

MODEL BIOSOLIDS / INDUSTRIAL RESIDUALS ORDINANCE

June 2016

AN ORDINANCE AMENDING THE [INSERT] CODE, BY THE ADDITION OF ARTICLE [X], LAND APPLICATION OF BIOSOLIDS AND INDUSTRIAL RESIDUALS

The Board of Supervisors finds that proper spreading, recycling, placement, disposal or management of biosolids and industrial residuals require appropriate regulation, and that notification, monitoring and enforcement are important to the general health, safety and welfare of the inhabitants of the County and its agricultural and forested lands, natural resources and environment.

I. Purpose and Intent

This ordinance is intended to ensure laws and regulations governing the land application of biosolids and industrial residuals are properly implemented and enforced; to prevent pollution of the waters of the County related to the application and recycling of biosolids and industrial residuals to agricultural and forested lands within its boundaries as authorized by the Code of Virginia and applicable regulations. This ordinance is intended to implement the authority granted to local governments by Va. Code §62.1-44.19:3, and §62.1-44.19:3.1, and pursuant to § 62.1-44.16 and §62.1-44.16:1 for industrial residuals. The County shall have the authority to order the abatement of any violation of §62.1-44.16, or of any violation of any permit or certificate issued under this this section, and to provide for the testing, monitoring and enforcement of land application of biosolids within the political boundaries of the County and to ensure compliance with applicable laws and regulations. This ordinance is not intended to regulate the land application of animal wastes or manures or the distribution and marketing or land application of exceptional quality (Class A) biosolids.

II. Authority and Severability

This ordinance is adopted pursuant to the authority granted by the Code of Virginia, including sections §15.2-1200 et seq., §15.2-2200 et seq., §15.2-2283 et seq., §62.1-44.19:3, and §62.1-44.16. In the event that any portion of this ordinance is declared void for any reason, such decision shall not affect the remaining portions of the ordinance, which shall remain in full force and effect, and for this purpose the provisions of this ordinance are hereby declared to be severable.

III. Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicated a different meaning:

"Application" means for the purposes of this chapter the forms approved by the State Water Control Board for applying for issuance or reissuance of a permit, certificate or special exception or for filing a registration statement or application for coverage under a general permit issued in response to Chapters 3.1, 24, and 25 of Title 62.1 of the Code of Virginia. Information to be submitted is required by 9VAC25-32-60 or 9VAC25-31-100.

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"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop, including trees, is grown. This includes range land and land used as pasture.

"Best Management Practices (BMP)" means a schedule of activities, practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and §9VAC25-32-356, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this regulation. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with existing regulations.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater, referred to as "effluent," stabilized sewage sludge, referred to as "biosolids," or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this ordinance, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land applier" means someone who land applies biosolids and industrial residuals pursuant to a valid permit from the department as set forth in §9VAC25-31 or §9VAC25-32.

"Local monitor" means a person or persons employed by local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with §62.1-44.16 or §62.1-44.19:3 of the Code of Virginia.

"Odor sensitive receptor" means, in the context of land application of biosolids, any health care facility, such as hospitals, convalescent homes, etc. or a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, or athletic and other recreational facilities.

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“On-site storage” is the short-term storage of biosolids on a constructed surface within a site approved for land application at a location preapproved by the Virginia Department of Environmental Quality (VADEQ). These stored biosolids shall be applied only to sites under the operational control of the same owner or operator of the site where the on-site storage is located.

"Permittee" means an owner or operator who has a currently effective VPA or VPDES permit issued by the State Water Control Board.

"Nutrient management plan" or "plan" means a plan prepared by a Virginia certified nutrient management planner to manage the amount, placement, timing, and application of manure, fertilizer, biosolids, industrial residuals or other materials containing plant nutrients in order to reduce nutrient loss to the environment and to produce crops.

“Permit” means an authorization granted by the authority of the State Water Control Board to land apply biosolids or industrial residuals.

"Variance" means a conditional approval based on a waiver of specific regulations to a specific owner relative to a specific situation under documented conditions for a specified period of time.

IV . Prohibited Practices

- A. No person shall apply biosolids or industrial residuals on land located in the County except in accordance with applicable federal and state law and regulations and this ordinance.
- B. No person shall land apply biosolids or industrial residuals, subject to this ordinance, on lands in the County until the procedural requirements set forth in this ordinance as well as those set forth in applicable federal and state laws and regulations have been satisfied.

V. Notice and Requirements for Land Application of Biosolids

- A. The application of biosolids is authorized on each property included in a permit. For the purpose of this ordinance, the use of biosolids in agricultural research and the distribution and marketing or land application of exceptional quality biosolids are excluded from this ordinance.
- B. As specified in §9VAC25-32-515, at least 100 days prior to commencing the first land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or designee for the local government where the site is located. This requirement may be satisfied by the VADEQ’s notice to the local government at the time of receiving the permit application if all necessary information is included in the notice or by providing a list of available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the information shall be provided to all jurisdictions where the site is located.
- C. At least 14 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to VADEQ and the

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chief executive officer or designee for the county where the site is located unless it requests in writing not to receive the notice. The notice shall identify the location of the permitted site and the expected sources of the biosolids to be applied to the site.

- D. At least five business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with §9VAC25-32-515. The sign shall remain in place for at least five business days after land application has been completed at the site. The permit holder shall not remove the signs until at least 30 days after land application has been completed at the site. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to five business days after completion of land application.
- E. Upon the posting of signs at a land application site prior to commencing land application, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer of the County where the site is located or designee, unless the County requests in writing not to receive the notice. Notification to the County shall include the following:
 - a. The name and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;
 - b. Identification by tax map number and the DEQ control number for sites on which land application is to take place;
 - c. The name or title and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project if not the permit holder identified in §9VAC25-32-515.
 - d. The approximate dates on which land application is to begin and end at the site; and
 - e. The name, address, and telephone number of the wastewater treatment facility or facilities from which the biosolids will originate, including the name or title of a representative of the treatment facility who is knowledgeable about the land application operation.
- F. Within 30 days after land application of biosolids has commenced, the permit holder shall provide a copy of the nutrient management plan to the Local Monitor, unless a request is made in writing not to receive the nutrient management plan.
- G. The county has the right to review documentation associated with the permitted land application of biosolids, and shall notify the permittee in writing of any deficiencies within ten business days of receipt of the application.

VI. Notice and Requirements for Land Application of Industrial Residuals

- A. The county, in consultation with VADEQ as identified in §62.1-44.16, and the Virginia Department of Health, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension Service, shall participate in a training program to support the testing and monitoring of the land application of industrial wastes. This program shall include, at a minimum, instruction in (i) the provisions of the Virginia Pollution Abatement Permit Regulation; (ii) land application methods and equipment, including methods and processes

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for preparation and stabilization of industrial wastes that are land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G of §62.1-44.19:3. To the extent feasible, the program shall emphasize in-field instruction and practical training.

VII. Monitoring, Sampling and Testing

By agreeing to accept biosolids or industrial residuals, the owner on which land application occurs agrees to allow the Local Monitor access to the land application site for the purpose of monitoring land application activities. It is the responsibility of the permittee to ensure the owner is advised of this requirement. The Local Monitor will make every effort to make contact with the owner prior to entering the owner's property.

The County, should it decide to proceed with testing of biosolids will adhere to sampling guidelines provided in §62.1-44.19:3. For industrial residuals, the County will comply with requirements stipulated in the permit.

The County shall promptly notify VADEQ of all results from the testing and monitoring of the land application of biosolids or industrial residuals performed by persons employed by local governments and any violation of §62.1-44.16 or of any violation of any permit or certificate issued under §62.1-44.16:1.C, §62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia.

The Local Monitor shall notify the permit holder of any failure to follow the requirements of the permit resulting in the improper application of biosolids or industrial residuals, or in the spillage of biosolids or industrial residuals onto public streets or rights-of-way or on property outside the area authorized by the permit.

The permit holder shall take appropriate steps to prevent 'tracking' of dirt and debris, biosolids or industrial residuals from land application sites onto public roads. Where material is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly as soon as practicable, but no later than the end of each day.

VIII. Complaint Response

In the event of a dispute concerning the existence of a violation between a permit holder and the County for testing and monitoring of the land application of biosolids or industrial residuals, the activity alleged to be in violation shall be halted pending a determination by the Director of VADEQ.

The County, upon receiving complaints concerning land application of biosolids or industrial residuals, shall notify VADEQ and the permit holder within 24 hours of receiving the complaint.

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IX. Staging and Storage

Staging is the placement of biosolids or industrial residuals on a permitted land application field, within the land application area, in preparation for commencing land application or during an ongoing land application, at the field or an adjacent permitted field. Staging is not considered storage and shall not take the place of storage.

Staging of biosolids shall not commence unless the field meets the requirements for land application in accordance with Part IX (9VAC25-32-303 et seq.) of this regulation and field conditions are favorable for land application.

There are two types of storage: Routine storage and on-site storage. All on-site storage and routine storage facilities shall comply with the requirements of §9VAC25-32-550. The certified land applier shall notify the department within the same working day whenever it is necessary to implement on-site storage. Notification shall include the source or sources, location, and amounts.

The County may, as a part of its zoning ordinances, designate or reasonably restrict the storage of biosolids based on criteria directly related to the public health, safety, and welfare of its citizens. Notwithstanding any contrary provision of law, the County may, by ordinance, require that a special exception or a special use permit be obtained to begin the storage of sewage sludge on any property in the County, including any area that is zoned as an agricultural district or classification. Such ordinances shall not restrict the storage of sewage sludge as long as such sludge is being stored (i) solely for land application on that farm and (ii) for a period no longer than 45 days.

X. Financial Responsibility

Land application of biosolids is not allowed unless the permittee has in effect liability insurance or other evidence of financial responsibility in the amount that is required by state law or regulation, covering losses and claims arising from the land application, storage, or transportation of biosolids in the County. Such insurance or other form of financial responsibility shall be maintained in full force and effect throughout the time that the land applier is engaged in land application of biosolids in the County.

XII. Reimbursement

The County shall submit requests for reimbursement for the costs and expenses of testing and monitoring of land application and related activities for biosolids or industrial residuals as are allowed by applicable state law, regulations, manuals, guides and procedures.

XIII. Effective Date

This ordinance is effective immediately. Any land application that is in progress on the date this ordinance is adopted, and any land application that was scheduled before the effective date of this ordinance, shall be deemed in compliance with this ordinance provided that application is completed within thirty days after the effective date of this ordinance.

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XIV. Enforcement

- A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of biosolids or industrial residuals, the activity alleged to be in violation shall be halted pending a determination by the DEQ Director.
- B. Upon determination by the DEQ Director that there has been a violation of §62.1-44.16 or of any permit or certificate issued, or of §62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, VADEQ shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of the County affected by the violation, as provided for in § 62.1-44.16:1.B.
- C. The Local Monitor shall promptly notify the department of all results from the testing and monitoring of the land application of biosolids or industrial residuals performed by persons employed by local governments and any violation of §62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3, § 62.1-44.16, or of any violation of any permit or certificate issued under any of these sections.
- D. The Local Monitor, or designee, receiving complaints concerning land application of biosolids or industrial residuals shall notify the department and the permit holder within 24 hours of receiving the complaint.