

Solid Waste Management Regulation, 9 VAC 20-81
Amendment 9 Regulatory Advisory Panel (RAP) Meeting No. 5
June 30, 2021
Meeting Notes

Location: electronic meeting via webinar

Start: 9:30 a.m.

End: 12:00 p.m.

Meeting Attendees:

RAP Members present

Raymond McGowan

Betty Myers

Ron Kimble

Paul Mandeville

Michael Lawless

RAP Members not present

Phillip Musegaas

DEQ Staff Present

Kathryn Perszyk

Melissa Porterfield

Geoff Christe

Richard Doucette

Priscilla Rohrer

I. Agenda Item: Welcome & Introductions

Discussion: Melissa Porterfield had individuals appointed to the Regulatory Advisory Panel (RAP) introduce themselves. She informed the RAP that the meeting was being audio recorded. Meeting notes will be posted on the Virginia Regulatory Town Hall website. Since this meeting is being held electronically, staff will be using a modified “open chair” concept to allow the public to provide information specific to the topic being addressed through the webinar question feature. Today’s meeting is the last scheduled meeting for this RAP.

II. Agenda Item: Permitting

Discussion: Kathryn Perszyk provided a general overview of the stages in the solid waste permitting process. The Notice of Intent (NOI) starts the permit application process and includes a requirement for submission of documentation for the director’s determination of the need for a facility. The Part A application contains the siting criteria for the facility and the Part B application contains the facility design and operation plans. The regulation currently addresses

the demonstration of need for the facility which is required by state law (§10.1-1408.1 of the Code of Virginia) in 9VAC20-81-450 B 8 a and 9VAC20-81-450 B 8 b.

RAP members were provided with an opportunity to provide feedback on the demonstration of need. Some comments were submitted during the NOIRA comment period suggesting changes to this section of the regulation.

Some RAP members asked about the origin of the 20 year landfill capacity threshold that is included in the evaluation of the need for a facility. Staff responded that the 20 year timeframe is consistent with the requirements for solid waste management plans to contain a 20 year planning window. One member indicated that the 20 year timeframe is the minimum timeframe that is required for solid waste management plans, but that plans can cover more than twenty years. The needs determination however, allows for a maximum of 20 years of capacity as part of the needs determination.

There was also discussion concerning when the needs determination occurs. The applicant is required to submit information regarding need as part of the NOI; however, the director determination (which includes assessing the need) for a new facility or facility expansion does not occur until after the publication of a draft permit and public participation. Some members indicated that the needs determination should be conducted as part of the NOI before the Part A and Part B applications are submitted. One member indicated that this would require additional public participation earlier in the permitting process.

There was discussion concerning the expansion of facilities vs. the creation of new facilities and how the different types of increases in capacity should be treated as part of the determination of the need for the facility. A suggestion was made to look at using more of a regional approach when considering if a facility is needed. Another suggestion was made to consider the difference between vertical vs lateral expansions of existing facilities. This would be in keeping with minimizing the creation of new facilities on “greenfield” sites vs. further development at existing facilities.

Mrs. Perszyk indicated that if there are additional items RAP members believe should be considered as part of the needs determination or information on how other states evaluate the need for landfill capacity, the information should be provided to the department by July 9, 2021.

Mrs. Perszyk also asked the RAP if they had any additional permitting process concerns that should be discussed. One member indicated that the wetlands permitting requirements were disjointed from the solid waste permitting process. Due to the requirements of the wetlands permits, some of the facility design elements (covered in the Part B application) were having to be completed at the NOI stage. There is currently agency guidance concerning the coordination between the multiple permits required for these facilities.

III. Agenda Item: Landfill Gas

Discussion: Richard Doucette discussed with the RAP the inclusion of a requirement in the regulation for the facility to notify adjacent property owners of landfill gas (methane)

compliance level exceedances in wells or structures in the perimeter gas monitoring network. Notification would be made to occupied structures within 500 feet of the exceeding well or exceeding structure. RAP members suggested that as part of the notification, the facility would also be required to offer to monitor occupied structures within 500 feet of the exceeding well or exceeding structure. Safety concerns for those adjacent to the facility were discussed. The length of time the facility should have to notify the adjacent property owner of an exceedance was discussed. Options suggested by members included 24 hrs, 5 days, 10 days, 15 days, and 60 days. There was also discussion concerning who should be notified- the property owner or the occupant, or both. Due to the safety risks associated with the landfill gas subsurface migration, staff indicated the notification should at least be to the person occupying the structure within 500 feet of the exceeding well or exceeding structure. A suggestion was made for DEQ to develop a standard form for the facility to use to provide information to DEQ and the neighbors concerning the landfill gas compliance level exceedance.

Consensus was reached that the regulation should include a notification of adjacent neighbors of landfill gas exceedances. (those occupying structures within 500 feet of the detected exceedance.)

III. Agenda Item: Groundwater

Discussion: Geoff Christe revisited two requests for information previously requested of the RAP. The first was the question concerning information RAP members have on current laboratories with the ability to conduct PFAS analysis and the second was for information on the associated costs with that analysis.

A member of the RAP indicated that the laboratories in Virginia are not Virginia Environmental Laboratory Accreditation Program (VELAP) certified and would need to become certified for conducting tests for emerging contaminants. Labs in Virginia are doing good work and could become VELAP certified. Recently an out of state laboratory was used to test for 49 PFAS constituents at a cost of \$349 using a non-SW846 test method. (EPA test method 537.1 was used).

One member raised the concern that there may be additional costs related to the monitoring of groundwater for PFAS that are not related to the analytical costs of sampling. Teflon containing components may be present in the well sampling equipment; however, pump manufacturers are switching to non-PFAS containing equipment. The costs of changing monitoring well sampling equipment and sampling protocols to avoid potential PFAS contamination of samples should be considered in addition to the laboratory testing costs. Costs to identify the source of the PFAS contamination (alternate source demonstrations) should also be considered.

Mr. Christe explained that an alternate source demonstration (ASD) would be available for Column C constituents, the same way an ASD demonstration is available for Column A and B constituents. If the well testing equipment is identified as the source of the contamination, then the agency will work with the facility to develop a schedule for replacement of the well testing equipment.

A member expressed concern with being required to use the proposed SW846 method for PFAS. Requiring the SW846 method for PFAS would provide inferior results to other test methods. Mr. Christie reviewed with the RAP the concept of including a third column, Column C, into the groundwater monitoring table of the regulation that would include emerging contaminants. Laboratory testing for constituents in Column C would not be required to be conducted in accordance with SW846 methods. Testing of constituents in Columns A and B would continue to be required to follow SW846 testing methods. The agency is not specifying which constituents would be listed in Column C at this time. The Virginia Department of Health is continuing to study PFAS and may or may not adopt MCLs for these constituents. If VDH does not publish or approve MCLs for PFAS, Column C will remain empty.

Phillip Musegaas was unable to attend the meeting but submitted the following statements to share with the RAP.

Potomac Riverkeeper Network (PRKN) would support a requirement that facilities operating under the SWMR conduct detection monitoring for the six PFAS compounds listed in the Virginia Department of Health legislation, HB586, along with 1,4 dioxane. Given that PFAS compounds generally are present in many household items that are likely to end up in a solid waste landfill, it seems appropriate to require detection monitoring to determine PFAS levels in landfills' groundwater.

PRKN's current understanding is that monitoring of groundwater for 'emerging contaminants' would not be required until and unless Virginia or the federal government develop MCLs, which would then be in force as groundwater protection standards under the SWMR.

Mr. Christie responded that no decision has been made concerning which monitoring network, Detection or Assessment, the constituents listed in Column C would be included in.

Ms. Perszyk reiterated that the Column C constituents still have not been identified, and that the agency is waiting on VDH to complete its work.

1,4 dioxane was discussed as another emerging constituent of concern for inclusion into Column C. For this constituent, if there is no federal MCL associated with 1,4-dioxane, then a risk based alternate concentration level (ACL) would be used as a benchmark value for this manmade volatile organic carbon. For PFAS, the agency would wait for a MCL to be established by VDH and would not use ACLs.

V. Agenda Item: Wrap up and next steps

Discussion:

The agency is in the process of developing amendments to the regulation and must complete its work by the end of August. Once proposed regulatory language has been developed and provided to the Waste Management Board for their review, RAP members will be provided with a copy of the proposed amendments. RAP members will receive a copy of the proposed amendments prior to the Waste Management Board meeting. The Board has adopted public participation procedures for regulatory actions and case decisions. Public comments on the

proposal will not be accepted at the board meeting. A public comment period (a minimum of 60 days) will be held in the future for the proposed amendment to the regulation. The comment period will be announced through the Town Hall website and will be published in the Virginia Register.

During the RAP meetings some members indicated they were working to obtain additional information in topics discussed. Previous topics members indicated they may have additional information on include the following:

- A definition for "subsurface event" or parameters that are indicative of a subsurface event;
- Impacts of the addition of a weekly cover requirement at industrial landfills (this would include costs estimates for this regulatory change for inclusion in the Town Hall Agency Background Document) (Some information was received from Andrea Wortzel, VMA)
- Information on PFAS from Solid Waste Association of North America workgroups that could be used to assist with addressing PFAS in this regulation.

During today's meeting a request was made for RAP members to provide to the agency any other information that should be considered as part of the needs determination or information on how other states evaluate the need for landfill capacity. If there is any additional information that RAP members have indicated they were going to provide, the information should be provided to the department by July 9, 2021.