

Voluntary Remediation Regulation, 9 VAC 20-160
Regulatory Advisory Panel (RAP) Meeting

February 21, 2020
Meeting Notes

Location: Bank of America Building
3rd Floor Conference Room
1111 East Main Street
Richmond, Virginia 23219

Start: 10:30 am
End: 3:15 pm

Lunch break: 12:00pm- 1:10pm

Meeting Attendees:

RAP members attending:

Andrew E. Kassoff, EEE Consulting
James Thornhill, Wire Gill, LLP
Channing Martin, Williams Mullen
Charles Williams, Gentry Locke
Wayne Leftwich, City of Roanoke
Chris Yenson, Commonwealth Catholic Charities Housing Corporation

RAP members not attending:

James Succop, ECS Mid-Atlantic, LLC

DEQ Technical Support Staff:

Meade Anderson, Brownfields & Voluntary Remediation Program Manager
Michelle Callahan, Land Policy and Regulatory Coordinator
Melissa Porterfield, Office of Regulatory Affairs
Valerie Thomson, Director of Administration
Justin Williams, Director, Division of Land Protection and Revitalization
Chris Evans, Director, Office of Remediation Programs
Brian Campbell, DEQ
Vincent Maiden, DEQ
Vrushali Gandhi, DEQ
April NiMary, DEQ
David Grimes, DEQ

I. Agenda Item: Welcome and Remarks- Justin Williams

Discussion: Mr. Williams welcomed meeting participants and thanked the members of the RAP for attending today's meeting.

II. Agenda Item: Logistics and Introductions- Melissa Porterfield

Discussion: Ms. Porterfield had individuals in attendance introduce themselves and informed them the meeting was being audio recorded. Meeting notes will be posted on the Virginia Regulatory Town Hall website.

III. Agenda Item: Full Regulatory Process and Regulatory Advisory Panel Overview- Melissa Porterfield

Discussion: Ms. Porterfield provided the group with a general overview of the Regulatory Development process in Virginia and reviewed the role of the RAP in the regulatory amendment process. Members of the RAP were appointed to the group by the agency director and are a public body. Meetings of the RAP are subject to the requirements of the Freedom of Information Act, are announced in advance, and are open to the public. A goal of the RAP is to reach consensus on issues. Consensus is defined as a willingness of each member of the RAP to be able to say that he or she can live with the decisions reached and recommendations made and will not actively work against them outside of the process. DEQ staff need to complete their work on this amendment by April 1, 2020. This amendment needs to be presented to the Waste Management Board for their consideration in May 2020.

IV. Agenda Item: Overview of Voluntary Remediation Program (Meade Anderson)

Discussion: Mr. Anderson provided the group with an overview of the Voluntary Remediation Program (VRP). The VRP is partially funded by federal funding which has continued to decrease. The VRP costs approximately \$1.4 million annually. Sites participating in the program have been assessed different fees based on their enrollment date. There are currently 72 sites in the program that enrolled prior to July 1, 2014, that paid a registration fee of 1% of the total cost of remediation or \$5,000, whichever is less and do not pay annual fees for their continued participation in the program. Sites that enrolled after July 1, 2014, "new sites", are subject to a different fee structure and pay a Phase 3 registration fee annually to defray program costs.

V. Agenda Item: Discussion of Topics for Consideration by RAP (Meade Anderson, Michelle Callahan)

Discussion: Agency staff shared the following issues listed as priorities for this amendment with the RAP:

- Structure the fees to fully support the VRP program
- To bring the "old program" pre July 1, 2014 sites into alignment financially
- CPI - introduce a CPI so periodic revisions aren't needed for financial issues
- Clarify Amendments and accompanying fees for administrative and technical changes
- Add, revise, and clarify certain definitions
- To clarify eligibility criteria and address waivers
- To clarify requirements for public notice for Certificate Amendments
- To require written notice to persons with an interest in the real property

Agency staff provided information on the current fees paid by sites that entered the program after July 1, 2014. The current fee structure generates an estimated annual revenue of \$492,500. Agency staff discussed two fee options to generate an estimated annual revenue of \$1.4 million to support the costs of the VRP. Option 1 would triple the current Phase 1, 2, and 3 fee amounts and only new sites would be assessed the Phase 3 fee. Option 2 would increase the Phase 1 and Phase 3 fees, and all sites, (both "old" and "new") would pay Phase 3 fees. Both of these options generate the needed \$1.4 million to operate the VRP. Consensus was reached by the RAP that the "old program" sites need to pay fees to continue to participate in the VRP. The RAP discussed the fee options and reached consensus on fee Option 2 (Phase 1 fee- \$3,000, Phase 2 fee \$7,500, and Phase 3 fee \$10,500 with all sites in the program (both "old" and "new") paying the annual Phase 3 fee. Some concern was expressed by RAP members concerning when program participants would be notified concerning changes to the fee structure. Justin Williams indicated DEQ staff would conduct outreach to the regulated community prior to the May 2020 Waste Management Board meeting to make them aware that changes will potentially be occurring to the VRP program fees. A regulatory amendment proposing revisions to the VRP fees will be presented to the Waste Management Board in May 2020. A public comment period will be held on the proposed changes before the regulatory changes are presented as final amendments to the Waste Management Board. It is anticipated that these changes will not become effective before 2021. DEQ anticipates that the earliest the increased Phase 3 fees would be due is April 1, 2022.

The RAP discussed fees for administrative and technical amendments. Consensus was reached on the following fees:

Administrative amendment fee - equivalent to Phase 1 fee

Technical amendment fee - equivalent to ½ of the Phase 3 fee

The RAP discussed the public participation requirements for Amendments to the Certification of Satisfactory Completion of Remediation. The group reached consensus on requiring public notice to be conducted if there is a technical amendment.

The agency does intend to include in the proposed amendment an annual inflation adjustment to the fees similar to the way fees are adjusted annually in other waste programs. Fees will be adjusted annually for inflation using the Consumer Price Index and rounded to the nearest dollar. Consensus was reached on including an adjustment for inflation in the regulation.

The RAP discussed including a requirement in 9VAC20-160-120 (Public Participation) to notify those with an interest in the real property to be notified as part of the public participation process. Consensus was reached to **not include** this notification requirement in the regulation.

The RAP was presented with changes to the definition section of the regulation. Members provided general feedback on the terminology used in the definitions. The term "authorized agent" was discussed. A suggestion was made to list the authorized agent on the program application.

Consensus was reached to strike the term "environmental response" from the definition of "Covenant."

Proposed edits to the Eligibility criteria section of the regulation were reviewed with the RAP. The RAP discussed the edits and provided suggestions concerning wording of this section. RAP members were asked to review and send comments to Michelle Callahan within a week of the meeting.

VI. Agenda Item: Public Comment

Discussion: No members of the public were in attendance and a comment forum was not held.

VII. Agenda Item: Next Steps

Discussion: Meeting notes will be distributed to RAP members by Ms. Porterfield for review by the RAP. DEQ staff noted that the group had addressed the entire list of issues the agency was seeking feedback on and that at this time did not feel it was necessary for the RAP to meet again. Any additional feedback will be obtained from the group through email.