

TENTATIVE AGENDA
 STATE WATER CONTROL BOARD MEETING
 FRIDAY, FEBRUARY 4, 2011
 (INCLEMENT WEATHER DATE – TUESDAY, FEBRUARY 8, 2011)

Department of Environmental Quality
 2nd Floor Training Room
 629 East Main Street
 Richmond, Virginia

			TAB
I.	Permits Appalachian Power Company, Claytor Hydroelectric Project, VWP	Winn	A
II.	Final Regulations General VPDES Permit for Pesticide Discharges Resulting from the Application of Pesticides to Surface Waters	Norris	B
III.	Consent Special Orders (VPDES Permit Program) Northern Regional Office Louisa County Water Authority, Louisa Regional Sewage Treatment Plant Louisa County Water Authority, Zion Crossroads Wastewater Treatment Plant	O’Connell	C
IV.	Public Forum		
V.	Other Business Gillies Creek UAA	Pollock	D

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For **REGULATORY ACTIONS** (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS** (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: cindy.berndt@deq.virginia.gov.

Summary of Comments Received During Public Hearing/Comment Period VWP Draft Permit No. 09-0892, Appalachian Power Company, Claytor Hydroelectric Project, Pulaski and Montgomery Counties: The Claytor Hydroelectric Project is an existing licensed hydropower facility located on the Claytor dam on the New River in Pulaski and Montgomery Counties, Virginia. The permittee, Appalachian Power Company (Appalachian) is re-applying for its Federal Energy Regulatory Commission (FERC) license, which expires June 30, 2011. The permittee holds an existing Section 401 Water Quality Certificate (no number assigned), which upon expiration or forfeiture of a FERC license, becomes null and void. As part of the FERC licensing requirements, a license applicant must apply for state water quality certification, and thus, DEQ received a Joint Permit Application on June 29, 2009. Regardless of the federal action, the proposed activities fall under the regulatory authority of the State Water Control Law and Virginia Water Protection Permit Regulation.

The Claytor Project consists of a concrete gravity dam, gated spillway, intake, powerhouse, switching equipment and appurtenant facilities, and a reservoir. The total generating capacity is 75 megawatts (MW), and the total hydraulic capacity is 10,000 cubic feet per second (cfs). The mean flow through the development is 3,413 cfs. The reservoir impounds water a distance of approximately 21.67 miles. The surface area of the lake is 4,360 acres at full pond (1846.0 feet NGVD) and has approximately 100 miles of shoreline.

As part of the application for a new FERC license, Appalachian is proposing a number of management and monitoring plans to protect, enhance, and mitigate for various issues related to Project operations. These plans will be incorporated into the FERC license, as approved by the FERC. DEQ and pertinent state agencies participated in several work groups for the purposes of assisting Appalachian in preparing its application for a FERC license during 2008 and 2009, and were involved in developing and reviewing many of these plans. At least three of the plans pertain directly to this VWP permit application: the *Water Management Plan*, the *Water Quality Monitoring Plan*, and the *Freshwater Mussel Adaptive Monitoring Plan*. The *Water Management Plan* provides a description of current operations and sets forth the permittee's proposal for operating the project in the future and meeting instream flow requirements in this VWP permit and those pending in the FERC license. The *Water Quality Monitoring Plan* outlines how the permittee proposes to mitigate the low dissolved oxygen conditions observed in the tailrace of the Claytor Project during the Water Quality Study completed for relicensing and how they will monitor the proposed mitigation to ensure dissolved oxygen levels remain above water quality standards in the tailrace. This plan further proposes to mitigate for low dissolved oxygen conditions by utilizing an existing deicing bubbler system located on the dam trash racks, and if this does not resolve the issue, the permittee offers to explore other means to increase dissolved oxygen conditions. The *Freshwater Mussel Adaptive Monitoring Plan* proposes to compile baseline data regarding mussel distribution and abundance in order to identify sites appropriate for long-term monitoring; evaluate long-term trends in mussel fauna downstream of the project, including species richness, abundance, growth and recruitment; and evaluate the potential influence of project releases on mussel fauna downstream of the project, with particular focus on water temperature and dissolved oxygen conditions.

As part of the application review process, DEQ contacted all appropriate state regulatory agencies on September 21, 2009 per §62.1-44.15:20.C. Additionally, follow up discussions were held with the Virginia Department of Game and Inland Fisheries in February, March, and December 2010. Agency comments were given full consideration to address the balance of instream and offstream uses in the VWP individual permit Part I - Special Conditions, particularly regarding the elimination of the annual drawdown, which both DGIF and DCR commented on in letters dated November 5, 2009 and November 2, 2009, respectively.

The applicant responded on April 15 and May 20, 2010 with comments on the draft permit regarding the permit term; requirements for action on the Eastern Hellbender salamander; copying DEQ on studies, reports, modeling, etc.; impediments to movement by aquatic species; mussel fauna monitoring locations; requirements on its operations; and flow conditions. DEQ revised several special conditions and further discussed Appalachian's concerns during a conference call on June 4, 2010.

The public notice for the draft permit was published in the Roanoke Times (Roanoke) and the Southwest Times (Pulaski) on June 20, 2010; and in the News Messenger/Radford News Journal (Christiansburg) and Wytheville Enterprise (Wytheville) on June 23, 2010.

DEQ received comments from 52 individuals, three local government agencies, two private groups, one House delegate, and the applicant. Approximately 45 requests for a public hearing were received, and the DEQ Deputy Director determined that a hearing was warranted on July 29, 2010. Members of the State Water Control Board were notified, and no comments were received requesting a meeting of the Board to review the Director's decision to grant a hearing or to delegate the permit to the Director for his decision. Consequently, the Department proceeded with scheduling the hearing and notifying interested parties.

The public notice for the public hearing was published in the News Messenger/Radford News Journal (Christiansburg) on August 18, 2010; in the Wytheville Enterprise (Wytheville) on August 21, 2010; and in the Roanoke Times (Roanoke) and the Southwest Times (Pulaski) on August 22, 2010.

A public hearing was held at Pulaski County High School in Pulaski, Virginia on October 14, 2010 at 7:00 p.m. Mr. Shelton Miles served as the Hearing Officer, and DEQ staff present included Brenda Winn, Scott Kudlas, and Mike McLeod. All speakers but the applicant opposed the elimination of the annual drawdown of Claytor Lake. The applicant opposed the permit term and reissuance process and the flow release in February and March in the draft VWP permit. Approximately seven additional written comments and approximately 839 signatures on a petition were received by the close of the comment period on October 29, 2010.

Summary of Comments and Staff Response

1. Issue: Elimination in draft permit of voluntary annual lake level drawdown by Appalachian
Comments from various citizens and shoreline owners:

- Drawdown is used to perform essential maintenance, cleanup and stabilization along the Claytor Lake shoreline; enables us to protect our properties, and to ensure our continued access, enjoyment and safety at Claytor Lake.
- Without drawdown, residents will be unable to perform needed shoreline activities; our properties will decline in condition and value, and our ability to access, and safely enjoy Claytor Lake will suffer.
- The water quality and mussels that DEQ is trying to protect will also be negatively affected because we will be unable to protect shorelines against erosion.
- By installing erosion control, we have also helped prevent sedimentation and contaminants from going into the lake, thus protecting water quality and aquatic habitat, including for mussels. We have also helped decrease infilling of the lake and the creation of low-water boating hazards by controlling erosion.
- Believe that a less than 5 foot "normal" drawdown can be accomplished without a negative impact to the fish wildlife and mussels.
- The environmental benefits of continued draw-down more than offset the potential impact on the total mussel population along New River.
- Measures that would be much easier, and less costly to accomplish, than if we were restricted to perform all work from the land side (or by boat). According to a survey of landowners done as part of the Recreation Study for AEP's relicensure application, seventy- five percent of landowners use drawdown for shoreline maintenance, debris clean-up and shoreline stabilization. One of the recommendations of the Study was that drawdown be continued (Recreation Assessment Study: Final Report, Claytor Project, FERC No. 739, The Louis Berger Group, Inc., December 2008).
- I am not aware of any other way to make these repairs.
- My rather large concrete wall I built in 1971, 1974, and 2000, has begun to be undercut by wave action and my yard is now being washed away. The only method of adequate repair is to dig a new foundation footer under and in front of the wall (150 feet long). This cannot be accomplished without at least a 3 foot drawdown.

- The amount of revenue for local contractors, hardware stores, and concrete companies is significant during the drawdown. This provides an economic "shot in the arm" for the local economy while providing a method for folks to save a little money rather than hiring the "only" piledriver on the lake! Most of us cannot afford a \$30,000+ dock!! We can afford a few thousand dollars of materials and fix it ourselves, or hire other contractors - while supporting "competitive" practices.
- Property owners have come to "rely" and "expect" by "continued practice of" the annual drawdown. The practice of drawdown has in fact enhanced the property values around the lakefront and it has been used as a "selling" advantage. ... The conscious decision to discontinue the drawdown of Claytor Lake by AEP will be a conscious decision by AEP to REDUCE property values on the lakefront and promote anticompetitive practices. There could possibly be legal issues raised concerning this.
- It appears that since the drawdowns have stopped by AEP you cannot get to the wood on the bottom to clean it out and as a result it is piling up creating a safety issue for watercraft.
- We are witnessing significant outbreaks of hydrilla infestation in the lake. One of the primary remediation and control means for this nuisance weed is periodic drawdown in the fall. Without the drawdown that kills the weed and allows physical removal, we fear that hydrilla will overwhelm the lake and cause deterioration of the precious shallow sections of the lake, impacts on watercraft and lake enjoyment, a buildup of organic matter in the lake, and/or reliance on expensive chemical remediation that many of us would like to avoid for environmental reasons.
- Our shoreline needs the drawdown in order to maintain the sea walls; otherwise over time they will fall into major disrepair and fall into the lake. This is very serious. My wife and I have spent over \$100,000.00 to build the wall and we want to be able to maintain it properly.
- The only reason cited in the relicensing application is for the mussel population which is not substantiated by biological facts or reason.
- Request a hearing to develop alternatives to allow for continued drawdown, including:
 - changing the timing, depth and frequency of drawdown
 - require Appalachian to mitigate for mussel losses and promote mussel populations through propagation and further study to look at the impacts of a smaller than 5 foot drawdown
 - Mitigations can include adding the lake to the Mussel Monitoring Plan, facilitating shoreline erosion control through the Shoreline Management Plan, and funding propagation of mussels at nearby facilities.
 - I would like to suggest a compromise of drawing down the water every other year or every two years.
- Our family is committed to protecting natural resources and want to impress upon you the importance of the drawdown. We participate in many agricultural best management and conservation practices and programs to help control erosion and water quality degradation. We have been able to stabilize much of our shoreline thanks to the drawdown, and have been able to afford it with help from cost-share and grant programs.
- Accretion of sediment has resulted in the development of shoals, limiting navigation in the lake. Shoal development appears to be related to the drawdown, which de-waters and compacts the shoals, maintaining the water depth over them. Drawdown is also cited as an effective means to control invasive aquatic plants. Drawdown in the fall and winter would not appreciably harm reproductive biology of the pistolgrip, since it is a short-term brooder that spawns in mid-March to May and releases juvenile hatchlings in mid-April to June.
- Clearly there is no question that mussels die as a result of drawdown. My point here is that there are inconsistencies and uncertainties in the estimates of mussels affected, including the state-threatened pistolgrip mussel. Appalachian states that low mobility species such as mussels do not tend to inhabit the first two feet below the reservoir's full pond (1844-1846 NGVD) because of the frequency of water level fluctuations. If this is true, then only the area exposed by the remaining three vertical feet of a five-foot drawdown should be used in calculating mussel

mortality. If this is not true, then mussels are potentially being killed in the course of Appalachian's water level management. Because peaking operations begin in late fall, stranded mussels can be subjected to freezing temperatures. Mussels can also be stranded during drawdowns for flood control, and for other emergency and nonemergency drawdowns for which Appalachian reserves the right in its proposed Water Management Plan. Moving drawdown forward to October from November and December would continue to avoid fish spawning periods and avoid mussel mortality due to freezing temperatures.

- Using Appalachian's statement in Volume I of its Final License Application that 55 MWh equals 0.02% of its annual generation, I have calculated that 792 MWh represents 0.288% of its annual generation. In consideration of the benefit to human and natural resources of the maintenance activities performed during drawdown, I feel this is not a significantly large amount of power to lose, or to have to generate elsewhere.
- I see the damage to the mussels around our cove when the lake is down. This is just a bad and unnecessary idea. Repairs can be made without this draw-down. I also support the new regulations for the repair and replacement of sea walls.

New River Planning District Commission: Over the past few years, water levels have not been lowered and Pulaski County would urge this practice to be reinstated annually.

Skyline Soil and Water Conservation District:

- Our concern with the draft permit is its requirement that drawdown be discontinued for the purposes of shoreline cleanup, structure maintenance, and stabilization. SWCD acknowledges the need to minimize negative impacts on fish and wildlife resources, including the state-threatened pistolgrip mussel, and also acknowledges the need for a balanced management strategy that affects the best outcome for all impacted resources. ... By participating in these activities, property owners assist in reducing soil erosion and preserving water quality within and downstream of Claytor Lake. ... Aquatic habitats, including that for the pistolgrip, benefit from the installation of erosion control measures as a result of drawdown. SWCD is concerned that the elimination of drawdown will make it too difficult and/or costly for landowners to conduct shoreline cleanup, maintenance, and stabilization activities. ... Sedimentation will endanger aquatic life, including smothering mussels and reducing dissolved oxygen for fish.
- SWCD requests that DEQ develop a comprehensive management plan that allows for the balanced protection of all impacted resources. SWCD recommends that periodic drawdowns be allowed to continue with mitigations required of the licensee. The mitigations should include expanding Appalachian's proposed Freshwater Mussel Adaptive Monitoring Plan to include the study of mussels within the lake reservoir, funding by Appalachian of mussel propagation at nearby facilities, and facilitation of shoreline erosion control through the Shoreline Management Plan. Modifications to the frequency, duration, depth or timing of drawdown could also be made to lessen the impact on aquatic resources.
- Please consider that wind and boat wakes are the primary causes of erosion of up to 1.5 feet per year along 11 miles shoreline consisting of highly erodible soils. Installation of erosion control measures is enhanced by drawdown, particularly when installing riprap revetments due to the need for key-weight trenching at the toe and sides. There is a potential for incorrect installation if alternate methods, such as barge access is used. Barge use for riprap installation can cost \$100 to \$150 per foot versus direct shoreline access costs of approximately \$20 to \$30 per foot.

Delegate Dave Nutter, House 7th District:

- I am deeply concerned that this proposal will have far reaching consequences to the Claytor Lake community. The proposed rule change will likely have significant impact on the lake's water quality, aquatic habitat, safety and property conditions and values if adopted. While I realize that you are in period of public comment, I am confident that the majority of residents of Claytor Lake are unaware of the scope of this proposed rule change.
- Elimination of the drawdown will have consequences on the economic vitality of the community and constitutes a breach of trust to citizens considering the historic partnership between it and the applicant.

- Appalachian should support the public good, and support for the elimination of drawdown appears to be more about money than it is the mussels.

Citizens of the Lake (Delegate Anne B. Crockett-Stark, House 6th District): Development of lake represents long-term commitment by all parties involved for mutual benefits. Mussels must be balanced with people's needs and financial needs of area. Please work together for future health of all those concerned.

Pulaski County:

- We are concerned with item 6 in the Department of Environmental Quality's draft permit requiring that Appalachian Power discontinue the periodic reduction of lake levels (drawdown). Residents have historically used drawdowns to perform essential maintenance, cleanup and stabilization along the Claytor Lake shoreline practice has contributed immeasurably to the water quality for both recreational purposes as well as the preservation of important habitat for species such as the state-threatened pistolgrip mussel (*Tritogonia verrucosa*).
- Were it not for the drawdowns, the ability to maintain shorelines clean-up the lake and otherwise care for the shoreline would be significantly impaired. ... land slopes steeply to the water's edge. These factors make it difficult and sometimes impossible for equipment and personnel to access the shoreline. A periodic drawdown allows equipment and personnel to access the water front and travel to otherwise inaccessible areas along the land area exposed by the drawdown.
- Full investigation of the following alternatives is respectfully requested: 1. Institution of shorter drawdown periods, 2. variation in the levels to which the lake elevation is reduced, 3. Moving the drawdown period to a different time of the year to avoid freezing weather, 4. Scheduling reductions in lake levels for every two or three years rather than annually, 5. Implementation of citizen efforts to encourage the growth of pistol grip and other mussel species through culturing and other methods such as are being tried in reintroducing oysters in the Chesapeake Bay, and other means of improving mussel habitat, 6. Propagation of mussels funded by AEP at local facilities, 7. Inclusion of the reservoir in AEP's proposed Freshwater Mussel Monitoring Plan, and 8. Consideration of the impact of unchecked erosion on mussel populations.
- Board of Supervisors requests that DEQ do whatever is necessary to encourage and support efforts by local lake residents in addressing erosion and other maintenance, recreation and water quality concerns at Claytor Lake.
- Discontinuing drawdown is very likely to result in a decline in water quality and other environmental conditions affecting both recreational use and the unique habitat Claytor Lake currently provides for mussel and other aquatic species.
- The drawdown is an issue of personal safety to workers performing shoreline maintenance, as well as to residents trying to cleanup debris and trash from shoreline structures. Lower lake levels provide for a safer environment in which to do this work, whereas higher lake levels create a potential for drowning more so than when lake is drawn down, and also prevents observation of dangerous debris.
- The Pulaski Board of Supervisors is interested in being involved with any discussions to resolve the drawdown issue.
- The board maintains a program for litter control that supports efforts made by land owners to keep properties clean, including those efforts conducted during the annual drawdown. In some cases, particularly where riprap revetments are in place, prohibiting access for shoreline cleanup is in direct conflict with the board's litter control efforts.

Friends of Claytor Lake (FOCL):

- FOCL supports the continuation of regular drawdowns for shoreline maintenance with mitigations for impacts to natural resources.
- There are approximately 1,200 lake front property owners with assessed property totaling almost \$430 million. The Louis Berger Group conducted a survey of property owners in 2008 and found that 75% use the drawdown time to remove trash and debris, stabilize shorelines, and maintain shoreline structures. They recommend the drawdown continue.

- FERC stated in its August 2010 Draft Environmental Assessment that while the elimination of the drawdown would benefit mussels, it would negatively affect land owners. FERC recommended that Appalachian provide property owners with an advanced-notice schedule of its own anticipated maintenance drawdowns.
- Drawdown enables stakeholders throughout the lake community to assist with clean up. It also enables property owners to install and maintain erosion control structures. Due to steepness in terrain and vegetation, many owners cannot access the shoreline for stabilization work without the drawdown. Working from the water is not an option for many due to the increased cost. Erosion control also protects against destruction of riparian vegetation, thus benefiting wildlife, water filtration, and aesthetic quality of the lake.
- Eliminating the drawdown appears to conflict with Part II.I of the draft permit regarding authorization of injury or invasion of personal property.
- Part I.D.6 of the draft permit is a single strategy approach based on limited and inconsistent information, such as abundance and distribution of mussels and the percentage or number of individuals impacted by drawdown.
- Other impacts to lake mussels may include sedimentation, dissolved oxygen, temperature, contaminants, invasive vegetation, and non-native mussel species. Further study is clearly needed.
- A more comprehensive approach than discontinuing drawdown is needed to balance impacts, which could include: expanding the Freshwater Mussel Adaptive Management Plan to assess lake mussel populations and impacts; propagating mussels; determine specific land owner needs to develop a strategy; developing and monitoring conservation measures that allow drawdown

American Electric Power d.b.a. Appalachian Power Company:

- Agree with the permit condition to eliminate drawdown due to results of mussel studies that show impacts, particularly to the state-threatened pistolgrip mussel.
- While recognizing that the elimination of an annual drawdown is a change in operations, this is no longer common and has been discontinued at other AEP facilities.
- Maintenance and repair of shoreline structures can still occur successfully.
- The drawdown results in loss of power generation by a renewable resource, causing generating by other means such as combustible coal, which leads to negative environmental impacts and increased generation costs.

Virginia Department of Game and Inland Fisheries (DGIF): DGIF is concerned about the potential impact to aquatic species (particularly the state threatened pistolgrip mussel); however, if the State Water Control Board decides in favor of continuing drawdowns, a mitigation/compensation plan may need to be developed. We are willing to work with the regulatory agencies and other stakeholders to develop this plan. Some of the issues that have been discussed internally in regards to developing recommendations for a mitigation plan to minimize impacts include the following:

- The drawdown could possibly be moved to a period when freezing temperatures are not an issue. However, there are tradeoffs with recreational fishing, fish spawning, and boating. Therefore, the 1st week of November time frame may be the best option.
- Decreasing the intensity of drawdowns from 5 feet to 3 feet will reduce the area exposed, possibly reducing the number of mussels impacted and shortening the refill period.
- Decreasing the length of the drawdown from 14 days to 9 days.
- Decreasing the frequency of drawdowns from every year to every two years.
- Stakeholder and applicant involvement and responsibility for returning some exposed mussels to the lake during drawdown.
- Continuing to monitor mussels during the drawdown.
- Determining a phase-out date to end drawdowns, possibly based on continuing mussel monitoring and input from stakeholders, etc.
- Propagating the pistolgrip mussel in an appropriate facility.
- Researching and securing the funding necessary to conduct several of our recommendations.

Staff Response:

The Department of Environmental Quality has no regulatory authority to require Appalachian to lower the level of Claytor Lake for the purposes of accommodating shoreline maintenance or stabilization activities. Following the recommendation received by the Virginia Departments of Game and Inland Fisheries and Conservation and Recreation, staff initially developed a condition in the draft Virginia Water Protection (VWP) permit that prohibited the drawdown of Claytor Lake, which Appalachian Power Company (Appalachian) has historically implemented annually to allow shoreline owners to make dock repairs, clean up debris, and/or stabilize the shoreline. The basis of the condition was to protect the pistolgrip mussel, a state threatened species, which has been documented in Claytor Lake. Supporting the basis are the Code of Virginia and Virginia Administrative Code; existing studies and reports from 2005 to 2008; and recommendations received from state resource agencies from 2006 to date. The applicable laws and regulations focus on protection of beneficial uses, protection of state-listed threatened and endangered species, and balancing these protections. Beneficial uses include, but are not limited to protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; cultural and aesthetic values; domestic (including public water supply); agricultural; electric power generation; commercial, and industrial uses. See 62.1-44.2; 62.1-44.15:20; 62.1-44.5; 62.1-44.6; 29.1-563; 29.1-564; 29.1-568; 9VAC25-210-10, -50, and -230; and 4VAC15-20-140.

Based on additional comments and recommendations received as a result of the public hearing, and subsequent comment from the applicant, DEQ staff has determined that the draft permit condition regarding drawdown should be revised to recognize the applicant's Water Management Plan, submitted as part of its license application to the Federal Energy Regulatory Commission (FERC), as the appropriate tool for managing such a drawdown activity.

Appalachian has suggested that alternative methods of making shoreline and structure repairs and conducting periodic maintenance that have been implemented at other AEP hydropower facilities, including Smith Mountain and Leesville Lakes be implemented at Claytor. DEQ strongly encourages Appalachian to implement a coordination program with residential and commercial shoreline owners and operators, either by creating a new work group or committee or by utilizing an existing work group or committee, for the purposes of: educating the public on available methodologies to make repairs or conduct maintenance; providing a process for owners to voice comments and concerns; developing a multi-tiered public notification and coordination process; developing management strategies acceptable to Appalachian and owners/operators; and partnering with stakeholders on measures and opportunities to reduce or minimize the introduction of debris and trash into Claytor Lake.

Regulation of erosion and sediment control falls under the authority of the Virginia Department of Conservation and Recreation. Once soils and other materials enter a surface water as a result of some man-induced activity or events of nature (i.e., hurricanes), DEQ may then have the regulatory authority to address the materials as fill in a surface water, based on the particular circumstances at the time. Any Virginia Water Protection permit attempts to protect surface waters from unauthorized fill and discharges, backflooding, and excavation, as well as protect water quality under established standards (see 9VAC25-260). DEQ recommends that Appalachian engage interested stakeholders in discussion about measures to reduce or prevent erosion and sediment control around Claytor Lake, not only by armoring shoreline but also with alternative methods of stabilization; ways to reduce both project and recreational affects on shoreline stabilization; and ways to reduce erosion from land owner activities, such as agriculture and landscaping .

Staff suggest that Appalachian provide the public with educational materials regarding how power is generated by the Claytor project; how Appalachian's power rates are determined; what effects Appalachian's power rates; and how Appalachian's customers can help conserve energy.

2. Issue: Instream flows required in the draft permit

American Electric Power d.b.a. Appalachian Power Company: Appalachian stated its position relative to loss of revenue as well as loss of renewable power resulting from the higher flows proposed by VDEQ. Appalachian's reasoning was based also on the results of studies performed to address this issue as part of the relicensing effort for the Claytor Project and the fact that the

minimum flows were to occur during winter months when the impact to the downstream environment including recreation use would be minimal. In addition, Appalachian stated that the benefits to the downstream environment resulting from the flow changes recommended by VDEQ in lieu of those proposed by Appalachian would not offset the loss of renewable energy that would result. ... the 417 MWH of renewable energy to be lost annually in order to meet the VDEQ's recommendations would most likely be replaced by a blend of combined cycle and combustion generating facilities The replacement energy would have associated discharges of CO₂, SO₂, and NO_x, while the cost to customers would be at a higher rate. ... the implications of the edicts of VDEQ in the related Section 401 Certification need to be weighed relative to overall impact on and benefit to the Commonwealth...Therefore, Appalachian still believes that its proposal for minimum flows of 1,000 cfs during the months of February and March during the term of the new license for the Claytor Project represents the best overall option.

New River Outdoor Company:

- The New River is recognized as the number one smallmouth river in the country, and provides huge tourism dollars for Giles County and the New River Valley in the form of fishing and recreating ALL season long.
- The recreational release period is still up to AEP even if it is defined. It is very difficult to guide during the summer months when you are running at @1000 cfs, and then there is a mention of a thunderstorm, and out of nowhere the river jumps to 3500 cfs. It negatively affects my anglers who have spent big bucks to come from ALL 50 states, and it is dangerous to wading anglers who do not expect it. I have reported these rises to the VDGIF all summer long. AEP needs a more stringent requirement in their releases during the recreational period.
- There needs to be a better way of notifying user groups below the dam of unexpected releases. A notification in fine print on their website or a news release is not good enough. We are too busy to sort through their website to find this stuff, and it is NOT consistent. An automated email list would help greatly, and a requirement as to when they have to send it is crucial.
- The recreational period should include March at the very least. We begin our guiding season as do many others for pre-spawn smallmouth in March.
- The minimal inflow during non-recreational period needs to be higher than the 750-1200 cfs included in the draft. It is very difficult to guide before April 15th (Now 4/1) and after October 15th (Now 11/30) with these tremendous rises that bring grass, snot grass, trees, etc.
- Get rid of the squirt boat competition in May during the middle of the spawn. I have observed it knocking spawning males off of their beds and have reported this to the VDGIF numerous times.
- This draft [does not do] anything different but increase the dates a little and add a little MIF during colder months.

Virginia Department of Game and Inland Fisheries (DGIF):

- DGIF has concerns about the language in the draft permit as it pertains to modified levelized flow in the late summer/early fall period. We recommend revising the language in "Table 1: Minimum Instream Flow (MIF) Requirements" to include a seven-day average inflow as a basis for modified levelized. We emphasized in our November 2009 letter that the intent of modified levelized flow would be to create flows in the lower end of the acceptable range for whitewater boaters and powerboat-based anglers, as defined in the New River Flows and Recreation Study final report. Powerboat-based anglers would benefit most from these flows particularly in the Whitethorne and Radford Arsenal portions of the New River. We recommend these higher weekend minimum flows be timed so that flows would be in this vicinity of the river during daylight hours.
- Winter minimum flows should be increased to more naturally mimic the long-term hydrograph. Higher minimum winter flows during peaking (December 1 through March 31) should provide better base flows for aquatic species based upon the IFIM studies completed. This should also limit stranding of anglers, recreational boaters, and waterfowl hunters. Recently, winter and early spring fishing has increased dramatically with the improving muskie fishery. Powerboat-based

navigation would be enhanced in the Whitethorne/Radford Arsenal area of the New River with higher minimum flows during peaking.

Friends of the New River:

- Levelized flow operation of the facility from April 1 through Nov. 30 is specified in the draft permit, and this is consistent with VDGIF's recommendation, but how is this consistent with "bringing a unit or units into operation" with specified ramping up (15 min.) and down (30 min.)? The latter language (in Part 1 D.2.) seems to countenance peaking operations during the levelized flow period.
- VDGIF requested clarification of licensee's rationale for a minimum instream flow of 1000 cfs for December through March, instead of VDGIF's proposed 1250 in December and January and 1500 in February and March. AEP did not provide clarification, but rather simply repeated the assertions that VDGIF questioned. What is DEQ's rationale for adopting the licensee's flow recommendation here rather than that of VDGIF, when the licensee has refused to address VDGIF's questions and concerns? Besides a lack of transparency regarding the method by which Appalachian arrived at a cost figure for the higher minimum flows, there is no attempt in Appalachian's license application to demonstrate that the (easily quantified) foregone hydropower benefits outweigh the value of public benefits such as a healthy biota.

Staff Response:

DEQ staff participated in the Water Management Work Group convened by Appalachian for the purposes of its Federal Energy Regulatory Commission (FERC) license application. Staff from the Virginia Departments of Games and Inland Fisheries (DGIF) and Conservation and Recreation (DCR) also participated. The goal of that work group was to review the current Appalachian operations and their impact on stream flow in the New River and make recommendations to Appalachian for changes to its operations under the new FERC license term. DEQ, DGIF, and DCR focused on improving flows, and thus improving protection of beneficial uses. DEQ proposed specific recommendations regarding an approach termed 'modified levelized flow', to occur in the late summer/early fall, to improve flow for recreational uses. Staff intended for this to be an experimental mode of operation to determine if additional flows could be provided without significant impact on power generation capabilities. The draft VWP permit contains flow release requirements per VWP regulation that also include optional modes of operation to implement the experimental plan. However, the language in the draft permit condition was unclear to several commenters. Therefore, staff recommends the revision of Table 1 in the draft VWP permit to clarify the optional nature of this release plan.

Another aspect of Appalachian's operations regarding stream flow is the seasonal switch from a levelized mode to a peaking mode. The Water Management Work Group made recommendations to Appalachian about seasonal flows, specifically those during the winter months. Appalachian decided not to accept those recommendations in its proposals submitted for its FERC license application. DEQ received comments from state resource agencies during the public comment period that provided alternate flow recommendations from those proposed by Appalachian. DGIF contends that winter minimum flows should be increased to more naturally mimic the long-term hydrograph of the New River, based upon the In-stream Flow Incremental Method studies completed to date. Appalachian contends that a loss of revenue and a loss of renewable power would result from the flows proposed by VDEQ (lost renewable energy would most likely be replaced by a blend of combined cycle and combustion generating facilities), and that its proposal of 1,000 cfs, or inflow, whichever is less is appropriate based upon studies conducted as part of its FERC relicensing effort. To fully consider the recommendations made specifically by DGIF, DEQ staff conducted in-stream flow modeling to determine what if any compromise could be reached. The February and March limits set forth in the draft permit are a compromise between those proposed by Appalachian (1,000 cfs, or inflow, whichever is less) and those proposed by DGIF (1,500 cfs, or inflow, whichever is less), and was validated by DEQ's modeling efforts as protective of beneficial uses. Therefore, no changes to the draft VWP permit are recommended regarding the flow requirements in Table 1 for the months of December through March.

To further address concerns expressed by the Board Chairman during the public hearing process, staff propose to revise the permit conditions to require the permittee coordinate with state agencies and

interested stakeholders during periods of extreme low inflow to the Claytor project in order to develop operational protocols for flow release at these times.

3. Issue: Permit term and reissuance process/requirement

American Electric Power d.b.a. Appalachian Power Company:

- Appalachian stated that a VWP permit with a termination within the term of the license for the Claytor Project would be inconsistent not only with the new license term but with the scheme of regulation contemplated by Section 401 (a)(1) of the Clean Water Act (CWA). Appalachian also showed examples for hydroelectric projects in the Commonwealth that recently received licenses from FERC and that VDEQ had issued VWP permits with language similar to that contained within the draft permit for the Claytor Project whereby FERC had upon review determined that any termination of the certification during the license term would end the conditions of the certification but would have no effect on the validity of the FERC license. In other cases, FERC added that the certification requirement of Section 401 (a)(1) only applies to the granting of a license by a federal agency and that once the license is granted, the state water quality certification agency no longer possesses authority to issue a certification for the project covered by the license. ... The VWP permit for Appalachian's Smith Mountain Project has no requirements for Appalachian to reapply for and obtain new certifications during the term of the FERC license. Therefore, understanding the statutory constraint on VDEQ, Appalachian firmly believes that for the Claytor Project only the first sentence of the first paragraph of Special Condition B should be retained and the remainder of that paragraph should be deleted so that the conditions of Special Condition B parallel the language contained within VDEQ's Section 401 (a)(1) certification for the Smith Mountain Project...
- The 15-year permit term should be vacated and instead run concurrent with FERC license term. Same language as was used in the Smith Mountain Project permit should be used for this permit.

Friends of the New River: We are concerned that VDEQ will not be able to enforce the permit conditions past 15 years. ... According to Appalachian Power, FERC claims further that licensee would not be required to seek another VWP before the end of the FERC license period.

Staff Response:

The condition providing for the permit term and reissuance procedures is in accordance with the State Water Control Law. Notably, § 62.1-44.15 authorizes the Board to adopt rules governing the issuance of water quality permits and further authorizes such rules to be more restrictive than federal requirements. Statutory duration requirements include that the term of the permit be based on the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term of any permit shall not exceed fifteen years. Further, the term of these permits shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit requires reapplication and reissuance of a permit. Reissuance cannot extend the 15-year term of the original or subsequent issuances. No changes to the draft VWP permit are recommended regarding permit term or reissuance procedures.

4. Issue: Recreational access

New River Planning District Commission: The New River has a Blueway Trail that extends from the headwaters to its terminus; currently no route exists around the Claytor Hydro project. A portage around the facility would provide a way to remain on the trail in a safe manner.

Staff Response:

DEQ has no authority to require portage around the Claytor Lake dam to enhance recreational opportunities to the public. No changes to the draft VWP permit are recommended regarding recreational access.

5. Issue: Impacts to downstream aquatic resources

Friends of the New River: We are concerned about possible adverse impacts on the Hellbender (*Cryptobranchus allegghensis*) which inhabits the New River system and which seems to be on its way

to being designated a special status organism. ... The language of the draft permit leaves it entirely to chance whether the Hellbender is studied at all. Licensee should be required to provide for studies on the status of the Hellbender in the project area (downstream of Claytor Dam to the backwaters of Bluestone Lake). ... the permit is not clear with respect to the licensee's obligations if it is determined that project operations are detrimental to the Hellbender. ... We would urge that the permit substitute "shall" for "may" in the preceding sentence and in similar circumstances in the permit. ... the draft permit is silent as to the process by which the licensee might be required to amend its project operations in the event they are found to be detrimental to the Hellbender or other biota.

Staff Response:

VWP staff did not include any special conditions in the draft VWP permit that are specifically related to the Hellbender salamander, identified by DGIF as a potential inhabitant downstream of the dam for the following reasons: it is not a listed threatened or endangered species; the Virginia Department of Game and Inland Fisheries did not provide DEQ with specific comments or recommendations regarding potential studies for the species; and unlike with the freshwater mussels, Federal Energy Regulatory Commission (FERC) coordination did not identify a potential connection between project operations and the salamander populations and/or habitat. However, the draft VWP permit does contain conditions to protect all instream beneficial uses and water quality, per the Code of Virginia §§62.1-44.2; -44.5; -44.15:20; and -44.15:22. Should the project be found to impact any aquatic species as a result of the on-going studies and coordination, DEQ will determine what if any permit modifications are necessary and/or if mitigation for such impacts is appropriate. Also, a permit condition was included in the draft VWP permit that specifically addresses the potential to reopen the permit should impacts be found or should the species listing status change. Staff does not recommend any changes to the draft VWP permit regarding the Hellbender salamander.

6. Issue: Administrative management

Friends of the New River:

- The draft permit refers to a Water Quality/Water Management Technical Review Committee. Is this the same committee referred to in Permit Condition 1 as an "adaptive management committee"? Who decides who will sit on this committee? The composition of the Committee should be specified. What response will be required of the licensee to any recommendations affecting project operation that may be made by the Committee?
- The permit should make clear that the licensee be financially responsible for the mussel studies described under E.5 regarding the mussel monitoring plan.
- VDGIF and FONR both have repeatedly expressed concerns (see for example DGIF comments on the license application, signed by William Kittrell and dated November 24, 2009) over funding for studies, decision-making, and the role of the Committee with respect to management decisions, and AEP has consistently been unresponsive, addressing the concerns in only the vaguest language. The VWPP should specifically address these issues (the composition, schedule, funding, rules of order, and role of the Committee and the obligations of the licensee in recording and reporting deliberations/decisions of the Committee as well as implementing its recommendations). A process for resolving disputes between the Committee and the licensee should also be specified.

Staff Response:

The use of technical work groups or committees is a tool used by applicants to gather public information and comments, technical expertise, and data on a wide array of topics that must be addressed in the process of applying for a Federal Energy Regulatory Commission (FERC) license, and is also used as a tool for the application for a Virginia Water Protection (VWP) permit. Such bodies are optional in the VWP permit process unless specifically required by a permit. Participants usually include interested stakeholders; local, state, and/or federal agency personnel with jurisdiction and expertise over the topic(s) to be discussed; and the applicant or licensee. The purpose is to gain consensus on any identified issues, while understanding the inherent authority limitations and practicability of any resolutions derived by the group. Such groups may themselves provide human or financial resources to assist in

developing resolutions, or may provide references to other bodies or programs for assistance. Leadership of such work groups or committees depends on the tasks the group is charged with, but typically resides with the governmental authority(ies), particularly when permitting or licensing is necessary. Staff recommends the incorporation of a work group to address the issues associated with the annual lake level drawdown.

Based on the review of the permit application and subsequent submittals from the permittee and/or the permittee's agents, the staff provides the following recommendations: 1) the permit has been prepared in conformance with all applicable statutes, regulations and agency practices; 2) the proposed activity is consistent with the provisions of the Clean Water Act and State Water Control Law and will protect instream beneficial uses; 3) the proposed permit addresses avoidance and minimization of surface water impacts to the maximum extent practicable; 4) the effect of the proposed activities, together with other existing or proposed impacts to surface waters, will not cause or contribute to significant impairment of state waters or fish and wildlife resources; and 5) this permit is designed to prevent unpermitted impacts.

The staff recommends that the Board find the above recommendations to be appropriate; approve the VWP individual permit and conditions; and authorize the Director to issue VWP Individual Permit Number 09-0892 as approved by the Board.

Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (9VAC25-800) : This is a new final regulation.

The staff will ask the board to approve the regulation establishing the General VPDES Permit for Discharges Resulting from the Application of Pesticides to Surface Waters. A public comment period was issued from October 25 – December 27, 2010. Three public hearings were held. These hearings were held at DEQ's Tidewater Regional Office in Virginia Beach on November 16, 2010 at 7:00 PM; at DEQ's Blue Ridge Regional Office in Roanoke on November 18, 2010 at 7:00 PM; and at DEQ's Piedmont Regional Office in Glen Allen on December 7, 2010 at 3:00 PM. Public comments are summarized in the below.

DEQ used a participatory approach to develop these regulations. A 21-person Technical Advisory Committee (TAC) was formed to assist the department in the development of a VPDES general permit for pesticide applications that result in a discharge to surface waters. The TAC's primary responsibility was to collaboratively contribute to the development of a VPDES General Permit for Pesticide Discharges that is in the best interests of the Commonwealth as a whole. The TAC met four times (July 14th; July 28th; August 6th and August 18th) to discuss the development of a Virginia Draft Pesticide Discharge Permit Regulation. During the course of those meetings many alternatives were considered and the agency has developed a final regulation that has gained the concurrence of the stakeholders in the technical advisory committee. The agency believes the regulation represents the least burdensome and intrusive alternative that meets the essential purpose of the action.

This action is to approve a new VPDES general permit for discharges from pesticides applied directly to surface waters to control pests, and/or applied to control pests that are present in or over, including near, surface waters. The general permit regulation is needed in order to comply with court ordered requirements for EPA and states to issue NPDES permits for both chemical pesticide applications that leave a residue or excess in water, and all biological pesticide applications that are made in or over, including near, waters of the United States. This new requirement is in addition to existing Federal Insecticide, Fungicide, and Rodenticide Act requirements that are implemented by the Virginia Department of Agriculture and Consumer Services under the Pesticide Control Board.

Since the Court ruling, EPA collected and analyzed data on pesticide applications, including labeling requirements, pesticide uses, best management practices employed to minimize the impact of pesticides on water quality, and existing state water quality standards for pesticides. EPA proposed a NPDES Pesticides General Permit that will be issued by them for areas where EPA remains the NPDES permitting authority and for the delegated NPDES states (like Virginia) to use in drafting their permit.

The following pesticide uses were covered under the draft General Permit per the court order for operators that apply pesticides in or near water:

- Mosquito and other flying insect pest control
- Aquatic weed and algae control
- Aquatic animal pest control
- Forest canopy pest control

The regulation generally follows EPA's proposed pesticide general permit with definitions, eligibility requirements (authorizations to discharge), technology effluent limitations (integrated pest management considerations), water quality based limitations, monitoring requirements, pesticide discharge monitoring plan, corrective actions, adverse incident and spills and leaks reporting, recordkeeping and annual reporting requirements and conditions applicable to all permits. However, the EPA proposed general permit was adjusted for Virginia users for clarification, flexibility and ease of implementation.

Pertinent matters of interest are that this permit differs from the EPA proposed pesticide general permit in that this permit does not require submittal of a 'registration statement' or 'notice of intent' from the pesticide operators that wish to be covered under the permit. Since registration statements would only provide very general information the staff does not believe that registration statement should be required. Not requiring registration statements also eliminates staff resources needed to review registrations, send out acceptance letters and other correspondence normally associated with registrations. All operators falling under one or more of the four pesticide 'uses' are automatically covered for discharge to surface waters. This is allowed under the VPDES permit regulation at 9VAC25-31-17- B 2 a. Since there is no registration requirement, there is also no fee requirement.

Another matter of interest is that permit coverage is only being issued for a 2-year period rather than the standard 5-year coverage. EPA is expected to issue their final pesticides general permit by April 2011. Based on the substantial comments EPA has received on their draft permit, and recent legislation that has been introduced in Congress to modify some of EPA's requirements, it is likely that the TAC would need to be reconvened to consider changes to Virginia's permit based on changes EPA makes for their final permit. The use of this 2-year permit will allow Virginia to put in place a general permit by the court required deadline and also provide a reasonable time to evaluate the federal permit to incorporate appropriate changes for the reissuance of the Virginia general permit in June 2013. The Virginia 2-year permit will also provide a timing off-set to future EPA general permit reissuance (every 5 years) and allow more time for DEQ to react to future changes in the EPA requirements. This final general permit is protective of water quality; matches up with current Virginia Department of Agriculture and Consumer Services 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.

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. This matches the EPA definition. This has caused some concern by the public in that there are overlapping responsibilities. This was discussed in great detail with the technical advisory committee and it was eventually determined to keep the definition of operator as proposed in the federal general permit. Other alternatives were provided to ease this concern (such as no requirement for registration statements and only adverse incident annual reporting). Some operators (e.g., those that exceed the acreage thresholds) will have additional reporting requirements but all operators are required to consider integrated pest management practices and decisions in their operation, and report annually any adverse incidents.

Operators exceeding pesticide application thresholds have more recordkeeping requirements than operators falling under the threshold. This is within the spirit and intent of the EPA permit. However, the threshold limits identified in 9VAC25-800-30 C Table 1 were generally considered by the TAC and other interested stakeholders to be too low. It was decided that at this 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.

Another issue is that the EPA proposed pesticide general permit prohibits coverage under the general permit in 'exceptional' or 'tier 3' waters. Virginia's water quality standards in the antidegradation policy at 9VAC25-260-30 A 3 allows for temporary discharges to tier 3 waters. The Virginia proposed pesticide permit recognizes this allowance and states that discharges resulting from the application of pesticides are temporary and allowable in exceptional waters (see 9VAC25-260-30 A 3 (b)

(3). Staff believes it is important to allow pesticide application in exceptional waters because there are situations where the pesticide application may be for the express purpose of protecting or restoring the exceptional waters. For example, a gypsy moth infestation if left unchecked could adversely affect water quality by 1) increased siltation from rapid runoff of rainfall from defoliated areas; and 2) increase in water temperature as the stream flows through areas made shadeless.

In a teleconference on January 6, 2010 EPA informed the States that the scope for three of the four types of pesticide use patterns will likely be revised in the final federal general permit. EPA has removed the ‘aquatic’ restriction for two pesticide use patterns which widens the scope of these two use categories. These revised use patterns are now weed and algae control and animal pest control instead of aquatic weed, algae and aquatic animal pest control. This means that pesticides applications that result in a discharge to surface waters to control aquatic or terrestrial species are covered. Additionally, EPA included ‘pathogens’ in the weed and algae type of pesticide application. For the third use pattern EPA has removed the ‘aerial’ qualifier from the federal forest canopy pest control definition so that both ground and aerial canopy spraying are covered under the permit.

Additionally, EPA indicated that the thresholds in the EPA permit will also likely be revised. The 640 acre thresholds for mosquito control and forest canopy have been increased to 6400 acres and the 20 acre threshold for weeds, algae, pathogen and animal pests has been increased to 80 acres. Additionally, the method (in footnote 2 in Table 1) to calculate annual threshold acreages for weeds and animal pests has been revised to say ‘For calculating annual treatment totals count each pesticide application activity [and each side of a linear water body as a separate activity] or area [only once]. For example, treating both sides of a ten mile ditch [twice a year] is equal to [twenty ten] miles of water treatment area.

In anticipation of the EPA issuing the final draft of the federal pesticide general permit VADEQ has made these revisions to the Virginia pesticide general permit. It is now anticipated that the final draft of the federal pesticide general permit will not be released by EPA until mid-February.

It is anticipated approximately 600 pesticide businesses (including local governments) could be impacted by this new general permit regulation. Businesses that apply pesticides exceeding a certain annual threshold will be required to develop a pesticide discharge management plan, and to keep additional pesticide application records. All operators, regardless of the number of acres on which they apply pesticides, will be required to consider integrated pest management decisions in their operations and submit an annual report to the Department of Environmental Quality of any adverse incidents.

The regulation has been reviewed by the Attorney General’s Office and has received statutory authority approval.

According to the EPA/DEQ Memorandum of Agreement, the Environmental Protection Agency (EPA) Region III has reviewed the draft Virginia Pesticide General Permit (PGP). Based on a review of the draft permit, fact sheet and the permit file, EPA has approved the general permit and assigned the state general permit number as G87, which would make the Virginia permit VAG87.

Changes made since the proposed stage

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC25-800-10	Definition: “Treatment area”: <u>Treatment area calculations for pesticide applications that occur at water’s edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied. For</u>	Example has been deleted: Text now reads: <u>Treatment area calculations for pesticide applications that occur at water’s edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied. [For example, treating both sides of a five mile long river,</u>	Revised for consistency with changes to information in Threshold table (Table 1. Annual Treatment Area Thresholds) in 0VAC25-800-30 C.

	<u>example, treating both sides of a five mile long river, stream, or ditch is equal to 10 miles of treatment area. Treating five miles of shoreline or coast would equal a five mile treatment area.</u>	<u>stream, or ditch is equal to 10 miles of treatment area. Treating five miles of shoreline or coast would equal a five mile treatment area.]</u>	
9VAC25-800-10	Definition: <u>“VDACS” means the Virginia Department of Agriculture and Consumer Services.</u>	<u>“VDACS” means the Virginia Department of Agriculture and Consumer Services. [VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of the Federal Insecticide, Fungicide and Rodenticide Act-(FIFRA). As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.]</u>	Request by VDACS to clarify department responsibilities related to the provisions of the pesticide statute.
9VAC25-800-30 B 2	<u>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, but are not limited to cattails, hydrilla and watermeal.</u>	<u>2. [Aquatic weed and algae Weed, algae and pathogen] control - to control invasive or other [aquatic (emergent, floating or submerged) nuisance weeds and algae nuisance weeds, algae and pathogens] in surface waters. [Aquatic nuisance weeds include, but are not limited to cattails, hydrilla and watermeal.]</u>	Clarification of requirements based on information received from EPA.
9VAC25-800-30 B 3	<u>3. Aquatic Animal Pest Control – to control aquatic invasive or other aquatic animal pests in surface waters. Aquatic animal pests in this category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.</u>	<u>3. [Aquatic animal Animal] pest control – to control [aquatic] invasive or other [aquatic] animal pests in surface waters. [Aquatic animal pests in this category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.]</u>	Clarification of requirements based on information received from EPA.
9VAC25-800-30 B 4	<u>4. Forest Canopy Pest Control – 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.</u>	<u>4. Forest canopy pest control – [aerial] application of a pesticide [over a 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.</u>	Clarification of requirements based on information received from EPA.
9VAC25-800-30 C	<u>C. Operators applying pesticides are required to</u>	<u>C. Operators applying pesticides are required to maintain a pesticide</u>	Clarification of requirements and

	<p>maintain a <u>Pesticide Discharge Management Plan (PDMP)</u> if they exceed the <u>annual treatment area thresholds</u> in <u>Table 1</u> of this subsection:</p> <p><u>Table 1. Annual Treatment Area Thresholds</u></p> <table border="1"> <thead> <tr> <th><u>Pesticide Use</u></th> <th><u>Annual Threshold</u></th> </tr> </thead> <tbody> <tr> <td><u>Mosquitoes and Other Flying Insect Pests</u></td> <td><u>640 acres of treatment area</u></td> </tr> <tr> <td><u>Aquatic Weed and Algae Control:</u></td> <td>-</td> </tr> <tr> <td>- <u>In Water</u></td> <td><u>20 acres of treatment area¹</u></td> </tr> <tr> <td>- <u>At Water's Edge:</u></td> <td><u>20 linear miles of treatment area at water's edge²</u></td> </tr> <tr> <td><u>Aquatic Animal Pest Control:</u></td> <td>-</td> </tr> <tr> <td>- <u>In Water</u></td> <td><u>20 acres of treatment area¹</u></td> </tr> <tr> <td>- <u>At Water's Edge</u></td> <td><u>20 linear miles of treatment area at water's edge²</u></td> </tr> <tr> <td><u>Forest Canopy Pest Control</u></td> <td><u>640 acres of treatment area</u></td> </tr> <tr> <td>-</td> <td></td> </tr> </tbody> </table> <p>¹ - <u>Calculations include the area of the applications made to: (1) surface waters and (2) conveyances with a hydrologic surface connection to surface waters</u></p>	<u>Pesticide Use</u>	<u>Annual Threshold</u>	<u>Mosquitoes and Other Flying Insect Pests</u>	<u>640 acres of treatment area</u>	<u>Aquatic Weed and Algae Control:</u>	-	- <u>In Water</u>	<u>20 acres of treatment area¹</u>	- <u>At Water's Edge:</u>	<u>20 linear miles of treatment area at water's edge²</u>	<u>Aquatic Animal Pest Control:</u>	-	- <u>In Water</u>	<u>20 acres of treatment area¹</u>	- <u>At Water's Edge</u>	<u>20 linear miles of treatment area at water's edge²</u>	<u>Forest Canopy Pest Control</u>	<u>640 acres of treatment area</u>	-		<p><u>discharge management plan (PDMP)</u> if they exceed the <u>annual treatment area thresholds</u> in <u>Table 1</u> of this subsection:</p> <p><u>Table 1. Annual Treatment Area Thresholds</u></p> <table border="1"> <thead> <tr> <th><u>Pesticide Use</u></th> <th><u>Annual Threshold</u></th> </tr> </thead> <tbody> <tr> <td><u>Mosquitoes and Other Flying Insect Pests</u></td> <td><u>[640-6400] acres of treatment area</u></td> </tr> <tr> <td><u>[Aquatic Weed and Algae Weed, Algae and Pathogen] Control:</u></td> <td></td> </tr> <tr> <td>- <u>In Water</u></td> <td><u>[20-80] acres of treatment area¹</u></td> </tr> <tr> <td>- <u>At Water's Edge</u></td> <td><u>20 linear miles of treatment area at water's edge²</u></td> </tr> <tr> <td><u>[Aquatic] Animal Pest Control:</u></td> <td></td> </tr> <tr> <td>- <u>In Water</u></td> <td><u>[20-80] acres of treatment area¹</u></td> </tr> <tr> <td>- <u>At Water's Edge</u></td> <td><u>20 linear miles of treatment area at water's edge²</u></td> </tr> <tr> <td><u>Forest Canopy Pest Control</u></td> <td><u>[640-6400] acres of treatment area</u></td> </tr> </tbody> </table> <p>¹ <u>Calculations include the area of the applications 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</u></p>	<u>Pesticide Use</u>	<u>Annual Threshold</u>	<u>Mosquitoes and Other Flying Insect Pests</u>	<u>[640-6400] acres of treatment area</u>	<u>[Aquatic Weed and Algae Weed, Algae and Pathogen] Control:</u>		- <u>In Water</u>	<u>[20-80] acres of treatment area¹</u>	- <u>At Water's Edge</u>	<u>20 linear miles of treatment area at water's edge²</u>	<u>[Aquatic] Animal Pest Control:</u>		- <u>In Water</u>	<u>[20-80] acres of treatment area¹</u>	- <u>At Water's Edge</u>	<u>20 linear miles of treatment area at water's edge²</u>	<u>Forest Canopy Pest Control</u>	<u>[640-6400] acres of treatment area</u>	<p>incorporation of anticipated revisions to the EPA permit based on information received from EPA.</p>
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9VAC25-800-60	<p><u>General permit:</u> <u>Any operator who is authorized to discharge shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.</u> <u>General Permit No: VAGxx</u></p>	<p><u>General permit:</u> <u>Any operator who is authorized to discharge shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.</u> <u>General Permit No: [VAGxx VAG87]</u></p>	<p>Approval of general permit by EPA and issuance of General Permit Number.</p>
9VAC25-800-60 Part I A 1 b (1) (c) (i)	<p><u>Mosquito control pesticide use pattern:</u> <u>(i) Conduct larval and/or adult surveillance prior to each pesticide application to assess the pest management area and to determine when action threshold(s) are met that necessitate the need for pest management;</u></p>	<p><u>Mosquito control pesticide use pattern:</u> <u>(i) Conduct larval and/or adult surveillance[, or assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects,] prior to each pesticide application to assess the pest management area and to determine when action thresholds are met that necessitate the need for pest management;</u></p>	<p>Clarification of requirements and to correct inconsistencies within the regulation.</p>
9VAC25-	<p><u>(2) Aquatic weed and algae</u></p>	<p><u>(2) [Aquatic weed and algae Weed,</u></p>	<p>Clarification of</p>

800-60 Part I A 1 b (2)	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.	algae and pathogen] 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 nuisance weeds, algae and pathogens] in surface waters. [Aquatic nuisance weeds include, but are not limited to, cattails, hydrilla, and watermeal.]	requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (2) (a) (ii)	Identify the problem: (ii) Identify areas with aquatic weed or algae problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);	Identify the problem: (ii) Identify areas with aquatic weed or algae weed, algae or pathogen] problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (2) (a) (iv)	Identify the problem: (iv) Establish past or present aquatic weed or algae densities to serve as thresholds for implementing pest management strategies.	Identify the problem: (iv) Establish past or present aquatic weed or algae weed, algae or pathogen] densities to serve as thresholds for implementing pest management strategies.	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (2) (b)	(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 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 that minimize discharges resulting from application of pesticides to control aquatic weeds or algae. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance,	(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 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 that minimize discharges resulting from application of pesticides to control aquatic weeds or algae weeds, algae or pathogens]. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.

	<u>feasibility, and cost effectiveness:</u>		
9VAC25-800-60 Part I A 1 b (2) (c)	<u>(c) Pesticide use. If a pesticide is selected to manage aquatic weeds or algae and application of the pesticide will result in a discharge to surface waters, the operator shall:</u>	<u>(c) Pesticide use. If a pesticide is selected to manage [aquatic weeds or algae weeds, algae or pathogens] and application of the pesticide will result in a discharge to surface waters, the operator shall:</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (3)	<u>(3) Aquatic animal pest control. This subpart applies to discharges resulting from the application of pesticides to control aquatic invasive or other aquatic animal pests in surface waters. Aquatic animal pests in this use category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.</u>	<u>(3) [Aquatic animal Animal] pest control. This subpart applies to discharges resulting from the application of pesticides to control [aquatic] invasive or other [aquatic] animal pests in surface waters. [Aquatic animal pests in this use category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.]</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (3) (a) (i)	<u>(i) Identify target aquatic animal pests;</u>	<u>(i) Identify target [aquatic] animal pests;</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (3) (a) (ii)	<u>(ii) Identify areas with aquatic 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);</u>	<u>(ii) Identify areas with [aquatic] 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);</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (3) (a) (iv)	<u>(iv) Establish past or present aquatic animal pest densities to serve as action thresholds for implementing pest management strategies.</u>	<u>(iv) Establish past or present [aquatic] animal pest densities to serve as action thresholds for implementing pest management strategies.</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
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	<u>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 that minimize discharges resulting from application of pesticides to control aquatic animal pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:</u>	<u>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 that minimize discharges resulting from application of pesticides to control [aquatic] animal pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:</u>	EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (3) (c)	<u>(c) Pesticide use. If a pesticide is selected to manage aquatic animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:</u>	<u>(c) Pesticide use. If a pesticide is selected to manage [aquatic] animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.
9VAC25-800-60 Part I A 1 b (4)	<u>(4) Forest canopy pest control. This subpart applies to discharges resulting from the aerial application of pesticides to the forest canopy to control the population of a pest species...</u>	<u>(4) Forest canopy pest control. This subpart applies to discharges resulting from the [aerial] application of pesticides to the forest canopy to control the population of a pest species...</u>	Clarification of requirements and incorporation of anticipated revisions to the EPA permit based on information received from EPA.

Public comment and Agency Response

Commenter	Comment	Agency response
Cindy Schulz, US FWS	Amend 9VAC25-800-30.C to include a second requirement for operators: “Operators applying pesticides are required to maintain a Pesticide Discharge Management Plan (PDMP) if 1) they exceed the annual treatment areas thresholds in Table 1 below or 2) they are applying pesticides to threatened and endangered species	This represents a significant change for pesticide operators that was not required in the draft federal permit. It is our understanding that the EPA is also still negotiating Endangered Species Act requirements for the pesticide general permit. That is one reason why permit coverage for Virginia is only being issued for a 2-year period rather than the standard 5-year

	waters as identified by the Virginia Department of Game and Inland Fisheries or to federally designated critical habitat as identified through the U.S. Fish and Wildlife Service review process (see 9VAC25-800-30. Authorization to discharge F.1).”	coverage. EPA is expected to issue their final pesticides general permit by April 2011. The use of this 2-year permit will allow Virginia to put in place a general permit by the court required deadline and also provide a reasonable time to evaluate the federal permit to incorporate appropriate changes for the reissuance of the Virginia general permit in June 2013. It is expected that a Technical Advisory Committee will be reconvened this spring to address issues such as this and USFWS will be asked to join this discussion to determine if additional requirements are necessary in Virginia.
Cindy Schulz, US FWS	Add language to 9VAC25-800-30 D.2: “Discharges to Lake Drummond within the Great Dismal Swamp National Wildlife Refuge are not authorized by this general permit. Operators seeking coverage for a point source discharge to Lake Drummond that would result from the application of biological or chemical pesticide should apply for an individual VPDES permit.”	Since USFWS controls the Great Dismal Swamp National Wildlife, the Service may choose to apply for an individual VPDES permit in lieu of using the general permit; therefore, this suggested change is not necessary. VADEQ believes treating exceptional waters inconsistently in a regulation is not appropriate and that it is important to allow pesticide application in exceptional waters because there are situations where the pesticide application may be for the express purpose of protecting or restoring the exceptional waters. EPA has approved the Virginia approach to exceptional waters for the pesticide general permit.
Cindy Schulz, US FWS	Add language: 9VAC25-800-30.F: “1. To ensure compliance with the Federal Endangered Species Act, operators seeking coverage under this permit should review their project through the U.S. Fish and Wildlife Service’s project review website ... to ensure that impacts to federally listed threatened and endangered and proposed species and federally designated critical habitat do not occur and to ensure that any effects which cannot be avoided are minimized and coordinated with and/or authorized by the Service.”	This represents a significant change for pesticide operators that was not required in the draft federal permit. It is our understanding that the EPA is also still negotiating Endangered Species Act requirements for the pesticide general permit. That is one reason why permit coverage for Virginia is only being issued for a 2-year period rather than the standard 5-year coverage. The use of this 2-year permit will allow Virginia to put in place a general permit by the court required deadline and also provide a reasonable time to evaluate the federal permit to incorporate appropriate changes for the reissuance of the Virginia general permit in June 2013. It is expected that a Technical Advisory Committee will be reconvened this spring to address issues such as this and USFWS will be asked to join this discussion to determine if additional requirements are necessary in Virginia. The permit does state that operators are not

		relieved of their responsibility to comply with other federal statutes, including the product label. This includes the Endangered Species Act. The permit already requires minimization techniques, use of integrated pest management and a requirement to meet water quality standards. The fact sheet will include the web site you have provided for the permittees to consult for information about critical habitat or federal species.
Cindy Schulz, US FWS	Add language: 9VAC25-800-60. General Permit. Part I.D Special Conditions. 2. Adverse Incident Documentation and Reporting d.(1) (b) and (c): “Notify the U.S. Fish and Wildlife Service Virginia Law Enforcement Office at 804-771-2883, 5721 South Laburnum Avenue, Richmond, Virginia 23231 and the Virginia Field Office at 804-693-6694, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061 in the event of an adverse incident.”	VADEQ will add this to the contact information form.
Todd A. Trowbridge, CLARKE	Suggest that the language at 2.c (11) (page 42) addressing criteria for an “adverse incident” is not consistent with other sections of the current draft and should be removed.	The section in question is actually a continuation of the Part I D 2 c requirements, and not one of the 11 pieces of information required to be in the adverse incident report. Part I D 2 c is the 5-day adverse incident report. The Department recognizes that the product label may indicate that adverse effects may occur, but the operator is still required to report any adverse incidents that actually do occur, unless the report is waived by the provisions of Part I D 2 b (“Reporting of adverse incidents is not required under this permit in the following situations:…”). The definition of “adverse incident” in the regulation at 9 VAC 25-800-10 details what constitutes “adverse effects”, and provides the operator the information needed to determine if an adverse incident has occurred. The definition and permit requirements are consistent, and no changes to the permit or regulation are necessary.
Evelyn Mahieu, UOSA	(1) Is applying the pesticide “doughnuts” for mosquito control to a storm water pond, which discharges to a stream subject to the PGP? (2) While spraying a herbicide around fences close to a stream there is	(1) The application of pesticide “doughnuts” for mosquito control to a storm water pond, which discharges to a stream, is subject to the PGP; (2) The draft PGP only addresses applications to water; spray drift associated with residual pesticides from land

	<p>always a possibility of some of the spray reaching areas nearby the stream. Is that activity subject of the PGP? (3) Do you consider the example in (2) above “off target spray drift”, which is outside the scope of the PGP? (4) For the same example as in (2) above, if after spraying during a dry day it rains and some of the herbicide/degradation products run into the stream, is this case subject to the PGP?</p>	<p>applications do not have coverage under this PGP; (3) “Off target spray drift” is outside the scope of this PGP; (4) The draft PGP only addresses applications to water; storm water contaminated with residual pesticides from land applications is not covered under this draft PGP.</p>
<p>Cindy Schulz, US FWS</p>	<p>Suggest that language be added to require applicants to refer to the US FWS project review website that provides the steps and information necessary to allow general VPDES permit applicants to review their project and reach a conclusion on the effects of their proposed biological or chemical pesticide application project on federally listed and proposed species and federally designated critical habitat.</p>	<p>This represents a significant change for pesticide operators that was not required in the draft federal permit. It is our understanding that the EPA is also still negotiating Endangered Species Act requirements for the pesticide general permit. That is one reason why permit coverage for Virginia is only being issued for a 2-year period rather than the standard 5-year coverage. The use of this 2-year permit will allow Virginia to put in place a general permit by the court required deadline and also provide a reasonable time to evaluate the federal permit to incorporate appropriate changes for the reissuance of the Virginia general permit in June 2013. It is expected that a Technical Advisory Committee will be reconvened this spring to address issues such as this and USFWS will be asked to join this discussion to determine if additional requirements are necessary in Virginia.</p> <p>Until then, the permit states operators are not relieved of their responsibility to comply with other federal statutes, including the product label. This includes the Endangered Species Act. The permit already requires minimization techniques, use of integrated pest management and a requirement to meet water quality standards. The fact sheet will provide the web site given as information for the permittees to consult if they have concerns about critical habitat or federal species.</p>
<p>Katie K. Frazier, Virginia Agribusiness Council</p>	<p>We recognize that Virginia, acting within their EPA delegated authority for NPDES permitting, must issue this regulation to establish a pesticide general permit. We are encouraged that this proposed regulation is not more stringent than federal</p>	<p>VADEQ acknowledges the comment.</p>

	<p>guidelines. This proposal also attempts to minimize the reporting and record keeping burden on permittees by not requiring submittal of “Notices of Intent” annually to DEQ during the current, shortened permit period. This will lessen regulatory burdens on permittees, while not impacting water quality protections, as the requirements for minimization, incident reporting, etc. are still in place.</p>	
<p>Katie K. Frazier, Virginia Agribusiness Council</p>	<p>While the Council opposes EPA’s mandate to Virginia (and other states) to develop this pesticide general permit, we appreciate the Commonwealth’s efforts to minimize impacts to our industry sectors (agriculture, forestry, and turfgrass), small businesses, and landowners while still meeting EPA requirements. The court ruling that has led to EPA’s mandate for States to develop a NPDES permit for four types of pesticide applications “to, over or near” waters of the United States has overturned decades of legal, legislative and regulatory precedence, and thus, fundamentally, we do not agree with the basic premise of this permit issuance at the federal level.</p>	<p>VADEQ acknowledges the comment. However, EPA has verbally informed the States that the scope for three of the four types of pesticide use patterns will likely be revised and VADEQ has made those revisions in anticipation of the EPA changes. For example, EPA has removed the restriction to ‘aquatic’ for two pesticide use patterns which widens the scope of these two use categories. This means that pesticides application for aquatic or terrestrial species to surface water is covered. Additionally, EPA included ‘pathogens’ in the weed and algae type of pesticide application. These pesticide use patterns now read ‘Weed, algae and pathogen control’ and ‘Animal pest control.’ For the third use pattern EPA has removed the ‘aerial’ qualifier from the federal forest canopy pest control definition so that both ground and aerial canopy spraying are covered under the permit.</p>
<p>Paul R. Howe, Virginia Forestry Association</p>	<p>VFA is aware of the federal government pressure directed at Virginia to establish a pesticide general permit, and we acknowledge DEQ’s considerable effort to keep the regulation as unobtrusive as possible according to the agency’s perception of mandated federal guidelines. Thank you for listening to the response of our citizen woodland owners and forestry professionals.</p>	<p>VADEQ acknowledges the comment.</p>
<p>Sarah C. Tarallo, City of Manassas</p>	<p>(1) Request that municipalities that are already regulated under the Department of Conservation (DCR) MS4 storm water program be exempt from this regulation; (2) Request an exemption for jurisdictions within the Commonwealth that own, maintain,</p>	<p>The court ordered mandate requires some type of National Pollutant Discharge Elimination System coverage. Therefore, either a NPDES (VPDES) general permit or an NPDES (VPDES) individual permit may contain the requirements so no program that applies pesticides to surface waters can be</p>

	<p>and operate their own water supply reservoirs for drinking water purposes; (3) The City is monitoring and reporting under the DEQ Individual VPDES permit for discharges that occur at the outfall into Broad Run. Since the Algaecide applied at the Lake is housed on the Water Plan property, this chemical is reported in our current VPDES permit as a method of algae removal from our lake; (4) Request an exemption for municipalities currently under water quality monitoring programs to maintain water quality issues as they arise. Additional monitoring and testing is redundant.</p>	<p>waived. If DCR included the requirements of the pesticide general permit in the MS4 permits then coverage under this general permit would not be necessary. However, DCR may not have the authority to do so in the MS4 permits. If they did, the requirements would be similar.</p> <p>Regarding the DEQ individual permit at Broad Run, DEQ can incorporate the requirements of the pesticide general permit into that individual permit at reissuance or via a modification. However, given the April 10, 2011 deadline, the facility will need at least temporary coverage under the general permit. Coverage is automatic and the requirements are different from the Broad Run water treatment plant individual permit, so there is no duplication or redundancy of effort.</p> <p>Regarding the monitoring in Lake Manassas, the current pesticide permit does not contain chemical monitoring requirements so there is no redundancy there.</p>
<p>Brian L. Ramaley, Newport News Waterworks</p>	<p>As the general permit guidance documentation is developed and finalized, we again ask that the unique status of terminal drinking water reservoirs be carefully recognized. This includes application of human health water quality standards for drinking water reservoirs in-lieu of the aquatic life standards currently applied.</p>	<p>We agree this is a challenge for VPDES permitting in terminal reservoirs. VADEQ has also questioned EPA about this issue and will address this issue further in Agency guidance.</p>
<p>Carl E. Garrison, Virginia Department of Forestry</p>	<p>There is an argument that can be made using the federal (NPDES) guidelines that we can exempt forestry silvicultural operations from the general permit requirements, but the exemption needs to be more explicit and defined in the VPDES.</p>	<p>Both the federal regulation (40 CFR 122.3 (3) and 122.27 (a) and (b) (1)) and State VPDES regulation (9VAC25-31-10, -40 (5), and -160) exempt non-point source silvicultural activities from the NPDES/VPDES permitting requirements, and specifically exclude silvicultural non-point pest and fire control activities from the definition of silvicultural point source discharges. However, the recent Court ruling that precipitated the development of this permit has clarified that pesticide application to surface water is a point source discharge. Any nonpoint source discharge associated with terrestrial pesticide application (e.g., storm water runoff containing pesticides as a result of pesticide terrestrial application) remains exempt from NPDES/VPDES</p>

		permitting requirements.
Carl E. Garrison, Virginia Department of Forestry	On page 7 of the VPDES document, it indicates that forest canopy pest control as the “aerial application of a pesticide over a forest canopy to control the population of a pest species...” and specifically lists insects or pathogen. However, on page 4, the definition of “pest” includes “any plant growing where not wanted.” This could easily be argued that herbaceous competition control in a loblolly plantation would be included in the eligibility requirements although it is not specifically implied under forest canopy pest control. Now the State and Federal fact sheets refer to “forest canopy spraying” as <u>over mature tree canopy</u> . Our interpretation is that silvicultural practices, including cutover, young stands and mid-age rotation stand herbicide treatments don’t fit into this description and, therefore, would not be included in the VPDES permit.	The "Forest Canopy Pest Control" pesticide use pattern described in the draft regulation (9VAC25-800-30 B 4) addresses the "aerial application of a pesticide over a forest canopy to control the population of a pest species where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water." The regulation does not distinguish between mature tree canopies, and cutover, young stands and mid-age rotation stands. Consistent with the VPDES regulation, herbicide applications to all of these stands where the herbicide is applied over and deposited to surface waters are provided coverage in the VPDES permit. Additionally, EPA has told the states that the ‘aerial’ qualifier will be removed from the federal definition so that canopy spraying from the ground is also covered under the permit. This further supports our interpretation that applications to any type of canopy could unavoidably be deposited into surface water.
Paul R. Howe, Virginia Forestry Association	Through the TAC process, we have offered several arguments regarding the inappropriateness of including forestry (or silviculture) in this permit system. We have also shared how the potential reporting process and permit fee would be a cost burden upon forest landowners practicing forestry on their property, and on those small businesses applying forestry practices. Forest canopy pest control remains on the list of regulated activities in this proposed permit as prepared by DEQ. We believe this to be wrong. Generally VFA believes the court ruling and subsequent EPA mandate forcing Virginia to develop this proposed permit is an affront to long-standing legal, legislative and regulatory precedence. The state should challenge this mandate. Specifically, VFA urges Virginia to recognize that EPA itself has defined silvicultural activities, including pest control, as nonpoint sources of pollution (see 40 CFR 122.27).	Both the Federal regulation (40 CFR 122.3 (e) and 122.27 (a) and (b)(1)) and State VPDES regulation (9VAC25-31-10, -40 (5), and -160) exempt non-point source silvicultural activities from the NPDES/VPDES permitting requirements, and specifically exclude silvicultural non-point pest and fire control activities from the definition of silvicultural point source discharges. However, the recent Court ruling that precipitated development of this permit has clarified that pesticide application to surface water is a point source discharge. Any nonpoint source discharge associated with terrestrial pesticide application (e.g., storm water runoff containing pesticides as a result of pesticide terrestrial application) remains exempt from NPDES/VPDES permitting requirements.

	<p>Under the Clean Water Act, nonpoint sources are not subject to NPDES permit requirements although potentially subject to best management practices and other control measures under state and federal programs. EPA did not amend or modify its silvicultural definition in its Draft NPDES General Permit, and the definition remains in force throughout the United States with limited exception. We therefore request specific recognition of the nonpoint status of silviculture in the VPDES, acknowledging forestry applications as nonpoint sources. Forestry pesticide applicators would therefore only need to comply with existing stringent pesticide product label requirements and any applicable Virginia requirements.</p>	
<p>Tom Warmuth, Cygnet Enterprises, Inc.</p>	<p>The proposed state permit is able to acknowledge and observe the new NPDES regulations from EPA and still address parts of the new regulations that are easily found to be duplicative, costly and unnecessary. Having this permit be for two years is a good idea. Keeps the commitment time to this permit fairly short while allowing regulators enough time to regroup to begin drafting a new general permit if needed. By eliminating registration statements, fee requirements, and minimizing reporting requirements, the proposed permit may prove to be of minimal costs to those involved in both time and money.</p>	<p>VADEQ acknowledges the comment.</p>
<p>Brian L. Ramaley, Newport News Waterworks</p>	<p>This regulation is basically unnecessary as it applies to terminal drinking water reservoirs, and increases operating costs for communities and businesses in the Commonwealth. The application of EPA and Department of Agriculture approved chemical products by certified operators, in full compliance with manufacturer guidelines and existing state and federal regulation is simply not a discharge of pollutants as defined in VPDES regulations.</p>	<p>The courts have decided that chemical pesticide residues and biological pesticides require a National Pollutant Discharge Elimination System permit.</p>

	Even if it were, compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) more than adequately controls and regulates operators that apply and use these products.	
Todd A. Trowbridge, CLARKE	Would like to note our support for the comments made by the Virginia Mosquito Control Association.	VADEQ notes the support for the comments made by the Virginia Mosquito Control Association.
Todd A. Trowbridge, CLARKE	Would like to commend you on the majority of the Draft Permit that sensibly expresses the requirement for consistent implementation of Integrated Pest Management in terms relevant to the Clean Water Act requirements.	VADEQ acknowledges the comment.
SD, Water Ltd.	General comment regarding “the solution to pollution”. The use of statistical methods in evaluating outcomes has given currency to the principle of probable harm in cases where assessment is warranted but resorting to deterministic models is impractical or unfeasible. Consideration of the environment beyond direct impact on human beings has gained prominence. Migration from pollution dilution to elimination in many cases is confronted by challenging economical and technological barriers.	VADEQ acknowledges the comment.
Brian L. Ramaley, Newport News Waterworks	Section 1.1.2.1 <i>Discharges to Water Quality Impaired Waters</i> of the noticed General Permit includes an important element that we believe should be retained in the Final Regulation. Specifically, this language allows an operator to provide evidence that a water is no longer impaired, even if the water is currently listed as impaired for a pesticide or its degradates. In cases where adequate, recent data exist confirming that the designated uses are fully supported by the current water quality, operators should be given the opportunity to use the General Permit.	VADEQ agrees and the regulation will retain this language.
Tom Warmuth, Cygnet	The VA version of the NPDES permit cannot begin to address other issues that will arise once the regulatory	The courts have decided that chemical pesticide residues and biological pesticides require a National Pollutant Discharge

Enterprises, Inc.	wheel is on motion. Possible future litigations will arise and now be held to the light of the Clean Water Act. Companies, who are trying to keep our aquatic habitats and resources clean, preserved and maintained to ensure continuity of those environments, could be greatly impacted by imposed legal costs under that type of legislation.	Elimination System permit.
Jim Rindfleisch, York County Mosquito Control	York County Mosquito Control currently holds contracts for mosquito control service on the Yorktown Naval Weapons Station. This is a high-security installation and public disclosure is forbidden. The provisions of the proposed regulation calls for disclosure of maps and identification of names, addresses, and telephone numbers in treated areas. These records would contain a listing of who lives in officer's row, maps, and other intimate information not for public consumption. Is there an exemption for the military?	VADEQ does not require this level of detail. The Yorktown Naval Weapons Station in total is the customer, not individuals on the base. The map only shows the boundary of the facility and not intimate information. VADEQ does not expect operators to supply high-security information where public disclosure is forbidden.
Elijah Richardson, Yorktown Naval Weapons Station	Please provide more clarification on NPDES reporting for our base (Yorktown). Should the address for everything on the base be the base address?	Only the base address is required.
Todd A. Trowbridge, CLARKE	The monitoring requirements at Part I.B.2 indicate: "Visual monitoring assessment is only required during the pesticide application when feasibly and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances." US EPA lists a more robust set of conditions under which it might not be feasible to conduct monitoring noting: "Additionally, the following scenarios often preclude visual monitoring during pesticide application: 1. Applications made from an aircraft; 2. Applications made from a moving road vehicle when the applicator is the driver; 3. Applications made from moving	Since these additional examples are listed in the fact sheet they are considered valid examples of scenarios where visual monitoring is not required and no change to the regulation is necessary.

	<p>watercraft when the applicator is the driver; 4. Applications made from a moving off-road wheeled or tracked vehicle when the applicator is the driver.” Strongly suggest the inclusion of the full list of scenarios noted by US EPA to avoid confusion and possible litigation of monitoring requirements in the final permit.</p>	
<p>Jim Rindfleisch, York County Mosquito Control</p>	<p>We have reviewed the contents of the proposed regulations concerning mosquito control. Unfortunately, no mosquito control district in Virginia has the ability to comply with the proposed rules, especially in relation to recordkeeping and the use of sustained release pesticides. Many statements in the proposed rules concerning mosquito control are incorrect and some recommendations are illegal. These proposed rules will invalidate several environmental assessments that are currently in force. In addition, the pre-season reporting requirements found in the PDMP are impossible to comply with without extensive GIS capability. Given this, we respectfully request consultation with the appropriate SWCB representative at your earliest opportunity. There are several points that are causing concern, but the most urgent are record keeping, public access, surveillance requirements, and conflicts with other environmental documentation. The regulation seems to preclude the use of sustained acting pesticides, which are applied preemptively before mosquitoes appear. Clarification of these issues would be appreciated.</p>	<p>VADEQ has contacted York County for clarification on their concerns and provided the following responses with regards to:</p> <p>Recordkeeping (concern was about the requirement to provide detailed names and addresses) - Response - DEQ assumes the county is spraying an area as part of county mosquito control program. For this type of activity DEQ would view the county as the customer so only the county name and number would be required. There would need to be enough location information to know where the spraying occurred. Typically the detail of a USGS topographical map would suffice.</p> <p>Public Access to Records (concern was sharing sensitive information particularly in the Pesticide Discharge Management Plan) - Response -Typically the level of detail we would require for location information (mapping) is the USGS topographical map. Hopefully, this will address any concerns about sensitive information.</p> <p>Surveillance requirements (concern was geo-locating and mapping each pest management area with dipping, counts and examination documentation was not possible. Also, that it precluded the use of sustained acting pesticides, which are applied preemptively before mosquitoes appear) – Response- The operator defines the pest management area(s) and the level of larval or adult surveillance activity that is needed. Therefore, the county’s present surveillance activities should be sufficient to encompass the pest management area (or areas) the county defines. DEQ does not envision that the county would change it’s surveillance procedures to be in compliance with this general permit. We also plan to add to the fact sheet and the regulation that the operator shall “Conduct larval or adult surveillance, or</p>

		<p>assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects, prior to each pesticide application to assess the pest management area and to determine when action thresholds are met that necessitate the need for pest management” to better match the definition of an action threshold. In addition, the fact is being revised to recognize that the permit only requires larval and/or adult surveillance. The reference to establishing species presence will be removed.</p> <p>The operator defines action threshold through the use of the integrated pest management activities. DEQ does not believe that the general permit precludes the use of sustained acting pesticide products.</p> <p>Problems with existing environmental assessments (concern was that fact sheet seems to say that their method of environmental assessment (larval dip monitoring) was not an accurate indication of the potential adult population) –</p> <p>Response - DEQ recognizes that larval counts may be used as part of the integrated pest management practices and incorporated within the county’s Pesticide Discharge Management Plan to meet the requirements of this general permit.</p>
<p>Pam Dinkle, TLAC, Smith Mountain Lake</p>	<p>The “Operator” issue is quite confusing and I would greatly appreciate your assistance in better defining this issue. Here is our scenario: 1) Our office (TLAC) requests permission from Appalachian Power to contract for treatment of Hydrilla/Curlyleaf pondweed; 2) If we receive permission from APCO, then we instruct our applicator contractor to perform that treatment, and 3) Once the application is completed, the applicator provides APCO with a follow-up report noting when/where the treatment was done. In that scenario, who is the operator? APCO has the ultimate authority (TLAC can’t treat if they say no), TLAC provides the funding and issues instructions for treatment, and the applicator contractor handles the</p>	<p>There are 3 separate operators. APCO is an operator because they are the decision maker that gives permission to apply the pesticide. The TLAC is an operator because they control the financing. The applicator contractor is an operator because they have day to day control of the pesticide application. All three are operators and all three are responsible for any permit violation. However, the entities can decide among themselves who will be performing activities required by the permit. For example, TLAC could make this part of the contract with the pesticide applicator that they follow the requirements of the permit and keep the necessary documentation. The bottom line is that any and all operators covered under this permit are still responsible, jointly and severally, for any violation of shared responsibilities that may occur, though the Department may consider this division of responsibilities (e.g., the contract made with the pesticide applicator)</p>

	<p>treatment. Are there 3 separate operators in this scenario, and is each responsible for different portions of the permit? Does one of these 3 agencies have to “agree to accept” the role of operator and thus is responsible for all of the permit’s responsibilities? Does one of those 3 agencies “accept” the operator role and then divvy out the responsibilities based upon the action each agency takes?</p>	<p>when determining the appropriate enforcement response to a violation.</p>
<p>Matthew J. Lohr, VDACS</p>	<p>As currently defined, the term “Operator” could lead to confusion because it provides that more than one person could be responsible for the same discharge resulting from a pesticide application. VDACS recommends that responsibility for compliance with the requirements of the general permit be assigned to the person who actually makes the decision to apply a pesticide that results in a discharge.</p>	<p>We understand EPA is reviewing the definition. Accordingly, we believe a better time to adjust the definition would be during the 2013 reissuance.</p>
<p>Matthew J. Lohr, VDACS</p>	<p>VDACS recognizes the magnitude of the outreach efforts that will be necessary to ensure compliance by licensed pesticide businesses and certified pesticide applicators. VDACS stands ready to assist DEQ in these efforts.</p>	<p>VADEQ appreciates this commitment and all the assistance given by VDACS during this entire process.</p>
<p>Todd A. Trowbridge, CLARKE</p>	<p>Specific requirements for surveillance related to chemical application under the draft permit appear to be inconsistent. Since as the definition of “action threshold” and the federal PGP points out that environmental conditions may be (and often are) the determining factor in making applications: Recommend that the language at Part I.A.1.b (1) (c) (i) (page 21) be changed to read: “Conduct larval and/or adult surveillance and/or assess environmental conditions prior to each pesticide application to assess the pest management area and to determine when action threshold(s) are met that necessitates the need for pest management.”</p>	<p>VADEQ agrees and will change the language at Part I, A.1.b.(1)(c)(i) to read as follows: (i) Conduct larval or adult surveillance <u>and/or assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects</u> prior to each pesticide application to assess the pest management area and to determine when action thresholds are met that necessitate the need for pest management.</p>
<p>Matthew J.</p>	<p>The current thresholds in the general</p>	<p>This is one reason why permit coverage for</p>

Lohr, VDACS	<p>permit above which an operator must meet the requirements of the permit, including development of a pesticide discharge management plan, were not determined based upon actual data collected but rather were incorporated directly from the thresholds established in the draft federal permit. VDACS recommends that DEQ work with relevant Virginia stakeholders to determine appropriate thresholds in the Commonwealth.</p>	<p>Virginia is only being issued for a 2-year period rather than the standard 5-year coverage. EPA is expected to issue their final pesticides general permit by April 2011. The use of this 2-year permit will allow Virginia to put in place a general permit by the court required deadline and also provide a reasonable time to evaluate the federal permit to incorporate appropriate changes for the reissuance of the Virginia general permit in June 2013. A Technical Advisory Committee will be reconvened this spring to address the EPA changes, and this will certainly be one of the topics that will be discussed. However, EPA has verbally informed the States that the thresholds in the EPA permit will likely be revised and VADEQ has made those revisions to the Virginia thresholds in anticipation of EPA's change. The 640 acre thresholds for mosquito control and forest canopy have been increased to 6400 acres and the 20 acre threshold for weeds and animal pests has been increased to 80 acres. Additionally, the method (in footnote 2 in Table 1) to calculate annual threshold acreages for weeds and animal pests has been revised to say 'For calculating annual treatment totals, count each pesticide application activity [and each side of a linear water body as a separate activity] or area [only once]. For example, treating both sides of a 10 mile ditch [twice a year] is equal to [20-10] miles of water treatment area.'</p>
Alan R. Wood, American Electric Power Service Corporation (AEP)	<p>There exists significant uncertainty within the regulated community regarding the applicability of the NPDES permit program to the application of herbicides on utility right-of-ways, to the extent that this application could result in the direct discharge of the chemicals to water. This uncertainty has been communicated to the US EPA during the comment period for the federal rulemaking. There remains insufficient direction from US EPA regarding the applicability of the decision by the Sixth Circuit Court of Appeals (National Cotton Council, et al. v. EPA) to utility vegetation management practices on right-of-</p>	<p>EPA has verbally informed the States that the scope for this type of application will be clarified in the final permit. EPA has removed the restriction to 'aquatic' for the weed and algae use pattern which widens the scope of this category. This means that pesticides right of way applications to surface water is covered and VADEQ has made this revision in anticipation of the EPA changes.</p>

	<p>way corridors. None of the four categories contained within the general permit proposed by DEQ are intended to provide eligibility of coverage for this category, and none target any form of terrestrial vegetation management practices. At most, AEP's vegetation management practices may only result in incidental, <i>de minimus</i>, discharges of pesticides to waters due to drift or during aerial spraying. Should US EPA clarify that utility vegetation management practices for rights-of-way may require NPDES permit coverage (if those practices would actually result in a point source discharge to waters of the state), then we request that DEQ actively engage the affected parties in Virginia to develop an additional general permit which provides eligibility for, and is tailored to, these practices.</p>	
<p>Matthew J. Lohr, VDACS</p>	<p>The Virginia Department of Agriculture and Consumer Services (VDACS) administer the provisions of Virginia's pesticide statute, Chapter 39 of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth. The proposed regulation needs (i) to adequately reflect VDACS authority to administer the pesticide statute, (ii) to be compatible with the regulations promulgated by the Virginia Pesticide Control Board, and (iii) to impose on the regulated community only the administrative and financial burdens essential to complying with the Court's decision.</p>	<p>VADEQ will add the delegated authority details to the definition of VDACS in 9VAC25-800-10 Definitions as follows to reflect VDACS authority to administer the pesticide statute: "VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth. VADEQ attempted to reflect the requirements of the Virginia Pesticide Control Board and to impose on the regulated community only the administrative and financial burdens essential to complying with the Court's decision. For example, there is no permit fee and no registration requirement.</p>
<p>Carl E. Garrison, Virginia</p>	<p>In the definitions section of VPDES, "surface water" (9VAC25-800-10,</p>	<p>The definitions of "surface water" and "wetlands" in the permit are the same</p>

<p>Department of Forestry</p>	<p>page 5) includes <u>adjacent</u> wetlands and that “Wetlands” (page 6) means those areas that are inundated...under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions.” Silvicultural herbicide application operations do not take place over surface water, however, under the definition, even a dry, forested wetland would be considered “surface water”. There are thousands of acres of loblolly pine being managed in the coastal plains of Virginia that would be included in that definition. Management of these plantations does include silvicultural vegetation control for forest establishment and maintenance. The forestry community needs to know how far from surface waters does “adjacent” mean, and the Department would suggest that forestry silvicultural herbicide application over dry wetlands (no standing or ponded surface water) be excluded from the permitting requirements.</p>	<p>definitions that are contained in the VPDES Permit Regulation (9VAC25-31), and have been in use for many years. By definition, all wetlands are included in the definition of surface waters, regardless of their landscape position. There was much discussion by the TAC relative to the potential for pesticide discharges to wetlands, with a general consensus that there should be water showing on the surface of the wetland for the regulation to apply to the pesticide discharge. However, to be consistent with the definitions of surface water and wetlands, the regulation was drafted to provide permit coverage for pesticide application over or into a wetland, whether there is water present or not. DEQ anticipates that the final EPA permit and fact sheet will further address this issue, and DEQ plans to revisit this issue with the TAC as part of the permit reissuance.</p>
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Several comments were also received regarding the draft Fact Sheet developed by DEQ as guidance for the regulation. A summary of those comments are provided below:

Commenter	Comment	Agency response
<p>Cindy Kane, US FWS</p>	<p>Fact sheet comment: Suggest a slight re-wording of the sentence on page 4 of the draft Fact Sheet: “The permit requires annual <u>summary</u> reports by February 10 each year <u>listing all adverse events reported for the year.</u>”</p>	<p>VADEQ agrees and will make the change.</p>
<p>Randy B. Buchanan, Virginia Mosquito Control Association</p>	<p>Fact sheet comment: In reading the latest fact sheet, I have a question regarding “Resistance Management”. I have never heard of reduced application rates as a way to help manage pesticide resistance. Is this an accepted method of “Resistance Management”?</p>	<p>VADEQ agrees and will revise that portion of the fact sheet.</p>
<p>Pat Hipkins, Virginia Cooperative Extension</p>	<p>Fact sheet comment: Reduced rates (to the point that efficacy is reduced) is not a resistance management tactic. Some of us on</p>	<p>VADEQ agrees and revised that portion of the fact sheet.</p>

	<p>the TAC has “heartburn” about “reduced rates” and how the VPDES would be worded to require/encourage them. Both the 08-24-10 Working Draft and the draft Fact Sheet do have the word “effective” in there. I hope that as long as folks don’t exceed the label rate, they will be okay. The worry is that someone will question a maximum-label rate application, and the applicator/operator will need to find research-based support for his or her decision to apply at a full (or top end of the range) rate. How will DEQ address this concern?</p>	
<p>Randy B. Buchanan, Virginia Mosquito Control Association</p>	<p>Fact sheet comment: The listing for Attachment B, Pesticide Business Licenses appears to be incorrect. It looks like this is a list of certain certified applicators. Recommend that DEQ consul VDACS for corrections needed.</p>	<p>We consulted VDACS to obtain this list and it was not intended to be all inclusive. The main purpose was to show EPA and the public that we had a good idea of pesticide businesses in Virginia and a registration statement was not needed. We will update the list from VDACS at the next reissuance in 2013.</p>

Louisa County Water Authority Louisa Regional Sewage Treatment Plant - Consent Special Order w/ Civil Charges:

Louisa County Water Authority (LCWA) owns and operates the Louisa Regional Sewage Treatment Plant (STP) in Louisa County, Virginia. LCWA is authorized to discharge to Beaver Creek pursuant to VPDES Permit No. VA0067954 (Permit). In addition to the STP, LCWA also operates the Louisa Regional STP Laboratory, which analyzes compliance samples for the STP, the Zion Crossroads Sewage Treatment Plant, and the Northeast Creek Water Treatment Plant all also owned and operated by LCWA. LCWA was referred to enforcement in April 2009 for violations of permit effluent limits for Total Recoverable Zinc, failing to meet instantaneous concentration minimum limits for pH, and failing to report sample type for Total Nitrogen and Total Phosphorus for the calendar year and year to date in its December 2008 discharge monitoring report (DMR). On March 11, 2009, DEQ conducted an inspection of the STP and laboratory. DEQ noted operational and laboratory deficiencies in an inspection report dated April 17, 2009. These deficiencies included the ultra-violet (UV) disinfection system not operating properly and the auto sampler not collecting flow proportional composite samples as required by the Permit. With regards to laboratory deficiencies, these included improper sample analysis techniques and QA/QC procedures for Ammonia as Nitrogen, Carbonaceous Oxygen Demand, and Total Suspended Solids. These same deficiencies were again noted by DEQ after an inspection was conducted on May 8, 2009. On May 27, 2009, based on these deficiencies, DEQ issued a letter to LCWA recommending the LCWA discontinue permit compliance sample analysis for Ammonia as Nitrogen, Carbonaceous Oxygen Demand, and Total Suspended Solids and instead have all compliance sample analysis for the aforementioned parameters performed by a commercial laboratory. LCWA agreed to this assessment and engaged a third party commercial laboratory to conduct these samples. At a meeting between DEQ and LCWA on May 28, 2009, LCWA advised that the zinc violations could be attributed to the use of orthophosphate at the water treatment plant. LCWA committed to eliminating its use in order to reduce zinc excursions. LCWA also advised that the failure of the auto sampler to obtain samples as required by the permit was due to a malfunctioning circuit board. LCWA installed a new board on July 20, 2009. On July 29, 2009, DEQ conducted a follow-up inspection of the laboratory and based on this inspection granted LCWA conditional approval to discontinue use of the third party laboratory. LCWA

became aware of DMR reporting discrepancies during a deposition of its Chief Operator conducted on June 16, 2010 as part of the discovery process for a pending lawsuit filed by The Historic Greensprings, Inc. against the Environmental Protection Agency and LCWA regarding violations of the Clean Water Act occurring at the Zion Crossroads WWTP. In response to learning of the discrepancies, LCWA hired an outside engineering firm, Wiley & Wilson, to complete a comprehensive review of the DMRs. Concurrently with this review, DEQ conducted its own review of both contracted lab results and the results reported by LCWA on its DMRs. On August 31, 2010, LCWA submitted revised DMRs for the STP, spanning from January 2008 through May 2010. As a result of both the review by Wiley and Wilson and DEQ, additional violations of permit effluent limits were identified and included in a revised Consent Order. The Order requires LCWA to (1) evaluate and submit updated laboratory standard operating procedures for DEQ's review and approval; (2) keep a detailed log of all STP maintenance including UV cleaning; (3) submit to DEQ for review and approval a plan and schedule detailing the steps LCWA shall take to obtain an approval pretreatment program; (4) submit a plan and schedule to DEQ for review and approval detailing the measures LCWA will take to meet zinc permit limits; and (5) submit completed chain of custody, certificate of analysis, and bench sheets for any compliance samples. Civil Charge/Supplemental Environmental Project: A civil charge of \$50,760.00 is being assessed based on a marginal to serious potential for harm to the environment. Failing to properly operate and maintain the laboratory was noted as a serious violation as the reliability of the results produced by the lab cannot be confirmed. The permitted effluent limit violations ranged from marginal to moderate. Of the \$50,760.00 civil charge, 80% will be offset with the implementation of a Supplemental Environmental Project (SEP). The SEP consists of the design and construction of facilities needed to reuse the effluent from the Zion Crossroads Wastewater Treatment Plant as seasonal irrigation water at the adjacent Spring Creek Golf Course and residential development. Geographically, this SEP is located in the York River watershed, which both the Louisa Regional STP and Zion Crossroads WWTP discharge into. The SEP serves to reduce nutrient loads discharged into the Chesapeake Bay and conserves water by reusing reclaimed water for irrigation as opposed to the water withdrawal Spring Creek currently engages in.

Louisa County Water Authority Zion Crossroads Wastewater Treatment Plant - Consent Special Order w/ Civil Charges: Louisa County Water Authority (LCWA) owns and operates the Zion Crossroads Wastewater Treatment Plant (WWTP) in Louisa County, Virginia. LCWA is authorized to discharge wastewater pursuant to VPDES Permit No. VA0090743 (Permit) into an impoundment of Camp Creek. LCWA was referred to enforcement in May 2009 for violations of effluent limits for Total Phosphorus (TP), Dissolved Oxygen (DO), Total Suspended Solids (TSS), and cBOD5. In addition to violations of effluent limitations, LCWA failed to submit a schedule of compliance for metals limits by the due date set forth in the Permit; submitted incomplete discharge and monitoring reports (DMR) on three occasions; failed to provide a written report of non-compliance on two occasions; failed to submit an annual pretreatment report by the due date set forth in the Permit; failed to submit an industrial user survey as required by the Permit; failed to use proper operations and maintenance procedures at the WWTP; and failed to properly report E. coli sampling results. LCWA submitted a compliance plan for metals limits on June 4, 2009 and submitted the required annual pretreatment report on February 25, 2009 thereby resolving those violations. DEQ conducted a technical inspection on May 20, 2009, and noted deficiencies in an inspection report dated June 12, 2009. Among the deficiencies noted were accumulated solids in the channel prior to the Parshall flume; the meters for the ultraviolet radiation (UV) used for disinfection were not functioning properly; and the thermometer for the composite sampler refrigerator was encased in ice. In addition, a review of the files found that the Operations and Maintenance (O&M) manual had not been updated after plant flow and discharge frequency increased. DEQ conducted an additional inspection on June 15, 2009, and again observed solids in both the effluent flow meter channel and the final effluent. The UV intensity meters were not functioning and some UV bulb indicator lights were not lit despite the UV bulbs being operational. LCWA completed repairs to the WWTP's sequencing batch reactor (SBR) unit on June 2, 2009, and November 11, 2009, and to a detached hose on September 25, 2009. In addition, LCWA installed a temporary effluent filtration unit which became operational on December 29, 2009, and also temporary alum addition which became operational on

February 27, 2010. LCWA became aware of DMR reporting discrepancies during a deposition of its Chief Operator conducted on June 16, 2010. The deposition was conducted as part of the discovery process for a pending lawsuit filed by The Historic Greensprings, Inc. against the Environmental Protection Agency and LCWA regarding violations of the Clean Water Act occurring at the Zion Crossroads WWTP. LCWA advised DEQ via letter dated June 25, 2010, that in response to learning of these discrepancies, LCWA hired an outside engineering firm, Wiley & Wilson, to complete a comprehensive review of the DMRs. Concurrently with this review, DEQ conducted its own review of both the contracted lab results and the results reported by LCWA on the DMRs. On July 2 and August 5, 2010, LCWA submitted revised DMRs for dates ranging between 2006 and June 2010. The Order was revised to resolve additional permit effluent limit violations discovered as part of this review as well as effluent limit violations stemming back to 2004 that were previously unresolved. On December 9, 2010, LCWA submitted a certification statement stating that the UV intensity meters were repaired on October 15, 2010. On December 30, 2010, LCWA submitted a compliance plan and schedule to DEQ for review and approval. This plan outlined the steps that LCWA will take to ensure consistent compliance with permit effluent limits at the WWTP. At the time of this writing, DEQ is reviewing this plan. The Order requires LCWA to (1) submit to DEQ for review and approval a plan of action and schedule to ensure consistent compliance with effluent limits and permit requirements; (2) complete and certify repairs or replacement of the UV intensity meters; (3) submit monthly progress reports to DEQ outlining the projects and steps taken to achieve consistent compliance; (4) submit completed chain of custody, certificate of analysis, and bench sheets for all compliance samples, and (5) comply with increased sample frequency requirements. Civil Charges/Supplemental Environmental Project: A civil charge of \$164,700.00 is being assessed based on a marginal to moderate potential for harm to the environment. The majority of exceedances are greater than 10% above effluent limits and have resulted in visible solids being discharged. In addition, LCWA's misreporting of sampling results on DMRs does impede the Department's ability to monitor compliance. Of the \$164,700 civil charge, 80% will be offset with the implementation of a Supplemental Environmental Project (SEP). The SEP consists of the design and construction of facilities needed to reuse the effluent from current design flows at the Zion Crossroads WWTP as seasonal irrigation water at the adjacent Spring Creek Golf Course and residential development. This SEP will reduce nutrient loads discharged into the Chesapeake Bay and also conserve water by reusing reclaimed water for irrigation as opposed to the water withdrawal that Spring Creek currently engages in

Proposed Action on a Request to Conduct a Recreation Use Attainability Analysis for Gillie Creek submitted by the City of Richmond: Staff will ask the Board to act on a request from the City of Richmond [City] to conduct a recreation use attainability analysis ["UAA"] for Gillie Creek, in Richmond. Gillie Creek is a small tributary to the tidal James River. Based on staff review of the request and public comment received, staff believes that conducting a UAA for Gillie Creek should proceed subject to certain conditions and in accordance with a schedule consistent with implementation of reasonable and cost-effective best management practices identified in the bacteria TMDL Implementation Plan for Gillie Creek.

Gillie Creek was first listed as impaired in 2004 due to excessive counts of E. coli bacteria. In November 2010, EPA approved a bacteria TMDL for the lower James River and its tributaries in Richmond, Henrico, and Chesterfield. Gillie Creek was included in this TMDL. DEQ is beginning the process of developing a TMDL Implementation Plan for this TMDL, with an expected completion date in mid-July of this year.

In July 2006, House Bill 1457 was enacted to amend § 62.1-44.19:7 of the Code of Virginia (Plans to Address Impaired Waters). The amendment is as follows:

If an aggrieved party presents to the Board reasonable grounds indicating that the attainment of the designated use for a water is not feasible, then the Board, after public notice and at least 30 days provided for public comment, may allow the aggrieved party to conduct a use attainability analysis according to criteria established pursuant to the Clean Water Act and a schedule established by the Board. If applicable, the schedule

shall also address whether TMDL development or implementation for the water should be delayed.

A UAA is a structured scientific assessment of the factors affecting the attainment of the use. A UAA study must also ensure that downstream and existing uses are protected and analyze what uses are attainable after implementing effluent limits under §§ 301b and 306 of the Clean Water Act and by implementing *cost-effective* and *reasonable* best management practices for non-point source control. All of these requirements are listed in the federal and state water quality standards regulations (EPA 40 CFR 131.10 and Virginia 9 VAC 25-260-10).

In 1974 as part of the Fulton Bottom Urban Renewal Project work was done in Gillie Creek to efficiently convey floodwaters to the James River. To that end, the entire length of the creek bed within the City of Richmond was channelized and lined with concrete. The channelized/concrete portion of the creek begins approximately 1.6 miles upstream and terminates at the confluence of Gillie Creek with the James River. The land surrounding the channelized segment is either City owned properties, railroad company properties, or industrial-type properties. Though no residential properties abut the channelized portion, the creek flows along the northern boundary of a public park (Gillies Creek Nature Area) for approximately 2,400 feet.

In August, 2010, DEQ received from the City a document titled “Reasonable Grounds Documentation to Conduct a Recreational Use Attainability Analysis for Gillies Creek”. This documentation asserts that attainment of the recreational designated use is not feasible due to the following:

- primary contact is not attainable due to flow and hydrologic modification.
- the City does not believe there is a primary contact use on lower Gillie Creek.
- the City maintains that 95% reductions above the Long Term Control Plan will cause substantial and widespread economic and social impacts.

The City requests to conduct a UAA study for Gillie Creek in an effort to determine if the primary contact use is an existing use and, if not, replace primary contact use with a lesser use category or a temporary suspension of use following rain events. The City is also asking to conduct the UAA concurrent with DEQ’s development of the TMDL Implementation Plan to provide the City the opportunity to determine if the Gillie Creek paved channel CSO waste load allocations in the approved TMDL are “reasonably attainable” in accordance with the Water Quality Standards coordination provisions of EPA’s CSO Policy.

At their September 28, 2010 meeting, the Board directed staff to publish a general notice in the Virginia Register to solicit public comment on whether the documentation submitted establishes reasonable grounds that attainment of the recreation use for Gillie Creek is not feasible and to return to the Board with a summary of comment received.

Pursuant to § 62.1-44.19:7 of the Code of Virginia, a notice of public comment period was published in the Virginia Register on October 1, 2010. The comment period ended November 1, 2010. The Notice stated that the Board was seeking comment on the documentation submitted and if it constitutes reasonable grounds that attainment of the recreational use for Gillie Creek is not feasible.

Comments from seven citizens, three environmental organizations, one state agency, two municipal organizations, and the City were received and are summarized below. In general, citizen and environmental organizations urge the City and DEQ to implement cleanup plans prior to initiating a UAA. Comment from the City and municipal organizations state there are reasonable grounds to conduct a UAA for Gillie Creek and that a UAA is necessary to determine the existing uses for the creek and direct resources appropriately. Key comment received includes:

- Presence or lack of recreation in the creek is not an excuse to leave a water body in a state of impairment.
- Gillie Creek flows next to a public park and is accessible through the entire length of the park segment.
- Gillie Creek empties to a section of the James River that is accessible to a large population that recreate there and those downstream uses need to be protected.
- The City believes the Reasonable Grounds Documentation to Conduct a Recreational Use Attainability Analysis for Gillie Creek fulfills the statutory mandate for reasonable grounds.

- Virginia and other states have designated uses without regard for attainability and the negative socioeconomic impacts that may be caused by related federal and state implementation mandates.
- The estimated cost of \$300 million to attain recreational use for a channel not used for that purpose is unjustified and unreasonable.

Citizen Comment

Commenter	Comment Summary
David Bernard	<p>Stated his concern about the quality of life and appropriate development in Richmond, as well as in stream restoration. A UAA, if successful, would lead to no improvement to the creek which is unacceptable. Presence or lack of recreation in the creek is no excuse to leave a water body in a state of impairment. Gillie Creek empties to a flat water section of the James River that is accessible to a large population that recreate there. Many canoeists and kayakers use this segment of the James River.</p> <p>Nitrogen, phosphorus, and sediment loads from CSOs are a burden for the James, affecting both the river and the Chesapeake Bay. These nutrients would be a target for the Chesapeake Bay TMDL regardless of the UAA's outcome. Richmond should be granted a five year delay to September 30, 2015 to develop a master plan for a Gillie Creek Urban Stream Restoration, and a further 10 years to implement the plan. This timetable parallels the Bay restoration timeline.</p> <p>The master plan should include total separation of storm and sanitary sewers, removal of the concrete channel, storm water infiltration to the maximum extent possible, and restoration of the natural stream channels and riparian zone vegetation. Sewer infrastructure construction should be planned and built in coordination with smart grid electrical upgrades, transportation needs, landscaping, and possible non-potable water distribution system. Ultimately, the Gillie Creek watershed will be fitted with green infrastructure. No permits for floodplain construction should be issued in the interim. All new construction should meet the highest storm water standards.</p>
Karl Corley	Finds it appalling that the city has no plan to the pollution problem in Gillie Creek.
Benjamin Evans	Mr. Evans states he is a City resident within the Gillie Creek watershed and asks that the City of Richmond not be allowed to initiate a Use Attainability Analysis for Gillie Creek. He agrees with comment submitted by Kristen Hughes Evans (below).
Kristen Hughes Evans	As a City resident living in the Gillie Creek watershed, she adamantly opposes the City's request to initiate a Use Attainability Analysis for the attainment of the designated uses for Gillie Creek. She recognizes that treating the Combined Sewer Overflow (CSO) systems is expensive but, as a citizen that places great value on clean water, she strongly suggest that the City develop a plan to get the job done. She states her realization that such a plan may take years to achieve but that is preferable to continued impairment of Gillie Creek and the James River. She would like to make it clear to the SWCB and DEQ that Gillie Creek flows next to a public park

	<p>and is accessible through the entire length of the park segment. There are no chain link fences to prevent public access. She requests that the SWCB reject this petition to begin the UAA process for the creek and instead, instruct the City to focus on the TMDL implementation plan process. She urges the City to focus on innovative, cost-effective strategies to immediately remediate water quality problems, and develop a long-term plan to end the dumping of raw sewage into Gillie Creek, and subsequently the James River. She states that writing off Gillie Creek water quality is simply unacceptable.</p>
Garry Marshall	<p>He states that he lives near Gillie Creek and has witnessed people in the creek walking or painting graffiti. He asks that the City clean up this waterway as it impacts the health of the James River and Chesapeake Bay and it is the responsibility of the City to do so.</p>
Kate Meacham	<p>Stated that she also lives in the Gillie Creek watershed and concurs with Kristin Hughes' comment (above).</p>
Bill Shanabruch	<p>He is opposed to the City of Richmond's request to perform a UAA for Gillie Creek for the following reasons:</p> <ol style="list-style-type: none"> 1) The City has not evaluated all "reasonable" options to address the CSO problem in Gillie Creek. It is disingenuous to use the "knee of the curve" argument based on the outdated solution of a \$300 million tunnel for collection of stormwater. Other CSO cities (e.g. Portland, Philadelphia, Washington, DC) have committed substantial resources to reducing stormwater volume at the source with a host of green practices (pervious pavement, rainwater harvesting, rain gardens, bio-retention, etc.). In reviewing the practicality of green solutions, the analysis must consider social and economic factors beyond the installation cost of these smaller-scale projects. These factors include water quality and quantity, energy consumption, neighborhood vitality, citizen education, and reduction in long-term maintenance costs. 2) Since the TMDL public meeting last June, he has been receiving CSO overflow notices from the City and has been stunned by how little rain triggers an overflow event. He states that a 21st century American city can do better than this. 3) He states that the DEQ preliminary models that show no additional CSO controls beyond Alternative E are required to meet the water quality standards in the James River are mentioned on page 2-1 of Richmond's UAA request. What is not mentioned is that the models were not run for the segment of the James River closest to Gillie Creek. He questions the possibility for Gillie Creek CSO discharges to have no significant impact on the James near the mouth of the creek. He states that the segment of the James near the mouth of Gillie Creek is used heavily for recreation (fishing, kayaking, and the swimming leg of a triathlon). This situation creates a public safety issue. DEQ's current study to determine the influence of Gillie Creek CSO discharges on the James River should be completed prior to granting permission to the City to do a UAA.

	<p>4) On page 4-1 of the UAA request it states “...the City is truly trying to make the most appropriate investments to improve the water quality in our local waterways.” Mr. Shanabruch states that the City would not be proposing to waste time and money doing a UAA prior to TMDL implementation and post-implementation monitoring if it was genuinely attempting to do the right thing and that the UAA request is a transparent attempt to circumvent the spirit of the TMDL process and avoid improving water quality in Gillie Creek (and the James River) beyond Alternative E. He states the necessity for doing a UAA will become apparent after reasonable TMDL implementation efforts have been made.</p>
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State Agency Comment

Commenter	Comment Summary
<p>VA Dept. Conservation & Recreation</p> <p>Dr. Ram Gupta, TMDL Project Manager</p>	<p>Prior to a UAA, a TMDL Implementation Plan (IP) is developed, control measures are implemented on the ground and water quality improvements are monitored. If water quality standards are still not attained, only then is a UAA performed. Therefore, based on the above, it is suggested that prior to initiating a UAA study, the implementation plan be developed. The Plan will include various technical information and other details which will support the UAA study. The Plan might include any hydrologic modification and non-pollutant related factors that may improve water quality. Based on the preliminary modeling runs, it was indicated at the public meeting that change in designated use will not affect James River water quality. It is suggested that modeling runs be finalized, and water quality monitoring data collected on James River downstream needs to be analyzed to support conclusively that the changed designated use (630 cfu/100ml) will not negatively impact James River water quality with regard to primary contact recreation. Further, rather removing Gillie Creek’s designated use; a temporary use removal during extreme storm conditions is also an option to be considered. The public notice indicates that water quality problems exist during rainfall events greater than 0.2”, due to combined sewer overflows. A temporary use removal in the Gillie Creek trapezoidal concrete channel during extreme storm overflows might be an alternative option to the primary contact use removal in Gillie Creek.</p>

Environmental Group Comment

Commenter	Comment Summary
<p>Coastal Canoeists</p> <p>David Bernard, Conservation Chair</p>	<p>Coastal Canoeists is a state-wide recreational paddling club and Mr. Bernard states that the James is their “home river” and its water quality is important for their health as well as their enjoyment. He conveyed appreciation for past efforts of DEQ and Richmond that have improved degraded water quality that existed in the 1970’s. Coastal Canoeist members are not happy with Richmond’s plan to seek a UAA and thereby avoiding the necessary task of ending the Combined Sewer Overflow (CSO) problem. Water quality improvements in the James should not stop now. (Remainder of comment is identical to that provided by David Bernard in</p>

	preceding “Citizen Comment” section.)
Sierra Club, VA Chapter David Bernard, Water Quality Chair	Mr. Bernard conveyed appreciation for past efforts of DEQ and Richmond that have improved impaired degraded water quality that existed in the 1970’s. Sierra Club chapter leadership was not happy with Richmond’s plan to seek a UAA and avoid the necessary task of ending the Combined Sewer Overflow (CSO) problem. Water quality improvements in the James should not stop now. (Remainder of comment is identical to that provided by David Bernard in preceding “Citizen Comment” section.)
Southern Environmental Law Center (SELC) Marirose J. Pratt, Associate Attorney	They urge the SWCB to deny the City’s request as preparation of a UAA at this time is premature and wholly unjustified due to: <ol style="list-style-type: none"> 1) Significant data gaps regarding the degree to which Gillie Creek impacts water quality in the James. 2) The insufficient analysis of a full range of stormwater management scenarios, including the use of green infrastructure that could be employed towards attainment. 3) Lack of evidence regarding the existence or non-existence of “existing uses” in Gillie Creek <p>Under both state and federal regulations governing designated use changes, a designated use may not be removed if: (1) removing the use would prevent the attainment and maintenance of water quality standards downstream; (2) the use can be attained by implementing technology-based effluent limits for point sources or by implementing cost-effective and reasonable BMPs for non-point source control; or (3) it is an existing use. Even when all three of these conditions are met, a designated use may only be removed if attainment is not feasible because one or more of the six specific factors set forth in 40 C.F.R. 131.10(g) and 9 VAC 25-260-10 H exist. The City must provide reasonable grounds establishing that the three prerequisites to changing a designated use exist and that at least one of the six factors set forth in 40 C.F.R. 131.10(g) and 9 VAC 25-260-10 H exist. They state that the City has failed to present reasonable grounds demonstrating that a UAA for Gillie Creek is warranted. They ask the SWCB to deny the City’s request or, at the least, delay the UAA pending completion of a robust TMDL IP and reasonable actions towards attainment have been taken.</p>

Municipalities/Municipal Groups

Commenter	Comment Summary
City of Richmond Robert Steidel, Dept. Public Utilities Interim Director	States that the City believes the Reasonable Grounds Documentation to Conduct a Recreational Use Attainability Analysis for Gillie Creek fulfills the statutory mandate for reasonable grounds. They state their belief that a recreational UAA conducted concurrently with development of a TMDL Implementation Plan for the paved channel portion of Gillie Creek may support an amendment to (change) its designated use. A map of the channelized portion and indicating adjacent parcels was provided that shows the creek is not within the Gillie Creek Nature Area.
Virginia Association of Municipal Wastewater Agencies	On behalf of VAMWA, Mr. Pomeroy states that Virginia and other states have designated uses without regard for attainability and the

<p>(VAMWA)</p> <p>Christopher D. Pomeroy, Esq.</p>	<p>negative socioeconomic impacts that may be caused by related federal and state implementation mandates. He states that it has come to be widely accepted among water quality professionals that “[s]tates should develop appropriate use designations for waterbodies in advance of assessment and refine these use designations prior to TMDL development” and, further, that “use attainability analysis should be considered for all waterbodies before a TMDL is developed.” NRC, <i>Assessing the TMDL Approach to Water Quality Management</i> (2001). They urge the SWCB to authorize the study to proceed.</p>
<p>Virginia Municipal League (VML)</p> <p>Joe Lerch, Director of Environmental Policy</p>	<p>On behalf of the VML, Mr. Lerch states their finding of sufficient reasonable grounds that attainment of a recreational use for the concrete channel is not feasible. The estimated cost of \$300 million to attain that use for a channel not used for that purpose is unjustified and unreasonable.</p> <p>As supporting relevant documentation they provide an EPA case study entitled <i>Suspension of Recreational Beneficial Uses in Engineered Channels During Unsafe Wet Weather Conditions</i> (2006). The case study documents a UAA for highly modified stream channels in the Los Angeles region undertaken by the Los Angeles Regional Water Quality Control Board (RWQCB). The streams have been straightened and concrete lined to move large volumes of water from urban areas to the ocean. The UAA showed that recreation is not an existing use because the channels were modified before the Clean Water Act and swift water conditions during rain events made for hazardous conditions within the channels. The study showed the use would not be attained through effluent limits or best management practices because the physical characteristics of the waterbody rather than water quality precluded the use. EPA approved revisions that suspend the recreational use for these modified streams during and for 24 hours after rainfall events of a certain magnitude (generally, rainfall greater than or equal to ½ inch).</p>

DEQ staff recognizes that an existing use cannot be removed. However, a UAA study can help to more precisely define the existing use. DEQ is prepared to accept the “Reasonable Grounds” document and work with the City and stakeholders to evaluate the recreational use in Gillie Creek, given certain safeguards and a schedule that acknowledges the need for corrective actions in the watershed. The results from this study process will provide information to DEQ about recreational use in Gillie Creek.

Staff will recommend that the Board:

1. Subject to the condition listed below, grant approval for the City of Richmond to conduct a use attainability analysis for recreational uses in Gillie Creek according to criteria established pursuant to the Clean Water Act and in conformance with 9 VAC 25-260-10.
2. Include in the use attainability analysis a detailed examination of how any change to the recreational use in Gillie Creek would avoid impacting the primary contact recreational use of the James River adjacent to, and downstream of, the confluence with Gillie Creek.
3. Direct the staff to report back to the Board upon completion of the UAA study whether the results of the study are deemed consistent with federal and state regulations and warrant initiating a regulatory process to consider removal of the recreational use or establishing a subcategory of recreational use in Gillie Creek.

