

**VERMONT PESTICIDE ADVISORY COUNCIL
JANUARY 2015 FOCUSED TOPIC COMMENTS
AGENCY OF AGRICULTURE, FOOD AND MARKETS REGULATIONS FOR THE CONTROL OF PESTICIDES**

The comments below represent the general consensus of the Council (sans the Agency of Agriculture, Food and Markets [AAFM] representative) on certain broad topic areas. Note, the AAFM representative abstained from this activity and served only as a reference source for the Council.

COMMENTS

Record Keeping, Maintenance and Information Management

Efforts to update and maintain the existing commercial use pesticide record keeping system/database would benefit all interested parties. Public access and a user friendly interface should be established. Data should be made available in a usable format (e.g., EXCEL) so that it may easily be obtained and worked with rather than in a static format such as pdf. Timely posting of data submitted is important. Specific reporting requirements could be included in a separate Procedure/Guidance document that is easily updated/revised as warranted and referenced in the Regulations.

It would also be very helpful to transition from requiring private applicators to keep paper records to an electronic reporting system.

The Council supports allocation of resources, including personnel knowledgeable in pesticides and data management, so that AAFM may develop and maintain such a comprehensive information management system.

While the Council is supportive of efforts to in some way capture homeowner usage, how this may be best achieved is not clear.

Notification/Posting

In those instances where notification/posting of treatment is reasonable and appropriate, for example in the case of abutters or those who may reside in condominium complexes, it is recommended that acceptable means of notification and specific requirements for notification and posting be removed from the Regulations and included in a separate Procedure/Guidance document that is easily updated/revised as warranted. This document could be developed with input from the Council and include a provision for periodic review. It could then be referenced where appropriate in the Regulations.

It was suggested that development of a registry for those who wish to self identify as potentially sensitive or to request prior notification based on right to know rather than medical necessity could be helpful. It was noted that such a system exists in some states and in some instances the registry is compatible with the software currently used in Vermont.

In addition, it was noted that several states require some type of notification of turf applications and that a few locations require retail stores to provide warning signs to homeowners when they purchase pesticides. It was suggested that similar practices could be helpful in Vermont.

Power of the Secretary of Agriculture, Food and Markets

Except where explicitly prohibited by statute, consistent with other Rules, Regulations and Guidance, it is recommended that the Secretary of AAFM consult with the Secretary of the Agency of Natural Resources (ANR) and Commissioner of Health (Health) in the process of determining if acceptable risk to the non-target environment and negligible risk to public health exist. For an example please see Section IV.11.iii.

Buffers

It is recommended that reference to specific buffer/separation distances be removed from the Regulations and included instead in a separate Procedure/Guidance document. This allows for easier revision of reasonable and appropriate values as our knowledge base regarding environmental fate and transport and toxicity increases and as applicable Rules and Regulations, such as the ANR Department of Environmental Conservation Environmental Protection Rules Chapter 21 Water Supply Rule are updated and new applicable requirements such as the Vermont Wetland Rule dated 8/1/10 arise. This recommendation is of particular note as the Council aspires to conduct a review of existing buffer distances and offer recommendations for revision where warranted.

Examples where specific distances are noted in the Regulations and potential revisions include, but are not limited to: page 20. r. “maintain a 50 foot buffer when applying pesticides which provide control within the soil profile around any existing well unless written permission allowing lesser distance has been granted by the well owner” which could be revised to “Application of pesticides identified to provide control within the soil profile (insert reference to document that defines and contains a list of such) should employ a buffer distance as specified in [add reference to buffer document or appropriate statute/regulation]” and page 37. 9.a.i.3.b. where distances listed in i-v could be removed and language revised to “Standard buffers where pesticides shall not be applied are specified in [add reference to buffer document]”.

The Council believes it is very important that the Regulations include provisions to provide for existing entities operating in accordance with current requirements.

Bees

Section IV.3. Protection of Bees. It is recommended that the language be examined and made consistent with current federal directives and ongoing national and state efforts. The Council also suggests that the language be added to clarify the importance of timing of application to both “flowering crops” and “flowering trees”, the latter of which is recommended for inclusion on the list.

Aerial Application and VPAC role

It is recommended that the Regulations establish and formalize the role of VPAC in the aerial application of pesticides permit review process.

It is understood that aerial application may need to occur within tight timeframes in order to be efficacious. However, as with the AAFM Rights-of-Way (ROW) and Golf Course permit programs as well as the ANR Aquatic Nuisance Control permit program, including the Rapid Response provision, there are many aspects that can be discussed, pre-determined and included in a stand-alone procedure/framework. This would allow for a more coordinated, rapid response in the event a permit for aerial application is received. VPAC

could be of assistance in developing the process/framework. VPAC has long reviewed ROW and Golf Course permit applications and provided recommendations regarding such to the Secretary of AAFM.

Mosquito Control

It is recommended that the Regulations establish and formalize oversight of ground based nuisance mosquito control (i.e., adulticiding) by the Mosquito Control Districts (MCDs). A stand-alone procedure/framework, perhaps similar to the mosquito larvicide control procedure, could be established with regard to adulticiding. The framework could include information such as criteria for treatment and notification provisions. The Council could be of assistance in the development of a procedure/framework for such activities.

Golf Course Permit Program

Consistent with its functions as set forth in statute, the Council should retain a role in the Golf Course Permit program, not eliminated as currently proposed.

While the Permit review process itself may warrant revision, the responsibility of the Council to review and advise the Secretary of AAFM regarding such activities remains the same.

The Council could be of assistance in developing an updated policy and permit review process. Provisions for streamlined review of renewals where no issues have been noted and no changes are proposed could be instituted. The Council could provide input as to parameters appropriate for inclusion in Integrated Pest Management Plans, QA/QC and input into the overall process.

The Council agrees with the proposed removal of the use of a "Prescreen" list. The Council could be of assistance in developing a tiered approach for assessment in its place. For example, if a dilution calculation using generic, conservative, default parameter inputs yields an estimated value in excess of a relevant comparison value, a refined or more site-specific assessment or monitoring could be conducted to determine if the potential for concern truly exists. The Council could assist by reviewing the dilution calculation process and in an annual review.

The Council would like the opportunity to review and comment on the EIQ process that will be employed. It is recommended that the EIQ process selected be included in a separate Procedure/Guidance document that is easily updated/revised as warranted.

For drinking water, the reference standards employed should be the ANR Groundwater Protection Rule and Strategy (effective January 2005) Primary Groundwater Quality Enforcement Standards (enforceable values). These values are appropriate for use whether the source of drinking water is groundwater or surface water. Enforcement Standards are made up of U.S. Environmental Protection Agency (EPA) Maximum Contaminant Levels (MCLs) and Vermont derived values in those instances where an MCL does not exist (except for 10 chemicals as specified in a 12/14 memorandum). The ANR DEC Environmental Protection Rules Chapter 21 Vermont Water Supply Rule (effective December 2010) Section 6.15 supports the use of such values "For contaminants which may be detected in a **Public** water system for which MCLs or MCLGs have not been adopted, and the Vermont Commissioner of Health has established a Vermont Health Advisory Level for it, the Secretary [of ANR] may adopt the Advisory Level as an MCL or MCLG." Table 6.1 of the Water Supply Rule presents a list of some contaminants for which there is an MCL and/or MCLG (MCL Goal).

In terms of reference standards for protection of aquatic life, Appendix C of the ANR DEC Environmental Protection Rule Chapter 29 Vermont Water Quality Standards (effective October 2014) provides water quality criteria for the protection of aquatic biota which are consistent with the EPA National Recommended Water Quality Criteria. In the event a numeric comparison value is not available for a particular substance, a method for deriving such could be developed. As noted in Section 3-01 of Chapter 29, the Vermont Toxic Discharge Control Strategy (effective May 1994) provides guidance for calculating such criteria. The Council, or a subset thereof, could be of assistance in this process.