BIOSOLIDS TECHNICAL ADVISORY COMMITTEE
Amendments to Biosolids Regulations after Transfer from VDH to DEQ

DRAFT MEETING NOTES
TAC MEETING – THURSDAY, AUGUST 20, 2009
DEQ PRO TRAINING ROOM

Meeting Attendees

TAC Members	*Interested Public*	*DEQ Staff*
Karl Berger	Todd Benson - PEC	Bryan Cauthorn
Rhonda L. Bowen	Joel Coert – Bio-Nomic Services	Ellen Gilinsky
Greg Evanylo	Robert Crockett	Angela Neilan
Katie Kyger Frazier	Jeff Fletcher - SAIF Water Wells, Inc.	Bill Norris
Tim Hayes	Gayl Fowler – SAIF Water Wells, Inc.	Charlie Swanson
Diane Helentjaris - VDH	Don Greene – Bio-Nomic Services	Anita Tuttle
Larry Land	Roger Hatcher – Allendale Farms	Christina Wood
Darrell Marshall - VDACS	Chad Heflin - RecycSystems	Neil Zahradka
Jacob Powell - DCR	Steve McMahon - Synagro	
Ruddy Rose	Harrison Moody - RecycSystems	
Wilmer Stoneman	Sharon Nicklas – Alternate for Rhonda Bowen	
Ray York	Lisa Ochsenhirt – AquaLaw /VAMWA	
	Mary Powell – Nutri-Blend	
	Hunter Richardson - SYNAGRO	
	Susan Trumbo – RecycSystems	
	George Upton – Urban Service Systems	

NOTE: The following Biosolids TAC Member was absent from the meeting: Jim Burns - VDH

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1) Procedural Items – Convene – Overview, Reminders; and Meeting Notes (Angela Neilan/Neil Zahradka):

Angela Neilan, DEQ Community Involvement Specialist and Meeting Facilitator, welcomed the members of the Biosolids TAC and members of the Interested Public to the 8th Meeting of the Technical Advisory Committee. She asked that everyone introduce themselves so that we all would know who is in attendance. She thanked all those in attendance for participating in the process and for their continued interest in giving their time to the work of this TAC.

Staff provided an overview of the agenda for the meeting and the use of the "open chair" as a means for members of the TAC to invite members of the interested public to provide information pertinent to the

subject being discussed. She also noted that there was a separate sign-in sheet for those members of the interested public who want to request time to speak during the public comment period scheduled at the end of the meeting.

Neil Zahradka, Manager of DEQ's Office of Land Application Programs, informed the members of the TAC that the purpose of today's meeting was for the TAC to discuss the proposed language for the sections of the draft regulations that had been provided to them and to provide an opportunity for the members of the TAC to make recommended language changes that could be further discussed during the course of the meeting. He also noted that there were additional sections with proposed language that would be distributed to the TAC for discussions at the meeting scheduled for Tuesday, September 22, 2009.

Staff noted that the current plan was to present the draft proposed regulations to the SWCB at their meeting in December.

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2) Written Comments Provided by TAC Members to Support Recommendations for Specific Language Changes:

Three members of the TAC, Rhonda Bowen, Tim Hayes and Ray York noted that they had prepared written comments to support their recommendations for changes to the proposed language sections that they planned to discuss during today's meeting. Rhonda Bowen's comments and suggestions were the result of discussions with HRSD project staff. Tim Hayes's comments and suggestions were the result of discussions he had with Katie Frazier, Wilmer Stoneman, Darrell Marshall and representatives of Synagro and RecycSystems. Comments provided by Ray York were the result of discussions with County Monitors throughout the Commonwealth. Copies of these written comments were provided to the members of the TAC for use during the discussions of specific proposed language changes.

A. TAC Written Comments - Rhonda Bowen: For each of the following issues, please consider:

1. <u>Buffer Zone Table:</u>

a. How will DEQ ensure that the increased buffers will be the outer limit? In other words, if DEQ is set on expanding the buffers across the board, the regulatory language should provide clarity that no additional extensions will be granted absent an exceptional, extraordinary situation.

b. Adding a footnote to "Occupied dwellings" stating that the buffer zone may be waived upon written consent by occupant of dwelling.

c. Revising existing footnote 3 to apply solely to property line waivers (and renumber).

d. Splitting the last sentence of paragraph (2) into two sentences. Otherwise it appears that written consent from adjacent landowners is required in order to reduce the buffer zone requirement for an occupied dwelling.

e. Deleting paragraph (4). A private agreement between the permit holder and a

landowner or resident to do more than is legally required should not be included in the state's regulations.

f. Explaining the genesis for the requirement of a 400' buffer from water supply reservoirs and a 100' buffer from "All streams and tributaries within 5 miles upstream from reservoir or public water intake." Was this discussed during previous TAC meetings? What is the definition of a "water supply reservoir?" Will DEQ be mapping streams and tributaries within 5 miles of an intake or reservoir and providing them to permit holders? How do these requirements relate to existing Chesapeake Bay Act requirements?

2. <u>9VAC25-20-60, -110, -120, -142:</u>

a. Providing justification for the suggested permit fee increases. What is DEQ currently spending on the program? What specific information can DEQ provide to explain the recommended increases in the application fee (extra $5,000 for all VPDES permits if they include authorization for land application (no matter the size of the plant)), the major modification fee (extra $1,000), and the annual maintenance fee (extra $1,000). If DEQ alleges a gap between existing funding provided by the tonnage fee and the amount needed to run the program, please provide supporting data. Once this additional information is provided, we will submit comments.

b. Providing justification for requiring a VPDES permittee to pay $1,000 <u>plus</u> other modification fees for a major modification (9VAC25-20-120.A (1)). For a major municipality that wishes to add land to a permit, every major modification will cost $11,650. This is very high. Once DEQ provides additional information to explain why it is recommending this change, we will submit comments.

3. <u>9VAC25-31-290.H and 9VAC25-32-140.B.3:</u>

a. Changing the language that would require the permit applicant to notify the adjacent landowners following the submittal of an application. The Virginia Code tasks DEQ with providing public notice (not specifically adjacent landowner notice) (VA Code § 62.1-44.19:3.4). In addition, according to the meeting minutes of the January 9, 2009 TAC, the TAC consensus was that DEQ should be responsible for notification to landowners.

b. Clarifying the language that reads "The permit application shall not be deemed technically complete until such notification has occurred" so that it is clear that a good faith attempt (based upon current owner/occupant information) to notify is acceptable. Ensuring that notification has <u>actually</u> occurred is quite difficult.

c. Explaining why the definition of "farm" in H (1) [VPA -140.B (3) and C (2)] is different than the definition in I (3). How do these definitions relate to the definitions in the storage section?

4. <u>9VAC25-31-485 and 9VAC25-32-410, -510, -530:</u>

a. Explaining what DEQ means in B (3) [VPA - 530. B (3)] by the submittal of new landowner agreements with each permit action ("new landowner agreements shall be submitted to the department with each new application for issuance or reissuance of

a permit or modification to add land to an existing permit…"). We have no objection to obtaining new agreements when a new site is added. However, obtaining new landowner agreements every five years with the VPDES permit cycle would be burdensome.

b. Deleting items b, c, and e under paragraph C.2 [VPA -510A (2)]. As discussed in the TAC, items c and e are too difficult to predict 100 days in advance as it is very hard to know at that stage where field conditions will allow for land application.

c. Refining the language in B (2) [VPA-530A] "the permit applicant shall ensure the continued availability of the land and protection from improper concurrent use during the utilization period." This language is too broad.

d. Explaining what DEQ means by the following language in B (2) [VPA-530 B (2)]: "The responsibility for obtaining and maintaining the agreements lies with the permit holder." The permit holder can obtain the landowner agreement, but how can the permit holder "maintain" that agreement over any length of time?

e. Changing the control number concept to allow permit holders to use the farm serve agency number to identify fields that are available for land application.

f. Removing language in F (3) [VPA-530 B (3)] that would require a permit holder to replace or repair signs that have been removed or damaged. Should the permit holder be responsible for intentional vandalism? Also, please remove the requirement that the sign be a certain size and staked every 0.2 miles along a right-of-way.

g. Explaining some of the concepts in the new "Operations management plan" language at G (1) - (2) [VPA-410]. We submit that VPDES permittees who land apply should be permitted to use their existing VPDES O&M plan addressing land application (no requirement for new plan if existing plan covers topics included in new text). In addition, many of the terms are vague (what is considered to be "equipment" and what "sampling" is suggested?).

5. <u>9VAC25-32-545 and 9VAC25-32-550:</u>

a. Defining the term "working day" in Item B.4. A 24-hour notification time period should be used for this requirement because there are days or evenings when DEQ offices are not open.

b. Modifying or deleting some of the provisions under Section D. Routine Storage [VPA-550.D] that were derived from the old Biosolids Use Regulations. In particular, VPA-550.D (2) "Design Capacity" does not seem relevant to current biosolids management practice and should be deleted. VPA-550.D (5) sections © and (d) are not applicable to above-ground storage facilities.

6. <u>9VAC25-32-780, 9VAC25-32-820, 9VAC25-32-840, 9VAC25-32-850:</u>

a. Changing DEQ's position on no waiver for local government for FA requirements. Local governments are unique in their ability to raise funds through normal wastewater rates and charges. This should be recognized. If DEQ refuses to allow for local government waivers, DEQ should create a sliding scale requirement for local governments depending on the size of the entity or the amount of biosolids spread (e.g. smaller locality/political subdivision that spreads little material would be given a complete waiver of requirements, but a larger locality/political subdivision

with a larger program would be required to meet a streamlined test). We are concerned that the providing the extensive list of information included in the local government test section could be burdensome.

b. Explain why DEQ has included "bodily injury" in the FA text when this is not included in the statute ("clean-up costs, personal injury, and property damage").

c. Explaining what is meant by the language in B (3) re: the letter of credit being for an amount "at least equal to the current cost estimate" for clean-up costs, etc. What is the "current cost estimate"? How does this relate to the $2 million liability coverage in 9VAC25-32-780?

d. Explaining what is meant by the language in B (3) re: "the full amount of liability coverage provided." Is this the same as the $2 million liability coverage in 9VAC25-32-780?

e. Confirming that political subdivisions and wastewater authorities are considered to be local governments for purposes of the FA regulations.

B. TAC Written Comments - Tim Hayes: Please consider the following recommendations concerning the draft Biosolids Regulations that you circulated July 31. These comments are the results of discussions with Katie Frazier, Wilmer Stoneman, Darrell Marshall, representatives of Synagro, Recyc and myself. Specific comments follow:

1. 9VAC25-32-560 (buffer zone requirements):

a. The 400 foot minimum buffer from occupied dwellings will impose significant hardships and difficulties for land application, particularly on smaller farms. Furthermore, based on statements made by representatives of the Health Department during the March TAC meeting, a 400-foot buffer is unnecessary for protection of human health except in the most extreme cases. We suggest that the minimum buffer continue to be 200 feet as it is in the current regulations, and that the new regulations provide: (1) that the buffer may be extended by DEQ based on documented site specific conditions and (2) that the buffer may exceed 400 feet but only with certification from the regional health director that a buffer in excess of 400 feet is necessary to prevent specific and immediate injury to the health of an individual or individuals.

b. The extended buffer for streams and tributaries within five miles upstream from a reservoir or a public water intake is unnecessary. A similar requirement in current DEQ regulations applies to point source discharges pursuant to NPDES permits. Those allow continuous discharge of sewage effluent. VPA permits issued for biosolids land application do not allow discharge. The current 50-foot buffer is deemed sufficient to prevent run-off to surface streams. Furthermore, the proposed "all streams and tributaries" can be construed to mean swales, drainage ditches, intermittent streams, etc. It would be virtually impossible to identify which of these, ay any particular site, might connect with a reservoir or a public water supply. This requirement should be deleted.

c. Paragraph (4), on page 2, should be deleted. It appears to serve no purpose.

2. **9VAC25-31-290 (public notice, comment.)**

    1. On page 8, we suggest that subsection H be amended to read as follows: "Following the submission of an application for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage, the department shall make reasonable effort to notify persons residing on property bordering sites to be incorporated in the permit. This notification shall be in a manner selected by the department. For purposes of this subsection, "site" means the area that is or will be permitted to receive biosolids."
    2. We believe that the changes proposed to subsection H make subsection I unnecessary and it should be deleted.
    3. We believe that the language in proposed subsection I.2 is unnecessary because it is already in the Virginia Code. If the Department deems the language necessary for inclusion in the regulations, we recommend that it be renumbered as subsection "I". Furthermore, the second sentence of that paragraph should be moved to that portion of the regulations dealing with public meetings. It merely confuses the language addressing public notice and hearings.
    4. With changes suggested to subsection H, proposed I.3 is no longer necessary and should be deleted.

3. **9VAC25-31-485 (requirements for permittees who land apply:**

    1. On page 1, we believe that language in subsection B referring to continued availability of the land, etc. is confusing. We suggest that language to the effect that "the permit applicant shall ensure the continued availability of the land and protection from improper concurrent use during utilization" be deleted and tat a colon be placed after the word "department" in the second sentence of subsection B. The remaining language of subsection B would stay the same, except that in B.2, the words "for biosolids" should be added after the word "permitted" in the second line from the end of that paragraph.
    2. On page 2, language respecting notification requirements is inconsistent. Paragraph C.1 says that the 100-day notification requirement is satisfied by providing a list of all available permitted sites; however, subsection C.2 says that a notification shall include several items not required in C.1. Subsection C.3 says that the 14-day notice shall identify the location of the permitted site and the expected sources of biosolids which is also inconsistent with the language in C.2.
    3. If the department wants to include the more comprehensive list of items set forth in C.2, it should delete the requirement for a farm service agency farm track number, because that information is protected by federal and state privacy laws. The requirement in section C.2.e for statement of approximate dates on which land application is to begin and end is not feasible for inclusion in the 100-day notice and should be deleted from that requirement.
    4. The requirement for posting of signs is excessive to the extent that it requires posting every 0.2 miles of road frontage. We believe that posting at entrances to fields being land applied adjacent to public right-of-way is sufficient to inform the public of land application.
    5. In subsection F.1.c, the department should be required to waive or alter signage

requirements is inconsistent with local ordinances regulating use of signs.

6. In subsection G.1.a, the term "farm" should be changed to "site".
7. In subsection H.1, the following language should be added after the word "complaint" in the second line of that paragraph: "and shall determine whether the complaint is substantive". The permit holder should be required to confirm receipt of all substantive complaints as set forth in the proposed regulation.
8. The following language should be added as a new subsection: "for purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of these regulations, state law, or local ordinance, a release of biosolids to state waters or to a public right-of-way or at any location not authorized in the permit, or failure to comply with the nutrient management plan for the land application site."
9. The requirement for documentation of complaints and responses should be deleted from the regulations.

4. **9VAC25-32-140:** Changes to this section should track those recommended above respecting 9VAC25-31-290.

5. **9VAC25-32-510 (notification of land application):** Changes to this section should be made to track those recommended above as to 9VAC25-32-510.

6. **9VAC25-32-530:** The first sentence in paragraph B.2 on page 1 should be amended as follows: "a written agreement shall be established between the landowner and permit applicant or permit holder, whereby the landowner shall consent to the application of biosolids on its property, certify that no concurrent agreements exist authorizing land application on his property, and acknowledge that he is aware of and will comply with site restrictions and the nutrient management plan applicable to his property.

7. **9VAC25-32-545 (field stockpiling):**

    1. This activity should refer to as "stockpiling", i.e., the term "field" should be deleted. Paragraph A should be amended to read "stockpiling of biosolids shall not commence unless the site meets the requirements for land application".
    2. Paragraph B.4 should be amended as follows: "the certified land applier shall notify the department within the same working day whenever it is necessary to implement stockpiling. Notification shall include source or sources, location and approximate amounts stockpiled.
    3. Note that the draft incorrectly numbers the paragraphs. The paragraph following paragraph 4 is designated as paragraph 3 in the draft - it should be renumbered to 5, and the following paragraphs should be renumbered accordingly. New paragraph 5 should be amended as follows: "stockpiling shall be limited to the amount of biosolids specified in the nutrient management plan for the site".
    4. New paragraph 6 should be amended as follows: "biosolids will be stockpiled within the land application area of the field in which the biosolids will be applied or in a permitted area of the site where the subject field is located, in a location selected to prevent run-off to water-ways and drainage ditches".
    5. New paragraph 8 should read "site management practices, as described in the

operation manual, shall be utilized as appropriate to prevent contamination of state waters by stockpiled biosolids".

6. New paragraph 10 should be amended to read "stockpiling shall be prohibited in areas identified in the USDA soil survey as frequently flooded".
7. New paragraph 12 should be amended to read "stockpiled biosolids shall be managed so as to prevent adverse impacts to water quality or public health".

8. **9VAC25-32-550 (storage facility):** On page 3, the following changes should be made to paragraph C:

    1. The beginning of paragraph C should be amended as follows: "on-site storage is the short-term storage of biosolids on a constructed surface at a location preapproved by the department. These stored biosolids shall be applied only to sites under the control of the same owner or operator".
    2. Paragraph C.1 should be amended as follows: "the permit holder shall include in the monthly report a description of on-site storage activities including source or sources of stored biosolids, location of storage activities and amounts stored".
    3. Paragraph C.3 should be amended as follows: "storage shall be limited to the amount of biosolids specified in the nutrient management plan for the sites to be served by the storage facility".
    4. Paragraph C.7 should be amended as follows: "best management practices shall be utilized as appropriate to prevent contamination of state waters".
    5. Paragraph C.11 should be amended as follows: "biosolids shall be managed so as to prevent adverse impacts to water quality or public health".

9. **9VAC25-32-550 (routine storage):**

    1. The provisions of paragraph D.2 are irrelevant to current storage operations and should be deleted.
    2. Paragraphs D.3.c, d and e are irrelevant to current storage activities and should be deleted.

C. TAC Written Comments - Ray York: After discussing the Draft Biosolids Regulations with County Monitors throughout the Commonwealth the following is a summation of their comments and concerns:

1. **9VAC25-32-560 - Buffers for health protection:**

    a. **Support**
    b. **Comments:** Define "occupied dwelling" due to: seasonal farm labor dwellings and Certificate of Occupancy is issued by County building departments allowing residents to set up campers for several years on a building site without a structure present.

2. **9VAC25-31-290.H & 9VAC25-32-140.B.3 - Public Notice for a New Permit:**

    a. **Support**

b. **Comments:** Localities request a copy of the list of adjacent landowners (adjoining residents) that are notified by the DEQ or permit applicant.

3. **9VAC25-31-485 & 9VAC25-32-510 - Public Notice prior to Land Application:**

   a. **Support**
   b. **Comments:** Localities request daily notice of application sites.

4. **9VAC25-32-550 - Storage for applications on-site & Routine Storage: Support**

5. **9VAC25-32-545 - Stockpiling**

   a. **Change requested.**
   b. **Comments:** Localities request a shorter duration (2-5 days) for stockpiling biosolids on-site.

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3) Summary of Final Exempt Regulatory Changes – HB 2558 (Neil Zahradka):

Neil Zahradka provided an overview of the Final Exempt Regulatory Changes taken to implement HB 2558. He noted that this was legislation passed during the 2009 general assembly session to amend and reenact §§ 62.1-44.19:3 and 62.1-44.19:3.4 of the Code of Virginia, relating to permits for the land application of sewage sludge.

He noted that the changes were in State Water Control Law § 62.1-44.19:3.C.10:

> *C. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health pursuant to subsection B, shall include:*
>
> > *10. Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application ~~for a permit amendment~~ **any permit amendments** to increase the acreage authorized by the **initial** permit by 50 percent or more shall be treated as a new application for purposes of public notice and public hearings.*

And in State Water Control Law § 62.1-44.19:3.4. Notification of local governing bodies.

> *A. Whenever the Department receives an application for land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the Department shall notify the local governing bodies where disposal is to take place of pertinent details of the proposal and establish a date for a public meeting to discuss the technical issues relating to the proposal. The Department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper or general circulation in the city or county where land disposal is to take place. Public notice of the scheduled meeting shall*

*occur no fewer than seven or more than 14 days prior to the meeting. The Board shall not ~~consider the application~~ **issue the permit** for land disposal ~~to be complete~~ until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting. This section shall not apply to applications for septic tank permits.*

The regulatory language changes resulting from the changes in statute included the following:

- VPA Regulations Amendments to Conform with 2009 Legislation:
  - ***9VAC25-32-140. Public notice of VPA permit action and public comment period.***

    E. Upon receipt of an application for a permit or for a modification of a permit, the board shall:

    2. Establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The board shall not ~~consider the application for the proposal to be complete~~ issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

  - ***9VAC25-32-240. Minor modification.***

    C. An application for ~~a~~ any permit ~~amendment~~ amendments to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

- VPDES Regulation Amendments to Conform with 2009 Legislation:
  - ***9VAC25-31-100. Application for a permit.***

    P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include he board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

    8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

    e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

    (5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

    A request to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

- **9VAC25-31-290. Public notice of permit actions and public comment period.**

  F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the board shall :

  2. Establish a date for a public meeting to discuss technical issues relating to proposals for land application of sewage sludge, or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The board shall not ~~consider the application for the proposal to be complete~~ issue the permit until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting.

He noted that one of the questions raised by the TAC during one of its first meetings was "What was the 50% based on? The legislation in HB 2558 attempted to answer that question by specifying that it was the initial permit, i.e., the acreage of the first permit issued or the "initially permitted acreage", which governs the 50% rule. The example of a permit with an "initially permitted acreage" of 1,000 acres could request the addition of up to 490 additional acres without triggering the public notice and public meeting requirements, but that an addition of 10 additional acres over that 490 would trigger the notice and meeting requirements.

The TAC discussions on this topic included:

- A member suggested that they felt that this was not the legislative intent of this action. It doesn't make any sense that the addition of that 10 additional acres would be of concern.
- The question was raised as to whether this language change was a done deal? Staff noted that with the current legislation that the use of the concept of the "initial permit" was specified.
- A member noted that this appeared to be a matter of interpretation by the staff and that the interpretation might not have followed the intent of the legislation. If so then there could be further legislative changes in the upcoming session that could further clarify the requirements and intent and result in additional changes in the future.

Neil noted that the second change in the statue provides DEQ with flexibility as to when they actually start the drafting of a permit. He noted that the 30 day period is a local government deadline but the normal procedure is for DEQ to also accept public comment during that same period.

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4) Facilitated TAC Discussion – Public Notice & HB 2558(Neil Zahradka/Angela Neilan):

Neil Zahradka and Angela Neilan facilitated a discussion among the TAC members on "Public Notice Requirements" as they related to the changes necessitated by HB 2558 and proposed language changes to draft regulation sections.

Neil noted that in the example presented previously of an initial permit application for 1,000 acres, there would be a public meeting to inform the public and then following the normal procedure, a permit would be issued. If that same permittee came in and wanted to add 490 acres to that same original

1,000 acre permit there would be no requirement for a public meeting for that additional acreage. But if that same application came back in at a later date to add another 10 acres, then the requirement for a public notice and public meeting would be triggered because of the 50% threshold created by HB 2558. He noted that the original purpose behind the legislation was to avoid the situation where a permit holder continually came in for a 49% increase in acreage every time and never triggered the need for another public meeting.

The TAC's discussions on this topic included the following:

- If a permit came in an original 1,000 acres and then an additional 490 acres and then for another 10 acres and therefore triggered the need for public notice, then would the new benchmark for the permit be the new total acreage of 1,500 acres? Staff responded that the benchmark would always revert back to the original permitted acreage so the applicant could then add an additional 490 without a public meeting and then the addition of 10 more acres would again trigger the public notice requirements. The TAC suggested that the new denominator in the equation should be the 1,500 acres not the original 1,000 acres. Staff responded that was not the way the statute is worded; it refers to the "initial permit".
- What about old VDH permits? Staff responded that their interpretation is that the "initial permit" acreage in that case would refer to the "initial VPA or VPDES permit" not what was in the VDH permit.
- What about required notification for adjacent property owners? Staff noted that under the proposed notification requirements that any time land is added to a permit, the adjacent property owners would need to be notified. Therefore when the 490 acres was added DEQ would need to notify the adjacent property residents. Staff noted that if the 490 acres was added as a modification that the statute says that DEQ makes the notification. Under the proposed amendments, any action that triggers a public meeting, the permit applicant is required to make the notification. Staff noted that the 50% trigger would be used for both a modification or reissuance, and that if nothing has changed there would not be a public meeting required, but a public meeting would be required in a reissuance if greater than 50% of the initial acreage was being added to the permit.
- The TAC noted that when the language was drafted for a permit amendment that whether the added acreage was cumulative or not was a matter of interpretation. Staff noted that there were discussions about the use of the term "initial permit" and the legal interpretation was that it was cumulative.

ACTION ITEM: The TAC requested that DEQ staff seek a legal opinion or clarification from the AGs office on the interpretation of the statute language regarding "initial permit" and whether it is cumulative or not. Staff will seek an opinion from the AGs office in this matter.

- It was suggested that the reason for the statute change (HB 2558) was to address concerns over a Campbell County permit where there was a potential for a large expansion of the permitted acreage without an opportunity for public comment.
- It was noted that the 50% rule was in the Code and that the guidance and regulations need to address what that actually means.
- It was suggested that the patron of the legislation (HB 2558) would be very upset if the scenario that has been discussed regarding the interpretation of the 50% rule that has been described by the Staff today.

5) Facilitated TAC Discussion - Public Notice - New Permit Issuance (Neil Zahradka/Angela Neilan):

Staff reviewed the proposed changes related to the public notice requirements for new permit issuance (9VAC25-31-290.H & 9VAC25-32-140.B.3):

9VAC25-31-290.H & 9VAC25-32-140.B.3:

Following the submission of any application for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage the permit applicant shall notify persons residing on property bordering the farms that contain the proposed land application sites. This notification shall be in a manner approved by the department. The permit application shall not be deemed technically complete until such notification has occurred.

The TAC's discussions on this topic included the following:

- During the discussions of notification during the January 9th meeting of the TAC there was a consensus that DEQ would do the notification.
- Staff noted that DEQ had considered that recommendation during the development of the proposed language for these sections of the regulations and examined the man-hours required for permit issuance and the public meeting notifications and that DEQ felt that it was fair to share the burden with the permit applicants. Staff noted that they had received suggestions in other programs that when the Agency had the responsibility for the notification that sometimes it slowed down the process.
- The TAC recommended that the burden should be on DEQ. In fact the statute states that it is DEQ's responsibility to do the notification.
- It was noted that the TAC did agree for DEQ to do the notification. There have been some instances where the applicant has agreed to shoulder DEQ's notification responsibility, so the applicant can do it if they want to. The current $7.50/dry ton application fee should be sufficient for DEQ's responsibilities under the program. It should be DEQ's responsibility, but there should be an option for the applicant to do it.
- A question was raised regarding the use of the phrase "This notification shall be in a manner approved by the department." There had been lots of discussions at previous TAC meetings regarding acceptable notification methods other than the use of certified letters. Staff noted that the thought was that the permit applicant might be more creative then the department in the selection of various notification methods. It was also noted that there was nothing in the regulations that specifies the use of a certified letter. In fact notifications could be done through the use of "door hang tags" or even personal conversations. The department doesn't want to restrict the options for notification.
- A question was raised as to whether the department would approve the various methods chosen on a case-by-case basis of whether they would issue guidance. Staff responded that it would likely be both. Staff also noted that they would rather not specify a method in the regulations, i.e., use the phrase "method acceptable to DEQ".

- A request for clarification of the notification triggers for DEQ or the applicant being required to do the notification. Staff responded that when there is a public meeting required (i.e., for increases in acreage greater than 50%) that the permit applicant would be responsible for the notification and when no public meeting is required (i.e., for increases in acreage less than 50%) that DEQ has the responsibility for the notification.

OPEN CHAIR: Susan Trumbo – RecycSystems: They are paying the fees to support the program based on the dry/ton rate. If that is not sufficient for DEQ to do the notifications and the permit applicant is to be saddled with the responsibilities, those addition costs will end up back to the public. The draft language indicates that the permit applicant would have to prove that the notification took place. How does an applicant prove that the notifications took place? How does an applicant prove that all of the neighbors/adjacent land owners/residents were contacted? Don't want that responsibility.

- Staff acknowledged that the notification process is a complicated one. The available addresses are usually for the owners of a piece of property and not necessarily the tenant or current resident.
- The TAC suggested that the sentence stating that the "permit application shall not be deemed technically complete until such notification has occurred" needs to be changed.

GENERAL CONSENSUS: DEQ has the responsibility for notification. The permittee has the option to do the notification. The proposed language should be changed to reflect this general consensus by the TAC.

- The concept of making a "good faith effort" to make the notifications was discussed.
- Staff suggested that maybe the language to use should be more along the lines of "DEQ will notify or cause to be notified".
- It was suggested that the Local Monitors might also be able to assist with the notification process.
- A question regarding the differences between an "initial permit" and a "reissued permit" was raised. It was noted that the initial permit was always the very first permit and that the "initial permit" is specific to the locality or permittee and the owner.

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6) Facilitated TAC Discussion - Public Notice - Adding a New Site (Neil Zahradka/Angela Neilan):

Staff provided an overview of the proposed language changes for "public notice prior to adding a new site" (9VAC25-31-290. H & I and 9VAC25-32-140.B.3 & C):

9VAC25-31-290. H & I

H. …For the purposes of this subsection, "farm" means all contiguous land under common ownership, but which may contain more than one tax parcel.

I. When a farm is to be added to an existing permit authorizing the land application of biosolids:

1. The department shall notify persons residing on property bordering such farm, and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the farm.

2. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

3. For the purposes of this subsection, "farm" means a property that is not contiguous to property identified in and covered by an existing permit.

9VAC25-32-140.B.3 & C

B. VPA Permit Application.

3. …For the purposes of this subsection, "farm" means all contiguous land under common ownership, but which may contain more than one tax parcel.

C. Application to add a farm to an existing permit authorizing the land application of biosolids.

1. Upon receipt of an application to add a farm to an existing permit authorizing the land application of biosolids:

a. The department shall notify persons residing on property bordering such farm, and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application on the farm.

b. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

2. For the purposes of this subsection, "farm" means a property that is not contiguous to property identified in and covered by an existing permit.

Staff noted that the concept was to change the word "site" to "farm" to match the statute and to clarify the definition of farm as it related to notification. If a "field" is in the center of the farm, the idea would be to require that the first adjacent owner or owners who were not the owner of the farm would be notified as part of the notification process. That way when you add a field within that farm the required notification has already occurred. If a field is added at a later date that is not contiguous to the original farm then there would be different residents or adjacent property owners involved and additional notifications would be required.

The TAC's discussions on this topic included the following:

- The term "farm" should be replaced with the phrase "permitted sites" or "sites under permit".

The use of biosolids is not just limited to farm land use, it is also used for forest and mine land restoration.

- The statute may use the term "farm", but the permit is the unit, the "permitted acres" or permitted sites" not the farm. This is a chance to correct the terminology. There have been plenty of debates about "what a farm is?" or "what a farm isn't?" The terms "permitted sites" or sites under permit" or "permitted acres" should be used.
- The statute uses the term "farm" in the context of adding additional acreage only.
- The term "site" instead of "farm" should be used. The term "site" should then be identified.
- Language proposed in H.1 and C.1.a is not necessary if H is revised to indicate that DEQ is responsible for making the notification.
- Language proposed in I.2 already in State Code. If it is included it should be included as part of H or renumbered as a new I.
- There should be language added to provide a mechanism to allow the permit applicant to do the notifications if they desire too.

PROPOSED REVISED LANGUAGE: 9VAC25-31-290.H & 9VAC25-32-140.B.3:

> **"Following the submission of an application for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage, DEQ shall notify or cause to be notified persons residing on property bordering the site or sites to be incorporated in the permit. This notification shall be in a manner selected by the department. For the purposes of this subsection, "site" means the area that is or will be permitted to receive biosolids."**

PROPOSED REVISED LANGUAGE: 9VAC25-31-290.I & 9VAC25-32-140.C:

> **"An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings."**

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7) Facilitated TAC Discussion - Public Notice - Land Application (Neil Zahradka/Angela Neilan):

Staff provided an overview of the proposed language changes for "public notice prior to and during land application" related to signage (9VAC25-31-485 & 9VAC25-32-510):

9VAC25-31-485.F & 9VAC25-32-510.B - Posting Signs

-485.F/-510.B. Posting Signs.

1. At least 5 business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with this section, are visible and legible from the public right-of-way in both directions of travel, and conform to the specifications herein. The sign shall remain in place for at least 5 business days after land application has been completed at the site.

a. If the site is located adjacent to a public right-of-way, signs shall be posted every 0.2 miles along the road frontage beside the field to be land applied.

b. If the site is not located adjacent to a public right-of-way, the sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site.

c. The department may grant a waiver to the requirements in this section, or require alternative posting options due to extenuating circumstances.

2. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, four square feet or more in area and shall only contain the following information:

a. A statement that biosolids are being land-applied at the site;

b. The name and telephone number of the permit holder as well as the name or title, and telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and,

c. Contact information for the department, including a telephone number for complaints and inquiries.

3. The permit holder shall promptly replace or repair any sign that has been removed from a land application site prior to 5 business days after completion of land application or that has been damaged so as to render any of its required information illegible.

The TAC's discussions on this topic included the following:

- The requirement to post signs every 0.2 miles is excessive. Posting at entrances to fields being land applied adjacent to public right-of-ways should be sufficient to inform the public of land application. Staff noted that the intent of the proposed change was to try to increase visibility.
- A sign on every section of road frontage should be sufficient to inform the public.
- A question was raised as to what the requirements for signage for a local government rezoning were? What are the local government requirements?
- Staff noted that one of the problems that had arisen with signage was the situation where the property involved was on a dead-end road and the sign was posted at the access to road frontage that was on the farm, i.e., at the entrance to the farm, but no one every saw the sign. Is this meeting the intent of the regulations?
- Should look at the Title 15.2 requirements for posting of sign for a rezoning.
- Should follow the same procedures that local governments use. That should provide adequate notice but would not be overly burdensome.

- The issue of sign clutter and removal of signs requirements were also raised.
- The notion of not having the legal right to place the signs in some areas was also raised.
- The question was raised as to whether this suggested signage language had been looked at by VDOT. There may be some VDOT regulations that would prohibit the placement of signs in certain areas.

ACTION ITEM: Staff will look at the local government rezoning signage requirements to identify an alternate wording for the signage requirements. Staff will also look at local government signage restrictions in order to account for those restrictions in the proposed language for signage.

ACTION ITEM: Staff will work with VDOT to review the proposed signage language to make sure there are no conflicts with the regulations and VDOT requirements.

- Don't want to be too specific or prescriptive in the wording of the requirements in the regulation.
- What is the signs true purpose? Is it to generate public comment or to let people know where the site is? Is it simply to put a visible/touchable mark as to where the site is, i.e., X marks the spot?
- Signs should be a complement to other notification measures. Can't write a standard that covers all instances and circumstances. Have to have many avenues for communication. Can't write a regulation to address them all. The cumulative effect of the notification measures is to inform the public of the activity of land application of biosolids and where that application is occurring and who to contact if there is an issue or concern. The notifications are a way to get the public to pay attention.
- The requirement for signage every 0.2 miles is too specific. Maybe the placement of a sign at every entry point to the site might be a better requirement.
- Need to clarify local government and VDOT rules and requirements.
- The signs should be placed in the easement areas in the beginning, middle and end of the road frontage.
- The language should be drafted to recognize a "good faith effort" to place the signs in visible locations.
- There should be some ability to use "common sense" in the placement of the required signs.
- Recommendations for specific signage should be included in guidance and not specifically in the regulations.
- It was suggested that the local monitors could provide some acknowledgement that the signs had been posted in cases where a sign or signs are missing at some stage of the posting period.

PROPOSED REVISED LANGUAGE: 9VAC25-31-485.F & 9VAC25-32-510.B

B. Posting Signs.

1. At least 5 business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with this section, are visible and legible from the

public right-of-way in both directions of travel, and conform to the specifications herein. The sign shall remain in place for at least 5 business days after land application has been completed at the site.

a. If the site is located adjacent to a public right-of-way, signs shall be posted along the road frontage beside the field to be land applied.

b. If the site is not located adjacent to a public right-of-way, the sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site.

c. The department may grant a waiver to the requirements in this section or require alternative posting options due to extenuating circumstances or to be consistent with local government ordinances and requirements regulating the use of signs.

2. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, four square feet or more in area and shall only contain the following information:

a. A statement that biosolids are being land-applied at the site;

b. The name and telephone number of the permit holder as well as the name or title, and telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and,

c. Contact information for the department, including a telephone number for complaints and inquiries.

3. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to 5 business days after completion of land application.

8) Facilitated TAC Discussion - Notification Requirements (Neil Zahradka/Angela Neilan):

Staff discussed the proposed notification requirements contained in 9VAC25-31-485.C and 9VAC25-32-510.A.

C. Notification requirements.

~~C.~~ 1. At least 100 days prior to commencing land application of ~~sewage sludge~~ biosolids at a permitted site the permittee shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the ~~sewage sludge~~ biosolids to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

2. The notification required by this section shall include the following:

a. The name, address and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;

b. Identification by tax map number and farm service agency (FSA) farm tract number of parcels on which land application is to take place;

c. A map indicating haul routes on each site where land application is to take place;

d. The name or title and phone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project;

e. The approximate dates on which land application is to begin and end at the site;

f. The name and telephone number of the person or persons at the department to be contacted in connection with the permit; and,

g. The name, address, and telephone number of the wastewater treatment facility, or facilities, from which the biosolids will originate, including the name or title of a representative of the treatment facility that is knowledgeable about the land application operation.

~~D.~~ 3. The permittee shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located, ~~as~~ at least 14 days prior to commencing land application of ~~sewage sludge~~ biosolids at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the ~~sewage sludge~~ biosolids to be applied to the site.

The TAC's discussions on this topic included the following:

- Staff noted that while the original VDH regulation specified that localities would get the 14 day notice, the statute specified a 100 day notice requirement to localities. The requirement to provide the 14-day notice to the localities was thus removed during the final exempt action. The proposed changes make sure that localities also receive the 14-day notice prior to commencement of land application at a permitted site. With an email notification, it essentially requires the addition of just one additional email address.
- The language of the notification sections is confusing.
- Staff noted that the 100 day notice was just a one time notice requirement while the 14-day notice would be required prior to each actual land application.
- It was suggested that the regulation wording is materially inconsistent.
- The requirement for providing a farm service agency (FSA) farm tract number is no longer feasible because that information is protected by federal and state privacy laws.
- It was suggested that the proposed section C.2 be deleted. Sections C.1 and C.3 track code language.
- It was suggested that there should be a requirement for daily notification of localities for land applications. Staff noted that they had intended to add a general requirement with daily notification.

PROPOSED REVISED LANGUAGE: 9VAC25-31-485.C & 9VAC25-32-510.A

1. At least 100 days prior to commencing land application of biosolids at a permitted site the permittee shall deliver or cause to be delivered written notification to the chief executive officer or designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the biosolids to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

2. The permittee shall deliver or cause to be delivered written notification to the department and to the chief executive officer or designee for the local government where the site is located, at least 14 days prior to commencing land application of biosolids at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the biosolids to be applied to the site.

3. The permittee shall deliver or cause to be delivered notification to the department and to the chief executive officer or designee for the local government where the site is located, daily notification of planned land application activities.

9) Facilitated TAC Discussion - Requirements for Permittees (Neil Zahradka/Angela Neilan):

Staff discussed the proposed requirements contained in 9VAC25-31-485.B.

B. When an application for a permit that authorizes the land application of biosolids is submitted to the department, the permit applicant shall ensure the continued availability of the land and protection from improper concurrent use during the utilization period.

1. Permit holders shall use a unique control number assigned by the department as an identifier for fields permitted for land application.

2. A written agreement shall be established between the landowner and permit applicant or permit holder to be submitted with the permit application, whereby the landowner shall consent to apply biosolids on his property and certify that no concurrent agreements exist for the fields to be permitted. The responsibility for obtaining and maintaining the agreements lies with the permit holder.

3. New landowner agreements shall be submitted to the department with each application for issuance or reissuance of a permit or modification to add land to an existing permit that authorizes the land application of biosolids.

The TAC's discussions on this topic included the following:

- The "unique control number" would be assigned by DEQ and would be unique to that particular site.
- The language regarding continued availability of the land is confusing and should be deleted.
- The use of the wording "obtaining and maintaining" was questioned. Staff noted that DEQ does not want to get into the role of obtaining land owner agreements. That is the role of the permit holder.
- The term "maintaining" is confusing. It might be better to develop language to indicate that the permit holder has to certify that the landowner agreements are current.
- The requirement for a new landowner agreement for each modification to add land is overkill and should be deleted.
- Staff noted that the use of the "unique control numbers" would make it crystal clear as to what site is being considered for land application.
- A question was raised as to how the department was going to assign numbers to sites that are already permitted under an existing permit. Staff responded that on the effective date of the regulation that the department would assign numbers to the existing permits and notify

the permit holders of these identification numbers.

- A question was raised as to how these new numbers would work with an applicant who already has a unique set of numbers to track their land application sites. Staff responded that the DEQ numbers would be unique to DEQ and would be used so that there is a common identifier for each land application site. A separate numbering system used by an applicant would not be affected.

PROPOSED REVISED LANGUAGE: 9VAC25-31-485.B

B. When an application for a permit that authorizes the land application of biosolids is submitted to the department:

1. Permit holders shall use a unique control number assigned by the department as an identifier for fields permitted for land application.

2. A written agreement shall be established between the landowner and permit applicant or permit holder to be submitted with the permit application, whereby the landowner shall consent to apply biosolids on his property and certify that no concurrent agreements exist for the fields to be permitted for biosolids application. The landowner agreement shall include an acknowledgement by the landowner of any site restrictions identified in the permit. The responsibility for ensuring that the land owner agreement is current lies with the permit holder.

3. New landowner agreements shall be submitted to the department with each application for issuance or reissuance of a permit that authorizes the land application of biosolids.

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10) Facilitated TAC Discussion - Operations Management Plan (Neil Zahradka/Angela Neilan):

Staff provided an overview of the proposed requirements contained in 9VAC25-31-485.G & 9VAC25-32-410. Operations management plan.

-31-485.G. Operations management plan & -32-410.A & B

1. The permit holder shall maintain an Operations Management Plan which shall consist of three components:

a. The materials, including site booklets, developed and submitted at the time of permit application or permit modification adding a farm to the permit in accordance with 9VAC25-32-60.F;

b. Nutrient management plan for each site, in accordance with 9VAC25-32-560; and,

c. Operation and Maintenance Manual, developed and submitted to the department within 90 days of the effective date of the permit.

2. The operation and maintenance (O&M) manual shall include at a minimum:

a. Equipment maintenance and calibration procedures and schedules;

b. Storage facility maintenance procedures and schedules; and,

c. Sampling and analysis procedures, including laboratories and methods used.

The TAC's discussions on this topic included the following:

- Change the term "farm" to "site".
- Staff noted that there were some overlapping requirements in the VPA that were very inconsistent. Want to be able to use consistent language throughout the regulations (VPA & VPDES) where possible.
- A question was raised regarding the use of a permit holder's existing O&M manuals. Staff responded that the assumption was that they covered the same things as required by the regulations.
- The O&M language is very vague. What is considered to be "equipment" and what "sampling" is suggested?
- VPDES permittees who land apply should be permitted to use their existing VPDES O&M plan addressing land application (no requirement for new plan if the existing plan covers the topics included in the new requirements).

PROPOSED REVISED LANGUAGE: 9VAC25-31-485.G & 9VAC25-32-410

The permit holder shall maintain an Operations Management Plan which shall consist of three components:

The materials, including site booklets, developed and submitted at the time of permit application or permit modification adding a site to the permit in accordance with 9VAC25-32-60.F;

Nutrient management plan for each site, in accordance with 9VAC25-32-560; and,

Operations and Maintenance Manual, developed and submitted to the

department within 90 days of the effective date of the permit.

The operation and maintenance (O&M) manual shall include at a minimum:

Equipment maintenance and calibration procedures and schedules;

Storage facility maintenance procedures and schedules; and,

Sampling and analysis procedures, including laboratories and methods used.

Current VPDES permittees who land apply biosolids may use their existing VPDES O&M Plan addressing land application to satisfy the requirements of this section if the existing plan addresses all of the required minimum components identified in this section.

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11) Facilitated TAC Discussion - Handling of Complaints (Neil Zahradka/Angela Neilan):

Staff provided an overview of the proposed requirements contained in 9VAC25-31-485.H - Handling of Complaints.

H. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of said complaint. The permit holder shall confirm receipt of a complaint by phone, email or facsimile to the department, the chief executive officer or designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint. Complaints and responses thereto shall be documented by the permit holder and submitted with monthly land application reports to the department and copied to the chief executive officer or designee for the local government and the owner of the treatment facility from which the biosolids originated.

2. Localities receiving complaints concerning land application of biosolids shall notify the department and the permit holder.

The TAC's discussions on this topic included the following:

- There needs to be some way to weed out frivolous complaints so that only the substantive complaints are addressed.
- How does one determine what is a real complaint?

- How does the permit holder address "unfounded" complaints?
- Language should be added to clarify what that it is substantive complaints that need to be addressed and what a "substantive complaint" actually is.
- Why doesn't every complaint do through DEQ and then to the permit holder? That way DEQ could screen out the non-substantive complaints.
- There should be a certain defined structure to the complaints and how they are recorded and responded to. The agency should address all complaints dealing with a potential impact on health or the environment. Complaints to permit holders are generally less regulation based and more public relations based.
- The permit holder should be required to notify DEQ of a substantive complaint. The permit holder should investigate the complaint and notify DEQ once it is determined that something is amiss. Need to add language to notify DEQ.
- There needs to be some common sense used so that an applicator can deal with a complaint where there is no potential for an impact on health or the environment.
- If it is a safety complaint, i.e., trucks speeding or reckless operation, etc. then it should be a state police matter not a DEQ matter.
- Staff noted that it is DEQ's responsibility to address all complaints that might have an impact on health or the environment.
- It was noted that you need to have a better idea of what the nature of the complaint actually is. There need to be guidelines for a follow-up procedure to ensure that all complaints are addressed. There needs to be a public record of the nature of the complaints and whether they are substantive or not. There needs to be balance in dealing with complaints to ensure that health concerns as well as environmental concerns are addressed.
- Staff noted that VDH maintained a database of health related complaints. DEQ has developed an Access Database to record complaints that they receive. The database is not currently on-line. The statute doesn't say the database has to be on-line, it just states that one has to exist. DEQ currently documents everything that comes into the system as a complaint.
- A question was raised as to whether there could be guidance developed that could give the permit holder firmer guidelines as to what they needed to record to document complaints that they receive. Staff responded that could be developed but there is lots of different data and information that could be collected depending on the nature of the complaint so it might be difficult to specify exactly what is needed for each complaint.
- Need to clarify what the permit holder is responsible for.
- There needs to be someway to address frivolous complaints.
- There needs to be guidance that identifies the standard information that is needed to record a complaint. What is the minimum information that is required? A suggestion was made that a form with check boxes could be designed to indicate the minimum information and the standard information that needs to be collected to document and categorize each complaint.
- Put into guidance what is done/needed at a minimum to document calls and complaints.
- The proposed language seems to indicate that the permit holder has to provide documentation or report the complaints twice. The notification is also included in the monthly reports. Why is that necessary?

PROPOSED REVISED LANGUAGE: 9VAC25-31-485.H

H. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of said complaint and shall determine whether the complaint is substantive. The permit holder shall confirm receipt of all substantive complaints by phone, email or facsimile to the department, the chief executive officer or designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated.

2. For the purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of these regulations, state law, or local ordinance, a release of biosolids to state waters or to a public right-of-way or to any location not authorized in the permit, or failure to comply with the nutrient management plan for the land application site.

3. Localities receiving complaints concerning land application of biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.

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12) Information – Separate permit for each locality (Neil Zahradka):

- Neil Zahradka briefly reviewed the current requirements for separate permits for each locality and noted that this was language that was brought over with the VDH regulations. He noted that the requirement for separate permits was being retained in the VPA regulations but that it was not going to be added to the VPDES regulations.

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13) Information - Research (Neil Zahradka):

Neil Zahradka informed the TAC that the department is not proposing any changes to the requirements for permitting of biosolids research projects. Staff noted that legal counsel has advised the department that while they understand the need for research that it can not be exempted from the permitting requirements. Staff noted that there was a possibility in the future that a "general permit" may be developed to address the area of research for land application of biosolids.

The TAC's discussions on this topic included the following:

- It was suggested that it was unintelligent not to exempt research from the permitting requirements.

14) Information – Threatened and Endangered Species (Neil Zahradka)

Neil Zahradka informed the TAC that the department is not proposing any changes to the regulations for the protection of Threatened and Endangered Species. The department will continue to coordinate with the Department of Game and Inland Fisheries in this area. Staff noted that the department had held a meeting with the resource agencies and that a Memorandum of Understanding for the roles of each in the review of permits and the screening of databases was being developed. The MOU will address what will need to be commented on. Staff will share that MOU with the TAC when it is finalized. The MOU will address and identify screening criteria that will be used, so that not every species will need to be addressed.

The TAC's discussions on this topic included the following:

- Research could be useful in determining the potential impacts on Threatened and Endangered Species.
- Research has should that restoration of disturbed lands through the application of biosolids has actually enabled the return of some Threatened and Endangered Species.
- Will the screening criteria only address those species that are expected to be in Virginia? Staff responded that yes, the developed screening criteria in the MOU would only address those species expected to be in Virginia.

15) Information - TAC Meeting Notes - May 22, 2009 Meeting (Bill Norris):

Bill Norris, Regulation Writer for this regulatory action and meeting note taker, asked the TAC members to review the meeting notes from the previous Biosolids TAC Meeting and provide any edits or corrections to him as soon as possible so that a final version of the notes can be posted on Town Hall.

ACTION ITEM: TAC members are requested to provide comments or edits on the May 22, 2009 meeting notes to Bill Norris via email ASAP.

16) Facilitated TAC Discussion - Buffer Zones for Health Protection (Neil Zahradka/Angela Neilan):

Staff provided an overview of the changes proposed for the buffer zone language in 9VAC25-32-560. Staff noted that the section deals primarily with the nutrient management plan requirements and the entire section would be the subject of part of the discussions at the next TAC meeting.

The location of land application of biosolids shall not occur within the following minimum buffer zone requirements (Table 12):

Table 12: Minimum Buffer Zone Requirements

	Minimum Distances (Feet) to Land Application Area		
Adjacent Features	*Surface Application*[1]	*Incorporation*	*Winter*[2]
Occupied dwellings	~~*200 ft.*~~*400*	~~*200*~~*400*	~~*200*~~*400*
Water supply wells or springs	*100* ~~*ft.*~~	*100*	*100*
Water supply reservoirs	*400*	*400*	*400*
All streams and tributaries within 5 miles upstream from reservoir or public water intake	*100*	*100*	*100*
Property lines	*100* ~~*ft.*~~[3]	*50*	*100*
Perennial streams and other surface waters except intermittent streams	*50* ~~*ft.*~~	*35*	*100*
Intermittent streams/drainage ditches	*25* ~~*ft.*~~	*25*	*50*
All improved roadways	*10* ~~*ft.*~~	*5*	*10*
Rock outcrops and sinkholes	*25* ~~*ft.*~~	*25*	*25*
Agricultural drainage ditches with slopes equal to or less than 2.0%	*10* ~~*ft.*~~	*5*	*10*
[1]*Note: Not plowed or disced to incorporate within 48 hours.*			

[2]*Application occurs on average site slope greater than 7.0% during the time between November 16 of one year and March 15 of the following year.*

[3]*The buffer to occupied dwellings and property lines may be reduced with written consent of the adjacent property resident and landowner.*

(2) Reduced buffer setback distances. The stated buffer zones to adjacent property boundaries and drainage ditches constructed for agricultural operations may be reduced by 50% for subsurface application (includes same day incorporation) unless state or federal regulations provide more stringent requirements. ~~Written consent of affected landowners is required to reduce buffer distances from property lines and dwellings.~~ In cases where more than one buffer distance is involved, the most restrictive distance governs. Buffer requirements may be increased or decreased based on either site specific features, such as agricultural drainage features and site slopes, or on biosolids application procedures demonstrating precise placement methods. Waivers from adjacent property residents and landowners may only be used to reduce buffer zone distances from dwellings and property lines.

~~(2)~~(3) Extended buffer setback distances. For applications where surface applied biosolids are not incorporated, the department (or the local monitor with approval of the department) may require as a site-specific permit condition, extended buffer zone setback distances when necessary to protect odor sensitive receptors. ~~When necessary, buffer zone setback distances from odor sensitive receptors may be extended to 400 feet or more and no biosolids shall be applied within such extended buffer zones. In accordance with 9VAC25-32-100 and 9VAC25-32-490, the~~ The board may impose standards and requirements that are more stringent when required to protect public health and the environment, or prevent nuisance conditions from developing, either prior to or during biosolids use operations.

(4) Voluntary extensions of buffer distances. If a permit holder negotiates a voluntary agreement with a landowner or resident to extend buffer distances or add other more restrictive criteria than required by this regulation, the permit holder shall document the agreement in writing and provide the agreement to the department. Voluntary buffer increases or other management criteria will not become an enforceable part of the land application permit unless the permit holder modifies the operations management plan to include the additional restriction.

Staff also referenced the memo from VDH (Dr. Burns) to DEQ (James Golden) where the recommendation for a 400 foot buffer was made. This memo was discussed during the March Biosolids TAC meeting and is attached below as information.

Letter from Dr. Burns to James Golden:

"You have asked for our guidance in responding to health concerns from citizens who live near biosolids application sites. The following recommendations are designed to provide an abundance of caution in response to citizen's concerns. There are no data indicating this increased caution is necessary, but we determined that providing these additional measures might make administering the program more practical.

We recommend that, in addition to the extending the existing buffer of 100 feet to 200 feet between all property lines at which the public may have access and any part of the application site, no application should be permitted within 400 feet of any occupied dwelling.

The practice of the Department of Health, when the biosolids program was located here, was to extend the buffer to 400 feet in situations where an individual had been identified with medical conditions that could result in increased risk[1]. We found that this policy was difficult to implement, and are therefore recommending that these extended buffers be added in all situations. This should minimize the need for individual considerations.

If individuals assert that they need additional protection, we recommend that they contact the local District Health Director to request an individual assessment be performed. We would anticipate that there would be very few situations where extended buffers or other controls would be warranted.

Though biosolids have been applied to land for many years without scientific evidence of harm to humans, it is not possible to make a definitive statement about the safety of biosolids. As the National Research Council's report Biosolids Applied to Land concludes: 'There is no documented scientific evidence that the Part 503 rule has failed to protect public health. However, additional scientific work is needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to biosolids.'

For many contaminants the level of exposure over time (particularly low-level and chronic exposure to multiple age groups and those with immune vulnerabilities) that can be considered 'safe' or a very low-level risk is not known and difficult to study. Long term health effects are challenging to study and quantify due to a variety of issues. Further difficulty includes not always having knowledge of the actual contents of the sludge and a complete lack of knowledge regarding health effects for some of the contaminants that may be present and the difficult issue of the toxicology of mixtures of compounds. Class B biosolids may contain a wide variety of contaminants in addition to the 9 regulated contaminants. These include enteric bacteria, viruses, endotoxins, and parasites, organic and inorganic materials. The potential interactions of chemical contaminants with low levels of pathogens in individuals who may have an increased risk of infection due to allergic and irritant reactions that may compromise the normal barriers to infection also need to be considered. However, the physical nature of biosolids and the application process is such that very little of the material leaves the application site.

The best current conclusion is that biosolids applied in compliance with federal and Virginia standards pose very little risk to human health if applied following the applicable laws and regulations. Our recommendation in this letter further deceases that risk."

[1]Respiratory diseases include Asthma (must require bronchodilator therapy); Chronic obstructive pulmonary disease; Emphysema and Cystic fibrosis. Immunodeficiency and immunosuppression conditions; including Chemotherapy, for two weeks before starting a course of chemotherapy and for one month after completing a course of chemotherapy, or with an absolute neutrophil count less than 1,000/mm^3; Organ transplant recipient, for 4 months after transplantation; HIV infected with CD4 count below 200; Primary immunodeficiency, exclusion will vary depending upon the diagnosis.

Current DEQ and VDH Procedures for Addressing Citizen Requests for Buffer Extensions

Near Biosolids Land Application Sites:

Assignment of Buffers to Land Application Sites

VDH will recommend extended buffers in cases where persons with certain medical conditions are identified in close proximity to application sites. These additional buffers are intended to provide an abundance of caution in response to citizen's concerns.

VDH will recommend that DEQ extend the buffers to 200 feet from publicly accessible property lines and 400 feet from occupied dwellings in these circumstances. VDH has also developed a new process by which VDH will handle requests for individual consideration above and beyond these extended buffers.

Implementation of Extended Buffer Requirements

1. *Property owners and residents in the vicinity of land application sites who assert that for health reasons, they need increased buffers must contact the local Health District Director to determine if an extended buffer is warranted. A property line will be considered to be publicly accessible if the parcel it abuts contains an occupied residence, or the property is open to the general public and routinely accommodates pedestrians (e.g. parks, nature trails, businesses, etc). A public road adjacent to a field would not be considered a publicly accessible property line as its primary purpose is to convey vehicular traffic, not pedestrians.*

    a. *The DEQ shall provide the property owner/resident with the name and phone number of the local Health District Director for their county. This can also be found at* http://www.vdh.virginia.gov/lhd/

    b. *The local Health District Director will inform DEQ of the outcome of the complaint and any recommendations they have for further changes to the buffer requirements.*

    c. *Buffers will be incorporated into VPA and VPDES permits as they are issued, reissued or modified. If the concern is identified after a permit is issued, the DEQ will require that the certified land applier in charge of the permitted land application implement the extended buffer immediately.*

2. *Property owners and residents in the vicinity of land application sites who assert that for health reasons, they need additional protection beyond the increased buffers specified in item 1 above must contact the local Health District Director and note that they feel an individual assessment to determine their buffer distance is warranted.*

    a. *The DEQ shall provide the property owner/resident with the name and phone number of the local Health District Director for their county. This can be found at* http://www.vdh.virginia.gov/lhd/

    b. *VDH will handle the complaint according to their internal procedures. If the*

property owner/resident's medical condition is not on the VDH list, the local Health District Director has been asked to request that the Biosolids Medical Review Committee (VDH committee of medical professionals) be convened to make a buffer determination.

c. *The local Health District Director will inform DEQ of the outcome of the complaint and any recommendations they have for further changes to the buffer requirements.*

d. *Buffers will be incorporated into VPA and VPDES permits as they are issued, reissued or modified. If the concern is identified after a permit is issued, the DEQ will require that the certified land applier in charge of the permitted land application implement the extended buffer immediately.*

3. *In the event that a citizen requests an individual assessment from the local Health District Director. The land application of biosolids may continue while the health investigation is conducted, unless the Health Commissioner, pursuant to §32.1-13 of the Code of Virginia, issues an emergency order to cease operation of the biosolids use activity. DEQ will, however, request that the land applier postpone land application in the area in question until the evaluation is complete. If DEQ determines that an activity associated with the land application is not in compliance with regulatory requirements, the activity shall be ceased.*

The TAC's discussions on this topic included the following:

- Staff noted that the recommendation from Dr. Burns creates a more predictable process for providing a buffer that is significantly protective and also provides some mechanism for an opportunity to expand the buffer.
- The process was just as predictable at 200 feet. According to Dr. Burn's memo, the 400 feet was not necessary for the protection of public health, it was more of an administrative tool to eliminate some administrative burden.
- The 400 foot minimum buffer from occupied dwellings will impose significant hardships and difficulties for land application, particularly on smaller farms.
- Based on the statements made by representatives of VDH at the March TAC meeting, a 400-foot buffer is unnecessary for protection of human health in most cases.
- The minimum buffer should continue to be 200 foot as it is in the current regulations.
- The new regulations should provide that the buffer may be extended by DEQ based on documented site specific conditions and that the buffer may exceed 400 feet but only with certification from the District Health Director that a buffer in excess of 400 feet is necessary to prevent specific and immediate injury to the health of an individual or individuals.
- Concern that the 400 feet would turn into 800 feet in the future.
- Staff asked for clarification as to what "site specific conditions" should be considered. The response was conditions such as the existence of schools, day-care centers, known health problems/concerns, presence of a new born, just back from the hospital in a dwelling. Things that an applicator has dealt with on a case-by-case basis in the normal course of doing business.
- Staff noted that it would be hard to specify in regulations every such site-specific condition.

These are areas that could be worked out between the applicant and the resident prior to actual application to accommodate specific concerns and issues.

- Staff noted that the biggest issue is at what time is the extension given? And when is the concern/issue noted or identified? Is the suggestion that DEQ could expand the buffer from 200 to 400 without consultation with VDH and only have to confer with VDH for those possible expansions beyond 400 feet?
- DEQ could expand the buffer from 200 feet to 400 feet upon request from a resident. This would not require a lengthy review and could be based entirely on a request made by the resident. Requests for expansions beyond 400 feet would require review and a recommendation from VDH.
- Staff noted that if the request for expansion of the buffer came at the time of application or when the sign goes up the buffer could be increased but it would require a modification to the Nutrient Management Plan due to the reduced acreage.
- It would be a matter of balancing the need for modification of the NMP versus the reason for the request for the buffer extension. It would be DEQ's call not an automatic extension to 400 feet.
- Is the suggestion that the buffer be extended to more than 400 feet in accord with Dr. Burn's memo? Staff responded tat the standard is currently and would be 200 feet and that a request for extension of the buffer up to 400 feet could be granted by DEQ without consultation with VDH, but that any requests for expansion beyond 400 feet would need to be reviewed by the District Health Director.
- The 400 foot buffer would be protective of the conditions identified in Dr. Burn's memo.
- The proposal is to leave the property line buffers as they were in the original regulation.
- There is a need to define "occupied dwelling" due to the existence of "seasonal farm labor dwellings" in some localities and because some "certificates of Occupancy" issued by some County building departments allow residents to set up campers for several years on a building site without a structure present. Staff noted that the presence of "tenant houses" might also be an issue. It was noted that in certain A-1 zones that trailers or campers are classified as "occupied dwellings".
- A question was raised regarding the impact of extending the buffer width on the landowner/farmer. A farmer is attendance at the meeting was asked to come to the open chair to answer this question.

OPEN CHAIR: Roger Hatcher – Cumberland County Farmer - Allendale Farms: Mr. Hatcher provided the TAC with a visual representation of the potential impacts on loss of acreage available for the application of biosolids on his farming operation. He informed the TAC that he was of the opinion that changing from 200 to 400 feet was purely an arbitrary decisions not based on any scientific data or demonstrated problems with the current 200 foot requirement. He noted that in one portion of the farm that he would loose approximately 4% or 4 acres if the buffer were extended to 400 feet. In that case, there would be little impact on the operation of those fields. On another part of the farm, due to the size of the fields and their configuration about half of the available acreage would be removed with the extension of the buffer. This would have a big impact on his operations. He suggested that in Cumberland County that an automatic extension of the buffers from occupied dwellings from 200 feet to 400 feet would impact the feasibility of the use of biosolids on the farm land. He suggested that if there was no medical reason for the extension that it would seem to be an arbitrary decision and there doesn’t seem to be any good reason to remove that much acreage from the program.

- Staff noted that as part of the regulatory review process that but the budgetary and economic impacts of the proposed regulatory changes will be evaluated.
- It was noted that there was another interested party that might have some information related to the buffer discussion that might be useful for the TAC members to hear at this stage of the deliberations. A representative of SAIF was asked to the open chair.

OPEN CHAIR: Rev. Gayl Fowler – SAIF Water Wells, Inc.: Rev. Fowler noted that she recognizes the struggles that farmers are having, but her concern is the existence of large-bore and hand dug wells in Lancaster and Norththumberland Counties that are still be used by the poor residents of those counties as a source of water. She suggested that these wells provide a direct connection to the area's ground water resources that would be impacted if the application of biosolids occurred in close proximity to them. She noted that heavy rains can wash materials directly into these wells. She stressed that the residents and home owners in these rural areas lack the technical background to make an informed decision about the extension of the buffer.

- It was noted that the types of wells being discussed would not be considered adequate wells by the Health Department.
- Staff noted that the current regulations require a minimum 100 foot buffer from water supply wells or springs.

The TAC's continued discussions on buffers included the following:

- A suggestion was made to revise the footnotes of the buffer table to clarify the buffer requirements related to "occupied dwellings" and "property lines".
- The proposed property line buffer language needs to be clarified.
- Staff reminded the TAC that the regulations provide for a waiver from property line buffers.
- The buffer from "occupied dwellings" is the overriding buffer.
- There can be extensions of the buffer setback distances when necessary to protect odor sensitive receptors. It was suggested that 'if there is no one there to smell it, does it really smell?"
- A question was raised as to why the property line buffer is different depending on the type of application or time of year? It was suggested that varying the distance from property lines makes little sense. It was suggested that the property line buffer should be 50 foot in all cases, unless there was an "occupied dwelling" then the larger buffer (200 foot) would be used.
- A question was raised that if the property line buffer was set to prevent the overspread of materials off-site, then why is the buffer distance from "improved roadways" set at 10 feet?
- Staff responded that it is what is on the other side of the property line that is the issue and is the reason for a larger buffer, especially if the area is publicly accessible.
- Staff noted that the intent of the proposed changes to the buffer table and associated language was to make the process more predictable. It was suggested that there needs to be "predictability with reason."
- The property line buffer category should be clarified as referring to property lines in the absence of "occupied dwellings" or "publicly accessible areas".
- The extended buffer for streams and tributaries within five miles upstream from a reservoir or a public water intake is unnecessary. A similar requirement in current DEQ regulations applies to point source discharges pursuant to NPDES permits. Those allow continuous discharge of

sewage effluent. VPA permits issued for biosolids land application do not allow discharge.

- The proposed term "all streams and tributaries" could be construed to mean swales, drainage ditches, intermittent streams, etc. It would be difficult to identify which of these, at any particular site, might connect with a reservoir or a public water supply.
- It was suggested that the term "PWS" used in the Water Quality Standards could be used to identify and specify the streams of concern.
- A question was raised as to what was meant by the term reservoir? Could a stream intake on the James be classified as a "reservoir"? It was noted that if a designation of "PWS" was used that it would clear up the meaning of the terms and areas of concern.
- A question was raised why the buffer distance from reservoirs is 400 foot while the buffer from water supply wells is only 100 foot? Staff noted that reservoirs were open bodies of water and therefore more susceptible to be contaminated, whereas wells are supposed to be contained.
- It was suggested that the term "reservoir" needs to be defined to clarify what areas the buffer will be set from. It was noted that the Virginia Chapter of the AWWA is looking at these proposed buffer distances from water supply reservoirs.
- The language related to the documentation of "voluntary extensions of buffer distance" doesn't appear to serve any purpose and should be deleted.
- A question was raised regarding the use of the qualifier "with slopes equal to or less than 2.0%". Staff responded that to be classified as "agricultural drainage ditches" that the slopes had to be "equal to or less than 2.0%".
- The wording of the "reduced buffer setback distances" is very confusing and needs to be revised. The concepts of buffers from "property lines" and from "occupied dwellings" should be two separate items.
- Staff noted that the wording and content of the buffer section would be reexamined in the light of discussions on the Nutrient Management Plan requirements that would take place at the September meeting of the TAC.
- It was suggested that the use of the term "minimum buffer zone requirements" should be changed. A better term might be "default" buffers or "default requirements".

PROPOSED REVISED LANGUAGE: 9VAC25-32-560 (Buffers for Health Protection)

The location of land application of biosolids shall not occur within the following buffer zone requirements (Table 12):

Table 12: Buffer Zone Requirements

	Distances (Feet) to Land Application Area		
Adjacent Features	**Surface Application[1]**	**Incorporation**	**Winter[5]**
Occupied Dwellings	**200[2&3&4]**	**200[2&3&4]**	**200[2&3&4]**
Water Supply Wells or Springs	**100**	**100**	**100**
Water Supply Reservoirs[5]	**400**	**400**	**400**
All Streams and Tributaries within 5 miles upstream from a designated PWS public	**100**	**100**	**100**

water intake			
Property Lines, w/o the presence of an "occupied dwelling" or an "odor sensitive receptor"[6]	**50**	**50**	**50**
Property Lines, with the presence of an "occupied dwelling" or an "odor sensitive receptor"[6]	**100**	**100**	**100**
Perennial streams and other surface waters except intermittent streams	**50**	**35**	**100**
Intermittent streams/drainage ditches	**25**	**25**	**50**
All improved roadways	**10**	**5**	**10**
Rock outcrops and sinkholes	**25**	**25**	**25**
Agricultural drainage ditches with slopes equal to or less than 2.0%	**10**	**5**	**10**

[1]Not plowed or disced to incorporate within 48 hours.
[2]The buffer to occupied dwellings may be reduced or waived upon written consent of the occupant of the dwelling.
[3]Buffer may be extended by DEQ based on documented site specific conditions.
[4]Buffer may exceed 400 feet but only with certification from the District Health Director that a buffer in excess of 400 feet is necessary to prevent specific and immediate injury to the health of an individual or individuals.
[5]Application occurs on average site slope greater than 7.0% during the time between November 16 of one year and March 15 of the following year.
[6]Property line buffers may be reduced or waived upon written consent of the adjacent property resident or landowner.

(2) Reduced buffer setback distances: The stated buffer distances to adjacent property boundaries and drainage ditches constructed for agricultural operations may be reduced by 50% for subsurface application (includes same day incorporation) unless state or federal regulations provide more stringent requirements. In cases where more than one buffer distance is involved, the most restrictive distance governs.

(3) General Buffer requirements: Buffer requirements may be increased or decreased based on either site specific features, such as agricultural drainage features and site slopes, or on biosolids application procedures demonstrating precise placement methods.

(4) Waivers: Waivers from adjacent property residents and landowners may only be used to reduce buffer distances from occupied dwellings and property lines.

(5) Extended buffer distances: For applications where surface applied biosolids are

not incorporated, the department (or the local monitor with the approval of the department) may require as a site-specific permit condition, extended buffer setback distances when necessary to protect odor sensitive receptors.

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17) Facilitated TAC Discussion – Financial Assurance (Leslie Beckwith/Neil Zahradka/Angela Neilan):

Staff provided an overview of the proposed "financial assurance" language that had been developed by the "Financial Assurance Sub-Committee" and the Financial Assurance staff.

TAC discussions of this topic included the following:

- A question regarding the absence of a "local government waiver" was raised. It was noted that local governments are unique in their ability to raise funds through normal wastewater rates and charges. If there is no waiver granted for local governments, then a sliding scale requirements for local governments depending on the size of the entity or the amount of biosolids spread.
- Staff noted that the permittee has to provide evidence of financial assurance, there are no exceptions. An attempt was make to make the options for providing that evidence as flexible as possible.
- Staff noted that they had not looked at the impact of the requirement on smaller localities.

ACTION ITEM: Staff will look at the impact of the proposed financial assurance language on smaller localities to see if changes to the proposed requirements are warranted.

- A question was raised over the use of the term "bodily injury". It was noted that the term "bodily injury" is not used in the statute. The term "personal injury" is used.
- Staff responded that the term "personal injury" is not usually defined and there was a concern that insurance companies would not provide coverage if that term was used.
- It was recommended that a definition of "personal injury" should be included in the definition section to clarify the requirements.
- The section addressing the use of a letter of credit (9VAC25-32-840) contains language that references "an amount at least equal to the current cost estimate for clean-up costs, personal injury, bodily injury and property damage…" What does this mean?
- Staff responded that the reference should be to "an amount of $2 million".
- Need to make sure that the language in 9VAC25-32-830 regarding "local government guarantee" is clear that the local government is the permittee.

ACTION ITEM: TAC members were requested to submit any comments and suggestions for revisions of the "financial assurance" sections of the regulations directly to Leslie Beckwith so that a revised version of the proposed sections can be developed by staff and provided to the TAC for further review.

18) Field Stockpiling - Facilitated Discussions (Neil Zahradka/Angela Neilan)

Staff provided an overview of the proposed language changes to 9VAC25-32-545 regarding "field stockpiling":

9VAC25-32-545. Field stockpiling.

A. Field stockpiling of biosolids shall not commence unless the field meets the requirements for land application.

B. Field stockpiling requirements:

1. No liner or cover is required under or over the stockpile or stockpiles if spread within 14 days;

2. Stockpiles which can not be spread within 14 days shall be covered to prevent contact with precipitation;

3. Biosolids which have been stockpiled for greater than 14 days shall be spread as soon as field conditions become favorable for land application;

4. The certified land applier shall notify the department within the same working day whenever it is necessary to implement field stockpiling. Notification shall include source or sources, location, amounts and reason for stockpiling;

3. Field stockpiling shall be limited to the amount of biosolids specified in the nutrient management plan to be applied at the intended field;

5. Biosolids will be stockpiled within the land application area of the field in which the biosolids will be applied or in a permitted field adjacent to the subject field, in a location selected to prevent runoff to waterways and drainage ditches;

6. Biosolids shall not be stockpiled in the buffer zones;

7. Best management practices shall be utilized as appropriate to prevent contact with storm water run on or runoff;

8. Biosolids stockpiles are to be inspected by the certified land applier at least every 7 days and after precipitation events of 0.1 inches or greater to ensure that runoff controls are in good working order. Observed excessive slumping, erosion or movement of biosolids is to be corrected within 24 hours. Any ponding or malodor at the site is to be corrected. The certified land applier shall maintain documentation of biosolids stockpile field inspections;

9. Stockpiling shall be prohibited in areas prone to flooding at a 25-year or less frequency interval as identified by the county soil survey;

10. No stockpiling shall take place in areas of Karst topography; and

11. Stockpiled biosolids shall not result in water quality, public health or nuisance problems.

TAC discussions on this topic included the following:

- Staff noted that the discussions on this topic had been cut short during the last TAC meeting, so it is being brought back to the TAC for further review and comment. Staff noted revisions are being looked at as a way to loosen up the requirements in the short term but to tighten down the requirements in the long term.
- A question was raised as to whether the term should be "site" or "field" as it refers to stockpiling? Staff responded that "field" is a subset of the "site".
- The term "field" should be deleted. The first paragraph should be amended to read "stockpiling of biosolids shall not commence unless the site meets the requirements for land application."
- It was noted that the section provided to the TAC was incorrectly numbered. Staff responded that this would be corrected in the revised language.
- A suggestion was made that the term "stockpiling" is not accurate, it should be "staging".
- A concern was raised over the allowance of biosolids "stockpiling" for up to "14 days". It was suggested that this might promote the "stockpiling" of biosolids in a number of piles throughout a county.
- A suggestion was made that the language should stipulate that the material stockpiled for greater than a given period (either the proposed 14 or recommended 7) should be spread or removed from the site.
- There needs to be a little more thought given to what "stockpiling" really means. There needs to be a clear definition. "Stockpiling" should refer to situations where circumstances prevent the spreading of biosolids.
- It was suggested that this should only be a day's worth of biosolids.
- A suggestion was made to change to term from "stockpiling" to "staging".
- A suggestion was made that one of the land appliers in attendance might have some information pertinent to this discussion and should be invited to the "Open Chair".

OPEN CHAIR: Steve McMahon – SYNAGRO: He noted that there was some confusion regarding the "stockpiling" and "staging" of biosolids. He suggested that his concept of the term was more of a "staging" approach where if conditions arise that prevent the application of biosolids on any given day that he could continue to deliver and "stage" materials at the site (no more than approved for application at the site) under the terms of the regulations until conditions improved so that the land application process could continue.

- Staff responded that if conditions at the site were not suitable for the land application of biosolids, i.e., it was raining that the proposed amendments are intended to preclude the applier from delivering materials or stockpiling materials in the rain.
- A question was raised as to what are we trying to fix? The proposed language to address "stockpiling" has a number of conditions/requirements listed to address stockpiling. That should be sufficient to make sure that it is done right.
- Staff noted that if the conditions on the site are not suitable for the land application of biosolids that they don't want to see continued delivery and stockpiling occurring at the site.
- It was suggested that another land applier in attendance might have some information pertinent to this discussion and should be invited to the "open chair".

OPEN CHAIR: Susan Trumbo – RecycSystems: She noted that they usually don't get into a situation where they are "stockpiling" due to weather conditions but rather for convenience since in

some instances the field crews can apply faster than the materials can be delivered. The limiting factor is getting the trucks to the fields. “Stockpiling” usually is for a 5 to 7 day period when it is used.

- Staff noted that the proposed 14 day limitation was thought to address both scenarios of “weather related delays” and “stockpiling for convenience”.
- A question was raised as to what the difference was between the 7 and 14 day periods. Regardless of the time period the materials should be spread as soon as land conditions permit.

OPEN CHAIR: Hunter Richardson: He suggested that all efforts should be made within the 7-day period to spread the biosolids on the approved field.

- Staff suggested that it could be up to 14 days for breakdown or weather issues. Staff suggested that the wording could be that the materials “should be spread within the first 7 days if conditions allow.
- Staff suggested that the wording in 9VAC25-32-545.B.3 should be revised from 14 days to 7 days and moved to the first of the section as the new number 1.
- The phrase “within the same working day” should be changed to “a 24-hour notification time period” because there are days or evenings when DEQ offices are not open.
- It was suggested that the issue over whether it is a “7-day” period or a “14-day” period is more of a political concern than an environmental concern given the requirements that have to be met for “stockpiling”.
- The term “frequently flooded” should be used instead of “areas prone to flooding”.
- The term “pollution” should be used instead of “contamination”.
- The use of the term “best management practices” was discussed. Maybe the phrase “management practices” should be used.
- The term “field” versus “site” was discussed. A permitted site may have several permitted fields. “Site” is defined. “Field” is not defined. Staff noted that a “field” would have a unique control number. It was suggested that “site” is equivalent to “farm”. Staff responded that “field” is a subset of a “permitted site”.

OPEN CHAIR: Steve McMahon: Could the wording be such that the materials could be spread on an adjacent or a contiguous field that was approved for the land application of biosolids if the conditions on the intended field did not allow the application of biosolids?

- It was suggested that the regulations should be flexible enough to allow an applier to spread on an adjacent site or field or to stockpile on an adjacent site or field if that adjacent site or field was included in the permit for land application at that time.

PROPOSED REVISED LANGUAGE: 9VAC25-32-545 (Field stockpiling)

Staging of biosolids for land application.

A. Staging of biosolids shall not commence unless the field meets the requirements for land application.

B. Staging requirements:

1. Biosolids which have been staged for greater than 7 days shall be

spread as soon as field conditions become favorable for land application or removed from the field;

2. **No liner or cover is required under or over the staged biosolids if spread within 14 days;**
3. **Staged biosolids which can not be spread within 14 days shall be covered to prevent contact with precipitation;**
4. **The certified land applier shall notify the department within 24-hours when it is necessary to stage biosolids for land application. Notification shall include the source or sources, location, amounts and reason for staging;**
5. **Staging shall be limited to the amount of biosolids specified on the nutrient management plan to be applied at the intended field;**
6. **Biosolids will be staged within the land application area of the field in which the biosolids will be applied or in a permitted field adjacent to the subject field, in a location selected to prevent runoff to waterways and drainage ditches;**
7. **Biosolids shall not be staged in the buffer areas;**
8. **Management practices, as described in the operations manual, shall be utilized as appropriate to prevent pollution of state waters by staged biosolids;**
9. **Staged biosolids are to be inspected by the certified land applier at least every 7 days and after precipitation events of 0.1 inches or greater to ensure that runoff controls are in good working order. Observed excessive slumping, erosion or movement of biosolids is to be corrected within 24 hours. Any ponding or malodor at the site is to be corrected. The certified land applier shall maintain documentation of the inspections of staged biosolids;**
10. **Staging shall be prohibited in areas identified in the USDA soil survey as frequently flooded;**
11. **No staging shall take place in areas of Karst topography;**
12. **Staged biosolids shall be managed so as to prevent adverse impacts to water quality or public health; and,**
13. **Biosolids shall not be staged on sites that have on-site storage.**

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19) On-Site Storage - Facilitated Discussions (Neil Zahradka/Angela Neilan)

Staff provided an overview of the proposed language changes to 9VAC25-32-550.C regarding "on-site storage":

C. On-site storage - On-site storage is the short-term storage of biosolids within a site or farm on a constructed surface at a location pre-approved by the department. These stored biosolids shall be applied only to fields on this site or farm. Requirements for on-site storage include the following:

1. The certified land applier shall notify the department within the same working day whenever it is necessary to implement on-site storage. Notification shall include the source or sources, location and amounts;

2. A surface shall be constructed with sufficient strength to support operational equipment and with a maximum permeability of 10^{-7} cm/sec;

3. Storage shall be limited to the amount of biosolids specified in the nutrient management plan to be applied at the intended approved field or fields within the property on which the storage site is located;

4. Biosolids must be removed from the storage site within 48 hours if malodors related to the stored biosolids are verified by DEQ at any occupied residence on surrounding property;

5. All biosolids stored on the on-site storage pad shall be land applied by the 45th day from the first day of on-site storage;

6. Biosolids storage shall be located to provide minimum visibility;

7. Best management practices shall be utilized as appropriate to prevent contact with storm water run on or runoff;

8. Biosolids on-site pads are to be inspected by the certified land applier at least every 7 days and after precipitation events of 0.1 inches or greater to ensure that runoff controls are in good working order. Observed excessive slumping, erosion or movement of biosolids is to be corrected within 24 hours. Any ponding or malodor at the site is to be corrected. The certified land applier shall maintain documentation of biosolids on-site storage pad field inspections;

9. The department may prohibit or require additional restrictions for on-site storage in areas of Karst topography and environmentally sensitive sites;

10. Biosolids shall not be stockpiled on farms that have on-site storage; and,

11. Biosolids shall not result in water quality, public health or nuisance problems.

TAC discussions on this topic included the following:

- Staff noted that this language was being proposed as a way to address storage of biosolids where it falls below the regulatory threshold of 45 days. The key point is that the use of the site is self-limited due to the build-up of phosphorus in the soil.
- The use of the term "site" in lieu of "farm" was discussed.
- A question was raised regarding the wording of the statute in relationship to the wording proposed in the opening paragraph of section C.
- It was suggested that the patron of the legislation meant for the requirements to apply to the "farm" as those properties under the same owner or operator.
- It was suggested that there could be several non-contiguous sites under the same operator or owner. There should be some flexibility to allow the use of those sites as storage sites.

OPEN CHAIR: Hunter Richardson: He noted that in a farming situation that there are often multiple sites. There is usually one storage site on a farm that is used to provide storage for biosolids to be used

on multiple permitted fields within the permitted site.

- Staff noted that they would need to confirm the wording of the statute to determine the wording of this section.

ACTION ITEM: Staff will look at the wording of the statute to determine potential wording changes to this section.

- The concept of the correction of a problem related to malodors versus removal of the problem was discussed. It was suggested that there should be a mechanism for the correction of the problem within a 48-hr period or the problem had to be removed. This would provide an opportunity to correct the problem.
- A question regarding the verification of the problem specified in item C.4 was raised. Staff responded that this provided a mechanism to identify/verify a problem at any property and not necessary based on a neighboring property.
- The wording of item C.7 should follow the discussions and corrections made in the discussions on the previous sections of the regulations.
- A question was raised over the use of the phrase "on-site storage pad" in item C.5. Consistent terminology should be used throughout the regulations.

PROPOSED REVISED LANGUAGE: 9VAC25-32-550.C (On-site storage)

C. On-site storage – On-site storage is the short-term storage of biosolids within a site on a constructed surface at a location pre-approved by the department. These stored biosolids shall be applied only to sites under the control of the same owner or operator that are approved for the land application of biosolids. Requirements for on-site storage include the following:

1. **The certified land applier shall notify the department within 24 hours whenever it is necessary to implement on-site storage. Notification shall include the source or sources, location and amounts;**
2. **A surface shall be constructed with sufficient strength to support operational equipment and with a maximum permeability of 10^{-7} cm/sec;**
3. **Storage shall be limited to the amount of biosolids specified in the nutrient management plan to be applied at the intended field or fields within the property on which the storage site is located;**
4. **If malodors related to the storage of biosolids are verified by DEQ at any occupied dwelling on adjoining property, the problem must be corrected within 48 hours. If the problem is not corrected within 48 hours, the biosolids must be removed from the storage site;**
5. **All biosolids stored on the site shall be land applied by the 45th day from the first day of on-site storage;**

6. **Biosolids storage shall be located to provide minimum visibility;**
7. **Management practices, as described in the operations manual, shall be utilized as appropriate to prevent pollution of state waters by staged biosolids;**
8. **Stored biosolids are to be inspected by the certified land applier at least every 7 days and after precipitation events of 0.1 inches or greater to ensure that runoff controls are in good working order. Observed excessive slumping, erosion or movement of biosolids is to be corrected within 24 hours. Any ponding or malodor at the site is to be corrected. The certified land applier shall maintain documentation of inspections of stored biosolids;**
9. **The department may prohibit or require additional restrictions for on-site storage in areas of Karst topography and environmentally sensitive sites;**
10. **Biosolids shall not be stockpiled on farms that have on-site storage;**
11. **Storage of biosolids shall be prohibited in areas identified in the USDA soil survey as frequently flooded; and,**
12. **Stored biosolids shall be managed so as to prevent adverse impacts to water quality or public health.**

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20) Routine Storage - Facilitated Discussions (Neil Zahradka/Angela Neilan)

Staff provided an overview of the proposed language changes to 9VAC25-32-550.D regarding "routine storage":

TAC discussions on this topic included the following:

- There should be an opportunity for local government input for the use of routine storage.
- The provisions of paragraph D.2 are irrelevant to current storage operations and should be deleted.
- Paragraphs D.3.c, d and e are irrelevant to current storage activities and should be deleted.
- Staff noted that the cover requirements need to be included but that a lot of the other existing language could probably be removed due to the fact that the requirement for the cover eliminates the need for liquid freeboard considerations.
- It was noted that the existing section related to monitoring requirements (9VAC25-32-550.D.4) was hard to find, but was also needed.

ACTION ITEM: Staff will look over the wording of this section and provide revisions to the TAC for review and comment.

21) Fees - Facilitated Discussions (Neil Zahradka/Angela Neilan)

Staff provided an overview of the proposed language changes to 9VAC25-20-60; 25-20-110; 25-20-120; and 25-20-142 regarding "fees":

TAC discussions on this topic included the following:

- A question was raised regarding the need for the permit fee increases. Staff noted that the original idea was to run the increased costs through as part of the existing permitting process but the additional resources being utilized for the inspection requirements are not absorbed well in the existing structure.
- Staff noted that one of the major changes is the concept of the maintenance fees for the VPA & VPDES permits. The concept is for the permittee to pay the fee of $5,000 totally over the course of the permit through payments of $5,000/10 or $500 instead of the current fee of $750.
- Staff noted that the existing fees for the VPDES program are based on permitting the discharge facility. When you add in the land application program there are additional resources that are required to manage and run the program. The proposed fee structures would result in those operating a land application program under the VPA and the VPDES programs having to pay the same fees for the same activities.

OPEN CHAIR: Sharon Nicklas – HRSD: She raised a question about the footnote included as part of the table in 9VAC25-20-120.A.1. What is meant by the wording "in addition to any other modification fee incurred"? She noted that the footnote is not clear. She also noted that the HRSD program contains a "land application process" as a backup plan for emergency. Does that mean that an additional fee will need to be paid each time that backup plan is submitted?

- Staff responded that the footnote indicates that the fee for land application activities is $1,000, but that there may be other modification fees associated with other part of the permit holders operations that may result in other fees having to be paid in addition to the $1,000. Staff will revise the wording to clarify the footnote.
- Staff noted that the use of a land application plan as a backup plan and part of a permit would need to be looked at.

PROPOSED REVISED LANGUAGE: 9VAC25-20-120 (Fee schedule for major modification of individual permits or certificates requested by the permit or certificate holder)

A.1. Footnote:

The fee for modification of a VPDES permit due to changes relating to authorization for land application of biosolids or land disposal of sewage sludge shall be $1,000, notwithstanding other modification fees incurred.

22) Information – Biosolids Use Regulation Advisory Committee (Neil Zahradka)

Staff informed the members of the TAC that this section of the regulations and any references to the same was being proposed to be removed from the regulations. He noted that the standard DEQ regulatory development procedures would be used.

GENERAL CONSENSUS: The TAC agrees the plan to delete the Biosolids Use Regulation Advisory Committee language from the regulations.

23) Other Issues:

TAC discussions on this topic included the following:

- It was noted that there was not a lot of new language in the VPDES to address the issues of storage.
- A question was raised as to whether there was going to an attempt to clarify Class A Biosolids and exemptions related to that class of biosolids.
- It was noted that there is a definition of biosolids in the VPA regulations but not in the VPDES regulation.

24) Next Meeting:

The next meeting of the TAC is scheduled for Tuesday, September 22nd at the Virginia Fire Programs Office located at 1005 Technology Park Drive, Glen Allen.

Topics for the meeting will include:

- **Nutrient management**
- **Monitoring requirements**
- **Definitions**
- **Sections modified as a result of today's discussions**

An additional date of October 1st at the DEQ Piedmont Regional Office has been reserved just in case a wrap-up meeting is needed.

Ellen Gilinsky thanked the members of the TAC for their patience and

determination to get through all of the sections of the proposed language for today's meeting and thanked the members for taking the time to prepare written suggestions to support today's discussions. She noted that the intent is to take the draft regulations to the SWCB at their December Board meeting. Following acceptance of the draft regulations there will be a public comment period and public meetings to discuss the draft regulations, so there will be plenty of opportunity for additional public comment on the regulations.

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25) Public Comment:

The individuals who had signed up for the Public Comment period provided their comments through the Open Chair during the course of the meeting and no additional Public Comment was provided.

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26) Meeting Adjournment:

The meeting was adjourned at approximately 3:30 P.M.