

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER DIVISION
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Subject: Water Guidance Memo No. 11-2001
Review and Coordination with other State Agencies for Threatened and Endangered
Species for Biosolids Permitting

To: Regional Directors

From: Ellen Gilinsky, Ph.D., Director, Water Division



Date: January 25, 2011

Copies: Deputy Regional Directors, Regional and Central Office Biosolids Staff, James
Golden, DCR, VDH

Summary: This guidance addresses DEQ's procedures for screening proposed biosolids land application sites for threatened and endangered species and the subsequent coordination with the Department of Game and Inland Fisheries (DGIF) and the Department of Conservation and Recreation (DCR) when threatened and endangered (T&E) species have the potential to be present in the vicinity of a proposed biosolids land application site.

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.

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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 (VPDES) Permit Regulation, 9VAC25-31-420 through 720.

Both the VPA and VPDES Permit Regulations require the protection of T&E Species and their critical habitats:

9VAC25-32-530 states that agricultural use of sludge in accordance with this regulation is not to result in harm to threatened or endangered species of plant, fish, or wildlife, nor result in the destruction or adverse modification of the critical habitat of a threatened or endangered species. Site-specific information shall be provided as part of the sludge management or management practices plan.

9VAC25-31-550 states that bulk sewage sludge shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC § 1533) or if the land application is likely to adversely affect its designated critical habitat.

II. Background

The Virginia Department of Game and Inland Fisheries (DGIF) exercises full law enforcement and regulatory jurisdiction over the Commonwealth's fish and wildlife resources, including state or federally-listed threatened or endangered species (T&E species), but excluding listed insects. The Virginia Department of Agriculture and Consumer Services (VDACS) has regulatory authority over plants and insects that are state listed as T&E species. Under a memorandum of agreement established between VDACS and the Department of Conservation and Recreation - Division of Natural Heritage (DCR-DNH), DCR-DNH represents VDACS in comments regarding potential impacts on state-listed plant and insect species. DCR-DNH and DGIF are the state agencies that maintain databases which include the location and known ranges of state and federally-listed threatened and endangered species and other wildlife resources. The listing of threatened and endangered plants and insects and associated surveys are maintained through the DCR-DNH. DCR-DNH maintains the Natural Heritage Data Explorer database (NHDE), which includes the Natural Heritage Resources most likely to be lost without conservation action in the near future. Natural Heritage Resources are defined in the Virginia Natural Area Preserves Act of 1989 (Section 10.1-209 through 217, Code of Virginia), as the habitat of rare, threatened, and endangered plant and animal species; exemplary natural communities, habitats, and ecosystems; and other natural features of the Commonwealth. All species that are officially protected by federal or state endangered species acts are included in the inventory of Natural Heritage Resources in the database. DGIF maintains a searchable database of fish and wildlife that are threatened, endangered or of special concern – the Virginia Fish and Wildlife Information Service (VAFWIS).

The land application of biosolids most often occurs on sites which have already been disturbed and affected by agricultural practices. Therefore the activity of applying fertilizer to the field, whether it is commercial fertilizer, manure or biosolids, is usually an existing practice at the site. Furthermore, the land application of biosolids is permitted as a no discharge activity, whether it is permitted under a VPA permit or a VPDES permit, with the land application activity confined to the actual field where the biosolids are applied. In order to reduce the risk of biosolids runoff entering adjacent surface or ground waters, the regulation requires buffer zones in which biosolids can not be land applied, in and around fields where surface water and other features such as drainage ditches or sinkholes are present.

Based on the nature of biosolids land application and in conformance with the statutory mandate to protect threatened and endangered species from impact, DEQ in consultation with DCR and DGIF has established these procedures for screening and coordination related to T&E species for biosolids VPA and VPDES permits. In order to prevent the land application of biosolids from adversely impacting state and federally-listed threatened and endangered species, DEQ will conduct screenings for T&E species at proposed land application sites according to the procedures outlined in this guidance.

III. Implementation of Screening and Coordination Procedures

A. Screening for Threatened and Endangered Species and Critical Habitats

1. DEQ staff will screen land application sites for the presence of state or federally- listed T&E species, and other resources, when the proposed land application site is:
 - a. a silvicultural site or;
 - b. a site that has been out of agricultural production for five or more years.This screening will be conducted before holding the public meeting on the permit application or notifying adjacent residents.
2. DEQ will screen those proposed land application sites for the presence of state or federally-listed T&E species, and/or associated resources, using the online DGIF Virginia Fish and Wildlife Information Service (VAFWIS - <http://vafwis.org/fwis/>) and the Virginia Department of Conservation and Recreation, Division of Natural Heritage, Natural Heritage Data Explorer (NHDE - <http://vanaturalheritageexplorer.org/>). DEQ will screen applications using database queries encompassing the acreage of the land application site itself.
3. If the database searches indicate the presence or likelihood of state or federally-listed threatened or endangered species, or other resources, DEQ will coordinate with DGIF and/or DCR for information regarding the potential impacts to these resources.
 - a. DGIF: DEQ staff will coordinate with DGIF on only those species and other resources listed in Table 1 if found in the DGIF VAFWIS database search results. This coordination will initially be submitted to DGIF on the attached form entitled “DEQ Permits for Biosolids Land Application - Threatened and Endangered Species Coordination”.

In the notification, DEQ will provide information including:

- permit applicant name and contact information;
- application site location information including latitude and longitude for:
 - the project centroid, or
 - each field proposed for application (if the fields are not contiguous);
- any streams within or adjacent to the field, if present;
- a topographic map identifying site boundaries;
- a description of the land use at the proposed application site; and
- the results of the database search.

b. DCR: Coordination with DCR will be initiated by submitting the site information online through the NHDE.

Table 1 Threatened and Endangered species and other resources that require coordination with DGIF	
Listed* Species:	
ST Mabee’s salamander SE eastern tiger salamander FTSE bog turtle ST wood turtle ST barking treefrog Listed mollusks Listed fishes FESE Lee County Cave isopod FTST Madison Cave isopod ST Madison Cave amphipod Listed birds	
Resources:	
Anadromous Fish Use Areas Trout Streams Threatened and Endangered Species Waters DGIF Hatchery, if located downstream of site	
* FE = federal endangered, FT = federal threatened, SE = state endangered, ST = state threatened	

B. DGIF and DCR Review of Screening Results

1. DGIF and DCR will have 30 days for review in which to provide written comments via letter or email on a VPA or VPDES individual biosolids permit application. If DEQ staff does not hear from DGIF/DCR by day 20 they should contact them by email to remind them of the deadline for comment.

2. DGIF and DCR should provide specific comments related to the potential impacts to threatened or endangered species or other resources that could occur as a direct result of the proposed land application of biosolids.
3. DGIF and DCR may also provide specific comments related to the overall potential impacts to Species of Greatest Conservation Need (Tiers I-IV) as identified in the DGIF Wildlife Action Plan; Natural Heritage Resources as identified by the DCR Natural Heritage Division; or other species or natural communities of concern to these agencies.
4. DGIF and DCR should be specific with their comments in terms of their requests for species surveys, recommendations for reduction of impacts, or suggestions for mitigating impacts. Comments should be provided in a manner that clearly distinguishes between the following:
 - **No objection to the activities proposed in the permit application.**
 - **Surveys required to confirm presence of T&E species or habitat related to the land application of biosolids.**
 - **Recommendations to conduct surveys for those species of concern that are not listed T&E within the proposed land application site.**
 - **Recommendation for denial of a biosolids land application site that will have a significant impact on state or federally-listed T&E species and/or associated resources.** In the event that a proposed land application site is deemed unacceptable to the DGIF and/or DCR as a result of potential impacts to state or federally-listed T&E species and/or associated resources, the comments shall clearly state the agency's opposition to the project and specifically express recommendations for denial. Each agency should be prepared to support their position at a meeting(s) with the applicant or before the SWCB if necessary.
 - **Additional Recommendations.** In the event that DGIF and/or DCR believe that land application of biosolids at the proposed site may result in significant impact to state or federally-listed T&E species and/or associated resources, but that there are measures available that would appropriately mitigate for those impacts, then DGIF and DCR is expected to make recommendations for such mitigative measures for DEQ's consideration.

C. DEQ Response to Comments

During the decision making process to issue or deny the permit, DEQ staff shall give full consideration to the written recommendations of DGIF and/or DCR regarding the potential impacts to threatened or endangered species and other resources that could occur as a direct result of the proposed land application of biosolids. If written comments are not submitted by DGIF and/or DCR by the end of the 30 day review period, then DEQ will continue processing the permit application.

DEQ will respond by email to the comments provided by DGIF and/or DCR with the actions being undertaken, as well as reflect the comments and response in the permit fact sheet. DEQ staff will coordinate survey implementations or other information development with the appropriate agencies during the processing of the permit. The final determination to issue or deny any VPA or VPDES permit to authorize biosolids land application, including final determination of specific permit conditions, will be made by DEQ. The following guidelines will apply in most cases when acting on and responding to DGIF's and DCR's recommendations:

- **DGIF and/or DCR have no objection to the activities proposed in the permit application.**
 - No action or response is necessary
- **Surveys required to confirm presence of T&E species or habitat related to the land application of biosolids.**
 - If a survey is conducted and shows terrestrial T&E species are present within the proposed biosolids land application site, DEQ will coordinate with the permit applicant and DGIF/DCR to discuss changes needed to the project to mitigate for their presence and any potential impacts.
 - If threatened or endangered species or critical habitat are present within the proposed land application site, a buffer may be established around the resource or the site may be excluded from the permit.
- **Recommendations to conduct surveys for those species of concern that are not listed T&E within the proposed land application site.**
 - These recommendations will be provided to the applicant as suggestions only as there is no regulating requirement to address as part of the VPA or VPDES permit process.
- **Recommendation for denial of a biosolids land application site that will adversely impact state or federally-listed T&E species and/or associated resources.**
 - If threatened or endangered species or critical habitat are present within the proposed land application site, and biosolids land application is likely to adversely affect a threatened or endangered species, the site will be excluded from the permit.
- **Additional Recommendations.**
 - If DGIF and/or DCR make comments regarding potential impacts to Species of Greatest Conservation Need (Tiers I-IV) as identified in the DGIF Wildlife Action Plan; Natural Heritage Resources as identified by the DCR Natural Heritage Division; or other species or natural communities of concern to these agencies, DEQ will determine whether these comments are related to the land

application of biosolids and its potential impact, and whether further avoidance, minimization, or compensation is appropriate. If the comments regarding these resources do not pertain to the land application of biosolids and its potential impact, then DEQ may determine to not require any further action by the applicant based on those comments.

- Recommendations not based on regulatory requirements will be provided to the applicant as suggestions only.
- Biosolids permits are established as permitting no discharge to surface waters, and existing buffer requirements are established to maintain that condition. Land application buffers to surface waters need not be extended unless there is an accompanying site-specific condition that would increase the risk of discharge to surface waters (e.g. slope).

D. FOIA Exempt Location Information

There is an exemption to disclosure under FOIA at § 2.2-3705.7(10) for “records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information disclosure of the information would jeopardize the continued existence or integrity of the resource.” This exemption is relevant to any document that contains information regarding site specific locations of rare, threatened, or otherwise imperiled plant and animal species, natural communities, and/or caves.

When the files to be provided in response to a FOIA request reveal site specific locations of rare, threatened, or otherwise imperiled plant and animal species, natural communities, and/or caves DEQ staff will invoke the FOIA exemption, unless staff is aware that the information is already in the public domain. The exemption is invoked by redacting the specific information from the document. Agency procedures for identifying records that may be withheld and redacting that information is provided in [GM09-2012 - Applying the Freedom of Information Act Exemption of Location Information to DEQ Water Division Permit Files](#).

 <p>DEQ VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY</p>	<p>DEQ PERMITS for BIOSOLIDS LAND APPLICATION</p> <p>Threatened and Endangered Species Coordination</p>
<p>To:</p> <p><input type="checkbox"/> DGIF, Environmental Review Coordinator</p> <p><input type="checkbox"/> DCR</p> <p><input type="checkbox"/> USFWS, T/E Review Coordinator</p> <p>From:</p>	<p>Date Sent:</p> <p>Permit Number:</p>
<p>Permit Applicant Name:</p> <p>Contact:</p> <p>Phone:</p> <p>Address:</p>	<p>Application Site Location: (Attach site map)</p> <p>USGS Quadrangle:</p> <p>Latitude/Longitude:</p> <p>Stream within or adjacent to proposed site:</p>
<p>Description of Land Use:</p> <p><input type="checkbox"/> Pasture</p> <p><input type="checkbox"/> Row Crop</p> <p><input type="checkbox"/> Silviculture</p> <p><input type="checkbox"/> Other (please describe below)</p>	<p>Species Search Results (or attach database report and map):</p>

DGIF email: projectreview@dgif.virginia.gov

USF&W fax: (804)693-9032

DCR: If Natural Heritage Data Explorer (NHDE) has the needed information DCR does not need this form. If you have additional information you wish to add, you may do so in the comments field on the NHDE form. DCR will contact you directly if they need more information.