

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY**

Subject: Water Guidance Memo No. **12-2003**
Landowner Agreements for Biosolids Land Application

To: Regional Directors

From: Melanie D. Davenport, Director, Water Division



Date: September 21, 2012

Copies: Deputy Regional Directors, Regional Water Permit Managers, Regional Water Compliance Managers, James Golden, Rick Weeks, Neil Zahradka, and Fred Cunningham, DCR, VDH

Summary: This guidance follows submission to the Virginia Register of new VPA and VPDES landowner agreement forms entitled Land Application Agreement – Biosolids and Industrial Residuals, and Land Application Agreement – Biosolids, respectively. It addresses procedures regarding the completion and acceptance of landowner agreements authorizing the land application of biosolids and industrial sludges. The guidance also addresses which revision(s) of the form is appropriate for submittal with permit applications and when new landowner agreements are required. The guidance provides routine procedures that go into effect immediately, as well as procedures for the transition period following finalization of the current biosolids regulatory action “[Amendment of Regulations Pertaining to Biosolids After Transfer from the Department of Health.](#)”

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <http://www.deq.virginia.gov/waterguidance/>.

Contact Information:

Please contact Christina Wood, Office of Land Application Programs at (804) 698-4263 or christina.wood@deq.virginia.gov with any questions you have regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Contents

I. AUTHORITY	1
II. BACKGROUND	3
III. LANDOWNER AGREEMENTS	4
A. Basic Principles of Landowner Agreements.....	4
B. What is the Current Landowner Agreement Form?	5
C. What is Considered to be a “NEW” Landowner Agreement?	5
D. When is a New Landowner Agreement required?	6
E. Landowner Agreement Consent and Signatory Requirements	8
F. Change of Ownership	10
G. “Double Permitting”	11
APPENDICES	15
PART D-VI: LAND APPLICATION AGREEMENT - BIOSOLIDS AND INDUSTRIAL RESIDUALS	16
Landowner Coordination Form	18
Supplement A: Additional Land Application Sites	19
VPDES LAND APPLICATION AGREEMENT - BIOSOLIDS	20
Landowner Coordination Form	22
Supplement A: Additional Land Application Sites	23
PART D-VI BIOSOLIDS APPLICATION AGREEMENT- Obsolete	24
Letter to Permittee – LOA No Longer Valid	25
Letter to Permit Applicant – LOA Not Valid.....	26

I. Authority

The DEQ is authorized to issue permits for the land application of biosolids in accordance with the Virginia Pollution Abatement (VPA) Permit Regulation, [9VAC25-32-310 through 760](#) and the Virginia Pollutant Discharge Elimination System Permit Regulation, [9VAC25-31-420 through 720](#).

[§62.1-44.19:3.A.3.](#) of the Code of Virginia states:

The permit application shall not be complete unless it includes the landowner's written consent to apply sewage sludge on his property.

The current VPA Regulation states in Section [9VAC25-32-60.A.1.d.](#):

No application for a permit to land apply biosolids in accordance with Part IX (9VAC25-32-310 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

Section [9VAC25-32-530.A](#) of the current VPA regulation also states:

When land application of sludge is proposed, the continued availability of the land and protection from improper concurrent use during the utilization period shall be assured. A written agreement shall be established between the landowner and owner to be submitted with the permit application, whereby the landowner, among other things, shall consent to apply sewage sludge on his property. The responsibility for obtaining and maintaining the agreements lies with the party who is the holder of the permit. Site management controls shall include access limitations relative to the level of pathogen control achieved during treatment.

The current VPDES regulation does not address landowner agreements; however, the VPDES Sewage Sludge Permit Application Form - Section C.10. requires the submission of landowner agreement forms for each landowner of sites proposed to receive biosolids if those sites are not owned by the applicant.

The signed agreement form documents that the landowner(s) has given permission to the land applier to spread biosolids on his property, and the form also informs the landowner of the site access restrictions that must be adhered to following the application of biosolids on his land.

The State Water Control Board (Board) has the authority to require additional permit special conditions when a public hearing has been held on a draft permit and the Board is making the final permit decision. During their meeting of June 21-22, 2010, the Board directed DEQ staff to develop a permit special condition and rationale to address concerns that property use and access restrictions would be followed in the event that land changed ownership. This special condition would be included in the three permits under consideration at that meeting, as well as in future permits. The fact sheet rationale for this special condition is as follows:

VPA Permit Regulation [9VAC25-32-620.B.](#), with which all biosolids operations must comply, requires permit holders to control public access and crop management on sites that have received biosolids land applications, regardless of landownership. This permit condition ensures that a new landowner is made aware of the management restrictions.

Further, § [62.1-44.19:3.B.](#) of the Code of Virginia directs the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health, to adopt regulations to ensure that land application, marketing, and distribution of sewage sludge is performed in a manner that will protect public health and the environment.

In order to address the Board's concerns, DEQ developed a new permit special condition for landowner agreement requirements for VPA permits issued under the current regulation and also incorporated these requirements into the final amendments of both the VPA and VPDES permit regulations, [9VAC25-32-530-B.2.](#) and [9VAC25-31-485.B.2.](#), respectively. The specific new regulatory requirements include:

- (a) A statement certifying that the landowner is the sole owner or one of multiple owners of the property or properties identified on the landowner agreements;*
- (b) A statement certifying that no concurrent agreements are in effect for the fields to be permitted for biosolids application;*
- (c) An acknowledgement that the landowner shall notify the permittee when land is sold or ownership transferred;*
- (d) An acknowledgement that the landowner shall notify the permittee if any conditions change such that any component of the landowner agreement becomes invalid;*
- (e) Permission to allow department staff on the landowner's property to conduct inspections;*
- (f) An acknowledgement by the landowner of any site restrictions identified in the regulation;*
- (g) An acknowledgement that the landowner has received a biosolids fact sheet approved by the department; and*
- (h) An acknowledgement that the landowner shall not remove notification signs placed by the permit holder.*

[9VAC25-31-485.B.4](#) and [9VAC25-32-530.B.4](#) of the amended regulations will also require that within 60 days after the effective date of a permit modification to incorporate the regulatory changes, the permit holder shall notify landowners, via certified letter, of the need for the landowner to provide new landowner agreements on the revised form to the permittee prior to future land application of biosolids on their property. DEQ recognizes the time required to obtain the landowner signatures and therefore, the need for the permit holders to begin obtaining signatures on the new landowner agreement forms as soon as possible in order to maintain an operable land base and reduce the volume of letters that will need to be sent via certified mail. This guidance memo will address interim procedures for obtaining landowner agreements using the new form.

II. Background

The landowner agreement is held between the permit holder that is authorized to land apply biosolids and the owner(s) of the property on which the biosolids will be land applied. The permit holder may be the owner or operator of the wastewater treatment plant (WWTP) that generated the biosolids or a company or individual who has contracted with the owner or operator of the WWTP to land apply the biosolids.

Since DEQ began issuing VPA biosolids permits in 2008, issues have arisen regarding landowner agreements. The Board expressed their concern regarding errors that were being found following several public hearings held on draft permits. Some of the problems encountered included:

- missing landowner signatures, such as a spouse’s signature where there is joint ownership;
- change in ownership after the landowner agreement form was signed due to sale, inheritance or transfer to a trust, often on old landowner agreement forms that were signed prior to the previous permit issuance; and
- confusion regarding signatures and ownership where, for example, a father and son have the same or similar names

The Board, as well as members of the public also expressed concern regarding how future landowners would be made aware of access restrictions or site management requirements which may still be in effect following the sale of a field(s) on which biosolids has been applied. In June 2010, the Board voted to include a special condition in permits authorizing the land application of biosolids to address the transfer of land:

In the event that land upon which biosolids has been applied changes ownership within 38 months of the date of land application, the permit holder shall notify the new landowner of the public access and crop management restrictions and the dates and amounts of biosolids land application. This notification, including notice to DEQ, shall occur within 90 days of the change in landownership and no later than 2 weeks following the permit holder becoming aware of the change in ownership.

Based on citizen concerns that landowners were not informed about the nature of biosolids, the Board also required that the landowner receive a Biosolids Fact Sheet and acknowledge receipt of the fact sheet on the landowner agreement.

The Board also expressed concern about the need to incorporate the revised regulatory language into existing permits once the regulatory amendments become final. In June 2010 the Board changed the word “may” in the reopener statement *The Board may modify or revoke and reissue*, to “will” as follows:

The Board will modify or revoke and reissue this permit as appropriate and necessary to incorporate changes to any applicable standard or requirement for the use or disposal of biosolids, industrial wastewater sludge, or septage promulgated under Section 405(d) of the Clean Water Act, State Water Control Law, or the VPA Permit Regulation (9VAC25-32)

The landowner agreement forms entitled Land Application Agreement – Biosolids and Industrial Residual, which is Part D-VI of the VPA Permit application and Land Application Agreement – Biosolids, which is attached to Section C of the VA Sewage Sludge Permit Application Form, have been modified and were submitted to the Virginia Register and became effective on 9/19/2012. The amended forms, Revision 9/14/2012, are now considered to be the “current forms approved by the Board.” The forms were modified to include information deemed necessary to address the concerns of the Board and ensure:

- accurate identification of land parcels and their landowners
- proper signatures;
- concurrent landowner agreements do not exist for the same property;
- adequate information is provided to the landowner regarding site restrictions and biosolids composition; and
- proper notification of new landowners upon transfer or sale of property after biosolids land application. ”

There is one item included in the Revision 9/14/2012 Land Application Agreement forms that is not specifically related to ensuring accurate information and landowner notification, but is required by the regulatory amendments which have not been finalized at the time the form was submitted. This is a statement that the landowner agrees not to remove signs posted by the Permittee for the purpose of identifying the field as a biosolids land application site within 30 days after land application at the site is completed. Note that inclusion of this requirement does not prohibit a Permittee from removing a notification sign according to the current regulations prior to the effective date of the revised regulation.

III. Landowner Agreements

A. Basic Principles of Landowner Agreements

1. A landowner is an individual or an entity that owns land. For purposes of the herein discussed landowner agreements, landownership is demonstrated through deed documents recorded in the real property records of the city or county in which the land is located.
2. Each landowner identified on a deed must consent to the land application of biosolids and/or other sludges on his/her land, and sign and submit a landowner agreement form.
3. DEQ only considers whether or not a signed landowner agreement is current or new at the time a permit applicant submits the agreement with an application to issue or reissue a permit, modify a permit to add land or document a change of ownership.
4. Once a landowner agreement is signed and submitted and the land identified therein is authorized for land application under a VPDES or VPA permit, that agreement will remain in effect until:
 - a. landownership changes;
 - b. any information in the landowner agreement becomes invalid;

- c. the final regulatory amendments are effective and the permit is modified to incorporate the regulatory changes, and notice has been sent to the landowner(s) informing him that biosolids will not be applied on his land until a new landowner agreement is submitted; or
 - d. The agreement is terminated in writing by the landowner or the permittee.
5. DEQ will only accept a complete Land Application Agreement form with original signatures on pages 1 and 2 and Supplement A, if used. A complete form has all requested information provided (i.e. no blanks).

B. What is the Current Landowner Agreement Form?

Previously, there has been no specific age limit for an acceptable landowner agreement. Factors that determined whether the landowner agreement submitted with a permit application for issuance, reissuance or modification was acceptable or not was based on its content. At a minimum, a landowner agreement submitted with any permit application or change of ownership notification must include all of the information currently required by the Board and DEQ. The previously approved form is provided in Appendix II. In addition to that form, as requested in an email sent to all certified land appliers on June 18, 2010, the permit applicant must submit a list of all the proposed land application sites, including the County Tax Parcel ID number for each parcel and a county tax map with those parcels labeled. Without all of that information, the landowner agreement is not complete.

The Land Application Agreement Forms (VPA and VPDES Rev. 9/14/2012), which were submitted to the Virginia Register on 9/19/2012 and posted on the DEQ website on 9/20/2012 are presented in the Appendices. These forms are, as defined in the regulatory amendments, the current form approved by the Board. Any landowner agreement signed and dated after 10/19/2012 must utilize the Rev. 9/14/2012 forms. Note that a 30 day grace period after the submittal date is included.

C. What will be accepted as a “NEW” Landowner Agreement?

A signed Land Application Agreement form submitted with a permit application to issue, reissue or modify a permit is considered to be “new” if:

- 1) it is on the most current form approved by the board, as of the date it was signed;
- 2) all the information provided on the form is valid; and
- 3) the signed Land Application Agreement will be less than 10 years old on the effective date of the permit issuance, reissuance or modification.

Note that with respect to item 1, following the effective date of the regulatory amendments, the acceptance of landowner agreements signed on or prior to 10/19/2012 on forms other than the Revision 9/14/2012 form will be considered case-by-case, based on content of the form.

A new landowner agreement submitted as a result of change of ownership must be signed and dated after the land transfer is complete.

As noted above in Section B. the Rev. 9/14/2012 Land Application Agreement forms are the current forms approved by the board as of 9/19/2012. These forms become part of the permit application and must be used. Any form signed after 10/19/2012 must be the 9/14/2012 version.

Prior to 9/19/2012 the Revision 4-2009 Biosolids Application Agreement Form was the official form approved by the Board; however a variety of forms were being used and accepted. From now until the effective date of the regulatory amendments, the Revision 4-2009 form, along with any other form, will be accepted with permit applications to issue, reissue or modify a permit if the form was signed and dated prior to 10/19/2012 and the following information is included:

1. Identification of the fields/property in the form of County Tax ID number.
2. An attached map(s), referred to as Exhibit A, outlining the properties and identifying tax parcels
3. Site access restrictions
4. A statement that application of other nutrient sources will be coordinated with biosolids applications as identified in a nutrient management plan (NMP) developed by a person certified in accordance with [§10.1-104.2 of the Code of Virginia](#). The NMP will be provided to the landowner by the permit holder at the time of application to a specific permitted site.
5. The permit holder will notify the landowner or landowner designee prior to any particular application of biosolids to the landowner's land
6. The agreement may be terminated by either party by written notice.
7. Printed names, signatures and mailing addresses of all landowners and the permit holder.

D. When is a New Landowner Agreement Required?

1. Interim Procedures – effective 9/19/2012 until permit issuance or modification to incorporate regulatory amendments
 - a. Permit Actions - During permitting procedures, new landowner agreements are required when:
 - i. DEQ receives an application for a new permit that authorizes the land application of biosolids, water treatment plant residuals and/or industrial sludges (including all first time VPA permits to replace BUR permits);
 - ii. DEQ receives an application for a permit modification to add land (new Landowner Agreement forms are required only for the land to be added); or

- iii. DEQ receives an application for reissuance of a permit that authorizes the land application of biosolids, water treatment plant residuals and/or industrial sludges, for all of the land in the permit application, new and previously permitted.
- b. Life of the Permit - A landowner agreement that is accepted with the permit application to issue or reissue a permit may remain in effect for the term of that permit if there are no changes in ownership of the land or information on the landowner agreement.

During the term of an active permit, permit holders must submit new landowner agreements to DEQ prior to further land application on specific land approved for biosolids application in the event that :

- i. ownership of that land changes;
 - ii. any information in the landowner agreement is no longer correct, rendering it invalid; or
 - iii. the permittee wishes to apply a water treatment plant residual or other industrial sludge to a site where the existing landowner agreement only authorizes biosolids.
2. Procedures after Regulatory Amendments become effective
 - a. Permit Applications received after the effective date of the regulatory amendments: landowner agreements submitted with any application to issue, reissue or modify a permit must be in accordance with the regulation.
 - b. Permit modifications - Following any permit modification that incorporates the regulatory amendments, whether initiated by DEQ or the permittee, the permit holders will be required to obtain landowner signatures on the current landowner agreement form approved by the board prior to any further land application on parcels previously approved for land application. The special condition that will be included in the modified permit is as follows:

The permit holder shall, within 60 days of the effective date of this permit, advise the landowner by certified letter of the requirement to provide a new landowner agreement. The letter shall include instructions to the landowner for signing and returning the new landowner agreement, and shall advise the landowner that the permit holder's receipt of such new landowner agreement is required prior to application of biosolids to the landowner's property.

The permit holder is not required to send notice to landowners who have already submitted landowner agreements using the 9/14/2012 revision. Therefore, permit holders should be encouraged to begin distributing the new Land Application Agreement Form (Revision 9/14/2012) to owners of currently approved application sites, and to obtain their signatures on the new forms as soon as possible. This will reduce the need to send the new forms to the landowners via certified mail following the agency initiated permit modification to incorporate the regulatory changes. The need to replace landowner agreements signed prior to 10/19/2012 on forms other than the Revision 9/14/2012 form will be considered case-by-case, based on content of the form.

- c. Permit issuance - If a VPA or VPDES permit application was submitted and found to be complete prior to the effective date of the regulatory amendments, but is still being processed after the effective date, the permit writer will include the same special condition as in D.2.a above that requires the permit holder to notify the landowners of the need to update the landowner agreements prior to land application under the new permit

If all landowner agreements submitted with the permit application were on the Land Application Agreement form revised 9/14/2012, this special condition may be excluded.

E. Landowner Agreement Consent and Signatory Requirements

The request to include land in a biosolids permit may be made at the time of initial permit application or through a subsequent modification request to add land to an existing permit. A signed landowner agreement(s) is required for each parcel/field/property identified in Attachment A of the Permit application and must be submitted with the permit application or request to add land. The landowner agreement must be on the appropriate form(s) as described above and contain the signatures of each landowner, or it is not considered to be a valid landowner agreement. DEQ must obtain the landowner agreement with original signatures of the landowner and the permittee's authorized representative.

The landowner agreement may authorize land application on a single field or an entire farm that includes multiple fields or parcels of land. The County Tax Parcel Identification Number must be included on the form for each parcel that will be authorized to receive biosolids. A copy of the County Tax Map showing that parcel(s) must also be provided with the landowner agreement.

The landowner may be an individual, a group of individuals, referred to here as multiple owners, or an entity such as a trust or corporation. Where a group of individuals owns a property, each of the individuals must sign a

landowner agreement. Multiple owners may include husband and wife, siblings or other family members, or business partners, etc. If any owner has given power of attorney or signatory authority to another, whether it is one of the co-owners, a relative or a third party, acknowledgement that the party is signing for another party must be indicated on the form. Where an entity owns the property to be included in the permit, the signatory requirements of [9 VAC 25-31-110.B](#) or [9 VAC 25-32-70\(2\)](#), as applicable, must be met.

In many situations, records documenting ownership or signatory authority may be found in public records, such as with deeds and corporate filings. However, there are other situations where documentation of signatory authority must be provided. Trusts identifying trustees, memoranda identifying authorities of a representative or attorneys-in-fact (Power of Attorney) and probate filings identifying executors of estates are common examples of legal transactions and process where documentation may not be publicly available and presentation of the original documents giving signatory authority is required when signing in the capacity of the trustee, attorney-in-fact or executor. The permit applicant must review the following documentation for these cases:

1. The original trust or memorandum of trust or a notarized copy of the trust;
2. The original notarized Power of Attorney; or
3. The original court document approving the person(s) as executor.
Note that a Last Will and Testament requesting the assignment of an executor is not the same as a document from the court approving the executor.

By checking the appropriate box on the Land Application Agreement form, the permit applicant or permit holder acknowledges that he has reviewed this document(s) and that he must be able to make this document(s) available to DEQ staff upon request.

The landowner agreement must be signed by the individual(s) with signatory authority, signing his own name and indicating his signatory authority; e.g. *John Smith*, Power of Attorney for Robert Doe; *John Smith*, Executor Robert Doe Estate; or *John Smith*, Trustee, Robert Doe Trust.

DEQ inspectors and permit writers may request to inspect the signatory authority documents at any time. No copy of the pages from the trust, power of attorney or executor assignment will be obtained by DEQ staff or placed in DEQ files. Staff observation of this instruction is important to preclude DEQ's collection of personal records and potential requirements for disclosure pursuant to FOIA.

When DEQ requests signatory documentation, a reasonable time must be allowed for the permittee to obtain these documents. If there is question regarding signatory authority of a person who signed the landowner

agreement, land application shall not take place on the sites identified on that landowner agreement until proper documentation is provided.

If any landowner agreement is found to have incorrect information or be incomplete or improperly signed during the permitting/modification process, the land applier will be given the opportunity to obtain the proper signatures prior to issuing the permit. Any landowner agreement that DEQ knows to have incorrect information or be incomplete or improperly signed at the time of permit issuance or modification will be considered invalid and those parcels identified in that landowner agreement shall not be included in the permit and will not be accounted for in the total permitted acreage. Those sites identified in the invalid landowner agreement will need to be added to the permit at a future date in order to be eligible to receive biosolids.

If a landowner agreement is found to have incorrect information or be incomplete or improperly signed after permit issuance, the parcel(s) of land identified in that landowner agreement shall be ineligible to receive biosolids until a corrected landowner agreement is submitted to DEQ. If the correction involves obtaining the signature of an additional landowner, and that landowner objects to the land application of biosolids on the parcel(s), then the parcel(s) shall be struck from Attachment A of the permit and the landowner agreement and Landowner Coordination Forms as appropriate. The parcel(s) may be added back to the permit through a permit modification if subsequent landowner authorization is obtained. DEQ staff shall adjust the originally permitted acreage to reflect the deletion of the parcel(s) affected.

When using the new Land Application Agreement form for land with multiple owners, the Landowner Coordination Form is required. This form serves as a master list of all owners associated with specific properties. When the statement “I am one of multiple owners of the properties identified herein” is checked on Page 1 of the Land Application Agreement form, the permit holder shall submit a completed Landowner Coordination Form with each of the associated landowner agreements attached. Note that the Landowner Coordination Form does not require signatures, only a listing of the multiple owners.

F. Change of ownership

There are various configurations of ownership change that may take place. A sole owner may get married and add his spouse as a co-owner; or one of many co-owners may sell his interest in the property to one of the existing co-owners or to an unrelated third party; or an entity may sell a portion of the land, etc.

If all of the property identified on a landowner agreement changes ownership, via sale, transfer or inheritance, etc., all of the property would no longer be authorized to receive biosolids.

If one of many parcels on a landowner agreement changes ownership, then only the one parcel affected by the change of ownership would no longer be authorized to receive biosolids. If a new owner is added to the deed for any reason (sale, marriage, inheritance, etc.), a new Land Application Agreement form (pages 1 and 2) must be signed by the new owners and submitted by the new owners prior to any further land application of biosolids. The permit holder must update the Landowner Coordination Form to include the new owner.

If one of multiple landowners dies, a new Land Application Agreement form (pages 1 and 2) must be signed and submitted by each executor or beneficiary of the deceased prior to any future land application of biosolids. The exception to this would be if joint owner is a spouse, in which case the property would automatically go to the surviving spouse in most cases. In either event, the permit holder must update the Landowner Coordination Form to exclude the deceased and include any new owner(s). If an executor(s) administering the estate has signed a landowner agreement authorizing land application, but he is not an heir or he is not the only heir, this entire process must be repeated once the estate is settled and the land has been distributed to the heir(s). After settlement, if one or all of the heirs do not agree to land application of biosolids, biosolids may no longer be applied on the property. The permit holder must strike the property from Attachment A of the permit and the landowner agreement and Landowner Coordination Forms as appropriate.

The above examples are just a few of the situations that may be encountered. In general, if ownership of a property changes, the landowner agreement is no longer valid and the property in question is no longer authorized to receive biosolids until new Land Application Agreement forms are signed by the new owners. The exception to the general statement is the case where a co-owner dies and that co-owner's interest in the property is transferred to the remaining owner(s), or the co-owner sells or transfers his interest in the property to the other existing owner(s).

All owners of a property must authorize the land application of biosolids and provide signature(s) on the Land Application Agreement form. The table below identifies various scenarios that may be encountered, how the ownership change affects the validity of the landowner agreement, and the actions required in order to continue the land application of biosolids at the properties involved.

G. “Double Permitting”

DEQ may find that a landowner agreement submitted with a permit application includes land - sites, fields, tax parcels – that is already authorized for the land application of biosolids under another permit. When signing the Land Application Agreement form, the landowner is stating that he/she has no other agreements for land application on the fields identified

in the landowner agreement. Therefore, any previous landowner agreements held with other permitted land application contractors are required to be terminated, in writing, prior to signing the new Land Application Agreement form.

When a permit application or request to add land is submitted, and that land is already included in another permit held by a different contractor, a copy of the notice that the landowner sent to the original contractor terminating that landowner agreement shall be submitted with the new landowner agreement. Upon receipt of this landowner agreement and termination notice, the permit writer will send notice to the original permittee. The notice shall inform the original permittee that a permit application and landowner agreement termination notice has been received by the DEQ Regional Office for land which was included in the original permittee's permit and that biosolids may no longer be applied under that permit. A letter template is attached in the Appendices.

However, there may still be cases where a landowner agreement submitted with a permit application is found to include land that is already authorized for the land application of biosolids under an existing permit, but no termination notice is submitted. In this situation, the permit writer will send notice to the permit applicant or permittee requesting to add land, notifying him that there is an existing contract on the fields and therefore the landowner agreement submitted with the application is not valid. In order for the land to be included in or added to the permit, DEQ must receive: 1) a copy of a letter sent from the landowner to the original permittee terminating the existing landowner agreement; and 2) a new Land Application Agreement form with a date that is later than the date of the termination letter. A letter template is attached in the Appendices. The permit writer will also send a copy of this notice to the land applier that holds the original agreement.

Once a termination notice is received, the land will not be authorized to receive biosolids under the original permit as long as that permittee does not hold a valid landowner agreement with that landowner. However, the fields will not be struck from Attachment A in the permit, because they have been through all the required notification procedures and were in full compliance at the time of permitting. In the event that the landowner chooses to contract with the original contractor in the future, a permit modification will not be required to reauthorize the land for land application.

Landowner agreements and availability of land to a permittee will be tracked in the DEQ Biosolids Access Database and the DEQ Biosolids GIS Database. As more shape files are entered into the GIS database and DEQ control numbers are assigned, the permit writer or inspector entering a field into the system will more easily recognize sites that are already permitted.

Water Guidance Memo No. 12-2003

Landowner Agreements for Biosolids Land Application – Interim Procedures

<u>Owner Type</u>	<u>Sale or Transfer Conditions*</u>	<u>Status of Landowner Agreement</u>	<u>Requirements**</u>
Sole owner	All Property sold or transferred; Or Landowner dies, property transferred to heir(s) or estate	<ul style="list-style-type: none"> ▪ Existing landowner agreement is no longer valid; ▪ Biosolids may not be land applied 	<ol style="list-style-type: none"> 1. If property is sold or transferred within 38 months of biosolids land application, the original landowner must notify new landowner of site access restrictions. 2. If new landowner wishes to receive biosolids, new Land Application Agreement Form pages 1 & 2 must be completed and signed by each landowner.*
Sole owner	Portion of the property is sold or transferred, may be the result of divorce, sale, etc	<ul style="list-style-type: none"> ▪ Existing landowner agreement remains in effect for the property not sold or transferred; ▪ The parcel(s) that has been sold or transferred is no longer eligible to receive biosolids under this agreement. 	<ol style="list-style-type: none"> 1. If property is sold or transferred within 38 months of biosolids land application, the original landowner must notify new landowner of site access restrictions. 2. Permit holder to update the existing landowner agreement: line through and date parcels that have been sold. Include documentation, such as signed letter from landowner stating he no longer owns certain parcels. 3. If new landowner wishes to receive biosolids, new Land Application Agreement Form pages 1 & 2 must be completed and signed.*
Sole owner	One or more names added to deed, perhaps as a result of marriage or including children on deed, etc.	<ul style="list-style-type: none"> ▪ Existing landowner agreement is no longer valid as is. ▪ Biosolids may not be land applied 	<ol style="list-style-type: none"> 1. If new landowner does not agree to accept biosolids: <ol style="list-style-type: none"> a. Biosolids may not be applied; b. The original landowner must inform new landowner(s) of site access restrictions if biosolids were land applied in the past 38 months. 2. If new landowner agrees to receive biosolids <ol style="list-style-type: none"> a. New Land Application Agreement Form pages 1 & 2 must be completed and signed; b. Permit holder must complete a Landowner Coordination Form
Multiple owners OR Entity	All Property sold to 3rd party OR All landowners die, property transferred to heir(s) or estate	<ul style="list-style-type: none"> ▪ Existing landowner agreement is no longer valid. ▪ Biosolids may not be land applied 	<ol style="list-style-type: none"> 1. If property is sold or transferred within 38 months of biosolids land application, the original landowner must notify new landowner of site access restrictions. 2. If new landowner(s) wishes to receive biosolids, new Land Application Agreement Form pages 1 & 2 must be completed and signed by each landowner.*

Water Guidance Memo No. 12-2003

Landowner Agreements for Biosolids Land Application – Interim Procedures

<u>Owner Type</u>	<u>Sale or Transfer Conditions*</u>	<u>Status of Landowner Agreement</u>	<u>Requirements**</u>
Multiple owners	One landowner sells his interest to a 3 rd party OR One landowner dies, his interest in the property is transferred to heir(s) or estate OR A new person buys in on the property	<ul style="list-style-type: none"> ▪ Existing landowner agreement is no longer valid as is ▪ Biosolids may not be land applied 	<ol style="list-style-type: none"> 1. If new landowner(s) does not agree to accept biosolids: <ol style="list-style-type: none"> a. Biosolids may not be applied; b. The original landowner must inform new landowner(s) of site access restrictions if biosolids were land applied in the past 38 months. 2. If new landowner agrees to receive biosolids <ol style="list-style-type: none"> a. New Land Application Agreement Form pages 1 & 2 must be completed and signed; b. Permit holder must update the Landowner Coordination Form
Multiple owners	One landowner sells his interest to one or all of the existing co-owners OR If one owner dies and bequeaths his interest to existing co-owner(s)	<ul style="list-style-type: none"> ▪ Existing landowner agreement remains in effect 	<ol style="list-style-type: none"> 1. Include documentation with the landowner agreement that the original co-owner sold the property or passed away. 2. Permit holder must update Landowner Coordination form to reflect loss of an owner
Multiple owners or Entity	Portion of the property sold to 3 rd party, could be direct sale or transfer due to divorce, etc.	<ul style="list-style-type: none"> ▪ Existing landowner agreement remains in effect for the property not sold or transferred. ▪ The property that has been sold is no longer eligible to receive biosolids under this agreement. 	<ol style="list-style-type: none"> 1. If property is sold or transferred within 38 months of biosolids land application, the original landowner must notify new landowner of site access restrictions 2. Permit holder must update the Landowner Coordination Form and include documentation with the existing Landowner Agreement identifying the land that has been sold. 3. If new landowner wishes to receive biosolids on the separated parcel, a new Land Application Agreement must be completed and signed.*

* The term “property” as used in this table refers to land that has been authorized to receive biosolids by a VPDES or VPA permit.

**Anytime a property is owned by two or more people, the permit holder must use a Landowner Coordination Form. It is to be used as a cover page to assemble all of the landowner agreements for property under common ownership.

APPENDICES

Virginia Pollution Abatement Permit Application Form Part D-VI (rev 7/03/12/2012):
Land Application Agreement - Biosolids And Industrial Residuals
Landowner Coordination Form
Supplement A: Additional Land Application Sites

Virginia Pollutant Discharge Elimination System Permit Application Form Part C (rev 7/03/12/2012):
Land Application Agreement - Biosolids
Landowner Coordination Form
Supplement A: Additional Land Application Sites

Part D-VI Biosolids Application Agreement (rev 4/2009) - Obsolete

Notice to Existing Permittee: Landowner Agreement No Longer Valid

Notice to Permit Applicant: Landowner Agreement Not Valid

**VIRGINIA POLLUTION ABATEMENT PERMIT APPLICATION
FORM D: MUNICIPAL EFFLUENT AND BIOSOLIDS**

PART D-VI: LAND APPLICATION AGREEMENT - BIOSOLIDS AND INDUSTRIAL RESIDUALS

A. This land application agreement is made on _____ between _____ referred to here as "Landowner", and _____, referred to here as the "Permittee". This agreement remains in effect until it is terminated in writing by either party or, with respect to those parcels that are retained by the Landowner in the event of a sale of one or more parcels, until ownership of all parcels changes. If ownership of individual parcels identified in this agreement changes, those parcels for which ownership has changed will no longer be authorized to receive biosolids or industrial residuals under this agreement.

Landowner:

The Landowner is the owner of record of the real property located in _____, Virginia, which includes the agricultural, silvicultural or reclamation sites identified below in Table 1 and identified on the tax map(s) attached as Exhibit A.

Table 1.: Parcels authorized to receive biosolids, water treatment residuals or other industrial sludges			
<u>Tax Parcel ID</u>	<u>Tax Parcel ID</u>	<u>Tax Parcel ID</u>	<u>Tax Parcel ID</u>

Additional parcels containing Land Application Sites are identified on Supplement A (check if applicable)

Check one: The Landowner is the sole owner of the properties identified herein.
 The Landowner is one of multiple owners of the properties identified herein.

In the event that the Landowner sells or transfers all or part of the property to which biosolids have been applied within 38 months of the latest date of biosolids application, the Landowner shall:

1. Notify the purchaser or transferee of the applicable public access and crop management restrictions no later than the date of the property transfer; and
2. Notify the Permittee of the sale within two weeks following property transfer.

The Landowner has no other agreements for land application on the fields identified herein. The Landowner will notify the Permittee immediately if conditions change such that the fields are no longer available to the Permittee for application or any part of this agreement becomes invalid or the information herein contained becomes incorrect.

The Landowner hereby grants permission to the Permittee to land apply residuals as specified below, on the agricultural sites identified above and in Exhibit A. The Landowner also grants permission for DEQ staff to conduct inspections on the land identified above, before, during or after land application of permitted residuals for the purpose of determining compliance with regulatory requirements applicable to such application.

<u>Class B biosolids</u>	<u>Water treatment residuals</u>	<u>Food processing waste</u>	<u>Other industrial sludges</u>
<input type="checkbox"/> Yes <input type="checkbox"/> No			

Landowner – Printed Name, Title	Signature	Mailing Address
---------------------------------	-----------	-----------------

Permittee:

_____, the Permittee, agrees to apply biosolids and/or industrial residuals on the Landowner's land in the manner authorized by the VPA Permit Regulation and in amounts not to exceed the rates identified in the nutrient management plan prepared for each land application field by a person certified in accordance with [§10.1-104.2 of the Code of Virginia](#).

The Permittee agrees to notify the Landowner or the Landowner's designee of the proposed schedule for land application and specifically prior to any particular application to the Landowner's land. Notice shall include the source of residuals to be applied.

I reviewed the document(s) assigning signatory authority to the person signing for landowner above. I will make a copy of this document(s) available to DEQ for review upon request. (Do not check this box if the landowner signs this agreement)

Permittee – Authorized Representative Printed Name	Signature	Mailing Address
---	-----------	-----------------

VIRGINIA POLLUTION ABATEMENT PERMIT APPLICATION: PART D-VI LAND APPLICATION AGREEMENT

Permittee: _____ **County or City:** _____

Landowner: _____

Landowner Site Management Requirements:

I, the Landowner, I have received a DEQ Biosolids Fact Sheet that includes information regarding regulations governing the land application of biosolids, the components of biosolids and proper handling and land application of biosolids.

I have also been expressly advised by the Permittee that the site management requirements and site access restrictions identified below must be complied with after biosolids have been applied on my property in order to protect public health, and that I am responsible for the implementation of these practices.

I agree to implement the following site management practices at each site under my ownership following the land application of biosolids at the site:

1. Notification Signs: I will not remove any signs posted by the Permittee for the purpose of identifying my field as a biosolids land application site, unless requested by the Permittee, until at least 30 days after land application at that site is completed.
2. Public Access
 - a. Public access to land with a high potential for public exposure shall be restricted for at least one year following any application of biosolids.
 - b. Public access to land with a low potential for public exposure shall be restricted for at least 30 days following any application of biosolids. No biosolids amended soil shall be excavated or removed from the site during this same period of time unless adequate provisions are made to prevent public exposure to soil, dusts or aerosols;
 - c. Turf grown on land where biosolids are applied shall not be harvested for one year after application of biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by DEQ.
3. Crop Restrictions:
 - a. Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after the application of biosolids.
 - b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after the application of biosolids when the biosolids remain on the land surface for a time period of four (4) or more months prior to incorporation into the soil,
 - c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months when the biosolids remain on the land surface for a time period of less than four (4) months prior to incorporation.
 - d. Other food crops and fiber crops shall not be harvested for 30 days after the application of biosolids;
 - e. Feed crops shall not be harvested for 30 days after the application of biosolids (60 days if fed to lactating dairy animals).
4. Livestock Access Restrictions:

Following biosolids application to pasture or hayland sites:

 - a. Meat producing livestock shall not be grazed for 30 days,
 - b. Lactating dairy animals shall not be grazed for a minimum of 60 days.
 - c. Other animals shall be restricted from grazing for 30 days;
5. Supplemental commercial fertilizer or manure applications will be coordinated with the biosolids and industrial residuals applications such that the total crop needs for nutrients are not exceeded as identified in the nutrient management plan developed by a person certified in accordance with §10.1-104.2 of the Code of Virginia;
6. Tobacco, because it has been shown to accumulate cadmium, should not be grown on the Landowner's land for three years following the application of biosolids or industrial residuals which bear cadmium equal to or exceeding 0.45 pounds/acre (0.5 kilograms/hectare).

Landowner's Signature

Date

**VPDES SEWAGE SLUDGE PERMIT APPLICATION FORM
SECTION C: LAND APPLICATION OF BULK BIOSOLIDS**

LAND APPLICATION AGREEMENT - BIOSOLIDS

Permittee: _____ County or City: _____

Landowner: _____

Landowner Site Management Requirements:

I, the Landowner, I have received a DEQ Biosolids Fact Sheet that includes information regarding regulations governing the land application of biosolids, the components of biosolids and proper handling and land application of biosolids.

I have also been expressly advised by the Permittee that the site management requirements and site access restrictions identified below must be complied with after biosolids have been applied on my property in order to protect public health, and that I am responsible for the implementation of these practices.

I agree to implement the following site management practices at each site under my ownership following the land application of biosolids at the site:

1. Notification Signs: I will not remove any signs posted by the Permittee for the purpose of identifying my field as a biosolids land application site, unless requested by the Permittee, until at least 30 days after land application at that site is completed.
2. Public Access
 - a. Public access to land with a high potential for public exposure shall be restricted for at least one year following any application of biosolids.
 - b. Public access to land with a low potential for public exposure shall be restricted for at least 30 days following any application of biosolids. No biosolids amended soil shall be excavated or removed from the site during this same period of time unless adequate provisions are made to prevent public exposure to soil, dusts or aerosols;
 - c. Turf grown on land where biosolids are applied shall not be harvested for one year after application of biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by DEQ.
3. Crop Restrictions:
 - a. Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after the application of biosolids.
 - b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after the application of biosolids when the biosolids remain on the land surface for a time period of four (4) or more months prior to incorporation into the soil,
 - c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months when the biosolids remain on the land surface for a time period of less than four (4) months prior to incorporation.
 - d. Other food crops and fiber crops shall not be harvested for 30 days after the application of biosolids;
 - e. Feed crops shall not be harvested for 30 days after the application of biosolids (60 days if fed to lactating dairy animals).
4. Livestock Access Restrictions:

Following biosolids application to pasture or hayland sites:

 - a. Meat producing livestock shall not be grazed for 30 days,
 - b. Lactating dairy animals shall not be grazed for a minimum of 60 days.
 - c. Other animals shall be restricted from grazing for 30 days;
5. Supplemental commercial fertilizer or manure applications will be coordinated with the biosolids and industrial residuals applications such that the total crop needs for nutrients are not exceeded as identified in the nutrient management plan developed by a person certified in accordance with §10.1-104.2 of the Code of Virginia;
6. Tobacco, because it has been shown to accumulate cadmium, should not be grown on the Landowner's land for three years following the application of biosolids or industrial residuals which bear cadmium equal to or exceeding 0.45 pounds/acre (0.5 kilograms/hectare).

Landowner's Signature

Date

**VIRGINIA POLLUTION ABATEMENT APPLICATION
FORM D
MUNICIPAL EFFLUENT AND BIOSOLIDS**

PART D-VI BIOSOLIDS APPLICATION AGREEMENT

This biosolids application agreement is made on _____ between _____, referred to here as "landowner", and _____, referred to here as the "Permittee". Landowner is the owner of agricultural land shown on the map attached as Exhibit A and designated there as _____ ("landowner's land"). Permittee agrees to apply and landowner agrees to comply with certain permit requirements following application of biosolids on landowner's land in amounts and in a manner authorized by (VPA) (VPDES) permit number _____ which is held by the Permittee.

Landowner acknowledges that the appropriate application of biosolids will be beneficial in providing fertilizer and soil conditioning to the property and consents to the application of biosolids on his property. Moreover, landowner acknowledges having been expressly advised that, in order to protect public health:

1. Public access to landowner's land upon which biosolids have been applied should be controlled for at least 30 days following any application of biosolids and no biosolids amended soil shall be excavated or removed from the site during this same period of time unless adequate provisions are made to prevent public exposure to soil, dusts or aerosols;
2. Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after the application of biosolids. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after the application of biosolids when the biosolids remain on the land surface for a time period of four (4) or more months prior to incorporation into the soil, or 38 months when the biosolids remain on the land surface for a time period of less than four (4) months prior to incorporation. Other food crops, feed crops and fiber crops shall not be harvested for 30 days after the application of biosolids;
3. Following biosolids application to pasture or hayland sites, meat producing livestock should not be grazed or fed chopped foliage for 30 days and lactating dairy animals should be similarly restricted for a minimum of 60 days. Other animals should be restricted from grazing for 30 days;
4. Supplemental commercial fertilizer or manure applications should be coordinated with the biosolids applications such that the total crop needs for nutrients are not exceeded as identified in the nutrient management plan developed by a person certified in accordance with §10.1-104.2 of the Code of Virginia to be supplied to the landowner by the permittee at the time of application of biosolids to a specific permitted site;
5. Tobacco, because it has been shown to accumulate cadmium, should not be grown on landowner's land for three years following the application of biosolids borne cadmium equal to or exceeding 0.45 pounds/acre (0.5 kilograms/hectare).
6. Turf grown on land where biosolids are applied shall not be harvested for one year after application of biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

Permittee agrees to notify landowner or landowner designee of the proposed schedule for biosolids application and specifically prior to any particular application to landowner's land. This agreement may be terminated by either party upon written notice to the address specified below.

Landowner:

Permittee:

Mailing Address:

Mailing Address:

Letter to Permittee – LOA No Longer Valid

[Regional Letterhead]

[Date]

[Permittee's Name]

[Address]

RE: Virginia Pollution Abatement (VPA) Permit – VPA0XXXX
[Company Name - County]

Dear (Permittee's Name):

We have received a permit application from (Permit Applicant Name) which includes land owned by (Landowner's name) that has previously been authorized to receive biosolids under a VPA permit that you hold as referenced above. Attached to the permit application was a copy of the termination notice dated (date of notice) that Mr./Ms. (Landowner's last name) provided to you. In accordance with 9-VAC-25-32-530.A, to provide *continued availability of the land and protection from improper concurrent use*, only one landowner agreement may be held for any field, therefore the landowner agreement that you hold with (Mr./Ms. Landowner's last name) is no longer valid and the properties identified below may no longer receive biosolids under VPA Permit number VPA0XXXX.

The fields no longer authorized to receive biosolids are located in tax parcel(s) (tax parcel #'s). Individual fields were identified in the permit application as follows:

NOTE to P.W.: If all fields owned by the owner are affected, and the list is long, attach the entire list from the site booklet and tax parcels from the landowner agreement. OR you may say all fields in Tax Parcel XZY, etc.

If I may be of further assistance, please contact me at (XXX) XXX-XXXX or [e-mail address]@deq.virginia.gov.

Sincerely,

[Permit Writer]

Letter to Permit Applicant – LOA Not Valid

[Regional Letterhead]

[Date]

[Applicant's Name]
[Address]

RE: Virginia Pollution Abatement (VPA) Permit Application
[Company Name - County]

Dear Applicant:

In reviewing the site booklets and landowner agreements submitted with your permit application, it was found that (all/some) of the fields identified in your permit application and on associated Land Application Agreement Forms(s) are currently covered by an agreement with another land applier and authorized to receive biosolids under an existing VPA (BUR) permit. In accordance with 9-VAC-25-32-530.A, to provide *continued availability of the land and protection from improper concurrent use*, only one landowner agreement may be held for any field, therefore the landowner agreement you hold with Mr./Ms. (Landowner’s last name) is not valid.

The fields affected are located in tax parcel(s) (tax parcel #'s). Individual fields were identified in the permit application as follows:

NOTE to P.W.: If all fields owned by the owner are affected, and the list is long, attach the entire list from the site booklet and tax parcels from the landowner agreement. OR you may say all fields in Tax Parcel XZY, etc.

In order to include these fields in the permit application the existing landowner agreement must be terminated in writing by the landowner and a new Land Application Agreement Form signed after the termination. If you wish to include these fields in your permit application, please submit a new Land Application Agreement Form(s) and copy of the termination notice the landowner(s) sent to the existing permit holder. The permit application will not be considered complete until these documents are submitted or you notify me that you do not wish to include these fields.

If I may be of further assistance, please contact me at (XXX) XXX-XXXX or [e-mail address]@deq.virginia.gov.

Sincerely,

[Permit Writer]

cc: land applier holding existing agreement