

## Comments and notes on proposed mark-up of Agency of Agriculture, Food and Markets Regulations for the Control of Pesticides

### GLOBAL COMMENTS

#### **Titles**

Organization and position titles should be made consistent with the current State of Vermont organizational structure. For example “Water Quality Division” is now “Watershed Management Division”, “Department of Agriculture, Food and Markets” is now “Agency of Agriculture, Food and Markets” (AAFM) lead by the “Secretary” not “Commissioner”.

#### **Aerial Application Permit Process**

It is recommended that the Regulations establish and formalize the role of the Vermont Pesticide Advisory Council (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 Agency of Natural Resources (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. Such a document would allow for a more coordinated, rapid response in the event a permit application is received. VPAC could be of assistance in developing the process/framework and have a formal role in the review of permit requests. VPAC has long reviewed ROW and Golf Course permit applications and provided recommendation regarding such to the Secretary of AAFM. The Department of Health (Health) should also be provided a formal role in the review of such permit requests.

#### **Nuisance 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, similar to the mosquito larvicide control procedure, could be established with regard to adulticiding. Health and VPAC are routinely contacted with multiple concerns and questions regarding nuisance control efforts. VPAC, in consultation with Health, could be of assistance in the development of a procedure/framework for such activities.

#### **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.

It is recommended that all information required to be recorded by the Regulation also be required to be submitted to AAFM for inclusion in the data management system.

In addition, it would be most helpful if a mechanism for collecting and recording information on sales of non-commercial use, “over-the-counter” homeowner products be established. For example, a reporting requirement, perhaps based on sale volume, could be included in the Regulation. This information could be a component of the larger data management system. A project currently underway with the University of Vermont provides a small glimpse into public perception of sources of pesticide exposure. A way to compare perception with some overview of reality would allow us to determine areas ripe for public outreach and messaging.

#### **Buffers/Separation Distances**

It is recommended that reference to specific buffer/separation distances be removed from the Regulations and included instead in a separate protocol/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. This recommendation is of particular note as VPAC intends 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]”.

### **Notification**

In those instances where notification of treatment is reasonable and appropriate, such as in the case of abutters, it is recommended that acceptable means of notification and specific requirements be included in a separate Procedure/document that is easily updated/revised as warranted. This document could be referenced as need be in the Regulations.

For example, residents, including renters, should be notified of impending treatment with various types of pesticides including but not limited to turf-grass and landscape pesticides, well in advance. Often times condominium units are subleased/rented and while the owner may receive notice, the actual occupant may not. It appears that the Regulations currently do require residents be notified of treatment for non-wood boring insects such as “sugar ants” (*Camponotus consobrinus*) or for spiders. Public concerns regarding lack of notification under such circumstances have been brought in front of VPAC repeatedly. It may be most efficient for the Regulations to include conditions describing the responsibility of Homeowner/Condominium Boards/Associations and for Landlords in general.

### **LINE ITEM COMMENTS**

#### **Section II. Licenses, Certificates, and Permits Issued by the Agency of Agriculture, Food and Markets**

Page 14. 3.b. Proposes allowing municipalities to use herbicides for the control of poison ivy within Rights-of-Way without a permit as long as conditions set forth in Section IV.4. b, d, e and f are met. These conditions pertain to notice of intent, methods of public notification, mapping of sensitive areas and applicator credentials. If, as discussed at several VPAC meetings, methods of notification are moved out of Regulation into a separate Procedure that is easily updated as recommended above, the conditions will need to be revised to reflect such. The terms “near” and “avoided” used in conditions e and f, respectively are subjective and could benefit from definition in Section I of the Regulation. No long-term management plan is required to be submitted. It is recommended that at a minimum, municipalities should provide AAFM with a description of intended activities and a summary of usage on an annual basis. In addition, at a 2013 VPAC meeting, a representative from AAFM noted products would be limited to homeowner ready-to-use products. This requirement should be specified in the conditions if it is not already so.

Page 14. 3.g. It is recommended that this subsection be renamed to “Mosquito Larvae/Pupae Control Activities Permits” as these are the only mosquito control activities described therein (this section does not appear to cover adulticiding).

#### **Section III. Powers of the Secretary**

It is recommended that determinations regarding potential impacts to public health or hazard be made in consultation with the Commissioner of Health.

#### **Section IV. Restriction on the Use and Application of Pesticides**

Page 17. 1.b. and 2.d. It is unclear if the term “conditions” refers to meteorological conditions or encompasses weather, tools and techniques. If the former, suggest revise to “conduct operations under conditions *and using equipment and techniques* known to minimize contamination of non-target land and water areas.” If the latter, include definition of “conditions” in Section I.

Page 18. 2.h. See Global Comment regarding Record Keeping, Maintenance and Information Management. Timely submission of spray reports and retention thereof is essential. It would be most efficient to list reporting requirements in a separate procedure that is easily updated/revised as appropriate.

Page 20. 2.o. As the Groundwater Protection Rule and Strategy may soon undergo revision, it is recommended that language be revised to simplify cross referencing. For example, streamline to “Shall use pesticides so as not to exceed the Primary Groundwater Quality Enforcement Standards specified in the Groundwater Protection Rule and Strategy in accordance with 10 V.S.A. Chapter 48.”

Page 20. 2.r. See Global Comment regarding Buffers/Separation Distances.

Page 21. 4.a. Rights-of-Way clearing and Maintenance – See comment above Page 14.3.b regarding municipalities and poison ivy control.

Page 21. 4.a.i. Please revise submission date to on or before February 1 of the year to allow adequate time for VPAC to review materials provided. The current practice often results in Council members either not receiving materials at all or just a day or two prior to the annual Rights-of-Way review meeting.

Page 21. 4.a. As VPAC has discussed, please add a condition that states technically or administratively incomplete permit applications will not be considered.

Page 21. 4.a. See Global comment regarding Notification. A condition requiring abutter notification is recommended. Methods of notification and other specifics could be contained in a separate, easily updated Procedure.

Page 21. 4.a. It is recommended that requirements for reporting and recording location of private wells along the ROW be included.

Page 22. 4.a.iv. To improve awareness and to highlight the responsibilities of private well owners/users, it is recommended that a separate condition be included regarding private wells. The condition would clearly state that a resident has the right and responsibility to notify the Permittee of the existence of a private water supply “near” a Right-of-Way destined for treatment. “Near” should be defined either in the condition or Section I. A condition should be included that describes the actions(s) the Permittee may take upon notification of the existence of such a private water supply. It would be most useful to reiterate that private well information will be marked on the geodetic maps along with public water supplies as required on Page 21. 4.a.iii.

Page 23. 4.c.ix. See Global Comment regarding Record Keeping, Maintenance and Information Management.

Page 23. 4.c.xi. Notes plan “may include...what is expected practice in sensitive areas”. Please cross reference to Section 4.e.i. It would be helpful to cluster conditions regarding private wells together or at least cross reference pertinent conditions.

Page 24. 4.e.iv. Please define “near” in either the condition or in Section I.

Page 24. 4.e.v. Please define “...be avoided” in either the condition or in Section I.

Page 25. 4.k. See Global Comment regarding Buffers/Separation Distances.

Page 25. 5. Aerial application of Pesticides

See Global Comment regarding Aerial Application Permit Process. It is recommended that a framework and annual review process be established. VPAC should be part of this effort.

Page 25. 5.c.ii.1.a. There is no entity termed a “Vector Control Permit”. Revise to “5.c.ii.1.a.i. A valid larvicide/pupacide permit” and “5.c.ii.1.a.ii. A Determination of Significant Public Health Risk Requiring Aerial Application of Pesticide to Protect Public Health” has been issued by the Commissioner of Health as described in the State of Vermont Arbovirus Surveillance and Response Plan.”

Page 25. 5.c.ii.1.b. It would be useful to cross reference to a description of what is contained in the Control Details information sheet.

Page 25. 5.c.ii. Revise DEC to ANR

Page 25. 5.c.ii.2.b. It is recommended that private wells, in addition to public water supplies, be required to be identified as for aerial permit applications for tree fruit orchards as required in 3.b.” For all other agricultural commodities”.

Page 25. 5.c.ii.1. and 2. It is recommended that public notification and traffic control requirements be included for vector and tree orchard applications as required in 3.c. all other agricultural commodities and 4.c. all other proposed aerial applications.

Page 26. 5.e. It is recommended that this condition be made consistent with other pertinent state Rules, Regulations and Procedures such as the State of Vermont Arbovirus Plan. It is recommended that the decision to treat should be made in consultation with the appropriate content area lead such as the Commissioner of Health.

Page 27. Experimental Use Permit 6(b) It is recommended that results of any tests conducted be evaluated by the Permittee "...with input from content area specialists."

Page 29. Bird and other animal control – It is recommended that reporting and record maintenance requirements be included. This information could be housed in the AAFM data management system suggested for creation in Global Comment.

Page 29.7(c). It is recommended that "limited-area" be defined either in the condition or Section I.

Page 29. 8. Notification and Posting of turf-grass and landscape pesticide application

8.(a) Covers residential, single or multifamily or public non-residential properties, such as athletic fields.

Page 31. 8.a.iii. See Global Comment regarding Notification.

Page 31. 8.a.iii. Recommended revision "or any individual condominium owner or occupant requesting notification" in order to ensure notification is provided to renters and/or those who sublet and are actually living at the premise in question.

Page 31. 8.a.v. See Global Comment regarding Notification and prior notification.

Page 31. 8. "Note" - It is recommended that this be removed and the information included as separate conditions or bullets or the order of 8b. and 8c. be reversed and a statement included as to the activities covered at the beginning of each subsection (8a. -8c.).

Page 32. 8.b. It is recommended that a cross reference to notification and buffer conditions in Section 9. Golf Course Permits be included. See Global Comments regarding Buffers/Separation Distances and Notification.

Page 32. Section IV. 9. **Golf Course Permits**

Page 33.9.a.i.1.f. It is recommended that the Regulations continue to require identification of any water source protection areas.

Page 33.9.a.i.1.f. It is recommended that the Regulations continue to require identification of any environmentally sensitive areas.

Page 33.9.a.i.1. See Global Comment regarding Notification. It is recommended that a condition be included that requires abutter notification. Methods of notification and other specifics could be contained in a separate, easily updated Procedure.

Page 33.9.a.i.1.f.ii. See Global Comment regarding Buffers/Separation Distances. It is recommended that specific distances be removed from the Regulation and reference to a separate procedure included.

9.a. See Global Comment regarding Record Keeping, Maintenance and Information Management. It is recommended that usage data and other pertinent information, including but not limited to the information specified in page 35.9.a.i.1.h, be reported to AAFM and maintained in the information management system recommended for creation in comments above.

Page 35.9.a.i.1.g.ix.4. Please specify the institution referred to as "University".

Page 35.9.a.i.1.i.v. It is recommended that any Environmental Impact Quotient or ranking process be subject to review by VPAC.

Page 35. 9.a.i.1 See Global Comment regarding Notification. It is recommended that a condition requiring abutter notification be included. Methods of notification and other specifics could be contained in a separate, easily updated Procedure.

Page 35-36.9.a.i.1.i.vi. The correct reference for drinking water values is either the ANR Groundwater Protection Rule and Strategy Primary Groundwater Quality Enforcement Standards (enforceable values) or the Department of Health Drinking Water Guidance (not enforceable values).

Page 36. 9.a.i.2. It is recommended that requests for permit renewal should continue to include details of any changes to the Course's Integrated Pest Management plan.

Page 36. 9.a.i.2.a. It is recommended that applications for permit renewals be submitted no later than 3 months prior to expiration, or 3 months prior to the annual VPAC permit application review meeting if such a process is established.

Page 36. 9.a.i.3.b. See Global Comment regarding Buffers/Separation Distances. It is recommended that reference to specific buffer distances be removed from the Regulation and instead included in a separate document.

Page 37. 9.a.i.3. See Global Comment regarding Notification. It is recommended that a condition be included that requires abutter notification. Methods of notification and other specifics could be contained in a separate, easily updated Procedure.

Page 37. 9.a.i.4. Consistent with its functions as set forth in statute, it is recommended that the role of VPAC in Golf Course Permit review be retained not eliminated as is proposed. While the Permit review process itself may warrant revision and formalization, the responsibility of VPAC to review and advise remains the same. A subcommittee/workgroup could be established to develop an updated application review protocol including provisions for streamlined review of renewals where no issues have been noted and no changes are proposed. It is recommended that condition 9.a.i.4 be split into: "9.a.i.4.a. The Secretary will forward the application to the Vermont Pesticide Advisory Council (VPAC) for review and recommendation under 6 V.S.A. Section 1102(d)9(1). VPAC's review shall be based on the establish requirements of statues, regulation and guidelines" (this language is currently in ~~strikeout~~ on Page 39) and the following which is 9.a.i.4 as proposed just with the italicized portion added "9.a.i.4.b. *The Secretary shall issue or deny the permit or permit amendment after consideration of VPAC's recommendations, risk to human health and the environment ...*"

Page 44. 10. It is recommended that a copy of the Safety Data Sheet be provided to the owner, manager or their designee.

#### Page 45. 11. **Mosquito Control Activities Permits**

As currently proposed, this subsection pertains only to larviciding/pupaciding activities. It is recommended the section be renamed "Mosquito Larvae and Pupae Control Activities Permits" to clarify that the conditions only apply to larviciding/pupaciding NOT adulticiding activities. At present, adulticiding efforts are conducted by either the Mosquito Control Districts in which case no permit is required or under the provisions of the State of Vermont Arbovirus Surveillance and Response Plan if aerial application is to occur. If the intention is for this subsection to also include adulticiding, then the title could remain as proposed and a subsection added that pertains only to adulticiding noting that such activity is only authorized to be conducted by the MCDs or under the provisions of the State of Vermont Arbovirus Surveillance and Response Plan.

Page 45. 11.a.ii. Recommended revision "State Board of Health (18 V.S.A. Chapter 3)..."

Page 45. 11.a.ii. It is recommended that the condition specify results are to be provided directly to VPAC and the State of Vermont Department of Health.

Page 45. 11.a.iii. Fifth sentence. Although the proposed language mimics that in 6 V.S.A. Chapter 85 Section 1083(a)(5), consistent with other Rules, Regulations and Guidance it is recommended the condition be revised to "...the Secretary shall find, after consultation with the Secretary of the [A]gency of [N]atural [R]esources and Commissioner of Health that there is acceptable risk to the nontarget environment and that there is negligible risk to public health."

Page 45. 11.a.iv. Although the proposed language mimics that in 6 V.S.A. Chapter 85 Section 1083(a)(6), the term "imminent risk to public health" is not defined in 18 V.S.A. Chapter 1 Section 2 Definitions. It is not clear if the intent is to use the term "significant public health risk" as defined in 18 V.S.A. Chapter 1 Section 2 (12) or if the phrase is being used as a generic descriptor and not as a defined term. If the latter, revision is recommended in order to clarify.

Page 46. 11.a.v. It is recommended that the condition include a reference to the list of products deemed acceptable for use by the Secretary.

## **Section V. Maintenance of Records by Certified Licensed Companies, Licensed Pesticide Dealers and Pesticide Producing Establishments**

It is recommended that active ingredient and Chemical Abstract System number be required to be recorded under all circumstances (e.g., page 46. 1, 2a., 2b.).

See Global Comment regarding Record Keeping, Maintenance and Information Management. It is recommended that all information required to be recorded also be required to be submitted to AAFM for inclusion in the recommended information management system.

## **Section VII. Requirements for Certified Commercial and Certified Noncommercial Applicators**

Page 50. 5. To be consistent with other Regulations, Rules and Guidance, it is recommended that the condition be revised to “when the Secretary, in consultation with the Secretary of the Agency of Natural Resources and the Commissioner of Health, determines that the restrictions are necessary to protect human life or the environment.”

## **Section VIII. Certification Standards for Commercial Applicators and Noncommercial Applicators Using Other than Class “C” Pesticides**

Page 52. 2.g. Category 7 title and item ii.: Recommend revise to “and Human Health Related Pest Control”

Page 53. 2.h. Category 8. It is confusing having one section named “Health Related Pest Control” and another “Public Health Pest Control”. Please consider if it would be appropriate to include these as subsections of a single category or to further distinguish the difference between the two.

Page 54. 3.a.ii.1. Recommend revision to “and hazard to human health and common exposure routes;”

Page 55 3.a.ii.v. Please indicate what is encompassed by “hazards associated with use”.

Page 57. 4.e. Category 5: Aquatic Nuisance Control - It is recommended that “limited-area” be defined either in the condition or Section I.

Page 57. 4.f.ii. Category 6B: Vegetation Control – Invasive Species. This subsection appears to be incomplete. At a minimum it would be beneficial to include a variation of the language used in condition 6A. Right-of-Way Pest Control.

Page 57. 4.g.i. 7A General Pest Control. It is recommended that the last sentence be revised to convey “Since human exposure, including that of potentially sensitive subpopulations including but not limited to infants, children, pregnant women and the elderly, may be of particular concern, applicators must demonstrate practical knowledge of specific factors which may lead to hazardous conditions or undue exposure...” It is recommended that similar language be repeated throughout the various subsections of 4.g. or instead included as an overarching statement at the beginning of 4.g. Category 7.

Page 59. 4.h. Category 8. Public Health Pest Control – Second sentence, grammatical correction – “A wide variety of pests *are* involved...”

## **Section X – Classification of Pesticides and Limitations on Sale**

Page 62 1.c. This condition requires VPAC to make determination that routine use and potential exposure to the active ingredient could result in harm. This requirement may benefit from further clarification/definition.

Page 63. 1.d.ii. Recommend clarify pertains to pet “pest control” collars containing greater than 25% active ingredient

Page 64 1.e.i.4. Recommend clarify pertains to pet “pest control” collars containing not more than 25% active ingredient

Page 64 1.e.ii.14. Use of colorants to control algae growth is often covered under the provisions of the ANR Aquatic Nuisance Control permit program. At the request of ANR, Health has reviewed select colorants to determine what, if any, use conditions may result in negligible risk to public health and has developed select drinking water guidance values. It is not clear if these products should be included as a Class C with unlimited percentage of active ingredient available for unlimited purchase at a retail outlet by a homeowner.

Page 65. 2.c. Please cite the origin of the 0.10 ppm threshold for TCDD.

**Section XI – Pesticide Dealer Licenses**

Page 66. 1.b. Please indicate if the examination is to actually be conducted by the Secretary or by the Secretary’s designee.

Page 66. 3. and Page 67. 4. Please define the term “agricultural type” company stores in the condition or Section I.