

**Virginia Regulations for the Development of Solid Waste Management Plans
9VAC20-130-10 *et seq* – Amendment 2
Technical Advisory Committee Public Meeting February 22, 2006**

Facilitator: Frank Daniel

Bill Dennison--Southwest Virginia Solid Waste Management Association

Debbie Devine--Southeastern Public Service Authority & Hampton Roads Planning District

Jeff Smithberger--Solid Waste Association of North America

Rick Guidry--Virginia Waste Industries Association

Mike Benedetto--Virginia Recycling Markets Development Council

Paul Vaughan--Campaign Virginia

Roger Diedrich--Sierra Club of Virginia

Steve Yob--Virginia Municipal League

Larry Land--Virginia Association of Counties—arrived at 1:30 pm

Allan Lassiter--DEQ Division of Environmental Enhancement; technical representative to TAC.

(Other names that appear in today's notes are the names of DEQ staff members that were present to answer questions raised by the TAC: Leslie Beckwith, Leslie Romanchik, Kathy Frahm, Steve Coe, Dan Gwinner, and Allen Brockman)

Today's meeting notes:

Frank Daniel began the meeting by stating we will have a fourth meeting prior to the meeting of the Waste Management Board on the draft proposed regulation that will be drawn up reflecting the TAC meeting's advice. DEQ will set the date of this fourth TAC meeting by email, once DEQ staff learn on what date the Waste Management Board meeting is scheduled. Frank noted that the fourth TAC meeting will be scheduled, but also noted that whether the meeting actually proceeds will be subject to whether the TAC

members feel, after seeing the draft proposed regulations, that a fourth meeting is necessary.

Frank then proceeded to outline the topics for today's third TAC meeting: nexus (item #9), market conditions (item #10), amendments and variances (items #13 & #14), recycling action plans (item #11), and reporting as a solid waste planning unit (item #12).

Allan Lassiter began today's discussion with the "nexus" issue (#9). Allan recalled that the focus of this issue is the new Permit-by-Rule (PBR) language from HB 421 and how permits are to be handled. Allan further explained that the Recycling Action Plans (RAPs) are also under this issue, because such plans concern the nexus between solid waste plans and permits. Frank Daniel asked if anyone else had additions to the nexus topic.

Allan Lassiter started with the PBR language from HB 421. Bill Dennison said the language Kathy Frahm supplied to the TAC on February 8 is not all of the language in the bill (HB 421). Mr. Dennison said Kathy Frahm had provided only paragraph "R." He stated that "B.9" is new language as well. Frank Daniel asked if the TAC would like to have an update from DEQ on this new language. Bill Dennison deferred on the question to Jeff Smithberger. Allan Lassiter gave an illustrative example of the nexus issue in the context of a recent DEQ permit review action that involved the nexus of the permitting decision with the status of a solid waste management plan. Leslie Romanchik joined the discussion to state that this particular permit had gone through the public notice process when it came to light that the solid waste management plan for the planning unit, where the permit was located, did not meet the recycling rate and could not be approved. To resolve the situation, DEQ accepted the planning unit's proposed Recycling Action Plan (RAP) to chart out the measures that would be taken to ensure the recycling rate would be achieved over the next two years. Mr. Lassiter continued to state that DEQ has followed this RAP process an additional three or four times since that initial instance.

Lassiter went on to point out that under HB 647 (provision D.2); DEQ will be prohibited from delaying review of a solid waste management permit solely because the recycling rate hasn't been achieved. Allan Lassiter and Bill Dennison agreed that the nexus between PBR's and plans is critical to this issue, as well. At this point Frank Daniel asked Steve Coe to check upstairs with Kathy Frahm on the status of the new legislative language in HB 421. Allan Lassiter turned further discussion over to Jeff Smithberger. Jeff Smithberger and Allan Lassiter said the revised 9 VAC 20-130 regulation's language regarding the nexus between PBR's and plans should conform to HB 421 once it is signed into law—Allen Brockman confirmed that any such new statutory language will need to be reflected in the revised regulations. The TAC reached consensus on this issue. At this point, Bill Dennison brought to the TAC's attention the existence of disclaimer in HB 421, section 1.B.9, that: regardless of what the local govt. body decides, the DEQ Director is not bound by their decision.

To follow up on Mr. Smithberger's concern that the revised regulation conform to the provisions of HB 421, once the bill is signed into law, Allen Brockman noted that DEQ staff would share the revised 9 VAC 20-130 regulation language by email with the TAC members, before the Board meeting, to ensure that all necessary changes have been identified. Mr. Brockman pointed out that additional changes may be necessary in the Virginia Solid Waste Management Regulation 9 VAC 20-80, with which Leslie Beckwith concurred.

Next, Frank Daniel referred the TAC to further discussion of market conditions (item #10). Jeff Smithberger congratulated DEQ staff for getting Allan Lassiter's handouts on this issue out to TAC members last night, but noted that it was late in the day when received and did not afford much time for review by the TAC. Allan Lassiter and Leslie Beckwith both explained that computer network problems on February 21 hampered the circulation of this material to TAC members. Allan Lassiter further explained that the emailed materials sent out yesterday consisted of definitions that could be added to the amendments/variances draft sent out to TAC members by DEQ staff on February 17.

At this point Frank Daniel reiterated the TAC's invitation to public attendees to speak before the TAC at the open chair at any time throughout the meeting. He asked merely that they coordinate their request through him. None of the public attendees came forward to request the opportunity to speak.

The TAC turned its discussion to the draft recycling-related definitions (including "market conditions") that had been proposed by Allan Lassiter. Allan noted that the handouts on market conditions for today's TAC meeting are meant to supersede any versions of this information that DEQ staff emailed to the TAC members on February 6, before TAC meeting 2.

While Allan Lassiter was introducing item #10, market conditions, Kathy Frahm briefly joined the TAC meeting to circulate a photocopy of the new language for HB 421, including section 1.B.9 (a handout associated with previous item #9—the nexus issue).

In reviewing Allan Lassiter's definitions handout, Bill Dennison addressed the term: "geographic conditions." Mr. Dennison suggested that Allan remove "due to topography" from the proposed definition. In addition, Jeff Smithberger questioned the need to go into all this intricacy in the proposed definitions. Jeff Smithberger suggested that the localities should be allowed to decide what details were necessary in these determinations—to leave them more flexibility. Jeff Smithberger asked that we leave the Director fewer constraints and more flexibility making these variance determinations on market conditions.

Bill said that the draft on variances and amendments (coming up later in today's discussion) contains many undo-able provisions. Bill Dennison said he has two words about what he would like to do with the variances definitions here and in the variances sections coming up—good bye. He said that comparing variances here to the permits variances language is like comparing apples and oranges. Jeff Smithberger said that if

we put a variance in for a landfill, only a tech explanation of why to do it should decide the issue. Jeff Smithberger saw problems of putting this into the regulation—we are making it more complex than it needs to be. Bill Dennison said some of the market conditions will not change and others will. Jeff Smithberger wants to keep flexibility in the language, without being proscriptive. Debbie Devine supports Jeff Smithberger's position on this (i.e. that some of the definitions have too many loopholes). Roger Diedrich said it shouldn't be completely open ended, that the Director should have to justify his decision in some way or another. Frank Daniel said the APA provides such a format, and that is the normal approach that is followed.

Leslie Romanchik pointed out that the DEQ director makes the variance decision on plans without the Board's involvement. Debbie Devine—anyone could argue the cost of collections as being prohibitive under the market conditions definition. Frank Daniel asked if the TAC was in consensus with Debbie Devine's view. Rick Guidry agreed he's in consensus. Allan Lassiter summed up that it appears that the TAC is recommending that the DEQ Director make the decision on market conditions without further guidance in the revised regulations. Allan Lassiter pointed out that we need the words on market conditions if we want more guidance on such variances. Allan Lassiter asked if you could define markets on both conditions and distance to markets. Debbie Devine asked Bill Dennison if he was okay with the definition. Both Bill Dennison and Debbie Devine agreed that they were okay with the market conditions definition. Allan Lassiter pointed out that no one has set up conditions for a market conditions variance, before. Bill Dennison said he is okay with the definition without setting any constraints (thus, the TAC agreed that a general definition of market conditions in the General Definitions section of the regulation is appropriate, without specificity in any particular enforceable application section elsewhere in the regulations).

Bill Dennison said more similar constraints were set up in Allen Brockman's proposed draft variance language to be discussed later today.

Mike Benedetto wants to be sure that we recognize that there are unique programs available and not to allow for variances to move forward on recycling programs that have nominal costs. Bill Dennison asked if the programs identified by Mike Benedetto were having problems meeting their recycling requirements. Mike Benedetto said that he's not suggesting that the wording be changed and that he's not on either side of the fence on whether to change the specific wording here.

Roger Diedrich wanted to be sure the TAC doesn't give up too easily on requirements for variances. Bill Dennison said he doesn't advocate allowing a variance for just anyone who comes through the door. Bill Dennison just wants to give the DEQ Director more opportunity to make the right decision for the applicant that can truly demonstrate a hardship case. Larry Land wanted to be sure that DEQ achieved the right balance—not permissive, but fair. Frank Daniel noted that the consensus (minus Roger Diedrich) was: not to be too proscriptive on the regulations (variances for market conditions).

Larry Land asked Allan Lassiter how he came up with this definition of market conditions. Allan Lassiter credited Steve Coe's work from over the past two years. Larry Land said he was in the first TAC for the solid waste management planning regulations 17 years ago and is interested in the progress DEQ had made toward defining market conditions.

At this point, Frank Daniel asked Allen Brockman and Allan Lassiter if either had any additional points they wished to bring up at this time on the issue of a variance based on market conditions. Allen Brockman noted that some of the discussion so far had identified problems with the proposed draft language for variances in general—both market conditions based and any other variances to the solid waste management planning regulations. Mr. Brockman asked the TAC if there was a general consensus at this time that DEQ should dispense with the draft proposed language on variances. Bill Dennison said he had a number of concerns about the draft language on variances that had been presented, but that we shouldn't dispense with the entire matter before further consideration of the issue in more depth today. He said that some items might be worth considering, but that overall, you are almost penalizing the planning unit for trying to improve its recycling rate. For example—if I want to implement curbside recycling in my plan I have to obtain the approval of the DEQ Director before I can proceed. Mr. Dennison said that if you want his opinion, Mr. Brockman's proposed draft on amendments and variances is one of the most beautiful pieces of bureaucratic writing that DEQ has ever attempted. Bill Dennison concluded that he doesn't want minor plan amendments to require the DEQ Director's approval. Jeff Smithberger concurred that DEQ should drop the provision that minor plan amendments require approval by the DEQ Director.

Allen Brockman responded that the provision requiring the DEQ Director's approval for minor plan amendments is contained in the existing regulation. Frank Daniel, Bill Dennison, and Jeff Smithberger all noted that the TAC at meeting 2 had identified that minor plan amendments should not require Director's approval and that this should have been reflected in the draft language submitted on February 17, 2006. Jeff Smithberger held that the DEQ Director's approval for minor plan amendments should only be required if the planning unit's recycling rate drops below the mandated rate. Allan Lassiter and Jeff Smithberger agreed that the TAC needed to look at each page of draft language that was submitted on Feb. 17 and 21 before dispensing with any subjects—that the TAC should do the page turning on each one.

With regard to item #11 (recycling action plans) for today's discussion, Jeff Smithberger pointed out that his recommendations on Action Plans (and RAPS) has already achieved consensus (see item #11, p. 10, TAC meeting 2 notes, February 8, 2006). Allan Lassiter asked his colleagues on the TAC if the TAC had addressed any of the particulars of the existing RAP process. Jeff Smithberger pointed out that the TAC had ideas for the revised regulation but did not get into that degree of detail—Jeff said less words are better for the regulations in regard to such action plans. Allan Lassiter said he agreed with Jeff that the discussion of RAPS/Action Plans should be more concise and less

detailed in the regulations than as currently worded in DEQ's existing guidance recommendations.

Jeff Smithberger said that today, when the TAC discusses the information DEQ sent (Feb. 17) on the plan amendments and variance issues, the TAC can move forward in further discussion on the variance issue for market conditions. However, at this point in the meeting, in response to Frank Daniel's query, the TAC reached consensus that there should be no definition of market conditions in the revised 9 VAC 20-130-230 section of the regulation.

Bill Dennison asked that we move on to the other recycling definitions that were emailed to the TAC on February 21. Allan Lassiter said that first, the TAC's discussion should focus on proposed 9 VAC 20-130-125—Recycling Requirements—a new section in the revised regulations that Allan has proposed. Mr. Lassiter said it made sense to collect the recycling requirements into a separate section, 125, just as it makes sense to combine the plan requirements into a combination section of former sections 120, 140, and 150, as recommended by Allen Brockman, in his email to the TAC on February 17, 2006.

Allan Lassiter then referred to his handout on proposed section 125. In response to a question about how "food waste" is to be designated under the new statute, Allan Lassiter said it falls into the "other" category. Allan Lassiter noted that the quantities recycled and generated in the formula (proposed 9 VAC 20-130-125.B) should be expressed in tons (bottom). Various TAC members asked Mr. Lassiter what type of "tons" he intended. Jeff Smithberger, Bill Dennison, and Rick Guidry all concurred that the measurement should be in "short tons" (i.e. 2000 pounds per ton). Allan Lassiter agreed to add this definition of "tons" to the regulation. Bill Dennison asked where the tonnage measurement requirement would leave small landfills that didn't have weighing scales. Steve Yob added that it would also impact MRF's without scales. Jeff Smithberger expressed doubts as to whether the "tons" measurement should be required if scales weren't required as well. Debbie Devine noted that conversions are available between volumes and tons. Allan Lassiter and the TAC agreed that DEQ should provide the conversion factors, but Allan Lassiter preferred that the facilities perform their own volume to weight conversions using these factors—thus the TAC agreed to a consensus that 9 VAC 20-130-120.C.1.b. in the existing regulation should be retained in some form in Allan Lassiter's proposed 9 VAC 20-130-125.B.b. Jeff Smithberger noted that there are distinctions between the definitions of vegetative waste and yard waste under the regulations. Jeff suggested that both categories be listed as "vegetative or yard waste" in proposed draft 9 VAC 20-130-125.B (page 2). Bill Dennison said we can't get rid of the reference to subsection M of §10.1-1408.1 in proposed draft 9 VAC 20-130-125.C.3, because subsection M is still required by the statute. Roger Diedrich questioned the validity of the certification process for the source reduction program noted in proposed draft 9 VAC 20-130-125.C.4. Allan Lassiter emphasized that the certification provision is contained in the new statute. Steve Yob concurred that planning units are certifying plan items as things now stand. Allen Brockman asked the TAC if the revised regulations should cite the mandatory recycling rates specified in the new statute, rather than to explicitly list the rates of 25% or 15%, respectively, to avoid the need for another

regulation revision in the event of future changes to the statutory rates. Allan Lassiter, Bill Dennison, and Jeff Smithberger disagreed with this suggestion and stated that the 25% and 15% rates should be listed in the regulations, because it was unlikely that the rates in the new statute would change in the near future. The TAC concurred that proposed draft items 9 VAC 20-130-125. D and E should be moved to the combination regulation for 9 VAC 20-120/140/150 proposed by Allen Brockman on February 17.

After discussing his draft language for a proposed new section 9 VAC 20-130-125 on recycling, Allan Lassiter went back to another handout to discuss the topic of estimated wastes. Debbie Devine and Jeff Smithberger asked if this doesn't get back to the question of how to collect good data when it isn't possible to get. Bill Dennison, Steve Yob, and Frank Daniel all agreed that we had already decided we can't put teeth into the regulations regarding such data collection. Allan Lassiter said in that case, we have to eliminate the requirement in his proposed draft 9 VAC 20-130-125.E (which the TAC had advised to be moved to combo section 9 VAC 20-120/140/150. Debbie Devine replied that she heard Bill Dennison's concerns that putting revised data collection requirements in revised 9 VAC 20-130 can't accomplish any real goal for more teeth. However, both Debbie Devine and Jeff Smithberger agreed that some such data collection language should be added to strive for more of a foothold on the data issue. Roger Diedrich said even if it isn't proscriptive, it would be good to have some data language in the appropriate direction. Frank Daniel reiterated that we had agreed to such language with Debbie Devine. In sum, Allan Lassiter recognized a TAC consensus for removing proposed 9 VAC 125.E. here, but to work it into the "teeth" language elsewhere.

At this point in the discussion, Allan Lassiter returned to the recycling-related definitions still to be discussed from his handout—composting, markets, materials recovery facilities (MRF's), principal recyclable materials (PRM's), and recycling residue (Bill Dennison said residue should be included in recyclable materials definition).

Mike Benedetto pointed out that in the MRF industry, the terms "residue" and "nonprocessed recyclable material" are used, which differ from how the term "residue" is used in Allan Lassiter's handouts of today. Mike explained the differences. Allan Lassiter said he wasn't aware of these distinctions. Further, Allan said there were no MRF's in Virginia when this language was written. Jeff Smithberger cautioned that "sorting" in Allan Lassiter's proposed MRF definition could be a loophole that would include transfer stations. Steve Yob agreed this was a good point. Steve Yob coined the term "faux MRF," to illustrate his meaning. Therefore, Jeff Smithberger suggested that Allan Lassiter look more closely at the wording of the PRM definition. Rick Guidry pointed out that we have to be careful about MRF definitions—he said that under DEQ regulations a transfer station is prevented from doing any MRF activities. Bill Dennison said just to leave the definition's wording in the regulation as restricted as it is worded in the statute. Jeff Smithberger expressed the concern that such a loophole could help some planning units to artificially reach the mandatory recycling rate--but Allan Lassiter pointed out that this was unlikely, because the residue qualifies for the credits (5%)—only. Bill Dennison said that our object is not to open the door here with loopholes in the

definitions. Bill Dennison pointed out that if we stay in the confines of the wording in the statute, we can keep the door closed. This was the consensus of the TAC on the definitions.

Jeff Smithberger returned to the Allan Lassiter's proposed definition of "composting." Jeff Smithberger asked why Allan had excluded "anaerobic" here. Steve Coe said the existing DEQ definitions for composting are limited to aerobic processes, so they had made no mention of anaerobic processes here. Jeff Smithberger pointed out that the definitions should be the same in both plan and solid waste regulations. Steve Coe pointed out that if such situations occurred, they could be covered by a variance to the planning regulations approved by the Director for anaerobic processes. Debbie Devine said that SPSA includes anaerobic composting processes in their recycling master plan. Steve Yob pointed out that protection of the public health and the environment in the composting definition is rather general. Allan Lassiter said this provision is this way in Virginia's solid waste regulations. But Allan Lassiter observed that the definitions between the solid waste and solid waste management planning regulations are not the same in each instance. Leslie Beckwith pointed out that both the definitions of compost and composting also are in the solid waste regulations. Frank Daniel asked the TAC if any change to the composting definition was needed, Steve Coe asked if DEQ should get rid of "aerobic" in the composting definitions. Steve Yob affirmed. Debbie Devine backtracked with a question about the definition of "residue," that was answered by Jeff Smithberger and Allan Lassiter.

In response to a question from the TAC, Allan Lassiter said waste to energy is not recycling under the recycling definition in the regulations. Some people have asked whether refuse-derived fuel qualifies (Allan Lassiter said trash burning could fit in this category). Frank Daniel said the status of waste to energy won't be changed in this regulation.

At this point the TAC took a ten minute break until 3:00 pm.

Debbie Devine's comment for the record—SPSA is only interested in providing accurate information for its recycling rate report, per the regulations.

At this point Frank Daniel referred to the attachments Allen Brockman circulated to TAC members by email on February 17, 2006. Allen Brockman opened by saying that a group of DEQ staff from both the Central and Regional Offices met in September 2005 to discuss their suggestions/ideas for the upcoming public meeting/comment period on the notice of intended regulatory action for the solid waste management planning regulation. The group recommended changes to the plan amendments and variances sections (9 VAC 20-130-175 and 9 VAC 20-130-230). In addition, Allen Brockman turned to 9 VAC 20-130-120.B for today's discussion. In the February 8 TAC meeting, Jeff Smithberger had proposed a plan amendment requirement for planning units that were unable to maintain their mandatory recycling rate. The DEQ group meeting in September had suggested that language addressing maintenance of recycling rates alternatively be included in 9 VAC

20-130-120.B as reflected in today's handout. Mr. Brockman asked the TAC for their comments on this proposed language.

Bill Dennison had a question on the first paragraph—with recycling rates being reported once per year, how will maintenance of the rate be tracked for requiring (and subsequently achieving) recycling action plans? Allen Brockman referred the question to the TAC.

Bill Dennison wanted to clarify whether the draft language for 9 VAC 20-130-120.B only would apply to plans that had once achieved the mandatory rate but had now fallen behind (and not to plans that had yet to achieve the mandatory rate). Allen Brockman confirmed this point.

Frank Daniel pointed out that some specific language in the regulations on maintaining recycling rates was necessary. Frank further indicated that DEQ routinely would track performance annually when the recycling reports were received—so it would make sense to log maintenance of recycling thresholds on the same annual basis. So, the planning units would acknowledge whether they had maintained the recycling rate at the time they submit their annual recycling reports. Jeff Smithberger asked about the time limits that would be required in communications between the planning units and DEQ at the annual recycling update time. Steve Coe explained the current time frames for such exchanges. Bill Dennison and Jeff Smithberger suggested that we write these time frames into the regulations. Leslie Romanchik suggested that we use the same time frames DEQ observes in compliance/enforcement letters. Jeff Smithberger expressed concerns that the “30 Day” response letter was not adequate to address the issues. Frank Daniel, Dan Gwinner, and Leslie Romanchik said that planning units could request additional time on a case by case basis if they couldn't meet the initial 30 day turnaround requirement—they acknowledged that in many situations more than 30 days would be required to resolve questions about whether mandatory recycling rates had been maintained—but they also pointed to the need for the 30 day requirement as a base, to ensure that these situations didn't remain open ended. Jeff Smithberger said he heard their point of view, but also would like to reiterate for the future that DEQ said it would be a case by case basis and that they would be flexible in allowing more time than 30 days, as requested. Jeff Smithberger said that if this issue comes up we can all go to the website and point to this wording.

The TAC requested clarification on the difference between the “maintaining recycling rates language” in this draft compared to the language proposed by Jeff Smithberger in his draft language on Action plans proposed on February 8. It was asked whether the Action Plans could be used by a planning unit to restore a recycling rate that had fallen below the threshold. It was agreed that this avenue would be afforded.

At this point, the discussion turned to amendments and variances (9 VAC 20-130-175 and 9 VAC 20-130-230). Allen Brockman suggested that rather than jump right into the details of the draft language circulated on February 17, that he start by discussing the big picture view that had been envisioned by the DEQ discussion group of September 2005.

Allen Brockman said that once this big picture had been presented, if the TAC disagreed with the broad proposals for amendments and variances at the starting gate, that maybe we should dispense with a lot of discussion on the minutia of proposed overall regulatory approaches that do not have TAC support.

Allen Brockman explained that the DEQ group of September 2005 saw a need for more detail in the 9 VAC 20-130-175.A section on plan amendments. Allen Brockman asked the TAC, before considering the draft language presented today, whether they agreed with the September DEQ group that the existing regulation at 9 VAC 20-130-175.A required more detail. Frank Daniel clarified—in other words, does the TAC agree with the initial DEQ staff recommendation that more detail was needed in the original 9 VAC 20-130-175.A? Allen Brockman affirmed Frank Daniel's clarification.

Jeff Smithberger said we shouldn't go into any detail more than what he had suggested in his draft language on amendments presented on February 8. In that draft language, original 9 VAC 20-130-175.B was eliminated to ensure that minor amendments would not have to receive departmental approval prior to implementation. In addition, in 9 VAC 20-130-175.E of Jeff Smithberger's draft, he had proposed that an amendment be required when the recycling threshold had not been achieved. Jeff Smithberger said those modifications were all that he saw as necessary.

Frank Daniel asked Allen Brockman for more information on why the DEQ group saw a need for additional detail in this amendments section. Allen Brockman explained that the DEQ group had concerns whether many permitting details from solid waste management facilities were being accurately reported in the plans and plan amendments. Then there seems to be some confusion over what constitutes a plan amendment versus a permit amendment.

Jeff Smithberger stated that these same DEQ folks are the ones who are used to permitting facilities—they are clearly trying to bring the landfill permitting mentality back to the planning area. They are trying to refine something in the planning regulation on a permit basis. Bill Dennison asked who approves the solid waste management plans. Leslie Romanchik replied that it is the DEQ Director that approves the plans. Bill Dennison asked what role the DEQ Regional staff have in that decision. Leslie Romanchik replied that they review the plans and provide comments to the Central Office staff. Frank Daniel clarified that the Director generally is blessing the staff's recommendation. Bill Dennison summed up by saying that he realizes that here we are discussing the overall context rather than the specific details, but he sees a whole lot of make-work in the staff's September recommendation. Jeff Smithberger said that the staff's proposal for 9 VAC 20-130-175.A puts a lot more work on the Department and its limited resources. Bill Dennison said this is exactly the kind of thing we're trying to minimize or eliminate. Steve Yob agreed. Bill Dennison commented on the contents of the proposed Table for elaboration of his point. Frank Daniel joked that under the proposed language, you can't improve your recycling rate without DEQ approval. Jeff Smithberger reiterated that minor amendments should not require DEQ approval—don't inhibit planning units from trying to improve their rates. Jeff asked the TAC if they agree

with this, Allen Brockman also asked that the TAC decide, at the same time, on whether they agreed with any of 9 VAC 20-130-175.A concept proposed in the staff recommendation.

Leslie Romanchik asked for clarification on how the plans would be updated if the DEQ approvals are dispensed with. Jeff Smithberger said that because the planning units are annually sending the Department all the information on what we're doing—the Department will know that we're doing things better or worse. Jeff Smithberger summed up by saying that the Department doesn't need to get into the "weeds" to know about what's going on. Jeff said there is no need for the Department to approve every single element of every single plan throughout the Commonwealth. Bill Dennison added—and that's beside the fact that this is a plan and not a permit. Rick Guidry added that it sometimes takes the Department a long time to go through the plan amendment approval process—depending upon what region you are in, it can take years. Roger Diedrich expressed reservations about today's TAC discussion on the extent to which the Department's involvement in the approval of plan amendments should be curtailed.

Allen Brockman requested clarification that the planning units would update their own plans on changes in the PBR arena. Bill Dennison affirmed. He said that such updates were incumbent on the planning units anyway. Jeff Smithberger noted that a requirement of so many DEQ approvals would be time consuming and, on top of that, the planning units don't want to be told that DEQ staff is overworked in addressing so many approvals and doesn't have time to address more pressing concerns. Leslie Romanchik said she understood these issues but said she remains concerned about how the plans will be updated and expressed concern about public access to such information, as well. Jeff Smithberger and Bill Dennison pointed out that under existing regulations the process is: update as necessary—so there will be no change from that standard. Jeff Smithberger said we'll make those tweaks as we go through. Leslie Romanchik asked—but will DEQ get a copy of those changes? Jeff Smithberger asked Leslie Romanchik why DEQ would need a copy of such changes—he said that DEQ knows who the planning unit contacts are and can pick up the phone at any time to ask questions. Jeff said--you do that now anyway. Frank Daniel asked for clarification as to whether the annual submittals on recycling data would provide updates on such things as new battery recycling operations—Frank said that this seems to be what Leslie's concerns are. Jeff Smithberger said the annual submittals can include such information—it will at least show up in the numbers. Then Frank Daniel followed up that the other side of the question is: does DEQ really need to know that level of detail. Both Jeff Smithberger and Bill Dennison said they had no disagreement on DEQ's generally needing to know information on a facility basis—but reiterated that the information Leslie is referring to is on a planning unit basis. Steve Yob brought in an example on propane tanks—he said that the operations may be added, may go defunct, etc., etc. and he doesn't want to have to amend his plan each time one of these changes occurs. Jeff Smithberger said if the plan is for waste projections, he can see the information need, but not for all the permitting detail that was specified in the individual plans in the staff's recommended draft language.

Frank summed up that the TAC members didn't agree with the staff recommendation for more detail in 9 VAC 20-130-175.A. Bill Dennison said the write up requires a data analysis that we have already discussed as not being available. Frank Daniel and Allen Brockman asked if there was a consensus to dispense with the staff's proposal for 9 VAC 20-130-175.A. The TAC (minus Roger Diedrich) reached consensus on this issue.

Leslie Romanchik asked for clarification that, based on Jeff Smithberger's discussion today that the most up-to-date plans would be with the planning units (not DEQ), i.e. whether the planning unit is to be designated as the official repository for its solid waste management plan. Jeff Smithberger said "absolutely." Leslie Romanchik said that DEQ would send queries for the most up-to-date plans to the individual planning units. Bill Dennison said that chances are they're going to the planning units anyway. Steve Yob and Jeff Smithberger agreed.

Frank Daniel noted that the planning units are required to submit their plans for approval to DEQ, therefore both DEQ and the planning unit are offices of record. Frank Daniel said he agrees that the planning units shouldn't have to get approval from DEQ for every change, but he's not sure that he also agrees that the planning units shouldn't have to provide information on such changes. Jeff Smithberger asked Frank Daniel if this opinion was being offered in his role as facilitator or in his role as DEQ staff. Frank Daniel said that he was speaking from his common sense—if DEQ is required by law to have the planning unit's plan and the planning unit doesn't keep us updated on what the plan is, then the plan quickly becomes obsolete. Bill Dennison agreed that information should be provided for major plan amendments that significantly change the plan and recycling rate. Debbie Devine agreed.

Jeff Smithberger asked if the information could be presented on recycling rate reports. Allan Lassiter recommended against attaching minor amendments to the recycling reports. Frank Daniel said just a notification is required, it doesn't have to be designated a "minor amendment"—Leslie Beckwith agreed. Allan Lassiter asked if the existing language other than on minor amendments remains—Frank clarified with the TAC that this was the consensus. Allen Brockman asked Jeff Smithberger and Leslie Romanchik to confirm their discussion that the most up-to-date plans would be with the planning units (not DEQ) and that the planning unit is to be designated as the official plan repository—both Jeff and Leslie confirmed this position. Jeff Smithberger went on to say that the Department will have a record of any particular facility (e.g. autoclave PBR) both in the original plan that was submitted for DEQ approval and in the PBR status notification that the facility provides directly to DEQ. As for updates to the plan, the locality will be responsible for memorializing any change in status of such facilities recorded in the plan and for confirming that the change conforms to the plan. Jeff Smithberger summed up by saying that it is best for the planning unit to handle the matters pertaining to the updating of solid waste management plans and plan repository; and that DEQ handle facility-by-facility matters pertaining to updating facility permits and PBR's.

Frank Daniel provided an example from water regulation—DEQ doesn't require localities to submit their storm water protection plans to the State—we don't want these storm water plans on file. Frank continued that it is required that the localities have these plans on site so that DEQ staff can review them when they go onsite. Jeff Smithberger agreed that Frank's storm water example was pertinent here. Jeff suggested that DEQ should carefully consider the review costs/time/staffing that would be required to do otherwise. Bill Dennison said: the plans are supposed to be a projection of how that planning unit is to handle its solid waste matters for years into the future; it does not matter whether XYZ company has handled it or BZM company has handled it, just so its being handled somewhere close to the timeframe that the planning unit has established; I just don't see that anything is accomplished by getting buried in further detail—it would be unreasonable. Jeff Smithberger agreed. Steve Yob noted that some will put out plans with generalities for all details—we don't need that—if the planning units are penalized. Frank summed up that this captures the flavor.

Bill Dennison asked Allen Brockman where this discussion leaves five year plan compilations as proposed in the staff recommendation. Brockman said he didn't see it happening, now. Roger Diedrich asked if this meant the plans won't be updated—Brockman said that based on today's discussion, the plan updating will be performed by the localities. Bill Dennison agreed that as long as I amend the plan as I go, why would I need a five year recompilation. Roger Diedrich was uncertain about that. Dan Gwinner commented that over the history of this regulation, formerly there was a five-year amendment requirement which wasn't workable. Allan Lassiter concurred and further explained this history to Roger Diedrich.

Roger Diedrich then asked the TAC—how is the plan timeline extended another five years if it is not revisited when five years has passed? Jeff Smithberger pointed out that the existing regulations don't say that they can't perform regular updates/time extensions; he said that some planning units (e.g. Fairfax) are performing such updates; but I don't think DEQ should require that planning units perform such recompilation updates, because the planning units are in a position to know when the forecast should be extended; if something is awry, then we go in and fix it. There was no TAC consensus on how to proceed on the recompilation issue, but all except Roger Diedrich expressed the view that such a recompilation should not be required in the DEQ regulations. Jeff Smithberger added that a cost analysis should be required before DEQ consider any mandate here—Jeff added that DEQ should consider providing funds if we were to go this direction. Jeff asked that the record state his view that plan updates are less difficult/expensive than plan resubmissions (thru a public hearing process) and that DEQ should keep this in mind before pursuing this course.

Bill Dennison asked Allen Brockman to clarify that the draft proposed language on five-year-recompilations emailed to TAC members on February 17, was simply that—a recompilation of all updates throughout the previous five years. Brockman affirmed that it was simply a five year recompilation; it did not include any proposed extension of the planning time line/forecast. Roger Diedrich said the extension of the plan also should be an issue. Steve Yob said a timeline extension doesn't make sense, because 20 years

projection doesn't make sense—it is difficult to plan ahead for 20 years in waste management. Then why aren't you arguing for 10 year plans?—asked Roger Diedrich.

Jeff Smithberger asked what DEQ's role in the extension of the timelines is, vs. that of the local planning units. Jeff Smithberger said the local unit is moving ahead all the time in the short range (e.g. for hurricanes, etc.). Roger Diedrich said that dealing with such contingencies is not planning for 20 years. Jeff Smithberger said this set of regulations/this planning document is not the driving factor. Roger Diedrich said a twenty year forecast should be built into the plan—he said otherwise it isn't worth the paper it's written on.

Jeff Smithberger and Bill Dennison agreed that there is nothing magical about the five years in the staff's recompilation proposal. The planning units will make those changes as they see the need. Frank Daniel stated that the TAC had reached consensus that the plans are continually updated either by notifications or by major plan amendments.

As for Roger Diedrich's dissension from this consensus (stated immediately above), Frank Daniel framed his concern as: the regulations should require that the planning unit should have to revisit the entire 20 year planning interval in plan recompletions. In a clarification with Allen Brockman, Jeff Smithberger observed that the proposed 5 year renewal process in the draft didn't include the public participation/hearing that Roger Diedrich stated should be necessary.

At this point, the TAC's discussion turned to the staff's draft proposed language on variances (9 VAC 20-130-230)—submitted to the TAC by email on February 17, 2006. Allen Brockman opened by explaining that currently, Statute 1411 only explicitly provides for: “variances or exemptions from the minimum recycling rates” as elaborated in the text. Brockman continued that some have expressed the belief that other variances from the solid waste management plan requirements should be available as well. Allen Brockman explained that a group of DEQ staff met in September and suggested that the existing language in 9 VAC 20-130-230 be expanded using the variance provisions in the Virginia Solid Waste Management Regulations (e.g. 9 VAC 20-80-750) as a model for revision of the text.

At this point Allen Brockman asked the TAC whether they interpret the Statute to provide only for variances from minimum recycling rates based on market conditions, or whether the TAC sees a wider variance provision. Bill Dennison said that the statute provides for exemptions or variances from minimum recycling rates, period. Allen Brockman suggested that if variances are limited to minimum recycling rates, then there is no need for the additional variance language proposed in the draft recommendation from the staff. Brockman asked if there were any additional changes to the regulation text that the TAC could recommend to emphasize that the variances are only in regard to minimum recycling rates. Bill Dennison replied that DEQ should take the language in the new statute for that purpose. Allan Lassiter stated that one question that came up along the way was, if it is to be based on market conditions, how do you go through that process? Allan Lassiter said he didn't want to make it complicated, but wouldn't we

need a variance procedure outline if a variance from minimum recycling rates was proposed based on market conditions? Allen Brockman replied that from today's discussion that Bill Dennison and Jeff Smithberger had already suggested that such an evaluation should be left up to the DEQ Director on a case-by-case basis. Brockman asked the TAC for their thoughts on this.

Leslie Romanchik commented that from the DEQ staff's perspective, we would like to have at least some minimum guidelines for granting such a variance, listing the minimum contents of the request. Bill Dennison said he would not disagree that there could be some minimum procedure, but that he would not consider the draft language that had been submitted on February 17 as "minimum guidelines." At this point, Leslie Romanchik referred to the draft variance language from February 17 and proceeded through each particular section to determine which elements the TAC would consider as acceptable minimum variance provision language, starting with draft proposed section B. Bill Dennison recommended that section B be struck in its entirety as unnecessary—the planning unit's either got the variance petition or you don't—no further language is needed. Frank Daniel agreed, in other media you either submit the variance or you don't; now you may not get the variance, but the agency is not going to start off by saying we won't even listen to your request. Jeff Smithberger said that section C is ok and that he agrees there should be some indication of how the Director has made his decision on the variance. Bill Dennison recommended that C3 should be removed; section C should be pared down to focus on the recycling rate variance and remove anything else. Bill Dennison said section D should be removed as not necessary; particularly D2 should be removed—no modified variances. Jeff Smithberger agreed, unless DEQ saw a particular reason for it. Bill Dennison said that in Section E, #5—duration of the variance should be removed and leave any time issues to the RAP; Allan Lassiter agreed. Also E6 should be removed. The TAC then entered in a discussion that the turnaround times on DEQ's end couldn't be achieved anyway. Leslie Romanchik asked about Section F; Frank Daniel suggested that this should be left to policy and procedure and not put in the regulations—just to cite to the APA if necessary; Dennison and Smithberger agreed.

Leslie Beckwith asked if we could keep proposed section G, which repeated certain specific steps from the Administrative Process Act (APA) required in the DEQ Director's resolution of a variance petition. Jeff Smithberger and Frank Daniel said that these steps are fully explained in the Administrative Process Act (APA). The APA is found in Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Code of Virginia and details the required procedures that are to be followed in making regulations or to decide cases. The APA can be found at the following weblink to the Virginia General Assembly's Legislative Information System: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC020200000400000000000000> Bill Dennison and Jeff Smithberger said we can keep proposed section G. Frank Daniel said we don't have to provide all the APA details in the regulation—those details only need to be explained in the DEQ's response letter to the variance applicant.

A final issue raised by Allen Brockman was when the constituents of planning unit regions change (20-130-220) we don't have a clear process for notification to the old

region, etc. Bill Dennison said DEQ didn't have authority to change this provision. Leslie Romanchik suggested that DEQ could change the provision. Jeff Smithberger, Bill Dennison, and Leslie Romanchik discussed the issue further and it was concluded that the existing wording was sufficient; any further revision would be too complex and time consuming. Brockman retired the issue from discussion.

Allan Lassiter announced that HB 647 has been signed into law effective 7/1/06.

Frank Daniel asked Allen Brockman to send out an email with the language rewrites proposed from today's discussion, to make sure that all recommendations were captured correctly. Allen Brockman confirmed this, but said first he would need to compile the lengthy notes from today's meeting and send them out for the TAC's review before posting to the Virginia Town Hall. Allen Brockman stated that he wanted to be sure that the notes were accurate before he made changes to the draft language.

Bill Dennison asked Frank Daniel to review his statements about the 4th TAC meeting. Here was Frank Daniel's statement:

We will have a fourth meeting prior to the meeting of the Waste Management Board on the draft proposed regulation that will be drawn up reflecting the TAC meeting's advice. DEQ will set the date of this fourth TAC meeting by email, once DEQ staff learn on what date the Waste Management Board meeting is scheduled. Frank noted that the fourth TAC meeting will be scheduled, but also noted that whether the meeting actually proceeds will be subject to whether the TAC members feel, after seeing the draft proposed regulations, that a fourth meeting is necessary.

In summary, Frank reiterated that the 4th meeting will automatically be offered to the TAC, but that the TAC may or may not wish to meet. Frank Daniel asked Allen Brockman if any public notice time requirement had to be met in advertising a fourth TAC meeting. Mr. Brockman stated we would need to check with the regulations staff.

Allan Lassiter brought up the fact that there are superfluous definitions that need to be removed from the planning regulations (particularly those not used in the text). Jeff Smithberger stated that if DEQ needs a definition, then, within reason, add it. If a definition is superfluous, then get rid of it.

Frank Daniel closed the meeting by pointing out that TAC members could participate in the public comment period on the proposed regulation—once it is written, but said it is hoped that TAC members wouldn't comment against consensus reached in the TAC; that is, consensus they bought into. Frank Daniel ended by noting that any of the TAC's comments of dissatisfaction with the draft language, to be presented to the Waste Management Board, as expressed in the 4th TAC meeting, will be included in Allen's submission to the Board.

End of Minutes for TAC meeting 3.

Persons attending this meeting as members of the public:

Dori Brown—City of Newport News Public Works

Christine McCoy—City of Alexandria

Dan Gwinner—DEQ

Steve Coe—DEQ

Leslie Romanchik—DEQ

Leslie Beckwith—DEQ

Allen Brockman--DEQ