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

DRAFT MEETING NOTES
TAC MEETING #9 – TUESDAY, SEPTEMBER 22, 2009
VIRGINIA FIRE PROGRAM OFFICES
GLEN ALLEN

Meeting Attendees

TAC Members	*Interested Public*	*DEQ Staff*
Karl Berger	Todd Benson - PEC	Bryan Cauthorn
Rhonda L. Bowen	J.B. Crenshaw – Recyc Systems	James Golden
Trey Davis – Alternate for Wilmer Stoneman	Robert Crockett - ADVANTUS	Seth Mullins
Greg Evanylo	George Floyd – Alexandria Sani. Authority	Angela Neilan
Katie Kyger Frazier	Jack Frye - DCR	Bill Norris
Donald L. Greene	Roger Hatcher – Allendale Farms	Charlie Swanson
Timothy G. Hayes	Harrison Moody – Recyc Systems	Christina Wood
Larry Land	Sharon Nicklas – Alternate for Rhonda Bowen	Neil Zahradka
Darrell Marshall - VDACS	Lisa Ochsenhirt – AquaLaw /VAMWA	
Jacob Powell - DCR	Mary Powell – Nutri-Blend	
Ray York	Hunter Richardson - SYNAGRO	
	Tim Sexton - DCR	
	Susan Trumbo – Recyc Systems	

NOTE: The following Biosolids TAC Member was absent from the meeting: Diane Helentjaris – VDH; Jim Burns – VDH; S. Rutherfoord Rose; Wilmer Stoneman

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

Angela Neilan, DEQ Community Involvement Specialist and Meeting Facilitator, welcomed the members of the Biosolids TAC and members of the Interested Public to the 9th Meeting of the Technical Advisory Committee and noted that there were three sign-in sheets for today's meeting. One was being circulated among the TAC members for their initials and one was being circulated around the room for identification of those in attendance. In addition, a third sheet was available for anyone who wants to speak during the public comment period at the end of the meeting. 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.

Bill Norris, the regulation writer for this regulatory action and note taker for the meeting, asked for any comments or edits from the meeting notes from the August 20, 2009 meeting of the TAC. It was noted that the language related to land owner agreements was not recorded as discussed during the meeting and needed to ne changed to eliminate the requirement for the submittal of land owner agreements with each application. It was also noted that there were a number of spelling errors that need to be corrected. In addition, the TAC noted that the definition sections need to be consistent and should not include terms that are not used in the regulations.

ACTION ITEM: Staff will review the notes and make the needed changes to this section of the meeting notes. Staff will also check spelling throughout the regulations and will check the definitions sections for consistence and for use in the regulations.

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~~ the application of biosolids on his property and certify that no concurrent agreements are in effect 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.

3. New or revised landowner agreements shall be submitted to the department if new land is being added to the permit or if there have been changes in ownership of land included in a permit reissuance request.

C. ~~3.~~ The permit holder shall ensure that the land owner agreement is still valid at the time of land application ~~at the time of application~~.

Neil Zahradka noted that staff would like for this to be the last meeting of the TAC if possible, so that the regulatory timetable for submission of the draft proposed regulations to the SWCB at their meeting in December could be met. He informed the TAC that the department was committed to bring the TAC back together following the public comment period on the draft proposed regulations so that the TAC would have an opportunity into the final version of the regulations that is developed following the consideration of the public comments.

Bill Norris requested that the TAC members provide any comments on changes to the current and previous sections of the draft regulations that are not covered during today's meeting be provided via email to him as soon as possible so that they can be considered during the drafting of the draft proposed regulations for the board.

The TAC inquired about the rational for changes that were made or not made to the regulations following TAC discussions. Staff noted that the required Town Hall document would contain a table

listing all of the proposed changes to the regulations as well as a brief summary of the reason that changes was made. In addition, the board memo that is also being prepared will go into greater detail regarding the major changes proposed to be made to the regulations.

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2) Facilitated Discussion - Permit Application: 9VAC25-32-60 & 9VAC25-31-100 (Neil Zahradka/Angela Neilan):

Neil Zahradka provided an overview of the permit application sections of the regulations. He noted the following proposed regulatory changes for TAC discussion:

- The VPA application information has been reorganized.
- Soil samples less than 3 years old must be submitted with the application.
- A Nutrient Management Plan, approved by DCR is required at the time of permit application for the following:
    - When site is part of a confined animal feeding operation;
    - For proposed applications > once every 3 years at > 50% annual agronomic rates;
    - Mined or disturbed land sites where application is proposed at > agronomic rates;
    - Fields where the soil test P is > 35% saturation
- Adding requirement to submit tax maps with permit application.
- Odor control plan requirements.

The TAC discussions on this topic included:

- If all the plans are required to be written by certified planners, why does there need to be an additional verification by DCR? This could result in a delay in timing of applications. It was suggested that this goes beyond DCR's authority and looks like "mission creep".
- If the purpose of the Certified Nutrient Management Planner training is to certify those who write the Nutrient Management Plans, why is this additional oversight required in some instances?
- What are the Mehlich I values used in 9VAC25-32-60 – Table 1. DCR staff responded that these values represented 35% saturation of soil. At these soil test levels, extended buffers may be necessary to reduce the risk of phosphorus loss.
- It was suggested that the DCR's Nutrient Management Standards and Criteria already provide a mechanism for extended buffers so that these instances would be covered in the NMP regardless of this proposed preapproval.
- DCR staff noted that up to a 20% saturation level that the soil test method can be used, but for saturations between 20% and 35% the Threshold method has to be used. Above 35% saturation, the Phosphorus index is used. There is a cutoff above 65%.
- DCR staff noted that for Confined Animal Operations (CAFOs) that the plans are usually reviewed and approved within a 7-day turn around cycle, so that there really is not a time frame issue. All plans for CAFOs have to be approved. DCR does not want to have to review all of the biosolids Nutrient Management Plans. They only want to review those plans were the phosphorus index and potential water quality impacts are of a concern.
- What does the turn-around time actually encompass? DCR staff noted that once the Nutrient Management Plan is submitted to DCR that it is usually reviewed and responded to within 3 to

7 days, assuming that there are no revisions required. The approvals are usually provided to the Nutrient Management Planner and/or the Permit Holder via email or letter. If there are revisions required the Nutrient Management Planner and/or the Permit Holder is notified immediately.

- How many Nutrient Management Plans have had an issue with Phosphorus levels? DCR staff noted that there had been several. It was noted that most of the sites that have fields that would require the use of the Phosphorus Index simply exclude those fields from the land application process.
- It was noted that DEQ, not DCR is the regulatory authority for this process and that it is not necessary to add another level of bureaucracy to the process.
- Which of the four conditions do the Certified Nutrient Management Planners not have the training to do? The first two conditions are addressed in statute and require pre-approval by DCR. Can understand the pre-approval of the third item, mined or disturbed land, but not sure why someone who is certified couldn't do the P-Index.
- DCR staff noted that what they were looking for was an additional level of review in those instances where phosphorus would have a potential for water quality impacts. They are not questioning the ability or the skills of the certified planners.
- It was noted that it was a given that the CAFO plans needed the pre-approval process since it is required by statute, but if the P-Index > 35% is already in the Standards and Criteria, why does there need to be additional review? The Standards and Criteria were developed to help protect water quality. What happens if the certified planner doesn't follow the Standards and Criteria? DCR staff noted that there were disciplinary actions identified in their regulations if a plan doesn't follow the Standards and Criteria.
- DCR staff noted that the pre-approval for these conditions was needed to make sure that mistakes are not made in these identified instances where there is a greater potential for impacts to water quality, since once a mistake is made it is too late. This is not outside the realm of what us already being done in the CAFO program. It would likely be a small number of sites that would fall under these conditions.
- It was suggested that the existing statute language was a compromise agreed to by the General Assembly and the affected community and the agencies involved, because DCR originally wanted Nutrient Management Plans for all land applications. This was a policy decision to limit the DCR pre-approval requirement to the first two items on the list (CAFOs & frequent applications at greater than agronomic rates).
- DCR staff noted that the last line of the statute provides for DCR pre-approval of Nutrient Management Plans for "other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters".
- It was noted that the "other sites" statutory criterion was added to address specific individual sites where there were specific water quality concerns; it was not intended to provide for another general category for review.
- It was suggested that the wording should be more general in nature, instead of being as specific as that being proposed.
- It was noted that sometimes the turn-around time has been greater than the suggested 7-day time frame. In fact it has been closer to 30 days for some CAFO plans.
- It was noted that the recommended additional review for mined or disturbed land sites where land application is proposed at greater than agronomic rates is not an issue and should be required. But, will these sites be routinely rejected? What conditions would be imposed? How would DCR make a decision on approval for these sites? On what basis would DCR allow the

application of biosolids at higher than agronomic rate?

- It was suggested that Staff should use the statutory language instead of the specific language currently proposed for the forth item in the list ("Sites where the soil test phosphorus levels exceed the values in 9VAC25-32-60 – Table 1"), with the possible addition of examples of specific criteria or conditions.
- It was suggested that "mined land reclamation" is really not "land application". You are basically going into a sterile situation not an agronomic one. Should eliminate "mined land reclamation" from the definition of "land application" and rely on a Memorandum of Agreement (MOA) between DEQ; DCR; and DMME as to how biosolids would be handled on those sites. Staff noted that based on legal interpretations that "mined land reclamation" cannot be exempted from the requirements to have a Nutrient Management Plan for the application of biosolids.

ACTION ITEM: Staff will review the MOA with DCR and DMME regarding the handling of mined land reclamation sites.

- It was suggested that staff should look at item number four to see if there were other site specific conditions other than high phosphorus saturation levels that potentially could have an impact on water quality and be included in the category for additional review.
- It was suggested that the use of agronomic rates for mined land reclamation does not make sense since it is not an agricultural site. Maybe some guidance from Virginia Tech might be useful.
- Is there a section in the DCR Standards and Criteria that addresses mined land reclamation? DCR staff responded that there was not and there is currently no DCR guidance on this topic.
- It was noted that in general when mined land reclamation is complete that there is a certain bond period during which all reclamations practices are completed. The use of applications of biosolids at higher than agronomic rates allows for the establishment of vegetation to occur at a faster rate than if agronomic rates were used and allows for the bond period to close. There is a short term tradeoff in potential releases to ground water. These practices are allowed in other states and have been allowed previously in Virginia. There is a balance that is necessary that allows for some form of nutrient loss while allowing the land to be restored quickly. There is usually an initial release of nutrients from the site but based on research there doesn't appear to be more releases after that.
- If there is nothing in the DCR Standards and Criteria regarding mined land reclamation, it would be better to stick with the existing 35 dry tons/acre. If there are reasons to go beyond that rate then get DCR to review the NMP. This could result in the use of biosolids for "mined land reclamation" not being allowed.
- Any application at greater than agronomic rates has the potential for water quality impacts.
- The 35 dry tons/acre limit was a guideline historically used in the VDH biosolids program and was part of a compromise between DMME; DCR and VDH. The 35 dry tons per acre is not currently part of the regulations.
- Anything outside of the rates allowed in the DCR Standards and Criteria would require DCR approval.
- DCR staff noted that they understood that there needed to be a balance between nutrient loss and erosion on mined land sites to allow for reclamation to occur.
- The 35 dry tons/acre limit is not a magic number. Thirty-five was a reasonable compromise that

was a balance between the value gained through accelerated reclamation of the site and the potential for water quality impacts. There have been some sites where applications up to 50 dry tons/acre have shown improvements in restoration. There have also been some soils where 35 dry tons/acre have provided sufficient restoration benefits. The policy has always been that there are trade-offs.

- It was suggested that there needed to be a meeting between the parties involved in mined land reclamation and biosolids applications (DEQ/DCR/DMME) to clarify how mined land reclamation should occur.

CONSENSUS/ACTION ITEM: DEQ needs to meet with representatives from DCR and DMME to identify and clarify what needs to be included in the regulations to allow for the use of biosolids in the mined land reclamation process. There needs to be an interagency agreement on handling of the reclamation of mined land sites.

- A suggestion was made that item number 4 regarding soil test phosphorus levels be deleted. It was suggested that instead of deleting number 4 that it should be rewritten as a place holder to recapture the statutory language and to put in specific conditions that might apply to specific sites. It needs to reflect what the code says.
- It was suggested that a revised item number 4 should address any issues that a Certified Nutrient Management Planner is not trained to cover. It should include site specific requirements that are not already addressed in the DCR Standards and Criteria.
- It needs to reflect the statutory language and legislative intent.

ACTION ITEM: Staff needs to revisit the wording of condition number 4 to evaluate the need to reword it to more closely reflect the statutory language and consider the inclusion of examples of site specific conditions that would require this additional oversight and review by DCR.

- It was suggested that these areas might provide an area for additional or focused training for the Certified Nutrient Management Planners to make sure that specific areas of concern are addressed.
- Staff noted that the current process for the DEQ site inspectors is to review the NMP on site at the time of inspection and if there are any problems noted to refer them to DCR.
- Does DCR review every NMP? DCR staff noted that under the CAFO program that all NMPs are reviewed but not all biosolids application NMPs are reviewed by the department. Only those for sites where a potential for water quality impacts are reviewed.

ACTION ITEM: The TAC requested that future mailings of regulation sections should be batched together and numbered sequentially to aid in the TAC review and the documents and to make it easier to refer and locate a specific regulation section being discussed. Staff will revise the distribution packets/batches accordingly.

- Staff noted that an additional requirement added to the regulations was that “the soil test results shall be less than three years old at the time of submittal”.
- It makes more sense for the soil test to be taken and submitted just prior to land application because of the time lag between application for a permit and the actual land application process.
- Staff noted that the NMP is written as close to the time of application as possible so that it can

be as accurate as possible. The Nutrient Management Planner would need to have the soil sample in order to write the plan. If a NMP is written based on a soil sample that is greater than three years old at the time of application, then the applicant would have to sample another time to make sure that the sample and conditions are current.

- It was suggested that the soil sample at the time of application for a permit really doesn't mean a lot. It is the sample taken right before application of the biosolids at the site that is the important one. If the sample is not taken until just prior to biosolids application, the onus of making a determination whether the field is in compliance with the requirements and no additional review or pre-approval of the field by DCR is required falls on the applicant.

OPEN CHAIR: Karl Berger invited an applicator to the Open Chair: Susan Trumbo. Recyc Systems: She noted that there have been instances where it has taken more than 18 months to get a permit for a site. The pre-approvals based on soil samples taken at the time of application are no longer useful so they end up having to resample to confirm that conditions have not changed.

- It was suggested that this requirement was not needed since it was the responsibility of the applicant to make sure that the site meets the conditions of the regulation or be found in violation. The timing of the taking of soil samples should be up to the individual applicant.

CONSENSUS: Strike requirement that the soil test results be less than three years old at the time of submittal. Strike the requirement to include a representative soil sample.

- It was noted that the proposed language requires the collection of soil samples and the inclusion of those samples and the Nutrient Management Plan as part of the Operations and Maintenance Manual. Staff noted that the language came out of the old requirements and regulations and needed to be revised and clarified

ACTION ITEM: Staff will clarify the requirements for soil samples and revise the proposed regulatory text accordingly.

- DCR staff noted that they had a concern with waiting until the time of application for the soil samples to be taken. If the samples/soil test results are not received until just before the application is to occur, there may not be sufficient time to review them to identify areas of concerns. Getting the soil samples and soil test results ahead of time allows time for a review of the site specific conditions to identify those areas of concern prior to application.
- Staff noted that the current proposal is for the Nutrient Management Plan to be on site at the time of biosolids application. If there is a case where a soil test indicates that there is a Phosphorus Index greater than 35%, the onus is on the land applier to submit that information to DCR for approval prior to land application. If the land application occurs prior to that approval, the land applier is in violation of their permit.
- It was suggested that this is a case of the regulator trying to protect the applicant from economic risks. Don't need to be including language in a regulation that protects the land applier from economic risk.
- Staff noted that the issue is whether or not we have an extra layer of scrutiny. DCR doesn't need to review every plan, but there are some plans that need to be reviewed and preapproved.
- There are multiple levels of regulations to meet these requirements. If the land applier applies

biosolids on a field where specific conditions exist that require preapproval, the land applier runs the risk of being in violation. The issue before the TAC is trying to determine which sites need the extra level of scrutiny that a preapproval by DCR would provide. DCR's concern is in those cases where the NMP is being reviewed by DEQ when the site is inspected which may occur after the biosolids have already been applied. That is why a preapproval process was being suggested.

- It was suggested that the applicant could take a soil sample at some point in the process and if the P-Index was > 35% that a screening process could kick in for a DCR preapproval. It is a waste of time to have to file two sets of soil test information. Need to develop a screening mechanism, not a lot of redundant processes.
- It was suggested that there are a lot of plans that are not totally in compliance with the Standards and Conditions and there are actions that could or should be taken. The permittee has to follow the regulations. DEQ should not be trying to write a rule to protect the applicator.
- DCR staff noted that the soil samples are integral to the whole process. Need to see those well prior to land application. Before the permit issuance is the most appropriate time for that to occur.
- It was suggested that providing this kind of information (soil tests) anytime prior to permit issuance for something that might not be done for five years would not be useful. Any number of site conditions or practices could change in that length of time that would make the soil tests invalid.
- DCR staff suggested that the submission of soil tests 60 days prior to the actual land application should provide enough time to allow for a preapproval process. This would also envision the submittal of the Nutrient Management Plan at the same time prior to actual land application.

ACTION ITEM: A suggestion was made that DEQ and DCR staff needed to get together to make a decision as to what length of time after permit issuance prior to actual land application that a Nutrient Management Plan and associated soil test results should be submitted to allow sufficient time for screening to determine the need for preapprovals.

- It was suggested that there could be a requirement for all soil samples to be submitted within 120 days of permit applications. Staff noted this should not be required for every site.
- It was suggested that the regulations shouldn't be telling when samples should be submitted.

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3) Continued Facilitated Discussions - Permit Application: 9VAC25-32-60 & 9VAC25-31-100 (Neil Zahradka/TAC Members):

Neil Zahradka asked for any additional comments and concerns on the permit application sections of the proposed regulations.

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

- Where did the language in 9VAC25-32-60.F.2.d (14) come from? Staff noted that it came from the VPDES regulations. It was suggested that it doesn't look like it is appropriate for inclusion in the VPA regulation.
- What does "pertinent" mean?

ACTION ITEM: Staff will review the application sections of the regulations and address any inconsistencies in the two regulations. Staff will confirm whether certain language should be excluded since it doesn't apply to one regulation or the other. Staff will evaluate the use of the word "pertinent" to develop either a definition or a more appropriate term to use.

- The use of the term "frequent" was questioned in section 9VAC25-32-60.F.2.d (13). Should this refer to "frequent at agronomic rates" or "frequent above agronomic rates"? Staff responded that it should be "frequent at agronomic rates".

ACTION ITEM: Staff will review the language used in this section to clarify the use of the term "frequent".

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4) Facilitated TAC Discussion – Nutrient Management – Biosolids Utilization Methods - 9VAC25-32-560 (Neil Zahradka/Angela Neilan):

Neil Zahradka summarized the proposed revisions to the nutrient management section of the regulation (9VAC25-32-560) as follows:

- Adding a requirement that the NMP be on site at the time of land application;
- Adding a requirement that the plan be submitted to DEQ within 30 days after land application;
- If soil pH is below the agronomic range for the proposed crop, lime must be applied;
- If soil K is below 38 ppm (L+), K must be applied;
- If slowly/rapidly permeable soil types are indicated in soil survey, site may be excluded or additional management requirements may be added (with option to demonstrate these soils are not present);
- Soil pH must be < 1 year old when applying lime amended biosolids;
- Nutrient management requirements duplicative of those found in DCR regulations deleted (language and tables);
- Numerous narrative statements will be deleted and moved to guidance; and,
- Option to clip pastures after biosolids application was removed (must be done prior).

Staff noted that during a previous TAC meeting, DCR had introduced a list of soils that were of concern for inclusion in the DEQ biosolids regulations for sites where permeability was an issue. DEQ didn't want to be specific in the regulations regarding the specific soils and opted to include more general references to the problematic soils.

The TAC's discussions on 9VAC25-32-560.B.2.g included the following:

- Where would the "additional best management practices" noted in 9VAC25-32-560.B.2.g be addressed? Staff noted that the permit would include special conditions to identify what best management practices would need to be used on the site. These would be enforceable conditions.
- Are the problematic soils part of the Standards and Criteria? DCR Staff responded that they

were no currently part of the Standards and Criteria.

- Are these problematic soils included in addressing any other sources? DCR staff responded that at this time that they were only being proposed for inclusion in the biosolids regulation. They also noted that it was not just a biosolids issue but more of a "nutrient" issue.
- It was suggested that these problematic soils should be included in the DCR Standards and Criteria instead of being put in the biosolids regulations. DCR staff noted that since the biosolids regulations were currently open that they were proposing that they be included here. In addition, this is an attempt to address a concern raised by the "Expert Panel" regarding "pollution sensitive sites" or "environmentally sensitive sites".
- Staff noted that an attempt was made to make the condition as flexible as possible, so that the regulations don't specify what the requirements or conditions are.
- This is a DEQ regulation, why do they need to be here and not in the Standards and Criteria?
- The time and place to change and to add this list or concern for problematic soils is in the DCR Standards and Criteria, not in the DEQ biosolids regulation. This is a case of "regulatory creep". Staff noted that this was an attempt to address a concern raised by the Expert Panel regarding "pollution sensitive" or "environmentally sensitive" sites. Staff agrees that it should be in the DCR Standards and Criteria but there are certain sites that are of concern so that it should also be included in the DEQ biosolids regulations.
- Staff noted that a number of the strikeouts that were included in this regulatory section were the result of those requirements already being in the DCR Standards and Criteria, so they are already required and didn't need to be repeated in another agency's regulation.
- DCR staff noted that the process of adding these to the Standards and Criteria could take awhile. It was suggested that if these soils were of such a great environmental concern that should be a way to proceed with making the changes in the Standards and Criteria.
- The order of the sentences in this section (9VAC25-32-560.B.2.g) is confusing and should be revised. In addition the way that the section is currently worded would allow for an entire site to be excluded from a land application process even if only a small portion of the site had problematic soils. This wording also needs to be reworked.

ACTION ITEM: Staff will revise the wording and structure of this section to clarify the requirements.

PROPOSED REVISIONS TO TEXT (9VAC25-32-560.B.2.g): *"If the NRCS soil survey for a proposed biosolids land application site indicates the presence of rapidly permeable soils (>5.0 inches/hr) on the site or on portions of the site, as identified by the department, the department may exclude those portions of the site where those soils are present from the proposed permit or require additional best management practices be implemented at the site. Rapidly permeable soils shall be treated as a high environmental risk soil for nitrogen loss in preparation of the nutrient management plan. If the permit applicant demonstrates that rapidly permeable soils are not present at the proposed site, this restriction may be waived by the department.*

- Need to make the requirements and the proposed regulatory language as clear as possible so that reviewers had the best attempt at regulatory language to review and comment on during the public comment period.

Staff noted the requirements that had been proposed for inclusion in 9VAC25-32-560.B.2.d and

9VAC25-32-560.B.2.e to address lime and potassium.

The TAC's discussions on 9VAC25-32-560.B.2.d and 9VAC25-32-560.B.2.e included the following:

- Who is responsible to applying the required lime or potassium? Staff noted that this is something that has to be done and it is envisioned that it would ultimately be the responsibility of the permit holder or could be under the control of the land applier.
- A concern was noted that if a farmer says that he is going to make these applications of additional lime or potassium following biosolids application and then once the application is completed he decides that he is not going to fulfill these requirements there is no recourse for the land applier to force him to do the required work. Staff noted that the requirements as identified in the Nutrient Management Plan should be fulfilled prior to the actual biosolids application to ensure that the required lime and potassium is applied. Staff noted that the goal is to ensure that the agronomic conditions exist to facilitate the uptake of nutrients.
- Staff noted that the land applier is responsible for implementing the Nutrient Management Plan and that is an enforceable part of the permit.
- There is no way to force the farmer to comply beyond the agreement to allow the application of biosolids on his property once that has occurred. If the farmer doesn't perform the needed activities then the land applier would be responsible for the cost of the required applications in order to satisfy the requirements of his permit and the Nutrient Management Plan. Staff noted that these requirements should be satisfied prior to application to ensure that the application of the lime or potassium is done.
- What the regulations as worded would do is require that the fields would have to meet certain conditions before any biosolids could be applied, i.e., the proper amounts of lime or potassium if needed would need to be applied prior to the application of biosolids.
- How does the department confirm that the necessary applications have occurred? Staff noted that under the CAFO program that the land applier is required to provide copies of records or receipts showing that the materials have been applied. The biosolids program would be handled in the same manner.
- DEQ would ask the permit holder to demonstrate that all of the conditions of the permit have been met.
- This isn't a question of "mission creep" it is more of a "mission leap".
- This is an effort to make sure that the nutrient management of each site works the way it is supposed to.
- It was noted that there is a concern that the land applier should not be responsible for the management of a farm after the biosolids have been land applied and the applicator has left the site. The land applier should not be responsible for implementation of the nutrient management plan for the farm outside of the application of the biosolids. This could complicate the scheduling of the application. Staff noted that the farmer will get the best agronomic benefit from the application of these materials if these conditions are met prior to application.
- It was suggested that the regulation should be written to require that biosolids can only be applied to land that has a pH within a certain range and the potash level has to be a certain level and leave it at that. The onus should be on the farmer/land owner not on the land applier to make sure that these "pre-conditions" are met. The regulation should say where you can and cannot apply biosolids.

- To put the biosolids down the site has to meet certain conditions.

ACTION ITEM: Staff will review the wording of this section to determine possible revisions to address the concerns raised by the TAC regarding the responsibilities of the land owner versus that of the land applier and the possible requirement to meet certain site specific conditions prior to biosolids being applied to the site.

Staff noted that in the rest of the section that a lot of the timing requirements as well the tables referring to rates and table references have been removed from the section since those are all included in DCR's Standards and Criteria. There are some conditions or requirements that are more restrictive in the biosolids regulations than in the Standards and Criteria. Those have been left in the regulations.

Staff noted that the proposed text for this section addresses proposed use of crops or PAN rates for soybeans; tallgrass has; warm season grasses; and alfalfa.

The TAC's discussions on 9VAC25-32-560.B.3.d included the following:

- Why was alfalfa removed as a permitted crop? Staff noted that change was a result of discussions with DCR. DCR staff responded that previously soybeans and alfalfa were allowed under the biosolids regulations. The DCR Standards and Criteria do not include nitrogen rate recommendations for soybeans and alfalfa. The DCR recommendation for leaving soybeans in and taking alfalfa out was based on the process for the uptake of nitrogen by the plant and the ultimate utilization of the available nitrogen from biosolids.
- It was suggested that the assumption that alfalfa would not utilize the nitrogen in the biosolids was scientifically incorrect. Alfalfa should be kept on the list as an allowed crop.
- How do the Standards and Criteria currently address alfalfa? Don't the Standards and Criteria recommend zero nitrogen for alfalfa? Could a Nutrient Management Plan be developed for sites where alfalfa was evident? Could a nitrogen rate be written for alfalfa? DCR staff responded that it could not. It was suggested that a NMP could still be written for fields containing alfalfa even if the recommendation is "zero".
- It was noted that the restrictions for soybeans and alfalfa are based on scientific evidence on what the crop can assimilate from the soil. What is the scientific evidence to exclude alfalfa?

ACTION ITEM: Staff will look at the specific crop specifications for alfalfa and determine the appropriate rates and will revise the proposed language accordingly.

- It was suggested that DEQ also work with some of the crop and soil experts that are available to develop these recommended rates.
- It was noted that these levels/restrictions should be consistent with what is in DCR's Standards and Criteria.
- The way this restriction is written a field with even a small percentage of alfalfa would have to be excluded from the biosolids application. Is there some percentage of alfalfa where biosolids could still be applied? DCR staff noted that there is an allowance in the Standards and Criteria for < 25% alfalfa present. The text needs to be rewritten to provide for an allowance for some percentage of alfalfa instead of an outright prohibition.

- It was suggested that it would be helpful to have a fact sheet of additional requirements that are specific to biosolids applications that need to be addressed so that the Nutrient Management Planner is clear as to what is required. Streamlining needs to be done. DCR staff noted that they had compiled a similar list for use in the CAFO program. Staff noted that they would look into compiling a list of requirements for the biosolids program other than those spelled out in the Standards and Criteria.

Staff noted that the original restrictions for pasture and hay field crop height varied from four to six inches (9VAC25-32-560.B.3.f (1). The proposal is to revise that section to require that the crop height be 6 inches prior to biosolids application and delete the provision for clipping of the crop after application.

Staff noted that a number of the other changes in the section (9VAC25-32-560) were pulling things out that were narrative statements or were already in the DCR Standards and Criteria in order to clarify and streamline the regulations where possible.

The TAC brought up some issues related to the "buffer zone" table included in 9VAC25-32-560.B.3.g (1).

The TAC's discussions on 9VAC25-32-560.B.3.g (1) included the following:

- The buffer zones included in the table are not necessarily consistent with those included in DCR's Standards and Criteria. The buffers need to be consistent so that there are not conflicting sets of requirements.
- The category for "streams and tributaries" is incorrectly worded and does not reflect the TAC discussions at the previous TAC meeting. The text should read "Any streams and tributaries designated as a PWS under the WQS".
- The categories for "property lines" should not include reference to "an odor sensitive receptor" since that can be defined as an "individual" according to the definitions sections. The intent of the buffers is to provide a separation between a dwelling where a susceptible individual resides and the application site. It would be impossible to establish a buffer from an individual for the purposes of this regulation. The concept of an "odor sensitive receptor" being an individual should also be removed from the definitions sections.
- The language related to rock outcrops and sinkholes is confusing and needs to be corrected. It was also noted that the setback distances indicated were also incorrect for this category. Staff noted that this was the result of multiple versions of the table being edited and that the correct version would be included in the proposed regulations.

ACTION ITEM: Staff will revisit the buffer table and the definitions sections to clarify the requirements and to address the concerns raised by the TAC.

The TAC brought up some issues related to the inclusion of language referring to "sludge standards" in the regulations.

The TAC's discussions related to 9VAC25-32-560.C & D included the following:

- Sections 9VAC25-32-560.C & D include language referring to sludge management. Shouldn't this be revised to refer to biosolids management?
- Staff noted that these sections came directly out of the old VDH regulatory language and would need to be revised to reflect the shift to DEQ and the biosolids program.

ACTION ITEM: Staff will revise the language of these sections to reflect the shift to the use of term "biosolids".

- It was noted that the language in 9VAC25-32-560.D.3.a is too specific in its reference to the Department of Crop and Soil Environmental Sciences of the Virginia Polytechnic Institute and State University. It needs to be revised to refer to some research based information instead of specific university of department. Staff noted that the wording had come directly out of the VDH regulations. Staff will revise the language as needed.

ACTION ITEM: Staff will revise the section to clarify the requirements and to make a more general reference to research based information being required.

The TAC brought up some issues related to the remediation rates included in this section (9VAC25-32-560.D.a).

The TAC's discussions related to 9VAC25-32-560.D.a included the following:

- What application rates should be used for remediation of disturbed land? Staff noted that DCR will look into the applicable rates that would be allowed, but there is no preliminary guidance as to what those rates might be.
- There needs to at least be a starting point, such as 35 dry tons per acre that has been used as a result of an agreement between VDH; DCR; and DMME in the original regulations.

ACTION ITEM: Staff will look at the issue of application rates for the remediation of disturbed land and will work with DCR and DMME to arrive at appropriate regulatory language to include in the proposed regulations.

The TAC brought up some issues related to the documentation of the "waiving of buffer requirements" and the "extension of buffer zones" included in 9VAC25-32-560.B.3.g (4) and 9VAC25-32-560.B.3.h.

The TAC's discussions related to 9VAC25-32-560.B.3.g (4) and 9VAC25-32-560.B.3.h included the following:

- The documentation of changes to the buffer distances needs to be consistent. In one case documentation is required while in another it is not. It should be consistent. Staff noted that the reason that there was a difference was that historically one area has been a problem and the other has not.
- It was noted that the reason for requesting documentation of voluntary extensions was to be able to document those changes to the application plan for the site. In the past there have been disagreements as to what those voluntary arrangements have been, so documentation is needed.

5) Facilitated TAC Discussion - Distribution and Marketing - 9VAC25-32-570 (Neil Zahradka/Angela Neilan/TAC Members):

Staff provided an overview of the proposed language changes for "distribution and marketing" of EQ biosolids (9VAC25-32-570). Proposed language changes included the following:

- Restructured the section for clarity;
- Bulk distribution:
  - "bulk" means an amount > 5 tons;
  - NMP required when land applied, submitted to DCR within 30 days after land application;
  - Recordkeeping and reporting requirements.
- Sources shall be approved.

The TAC's discussions related to 9VAC25-32-570 included the following:

- Staff noted that the majority of these changes were structural. The statute states that a Nutrient Management Plan is required whenever biosolids are land applied. The proposal is that for bulk applications that a Nutrient Management Plan be required to be written for that application.
- There are certain instances where bulk quantities are received and used in potting soil or in conjunction with the application of compost where it would be difficult to develop a nutrient management plan for those situations.
- The way that "bulk" is defined doesn't make sense. What is really was talked about is some way to address the bulk application of "Class A" cake materials that are land applied for agricultural and agronomic value. What you want to do is to exclude those products that can be or are registered under the VDACS registration program as a product. Can't really have a quantity to define bulk it really should be the nutrient content.
- It was suggested that the way the regulations are written that five dry tons of biosolids would be equivalent to approximate 11 1/2 cubic yards of compost. One recommendation is for a homeowner to use 6 cubic yards per 1,000 square feet. Most homes have turf areas of 5,000 square feet. That would mean that there would need to be a Nutrient Management Plan for every home. Staff noted that is not the intent.
- Should not have a quantity to define bulk, it should be related to nutrient content. Need a better definition of what "exceptional quality products" are and it should include a reference to a product's nutrient content.
- It was suggested that the agency's legal analysis is completely wrong. The code says that no owner of a sewage treatment work shall land apply or market & distribute sewage sludge except in compliance with a permit. Land application is one thing and "marketing and distribution" is another. If you land apply biosolids you need to have a permit to use it on that site. If you market and distribute biosolids that means that you have an exceptional quality biosolids that has a label from VDACS and can be sold to consumers and used in the same manner that 10-10-10 can be used. A person who sells that material has to have a permit to market and distribute it. The person that uses the material does not have to have a permit. The term "land application"

should not be confused with the term "marketing and distribution". If you say that anyone who buys a truck load of exceptional quality biosolids and puts it down on the land has to have a Nutrient Management Plan then you are also saying that they have to have a permit. Because if you say that this activity is "land application" then the code says that "land application" has to have a permit. That is not what the statute requires. A person who is using bulk quantities of exceptional quality biosolids is not land applying biosolids. Can't cherry pick the Code and say that they are land applying so they have to have a Nutrient Management Plan but don't need a permit. This is the use of an approved registered fertilizer. There is no legal basis for requiring a nutrient management plan for the use of an EQ biosolids no matter what the quantity is. If you are going to say that you can't use EQ biosolids without a Nutrient Management Plan then the regulation should say that you can't use the product without a permit. This would push the whole program to the use of "Class B". The farmer doesn't have to pay for "Class B" biosolids but does have to pay for the use of "EQ biosolids".

ACTION ITEM: Staff will consult with legal staff regarding the interpretation of this section of the statute.

- It was noted that there are some inconsistencies with the VDACS fertilizer laws that need to be corrected. There are also some terms that are not used in the same manner that they are in the VDACS laws.
- Staff noted that there need to be record keeping and reporting requirements. It was noted that VDACS currently requires monthly reporting but is shifting to a quarterly reporting requirement. The idea is to figure out a way that the VDACS reports could also be submitted to DEQ. A lot of it would be if a Nutrient Management Plan is required or not.
- It was noted that the entire discussion today has been dealing with the Nutrient Management requirements of DCR. Incorporating the requirements of yet another agency dealing with the same product and utilize those instead of utilizing the DEQ regulations seems to be outside of the realm of this regulatory action.
- If a Nutrient Management Plan is required then distribution and marketing will be minimized or become non-existent. The VDACS process is working to properly manage the product and to make sure that the legal requirements under the fertilizer law are followed.
- It was suggested that the recommendation should be that all of the Nutrient Management Plan; tracking; and reporting and record keeping and labeling for EQ biosolids should be removed from the biosolids regulations. VDACS already covers all of these requirements. All the information consistent with the fertilizer law is submitted to VDACS. A fee (.25 per ton) is paid to VDACS to ensure that the product meets the requirements and is properly labeled and that the content is accurately reported on the label. An annual report is already required to be submitted to VDACS reporting the number of bags or how much bulk has been sold in each of the counties. This information is just reported as total tons to each county. Why would DEQ need this information?
- Staff noted that the only reason to need to identify the end recipient would be if there was a requirement for a Nutrient Management Plan. Otherwise, the department is just interested in where it goes.
- It was suggested that there are some "composted biosolids" where a VDACS registration is not required. It is an option for marketing their material. The five tons limit is easily within the range of what a homeowner would apply. The use of the materials on a mined land reclamation

site might trigger the need for a Nutrient Management Plan.

- It was suggested that some instances where materials were given away their compost material for free that there is no guarantee and therefore no requirement for a VDACS registration.
- DCR staff noted that they were starting from the point that the statute says that this product has to have a Nutrient Management Plan. But that we can all come to a consensus that homeowners using bags of EQ product shouldn't be required to have a Nutrient Management Plan. The thought is to come up with some manageable way for DEQ to live up to their statutory requirements. Not interested in the bagged products, but are interested in "Class A" materials that go out on a land applier's truck and capturing that with a Nutrient Management Plan.
- It was suggested that this discussion is similar to the previous discussions related to potassium and lime. This is a statewide issue for fertilizers and any nutrient products (i.e., yard waste compost) that are applied in bulk and should be dealt with through DCR's Standards and Criteria. The DCR Standards and Criteria should address the bulk application of soil amendment products of low nutrients instead of using the biosolids regulation to cover these concerns.
- "Class A" biosolids that are land applied are subject to permitting and nutrient management plan requirements. There is no statutory requirement to require a permit or a nutrient management plan for the distribution and marketing of an EQ biosolids product. The material has a VDACS label and is put in a spreader and spread on the field. The land owner pays for the product. The application of an EQ product is not land application. EQ biosolids are regulated and registered as a fertilizer and is sold as a fertilizer and is sold under a distribution and marketing permit is not land application under the Code.
- The Nutrient Management Plan requirements address land application throughout the code section and is not related or tied to the marketing and distribution requirements. The statute is clear that if you land apply you have to have a permit. If we don't require a permit for bulk distribution then it would be very hard to justify the requirement to have a nutrient management plan. Staff will need to review this language and review the legal interpretation of the code requirements.
- If a product is distributed and marketed in Virginia, whether it is prepared in Virginia or not has to have a VPA permit for distribution and marketing.
- DCR staff noted that they didn't have any interest in requiring a Nutrient Management Plan for materials managed and labeled through VDACS. What they were proposing was the establishment of some threshold level exemption for the bulk land application of these products.

ACTION ITEM: Staff noted that they would be reviewing the legal interpretation and analysis to determine whether they leave to language as proposed or whether they can make other assumptions related to marketing and distribution of bulk EQ biosolids. The goal is to make sure that the statutory requirements are met.

- It was suggested that the analysis should be on what requires a permit for land application. If an activity requires a permit for land application then it requires a Nutrient Management Plan.
- Staff noted that we have to consistent with the application of the statute.

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6) Facilitated TAC Discussion - Soils Monitoring and Reporting (Neil Zahradka/Angela Neilan/TAC Members):

Staff provided an overview of the proposed changes related to Soil Monitoring (9VAC25-31-543 and 9VAC25-32-460):

- Clarified mandatory vs. recommended sampling;
- Revised table of parameters; and,
- Requirement to sample in the manner specified in the DCR Nutrient Management Plan regulations.

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

- Staff noted that the regulation still allows for the ability to ask for additional site specific information.
- Nitrate nitrogen is not a required part of any soil test regime. There needs to be a footnote added to the Nitrate nitrogen category to note that it is used only in a sidedress test only for corn. It is used to determine supplemental phosphorus or lime as a side dressing for corn. It is not related to biosolids applications.
- If these are in the DCR Standards and Criteria why don't we remove them like we did with the other "Standards and Criteria" materials? Refer to DCR Standards and Criteria. Why include as a Table here? Staff noted that since they don't inspect every site that it would be useful to have the soil test data.
- The title needs to be revised to either delete the reference in the title to reporting or make sure that the reporting requirements are inserted in the section.
- DCR staff noted that not all of the criteria noted in the table are included in the Standards and Criteria.
- Why is there a reference (footnote 3) to heavy metal analysis? There are no real standards for biosolids in the soil. Staff noted that this was a carryover from the previous table and should be revised or deleted.
- Soil testing requirements that are included in the Standards and Criteria should not be included in the biosolids regulations, but that additional requirements that are not addressed in the Standards and Criteria should be included.

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7) Facilitated TAC Discussion - Crop Monitoring and Reporting (Neil Zahradka/Angela Neilan/TAC Members):

Staff discussed the proposed changes contained in 9VAC25-31-545, which added the crop monitoring and reporting requirements to the VPDES regulations.

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

- Staff noted that the condition for vegetation monitoring in situations related to frequent

applications of biosolids applied at or greater than agronomic rates was added to the VPDES. The permit may require additional monitoring related to nutrient uptake.
- Might want to label this section as "Monitoring Requirements for Frequent Applications" or may want to shift information related to "frequent applications" all in a single section.

ACTION ITEM: Staff will review the proposed language changes with the idea of combining all of the requirements related to "frequent applications" in a single section in order to clarify the requirements.

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8) Facilitated TAC Discussion - Ground Water Monitoring and Reporting (Neil Zahradka/Angela Neilan/TAC Members):

Staff noted that this section (9VAC25-31-547) had been added to the VPDES regulation.

There were no TAC discussions on this topic.

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9) Facilitated TAC Discussion - Biosolids Characteristics (Neil Zahradka/Angela Neilan/TAC Members):

Staff noted that this section (9VAC25-32-600) had been revised to reflect previous TAC discussions on nutrient management and that this section had been reworded to clarify that any of the methods included in the DCR Nutrient Management Plan Standards and Criteria could be used to determine a biosolids application rate (i.e., the rate would be that specified in the NMP).

There were no TAC discussions on this topic.

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10) Facilitated TAC Discussion - Definitions (Neil Zahradka/Angela Neilan/TAC Members):

Staff noted that a number of definitions had been added to the various definition sections in an attempt to clarify the requirements and for consistence. Staff will be going back through the sections to make sure that the terms are actually used in the sections and in the appropriate regulations. The general changes included the following:

- VPDES regulation: added definitions;
- Replaced "sewage sludge" with "biosolids" where appropriate;
- VPA regulation:
    - Conformed VDH-BUR definitions to VPA
    - Added definitions from VPDES biosolids section

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

- Where is "malodor" used? Where does it apply in the regulations? Staff responded that it is used in relation to the requirements for the Odor Management Plan. They are in the application requirements for what an odor management plan has to contain. The regulations don't say how it is to be addressed just that malodors problems have to be remedied. It was suggested that the definition is pretty subjective and maybe a threshold level should be considered. Staff noted that it was based on the DEQ inspector and the state of the science and the variability involved don't allow for a more quantitative approach.
- The definition of "bulk biosolids" should read "means exceptional quality biosolids that are not sold or given away in a bag or other container for application to the land".
- The definitions of "odor sensitive receptor" should not refer to "an individual" since individuals are addressed in the health department buffering provisions addressed previously. The definition should be revised to read: "means in the context of land application of biosolids, a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, athletic and other recreational facilities, hospitals and convalescent homes." Staff noted that the "expert panel" had raised the idea of the use of the term "person" instead of "receptor". It was noted that the concern is to be able to buffer from where that "person" would be (dwelling). It was also noted that the term "receptor" was used because that is the term that the General Assembly decided to include in the statute. Buffer away from where the person will be (dwelling) not the "person". You can't buffer from an "individual" because the buffer would be constantly changing. Receptors are sites not persons. You can have a "school full of kids" that is classified as an "odor sensitive receptor" and yet there not be susceptible individuals that have health problems.
- Why are "turf farms" included in the definition of "public contact site"? They are not normally open to the public. Staff noted that this is not high public access business. It was noted that "plant nurseries" that are not doing retail are also not high public access areas.
- The definitions of "land application" are not consistent between the different sets of definitions. They should be made consistent.
- The definitions sections need to be made consistent.
- The concept of "agronomic rate" is addressed in the concept of "agronomic nitrogen rate". It is usually considered with regard to any nutrient factor that would limit your rate. Why isn't phosphorus included? Staff noted that this definition came from the VDH regulations and the 503. Staff noted that this is an old definition. It was suggested that the definition should just say as defined in the DCR Standards and Criteria and leave it as that.

ACTION ITEM: Staff will look at the definitions in the Standards and Criteria regulation to verify the correct definitions to use and for consistence.

ACTION ITEM: Staff will make sure that the definitions that are included are actually used in the regulations.

- The definition of "cover crop" limits it to only small grains. There are other kinds of crops that are being used for "cover crop". The definition should not be limited to just "small grains".
- Why does the definition of "pollutant" refer to "pathogens"? Staff will check.
- There are a number of definitions in the VPA that are not in the VPDES and vice a versa and in

some cases where they are in both, they sometimes differ. Staff noted that they would revisit the definitions to make sure that they are consistent. Staff also noted that where there was a 503 definition, they would make sure that it was used. A number of instances where the term "sludge" instead of "biosolids" is used were pointed out.

- A better definition of "exceptional quality biosolids" is needed.

ACTION ITEM: Staff will need to look closely at the definition of "contaminate an aquifer" for consistency with other agency programs and to tie it to other things that are done within the agency.

- A definition of "distribution and marketing" is needed to help clarify the requirements.

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11) Facilitated TAC Discussion - Odor Control Plan (Neil Zahradka/Angela Neilan/TAC Members):

Staff asked for any comments on the requirements for an "odor control plan" (9VAC25-32-60 & 9VAC25-31-100).

The TAC discussions on this topic included the following:

- Staff noted that the odor control plan requirements are included in the permit application sections of the regulations.
- Malodors are addressed in the Operations and Maintenance Plans and there are different requirements for facilities/sources and land appliers.

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12) Facilitated TAC Discussion - Local Monitor Reimbursement (Neil Zahradka/Angela Neilan/TAC Members):

Staff provided an overview of the changes related to local monitor reimbursements contained in 9VAC25-20-148 and 9VAC25-20-149, including:

- Clarified that biosolids and soils sampling are the only sampling that will be reimbursed (water sampling will be conducted by DEQ);
- Clarified that sampling will be reimbursed only to verify compliance with state or federal law and regulation;
- Revised wording describing $2.50/$4.00 per dry ton reimbursement limits, amounts > $2.50 require prior approval; and,
- Revised wording for clarity.

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

- Staff noted that with DEQ now handling the inspections if there is a problem associated with

surface water and potential contamination the department would be doing the required water quality monitoring as part of compliance action or as part of its ambient monitoring program.. There is no need for a local monitor or a locality to be involved in the collection of those water quality samples.

- The regulation has been clarified so that additional sampling or activities required by local ordinances and not required by state or federal law or regulation would not be eligible for reimbursement. The local monitoring program is to supplement the agency's regulatory program.
- There may be instances where a locality or a local monitor may request an increased monitoring frequency for a period of time to verify whether there is a problem or not. The department may approve an increased level of monitoring for a given period of time and reimburse for those costs up to their limits. They have to stay within the reimbursement limits and also only monitor for those items covered by the regulations.
- The reimbursement section (9VAC25-20-149) was reworded to clarify that the limit is $2.50 but that there is an option for the department to reimburse local costs up to $4.00, but only with pre-approval. Staff noted that the reference in the summary sheet to $4.50 as a maximum reimbursement amount was a typographical error.
- The results of any analysis done by the locality or local monitor are required to be reported to the department.
- There may be some localities that have adopted stricter requirements and may think that the department's requirements don't go far enough. They may be under an assumption that those additional monitoring costs are eligible for reimbursement. There may be some additional comments made related to the reimbursement of local monitoring costs after further review of the proposed language.
- One of the benefits of the local monitoring program is that there is a local person doing something related to the program in addition to what the agency is doing.
- The local monitoring program is an adjunct to the agency's compliance inspections.
- Regardless of the quality of the monitoring by the local monitor, if a potential water quality impact is identified, the Director is going to require that agency staff confirm the water quality results to use as the basis for any legal decision.
- Staff noted that if you do any level of water quality monitoring, you are likely to find impairments, because impairments can be the result of many factors.
- In cases where there are major shortages at the state level to do these things, there may be localities that may want to do these additional monitoring.
- It was noted that in those case where there are concerns at the local level and there has been a request for sampling to be done by the state, there have been no issues involved with getting department staff out to the sites to collect those samples in a timely manner.

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13) Facilitated TAC Discussion - Records and Reports (Neil Zahradka/Angela Neilan/TAC Members):

Staff provided an overview of the changes related to the "records and reports" requirements contained in 9VAC25-20-147 that basically removed the requirement to record interactions with local monitors.

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

- Staff noted that the requirement for the local monitoring recording and reporting in the monthly report of interactions with local monitors. This was a requirement that the land applier had to do. This requirement was included when VDH had the program and they were not typically in the field, so this was a way to track those interactions. DEQ staff is out in the field doing inspections, so there is no need for this requirement.
- The idea of streamlining the regulation was applauded by the TAC.

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14) Facilitated TAC Discussion - Transition (Neil Zahradka/Angela Neilan/TAC Members):

Staff provided an overview of the changes related to the "transition" requirements contained in 9VAC25-32-300included the following:

- Clarifies BUR permits will not be reissued or amended; and,
- Specifies time frame under which BUR holders must apply for VPA permit in order to continue activity.

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

- Staff noted that this section establishes a timeline in order to transition from the old VDH BUR permits, some of which had been administratively continued indefinitely, to DEQ's VPA permitting program.
- It was suggested that the new requirement identified in 9VAC25-32-300.D should refer to an "administratively complete" VPA application. If an applicant makes a "good faith effort" to submit everything there should not be a delay in the process.

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15) Other Items Included in the Batch 1 Submittals (Neil Zahradka)

Neil Zahradka noted that there were a number of other section of the regulations were materials have been moved around that have not been presented to the TAC so that the TAC would have the time to discuss the substantive changes.

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

- Animal health issues associated with grazing: added prohibition of biosolids exceeding 40 mg/kg Mb on grazed lands and additional tables will moved to this section. The requirement was added as a footnote to the ceiling concentration table in 9VAC25-32-356. Staff noted that Mb is not an issue in Virginia according to a review of the available records. Staff noted that there may be some local plants where this might be an issue. It was suggested that there is enough actual data out there for some smaller local plants where the levels are elevated and

should continue to be considered.

16) Discussion Related to the Need for Another TAC Meeting (Neil Zahradka/Bill Norris):

Neil Zahradka asked the TAC members that since we are committing to bring the TAC back together after the public comment period to review potential changes to the proposed regulations based on those public comments is there a need for an additional meeting prior to the December SWCB meeting? Is the TAC comfortable with staff putting together the proposed regulatory language for submission to the board and for public comment without another TAC meeting?

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

- The TAC would like to see the proposed language before it goes to the board.
- Staff noted that the deadline for submission of the proposed language for the December Board meeting is Monday, November 9th. The Board meeting is scheduled for Monday, December 14th.
- It was suggested that when the draft regulation is prepared for the board, that an email version of those regulations could be sent to the TAC meetings and then there could be a request made depending on the comments from the TAC for another meeting prior to the Board meeting if there is time.
- The assumption is that we move ahead with the proposed regulation as if that is what we send to public comment.
- It was suggested that the TAC could make changes if needed to an electronic version using "track changes" to make those minor changes. The reason for getting back together will be major ideas that won't be easy fixes. There is limited utility to have an additional meeting to have the same disagreements.
- It was suggested that it would be helpful if the TAC had an explanation of why there are certain changes in the document and what decisions resulted in the changes. Staff noted that this would be part of the required Town Hall documentation. The Board Memo would contain summaries of the major changes that have been made.
- It was recommended that the comments from TAC should be done via email and track changes.
- It was also noted that there would also be an opportunity to comment during the Public Comment Period.
- The actual date for release of the proposed regulation for public comment is an unknown. Once the public comment period has taken place and those comments have been summarized then the TAC would be called back together to go over those comments for possible changes in the regulations.

CONSENSUS: All of the substantive issues have been discussed by the biosolids TAC. Although there are still some unresolved issues that require policy decisions, the TAC agreed they didn't need another meeting if we would agree to provide them a copy of the proposed regulatory language before it went to the board, understanding they might only have a couple days to comment.

- Staff noted that they would be preparing a summary document regarding the topics and issues discussed during the TAC meetings that would be included with the distribution of the draft proposed regulation.

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17) TAC Discussion - Batch 3 (Neil Zahradka/Angela Neilan/TAC Members):

TAC members raised the following concerns about the materials distributed to the TAC as Batch 3:

- **9VAC25-31-485.C.2.h/Requirements for permittees who land apply biosolids:** A concern was noted that item 9VAC25-31-485.C.2.h didn't look like language that had been discussed by the TAC. Staff noted that this entire section was developed to clarify the written notice requirements. The TAC indicated that the staff did a good job of addressing the written notification requirements up until the addition of "h". Staff noted that what we were getting was a list of sites in the entire county and were relying on the daily reports to schedule the local inspections. Staff wanted to get some information on where to look and where the applications were occurring. It was suggested that "e" provides for approximate dates to be provided to the department. Staff noted that this could cover a period of months. This is an effort to make the two week requirement a little more useful. This is just a request not a requirement and would not result in a violation if the order was not completely accurate. By statute we have to get the information and this is a way to make that information useful to the department. The probable order will be somewhat close to the actual order of the applications. The requirement would not put anyone in violation. It would provide more useful information to the department.
- **9VAC25-31-485.B/Suggested revisions:** Previous edits were not made to this section. In addition the comments made at the start of the meeting regarding the rewording of this section need to be considered.

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~~ the application of biosolids on his property and certify that no concurrent agreements are in effect 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.***
> >
> > ***3. New or revised landowner agreements shall be submitted to the department if new land is being added to the permit or if there have been changes in ownership of land included in a permit reissuance request.***
>
> ***C. ~~3.~~ The permit holder shall ensure that the land owner agreement is still valid at the time of land application ~~at the time of application.~~***

18) Public Comment Period:

Roger Hatcher, Allendale Farms: This comment is related to one of the Batch 3 documents that was distributed to the TAC. In section 9VAC25-32-550.D regarding routine storage there is a requirement for a 750 foot buffer. There is an existing biosolids storage facility that was built approximately two years on 38 acres of land. The BUR requirement at the time when the permit was issued for storage in a building was 100 feet. This is critical, because the infrastructure for additional storage buildings has already been developed on the site. A 750 foot buffer would require roughly an 85 acre site. The site is only 38 acres. Also there are design capacity requirements that are more suited to generators than land appliers. Also the requirements related to malodors require the removal of the materials instead of other options for treatment. He noted that they had been dealing with minor odor problems at the site since the facility opened, but nothing that they would classify as malodorous. The language in this section needs to be revisited. It was suggested that the facility or the site could be grandfathered. The site conditions were apparently administratively approved with decreased requirements to allow for the 100 foot buffer within a building.

Discussions of this topic included the following:

- Staff noted that the site was built under the VDH regulations that required the 750 foot buffer, with site specific variances to this distance allowed by regulation.
- Staff noted that the concept is to include language in the regulations so that if there is something where an exception needed to be made that the regulations provide for that. There needs to be predictability.

19) Meeting Adjournment:

The meeting was adjourned at approximately 3:52 P.M.