

125 Airstrip Lane
P. O. Box 539
Ophelia VA 22530
November 27, 2001

Dr. Robert Stroube, Acting Commissioner, VDH
P. O. Box 2448
Richmond VA 23218

Dear Dr. Stroube:

I thank Dr. Croonenberghs, by copy of this letter, for his rapid response of November 15 to my letter of November 8 regarding the conflict of policy within VDH that I identified. I am now responding directly to you because it is clear that the Division of Shellfish Sanitation is not where the problem lies. On one hand, the Division of Shellfish within VDH works hard to analyze our tidal waterways for bacterial contamination so as to permit the safe harvesting of oysters. On the other hand, VDH also permits trillions of the same bacteria to be imported into the county in each truck load of sewage sludge which is land applied to our fields. Restricted waters impose economic hardship on some oyster-men and on some citizens who lease state waters. The land application of sludge provides a saving of only about \$15.00/acre/year, as one farmer testified at a VDH public hearing on April, 2002, in Heathsville. This small economic benefit is only realized by the small minority of farmers who choose to request permits to use sludge. For your convenience I enclose a copy of my original letter and Dr. Croonenberghs' reply.

Dr. Croonenberghs did not contest my assertion that bacteria from land-applied sludge are a source of contamination of our waterways. Thus I am glad we have at least taken a positive first step. I do, however, object to his statement that I claim solely that "...contamination of those growing waters will inevitably occur due to weather-related runoff from the land." Apparently I did not make myself sufficiently clear. I believe the primary source of contamination is exactly the same one thought to be responsible for natural contamination, namely wildlife, especially birds. "Birds follow the plow", as every farmer knows. As the sludge is tilled into the land, according to our county ordinance, birds, especially gulls, forage in the field. In coastal plain counties such as ours, waterways are never far from fields, which can hardly be classified as "upland" in any formal geographic sense. Because of the immense numbers of bacteria involved, it is inevitable that wildlife will transport bacteria to our waterways and contaminate them. This is not to say, of course, that runoff and/or wind might not also be vectors under some weather conditions.

Dr. Croonenberghs stated “....the **Code of Virginia**, § 32.1 164.5, requires the Department to develop regulations that allow the land application of biosolids.” I believe his reading of the Code is incorrect. The Code of Virginia states, in part: “B. The Board of Health, with the assistance of the Departments of Environmental Quality and conservation and Recreation, shall promulgate regulations to ensure that.....(ii) land application, marketing and distribution of sewage sludge is performed in a manner that will protect public health and the environment, and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those are defined in § 62.1-44.3, will be prevented.” Nothing in the Code directs VDH to “...develop regulations that allow the land application...” Quite to the contrary, the Code demands that VDH “...promulgate regulations to ensure...” that land application protects the public and the environment. Once it is admitted that wildlife vectors do, in fact, permit “escape” of bacteria from the land application of sewage sludge, contributing to “pollution of state waters”, then VDH is clearly in violation of the Code of Virginia for failing to deny permits for land application in tidewater counties. The local land application of sewage sludge certainly contributes to shellfish restrictions intended to protect the “public health and the environment”.

The fact that VDH appears to be in violation of the Code of Virginia, at least as I read the intent of the Code, must to be resolved by VDH, by the General Assembly, by the new Governor, or by the Courts. I look forward to a continued dialog on this issue, from you or from any other responsible official(s), so as to resolve the problem in the best interest of all citizens of tidewater counties and any citizen of the State concerned about the health of the Chesapeake Bay and the oyster fishery.

Yours sincerely,

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cc: Dr. Croonenberghs, VDH; White Stone Office, VDH; DCR; DEQ; Gov. Gilmore; Gov. elect Warner, Del. Pollard; Sen. Chichester; Rep. Davis; Northumberland County Board of Supervisors; Doug Jenkins; Lake Cowart; Calvin Keyser, Billy Dawson.