proper timing of such actions. Action thresholds are **site specific** and part of integrated pest management decisions.”*

- Definition - “active ingredient” – This was clarified that this is an EPA function not VDACS.

*“Active ingredient” means any substance or group of structurally similar substances (if specified by **EPA**) that will prevent, destroy, repel or mitigate...”*

- Definition - “adverse incident” – This definition was revised based on TAC comments and comments made on the EPA GP from Crop Life America. In addition the use of the terms unusual and unexpected in the definition addresses TAC concerns that some of the labels acknowledge that adverse effects on non-target organisms are possible and accepted in registration standard. The definition does not recognize exposure and effect. The definition also now includes recognition of “semi-aquatic organisms that may spend part of their life cycle in water” and “wildlife” based on a recommendation from DGIF.

*“Adverse incident “means an incident... 1. A person or non-target organism has **likely** been exposed to a pesticide residue...”*

*The phrase “toxic or adverse effects” includes effects that occur within surface waters on non-target plants, fish or wildlife that are unusual or **unexpected** as a result of exposure to a pesticide residue...”*

- Definition - "Best management practices" – This definition was revised based on TAC comments. This definition also contains the phrase “for the purposes of this chapter” to acknowledge that the definition has been altered from that found in the VPDES permit regulation.

*“Best management practices” or “BMPs” means, **for the purposes of this chapter**, schedules of **activities**, prohibitions of practices, maintenance procedures, preventative practices (pre-emergent applications) **and** other management practices...”*

- Definition – “Commercial applicator-for-hire” – Deleted. Going to proceed using the EPA definition of “operator”.
- Definition – “Commercial applicator-not-for-hire” – Deleted. Going to proceed using the EPA definition of “operator”.
- Definition - “Control measure” - Revised based on previous TAC suggestions to include the phrase “in this permit” and to note that “cultural methods” are an example of non-chemical tactics. In addition the definition was changed to clarify that it is not “discharges of pesticides” but rather the “residues resulting from the application of biological pesticides” that are the subject of this general permit.

*“Control measure” means any best management...used to meet the effluent limitations **in this permit**...Additionally, control measures could include other actions, **including** non-chemical tactics (e.g. cultural methods)...eliminate discharges resulting from pesticide application **to surface water**...”*

- Definition - "Discharge of a pollutant" – This definition was revised to remove references to “Waters of the US”. The EPA General Permit uses the term “Waters of the US”. Most of the Virginia Draft General Permit uses the term “surface water” and NOT “Waters of the US”.
- Definition - “Establishment” – This definition has been deleted. All references to "establishment" have also been removed from the text of the general permit.
- Definition - “FIFRA” – This definition was added based on TAC comments.
- Definition - "For-hire applicator" – has deleted. The EPA definition of “operator” is being

used for all “applicator” categories that had been suggested during previous TAC discussions.

- Definition - “Impaired water” – This definition has been revised to clarify the last sentence.

*“Impaired water” or “water quality impaired water” or “water quality limited segment” means...and **impaired waters** for which a TMDL has not yet been approved or established.*

- Definition – “label” - The VDACS definition of "label" was added.
- Definition – “labeling” - The VDACS definition of "labeling" was added.
- Definition – “Non-target organisms” – The definition has been clarified based on TAC discussions.

“Non-target organisms” means any organisms that are not the target of the pesticide application.”

- Definition – “Operator” – The definition was revised to replace the term "entity" with the term "person". Also, the phrase “for purposes of this chapter” was also added. The definition was clarified to indicate that the operator may meet either or both of the criteria listed.

*“Operator” means for the purposes of this chapter, any **person** involved in the application of pesticide...1. The person has control over financing for...or 2. The person has day-to-day control of...”*

- Definition - “Person” – A definition of "person" was added from the VPDES Permit Regulation. The TAC discussed this definition. A recommendation was made that the definition needed to be revised to make it more specific and to include reference to federal, state and local governmental bodies. It was also noted that if needed that this could be clarified in guidance by stating that “governmental body” means federal, state and local governments”. It was recommended that the definition be revised to include this clarification:

*“Person” means, for the purposes of this chapter, an individual, corporation, partnership, association, a governmental body (**local, state, or federal governmental agency or employee thereof**), a municipality, a corporation, or any other legal entity.”*

- Definition - “Pest” – The VDACS definition of "pest" was added. An editorial correction to the definition was identified by the TAC.

*“Pest” means any deleterious organism that is...3. Any plant growing where not wanted and any plant part such as a **root**; or...”*

- Definition - “Pesticide” – The definition has been revised to match the wording of the current VDACS definition.

“Pesticide” means...3. Any substance which is intended to become an active ingredient

thereof.” “Pesticides that are used/applied shall only be those that are approved and registered for use by the **Virginia** Department of Agriculture and Consumer Services.”

- Definition - “Pesticide product” – The definition was revised according to TAC recommendations to add the phrase "active and inert ingredients."

*“Pesticide product” means a pesticide in the particular form (including **active and inert ingredients**, packaging...”*

- Definition – “Pesticide residue” – The definition has been revised based on TAC recommendations.

*“Pesticide residue” includes that portion of a pesticide application that **has** been discharged from a point source to surface waters...”*

- Definition – “Point source” – The definition as modified from the VPDES regulations has been added. The definition was altered based on TAC recommendation.

*“Point source means, **for purposes of this chapter**, any discernible...This includes biological pesticides...**or nozzle of a pesticide application device**. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.”*

- Definition – “Pollutant” – The definition as modified from the VPDES regulations has been added. It was noted that biological pesticide itself is a pollutant but chemical residue is a pollutant not the chemical itself.

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

- Definition – “Surface water” – The definition of "surface water" from the VPDES regulation has been added.
- Definition – “Treatment area” – The definition has been revised based on TAC comments. The examples that have been removed will become part of the guidance document that is being developed. The TAC recommended that the examples that are being proposed to be removed and placed in guidance should be put back into the definition as a way to eliminate any confusion related to what actually is a “treatment area”.

*“Treatment area includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits...**For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied.**”*

- Definition – “VDACS” - The definition of "VDACS" was added.

- Definition – “Wetlands” - The definition of "wetlands" was added.

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

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

- **9VAC25-800-20: Purpose; delegation of authority; effective date of permit.**

- Subsection C has been revised to reflect a “2-Year” permit period instead of the original “5-Year” permit.

“C. This general VPDES permit will become effective on April 10, 2011, and expire on June 30, 2013.”

- Staff noted that the 2-Year permit period is being proposed to get a permit mechanism in place while waiting for EPA to finalize their general permit. EPA will need to renew their period in 5-years. The 2-Year permit if approved by EPA will provide an off-set to the Virginia general permit and will therefore allow more time for DEQ to react to any future changes in the EPA requirements.
- Staff also noted that the current proposal is for the Virginia general permit to have no “registration statement” requirements so there would be no cost because there is no “filing” requirement.
- Staff also noted that they felt that the use of this “2-Year” permit is still protective of water quality; matches up with current VDACS requirements; fits the intent of the court-decision; and allows more time to digest any changes that EPA makes to the requirements based on comments received or legislative changes.
- Staff noted that we would be sending a copy of the draft general permit to EPA for review in late September or early October. The public comment period is 60 days, but EPA has a 90-day comment period so we won’t know right away what their decision is on approval or not.

- **9VAC25-800-30: Authorization to discharge:**

- All previous references to “registration statement” requirements have been removed from this section.
- Section 30.A has been revised and now reads:

“A. Any operator that meets the eligibility requirements in subsection B of this section is hereby authorized for their discharges resulting from the application of pesticides to surface waters of the Commonwealth of Virginia.”

- Additional revisions include:

*“The definition of operator in 9VAC25-800-10 provides that more than one person may be responsible for the same discharge resulting from pesticide application. Any operator **authorized to discharge under this general permit** is responsible for compliance with the terms of this permit for discharges resulting from the application of **pesticides**.”*

- Section 30.B.2: The TAC discussed the wording used in this subsection and raised some concerns about the inclusion of the phrase; “including those present in irrigation ditches and/or irrigation canals”... It was noted that “terrestrial applications” are not included under this general permit. The operator only needs a permit for “discharges to surface waters”. The operator would need to make that determination. The requirements for a permit go back to the definition of “surface water”. If it is not a surface water it is not regulated under this permit. It was suggested that references to “irrigation ditches and or irrigation canals” should be included in guidance with a clarification of when they would need to be required to get permit coverage, i.e., when there is a direct linkage or conveyance to surface water. The proposed revisions to this subsection are:

*“2. Aquatic weed and algae control – to control invasive or other aquatic (emergent, **floating** or submerged) nuisance weeds and algae in surface waters. Aquatic nuisance weeds include....”*

- Section 30.B.3: The TAC discussed the wording in this subsection and raised some concerns regarding the use of the term “nuisance” when referring to “aquatic animals”. It was noted that DGIF had a specific definition of “aquatic nuisance animal” that did not necessarily fit into the intent of this regulation. A recommendation was made to replace the word “nuisance” with the word “pest” in this subsection.

*“3. Aquatic Animal **Pest** Control – to control aquatic invasive or other aquatic animal **pests** in surface waters. Aquatic animal **pests** in this use category include...”*

- Section 30.C: This section was revised to delete all references to the “registration statement” requirements. In addition, the references to “commercial applicators” and “other persons applying pesticides” have been deleted. This section now reads:

“C. Operators applying pesticides are required to maintain a Pesticide Discharge Management Plan (PDMP), if they exceed the annual treatment area thresholds in Table 1 below:”

- Section 30.C – Table 1. Annual Treatment Area Thresholds: The pesticide use category of “Aquatic Nuisance Animal Control” needs to be revised to reflect changes made earlier in today’s discussions. The category should now read:

“Aquatic Animal Pest Control”

- Staff noted that if you don’t break the threshold then there is no requirement for a PDMP.

- The TAC discussed possible changes to the threshold limits identified in Table 1 at length. Even though there was some support for developing a different set of numbers for use in the Virginia permit, it was decided that at stage of the process there was not time to adequately research revised numbers and be able to have the justification in place to be considered by EPA. The TAC noted that they felt that all of the threshold limits were too low and need to be raised. We really need to identify who and what do we want to capture with these limits/ what should the thresholds be? There may be reasonable exemptions.
- Section 30.C – Footnote 1: Staff recommended a streamlined approach in this footnote by only counting each pesticide application once, so that “applying pesticides twice a year to a ten acre site should be counted as ten acres of treatment area.” The TAC discussed this proposal at length and noted concern that this would not be in line with what EPA was proposing (under-reporting of pesticide applications) and might make it more difficult for the permit to be approved by EPA. The recommendation was made that the text should go back to that proposed in the EPA General Permit with a possible change in the terminology of the example being revised slightly. The footnote would then read:

*“Calculations should include the area of the applications made to: (1) surface waters and (2) 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 ten acre **treatment area** should be counted as **twenty acres** of treatment area.”*

- It was suggested that guidance could describe how the permittee may use the entire lake acreage if they apply only to various areas in the lake over the year or they can calculate the actual areas treated.
- Section 30.C – Footnote 2: Staff recommended a streamlined approach in this footnote by recommending that the requirement to count both sides of a linear water body as separate activities be deleted. The TAC discussed this proposal at length and noted concern that this would not be in line with what EPA was proposing (under - reporting of pesticide applications) and might make it more difficult for the permit to be approved by EPA. The recommendation was made that the text should go back to that proposed in the EPA General Permit.
- Section 30.D – This section was revised to clarify the requirements:

“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:

- Section 30.D.2 – This requirement was deleted. There are no such board regulations that prohibit pesticide discharges and it is not reasonable to prohibit pesticide discharges to waters that prohibit ‘discharges’ in general because those prohibitions were not written with pesticide applications in mind.
- Section 30.E – This section was revised to reflect the currently proposed 2-Year permit concept and the removal of the requirement to submit a registration statement.

“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 April 10, 2011.”

- Section 30.F – This section was revised based on comments received from DGIF. The phrase “that pertains to the application of pesticides” has been deleted.

“F. Compliance with this general permit...Approval for coverage under this general VPDES permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance or regulation. For example...”

- Section 30.G.1 – This subsection has been revised to reflect the current 2-Year permit concept and to remove references to submittal of a registration statement. In addition, a mechanism for continuance of permit coverage should the board fail to reissue a permit before the expiration date has been included.

*“1. This general permit shall expire on **June 30, 2013**, except...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.**”*

- **9VAC25-800-40. Registration statement.**

- Staff noted that this section had been revised to delete references to a registration statement and related requirements. The section has been kept as part of the general permit as a “placeholder” should EPA come back and require it before approval of the general permit and to allow for changes in the future. The section now reads:

“Operators are not required to submit a registration statement to apply for coverage under this general VPDES permit for discharges resulting from the application of pesticides to surface waters.”

- **9VAC25-800-50. Termination of permit coverage.**

- Staff noted that this section had been revised to delete references to a notice of termination and related requirements. The section has been kept as part of the general permit as a “placeholder” should EPA come back and require it before approval of the general permit and to allow for changes in the future. The section now reads:

“Operators are not required to submit a notice of termination to terminate permit coverage under this general VPDES permit for discharges resulting from the application of pesticides to surface waters.”

- **9VAC25-800-60. General permit.**

- The language for this section has been cleaned up to remove any references and requirements related to “registration statements”.

“Any operator who is authorized to discharge shall comply with the requirements contained herein...”

- The expiration date has been changed to account for the proposed 2-Year permit term.

“Expiration Date: June 30, 2013.”

- This section has been revised to exclude reference to “waters specifically named in board regulations that prohibit such discharges”. Staff found that there were no such regulations or prohibitions.
- This section has been revised to delete reference to an ordinance or regulation “that pertains to the application of pesticides” based on a DGIF recommendation.
- Section A.1.a (1): The TAC decided to keep “lowest” in the sentence as long as the phrase “without exceeding the maximum allowable rate of the product label” remains in. The phrase “without exceeding the maximum allowable rate of the product label” was added to address concerns raised by the TAC that the lowest amount indicated on the product label may not result in minimization of discharge, i.e. may not be “the lowest effective amount” – sometimes higher applications are required to eliminate the pest and avoid future applications. A range is provided on the product label.

*“(1) Use the **lowest effective amount** of pesticide product per application...**without exceeding the maximum allowable rate of the product label;**”*

- Section A.1.a (2): The original text of this subsection has been replaced with text out of the VDACS regulations dealing with maintenance of equipment. The VDACS language has been revised to address differences in the definitions of “discharge” between the VDACS regulations and this general permit. The word “discharge” has been replaced with the phrase “pesticide application”.

*“(2) No person shall apply, dispense...All spray distribution systems shall be...to assure a uniform and adequate rate of **pesticide application;**”*

- Section A.1.a (3): The original text of this subsection has been replaced with text out of the VDACS regulations dealing with pesticide application equipment and cut-off values and equipment maintenance. The VDACS language has been revised to delete reference to “agricultural applications”. The word “agricultural” has been replaced with “pesticide”.

*“(3) All pesticide application equipment...these backflow devices or valves are not required for separate water storage tanks used to fill **pesticide** application equipment by gravity systems...”*

- Section A.1.b – Integrated Pest Management (IPM) practices. This section has been revised to delete references to registration statement requirements.

“b. Integrated Pest Management (IPM) practices. The operator shall implement integrated pest management practices to ensure that discharges resulting from the application of pesticides to surface waters are minimized. The IPM practices shall consider the following for each pesticide use pattern:

- Section A.1.b – Note related to “research and development”: This subsection was revised to remove references to “registration statements” and was edited to make it more understandable.

“(Note: If the operator’s discharge of pollutants results from the application of a pesticide that is being used solely for the purpose of “pesticide research and development”, as defined in 9VAC25-800-10, the operator is only required to fully implement IPM practices to the extent that the requirements do not compromise the research design.)”

- Section A.1.b – Note related to “Pesticide Discharge Management Plan”. This note has been added to clarify the documentation requirements.

“Note: The Pesticide Discharge Management Plan (PDMP) required in Part 1 B documents these IPM practices.”

- Section A.1.b (1) – The TAC discussed this section regarding Mosquito and other flying insect pest control. The section will be revised to include the examples rather than a section reference:

“(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 category include but are not limited to mosquitoes and black flies.”

- Section A.1.b (1) (a): This section originally contained the phrase “shall do”. The TAC recommendation is to replace this language with “shall consider”.

“(a) Identify the problem. Prior to the first pesticide application...the operator shall consider the following for each pest management area.”

- Section A.1.b (1) (a) (ii): The TAC discussed the wording of this subsection and debated the use of the term “species specific”. The TAC recommended that the wording be revised and that this requirement should be the first item in the list not the second. This section will be revised and moved to the first item in the list and the original (i) will become (ii).

“~~(ii)~~(i) Identify target mosquito or flying insect pests.”

“~~(i)~~(ii) Establish densities for larval and adult mosquitoes...”

- Section A.1.b (1) (a) (v): Staff noted that they could not find any requirement for documentation in the EPA NPGP so this requirement was struck.
- Section A. 1.b (1) (b) (v): This requirement has been revised based on TAC recommendations. The word “agents” has been removed.

“(v) *Biological control;*”

- Section A.1.b (2): This section will be revised to reflect TAC comments and recommendations and will include examples rather than rely on a section reference for clarification.

“(2) *Aquatic weed and algae control. This **subpart** applies to discharges resulting from the application of pesticides **to control invasive or other aquatic (emergent, floating, or submerged) nuisance weeds and algae in surface waters. Aquatic nuisance weeds include, but are not limited to cattails, hydrilla, and watermeal.***”

- Section A.1.b (2) (a): This section is being revised to include the use of the phrase “shall consider” instead of “shall do”.

“(a) *Identify the problem. Prior to the first pesticide application...the operator **shall consider the following...***”

- Section A.1.b (2) (a) (ii): This subsection has been revised from the original to delete reference to “species” and to include “algae”. The TAC agreed that the order of these items should be revised and the identification step should be the first item in the list.

“~~(ii)~~(i) *Identify target weed **and algae;***”

“~~(i)~~ (ii) *Identify areas with aquatic...*”

- Section A.1.b (2) (a) (v): Staff noted that they could not find any requirement for documentation in the EPA NPGP so this requirement was struck.
- Section A.1.b (2) (b) (v): This requirement has been revised based on TAC recommendations. The word “agents” has been removed.

“(v) *Biological control;*”

- Section A.1.b (3): This section will be revised to reflect TAC comments and recommendations and will include examples rather than rely on a section reference for clarification. The word “nuisance” has been deleted and replaced with “pest” based on recommendation made by DGIF.

“(3) *Aquatic animal **pest** control. This **subpart** applies to discharges resulting from the application of pesticides for **to control aquatic invasive or other aquatic animal pests in surface water. Aquatic animal pests in this use category include, but are not limited to***

fish (e.g. snakehead) and zebra mussels.

- Section A.1.b (3) (a): This section is being revised to include the use of the phrase “shall consider” instead of “shall do”.

*“(a) Identify the problem. Prior to the first pesticide application...the operator **shall consider** the following...”*

- Section A.1.b (3) (a) (i): This part has been revised to incorporate the changes recommended by DGIF related to replacing the use of the term “nuisance” with “pest”. The TAC agreed that the order of the items needed to be revised. And this item should be moved to (ii).

*“(i) Identify areas with aquatic animal **pest** problems...”*

- Section A.1.b (3) (a) (ii): This part has been revised to incorporate the changes recommended by DGIF related to replacing the use of the term “nuisance” with “pest”. The TAC agreed that the order of the items needed to be revised. And this item should be moved to (i).

*“(ii) Identify target aquatic animal **pests**;”*

- Section A.1.b (3) (a) (v): Staff noted that they could not find any requirement for documentation in the EPA NPGP so this requirement was struck.
- Section A.1.b (3) (b) (v): This requirement has been revised based on TAC recommendations. The word “agents” has been removed.

“(v) Biological control;”

- Section A.1.b (4): This section will be revised to reflect TAC comments and recommendations and will include examples rather than rely on a section reference for clarification.

*“(4) Forest canopy pest control. This **subpart** applies to discharges resulting from the aerial application of a pesticide over a 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.”*

- Section A.1.b (4) (a): This section is being revised to include the use of the phrase “shall consider” instead of “shall do”.

*“(a) Identify the problem. Prior to the first pesticide application...the operator **shall consider** the following...”*

- Section A.1.b (4) (a) (ii): The TAC discussed the wording of this part and revised it to delete reference to “species” and for clarification. The TAC agreed that the order

of these items should be revised and the identification step should be the first item in the list.

~~“(ii)–(i) Identify target **pests**;~~”

~~“(i) (ii) Identify target pest densities...”~~

- Section A.1.b (4) (a) (v): Staff noted that they could not find any requirement for documentation in the EPA NPGP so this requirement was struck.
- Section A.1.b (4) (b) (v): This requirement has been revised based on TAC recommendations. The word “agents” has been removed.

~~“(v) **Biological control**;~~”

- Section A.2. Water quality-based effluent limitations. The TAC has discussed these requirements over the last couple of TAC meetings. It was decided that the issue related to “copper-sulfate” and water treatment plants and public water supplies would best be addressed in guidance. It was suggested that if a pesticide is doing what it is intended to do (meeting its intended purpose) then it is not a pollutant that is exceeding the standards. When a pesticide has done its job, what remains is a pollutant. The question is when has it done its job? Staff noted that according to an AG’s opinion that reservoirs are “state waters”. It was noted that only the residue is a pollutant not the pesticide itself. A recommendation was made to revise the section to include reference to “the operator’s discharge of pollutants” instead of just the “operator’s discharge”. The basis for the permit is “discharge of a residue”.

~~“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**. If at any time the operator **becomes** aware, or the board determines, that the operator’s **discharge of pollutants** causes or contributes to an excursion of...”~~

- Section B.1 (a): The TAC recommended correcting the terminology in this section to agree with revisions made in earlier sections regarding the “lowest effective amount” and “without exceeding the maximum allowable rate of the product label”.

~~“(a) The amount of pesticide applied shall be monitored to ensure that the lowest **effective amount of pesticide product per application and the 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**.”~~

- Section B.2. Visual monitoring requirements for all operators. It was noted that the monitoring required is “visual monitoring” and would consist of spot checks that the operator would perform to identify areas of adverse incidents. The assessment components of the PDMP would take place after a spot check identified an area or areas of adverse impact. Visual monitoring is more real time.

ACTION ITEM: Staff will look at the EPA Fact Sheet to see if there is any further clarification of the expected visual monitoring requirements and the reporting and recording of “adverse incidents”.

- Section C. Pesticide Discharge Management Plan (PDMP): This section has been revised to delete references to “registration statements” and any associated requirements.

*“C. Pesticide Discharge Management Plan (PDMP): Any operator **applying pesticides and exceeding the thresholds established in 9VAC25-800-30.C** must prepare a PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration of coverage under this general permit, even if discharges subsequently fall below the applicable **thresholds**. The operator **applying pesticides** shall develop a PDMP consistent with the deadlines outlined in Table I-1 below:”*

- Section C – Table I-1: The TAC members discussed the plan deadline reporting schedule and requirements. It was noted that once you break the threshold you have to have a plan for the duration of the permit period. Once you exceed the threshold, you are required to have a PDMP. The level of detail required for the PDMP was discussed. Staff noted that the idea was to have a high level type of plan that would cover all of the operator’s applications. It is anticipated that there would be one plan submitted for all of an operator’s applications.
- Section C – Materials below Table I-1: This text needs to be revised to delete any reference to “registration statement”.

“The PDMP does not contain effluent limitations...All operators subject to effluent limitations...in Parts 1.A.1 and 1.A.2. This includes any operator who exceeds the threshold limits as well as any employees, contractors, subcontractors, or other agents. The control measures implemented must...”

- Section C.2.d: The TAC discussed the inclusion of a requirement related to a situation where the “pesticide applicator” was unknown at the time of development of the PDMP. It was recommended that this requirement was unnecessary and should be deleted. The subsection should now read:

“d. Persons responsible for pesticide applications.

- Section C.3.c: The requirement for a “generalized map” was discussed by the TAC. Staff noted that this a “generalized” map and should cover the area of the operator’s applications and as discussed earlier could be a map of the county or counties where the operator applies pesticides or a map of the state if the area of operations is state-wide. This does not require specific down to the property level designations, it can be at a county level or above.
- Section C.5.a (1) Application rate and frequency. The TAC recommended making the same revisions to this section as have been made to previous sections related to “lowest effective amount” and “maximum allowable rate”. This section should be

revised to read:

“(1) Application rate and frequency. (See Part 1.A.a(1)) Procedures for determining 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.**”

- Section C.5.a (3): The TAC discussed the inclusion of specific references to regulations of other agencies (i.e., VDACS). Staff noted that in recent Attorney General decisions that the specific references and citations to other agency regulations was required.
- Section C.6. Signature requirements: This section needs to be revised and rewritten to delete all references to “registration statements” and associated requirements. Using the existing language rearranged slightly the revised section would read:

“6. Signature requirements. The PBMP shall be signed, dated and certified in accordance with this subsection.

a. All Pesticide Discharge Management Plans including changes to the PDMP to document any corrective actions taken as required by... and all reports submitted to the department, must be signed as follows or by a duly authorized representative thereof: (1) For a corporation...(2) For a partnership...(3) For a municipality...

b. A person is a duly authorized representative only if: (1) The authorization is made in writing...(2) The authorization specifies...and, (3) The signed and dated written authorization...

- Section C.6.d. Changes to Authorization. This section needs to be revised to delete references to “registration statements” and associated requirements. The text from “a new registration statement through the end of the current text needs to be deleted.

“d. Changes to Authorization. If an authorization under subsection 6.a above is no longer accurate because the application activities have been purchased by a different person.

- Section D.1.c (1): The TAC recommended that this text be revised to reflect changes made in earlier sections related to “lowest effective amount” and “without exceeding the maximum allowable rate”.

“(1) The lowest effective amount of pesticide product per **application and the optimum frequency of pesticide applications necessary to control the target pest consistent with reducing the potential for development of pest resistance was used without exceeding the maximum allowable rate of the product label.**”

- The TAC discussed the possibility of templates for the PDMP being available through EPA or some other source.
- Section D. Corrective actions. The TAC noted that this section needed to be cleaned up. There are a number of additions to the text that came from other sources that do not fit into the flow of the document and should be revised to make them consistent with the existing document. In addition the term “agriculture” needs to be deleted

and the statement in (3) should refer only to “pesticide application equipment”.

“D.1.c. Any monitoring activities indicate that the operator failed to ensure that: (1) The lowest effective amount of pesticide product per application...was used... (2)The pesticide equipment or application apparatus was in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment...(3) The pesticide application is equipped with cut-off valves and discharge orifices...However, these backflow devices or valves are not required for separate water storage tanks used to fill pesticide application equipment...”

- Section D.5 Adverse incident documentation. This section needs to be renumbered along with the preceding subsections to account for previous deletions. This section should be retitled to include a “reporting” requirement.

“5.4. Adverse incident documentation and reporting.”

- Section D.5.a (3): This requirement refers to a “registration statement” and should be deleted. This will result in renumbering of the rest of the subsection requirements.

*“~~(3) If covered under a registration statement, the VPDES permit tracking number;~~
~~(4) (3)...~~(8) (7)...~~”~~*

- Section D.5.b (4): The TAC discussed the use of the phrase “similar in kind”.
- Section D.5.d: The TAC discussed the adverse incidents to threatened or endangered species.
- Section D.5.d (3): The TAC proposed revising this requirement to read:

“(3) The name and number of affected species;

- Section D.5.d (9); The TAC proposed revising this requirement to read:

“(9) Approximate number of animals affected, if appropriate.”

- Section D.6: Staff noted that this came directly out of the EPA general permit. DEQ’s requirements are different. This section will need to be revised for clarification and to clean it up to make it specific to the product (pesticides) being handled. It should not be a general set of requirements; it should be specific to pesticide applications.

ACTION ITEM: Staff will revisit the section on “reportable spills and leaks” and redraft them to make them specific to “pesticide applications”.

- Section E. Recordkeeping and annual report. Staff noted that all of the reporting requirements would all be in one section. They will either need to be in Part I or Part II, but not both. Staff will attempt to make them mirror the current VDACS reporting requirements where possible. The TAC discussed the required length of record retention (VDACS is currently 2 years). VDACS recommended that the

“VDACS required records” should refer specifically to “VDACS Pesticide Application Records”.

- Section F. This section needs to be revised to delete references to a “registration statement”.

6. Next Steps

Fred Cunningham thanked all of the TAC members and interested parties for their interest, comments and participation in this process. He noted that the staff will go back through the document to incorporate the latest additions and corrections made by the TAC and to search through the document for consistence of changes to specific wording and the deletions of specific wording or concepts (i.e., registration statements). The intent is them to send that “final” draft version back out via email to the TAC members for their consideration. The staff will also be proceeding with the development of the required board materials to meet the timetable for finalization of the permit and having an effective general permit by April 10, 2011.

7. Meeting Adjournment:

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