

**Virginia Regulations for the Development of Solid Waste Management Plans
9VAC20-130-10 *et esq.* – Amendment 2
Technical Advisory Committee Public Hearing May 11, 2006**

Facilitator: Frank Daniel

Bill Dennison - Southwest Virginia Solid Waste Management Association

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

Pamela Gratton – Solid Waste Association of North America
(substituting for Jeff Smithberger)

Rick Guidry – Virginia Waste Industries Association

Paul Vaughn – Campaign Virginia

Roger Diedrich – Sierra Club of Virginia

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

(Mike Benedetto, Larry Land, Jeff Smithberger, and Steve Yob indicated they could not be present today. 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, Steve Coe, and Allen Brockman.)

Today’s meeting notes:

Frank Daniel began the meeting by inquiring how the TAC preferred to review the proposed draft regulations. The consensus was to review the regulation sequentially.

Bill Dennison inquired about the effective date of the regulation being July 1, 2007 and the reason why that date was chosen. Allen Brockman explained that the length of time that it would take to go through the regulation process is not known and that it was not necessarily the final date of the regulation. Leslie Beckwith added that how long a regulation spends in executive review can affect the date when a regulation may become effective.

Starting with Section 10, Definitions, Bill Dennison raised the question of whether the definition of “Recycling residue” should be added on p. 4 of 24. Allan Lassiter agreed that the definition should be added. Bill Dennison added that omitting the definition would be confusing. There was a full consensus to add the definition.

Pamela Gratton asked why the definition for “sanitary landfill” had been removed. The term occurs multiple times in the regulation. As an example, Pamela Gratton referred to 9 VAC20-130-70. Bill Dennison agreed that the definition should be reinserted.

Pamela Gratton also inquired why the change was made to the definition of “vegetative waste.” Allen Brockman explained that the new definition reflects a change in 9VAC20-101.

Roger Diedrich raised the question as to who must file the solid waste plan. He also asked what the “planning unit” constitutes and how a planning unit differs from a “region.” Roger said the terms seem ambiguous. Roger asked whether the term “region” refers to a geographical area or locality. Bill Dennison explained that the term “planning unit” is straight from the text of the statute and is an agreement to cooperate between several entities. Pamela Gratton added that a planning unit often represents several localities. The group consensus was that a “planning unit” is a term of art and that the wording in the regulation is not a problem.

Frank Daniel asked if there were any changes or questions regarding Section 20, Authority for regulations. The consensus was that the section is OK as is.

Frank Daniel asked if there were any changes or questions regarding Section 30, Policy. The consensus was that the section is OK as is.

For section 40, Purpose of the Regulation, Bill Dennison questioned the reason for striking through purpose six (6). Allen Brockman stated that number 6 was stricken to be consistent with the removal of section 165—the Waste Information and Assessment Program. Allan Lassiter recommended retaining number 6 and adding the word “recycling” after “solid waste management” and that number 6 may need rewording. Bill Dennison agreed with Allan Lassiter, but had no suggestions for how to change the wording. The consensus was to retain 9 VAC20-130-40, number 6.

Frank Daniel asked if there were any changes or questions regarding Section 50, Administration of regulations. The consensus was that the section is OK as is.

Bill Dennison suggested striking “local” in 9VAC20-130-60.A. All agreed.

Debbie Devine asked about the wording of 9 VAC20-130-70.D & E. She said SPSA would like to see “local government” and “governing body of the locality” deleted in favor of “planning unit.” Rick Guidry stated that the statute wording is the same as in the regulation and recommended not deviating from the statute. The group concurred with Rich Guidry, but SPSA would still prefer the change to “planning unit.” Allen Brockman said that he would point out SPSA’s minority view in his presentation to the waste board.

Frank Daniel asked if there were any changes or questions regarding Section 90, Relationship to other bodies of regulation. The consensus was that the section is OK as is.

Bill Dennison pointed out that in 9 VAC20-130-110, Section E, the present wording is such that one who meets all plan requirements is at the same time committing a significant deviation from the planning regulations. He recommended that the staff correct this typographical error. Allen Brockman acknowledged Bill's point. Allan Lassiter suggested striking "any of the required plan contents listed in" and replacing it with "are departures or omissions from activities planned in accordance with..." The group consensus went with Allan Lassiter's proposal.

Bill Dennison pointed out that the semicolon should be omitted in 9 VAC20-130-120 A.2. He also pointed out that in B.2, the use of the word "shall" wouldn't allow a planning unit to file an action plan ahead of revocation. Bill suggested that we remedy this shortfall. Allen Brockman agreed said that "shall" could be changed to "may" to provide the director more latitude in his decision. Bill Dennison suggested retaining "revocation," but to put in qualifications so that revocation would not be automatic. Frank Daniel suggested that this would be a good place to refer to the "action plan." Paul Vaughn suggested replacing "revocation" with "plan shall be replaced." Roger Diedrich suggested "action plan shall be filed" and Frank Daniel suggested "plan shall be amended." Roger Diedrich then suggested using language similar to "shall initiate plan unless" or "failure to meet regulation shall initiate plan." Allan Lassiter recommended adding, "unless the solid waste planning unit submits a recycling action plan acceptable to the department per (Action Plan) 9 VAC20-130-120I." Frank Daniel redirected the group to address the issue of using "shall" vs. "may." Pamela Gratton clarified that "shall" ties your hands and "may" gives you flexibility. Bill Dennison asked that Allen Brockman read back the proposed language. Allen Brockman read B.2 "When a solid waste planning unit's annual recycling rate falls below the minimum rate, it shall constitute evidence of a significant deviation from the plan. The plan may be subject to revocation by the department under 9VAC20-110.E unless the solid waste planning unit submits a recycling action plan acceptable to the department per 9 VAC20-130-120.I." The group consensus was to use "may."

Bill Dennison asked if there was any magic reason for the "2 years" provision in Section 120.I.2. Allen Brockman replied that recycling action plans, to date, have been for 2-year periods. Bill Dennison replied that the time schedule approved by the department may not be able to be addressed in 2 years, or alternatively could take a lot less than 2 years from case to case. Allen Brockman asked if there is a maximum time limit that Bill would recommend. Allan Lassiter reiterated that all of the recycling action plans so far have been for 2-year periods, but that this didn't necessarily have to be the rule. Allan Lassiter suggested that the 2-year limit be removed. The group consensus was to strike through 9VAC20-130-120.I.2. "not to exceed a maximum extent of two years," in 9 VAC 20-130-120.I.2.

In section 125, Recycling requirements, Bill Dennison suggested striking "the following units" in section 125B. The group consensus agreed.

Roger Diedrich requested that the volume conversion in 125.B.2 be specified. Allan Lassiter stated that the department has standard conversions. Steve Coe stated that DEQ follows conversion rates established by the EPA and agreed to send the citation to Allen

Brockman. Bill Dennison suggested we reference the form/citation in the regulation and make it available to the planning units. Allan Lassiter agreed.

Bill Dennison stated that he was uncertain of the meaning in 125.B.3. Allan Lassiter replied that this provision was discussed at TAC meeting 2. He said the provision is verbatim from the original regulation and based an EPA framework. Allan said B.3 refers to both recycling and generation numbers in the formula. The consensus agreed to eliminate B.3. Rick Guidry recommended that B.3 could be addressed under a variance if needed. Bill Dennison said that the volume determination in B.2 is OK if done by a formula. Allan Lassiter said the Central Virginia Waste Management Authority (CVWMA) does their determination on a per capita basis so B.3 could still be necessary. Allan mentioned that B.3 has problems because people use it to estimate recycling numbers. Debbie Devine and Pamela Gratton said that B.3 needs to be qualified in some way. Bill Dennison and Rick Guidry suggested that B.2 should be available only to those who do not have scales and that maybe we should consider assigning a hierarchy among use of methods B.1, B.2, and B.3. Frank Daniel asked if it would be possible to retain B.1 and B.2 and to restate B.3 as “or an alternate method established by the department.” Bill Dennison, Allan Lassiter, and Rick Guidry all agreed that “if the process is approved by the department” could be added to B.3. The final consensus of the group was that B.3 needs further public discussion and that the board should ask the public for guidance/public comments on the best wording of B.2 and B.3.

Pamela Gratton stated that we need to fix the typographical error (to: “needs to conduct”) in 9VAC20-130-130.A.

Sections 140, 150, and 160 were removed. Allen Brockman stated that section 165 was the former Waste Information and Assessment Program (SWIA) section. Steve Coe pointed out a couple of punctuation errors in sections 175 and 230.

Bill Dennison asked how the figure of “20 percent” (for the waste generation estimate tolerance) was decided in 175.F. Allen Brockman stated that it was a staff recommendation. Bill Dennison said that this is not an enforcement action it should be based only on a planning unit’s ability to handle the waste. Bill Dennison gave this example: suppose the estimate in Loudoun is 50,000 tons and jumps to 75,000 tons, the question is whether they can manage the waste and not be driven by production limits. Allan Lassiter suggested that the 20% be stricken. Roger Diedrich agreed. The consensus was to strike the words “to within 20% of the estimate in the approved plan.”

Bill Dennison also suggested that “satisfy” in the last sentence of 125.F be stricken. The consensus was to replace “satisfy” with “be used in.”

The next section discussed was 230, Petitioning for variance or exemption. Pamela Gratton stated that the variance here has no end date. Allen Brockman said that it was left open to in this way to give the director discretion in deciding dates, etc. Allan Lassiter explained variances and how the department applies them. Allan stated that he likes B.1, 2, and 3. At this point, Pamela Gratton agreed that her questions had been answered and she is fine with section B. Bill Dennison said he likes that section B gives the director discretion and is in favor of keeping section B as is.

Bill Dennison asked if all of the suggested changes will be presented to the board. Allen Brockman affirmed, but stated that Debbie Devine's comment on 9VAC30-130-70.D & E would be presented as a minority view.

Frank Daniel asked for thoughts/comments on TAC meeting.

Allan Lassiter stated that the SWIA form 50-30, Locality Recycling Rate Report had been revised (for the forms at the end of the regulation.) Leslie Beckwith recommended that "or most recent version" be added at the end. Pamela Gratton asked if the conversion chart should be referenced in the forms. Allan Lassiter replied that the chart was part of the form.

The meeting ended at 2:25 p.m.

Persons attending this meeting as members of the public:

S. Grace Turner, McGuireWoods Consulting
Sue Young, HDR Engineering
Steve Coe, DEQ
Leslie Beckwith, DEQ
Allen Brockman, DEQ
Angela Neilan, DEQ