



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Meeting Minutes

Virginia Pollution Abatement (VPA) Permit Regulation, 9VAC25-32
Implementation of Chapter 209 of the 2024 Acts of Assembly (HB870)
Regulatory Advisory Panel Meeting
April 7, 2025

The Virginia Department of Environmental Quality (DEQ) held the first Regulatory Advisory Panel (RAP) meeting beginning at 9:30 AM on April 7, 2025, at DEQ's Piedmont Regional Office located at 4949-A Cox Road, Glen Allen, Virginia 23060. The RAP's purpose is to collect stakeholder input, assist in associated regulatory processes, and help DEQ balance the concerns of all those interested in the action being undertaken. The RAP is a public body that serves in an advisory capacity to assist DEQ in its regulatory effort with the Implementation of Chapter 209 of the 2024 Acts of Assembly (HB870). DEQ provided notice of the RAP meeting on the Virginia Regulatory Town Hall website and the meeting was open to the public.

RAP Members in Attendance

Table with 2 columns listing attendees: Brad Copenhaver, Virginia Agribusiness Council; Tom Dunlap, James River Association; Mike Gerel, Chesapeake Bay Foundation; James Hutzler, Virginia Association of Counties; Bryan Johnson, Virginia Farm Bureau; Adrienne Kotula, Chesapeake Bay Commission; Nicholas Moody, Virginia Department of Conservation and Recreation; Milas Smith, Jr., Virginia Association of Municipal Wastewater Agencies (VAMWA); John Uzupis, Virginia Biosolids Council.

RAP Members Not in Attendance:

Table with 2 columns listing non-attendees: David Flores, Potomac Riverkeeper Network; Julie Henderson, Virginia Department of Health, Office of Environmental Health Services.

DEQ Staff:

Table with 2 columns listing DEQ staff: Neil Zahradka, Manager, Office of Land Application Programs / Water Division; Nelson Daniel, Policy Division.

Jeanette Ruiz, Regulatory Analyst	Bryan Cauthorn, Biosolids Program Coordinator
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Interested Member of the Public in Attendance:

Charlie Paullin, Freelance Journalist	
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## **Welcome and Overview**

Neil Zahradka facilitated the meeting and began by welcoming RAP members and thanking them for their efforts to help DEQ develop a proposed regulation to implement the requirements in the 2024 legislation. After DEQ staff and members of the RAP introduced themselves, Mr. Zahradka spoke about the RAP’s purpose, DEQ’s Public Participation Guidelines, and requirements in Virginia’s Freedom of Information Act (FOIA) for public bodies and meetings.

## **Introduction – Biosolids Storage**

After reading the new statutory language in HB870 for the RAP, Mr. Zahradka provided an overview of the conditions that prompted the legislation: excessive rainfall and extended periods of precipitation in 2018-2019 resulted in saturated soils at many land application sites in Virginia, preventing land application of biosolids, and a constantly increasing need to hold (store) biosolids until conditions were suitable for land application. Wastewater treatment facilities (biosolids generators) and land application companies both experienced issues with storage capacities. During this period, DEQ received requests to allow alternative storage methods until more typical storage volumes could be restored. With limited regulatory options, DEQ used enforcement discretion to evaluate emergency situations and help permittees maintain compliance with permit requirements. As conditions for land application improved throughout 2019, the amount of biosolids in storage returned to normal levels. However, the regulated community wanted to have more certainty about DEQ’s regulatory authority and get approval of alternatives to prepare for future extreme weather conditions – ultimately prompting HB870.

Mr. Zahradka reviewed three sections of the VPA Permit Regulation, 9VAC25-32, that are related to storage and land application of biosolids under the conditions experienced in 2018-2019: 9VAC25-32-515, Notification of land application activity, 9VAC25-32-545, Staging of biosolids for land application, and 9VAC25-32-550, Storage facilities. He suggested the RAP should consider and discuss the requirements in each of the sections in the context of HB870 as the meeting continued.

To conclude his introduction, Mr. Zahradka reviewed the substance and scope of the Notice of Intended Regulatory Action (NOIRA) that DEQ published on September 23, 2024, to initiate this rulemaking process, and provided a summary of the public comments received during the 30-day NOIRA public comment period that ended on October 23, 2024. The comments included requests to serve on the RAP, concerns about the presence of per- and polyfluoroalkyl substances (PFAS) in biosolids, and recommended limits on the regulatory action.

## **Panel Discussion:**

Following the introduction, Mr. Zahradka asked RAP members to discuss their goals and concerns. Their discussion considered constraints related to site storage capacity, land application restrictions, and the unpredictability of weather patterns. Considerable focus was placed on developing a regulatory proposal that provides regulatory flexibility due to uncertainty about future weather conditions, clarity about enforcement alternatives and procedures, allowing land appliers and wastewater treatment facilities to establish and follow emergency planning protocols, and maintaining environmental protections.

- **Environmental and Operational Constraints**

RAP members underscored the difficulty of managing biosolids under variable weather conditions. Rainfall, snow, and other precipitation events render land inaccessible or saturated, thus preventing application. Trucked material requires dry, flat surfaces for unloading prior to land application (staging). The unpredictability of weather, coupled with limited plan and site storage capacity, was cited as a recurring impediment to timely biosolids use.

Wastewater treatment facilities described storage as constrained and weather dependent. Several RAP members noted that events like historic rainfall have disrupted normal operations and site access. The need for adaptable site storage and rapid response to requests for flexibility to a non-compliance with regulations in such conditions was consistently affirmed as a need for stakeholders.

- **Storage Limitations and Staging Requirements**

RAP members cited limits on (i) on-site storage and (ii) capacity at landfills as challenges to managing biosolids that cannot be land applied during wet conditions. They reported a significant decrease in landfill capacity for biosolids since 2018, with some land appliers being forced to ship biosolids out of state for disposal. Factors that landfill operators consider when deciding whether or not to accept biosolids include the slope of the cell where they will be disposed of, odor, material composition, and internal temperatures (in some situations, the presence of biosolids in landfill waste leads to higher temperatures during decomposition). Dewatering was identified as a method that has reduced volume but does not solve broader capacity limitations.

The 45-day site storage limit and 7-day staging rule (9VAC25-32-550) were identified as a challenge during major weather events. RAP members requested clarification and possible revisions to allow for operational flexibility. The 5-day notice rule prior to land application (9VAC25-32-515) was flagged as being burdensome under extreme weather conditions because alternative more well-drained sites may be identified that had not yet been noticed.

- **Regulatory Roles and Local Authority**

It was clarified that DEQ maintains regulatory authority over the permitting process for land application of biosolids. This includes routine storage and staging. However, localities, as part of their zoning ordinances, may designate or reasonably restrict the

storage of biosolids based on criteria directly related to the public health, safety, and welfare of its citizens and the environment. (see § 62.1-44.19:3 of the Code of Virginia) The fact that some localities have ordinances related to biosolids storage may need to be addressed in the proposed regulation. The current limitations for on-site storage are intended to create a threshold below which storage would not be subject to a local ordinance. If on-site storage during a weather emergency were to extend beyond 45 days, or if stored material were to be land applied on farms other than where the on-site storage facility was located, the applicability of a local ordinance may come into play.

- **Emergency Conditions and Proposals of Flexibility**

RAP members advocating for the development of predefined emergency plans approved by DEQ in advance of need. These plans would include:

- Clearly defined thresholds and triggers (see below).
- Enhanced coordination between landowners and land appliers.
- Recognition of the role of geographic and seasonal factors (i.e. frozen soil, evaporation).
- Potential temporary waiver of the 5-day notice rule under emergency status.

DEQ proposed that permittees would submit reports verifying emergency conditions and their pre-approved plan. RAP members suggested the proposed regulations should include language explicitly defining what constitutes an emergency and outlining conditions for flexibility.

- **Geographic Distribution and Interstate Shipments**

Discussions acknowledged factors, in addition to weather, further complicating biosolids management – specifically storage impacted by geographic distribution, time of year, and interstate shipments.

- **Potential Triggers**

RAP members brainstormed a list of potential triggers for emergency storage exceptions, including:

- Saturated land due to prolonged rainfall.
- Governor-issued emergency declarations
- Storage capacity limits being exceeded.
- Influx of material from out of state.
- Measurable regional rainfall thresholds.
- Geographic and transportation constraints.

- **Potential Allowances**

RAP members brainstormed a list of potential allowances for emergency exceptions, including:

- Utilization of on-site storage for other sites other than the farm where the on-site storage is located

- Waiver on amount of time allowed at on-site storage, including requirement to have pad completely clean at least every 45 days
- Waiver or reduction of required time on notice/signs posted.
- Temporary storage on sites identified and approved ahead of time as emergency storage sites.

### **Public comment**

None

### **Proposed Solutions and Next Steps**

The panel suggested a framework for developing regulatory language in which land appliers create emergency plans with defined triggers and DEQ prior approval. Under extreme weather conditions, the land applier initiates the emergency plan and submits a report to DEQ verifying how the situation meets the standard of an emergency and how the plan will be enacted.

These plans would allow for responsive action under specific extreme weather and capacity conditions. This would allow land appliers to develop emergency plans for extreme weather conditions and reduce risk. A specific definition of an emergency would be included. Several examples of similar scenarios in other contexts were discussed and will be reviewed to assist in developing the proposed regulatory amendments for this effort.

#### **Next Steps:**

- DEQ to review thresholds and triggers discussed and develop regulatory language for the RAP members to review and provide feedback prior to, or during, the next RAP meeting.
- VACO will issue and gather survey data from localities on biosolids ordinances related to storage.
- Next meeting scheduled for May 13 at 9:30 AM at DEQ's Piedmont Regional Office. Further meetings will be scheduled if needed.