

Solid Waste Management Regulation, 9 VAC 20-81
Amendment 9 Regulatory Advisory Panel (RAP) Meeting No. 1
May 21, 2021
Meeting Notes

Location: electronic meeting via webinar

Start: 9:35 a.m.

End: 3:40 p.m.

Meeting Attendees:

RAP Members present

Raymond McGowan

Betty Myers

Ron Kimble

Paul Mandeville

Michael Lawless

Phillip Musegaas

DEQ Staff Present

Kathryn Perszyk

Richard Doucette

Priscilla Rohrer

Marilee Tretina

Melissa Porterfield

I. Agenda Item: Logistics & Introductions

Discussion: Melissa Porterfield reviewed the procedures for electronic meetings, and had individuals appointed to the Regulatory Advisory Panel 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 chat feature.

II. Agenda Item: Welcome & Remarks

Discussion: Kathryn Perszyk, Director, Land Protection & Revitalization Division thanked the members of the RAP for volunteering to assist the agency with this amendment.

III. Agenda Item: Full Regulatory Process & Regulatory Advisory Panel Overview

Discussion: Melissa 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 August 31, 2021. This amendment needs to be presented to the Waste Management Board for their consideration by October 2021.

IV. Agenda Item: Overview of NOIRA and Periodic Review Comments

Discussion: Melissa Porterfield referenced the public comments that were distributed to the RAP for review prior to the meeting. These public comments were submitted to the agency either during the periodic review of this regulation in 2019 or during the NOIRA comment period in 2021. The result of the periodic review conducted for this regulation in 2019 was to amend the regulation, resulting in the NOIRA for Amendment 9 to the Solid Waste Management Regulations being submitted to the registrar. The public comments received range in scope from very general to very specific. Please keep the comments expressed during these comment periods in mind as topics are discussed during these RAP meetings.

V. Agenda Item: Landfill Siting and Design

Discussion: Richard Doucette led the discussion concerning landfill siting.

The agency will be proposing a change to the language in the siting requirements section of the regulation (section 120). Currently the language states “The siting of all new sanitary, CDD and industrial landfills shall be governed by the standards set forth in this section.” The agency will be proposing to change the language to the following “The siting of the waste management boundary for all ~~new~~ sanitary, CDD and industrial landfills shall be governed by the standards set forth in this section.” The waste management boundary includes waste management units and leachate storage areas. The agency believes that the siting criteria needs to be updated to clarify that the agency is examining the location of where the waste and leachate will be managed, not the entire parcel of the site.

The RAP also discussed the siting requirements as they pertain to floodplains. DEQ relies on FEMA maps to identify the floodplain areas. Two options were presented, which included maintaining the 100-year floodplain setback, or using the 500-year floodplain. Consensus was reached to maintain the 100-year floodplain setback requirement.

The siting restrictions (setback distances) were also discussed. Currently the regulations prohibit siting closer than 200 feet from any residence, school, daycare center, hospital, nursing home, or recreational park area in existence at the time of application. The group discussed how changing this setback criteria would impact existing facilities, where the distances would be measured from, and if the setback distance should be increased (500 ft. setback). Setback criteria for facilities in other states was provided to the RAP. No consensus was reached on this setback criteria – “200 feet from any residence, school, daycare center, hospital, nursing home, or recreational park area in existence at the time of application.” This discussion was placed into the “parking lot” for possible future discussion.

A break was taken from 10:53 to 11:03.

The group discussed siting setbacks from streams. The current setback is 100 ft. Public comment had previously been received requesting this setback to be increased to 500 ft. Setback criteria for facilities in other states was provided to the RAP. Consensus was reached by the group that the current 100 ft. should be retained.

The 50 ft. setback from the facility boundary was discussed by the RAP and the group discussed possibly increasing this to 100 ft. or 200 ft. There was discussion concerning whether the term “facility boundary” should be changed to “property boundary” and how these terms are related to the waste management boundary. This discussion was placed into the “parking lot” for possible future discussion.

The current 500 ft. setback from drinking water wells was discussed. Consensus was reached that the 500 ft. setback is the minimum setback from these wells.

The group discussed Resource Protection Areas (RPAs) designated by localities and if these RPAs should be referenced in some way in the siting requirements to prevent siting of landfills in RPAs. Questions were raised concerning whether inclusion of these requirements would duplicate other requirements put in place at the local level. This issue was placed into the “parking lot,” and DEQ staff are going to further investigate RPAs to figure how to potentially integrate this concept into these regulations.

Lunch break was taken from 11:45 a.m. to 12:31 p.m.

The group transitioned to discussions concerning landfill design and construction requirements. The group discussed inclusion of additional information concerning benchmarks. Benchmarks are currently defined in the regulation as "a permanent monument constructed of concrete and set in the ground surface below the frost line with identifying information clearly affixed to it. Identifying information will include the designation of the benchmark as well as the elevation and coordinates on the local or Virginia state grid system." The group reached consensus on including references to survey coordinate systems in the regulations.

The group discussed the current run on/run off standard included in the regulations which include planning for the 24-hour, 25-year storm event. This standard is based on information from the Atlas 14 data for Virginia (from 2006) and Predictive Rainfall Intensity-Density Frequency curves (updates to be completed in May 2021), both of which are maintained by the National Oceanic and Atmospheric Administration (NOAA). Consensus was reached to maintain the requirement for stormwater management planning to be for the 24-hour, 25-year storm event. A recommendation was made to include... “based on current rainfall intensity data” to the regulation to clarify that the most recent available information should be used for stormwater management planning.

Sanitary Landfill Alternate Liner Design requirements were discussed. Staff are planning to rename the phrase Alternate liner system currently found in 9VAC20-81-130 J 1 b to FML/Geosynthetic Clay Liner. The group discussed the current Unified Soil Classification requirements for the controlled subgrade. Consensus was reached by the RAP to remove the Unified Soil Classification requirements for the subgrade from the regulation since the regulation already specifies the compaction requirements for the subgrade. The group also discussed and reached consensus on changing the hydraulic conductivity of the lower geosynthetic clay liner (GCL) from 1×10^{-9} cm/sec to 5×10^{-9} cm/sec to be consistent with industry standards.

Agency staff presented a new regulatory requirement to the RAP for their consideration and feedback. An annual topographic survey would be required to be conducted and reported to the agency. The annual topographic survey would provide information on the current capacity and grades at the fill area, the remaining life of the facility and also would prevent overflow of the facility. The group discussed the timing of this reporting requirement, the possibility of including the topographic survey result in conjunction with the Solid Waste Information and Assessment (SWIA) reporting requirement, the timeframe for conducting the survey, when the first report would be due (how this reporting requirement would be phased into the regulation). RAP members discussed challenges with conducting this survey, which included weather conditions, the cost associated with these surveys, potential biannual reporting for smaller facilities, and the fact that captive industrial facilities are not subject to SWIA reporting. Based on the discussions of the RAP, staff will develop language for review by the RAP at a future meeting that includes different requirements for small (less than 300 tons per day) and large facilities. RAP members indicated they would provide cost estimates for these topographic surveys at a future date and would also provide any information concerning how other states have addressed the settlement of waste at facilities, either through the allowance of actual final grades being within a certain percentage of permitted design grades or the use of settlement plans to address this issue.

Closure requirements for CDD and industrial landfills found in 9VAC20-81-160 D 2 e were discussed. The agency is looking to allow a barrier layer to be 30 mils if using PVC. Consensus was reached concerning this change. The group also discussed the use of the phrase “barrier layer” versus “infiltration layer” in that section of the regulations.

Break - 1:50 p.m. to 1:55 p.m.

IV. Agenda Item: Landfill Operations

Discussion: Priscilla Rohrer led the discussions concerning landfill operations. Noise and hours of operations of facilities were discussed. She provided an overview of current regulatory requirements, summarized public comments received concerning noise and hours of operation, and reviewed the local government's role in the permitting of these facilities, which includes certification that the operation is consistent with all applicable local ordinances. The department is not proposing to change any requirements pertaining to noise. The agency is suggesting the inclusion of language to allow for facilities to request a temporary extension in operational hours if needed to respond to emergencies, and consensus was reached to include this flexibility in the regulation.

Landfill fire control and response issues were discussed by the group, and the group agreed that soil is an effective way to extinguish landfill fires. The group reached consensus on adding more detail to the regulation to emphasize the use of soil in controlling landfill fires and to state that landfill fires shall be effectively controlled and extinguished (no active combustion, flames, smoke, smoldering).

The groups discussed including more requirements for the Fire Control Plan, and there was consensus on adding the following requirements to fire control plans:

- Fire suppression methods & equipment
- Procedures for applying soil & other fire suppression materials (water, foam)
- Water sources & supplies
- Containment of run-off & leachate
- Diversion and staging of incoming waste
- Isolation or shutdown of gas systems
- Entry routes for emergency responders
- Evacuation & notification procedures
- Backup contractors

Training for fire response was discussed, including training exercises with local fire departments. There was no consensus on requiring fire response training exercises with the local fire department. However, RAP members reached consensus that active landfills should conduct an annual training for their staff on the procedures in the fire control plan.

The meeting adjourned at 3:40 p.m.