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### **Federal Court Prohibits Biosolids Ban in Appomattox County Preliminary Injunction Allows Farmers to Combat Drought with Biosolids**

**LYNCHBURG** – A group of eleven local farmers, who sued Appomattox County because of its anti-biosolids ordinances, won their motion in U.S. District Court today to end the County's illegal ban. Federal Judge Norman K. Moon issued a preliminary injunction which prohibits the county from enforcing its ordinances and allows the farmers to begin applying biosolids to fertilize their fields and help condition their soils, pending the final outcome of the trial.

The farmers' motion asking for a preliminary injunction, filed July 16<sup>th</sup>, said: "If the farmers cannot use biosolids now as approved by VDH, their land will suffer environmental and conservation damage and lose the long term benefits of this organic soil amendment . . . The current drought in Appomattox County heightens the need for the moisture retention ability of biosolids."

Judge Moon held a hearing on Tuesday, July 30<sup>th</sup> to hear arguments from attorneys representing the County and the eleven plaintiffs and heard testimony from witnesses who stated the farmers could help combat drought conditions with this organic soil amendment which provides moisture retention benefits beyond its ability to provide essential plant nutrients and increase crop yields.

Judge Moon issued the Court Order this afternoon granting the motion for preliminary injunction and wrote "that Defendants (Appomattox County) shall be, and hereby are, enjoined and prohibited from enforcing the ordinances at issue with regard to the eleven plaintiffs (Appomattox farmers)." (See page 3 for excerpts of the court's opinion).

James B. Slaughter, counsel for the Appomattox farmers, thanked the Court for the speedy hearing and restoring the plaintiffs rights by granting their preliminary injunction motion.

"The Court has recognized the immediate need of Appomattox farmers to fertilize their soil, grow their crops, save money, and sustain their farming operations during a period of severe drought," Slaughter said. "Judge Moon's order gives the Appomattox farmers the same opportunity to use biosolids as farmers in 37 other Virginia counties," he said.

"Today's decision is a victory for Appomattox farmers and an endorsement of our freedom to farm in compliance with state and federal laws," said farmer and plaintiff, Cecil G. Wooldridge.

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Roger Hatcher, a farmer in Cumberland County, who holds a Ph.D in microbiology, testified before the Lynchburg Court this week, and declared: "I have personally witnessed numerous agricultural, environmental, and conservation benefits from the use of biosolids on my farm. As a microbiologist, I also am familiar from my training and professional practice with the technology and science of biosolids generation and the benefits of the organic material for farming."

According to Hatcher, "Biosolids have been an effective tool in mitigating periods of low rainfall on my farm. For example, during extremely dry conditions in 1998, the only acreage that produced a second cutting of hay was acreage receiving biosolids as a soil amendment. I saw the same crop response in 1999, another very dry year. Also in 1999, I witnessed corn production on a nearby farm average 180 bushels an acre on biosolids amended land. There is no doubt that biosolids are particularly important in very dry weather," he said.

The legal motion for preliminary injunction, documented the following points: biosolids are a valuable organic fertilizer that have been used successfully for decades, Appomattox farmers hold valid permits entitling them to use biosolids, the farmers are entitled to preliminary relief, the Appomattox farmers face irreparable harm absent a preliminary injunction, there is no likely harm to Appomattox County from a preliminary injunction, the Appomattox farmers are likely to prevail on the merits of the case, and the public interest favors granting a preliminary injunction.

On June 28<sup>th</sup>, the eleven farmers filed their initial Complaint against the County seeking "injunctive and declaratory relief that Defendant Appomattox County's anti-biosolids ordinance is invalid and preempted under federal and state laws."

The lawsuit against the County claims \$820,000 in damages, and states: "The Appomattox County Board of Supervisors adopted two Ordinances earlier this year that effectively ban the land application of biosolids in Appomattox County. The Ordinances are an intended and effective ban by the County on the application of biosolids on agricultural land. This ban is in direct conflict with comprehensive federal and state laws regulating biosolids, has no rational basis, deprives farmers of their property rights, discriminates against a valuable fertilizer, and impermissibly bans an article in interstate commerce." The Complaint also said the County's actions "are unreasonable and discriminatory, denying Appomattox farmers the equal protection of the laws under the Fourteenth Amendment."

Hundreds of Virginia farmers use biosolids because they recognize the benefits and reap the economic rewards of land application of this organic fertilizer. According to the Virginia Department of Health (VDH), farmers in 37 counties in the state fertilized their fields and conditioned their soils with biosolids during 2001 and 2002.

Biosolids result from the treatment of sewage sludge that renders it fit for recycling as a useful, safe and environmentally beneficial product. The practice is approved, regulated, and monitored by the U.S. Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA), the Virginia Department of Health (VDH), the Virginia Department of Environmental Quality (DEQ), and the Virginia Department of Agriculture and Consumer Services.

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In the accompanying “Memorandum of Opinion,” the Federal Court further strengthened the arguments made by the plaintiffs. Included in the opinion issued by the U.S. District Court are the following quotes:

“Many in the farming community have responded enthusiastically to the use of biosolids. Because biosolids are trucked to farms and land-applied at no cost to the property owner, they provide farmers with an effective, nutrient-rich fertilizer for free.”

“The number of farmers who use biosolids continues to grow, and if the practice were to begin in Appomattox, the County would become the thirty-eighth Virginia county to use biosolids.”

“A particular acute harm Plaintiffs face is from the continuing drought. It is well-known that Virginia is in the midst of its worst drought in decades. Obviously the farming community has been severely and adversely affected by the climate conditions.”

“. . . many in the scientific community insist that there are no cognizable dangers to the public, so long as sludge is properly treated before application.”

“Furthermore, to the extent that there is a question as to the safety of biosolids, the Virginia General Assembly and the U.S. EPA have already answered it, at least for the time being. . . That is, the federal and state authorities that have considered the question have determined that biosolids can be safely used on farmland. Therefore, in balancing the hardships that would be imposed either by the grant or denial of an injunction, this Court finds that the balance tips strongly in favor of Plaintiffs.”

“In sum, it appears that counties have no authority to regulate biosolids beyond their powers to conduct testing and monitoring.”

“In conclusion, it is likely that Plaintiffs will succeed on the merits of their state-law claims, at least insofar as Defendants’ ordinances reach beyond the County’s role in testing, monitoring, and legitimate zoning related to sewage sludge.”

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