

**INDUSTRIAL WASTE REGULATORY AMENDMENTS TO IMPLEMENT 2015
LEGISLATIVE ACTIONS (HB1364 & SB1413)**

REGULATORY ADVISORY PANEL (RAP) MEETING NOTES

FRIDAY, JUNE 19, 2015

<i>REGULATORY ADVISORY PANEL MEMBERS</i>	<i>INTERESTED PARTIES</i>
Brad Copenhaver – Virginia Agribusiness Council	Julie Baty - RockTenn
Tim Grove – Houff's Feed & Fertilizer	Robert Crockett – Advantus Strategies
Kim E. Hummel – Isle of Wight County	<i>TECHNICAL SUPPORT STAFF</i>
Adrienne Kotula – James River Association	Bryan Cauthorn - DEQ
Susan Lascolette – Goochland County Board of Supervisors	Melanie Davenport - DEQ
Lewie Lawrence – Middle Peninsula PDC	Kathleen O'Connell - DEQ
Chris Pomeroy – AquaLaw – VA Association of Municipal Wastewater Agencies (Alternate for Lisa Ochsenhirt)	Bill Norris - DEQ
Wilmer Stoneman – Virginia Farm Bureau	Kimi Perry - VDACS
John Uzupis - Synagro	Christina Wood - DEQ
	Neil Zahradka - DEQ

RAP Members Not in Attendance/Not Represented: Julie Walton – Prince George County

1. Welcome and Introductions – Melanie Davenport/Neil Zahradka:

Melanie Davenport, Director of DEQ's Water Division, welcomed everyone to the meeting and thanked the members of the Regulatory Advisory Panel for their willingness to serve on the Advisory Panel. She noted that DEQ staff would take some time this morning to try to explain how and why the RAP is here and what the scope of this RAP is. She noted that this regulatory development process is a little bit of a different process than normal to the extent that DEQ has received some very specific direction from the General Assembly. Those involved with DEQ before in regulatory development may recognize differences in how DEQ usually does things. The General Assembly, through HB1364 and SB1413 directed how DEQ is going to implement these amendments. This is a very narrow issue that DEQ is being asked to address through this regulatory action, which is how to amend the regulation to account for the opportunity for localities to inspect land applications of industrial residuals. She noted that DEQ will only hold one meeting of the RAP because it is really a targeted issue that DEQ will be addressing.

She noted that DEQ understands that some other issues or concerns may come up during the discussions. The plan is to put any of those items into a "Parking Lot" for

July 13, 2015

consideration at a later date when the regulation is under periodic review. For today's meeting DEQ is bound by what the General Assembly has directed DEQ to address.

Neil Zahradka, Manager of DEQ's Office of Land Application Programs, which includes: Animal Waste; Biosolids; Industrial Wastes and other things that are land applied for beneficial use, asked for introductions from the RAP members and members of the Interested Public. He noted that VDACS is being represented today by Kimi Perry. VDACS' role on the RAP is one of Technical Support.

2. RAP Meeting Guidelines/Protocol – Role of the RAP:

Bill Norris, Regulatory Analyst, with DEQ's Office of Regulatory Affairs, reviewed the "Guidelines" document that had been distributed to the group. He noted that: "the purpose of this action is the development of regulatory amendments needed to implement the provisions of House Bill 1364 and Senate Bill 1413 related to fees for the land application of industrial waste and reimbursement for compliance monitoring conducted by local governments."

He noted that: "The State Water Control Board's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia, except that the Department of Environmental Quality shall use a regulatory advisory panel to assist in the development of necessary regulations and shall provide an opportunity for public comment on the regulations prior to adoption."

He noted that this meeting is a public meeting and has been advertised and that there will be an opportunity for comments from those in attendance who are not members of the Advisory Panel during the course of the meeting if the comments are germane to the discussion or at the end of the meeting during the Public Comment Period.

He noted that he would be taking notes during the course of the meeting and developing a set of notes of today's discussions. Those notes will be posted to Town Hall and distributed to the group and the interested parties list.

He noted that the "function of the RAP members is to assist DEQ in the development of regulatory amendments related solely to local monitoring of Industrial Waste Permits and fees for land application of Industrial Wastes as outlined in the enabling legislation. No amendments relating to the technical requirements for land application of industrial wastes will be included in this regulatory action. As noted previously any topic raised during the groups discussions that does not fall within the narrow boundaries of the role of this RAP will be placed into a "parking lot" for consideration by staff at a later date.

He thanked everyone for their willingness to participate and turned the meeting back over to Neil Zahradka.

3. General Introduction to Impact of Legislative Actions – Neil Zahradka:

Neil Zahradka noted that what he would like to provide a framework for the day's discussions and identify where the RAP's boundaries are for this regulatory action. He noted that last year there were a number of discussions about the land application of

industrial wastes. During the course of those discussions, some localities asked whether their local monitor could be reimbursed for monitoring of industrial waste land application. DEQ noted at that time that the existing legislation authorizing localities to have local monitors be reimbursed was limited only to biosolids. In addition, DEQ did not have the ability under the existing legislation to charge a fee for the generators of industrial wastes to have funds to reimburse a locality for monitoring of those activities. The actions that we DEQ is proposing in the strawman provided are solely to accomplish that.

He noted that one of the things that is going on in an almost parallel action to this action are changes that alter the fee that DEQ charges for the land application of certain types of biosolids, in this case "exceptional quality" biosolids. That fee for Class B biosolids that are not exceptional quality is \$7.50 per dry ton, and land application of all exceptional quality biosolids was previously exempt from any fee. The 2015 General Assembly added language in the Budget Bill that will result in a charge of \$3.75 per dry ton fee for "cake" exceptional quality biosolids that are land applied. Two WWTPs are already or will soon be producing EQ biosolids for land application, and that will make up a large portion of the biosolids land applied in Virginia, but other wastewater plants are still making Class B. Fees for exceptional quality biosolids and the associated regulatory amendments to implement those fees are not a part of what the TAC will be discussing today. Those changes are being implemented through a Final Exempt Regulatory Action. A "Final Exempt Action" is a well defined process where DEQ makes the changes to the regulation solely to implement the legislative changes and DEQ takes that directly to the State Water Control Board where there is an adoption period after their approval, in case anyone had any objections to the action, but there is no Regulatory Advisory Panel included as part of that process. Those changes to the fees for exceptional quality become effective on October 1, 2015. The proposed changes in front of the RAP today related to industrial wastes would not become effective until January 1, 2016. Because of the way that the regulatory changes are being made, when the industrial wastes amendments are made, they are going to be made to the regulations that include the changes related to fees for "cake" exceptional biosolids. That resulting "final" language is included in the changes being discussed today, even though those changes won't be effective until October 1st. The proposed Industrial wastes changes are laid over the proposed changes to the "exceptional quality" language even though the EQ language is not part of today's discussions.

He noted that as RAP discussions progress, if anyone has questions or concerns about anything that is outside of the bounds of what the legislation authorizes DEQ to do; DEQ staff will set up a "parking lot" for those issues so that they can be addressed at a later date through a different process.

DISCUSSIONS:

- Is the "tonnage report" something that is already being provided to DEQ?
Staff Response: Yes – It is important to note that one important "bounds around this action" is that this legislation only covers those industrial wastes that are land applied according to a DEQ permit – there is a segment of industrial wastes that are registered as soil amendments or fertilizer products that are regulated through the VA Department of Agriculture and Consumer Services (VDACS) Industrial Co-Products rules (the Fertilizer Law) and those

products do not have DEQ permits. They are authorized through a different process.

- *Are industrial wastes "Class A" products? Staff Response: Industrial waste products are not necessarily "Class A" because "Class A" is strictly a pathogen reduction terminology, but the legislation speaks to industrial wastes that are land applied according to DEQ permits. So if the material has been permitted by DEQ, then it would be addressed under this regulation.*
- *RE: "tonnage report" question: Yes, DEQ does get reports of land applications and therefore know what is going down where. DEQ receives the report; the regulatory changes will just add a fee. The tricky part of the process will making sure that a locality has adopted an ordinance related to the land application of industrial wastes.*

He noted some of the changes that were made in the legislation:

- When about the statute references "any locality may adopt an ordinance" – DEQ's regulations will not speak to a locality's local authority to enact an ordinance because that is through statute and is done outside of DEQ regulations.
- DEQ regulations do address the local authority to enforce the regulations. That authority and how that works will be identical to the way that the language is set up for biosolids. Whatever authority the local monitor would have to enforce biosolids rules, the locality will have to enforce industrial wastes rules.
- The collection of fees is the other significant piece of this process. One of the enactment clauses for the legislation speaks to DEQ charging a fee of \$5.00 only in counties that have an ordinance. This is unlike the biosolids fee where a fee is charged anytime that biosolids are land applied – the \$5.00 per dry ton fee only applies when solid- or semi-solid industrial wastes are land applied in a county with an ordinance.
- The term that the legislation uses is "a fee for the land application of solid or semi-solid industrial wastes" – what that means is that industrial wastewater that might be land applied as a liquid is not covered under this action. DEQ is recommending that the term "industrial residual" be used instead of "solid- or semi-solid industrial wastes". Typically, industrial wastewater is applied very close to the facility due to transport costs. It is normally piped from the facility to irrigate land near the facility.
- The legislation duplicates the biosolids training requirements for local monitors – it is pretty much identical to that for biosolids except that DEQ has added "industrial residuals" into that language. What the RAP will be discussing today will not include discussions of the details of what that training includes. This is a directive to DEQ from the statute. What the RAP will be doing is incorporating any local monitors handling the land application of industrial waste into the existing program for biosolids monitoring.
- The statute speaks to how DEQ will reimburse – that language is included in the "Fee Regulation" when it speaks to what needs to be included in a reimbursement application from a locality and the process that DEQ uses. The strawman document explains how DEQ would handle that for industrial waste. It is identical to how DEQ handles reimbursement requests from localities regarding monitoring of the land application of biosolids.

He concluded that as much as possible DEQ has made only those changes to the regulations that are necessary to authorize solid- and semi-solid industrial wastes local monitoring and the fee associated with that activity. There are three (3) regulations that DEQ will be dealing with to make these changes. They include:

- The Fee Regulation – The two major components of the Fee Regulation are who gets charged a fee and how much. The Fee Regulation also includes the reimbursement processes to localities;
- The VPDES Regulation – This addresses where a wastewater treatment plant has materials that they are land applying under their VPDES discharge permit or it may be that an Industrial facility has material that they are land applying under their VPDES permit – DEQ is making changes in the definitions to ensure that industrial residuals are defined as well as the fee structure.
- The VPA Regulation – This is the regulation where a private contractor that land applies materials for a wastewater plant would be land applying under a VPA permit. We are addressing industrial residuals in the definitions as well as local enforcement of that regulation.

DISCUSSIONS:

- Local Enforcement – Local governments are being directed to notify DEQ of any violations. What is DEQ going to do once they have been notified of a violation? What is the next step? *STAFF RESPONSE: DEQ's process for compliance assurance is not covered in the regulation. DEQ would be following the same process that the agency uses in any other instance of noncompliance with a permit.*
- Overarching Question – A good deal of what DEQ has done is to add the term "or industrial residuals" all through the regulations – in looking at the statute the term "industrial waste" is used. It is defined as two different things. At this point it appears that the regulation is not following the bill language.

4. Review of "Strawman" Document – Proposed Changes – Christina Wood:

Christina Wood, DEQ's Biosolids Guidance and Regulation Coordinator, walked through the proposed amendments and presented them to the group.

- **Chapter 20 – FEES FOR PERMITS AND CERTIFICATES:**
 - **9VAC25-20-10. Definitions:**

"Dry tons" means dry weight established as representative of land applied biosolids or industrial residuals, and expressed in units of English tons.

"Established fees" means a fee established by the department per dry ton of biosolids or industrial residuals managed by land appliers.

"Industrial residual" means solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

DISCUSSIONS: The statute uses the term "solid or semisolid industrial waste." Instead of using this term, the proposed amendments use the term "industrial residuals." The decision to use this term was based on two things: if "solid or semisolid industrial wastes" were used throughout the regulation then the regulation would have to define "solid or semisolid" or in some way determine what that means. The definition of "industrial waste" does not provide for a definition of "solid or semisolid" it speaks to a very broad category. The "industrial waste" definition in statute includes both liquids and solids. If DEQ had tried to define "solid or semisolid" in terms of percent solids or a similar technical designation, that may be troublesome because materials vary so much. The second reason that DEQ recommends use of the term "industrial residual" is because it is an accepted industry term. "Residuals" is a term that is used in the wastewater treatment industry to describe what comes out of the solid side of a treatment plant. Residuals may be extremely wet or dry but it is clearly what is coming off the "solid side".

- A concern was noted about how the regulation can read differently than the law. *STAFF RESPONSE: DEQ is trying to put into words that stream of industrial waste that gets covered by this program and these permits. The term "industrial waste" is very broad. State Water Control Law focuses on a discharge from a VPDES permit into State waters. VPDES is a water program so it deals with the wastewater side of the plant – the only solids or semisolid material we would authorize would be solids coming out of the wastewater plant which DEQ terms as "residuals".*
- Is there a way to clarify that approach in the definition? *STAFF RESPONSE: "solids, residues, and precipitates separated or created by the unit processes..." are going to be "solid or semisolid".*
- Words have meanings – so tone must be very careful what terms are used.
- Could it be clarified by saying: "Industrial waste" means solids, residues, and precipitates separated or created by the unit processes of a device or system which results in industrial residuals"? *STAFF RESPONSE: Industrial waste is defined in the statute so we wouldn't redefine it in the regulation.*
- Could the term be "to treat industrial wastewater" instead of "to treat industrial wastes"? *STAFF RESPONSE: DE Q did not use that wording because it is such a very broad term. We looked closely at EPA definitions and wording before deciding on the current proposed wording.*
- Changing the wording and definition from that in the enabling legislation and the statute seems to be a leap.
- Industrial waste is defined in the Code. When the 2015 legislation added these new sections into the Code, it specifically speaks to the land application of solid or semisolid industrial wastes, so that had to be broken out. The definition of "industrial residuals" is just that broken out piece. It might not be in the Code, but it means the same thing. *STAFF RESPONSE: That is essentially what DEQ is trying to do. The statute uses the term "solid or semisolid" and DEQ has to, for the purposes of this regulation, define what that means. The definition found in the VPA regulation is taken directly from the statute: "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources." In the legislation, it is qualified in new section in the Acts of Assembly (Chapter 104 & 677)*

with the terms "solid or semisolid". The General Assembly refined the definition of "industrial waste".

STAFF SUGGESTION FOLLOWING THE MEETING:

To address the question regarding the use of the term "industrial residuals" versus "industrial waste" and for the sake of clarity, DEQ could modify the definition of industrial residuals as follows:

"Industrial residual" means solid or semi-solid industrial waste including solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Land application" means, in regard to sewage, biosolids and industrial residuals, the distribution of ~~either~~-treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, or industrial residuals; ~~upon, or insertion into, by spreading or spraying on the surface of~~ the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of ~~utilization, or assimilation~~ fertilizing crops or vegetation or conditioning the soil. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. Sites approved for land application of biosolids in accordance with 9VAC25-31 or 9VAC25-32 are not to be considered to be treatment works.

DISCUSSIONS: Is it clear in the definition of "land application" that this does not apply to "reuse of reclaimed water"? Both "reuse" and "reclaimed water" are defined terms. It was noted that the term "sewage" had been added in the proposed amendments. *STAFF RESPONSE: The changes to the definition of "land application" were problematic because the definition was different across the three regulations. Part of the boundaries on what DEQ is doing is that this regulatory action cannot affect in any way the regulations pertaining to anything other than "industrial residuals". DEQ changed only those parts of the definition that apply to industrial residuals and the other changes that DEQ made were drawing the fence around what the regulation describes. The addition of the phrase "in regard to" existed in the VPA definition of "land application."*

The concern was noted that DEQ needs to make sure that the regulatory changes are not impacting the "reuse of reclaimed water" processes that are being promoted by the Commonwealth through any of these amendments. *STAFF RESPONSE: This might be a good point to include in the "Parking Lot" for consideration during the next regulatory review for this regulation.*

PARKING LOT: Land application of wastewater versus Reuse versus Land Treatment needs to be clarified. – More clarity needed.

DISCUSSIONS – DEFINITION OF LAND APPLICATION: *Staff Note: DEQ is trying to make the definition of "land application" consistent across all the regulations.*

- A question was raised as to how are the regulatory changes are not capturing the industrial residuals that would be registered under the "fertilizer law"? Are they being captured here under the fee mechanism? *STAFF RESPONSE: DEQ does not regulate the VDACS components. The only thing that DEQ would charge a fee for is something that DEQ is permitting – that is part of the process and mechanism for collecting that fee. The only time a person would get a bill from DEQ is if that person has a DEQ permit. If someone is land applying a material that is registered – that they bought off the shelf or from a fertilizer distributor or bought directly from someplace and it is a registered product with VDACS – that product is not associated with a DEQ permit so there is no mechanism to charge a fee for its application. There is no mechanism to charge for that. The statute clearly says that the fee applies to materials permitted under DEQ programs. There has to be a permit "hook" to collect a fee.*
- If a property owner applies the fertilizer that DEQ does not "permit" – then that is okay. What would prohibit someone from applying something that they should have a permit for without a permit? *STAFF RESPONSE: That would be considered noncompliance with the regulation and would be handled according to DEQ compliance and enforcement mechanisms.*

"Land applier" means someone who land applies biosolids or industrial residuals pursuant to a valid permit from the department as set forth in 9VAC25-31 or 9VAC25-32.

"Reimbursement application" means forms approved by the department to be used to apply for reimbursement of local monitoring costs for land application of biosolids or industrial residuals in accordance with the provisions of this regulation. The application shall consist of a formal written request and any accompanying documentation submitted by a local government in accordance with a local ordinance.

- **9VAC25-20-20. Purpose.**

Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, or modify any permit, permit authorization or certificate which the board has the authority to issue from the applicant for such permit, permit authorization or certificate. Section 62.1-44.19:3 of the Code of Virginia requires the promulgation of regulations establishing a fee to be charged to all permit holders and persons applying for permits and permit modifications associated with land application of biosolids. Section 62.1-44.19:3 of the Code of Virginia also requires the promulgation of regulations requiring the payment of a fee by persons land applying biosolids. Section 62.1-44.16 of the Code of Virginia requires the promulgation of regulations requiring the payment of a fee by persons land applying solid or semisolid industrial wastes. These regulations establish the required fee assessment and collection system.

- **9VAC25-20-40. Applicability.**

A 3. All land appliers land applying biosolids or industrial residuals on permitted sites in the Commonwealth of Virginia, ~~except as specifically exempt under 9VAC25-20-50 C.~~
The fee due shall be as specified under 9VAC25-20-146.

- **9VAC25-20-60. Due dates.**

DISCUSSIONS: A suggestion was made to revise the proposed title from "Land application fees" to "Land application fees for biosolids and industrial residuals" for clarity.

D. ~~Biosolids land~~ Land application fees for biosolids and industrial residuals. The department may bill the land applier for amounts due following the submission of the monthly land application report. Payments are due 30 days after receipt of a bill from the department. No permit or modification of an existing permit will be approved in the jurisdiction where payment of the established fee by the land applier has not been received by the due date; until such time that the fees are paid in full. Existing permits may be revoked or approved sources may be reclassified as unapproved unless the required fee is paid by the due date. No permit will be reissued or administratively continued or modified without full payment of any past due fee.

- **9VAC25-20-90. Deposit and use of fees.**

A. Sludge Management Fund. All ~~biosolids~~ land application fees collected from permit holders who land apply biosolids or industrial residuals in the Commonwealth of Virginia, and fees collected from permit holders and persons applying for permits and permit modifications pursuant to § 62.1-44.19:3 of the Code of Virginia shall be deposited into the Sludge Management Fund established by, and used and accounted for as specified in ~~§-§§ 62.1-44.16~~ and 62.1-44.19:3 of the Code of Virginia. Payments to the Department of Conservation and Recreation for their costs related to implementation of the biosolids land application program and to localities with duly adopted ordinances providing for the testing and monitoring of the land application of biosolids or industrial residuals will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the department.

○ **9VAC25-20-100. General.**

Each application for a new permit, permit authorization or certificate, each application for reissuance of a permit, permit authorization or certificate, each application for major modification of a permit, permit authorization or certificate, each revocation and reissuance of a permit, permit authorization or certificate, and each application of a dry ton of biosolids or industrial residuals is a separate action and shall be assessed a separate fee, as applicable. The fees for each type of permit, permit authorization or certificate that the board has the authority to issue, reissue or modify will be as specified in this part.

○ **Part IV – Title:**

Biosolids and Industrial Residuals Fees and Reimbursable Costs

○ **9VAC25-20-146. Established fees.**

DISCUSSIONS: The group discussed the proposed amendments to 9VAC25-20-146 related to "established fees".

- The decision was made to separate the statements related to "exceptional quality biosolids" and "industrial residual" into separate sentences for clarity.
- A question was raised over the duplication of language related to established fees and regulation references.

A. Land appliers shall remit the established fees to the department as specified in this regulation. The land appliers shall collect the required fees from the owners of the sewage treatment works and facilities that generate the Class B biosolids and exceptional quality biosolids cake that are land applied. The land appliers shall collect the required fees from the owners of the industrial waste treatment facilities and other facilities that generate the industrial residuals that are land applied in localities that have adopted ordinances in accordance with § 62.1-44.16.D. of the Code of Virginia. Such works and facilities shall be approved sources of

biosolids or industrial residuals in accordance with ~~this regulation~~ 9VAC25-31 or 9VAC25-32. Land application shall only include biosolids or industrial residuals from approved sources as listed in the land application permit. The established fee shall be imposed on each dry ton of Class B biosolids and exceptional quality biosolids cake that is land applied in the Commonwealth of Virginia in accordance with 9VAC25-31 or 9VAC25-32. The established fee shall be imposed on each dry ton of industrial residuals that is land applied in localities that have adopted ordinances in accordance with § 62.1-44.16.D. of the Code of Virginia.

B. The amount of the established fee and disbursement are as follows:

1. The fee shall be \$7.50 per dry ton of Class B biosolids land applied in the Commonwealth of Virginia.

2. The fee shall be \$3.75 per dry ton of exceptional quality biosolids land applied as a cake in the Commonwealth of Virginia.

3. The fee shall be \$5.00 per dry ton of industrial residuals land applied in localities that have adopted ordinances in accordance with § 62.1-44.16.D. of the Code of Virginia.

DISCUSSIONS:

- Will this cause any confusion between the generator and the land applier as to when a fee should be paid or collected related to industrial residuals? *STAFF RESPONSE: DEQ should know. Hopefully, when a locality adopts an ordinance that allows local monitoring of the land application of industrial waste, they will let DEQ know that they have, (hopefully the Virginia Association of Counties (VACO) can help with this) so that it can be flagged in the records and accounting procedures to make sure that the land applier gets that bill for that material. Also, the land applier has the obligation, knowing that they have to remit this fee, it is in their best interest to check, when they are getting ready to land apply in a locality, whether the locality has adopted an ordinance for a local monitor.*

- Is there anything outside of these regulations/these provisions that asks or requires a locality to let DEQ know whether they have adopted an ordinance? *STAFF RESPONSE: There is no “must tell DEQ” requirement. DEQ would hope that a locality that has taken the time to develop an ordinance would know that they should tell DEQ that they have adopted an ordinance related to these requirements, but there are currently no requirements to do so.*
- Isn't there a requirement that the local monitors/inspectors need to be trained by DEQ before there can be reimbursement? *STAFF RESPONSE: Yes. DEQ would know at that point. DEQ could also do a blast notice to all localities when this is final to alert them so that if they are planning on doing an ordinance that provides for local monitoring of the land application of industrial waste that they need to let DEQ know. There is already a requirement that before a locality can be reimbursed that the local monitor would have to be trained by DEQ but reimbursement and collection of the fee are independent of each other. DEQ collects the fee whether or not reimbursement is requested.*
- It was noted that a locality could send someone to be trained even if they had not passed an ordinance. If a locality doesn't have an ordinance are they authorized to go out on the sites? *STAFF RESPONSE: The way the statute is written, the local monitor's authority to enforce the provisions of the permit are not diminished by the fact that the monitor has not been trained, however the locality cannot be reimbursed if the local monitor has not been trained.*
- Are the fees going to be effective October 1st? *STAFF RESPONSE: For “exceptional quality biosolids” the fees are effective October 1, 2015. For “industrial waste” local monitoring the fees will be effective either December 31st or January 1st. The statute says “on or before January 1, 2016”.*
- So DEQ is lumping the changes into one document for this meeting but will distinguish the differences when they become effective. *STAFF RESPONSE: On October 1st, when anyone views the “Fee Regulation” on Town Hall it will have the changes that DEQ has included in “green” in this strawman document, but the other changes – the industrial waste changes – will not be there yet. The industrial waste changes will not be reviewed by the Board until October 1st, and will not be effective until January 1.*
- It appears that DQ is not giving localities enough time to get an ordinance passed by January 1st – that is too late. *STAFF RESPONSE: This time schedule was the General Assembly's direction to DEQ – to enact the Industrial Waste provisions by January 1st.*
- Is there a way to back the schedule up to give localities enough time to adopt their ordinances? *STAFF RESPONSE: DEQ cannot accelerate the process any more than the regulation adoption process and schedule allows. This is not like the Stormwater regulations – where DEQ is telling the localities exactly what needs to be done. Localities have the flexibility to start the ordinance adoption process anytime they want. A locality can start the process anytime. There is nothing in these regulations that affect a localities timeline to develop an ordinance. However, DEQ will not start collecting the \$5 fee until January 1st.*
- Why is the Industrial Waste fee of \$5 different than that for biosolids (\$7.50)? Why are they not the same? *STAFF RESPONSE: The permit application fees and maintenance fees for an industrial waste permit are significantly higher than those for biosolids.*

~~2. 3. 4.~~ Disbursement of the established fees collected by the department for the land application of biosolids or industrial residuals shall be made to reimburse or partially reimburse those counties, cities and towns with duly adopted local ordinances that submit documentation of reimbursable expenses acceptable to the department as provided for in this regulation.

DISCUSSIONS:

- For the smaller jurisdictions, that just have one or two of these, there is not enough revenue there to fully fund and support the position of local monitor, but if there were 3 adjoining counties there may be enough there to support one local monitor position. Can that be added after “towns”? Something like “or an approved regional program administrator.” *STAFF RESPONSE: Only if the statute was changed. The concept of "multiple payments" to "multiple jurisdictions" is addressed in a later section of the regulations. The way the process is set up is that DEQ only reimburses one city, county or town – the documentation and reimbursement application brings in the other localities and the processes involved in that type of regional scenario. The only thing that is limited by the statute is DEQ’s ability to reimburse a planning district commission. DEQ cannot currently do that, but can reimburse a system where one locality is using a regional monitor.*
- Can third parties be used for this monitoring? The whole issue is on the cost. The cost is tremendously higher then what a locality gets reimbursed for. This is an unfunded mandate.

~~3. 4. 5.~~ Disbursement of the established fees collected by the department for the land application of biosolids shall be made to reimburse the Department of Conservation and Recreation's costs for implementation of the biosolids application program.

○ 9VAC25-20-147. Records and reports.

A. Records. Permittees shall maintain complete records of the land application activities and amounts of Class B biosolids, and exceptional quality biosolids cake and industrial residuals that they land apply in the Commonwealth of Virginia. Such records shall be maintained by the permittee for five years after the date of the activity in a form that is available for inspection by the department. Records of land application activities shall include at minimum:

2. Identification of land application site, including the DEQ control number.

DISCUSSIONS:

- Regarding the use of DEQ Control Numbers: With the inclusion of another program that uses the “DEQ Control Number”, is this going to cover “DEQ Control Numbers” covering multiple permits? *STAFF RESPONSE: A DEQ control number applies to the land application site and it goes across any land application under the biosolids and industrial waste regulations/provisions. When DEQ issues a permit now for biosolids or industrial waste land application, DEQ would be including in that permit a “DEQ control ID number” for each field. All of the sites are going into DEQ’s GIS database.*
- How does DEQ address the issue of multiple permits on the same site – the same DEQ Control Number site? *STAFF RESPONSE: When DEQ issues a permit, the DEQ Control Number for the site allows DEQ to be aware of overlapping areas being addressed under multiple permits. When the permit is issued and contained in the application materials and site books, the two permittees would know – their site books would represent what fields that they are allowed to land apply and what materials can be applied. The use of the DEQ control number helps to add clarity to the process. Simultaneous land applications of different materials by different permit holders would not be authorized on the same field area; because there can only be one valid land owner agreement form at any one time. It might exist in two permits, but for a particular control ID, there would only be one permit that would have land application authorized at any one time for that control ID.*
- Can a landowner have land applications of both biosolids and industrial residuals on the same field at the same time? *STAFF RESPONSE: This would have to be handled under the nutrient management plan. This is addressed in our Industrial Permits and Biosolids Permits where that situation exists where both biosolids and industrial residuals are being applied to the same field then the nutrient management plan has to be approved. There can only be one valid landowner agreement at a time.*
- DEQ needs to consider how their Control IDs are handled over-time as applications change over time.

PARKING LOT: Landowner Agreement Forms for Biosolids and Industrial Waste under different contractors – How should this be addressed? – Altered Field Boundaries and Control IDs over-time – A Nutrient Management Issue – Compliance Issue?

3. The source of ~~biosolids, whether the biosolids are Class B biosolids, or exceptional quality biosolids cake, or industrial residuals~~ and ~~the~~ field area receiving those biosolids ~~or industrial residuals.~~

4. The amount of ~~Class B biosolids, exceptional quality biosolids cake, or industrial residuals~~ applied in dry tons, ~~by class,~~ and the method and calculations used to determine the reported value.

B. Reports and notification. The permittee shall submit a monthly report by the 15th day of each month for land application activity that occurred in the previous calendar month, unless another date is specified in the permit in accordance with 9VAC25-32-80 I 4. The report shall include (i) the recorded information listed in subsection A of this section and (ii) a calculation of the total fee. The submitted report shall include a summary list of the total amount of Class B biosolids, and exceptional quality biosolids cake and industrial residuals land-applied and the calculated fee based on the land-applied Class B biosolids, and exceptional quality biosolids cake and industrial residuals for each county in which land application occurred. If no land application occurs under a permit during the calendar month, a report shall be submitted stating that no land application occurred.

DISCUSSIONS:

- *STAFF NOTE: Need to look back through the document to see if the phrase used is "land applied" or "land-applied" – also to see if its use is consistent throughout the regulations.*
- It appears that the "monthly report" requires permittees to summarize information from multiple permits into one report. *STAFF RESPONSE: That is what is done now.*
- One individual would only have one permit in a county. This is opening it up to the possibility of a second permit in a county. The scenario that is envisioned is that I have one permit and the gentleman beside me has another permit, if I am submitting the monthly report for that county, I don't know what he did – he doesn't know what I did, so we would not be able to summarize the activities. The second scenario would be if I had both permits, and now the question comes up, I apply some of the material in the county

under one permit, but not from the other permit. Then am I required to submit for the one permit saying there is no activity, but on the other permit I am reporting the activity that occurred? Or, because my one permit says here is the activity but it doesn't include any information from the second permit because there was no activity under that permit. And therefore I am relieved from the responsibility of submitting a report for that permit that would say that no activity occurred. *STAFF RESPONSE: Rephrasing the question: A land applier has a biosolids permit in that county alone. A land applier also has a regional industrial waste land application permit, where one of the counties in that permit is the same as the one with the biosolids permit. You land apply biosolids under the biosolids permit and you land apply industrial waste under your Industrial Waste Permit in the same county and then you have a requirement to submit a monthly report for each permit, so then is the requirement that when you submit the monthly report for your biosolids permit that you also have to include this other information related to the land application of industrial residuals under that permit and then in the report that you are required to submit for your Industrial Waste permit that you have to include information related to the land application of biosolids under that permit? There would be duplicity of information and reporting. What the language appears to say is that the information would need to be summarized. STAFF RESPONSE: The permit holder should only be submitting one report. The way the database and the reporting are set up, everything comes in together in one comprehensive spreadsheet. When the permit holder submits his monthly report, he can note that this is the report for these permits and includes the Industrial Waste Permit number. The permit holder could also submit individual reports for each permit – but this is not encouraged. The workbook is set up for both biosolids and industrial and includes all the parameters that are needed or appropriate for both permits. The Fee summary is already required by the regulations. DEQ would not be asking for anything more than is currently required other than the additional information on industrial waste as a result of this regulatory action.*

- The information for Industrial Waste is not currently required. *STAFF RESPONSE: Yes, this regulatory action will result in requiring information about the land application of industrial residuals. The reporting form will need to be modified to account for the additional information being required. Additional information will also be required as a result of the actions underway related to “exceptional biosolids cake”.*
- This adds another level of complexity to the reporting requirements.
- *STAFF NOTE: Is there anything in the proposed amendments that limits a permittee's flexibility to report how they want? Is there anything that prevents a permittee from reporting permit by permit? No. If they want to use the workbook and just fill in everything, then they can. The preference would be for the permittee to submit a single report. The changes in the regulations do not create the requirement for submitting an individual report for each county.*
- The question is that the regulation language appears to require a single report summarizing multiple permits. Would the permittee have the option to submit individual reports? *STAFF RESPONSE: No, DEQ would prefer the permittee did not but there is nothing prohibiting it. DEQ does not want this reporting requirement to limit their flexibility – it needs to be able to accommodate how their business model operates – there needs to be flexibility to allow for the submittal of individual reports or summary reports whichever works for the individual permittee.*
- What are the regulations requiring a permittee to do – to submit? *STAFF RESPONSE: This contemplates one report but the question that is being raised is that since DEQ is adding additional reporting items due to the imposition of fees that multiple reports might be more appropriate under some circumstances. DEQ is assuming that all this*

information needs to be put in the same report. But does it have to be? Maybe it needs to read “report or reports”.

- Could this be addressed in guidance? Could guidance say “permit or permits” or “report or reports”? By guidance DEQ could allow for a summary. Does DEQ need the word “summary”? *STAFF RESPONSE: DEQ cannot change anything related to biosolids through this action.*
- The group discussed concerns related to the term “summary”. A suggestion was made to strike the words “...shall include a summary list of...” and replace it with “...shall summarize...” *STAFF RESPONSE: If DEQ proposes any changes to the existing language DEQ would need to separate the biosolids components out from the industrial components.*
- *STAFF NOTE: Could DEQ address this with the addition of a sentence that reads: “The summary may include land application which occurs in a single permit or multiple permits”?*
- The suggestion was made to address this concern through guidance.
- A suggestion was made that this also could be addressed by leaving the existing language alone and creating two separate sentences, one to address exceptional quality biosolids cake and one addressing industrial residuals.
- A concern was raised that the requirement for reporting by the 15th of the month may be too aggressive.

PARKING LOT: Monthly Report due date – 15th of the month – too early.

ACTION ITEM: Staff will review the language in 9VAC25-20-147 B to see if the concerns that have been noted can be addressed with revisions or addressed through guidance. Suggested wording was requested from members of the RAP.

- **9VAC25-20-148. Reimbursable local monitoring costs.**

A. Reasonable expenses for the following types of activities may be submitted for reimbursement:

2. Charges and expenses, including local travel for site monitoring, inspections, collection and delivery of biosolids, industrial residuals or soil samples to a nearby laboratory and examination of records.

5. Charges for biosolids, industrial residuals and soil sample testing costs.

o **9VAC25-20-149. Reimbursement of local monitoring costs.**

A. Reimbursement of local monitoring costs deemed reasonable by the department will be made for costs up to \$2.50 per dry ton of biosolids or industrial residuals land applied in a county during the period of time specified in the submitted invoice. Costs of up to \$4.00 per dry ton of biosolids or industrial residuals land applied in a county during the period of time that the costs were incurred may be reimbursed with prior approval from the department.

B. Application. A local government must submit a reimbursement application to request reimbursement from the department. All information shall be clearly typed or printed and all required or supporting documents must be attached. The county administrator or designated local ~~biosolids~~ monitor shall sign and date the application where indicated. The original signed application with one copy of each of the supporting documents shall be submitted to the department. Applications may not be submitted by facsimile or through electronic means. A reimbursement invoice form as described in this regulation must be completed before a reimbursement application can be submitted. The invoice form must include all expenses for which reimbursement is requested during the designated time period.

C. Application forms and submittal...

1. Form 1 - Reimbursement Application. An invoice form shall be submitted with each application for reimbursement. The invoice form shall list all reimbursable charges. To be reimbursed for eligible expenses, an applicant must provide documentation to demonstrate that the expenses were incurred. Invoices are acceptable proof of incurred expenses. Invoices

signed by the local ~~biosolids~~ monitor or agent who performed or managed the monitoring activities shall be legible. All invoices are to include the following:

c. ~~Biosolids contractor's~~ Land applier's name;

e. Name of ~~biosolids-local~~ monitor;

E. Reconsideration process.

5. Errors ineligible for reconsideration...

g. Failure to obtain prior approval from the department for costs that exceed \$2.50 per dry ton of biosolids or industrial residuals land applied.

o **9VAC25-31-10. Definitions.**

"Industrial residual" means solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Land application" means, in regard to sewage, biosolids and industrial residuals, the distribution of treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, or industrial residuals by

spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this chapter are not to be considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this chapter, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Local ordinance" means an ordinance adopted by counties, cities, or towns pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia in accordance with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

DISCUSSIONS:

- A recommendation was made to delete the reference to Chapter 22 and Title 15.2 from the definition of "local ordinance" based on Case Law related to State Water Law. The relevant reference is 62.1 not 15.2. This change was agreed to by the group.
- **9VAC25-31-475 has been repealed and moved in its entirety with some revisions to a new section 9VAC25-31-915 entitled "Local Enforcement".**

9VAC25-31-475. Local enforcement of biosolids regulations. (Repealed.)

~~A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of biosolids, the activity alleged to be in violation shall be halted pending a determination by the director.~~

~~B. Upon determination by the director that there has been a violation of § 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.~~

~~C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of biosolids performed by persons employed by local governments and any violation of § 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia.~~

~~D. Local governments receiving complaints concerning land application of biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.~~

9VAC25-31-915. Local Enforcement.

A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of biosolids ~~or industrial residuals~~, the activity alleged to be in violation shall be halted pending a determination by the director.

B. Upon determination by the director that there has been a violation of § ~~62.1-44.16~~, 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia, ~~or~~ of any regulation promulgated under those sections, ~~or of any permit or certificate issued for land application of industrial residuals~~, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.

C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of biosolids or industrial residuals performed by persons employed by local governments and any violation of § 62.1-44.16, 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia or of any permit or certificate issued for land application of industrial residuals discovered by local governments.

D. Local governments receiving complaints concerning land application of biosolids or industrial residuals shall notify the department and the permit holder within 24 hours of receiving the complaint.

DISCUSSIONS:

- What is meant by the term “promptly notify” found in 9VAC25-31-915 C? Is DEQ talking about a specific time frame? *STAFF RESPONSE: This is existing language that has been moved from 9VAC25-31-475. DEQ has never had a problem with this. Typically if a locality has conducted monitoring and received results from that then they would have incurred costs which they would be wanting reimbursement for. That request for reimbursement is likely to be submitted within the next month. If that time frame were followed, DEQ would consider that to be “promptly.”*
- A question was raised regarding a locality doing the monitoring but not the testing. Isn't the testing always done at a laboratory and they are not the locality's employees? No issue with reimbursement of testing costs – the county is incurring the costs. *STAFF RESPONSE: This concern/comment can be addressed in guidance.*
- In regards to a comment regarding the omission of a reference to “biosolids” in 9VAC25-31-915 B. *STAFF RESPONSE: There was some very specific language in the statute that was included in 62.1-44.19:3; 19:3.1; and 19:3.3 that must be followed by the permittee. The VPA Regulation, which was promulgated under those sections, has some very specific requirements for biosolids and so the violations that DEQ examines are contained in those sections of the Code and the regulations. For Industrial residuals, Section 16 of the Code, is very limited as to what requirements it has other than the need for permits and the regulation does not have very much specific to industrial waste. The specifics for what would be required for industrial waste would only be included in a permit or certificate. That is why this language has been added and only refers to the land application of industrial residuals. For biosolids everything is already described and specified in the statute and in the regulation, for industrial residuals it is going to be described in the permit.*

- **9VAC25-32-10. Definitions.**

"Dry tons" means dry weight established as representative of land applied biosolids or industrial residuals and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge ~~or~~ biosolids, or industrial residuals after all moisture has been removed in accordance with the standard

"Industrial residual" means solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Land application" means, in regard to sewage, biosolids and industrial residuals, the distribution of ~~either~~-treated wastewater, referred to as "effluent," ~~or~~-stabilized sewage sludge, referred to as "biosolids," or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing ~~the~~-crops and or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this regulation are not to be considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this regulation, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

DISCUSSIONS:

- Is the definition of "land application" identical to the other definitions of "land application" that have been discussed by the group? No, because it is part of the biosolids regulations it contains the additional phrase "of acceptable quality" that is the only difference.

"Land applier" means someone who land applies biosolids or industrial residuals pursuant to a valid permit from the department as set forth in this regulation.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

~~"Reimbursement application" means forms approved by the department to be used to apply for reimbursement of local monitoring costs for land application of biosolids in accordance with a local ordinance.~~

- 9VAC25-32-285. Local Enforcement was added – originally contained in the regulations as 9VAC25-32-320.

9VAC25-32-285. Local Enforcement.

A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of biosolids **or industrial residuals**, the activity alleged to be in violation shall be halted pending a determination by the director.

B. Upon determination by the director that there has been a violation of § **62.1-44.16**, 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, ~~or~~ **or of any regulation promulgated under those sections, or of any permit or certificate issued for land application of industrial residuals**, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.

C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of biosolids **or industrial residuals** performed by persons employed by local governments and any violation of § **62.1-44.16**, 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia **or of any permit or certificate issued for land application of industrial residuals discovered by local governments.**

D. Local governments receiving complaints concerning land application of biosolids **or industrial residuals** shall notify the department and the permit holder within 24 hours of receiving the complaint.

9VAC25-32-320. Local enforcement of the regulation. (Repealed.)

~~A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of biosolids, the activity alleged to be in violation shall be halted pending a determination by the director.~~

~~B. Upon determination by the director that there has been a violation of § 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.~~

~~C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of biosolids performed by persons employed by local governments and any violation of § 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia.~~

~~D. Local governments receiving complaints concerning land application of biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.~~

5. Meeting Wrap-Up – Melanie Davenport/Neil Zahradka/Bill Norris**DISCUSSIONS:**

- What is the next step in the process? *STAFF RESPONSE: DEQ will take the language that was discussed today and put it out for a public comment period to see if other members of the public have comments. DEQ will consider those comments. The members of the RAP and Interested Parties are welcome to also provide additional comments if other issues come to mind. DEQ will then prepare a board packet for submittal to the State Water Control Board for their consideration at their meeting on October 1st for adoption.*

- How will additional comments from the group be handled? Can they be distributed to other members of the group? *STAFF RESPONSE: All additional comments should be sent via email to Bill Norris. Those comments will then be distributed back to the group.*
- *STAFF NOTE: Bill Norris will be developing notes from today's meeting which will be posted to Town Hall and will be distributed as information to all of those in attendance today and all of those on the RAP distribution lists.*

6. Public Comment Period:

- **Julie Baty – Rock Tenn:**

- I didn't see a definition of "exceptional quality biosolids" in the strawman document that the group reviewed today. Is there any way to get that into the definitions? *STAFF RESPONSE: That term is already defined in the VPA regulation.*
- Would it ever be possible for "industrial residuals" to be classified as "an exceptional quality industrial residual"? *STAFF RESPONSE: The place for that to happen would be under the VDACS program where the product would undergo some additional quality testing and evaluation for that product to be distributed and marketed and sold to the general public without necessary management restrictions because of the product quality. That is where you would get out of the \$5 land application fee is to have a product that is under the VDACS program.*
- Would that concept also apply to boiler ash or wood ash? *STAFF RESPONSE: Those would also likely apply under the VDACS program.*

- **Susan Lascolette – Goochland County:**

- It appears that "exceptional quality biosolids" is explained but not "cake". Does "exceptional quality biosolids cake" need to be defined? *STAFF RESPONSE: DEQ did not define it in the regulations because the statute did not define it and DEQ could not come up with a more explicit definition without a full regulatory process. A "final exempt action" essentially means that you are only using the words that the statute uses – any language added outside of the words used in the statute have to be nonsubstantive. DEQ knows what it is and the land appliers and the industry professionals know what it is and DEQ did not see any complications with the interpretation of the meaning of the term.*
- There could be significant costs now since the regulation has split it in half in terms of the monitoring – some might or would prefer to call everything "cake" to simplify things. *STAFF RESPONSE/COMMENT: Just in summary, the finest criteria that it goes through is the definition of meeting "exceptional quality". There are only a few processes that actually can meet "exceptional quality" criteria. Historically, the processes that produced "exceptional quality" biosolids resulted in a dry product or a compost product and that was the only way EQ was achieved. Now, with some new processes the material is what in the industry is referred to as a "cake". It is a higher moisture product. Those*

new processes are producing what DEQ is calling "cake", or what the General Assembly is calling "cake".

7. Adjournment of Meeting:

- Bill Norris requested that everyone make sure that they had provided their email address on the sign-in sheet so that they could be included in any distributions. He thanked everyone for their attendance and participation.
- Melanie Davenport thanked everyone for their attendance and willingness to go through the proposed amendments and provide input to this process.
- Neil Zahradka thanked everyone for their participation in this effort. In looking back around the room, it has been an unusual process where everyone in attendance submitted at least question or had some comment and all engaged in the workings of the advisory group. A lot of times when DEQ convenes an advisory group like this, there are some folks who just sit back and do not engage in the process. Everyone has been very helpful in the process. He thanked everyone for spending their Friday morning with DEQ to help with this process.

MEETING ADJOURNED AT APPROXIMATELY 12:00 NOON.