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

DRAFT MEETING NOTES
TAC MEETING – FRIDAY, June 24, 2011
DEQ PRO TRAINING ROOM

Meeting Attendees

TAC Members	*Interested Public*	*DEQ Staff*
Karl Berger - MWCOG	Robert Crockett – Advantus Strategies	Melanie Davenport
Rhonda L. Bowen - HRSD	Ed Cronin – Greeley and Hansen	Gary Flory
Dwight Flammia - VDH	Brady Deal – Recyc Systems	James Golden
Katie Kyger Frazier – VA Agribusiness Council	Kristen Evans – CBF	Angela Neilan
Tim Hayes – Hunton & Williams	Don Greene – Bio-Nomic Services	Bill Norris
Larry Land - VACO	Roger Hatcher – Allendale Farm	Jeff Reynolds
Darrell Marshall - VDACS	Willie R. Horton – City of Richmond	Charlie Swanson
Tim Sexton - DCR	Susan Lingenfelser – USFWS	Christina Wood
Wilmer Stoneman – VA Farm Bureau	Rachel McAden – DCR	Neil Zahradka
Ray York – Local Monitor	Harrison Moody – Recyc Systems	
	Sharon Nicklas – Alternate for Rhonda Bowen	
	Lisa Ochsenhirt – AquaLaw /VAMWA	
	Karen Pallansch – Alexandria Sanitation Authority	
	Jacob Powell – Virginia Conservation Network	
	Hunter Richardson – Synagro	
	Jerry Scholder – WORMS	
	Jim Sizemore – Alexandria Sanitation Authority	
	Claiborne Taylor – Agri-Services Corp.	
	Susan Trumbo – RecycSystems	
	Clair Watson – City of Richmond	
	Eric Whitehurst – City of Richmond	
	Andrea Wortzel – Hunton & Williams	

NOTE: The following Biosolids TAC Members were absent from the meeting: Greg Evanylo – VA Tech; Ruddy Rose – MCVH-VCU

1) Welcome, Introductions (Bill Norris):

Bill Norris, the DEQ Regulation Writer for this regulatory action, welcomed the members of the Biosolids TAC and members of the Interested Public to the Reconvened Meeting of the Technical

Advisory Committee. He asked for those in attendance to introduce themselves and asked that everyone sign the sign-in sheet.

He provided a clarification of the meeting purpose by reading the "clarification of meeting purpose" statement that was distributed via email to members of the TAC and Interested Parties prior to the meeting:

This meeting of the reconvened Biosolids Technical Advisory Committee scheduled for Friday, June 24th, is to provide the members of the TAC an opportunity to review and react to the proposed changes to the Biosolids Regulations that they contributed to and to provide their responses to staff before the staff finalizes the regulations for presentation to the State Water Control Board in September.

This is NOT a public hearing on the regulation or on any particular permit process. Public hearings/meetings related to permits are held in the specific counties where the permit is being applied for and comments related to a specific permit action should be directed to the appropriate DEQ Regional Office. The public comment period for this proposed regulatory action has already taken place and four public hearings were conducted during which comments were received.

A "public forum" period is a normal part of our public participation process. Whenever we have an advisory group meeting such as the Biosolids TAC meeting, we try to include time at the end of the meeting for members of the interested public who have decided to attend the meeting to offer any pertinent information or comment on the day's discussions or the subject matter of the meeting.

The main purpose of this meeting is to hear from the members of the Biosolids Technical Advisory Committee, but as noted we will try to allocate some time to the interested public if time permits.

There will be an opportunity for those that provided comments during the public comment period held for this regulatory action to address the Board during the Board meeting where the proposed regulation is presented to the board (September). This meeting of the Technical Advisory Committee is not the proper forum for those comments.

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2) Instructions and Overview of Priority Topics from Public Comment (Neil Zahradka):

Neil Zahradka, Manager of DEQ's Office of Land Application Programs, provided an overview of the Priority Topics from Public Comments and provided instructions to the TAC. The major substantive changes to the DEQ Biosolids Regulations (Proposed to Final) included the following items which will form the basis for today's discussions:

Fees

The requirements have been adjusted to align as closely as possible with the statutory requirements in § § 62.1-44.19:3.F. and 62.1-44.15:6. of the Code of Virginia.

VPDES permits: The initial permit fee will include an additional $5000 for processing of the biosolids portion of the permit. Annual maintenance fees will not increase over that prescribed in 62.1-44.15:6. Any addition of land will be subject to a $1000 modification fee, whether added during the term of the

permit or at reissuance. This includes additions of less than 50% of the originally permitted acreage. VPA permits: The initial permit fee remains at $5000 for a 10 year term. Annual maintenance fees will be reduced to $100 per year ($1000 maximum reissuance fee prescribed in § 62.1-44.19:3.F. divided by 10). Any addition of land will be subject to a $1000 modification fee, whether added during the term of the permit or at reissuance. This includes additions of less than 50% of the originally permitted acreage.

PCB Analysis

The requirement that the PCB analysis be conducted in accordance with EPA Method 1668 has been removed. This method is not currently used by EPA as a compliance method, and even if the lower detection level would indicate the presence of PCBs, no action level is prescribed for PCB content less than 50 ppm.

Permit application materials

The requirement for an aerial photograph has been added, along with the requirement that the map identify occupied dwellings and publicly accessible properties within 400 feet of the proposed land application site.

The requirement for additional soil characterization information for frequent applications of biosolids has been removed. Biosolids applications at greater than 50% of the agronomic rate more often than once every three years will require a DCR approved NMP, and the soils information will be evaluated in that process. Additionally, groundwater monitoring is not expected to be required for land application conducted in accordance with an NMP.

The requirement for a Land Application Plan (LAP) has been removed. All additions of land will necessarily be required to follow the notification procedures outlined in statute. Therefore, the information in the LAP is irrelevant at the time of permit application.
The requirement for an approved NMP at the time of permit application has been modified to be more inclusive of all reclamation sites, and includes "disturbed" land sites as well.

Land Application without a permit

The statutory requirement to not land apply without a VPA or VPDES permit has been added to the regulation.

Notification

The procedure for the 100 day notification is clarified to be a one-time notification to the locality that may occur when the permit application is received and DEQ notifies the locality of receipt of the permit application.

The procedure for the 14 day notification has been made identical to the statutory requirements. The list of other information required with this notice has been removed.

When signs are posted at a site at least 5 business days prior to delivery of biosolids at a permitted site, the permit holder must provide written notification to DEQ and the locality that signs have been posted

and include identifying information for those sites. The information that was previously required in the 14 day notice has been largely moved to this notification time.

The daily notice has been modified to be required to occur within 24 hours prior to biosolids being delivered or land application commencing at a permitted site. The notice can only include sites where land application will occur or biosolids delivered in the following 24 hours and must also include identification of the biosolids source.

Signage

A sign must always be posted at or near the intersection of the public right of way and the main site access road or driveway to the site. If a field is located adjacent to a public right of way, signs shall also be posted along each public road frontage beside the field to be land applied.

Landowner Agreements

A requirement has been added that specifies that the most current version of the landowner agreement form must be used for each permit application submitted, and that the form identify the land application sites for which permission is being granted.

A requirement has also been added that the landowner acknowledge receipt of a biosolids fact sheet approved by the department. At present, this would be the "Frequently Asked Questions" sheet on the DEQ biosolids program.

Storage

Staging has been defined as "the placement of biosolids on a permitted land application field, within the land application area, in preparation for commencing land application or during an ongoing application, at the field or an adjacent permitted field." The time period allowed before land application must commence has been defined as 5 days. Covering the biosolids is required if not spread within 7 days. Notification to the DEQ is required if biosolids is not spread within 7 days. A requirement has been added specifying that biosolids shall not be staged within 400 feet of an occupied dwelling and 200 feet of a property line unless reduced or waived through written consent of the occupant and landowner.

On-site storage requirements have been clarified to only apply to sites not located at the wastewater treatment plant. Additionally, biosolids stored at a permit holder's site may be land applied to any permitted site, not just those permitted by the holder of the permit for the on-site storage facility.

Soil pH and Potassium

The requirement that soil pH must be at least 5.5 SU at the time of land application has been modified to state that if the soil test pH is less than 5.5 SU, the land must be supplemented with the recommended agronomic lime rate prior to or during biosolids land application. A similar requirement that in cases where soil test potassium is less than 38 ppm, the land is to be supplemented with the recommended agronomic potassium rate prior to or during biosolids land application.

Nutrient Management Requirements

Plant available nitrogen application rates and timing limitations for soybeans, tallgrass hay, warm season grasses and alfalfa have been removed in order to rely upon DCR nutrient management standards and criteria.

Slope restrictions

A provision has been added that allows DEQ to waive the restriction on land application of biosolids to slopes exceeding 15% if for the purposes of establishment and maintenance of perennial vegetation.

Setback distances

The buffer guidance established for setbacks from homes and property lines has been incorporated into the regulation, maintaining the requirement for a 200 ft property line or 400 ft residence buffer "upon request" by the owner or occupant.

The setback from surface waters has been modified to be consistent with the CAFO regulations, i.e. a 100 ft setback is required unless a 35 ft vegetated buffer is present. If the 35 ft vegetated buffer is present, the setback from the surface water is 35 ft. A definition for "vegetated buffer" has been added to both the VPA and VPDES regulations.

The 25 ft setback from "intermittent streams/drainage ditches" has been reworded as a 25 ft setback from "channelized drainage ways."

The setback from open sinkholes has been increased to 100 ft (consistent with a well), and a note has been added that specifies that the 50 ft setback from a closed sinkhole can be reduced or waived based on evaluation by a professional soil scientist.

The provision for DEQ to increase any setback based on site-specific conditions remains.

Reclamation of Disturbed Land

The requirement for an approved nutrient management plan remains. The provision that the application rates be established in consultation with the CSES Department at Virginia Tech (in addition to DMME and DCR) was reinserted.

Financial Assurance

A statement has been added clarifying that for financial assurance demonstrated through liability insurance, a pollution policy as well as a general liability policy is required that covers storage, transport, and land application of biosolids. Additionally, a measure of the financial stability of the insurance carrier is required in that the carrier must meet specified AM Best, Standard & Poor, or Moody ratings.

He noted that the list above does not include all of the changes being proposed but does include the major areas of concerns and comments received based upon the content analysis of public comments

on the proposed biosolids regulatory changes provided below:

Primary focus of Comment	Number of Comments
Buffers	156
Notice	94
Sampling and Testing	78
Support Land Application	72
Nutrient Management Plans	72
Oppose Land Application	62
Language Changes	49
Storage	48
Landowner Agreements	45
Health	44
Definitions	37
Lack of Science, Toxics, Unknowns	35
Sensitive Sites, Karst	25
Financial Assurance	20
Use of Word “Biosolids” in place of “Sludge”	19
Maps, Control Numbers	18
Operations and Maintenance Manuals	13
Odor	12
Water, Runoff	12
Fees	11
Documentation, Reports	11
Monitoring, Enforcement	10
Mined Land, Reclamation	8
Alternatives to Land Application	7
Haul Routes	6
Hours of Operation	6
pH	6
DEQ Authority	5
Soil	4
Permitting	4
Local Monitors	3
EPA	3
Complaint Process	3
Frozen Ground	2

He informed the group that normally the agency does not reconvene an advisory group between proposed and final presentation to the board, but since there were a number of changes that were made in response to comments received during the public comment period DEQ wanted to provide an opportunity for the TAC members to provide feedback to staff on those changes. DEQ is looking to the TAC for suggestions as to changes that need to be made to those revisions and identification of areas that may have been missed in the process. DEQ is also looking to the TAC to provide alternatives for those requirements that the TAC determines are of concern or in those areas where the

agency response should have been different. This is an opportunity for staff to listen to TAC comments and recommendations. It is recognized that there may be some issues that are not on the list, but and agenda item was included to consider "other" issues/items that the TAC may have. TAC members were also invited to submit additional comments and recommendations on items that are not covered during the course of the meeting.

Discussions included the following:

A TAC member asked for clarification of what DEQ was really seeking during this "listening" session. Staff responded that the absolute best thing that a member of the TAC could do if there is a concern or an issue with something that staff has proposed that the member offer an alternative or alternative language to address the issue and requested that the members provide additional information beyond what was provided in public comment.

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3) Facilitated TAC Members Input – Buffers (Residence and Property Line) (Angela Neilan/Neil Zahradka):

The Summary of Major Substantive Changes to DEQ Biosolids Regulations (Proposed to Final) document contained the following summary related to this topic:

- The buffer guidance established for setbacks from homes and property lines has been incorporated into the regulation, maintaining the requirement for a 200 ft property line or 400 ft residence buffer "upon request" by the owner or occupant.

Neil Zahradka provided an opening statement regarding residence and property line buffers. He noted the following:

- The TAC will note that there is no change in the buffer requirements.
- There is an operational issue related to buffers on both sides of the issue.
- The idea is how DEQ addresses health sensitive individuals and their potential issues with the land application of biosolids based on Dr. Burn's (VDH) letter.
- The issue is how to appropriately address a situation where a resident is unaware of the notice for land application and has a health issue.
- If a request is made then based on the current language and guidance, DEQ would grant the extended buffer without requiring documentation.
- The problem is an operational one - if documentation were required before a buffer could be extended then there is a potential that the land application may be delayed.
- DEQ welcomes TAC suggestions as to an operational solution to deal with last minute requests.
- The only way to ensure operational certainty is either that the land applier has talked to every resident and knows where there are health concerns that need to be addressed or the land applier just automatically extends the buffer to 400 feet in all instances or at least in those instances where they have not contacted the land owner/resident/occupant.
- Other states have established buffers that are in some cases less and other cases greater than what DEQ has proposed.
- The extension of the buffer upon request is a policy decision.

- The buffer is 200 feet and can be extended up to 400 upon request. Any buffer request beyond 400 feet would be referred to the Health Department.

Angela Neilan facilitated TAC member input on this topic. The TAC's discussions on this topic included the following:

- There have been instances in the regions where concerns regarding land application of biosolids and regional staff have offered the buffer.
- DEQ should not be offering the buffer extension automatically.
- The buffer should not be automatic just because someone doesn't like biosolids.
- The buffer issue should be addressed as an individual concern, not just arbitrarily a dwelling. It should be based on an individual's health concerns/issues.
- The request should be in writing so that there is a record of the request and the response from DEQ.
- There is no period where the opportunity to request extension cuts off. There should be a time limit within which the request can be made.
- There is currently a requirement to have two signatures to waive a buffer - from the land owner and the occupant but there is no requirement that the buffer request be in writing.
- The buffer is arbitrary.
- If there are no health issues as discussed in Dr. Burns' letter then the buffers should be those originally proposed (200 feet from a dwelling and 100 feet from a property line).
- Extended buffers could affect farming operations.
- The issuance of an extended buffer should be based on actual health issues of an occupant. There should be a 24-hour period of notice. The request could be made during the permit review process and addressed within 24 hours. The decision for an extended buffer should be made within 24 hours of land application.
- Once the product is delivered to the site, it has to be put somewhere.
- Storage capacity can be a logistical issue.
- The buffer should not be extended based on anybody's request. It should be based on health issues/concerns of a dwelling's occupant.
- There should be clear evidence of serious health problems of an occupant before a buffer is granted.
- Any request for a buffer of 400 feet should be made at least 24 hours prior to scheduled land application. Anything less than 24 hours there should be a requirement for documentation of health issues.
- The footnote in the buffer table (Footnote 2) says that anyone (any landowner or resident in the vicinity of a land application site) can request an extended buffer - it doesn't designate that it has to be a dwelling occupant. This says that anyone in the neighborhood can request a 400 foot buffer from any dwelling. This is not what the TAC agreed to.
- There should be time parameters for a buffer request and should be prior to the day of application.
- What does the notification letter from DEQ say? *Staff response: The current letter notifies the resident that an application for land application of biosolids has been received for adjoining property and gives a contact number. The existing letter does not address the buffers but if it was a part of the regulations then it would be.*

- In earlier versions the TAC agreed to a buffer from a property line that was not adjacent to an occupied dwelling of 50 feet and for those adjacent to occupied dwellings of 100 feet.
- There does need to be a 24 hour time limit on the request for extended buffers.
- Publicly accessible sites have a 400 foot buffer proposed in the draft regulation. The original intent of the 400 foot buffer was to address health issues of a resident living in a dwelling adjacent to a land application site. It makes no sense to have a 400 foot buffer from a 7-11 or similar sites either scientifically or medically.
- Concerned about the use of the terms "vicinity" or "adjacent" - there term should be "adjoining". "Vicinity" could be anybody. *Staff noted that the term 'vicinity" is used in the statute.* If that is the case then the term "vicinity" needs to be defined for the purpose of this regulation as "adjoining".
- The request for an extended buffer should be in writing and part of the permit process. There needs to be documentation of the request.
- There is a misprint in the footnote notations in this section (footnote 6 is noted but there is no #6, it should be #4.
- There was general agreement in the TAC on the property line buffers and that is what should be included in the regulation.
- There needs to be common sense used in setting buffers. Buffers for special circumstances (buildings open to the public, church, school, day-care center, etc.) should be determined on a case-by-case basis. Special accommodations (timing or distance restrictions) could be made depending on the circumstances or the nature of the request of concern.
- Support the idea of requiring a written request for an extended buffer. The possible extension for a 400 foot should be based on health issues. The request should be documented in DEQ files and if that resident leaves then the buffer would go back to the original. *Staff noted that DEQ currently enters the physical location in the DEQ database as having a buffer request. Any changes would be based on information received from the permit holder or the resident. There is a place holder in the database for an expiration date for the extended buffer.*
- A new resident should be required to request the extended buffer on a site where an extended buffer has been granted in the past. The extended buffer should not be automatic if the original resident (requesting the buffer) no longer resides in the residence.
- The current regulations make it very difficult to get a waiver approved because of the requirement for signatures from both the resident and the land owner. There were no comments made during the comment period that would require this additional signature. There are a lot of absentee land owners.
- What is the definition of "occupied dwelling"? Does a trailer down by the river that is used periodically as a "vacation home" qualify as an "occupied dwelling"? What about other types of vacation homes or rental properties or "2nd home" used periodically? It should be the permanent occupant of the dwelling that needs to be the one requesting the buffer of signing off on the waiver request.
- "Occupied dwelling" is in the Code.
- Have to follow what is in the Code. Need to follow the language of the Code.
- Why was the option of the use of "incorporation" and "winter application" removed from the regulation? *Staff noted these changes were made to be consistent with Dr. Burns' letter and the 100 foot and 200 foot buffers.*
- The buffers can be established in the regulation but there needs to be site specific conditions for extension of a buffer.

- "Incorporation" was originally proposed as a means to address "odor sensitive individuals" without having to have extended buffers. There should be an option for the use of "incorporation" in lieu of having extended buffers. The wording of the regulation currently doesn't appear to be a mechanism to allow the use of incorporation. There is no opportunity for negotiation in the wording of the proposed regulation. Once the request is made it has to be included in the permit according to the current wording.
- What instructions is DEQ going to give to field people to address concerns raised by residents or dwelling occupants? *Staff noted that the current guidance is being used, but once the regulations are finalized then additional guidance will be provided to field personnel. Not trying to ignore the need for operational predictability (clarity and consistency). DEQ desires that the regulatory language be as clear as possible*
- There was a compromise agreed to by the TAC. The is no option to do other than what the Code requires and that is that the buffer requests must go through the permit issuance process and the applicator has 14-days to respond and they have to have the option of incorporation. Don't see where the Code allows DEQ employees have the authority to stop an applicator from putting down biosolids within a certain distance. *Staff responded is that it is not the Code but what is identified in the regulation.*
- The statute (Code) trumps the regulation.
- Must conform to Code requirements. When more people become aware that anyone can request a 400 buffer when an application is underway or is going to start, there could be a lot of interference that could delay and impact the land application process. There needs to be more order in this process.
- *Staff noted that the materials that were distributed to the TAC were not the official response to public comment. DEQ wanted to hear from the TAC prior to finalizing those official responses and that will be what is submitted to the Board for their review and consideration.*

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4) Facilitated TAC Members Input – Buffers (Environmentally Sensitive Sites) (Angela Neilan/Neil Zahradka):

The Summary of Major Substantive Changes to DEQ Biosolids Regulations (Proposed to Final) document contained the following summary related to this topic:

- The setback from surface waters has been modified to be consistent with the CAFO regulations, i.e. a 100 ft setback is required unless a 35 ft vegetated buffer is present. If the 35 ft vegetated buffer is present, the setback from the surface water is 35 ft. A definition for "vegetated buffer" has been added to both the VPA and VPDES regulations.

- The 25 ft setback from "intermittent streams/drainage ditches" has been reworded as a 25 ft setback from "channelized drainage ways."

- The setback from open sinkholes has been increased to 100 ft (consistent with a well), and a note has been added that specifies that the 50 ft setback from a closed sinkhole can be reduced or waived based on evaluation by a professional soil scientist.

- The provision for DEQ to increase any setback based on site-specific conditions remains.

Neil Zahradka provided an opening statement regarding buffers from environmentally sensitive sites. He noted the following:

- The most significant changes were made to make it consistent with the CAFO regulations. The CAFO regulations require a 100 foot setback from surface waters unless there is a vegetated buffer (35 feet). In that case the setback can be reduced. This is an opportunity to promote the establishment of 35 foot vegetated buffers from surface waters for all agricultural activity.
- Changes were made to the "sink holes" in Karst topography requirements. There is not a lot of difference between an "open sink hole" and a "well". There is a distinction made to account for geological parameters.

Angela Neilan facilitated TAC member input on this topic. The TAC's discussions on this topic included the following:

- Confused with the use of a new term in the regulation. "Channelized drainageway" is not defined. What is intended? There could be sheet flow that could occur. *Staff response: There have been a lot of discussions by staff over this topic and this language. Most of the determinations will be made on a "site-specific" basis. The goal is to avoid movement of pollutants in biosolids by the higher velocities in channelized flows of water.*
- Are the requirements for water supply reservoirs based on AWWA standards? *Staff response: There are current DEQ regulations that define "water supply reservoirs".*
- The terms used should be defined and examples should be provided.
- Concerns were noted regarding the lost of the ability to decrease the buffer to 5 feet for agricultural drainage ditches and incorporated roadways with incorporation. This will result in more farmers moving cattle back onto the fields sooner.
- Struggling with the phrase "all stream and tributaries designated as a "public water supply". *Staff response: Certain stream standards are designated as "public water supplies" not normally the whole stream.*
- Editorial: There is a footnote #5 for water supply reservoirs that is designated in this section but it doesn't seem to relate to the topic.
- The definitions of surface water courses and channelized waterways need to be clarified. Don't want to see erosion of permit authority occurring within guidance documents. Don't want to see sheet flow classified as surface water course and then be considered as requiring a buffer. There should be some kind of definition here. Where do intermittent and perennial streams fit in?
- There needs to be clarification of the terms used as they relate to "sheet flow" and the terms "intermittent" and "perennial".
- What is the difference between a drainage ditch and a channelized drainage way and why 50 feet? *Staff response: There are conditions in a poorly managed field where that are eroded pathways that could be classified as a "channelized drainage way". Distance is considered from edge to edge. Buffers from a feature are from all sides of the feature.*
- The buffer should be 10 on either side. Don't come up with a requirement for 50 feet when we don't know what it is. This is essentially taking the issues with dwellings out into the fields.
- With site-by-site determinations, how are you going to identify the terms used related to features in a field? *Staff response: When you look at the legal terms when looking at geologic features, there are a lot of features in the field that are not identified on a map. Staff needs the*

ability to address these unknowns with a potential for environmental impact on a site-by-site basis. This is an attempt to improve the regulatory language.

- If the mission is just to keep it out of the feature why isn't the setback 10 feet? Cover does make a difference.
- There need to be definitions and examples of these terms. Surface water is defined but surface water course is not.
- The regulations refer to "water supply reservoirs". This needs to be clarified that it is a "public water supply reservoir". The "public water supply" term should be clarified to mean all segments of a tributary designated as a "public water supply".
- A suggestion was made to revise the language to make it clearer.

ACTION ITEM: Tim Hayes will provide revised language to address the concerns related to public water supply and buffers. His submitted language suggestions included the following:

1. "Water supply reservoirs" should be changed to "public water supply reservoirs"

2. Should be changed to "All segments of streams and tributaries designated as PWS under the WQS"

3. Next category should be changed from "Surface water courses without a vegetated buffer" to "Other streams and tributaries with perennial flow". Add a footnote to the 100 ft. buffer stating that "May be reduced to not less than 35 ft. where vegetated buffer is present".

4. Strike next category (Surface water courses with a 35-foot vegetated buffer)

5. Next category should be changed to "Intermittent streams and channelized natural drainage ways".

6. "All improved roadways" should be changed to "All public roadways".

Note that these editorial changes are in addition to the standing concerns that were discussed at length about the automatic extensions of residential and property line buffers.

- The definitions used do need to be consistent with those used within DCR's Nutrient Management Plan program.
- Definitions need to be practicable and fairly common. You need to know what it is when you see it in the field.
- Needs to be consistent with what is used in other regulations. Need to take it back to the original language and use the terms 'intermittent" and "perennial" streams.
- Clarification of definitions is needed.

5) Facilitated TAC Members Input – Notice and Signage (Angela Neilan/Neil Zahradka):

The Summary of Major Substantive Changes to DEQ Biosolids Regulations (Proposed to Final) document contained the following summary related to this topic:

- The procedure for the 100 day notification is clarified to be a one-time notification to the locality that may occur when the permit application is received and DEQ notifies the locality of receipt of the permit application.

- The procedure for the 14 day notification has been made identical to the statutory requirements. The list of other information required with this notice has been removed.

- When signs are posted at a site at least 5 business days prior to delivery of biosolids at a permitted site, the permit holder must provide written notification to DEQ and the locality that signs have been posted and include identifying information for those sites. The information that was previously required in the 14 day notice has been largely moved to this notification time.

- The daily notice has been modified to be required to occur within 24 hours prior to biosolids being delivered or land application commencing at a permitted site. The notice can only include sites where land application will occur or biosolids delivered in the following 24 hours and must also include identification of the biosolids source.

- A sign must always be posted at or near the intersection of the public right of way and the main site access road or driveway to the site. If a field is located adjacent to a public right of way, signs shall also be posted along each public road frontage beside the field to be land applied.

Neil Zahradka provided an opening statement regarding notice and signage requirements. He noted the following:

- There were changes made to the notice and signage requirements. There were a lot of comments about the public notice process.
- Tried to make it as clear as possible.
- Tried to include the statutory requirements for the 100-day notice and the 14 day notice, and then try to get to the need for adequate notification to plan inspections.
- DEQ understands that from the land applicators that operations do change at the last minute. Tried to make the language account for that as much as possible.
- Clarified that the 100-day notice requirements could be met through the application submittal to DEQ.DEQ would send this to the localities and this would satisfy the 100 day notice if all the information required by the statute were included.
- The 14-day notice requirements were reduced to exactly what the statute requires.
- In order to get something that was useful to DEQ related to signage, staff took all of the language from that required originally listed as 14-day requirements and put that in the required information to be submitted when a land applicator places signage at the site.
- Some information already being provided in the "site book information" was pulled from the

required notice submittals since DEQ already had that information in the site book.

- Clarified that the notice is to be within 24-hours prior to land application or delivery of material to the site. Trying to make it as flexible as possible. As long as we get the call prior to the start of application then the requirements would be met. The 24-hour notice can be a phone call letting DEQ know what site or sites the land applicator will be on.

Angela Neilan facilitated TAC member input on this topic. The TAC's discussions on this topic included the following:

- Concerned about requirement for local government notification. There are some localities that do not have the personnel to handle those notices or are not interested in receiving those notices. There should be a provision for a locality to waive the notification requirement.
- Since emails are considered as "written notices" these should be allowed as a contact means for the notification.
- The statute requires the 14-day notice to DEQ, but there is nothing related to local government notification. There is also no requirement in statute that it be 24-hours. There is no problem with the notification to DEQ. The issue is with the local government notification requirement, especially since some localities do not want to be notified. There needs to be flexibility in this requirement.
- The 24-hour notification is not required by the Code. There were extension discussions by the TAC and there were no serious concerns with the 24-hour requirements as a concept.
- It might be better to say "not more than 24-hours" instead of "within 24-hours".
- Prior to commencing land application activities could mean putting out flags on the site. Language in D 1 states "at least 5 days prior to delivery of biosolids for land application". These sections should be consistent. Use the phrase "prior to delivery of biosolids for land application". Delivery of biosolids to the site is commonly the beginning of the land application process.
- The phrase "deliver or cause to be delivered" should be changed to "notify". The permittee should notify the department and the chief executive officer and that could be done via email or by phone.
- Why is there so many times that the identification of the biosolids source required in the required notices? Staff response: The 14-day notice in statute requires it. We understand that you may not know the source until the day before. It helps the department to anticipate what is happening at the site. It also acknowledges that there are times that the applicator does not know deterministically until just before land application.
- The signage requirement says that if a field is located adjacent to a public right of way that signs should be posted along each public road. It doesn't state how many signs. It should say "at least one sign". And it should say "in addition". At least one sign should be posted on the public road frontage. *Staff response: There needs to be signage along the access road that the land applicator is using to access the site and if there is road frontage at the field there should be signage.*
- Page 287 regarding the waiver regarding alternative posting. Don't want there to be conflict with any "local sign ordinance". The term "general" should be inserted before the phrase "regulating the use of signs". A locality should not be allowed to come up with their own biosolids sign or signage requirements.
- There should be notification that the land applicator has posted the required signage on the site

and therefore has complied with the requirements. This notification would start the 5 day notice period. This time should not start over if the signs are stolen from the site. The written notification should also serve as a "reputable assumption" that the Department can't pursue any enforcement actions because of a sign being missing.

- There have been instances where the signs have been removed prior to application.
- A statement could be added to the signage to state that it is unlawful to remove the signs without permission.
- There is nothing in the Code that would prohibit DEQ from requiring a 24-hour notification in addition to the 14-day notice for extended buffers.
- Would have no issue if there was a mechanism for a local government to opt out of the notification requirements but there are probably a large number of localities that would want that kind of notifications.
- Staff response: Regarding comments on flexibility of what is required on a sign. There is nothing in the regulations that would prohibit a land applier from putting up an additional sign.
- Local notice is important when a locality wants it.
- The Local Monitors are in the area frequently and will look at the site and signage and would be able to verify if the land applier had placed signs.
- The signage requirements should indicate that "at a minimum" or "at least" what information is required. *Staff response: Don't want to have a "cluttered" sign.*
- The sign posting is for the benefit of those living in the locality. An applicant/land applier should not be penalized if signs are stolen. *Staff comment: Make sure that the signs are placed on private property and anyone stealing one would be trespassing.*

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6) Facilitated TAC Members Input – Storage (Angela Neilan/Neil Zahradka):

The Summary of Major Substantive Changes to DEQ Biosolids Regulations (Proposed to Final) document contained the following summary related to this topic:

- Staging has been defined as “the placement of biosolids on a permitted land application field, within the land application area, in preparation for commencing land application or during an ongoing application, at the field or an adjacent permitted field.” The time period allowed before land application must commence has been defined as 5 days. Covering the biosolids is required if not spread within 7 days. Notification to the DEQ is required if biosolids is not spread within 7 days. A requirement has been added specifying that biosolids shall not be staged within 400 feet of an occupied dwelling and 200 feet of a property line unless reduced or waived through written consent of the occupant and landowner.

- On-site storage requirements have been clarified to only apply to sites not located at the wastewater treatment plant. Additionally, biosolids stored at a permit holder’s site may be land applied to any permitted site, not just those permitted by the holder of the permit for the on-site storage facility.

Neil Zahradka provided an opening statement regarding storage requirements. He noted the following:

- There were some changes made to the storage sections. There were a lot of comments on the staging portion of the regulations.
- The proposed regulations didn't define "staging". Staging is that activity that occurred prior to land application.
- DEQ changed the time frame in response to comment. The proposed regulations originally contained a 2-week time frame for covering. Staff clarified when land application should be commencing. Concerns were noted that the time frame of 2-weeks might be too long.
- A 5-day and a 7-day limit are being proposed.

Angela Neilan facilitated TAC member input on this topic. The TAC's discussions on this topic included the following:

- How did you arrive at a 7-day limit? The TAC had originally discussed a 14-day limit. *Staff response: The 14-day was consistent with the poultry regulations but the time frame was ratcheted down based on comments received.*
- How many commenters asked for this change? *Staff noted that there were enough to give it some consideration.*
- The Local Monitors had raised a concern over the 2-week period and had asked for the 7-day period.
- *Staff comment: The storage requirements were revised to clarify that storage at treatment plants is covered under the SCAT Regulation; therefore it is not necessary to include storage requirements in the Biosolids portion of the VPA Regulation.*
- The 14-day time frame is something that has been discussed in a number of TACs and in a number of other regulatory actions. This has been argued for years and years. The use of a 7-day time frame will set the bar for future actions. It seems arbitrary to say based on some comments that it should be 7-days. The 14-day time frame was plucked out of the sky, but at least it was discussed.
- Is the decision to move from 14 days to 7 days based on a higher level of environmental protection? *Staff response: The covering requirement in the proposed regulation was based on environmental protection, i.e., reducing contact with water to reduce odor. There are reasons for covering. The days are arbitrary with respect to that time period. It is what is considered a reasonable time frame under which the biosolids would be land applied after being delivered to the site. We are asking that it be covered within 7-days. The poultry regulation requires material to be covered after 14-days.*
- The biosolids may be staged for a maximum of 5 days before land application. Further down in 3 and 4 it says that no liner or cover is required no longer than 7 days. There is nothing in here that says that after 5 days that if you are hindered by weather from applying. *Staff response: Don't want the biosolids sitting there more than 5 days before land application begins. Have to be covered after day 7. As soon as field conditions become feasible land application must commence.*
- This requirement needs to be clarified.
- The difficulty is that if we are staging the materials in an amount for that field and in an acceptable spot, not just any where. What is the functional difference between the materials being in a pile of spread on the field? If it is the right sport, what is the big deal? *Staff response: There is a difference between the pile and being spread on the field. The factors of time, temperature and sunlight are starting to act on materials that are already spread that are*

acting to further stabilize the materials. These factors are not acting on the materials if they are still in a pile. There are possibilities for undesirable conditions to occur if it is still in a pile.

- The regulation states that everyone is to pick the best spot. This is clearly spelled out in the regulation. Do not think that we should be establishing different time frames.
- There is some EPA guidance (EPA Field Storage Guide) that sets a 14 day period for storage.
- The staging period should be a maximum of 7 days instead of 5 days.
- Editorial comment: The wording in #6 is awkward. The clause "or removed from the field" should be moved to after the word "spread", i.e., "spread or removed from the field".
- Page 299 – regarding routine storage – dewatered biosolids to be covered to prevent contact with precipitation – *Staff response: The desire is to keep dewatered biosolids dewatered, so the materials need to be covered.*
- Does this apply to new facilities or retrofits? *Staff response: There is no grandfather provision. This would apply to all facilities that store dewatered biosolids.*
- This requirement could be fairly expensive for facilities to do the required retrofit, i.e., installation of a cover.
- This should not apply to existing facilities. This section deals with new construction. *Staff response: Staff will clarify this requirement.*

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7) Facilitated TAC Members Input – Fees (Angela Neilan/Neil Zahradka):

The Summary of Major Substantive Changes to DEQ Biosolids Regulations (Proposed to Final) document contained the following summary related to this topic:

- The requirements have been adjusted to align as closely as possible with the statutory requirements in § § 62.1-44.19:3.F. and 62.1-44.15:6. of the Code of Virginia.

- VPDES permits: The initial permit fee will include an additional $5000 for processing of the biosolids portion of the permit. Annual maintenance fees will not increase over that prescribed in 62.1-44.15:6. Any addition of land will be subject to a $1000 modification fee, whether added during the term of the permit or at reissuance. This includes additions of less than 50% of the originally permitted acreage.

- VPA permits: The initial permit fee remains at $5000 for a 10 year term. Annual maintenance fees will be reduced to $100 per year ($1000 maximum reissuance fee prescribed in § 62.1-44.19:3.F. divided by 10). Any addition of land will be subject to a $1000 modification fee, whether added during the term of the permit or at reissuance. This includes additions of less than 50% of the originally permitted acreage.

Neil Zahradka provided an opening statement regarding fees. He noted the following:

- Received a number of comments regarding fees, primarily from permit holders.
- There are two statutory sections that prescribe fees for water permits, one is specific to biosolids and one is specific to water permits in general and the two don't mesh.

- Took a second look at what the two statutes require and made some revisions to clarify the requirements.
- These sections have been revised to remove duplication of requirements.
- The modification fee for a VPDES regulation is $1,000 for a biosolids modification.
- The statute states that a modification fee shall not exceed $1,000. The revised language states that any modification will be charged the $1000 fee, regardless of amount of land added.
- Tried to take a look at both regulations to match the fees and requirements and to remove duplication.

Angela Neilan facilitated TAC member input on this topic. The TAC's discussions on this topic included the following:

- A question was raised regarding the $5,000 fee and the $1,000 fee for VPDES permit regarding Distribution and Marketing. Is there a separate permit needed? What is the situation if there is a change in contractor? What would constitute a modification that would require a fee? *Staff response: You could add Distribution and Marketing special conditions to an existing VPDES permit with a $1,000 modification fee. There would not be a separate permit required. Distribution and Marketing can either be permitted as a component of a VPDES permit or as a separate VPA permit, similar to land application. As far as what is considered a modification for the change of a contractor when all else remains the same that would not be considered a major modification since the operation has not really changed and would not require a fee. It would probably require a change in the Operation and Maintenance Manual.*
- What about the building of a composting facility? *Staff response: A VPDES permit would have to be modified – with a $1,000 modification fee.*
- The requirements need to be clarified to state that a separate Distribution and Marketing permit is not required. It is not really clear that a D&M operation can be part of an existing Sludge Management Plan.
- Could it be included as part of a backup option in a permit renewal? *Staff response: Would be handled in a similar fashion as a permit reissuance. That is part of your sludge management plan. This issue would best be handled and clarified through guidance.*
- There is more clarification needed for these requirements for the payment of these fees related to D&M.
- The code says up to $1,000 for the addition of land, it doesn't spell out a specific number of acres.
- Adding a new source would not require a fee. *Staff response: This would be an administrative change.*

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8) Facilitated TAC Members Input – Landowner Agreements (Angela Neilan/Neil Zahradka):

The Summary of Major Substantive Changes to DEQ Biosolids Regulations (Proposed to Final) document contained the following summary related to this topic:

- A requirement has been added that specifies that the most current version of the landowner

agreement form must be used for each permit application submitted, and that the form identifies the land application sites for which permission is being granted.

- A requirement has also been added that the landowner acknowledge receipt of a biosolids fact sheet approved by the department. At present, this would be the "Frequently Asked Questions" sheet on the DEQ biosolids program.

Neil Zahradka provided an opening statement regarding landowner agreements. He noted the following:

- There were a lot of discussions about what the landowner agreements need to include so that they are valid.
- There were a lot of comments received as to what the farmers were told as to what the material is and misrepresentations about the material.
- There were a lot of suggestions made.
- Changes were made to the proposed regulation that specifies the land owner agreements must specify that the landowner has received the DEQ Fact Sheet about Biosolids.
- The purpose of the Fact Sheet distribution is to ensure that the same message is being heard.
- There is no discussion in the fact sheet regarding a farmer's liability.

Angela Neilan facilitated TAC member input on this topic. The TAC's discussions on this topic included the following:

- Did these requests come from farmers, or "folks trying to look after farmers"? *Staff response: The comments came from persons trying to make sure farmers are well informed. DEQ's new language proposal is designed to make sure that the message is consistent. The fact sheet is geared to provide general information about the whole program not just nutrient management.*
- What information is likely to be in it that we don't already have? Does anyone care? *Staff response: This is a further effort to educate the farmer about the material.*
- These comments came from people who are trying to look after the farmer. *Staff response: The fact sheet would provide an additional piece of educational material to the landowner who may not necessarily be the farmer.*
- Page 202 – No application for land application can be complete without written landowner agreement using the most current agreement form. Is there a standard form? Can we see it? *Staff response: The form is still being modified.*
- Can the form be modified? Can't DEQ just identify the minimum requirements that need to be required in the landowner agreement form? Suggestion was made that the wording should be "on a form approved by the Department."
- DEQ should establish a minimum list of required items in the landowner agreement.
- *Staff comment: There can only be one landowner agreement. The same parcel cannot have two valid landowner agreements at the same time.*
- Any required form should be included as a part of the regulation as an appendix.
- There needs to be flexibility to allow the form to be modified in special conditions.
- There should be a mandated minimum list of items that should be included in the landowner agreement that should be identified in the regulation. Any additional information pertinent to a specific program should be allowed to be included.

9) Facilitated TAC Members Input – Nutrient Management Plans (Angela Neilan/Neil Zahradka):

The Summary of Major Substantive Changes to DEQ Biosolids Regulations (Proposed to Final) document contained the following summary related to this topic:

- Plant available nitrogen application rates and timing limitations for soybeans, tallgrass hay, warm season grasses and alfalfa have been removed in order to rely upon DCR nutrient management standards and criteria.
- The requirement that soil pH must be at least 5.5 SU at the time of land application has been modified to state that if the soil test pH is less than 5.5 SU, the land must be supplemented with the recommended agronomic lime rate prior to or during biosolids land application. A similar requirement that in cases where soil test potassium is less than 38 ppm, the land is to be supplemented with the recommended agronomic potassium rate prior to or during biosolids land application.
- The requirement for an approved nutrient management plan remains. The provision that the application rates be established in consultation with the CSES Department at Virginia Tech (in addition to DMME and DCR) was reinserted.

Neil Zahradka provided an opening statement regarding nutrient management plans. He noted the following:

- The nutrient management requirements are found in Section 560 – Site management.
- Edits were made to separate the nutrient management requirements that are handled by DCR's Standards and Criteria versus DEQ regulation.
- Specifications about timing were removed as well as appropriate nutrient management rates.
- The proposed regulations do not prescribe any nutrient management rate.
- It was recognized that when "new ground" is cleared, pH and potassium levels may not be at optimal levels, and the owner should not be expected to bring the levels up prior to biosolids application. This could be done simultaneously with the biosolids application.

Angela Neilan facilitated TAC member input on this topic. The TAC's discussions on this topic included the following:

- Concern was noted about the inclusion of agronomic rates to supply needed lime and potash. These items (items D&E) should be addressed in the DCR Standards and Criteria not in DEQ's Biosolids Regulation.
- How can you hold the land applier responsible for something that may or may not be under his control?
- The reference should be to DCR's Standards and Criteria.
- Where did the definition of "cover crop" come from? This is something that is generally covered under the nutrient management plan. *Staff response: Need to make sure that the DEQ*

regulation uses the same terms or actually use the term. A number of the definitions have been moved from a previous section to consolidate separate sections.

- What is the context under which "cover crop" is used in the regulation?
- Under these requirements when do NMP plans need to be submitted for review and approval? *Staff response: If a NMP is required to be approved prior to permit being issued then the preparation and approval would be done before permit approval and before the permit is issued. This would be under specific conditions, i.e., CAFO's; at greater than agronomic rates; mined land; etc.. If a tract of land is added after the permit is issued that the approved NMP would be submitted with the modification package. When the land application occurs the land applier is required to have an approved NMP plan on site during application. With a preapproved plan and there are no changes then a "rate sheet" would be sufficient. If there was not a preapproved plan then the NMP would need to be onsite for review during application. Then a copy would need to be provided 30 days after application is completed.*
- These NMP submittal requirements need to be clarified.
- The timing of notification to the land applier for any buffer changes should be such that the NMP accurately reflects what is happening on the site at the time of application.
- Cover crop should be just as "a crop not grown for harvest".
- The definition's used in DCR's Standards and Criteria should be the default definitions used in the DEQ Biosolids regulations as they relate to NMP requirements.
- Mined land reclamation – NMP approved by DCR required. During the TAC meeting there were some discussions related to the use of greater than agronomic rates for application of reclamation sites. Are they going to be allowed? *Staff response: Anticipate that those rates will be at greater than agronomic rates and that would require approval by DCR. These rates are being looked at within DCR and VA Tech. It is understood that these sites will fail if the application is at agronomic rates. The issue is being looked at for the use of greater than agronomic rates on these types of properties. This is something for DCR to determine.*
- If the buffer is increased and the total application has to be cut, does that require a change in the NMP and a reapproval? *Staff response: The plan needs to be modified and possibly reapproved, depending on the application rate, i.e., if the new rate would be greater than the agronomic rate and is being done every year, it would have to be reapproved.*
- If the applicator does know until that morning that the buffer is going to be changed, and then there is no way that the NMP will be accurate due to last minute changes.
- If a 14-day period is used then there would be sufficient time to allow for approval of application rates and NMPs.
- If the rate of application is changed then it is not a current plan.
- Changes in application rates that required preapproval would need to be reapproved.
- The NMP needs to be able to stand as it is. Getting a separate approval creates a problem.
- *Staff comment: Application rates that change the plan would need to be approved only if they apply again within 3 years. If greater than agronomic rates would need to be preapproved.*
- Can see possible sand-bagging being done with on-the-spot buffer area changes being requested at the last minute on the day of application. Can see it being abused.

10) Facilitated TAC Members Input – Other Topics (Angela Neilan/Neil Zahradka):

Neil Zahradka asked the members of the TAC for any "other topics" that they felt needed to be discussed at this meeting. Topics and discussions included the following:

- **Molybdenum:** One of the items that DEQ included in the NOIRA was to look at land application issues with respect to grazing. There were grazing concerns and the issue with excessive molybdenum concentration in some biosolids and possibility of copper deficiencies resulting in animals. This is usually treated with a feed supplement. The comments related to what are EPA's numbers for molybdenum and how DEQ plans to address concerns. DEQ has left the pollutant concentration limit at 75 in the table but have proposed adding a footnote referring to molybdenum concentrations greater than 40 shall not be applied on land for livestock grazing. That statement is based on a paper from a 2001 Journal of Environmental Quality – Modified Risk Assessment to Establish Molybdenum Standards for the Land Application of Biosolids. This research was designed to look at putting together a new proposed standard for molybdenum by EPA. The paper suggests new limits. DEQ is proposing this addition to show that we have significantly addressed where there is an identified risk. The research suggested that biosolids with molybdenum greater than 40 pose a risk on grazed land. The comments received noted that EPA has not changed the standards so why was DEQ changing our standards. DEQ is looking at this as area of an identified risk that needs to be addressed in the regulations. TAC comments included:
    - This is premature ahead of EPA's actions.
    - Could there be an option of rather than prohibiting the application in those case, that DEQ require that the land applier notify the farmer that has grazing livestock when the molybdenum concentration is between 40 and 75 and allow the farmer to make the decision as to whether he wants the materials applied and would allow the property to be grazed, rather than prematurely putting the limit in the regulations.
    - If EPA comes out with a new standard/limit than we would have to automatically comply with it regardless of whether the limit is in the regulations.
    - Put the onus on the farmer.
    - There are several VAMWA members who have expressed concerns/problems with this restriction.
- **EQ Biosolids:** TAC comments included:
    - Concern is about the use of a 40% soil blended product (solids). A solid ceiling below 40% would be subject to a NMP plan. Suggest that it should be 32% not 40% since this would include materials used in the horticultural applications.
    - The alternative would be to not require a NMP for materials used for horticultural applications.
    - The solids content is also impacted by weather.
    - The NMP requirements should be limited to only bulk agricultural applications.
    - *Staff comment: The transfer of the materials is the concern in regard of bulk agricultural applications is a matter of enforceability and who has to have the NMP.*
    - *Staff comment: There are a lot of factors involved with the type of products used by*

landscapers and trying to have an exemption for those types of uses that are not going to be applied across a field, but will only be applied in smaller areas.

- Don't have a problem with percent solids as long as the 25 to 1 carbon/nitrogen ratio is met.
- There is language in there that refers to Table 1 on Potential Screening. VAMWA has recommended that the table be removed. At a minimum, clarification is needed as to when the limits may be required.

- **Groundwater Monitoring – Preemptive Language:** TAC comments included:
  - Page 270 – "Monitoring wells may be required by the board…for biosolids land application sites or biosolids storage facilities…" Didn't this originally apply only to frequent applications sites? *Staff response: Any land application requires a NMP, therefore leaching to groundwater will be addressed through management practices, so DEQ is unlikely to require groundwater monitoring wells.*
  - Want to avoid the situation where someone can come in on every site and have the expectation that there will be a groundwater monitoring well. There should not be an expectation that there will be a groundwater monitoring well on every land application site. More criteria is needed specifying when a groundwater monitoring well would be required. Maybe there should be an identified threshold. Realistically there will not be groundwater monitoring required for routine land application sites.
  - Groundwater monitoring is usually only required for remediation efforts unrelated to biosolids applications.
- **Site Selection Criteria in Permit Application:** TAC comments included the following:
  - Currently DEQ allows for the submittal of specific site selection criteria at the time of permit application submittal. This has been very helpful.
  - Do the new requirements related to fees mean that every time additional sites are added to a permit that a $1,000 modification fee would be required to be submitted? *Staff response: The Land Application Plan language in the regulation currently specifies what the procedures must be to add land not identified at the time of permit issuance. The statute spells out clearly what is required to add land, and these requirements were added to the regulation, so the LAP language was redundant and therefore was removed.*
- **15% Slope:** There were a lot of comments about the 15% slope and the benefits of the use of biosolids to help in the establishment of vegetation. Impacts are dependent upon what is down-slope of the area, i.e., a stream. DEQ inserted language that provides that during permit review that there is an ability to offer site specific exemptions from the slope restrictions if it is being established in permanent vegetation. TAC comments included:
  - There are instances where application of biosolids on slopes greater than 15% will work.
  - Suggestion was made to strike the language related to "establishment of permanent vegetative cover" and replace it with language that states that "the restriction may be waived by the department if site specific criteria and best management practices are in place."
  - *Staff comment: What conditions would apply?* There are a variety of things, contours, terraces, etc. Don't specifically say grass, allow for other best management practices approved by the soil conservation practice to be used. Allow flexibility.
  - There are conservation practices available. If they are placed properly then runoff can be prevented or limited.

- **Process Question – Citizen Members Involvement Clarification:** All three members were contacted and all three submitted letters giving reasons for not participating:
    - Henry Staudinger – "…Upon receipt of the revised regulations and your invitation to rejoin the TAC, I examined the revised language to see what needed changes had been incorporated. A quick review was more than sufficient to confirm that DEQ had once again failed to address the many changes needed for lawful land applications to be made under issued DEQ permits. Thus there is no legitimate basis for a TAC meeting and no reason for a Citizens' representative to be present. Accordingly, I will not be attending."
    - Chris Nidel - "…I believe that the definition of insanity is repeating the same thing over and over and each time expecting a different result. I, along with the other citizen representatives, have given considerable time and energy to the TAC process. This was on a purely voluntary basis. We have engaged the DEQ when and where we felt our experiences, observations, and voices would help shift some of the dialogue on this important issue. These efforts have failed repeatedly – each time with the result being the same. Not only is it a waste of time, money, and environmental resources for me to agree one last time to try to change the dialogue on this issue – it would in fact be insane."
    - Jo Overbey – "…I see no areas for compromise in these regulations as proposed, and see no hope for making any meaningful changes by attending the TAC meeting on the 24th. As a result, and with great regret, I withdraw my agreement to participate in the meeting."
- **New Source:** TAC comments included the following:
    - When we had the discussions in the TAC regarding new sources we were talking about new sources that has not been used in Virginia, not sources that have already been used in the state but may not have been used by a specific contractor.
    - This needs to be clarified.
    - *Staff comment: There were a lot of comments received whether this meant board or department.*
    - Is this actually a board approval or is it a department recommendation/approval? *Staff response: This usually refers to delegation by the board to the Department. Historically a lot of the regulations were written as State Water Control Board. The drafting of the language changes may not have been as clear as possible where SWCB is used and agency delegation is appropriate.*
- **Financial Assurance:** TAC comments included:
    - What happened with the language that was developed by the subcommittee for use in the financial test for localities? *Staff response: There is no exemption in the statutes for the procedures that we would use. Wanted to make sure that the procedures for getting financial assurance are consistent among the programs*
    - There needs to be clarification to these requirements.
    - The language seems to be word for word from those required for solid waste facilities.
- **Additional and more stringent requirements:** TAC comments included:
    - Page 232 - Subsection B states that "Nothing in this part precludes another state agency with responsibility for regulating biosolids or sewage sludge or any political subdivision of Virginia or an interstate agency from imposing requirements for the use of biosolids or the disposal of sewage sludge more stringent than the requirements in this part or from imposing additional requirements for the use of biosolids or disposal of sewage

sludge." – This is a legal conclusion. The department can't rule on the legal effect of its own regulation. Courts in Virginia have rules that because the state regulates biosolids extensively, localities don't have the authority to impose more stringent restrictions or additional requirements. They can use zoning to say where agriculture activities can occur. This language has no legal effect. This is creating an opportunity for misunderstanding. *Staff comment: This language comes directly from the VPDES program.* This language should not be included.
    - Suggestion was made that the subsection be reworded to read: "Nothing in this part affects the authority of any other state agency, any political subdivision of Virginia, or any interstate agency with respect to the use of biosolids or disposal of sewage sludge."
- **Record Keeping:** Comments had been received regarding the time for record keeping requirements (page 322 – line 9). Initially a concern was raised over the Distribution and Marketing record keeping requirements. Wanted the record-keeping to be consistent with the 3-year VDACS record keeping requirements related to the fertilizer regulations. However, the federal 503 regulation requires that records be kept for 5 years.
- Page 123 – Land applier requirements – There is a requirement for a Certified Land Applicator to be onsite at the site of a biosolids land application at all times. Originally the concept was that the Certified Land Applicator could be within 30 minutes of the site. Still need to allow some flexibility. This language needs to be clarified. *Staff response: That is specified in statute.* It was suggested that the language contained in the land applier certification program should be included (training and certification). It was suggested that it just say "on-site".

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11) Public Forum:

Public Forum comments made by those in attendance at the meeting included the following:

- **Roger Hatcher** – Farmer/Cumberland County – Buffers: Asking the board to approve going from 200 to 400 feet is too arbitrary a basis. In some cases this will eliminate not just that portion of a field but an entire field from use of biosolids. The likely outcome will result in more and more land being taken out of consideration for land application. Storage: Is the 45 day routine storage requirements going to raise a red flag with localities?
- **Jerry Scholder** – WORMS – Presented an alternative approach to the treatment of biosolids through the use of worms operating to reduce municipal sludge through vermistablilization.
- **Hunter Richardson** – SYNAGRO – Have attended all of the TAC meetings and public hearings. The process has been conducted according to the APA process. Allowing people to come to the table but those in favor and those opposed to the use of biosolids. I am surprised that with the level of concern that there would have been more people participating in the process. Glad to hear that an invitation had been extended to the citizen members, but surprised that they chose not to participate. Hope that the agency continues with the APA process and am winding the process down. There is a proper time to offer comments. Need to acknowledge the changes and the shift of costs to the rate payers.

Bill Norris noted that he had received a submittal from a citizen requesting that it be provided as part of the public forum portion of the meeting. That submittal was from Wendie Roumillat and read as

follows:

> "Do whatever yall want bc from my experience, the people have never been ur top priority anyway! I have tried for years to get through to yall but I am not stupid & I know that money is driving all of this. U can lead a horse to water but u can't make him drink. It's that plain and simple. So, go ahead and act like u r do'n this for the people, we know the truth. Have fun killing/hurting the environment, as well as, all our kids."

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12) Wrap Up and Next Steps:

Members of the TAC noted that staff had done a good job of keeping everyone informed and up-to-date throughout the regulatory development process.

Bill Norris thanked the TAC members for coming back to participate in this meeting and thanked them for their input and continued interest in this important regulatory action. He noted that the current plan is for staff to finalize the final regulation edits for submittal to the Office of the Attorney General the week of August 1st, with the goal of having the review of the proposed regulation by the Attorney General to occur between August 7th and August 26th. The current intent is to provide an update to the Board in a staff report at their meeting on August 4th and 5th. The goal is to make final edits to the regulation following completion of the Attorney General review for submittal to the Board sometime between August 29th and August 31st. The final board materials will be submitted to the Board by September 1st for consideration at the September 22nd and 23rd Board meeting.

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13) Meeting Adjournment:

The meeting was adjourned at approximately 3:50 P.M.