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Virginia Solid Waste Management Regulations – Amendment 5
9VAC20-80-10 *et seq*
Technical Advisory Committee (TAC) Public Meeting September 25, 2006

Facilitator: Steve Dietrich

Ron Birkhead--Virginia Dominion Power

Jeff Burrier--Virginia Waste Industries Association (VWIA)—(absent); Bob Dick,
substitute

David Graham--Kaufman and Canoles

Lisa Guthrie--Virginia League of Conservation Voters—(absent)

Michael Isper--Virginia Department of Transportation

Larry Land--Virginia Association of Counties—attended for part of the meeting

Ray McGowan--Solid Waste Association of North America

Michael Town--Sierra Club, Virginia Chapter—(absent)

Shawn Davis--DEQ Waste Division; technical representative to TAC—(absent); Becky
Dietrich, substitute

(Other names that appear in today's notes are the following: (1) names of DEQ staff members that were present to answer questions raised by the TAC: Karen Sismour, Leslie Beckwith, Debbie, Miller, Paul Farrell, Allen Brockman and (2) names of public attendees who spoke: Jeff Crate (Draper Aden Associates), John Robins (Fluvanna County), Scott Sheridan (Golder Associates), Jason Williams (Waste Management), Dick Sedgley (AquaLaw), and Joe Levine (New River Resource Authority).

Today's meeting notes:

The TAC meeting began at 10:10 am with introductions by Steve Dietrich.

The first item on the agenda to be discussed was the definition of "airport" proposed by the department for 9 VAC 20-80-10. However, once the subject was introduced, there were no comments from anyone in the room. The TAC approved the new definition by consensus.

Then, we moved on to the second agenda item, the definition of “closure.” Jeff Crate offered a suggestion for different language—“inspected, and closure activities found acceptable by the Department of Environmental Quality (DEQ) “

Ray McGowan asked who would do the certified cover. Becky Dietrich answered that it would be DEQ. final cover certified by PE (rather than simply “certified final cover”). At this point, consensus on the definition of Closure was reached by TAC:

~~"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter~~ ***that point in time when all waste units in a permitted landfill are filled, capped, Professional Engineer- certified final covered, inspected, and closure activities found acceptable by the Department of Environmental Quality (DEQ) for closure, and: At that time, the permitted landfill becomes a closed landfill. Following closure, Post-Closure Care must commence in accordance with the regulations and an approved Post-Closure Care Plan.***

Next, the meeting moved on to agenda item 3 (draft language for 9 VAC 20-80-60.B.3.d—1205 Landfills). Becky Dietrich asked if anyone saw any discrepancies in the department’s proposed tables 2.1 and 2.2. Jeff Crate said he found that some sites included that had not been finalized as closure. Further, Bob Dick said that Note 2 on closure [date] is not consistent with the closure cessation of waste acceptance date—in footnote number 2. Jeff Crate said that Waynesboro has not received acceptance by DEQ.

Ray McGowan said he doesn’t care if the table is included in the regulation. Ray said, the recommendation to include the tables originally was made by DEQ. Karen Sismour agreed that the suggestion may have come from DEQ.

Ron Birkhead asked if the tables can’t be referenced in item 3.b. One public member asked that this table be clarified that it is only for 1205 facilities. Jeff Crate questioned whether DEQ would require final cover over an area that hadn’t received waste in a long time. Becky Dietrich suggested that we could include a citation to 250.E (see underlined additional language below):

9 VAC 20-80-60.B.3b. The facility shall not dispose of solid waste in any portion of a disposal area that has closed or that has not received waste for a period of one year. The facility shall notify the department, in writing within 30 days, when an area has closed or has not received waste for a one-year period, in accordance with 9 VAC 20-80-250.E.

John Robins asked why we did not give the same leeway to 1205’s that you give to non 1205’s. Jeff Crate agreed.

Bob Dick said he has problems with the way “closed” is used in 9 VAC 20-80-60.B.3.b. Bob said that it is absurd to tell somebody that they can’t dispose of waste in an area that

is already closed. Bob suggests that we come up with language that articulates what we are actually trying to accomplish (rather than use the word “closed”).

Karen Sismour remarked that this “Applicability of Chapter” comes under B—which is for 1205 facilities only. This draft language indicates what we expect of the 1205’s. It does not extend it to any other facilities.

Jason Williams said he was curious about the wording targeting the 1205’s. Jason asked about the status of facilities that met the new standards from before the March 1993 date. Bob Dick said that the Charles City County facility would be in this category, but said it is not a 1205.

Jason Williams cautioned that the definition here would pull non1205 sites in, as well—so he suggested rewording the section. Jason said he would prefer not to rely on tables 2.1 and 2.2 to define what sites held 1205 status. Jason said 1205 definitions shouldn’t be based solely on dates, either. There should be a more detailed explanation. Ron Birkhead suggested that we instead use a tighter link to Tables 2.1 and 2.2. in the introductory wording in 9 VAC 20-80-60.B. Then, Jason Williams proposed the following wording: “All facilities listed in tables 2.1 and 2.2,” [~~Instead of that were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993].~~]

Bob Dick agreed that 1205 status is determined not just by date, but also by design – he said those are the 1205 criteria.

Bob Dick asked about the quality assurance (QA) process that was used on the tables (2.1 and 2.2) and whether a 1205 list was included in the 1205 legislation. Karen Sismour said we would double check the table. Becky Dietrich said she did QA tables 2.1 and 2.2. Becky said that the inactive sites are in table 2.1 and the active sites are in table 2.2..

Next, the TAC voted on changes to the tables: 4 voted for the table reference; 2 voted against; the consensus for was for the new table reference.

The TAC agreed to the following changes in Table 2.2:

(new title for final column in Table 2.2): ~~Closure~~ Latest Cessation of Waste Acceptance Date²

(new) footnote 2: ~~The closure~~ This date means the latest date that the disposal area must cease accepting waste.

Ron Birkhead asked if his facilities were 1205s, Becky Dietrich said no, they are 1911s.

Next, Jeff Crate asked about 3.b. language under 9 VAC 20-80-60. Karen Sismour asked about combining 3.b w/ 3.c.

Becky Dietrich asked if the “not received waste for a period of one year” was the sticking point. Ray McGowan said that the “one year” criterion is elsewhere in the regulations, and that we need to be consistent.

Bob Dick said he has problems with “when an area has closed.” Becky Dietrich said that the history is that in some cases “closed” facilities haven’t let us know that they were closed. Leslie Beckwith asked if the confusion is over the notification of “closed” issue. John Robins asked if we were talking about area vs. unit as being capped. Becky Dietrich said it has to do with whether the unit has been closed but not the area. The following change in language was proposed by Jeff Crate:

“The facility shall not dispose of solid waste in any portion of a disposal area that has received final cover ~~closed~~ or has not received waste for a period of one year in accordance with 250.E. The facility shall notify the department, in writing within 30 days, when an area has closed or has not received waste for a one-year period.”

However, Jeff Crate said that given there has been a court case on this topic, that with this proposed change, we might be setting up this regulation as not being enforceable. Karen Sismour said we would have to look into this.

Becky Dietrich asked if it would help to bring closure extension standards into this area that was already available in 250. John Robins questioned why we should bring this citation forward in such a way. Karen Sismour replied that the cross referencing could be brought forward for clarification purposes.

Jeff Crate said he assumed these 1205 sites have closure plans. Maybe we can just ask these facilities, up front, to make sure they have closure plans.

On 3.b., “The facility shall not dispose of solid waste in any portion of a disposal area that has received final cover ~~closed~~ or has not received waste for a period of one year in accordance with 250.E. The facility shall notify the department, in writing within 30 days, when an area has received final cover or has not received waste for a one-year period in accordance with 250.E.”

The TAC reached consensus on the above language for 9 VAC 20-80-60.B.3.b..

Jeff Crate concurred with the TAC’s view.

Bob Dick said the next issue was whether now DEQ wants to received verification of the closure date—Becky Dietrich said verification would be needed for the facilities in Table 2.2 from 2012 thru 2020. Jeff Crate’s suggested language—“those facilities in Table 2.2 shall update their closure plans.”

Jason Williams suggested that instead of the department’s requiring a plan revision, the 1205’s could designate the areas they are working in and the footprint in accordance with former House Bill 1205. Jason suggested that the 1205’s submit a plat instead of updating

the whole plan. Jason said otherwise, a plan update would involve an additional review step by DEQ. Jason said that all DEQ is interested in are the areas the 1205's have completed during the period from 2012 to 2020. John Robins agreed. John said that the inspectors could compare the plats to the field areas. Becky Dietrich said the 1205's could update their respective plans and the DEQ inspectors then could verify the changes in the field.

Karen Sismour suggested that the TAC bring this to a vote. Add the following provision as new 9 VAC 20-80-60.B.3.e.:

“3.e Those facilities in Table 2.2 shall designate those areas in which waste will be disposed until the latest cessation of waste acceptance date.”

Jeff Crate remarked that if “I’m a facility and only have to do a plat, I’ll show the entire facility.” Becky Dietrich agreed that we need to narrow down the 1205 areas. Bob Dick said he thinks we need to verify the closure plans existed—maybe just submitting a plat won’t accomplish that. However, Bob added, if we require update of a closure plan it will be a full blown submittal. So, Bob said we need to think about what we’re trying to achieve with this.

Jason Williams told Bob Dick that the regulations already require a closure plan and the inspectors can ask for it at any time. Ray McGowan agreed that 1205's are still subject to all the other regulations for disposal (250, 260, & 270).

Steve Dietrich said we realize that we need to do some additional word-smithing on this general 60.B.3.e area. Bob Dick suggested a format of month/day/year in the fourth column of Table 2.2 (rather than just year). Steve Dietrich agreed that we can do this.

The TAC then moved on to agenda item 4, animal carcasses. Steve Dietrich explained that the draft language for 9 VAC 20-80-60.E.14 is draft language provided by Mike Ispier of the Virginia Department of Transportation (VDOT). Mr. Ispier asked that the notes clarify that burial of animal carcasses along the right of ways is VDOT's last choice.

Jeff Crate asked if provision 14 was intended for turkey kills. Steve Dietrich clarified that 14 deals with VDOT daily carcass concerns. The draft language in 9 VAC 20-80-60.E.13 deals with limited agricultural burials. Avian flu control should be handled through composting, incineration, or disposal in a modern landfill.

Scott Sheridan and Ray McGowan asked if “consistent with public health” shouldn’t be “consistent with protecting the public health and the environment,” in 14.a and b.

Larry Land joined the group at 11:30 am.

The TAC announced its consensus for the draft language in 13 and 14 with the above minor changes..

Next, the TAC addressed agenda item 5 (cover maintenance in 9 VAC 20-80-250.C.2.c,d,e). Karen Sismour explained that this issue needed clarification in the regulations and it was covered in the NOIRA. Steve Dietrich said we've added the words "and maintained on." No one from the TAC had any comments or the public. TAC Consensus was announced.

Next, the TAC addressed agenda items 6 and 16—Landfill Safety Plans. Steve Dietrich said the draft language was provided to clarify the contents of the safety plans and said the change applies to all landfills (municipal solid waste (MSW), industrial, and construction and demolition debris (CDD)).

Someone brought up the inconsistency between MSW and CDD. Jeff Crate and Karen Sismour agreed that proposed draft language (and related original language) for the CDD safety plan reference and Industrial reference to 1910 should be consistent with MSW safety plan reference.

Jason Williams asked if all these safety plans need to be incorporated into the permit or into the operations record at the facility? Initially, Becky Dietrich said the new language was to be in the permits, only. Jason asked if permit amendments will be required to incorporate these. If not, Jason recommended that we say operating record rather than operating record. Karen said we didn't intend to require permit amendments. Ron Birkhead said the draft language should say that a permit amendment is not required to update the safety plan, in the regulation itself. Ron said, why require this—it is already required by the Federal Office of Safety and Health Administration (OSHA). Mike Isper suggested that the draft language should say the program, at a minimum, should require the described elements, rather than to specify where the safety plan should be contained. At this point, Becky Dietrich agreed with Jason Williams that "Record" should be substituted for "Manual" in "Operations Manual" for all 3 landfill types.

Bob Dick asked about permit appendices that have a "safety plan" component. Was it ok that we put it the revised version in the Operating Record? Ron Birkhead asked why we list these safety requirements again, if they are already in 29 CFR 1910. Ron said he doesn't want to be in violation of both 1910 and in violation of DEQ regulations. Steve Dietrich said it is easier for us to enforce DEQ regulations on safety than to enforce OSHA's regulations. Ron Birkhead said that he thought the purpose here was to simplify the regulation. Ray McGowan said he agreed that we should require that waste permits meet any applicable safety requirements.

Bob Dick and Ray McGowan agreed that it isn't an impediment to the industry to have these safety details in the operations records. John Robins agreed that his concern is that job titles and name changes are addressed by having only to update the Operating Record, not the permits as well.

Jason Williams asked questions about whether notices of violations (NOV's) would be assessed or not when the plan in the operating record is not in agreement with all the details of the plan found in a permit appendix.

Ron Birckhead asked when this safety program has to be enacted by the industry. Leslie Beckwith suggested that enactment can occur within 120 days of the regulation amendment. Karen Sismour said we would specify this as an actual date (not a generic 120 days) when we finalize the regulation.

Scott Sheridan requested consistency between the existing language in the three safety sections and to add the Operations Record language. The TAC reached consensus on this issue, subject to the agreements made above.

We broke for lunch at 11:55 a.m..

The TAC meeting reconvened at 1:12 p.m. Larry Land won't be returning—he's at the General Assembly Special Session this afternoon.

The TAC moved on to agenda item 7—Gas Remediation. Steve Dietrich summarized DEQ's recommended language (clarity improvements and a new Action Level). Becky Dietrich briefed us on the difference between action levels (25% of LEL at structures and 80% LEL at facility boundary) and compliance levels (25% of LEL at structures and 100% LEL at facility boundary). She noted there would be no change in compliance levels under the draft language.

Becky Dietrich then announced two proposals for section C of the gas language that weren't in the draft text. First, she noted that the gas plan isn't supposed to be submitted until you hit compliance levels. For your consideration, she announced, we're asking if you would consider adding a requirement for submitting the plan earlier, when action levels are reached. Both Ray McGowan and Bob Dick said that they thought we had implied, in the draft language that the gas plan was to be submitted when action levels are reached. However, Bob Dick said he preferred that the plan not be submitted until we reach the compliance level. Bob Dick said the industry in theory prefers that we don't submit the plan until 100% the LEL at the boundary. Bob said that the gas remediation plans are phased and 5 years later you're looking at the next phase of it. I'd prefer to give the outline of the plan at the action level (80%). Dick Sedgley agreed with Bob Dick, neither want the gas plan submitted earlier, at the action level.

Ray McGowan said his only question was about implementing the plan in 60 days in the existing language. Becky Dietrich explained that this doesn't mean it has to be installed in 60 days, only that you are moving towards the installation in the 60 days.

Then Becky Dietrich raised her second issue not previously included in the draft text—shall we put time frames within which different phases of the implementation procedure—two distinct passive gas phases, followed by an active gas remediation phase—are to be met. Ron Birckhead said by putting it in the recommendation in the

regulations, it would remove flexibility. Ray McGowan agreed—it's not one size fits all in how to proceed, and the geology of the sites are different. Becky Dietrich asked if the TAC felt that the current plans are adequate to protect human health and the environment. Ray McGowan said he hasn't had experience with gas remediation plans here to provide advice.

Bob Dick said he opposes our specifying any fixed time frames in the regulation, I think the current system works (under 3.b timeframes set in the plan). The language under 3.b. could be amended to better fit DEQ objectives if plans aren't meeting the needs. Becky asked the TAC if we can put some interim time lines in section C.3 by altering the language of 3.b as might be acceptable to the TAC.

Bob Dick suggested we could add a final sentence to C.2, after the phrase ending “..and the proposed remedy,”—and immediately before C.3. which would read: “The plan shall include an implementation schedule specifying timeframes for implementing corrective actions, evaluating the effectiveness of such corrective actions and milestones for proceeding in implementation of additional corrective actions if necessary to reestablish compliance.”

A consensus of the TAC agreed with Bob Dick's proposed additional language for 9 VAC 20-80-280.C.2.

Ron Birkhead asked whether these new gas provisions would require a permit amendment. Becky Dietrich said yes, a minor permit amendment.

Jeff Crate asked if the 60 days was both implementation and submission of a plan within 60 days, but doesn't mean all is installed (e.g. drilling, etc.). Becky Dietrich and Karen Sismour agreed that Jeff's preferred interpretation was the correct one here.

Scott Sheridan asked about C.5—that is, who determines what an unusual condition is. Becky Dietrich said the cite is to 570.C.3, where the same language is used. Allen Brockman read the language at 9 VAC 20-80-570.C.3.

Bob Dick asked whether the department distinguishes between gas control and gas remediation, that is, do we distinguish between a remedial effort and those voluntarily installed. Bob noted that as 5 is written, if I have a structure with an unusual condition, I don't shut down my gas control system. Becky Dietrich concurred with Bob's conclusion. Jeff Crate asked—what about if some gas vents are clogged at the facility but not the ones at the boundary, does this mean, then, that we don't shut down the wells at the boundary? Bob Dick was concerned about the subjective nature of the “unusual conditions”—certainly DEQ doesn't want the facility to call the department each time some condition is different, unless the condition goes to the extreme set forth in 570.C.3. Karen Sismour suggested we need the additional phrase from 570.C.3:”which may endanger health or the environment.” Bob Dick and Becky Dietrich agreed with Karen. Jeff Crate suggested that we should add a provision for when equipment malfunctions. Bob Dick suggested the language: “is no longer operating properly and may endanger health or the environment.” “Such as when an active gas remediation system is no longer

operating in such a manner as to maintain compliance with this section.” Ron Birckhead asked if this language was not duplicative with 570.C.3.

It was agreed by the TAC to add to C.5: “which may endanger health or the environment” but not at C.3. Ron Birckhead said instead that it should go *everywhere* we talk about noncompliance. Mike Isper agreed the threshold language should be in here with all the proposed changes in the gas section, rather than to rely only on the separate words at 570.C.3.

Bob Dick asked, if corrective action takes 12 months, do we have to continue to send the notification (280.C.1.b) that probe “M3” is hot? With the confirmation that this would be clarified (as suggested below by Jeff Crate), Bob Dick said he voted that the draft language should stay in the Gas regulations.

In response to a suggestion that the clarification should occur in 570 rather than in 280, Karen pointed out that 570 is based on the facility’s first awareness of the circumstances. Jeff Crate suggested that we put : C.1.b Notify the department in writing within five working days of initially learning that action levels have been exceeded and indicate...”

C9 VAC 20-80-280.C.5. The facility shall notify the department of a ~~noncompliance~~ an initial exceedance of the compliance level or unusual condition which may endanger human health and the environment, in accordance with 570.C.3, such as when an active gas remediation system is no longer operating properly in such a manner as to maintain compliance with this section.

A consensus of the TAC was reached on the above rephrasing.

Next the TAC addressed agenda item 8—Odor Control. Bob Dick expressed the concern that this standard is too subjective. What if the facility doesn’t recognize a scientific basis to the concern? Also, the wording makes the facility subjective to citizens who want to shut the facility down, particularly if multiple complaints are not founded in E.6. Bob Dick quipped that this section instead be worded: “If the facility thinks there is a problem.”

Ron Birckhead suggested that language be added for the facility’s dispute of the odor condition. Ron Birckhead asked Becky Dietrich what the department would do if we get a lot of citizen complaints about odor from a landfill. Becky said we verify if the complaints are valid before pursuing them. Mike Isper suggested rewording this: “On determination that there is a problem...” Leslie Beckwith said that Isper’s proposed wording would constitute a case decision, and therefore would need to be avoided.

Ron Birckhead asked about the E.6 language. He suggested we add “significant” to complaints.

Bob Dick suggested that we paraphrase from the Odor section of the Air regulations.

Jason Williams acknowledged that he was on this panel with citizens at the DEQ Piedmont Regional Office, when he worked for the department.

Bob Dick said he doesn't like amendment of the "permit boundary" in D.1 He suggested instead we use "facility boundary." Karen pointed out that this wording was an attempt at defining when a problem existed, so that a plan is required when it is necessary.

Bob Dick then asked, why not require all landfills have an odor plan? Joe Levine said a generic odor standard is already required in the Submission Instructions and in the Operations Requirements.

Next, Becky Dietrich, Bob Dick, and the TAC group tackled the following revision of D.1:

"When an odor nuisance or hazard is created under normal operating conditions and upon notification by the department the permittee within 90 days shall develop and implement an odor management plan to address odors that may impact citizens beyond the property boundaries internally and submit the plan to the department for approval and amendment of the facility permit."

This preceding language was adopted by consensus of the TAC. The TAC was queried as to whether they would like to review this language again in a followup email, the consensus said they were satisfied with this revision and did not need to review it again. However, Steve Dietrich said that DEQ may want to adjust this wording, and if so, it will be recirculated to the TAC prior to the fall Board meeting.

Next, the TAC addressed draft 9 VAC 20-80-280.E.6. The TAC discussed that a log of the receipt of complaints has not been the basis of the requirement for gas plans, up to the present. Bob Dick concurred with John Robins that we can move this draft E.6 provision into a slot as new D.3: Facilities shall perform and document an annual review and update the odor management plan, as necessary, to address ongoing odor management issues." Draft E.6, transformed into new D.3 as written here, and was approved by the consensus of the TAC.

Jeff Crate suggested that we add the word "issues" to the phrase "and any gas remediation," in the header language in 9 VAC 20-80-280.E. The TAC agreed. No draft language in the department's proposed draft language for 9 VAC 20-80-280 (other than the areas addressed above) was suggested for changes by the TAC.

Discussion then moved on to Item 9 on the agenda—the 10 to 30 day change, proposed for 9 VAC 20-80-485.A.7. A consensus of the TAC approved the department's proposed draft language here.

At this point, the TAC postponed discussion on the proposed draft language for 9 VAC20-80-485.D—Research, Development and Demonstration (RDD) Plans (agenda item 10), until later in the meeting.

The TAC moved on to discuss #11—Permits by Rule (PBR's)—local plan certification—HB421—to cite from the Statute. TAC consensus agreed.

Bob Dick asked for clarification that local govt. provides the certification and planning unit updates the plan.—The legislature wrote this into the law, it wasn't done by the Dept.

On to Item 12—Ray asked why the applicant has to respond in 60 days. Karen said it is just to keep it on track, but that extensions are granted as necessary. Karen said we could look at the extension language in Part B. Bob Dick said the bold sentence at the bottom of the draft language (p. 17) has fee issues associated with it.

Bob Dick : “Subsequent resubmittals of the application greater than 18 months or more after the initial response letter from the department shall be considered as a new application.” TAC Consensus—[Otherwise, any submittal could be considered a resubmittal.]. The following language was agreed to by a Consensus of the TAC:

9 VAC 20-80-500.C.2. The Part A application will be reviewed for completeness. The applicant will be notified within ~~fifteen~~ **30** days whether the application is administratively complete or incomplete. If complete information is not provided within ~~thirty~~ **60** days **or an alternate timeframe approved by the department** after the applicant is notified, the application will be returned to the applicant without further review. **Subsequent resubmittals of the application submitted after eighteen months from the date of the department's response letter shall be considered as a new application.**

On to Item 13—Public Hearings. Karen explained the new issue for not having automatic hearings—where the law does not otherwise require them. Draft language came from HW and wetlands regulations. Criteria for a hearing is set forth in the regulations, and the decision is based on those criteria. Consensus from TAC.

On to Item 14— remove “final.” Becky explained it, there is still an appeal window, so it is not a final decision. consensus reached by TAC

On to Item 15—public water supply or wetlands issues. Bob Dick asked why DEQ doesn't have to update the regulations every time the legislature modifies the code—why haven't we been modifying all along and aren't higher in the amendments? Leslie Beckwith explained that sometimes these are immediate final rule changes (incorporations) rather than full blown amendments. Leslie Beckwith said it was HB 2192. Consensus from the TAC reached on this.

Item 16 was the safety issue, which was approved earlier in the day by consensus.

Item 17—Table 7.2 revision on closure date (from major to minor). Bob Dick said that a regional office told him that the closure dates were not enforceable, so initially he was reluctant to support the draft language. He thought the closure dates didn't require an amendment at all. Ray said this is why he wanted it to be a minor permit amendment. In the end, TAC consensus was reached on the proposed draft language. Some TAC members posed the question, how often would you have to modify the closure date if it changed? Ray pointed out that DEQ had said the public needs to know if the closure is early or late. Karen said she doesn't read this as requiring an amendment each time the date changes, just because we're designating it as a minor amendment. Karen asked if we'd prefer to keep the permit inaccurate by not updating the dates and accepting the draft language? Jason said that we can self identify. Bob Dick said he thought our VA solid waste permits were term-less. Bob Dick--Now all the sudden the closure date is prescribed. Jason pointed out that the requirements are to estimate the numbers. John asked where this date shows up in the Permits?—his point was that they occur in the operating record—so he doesn't understand why this showed up as a major amendment. Jason said for some facilities, the closure plan is incorporated into the permit. Jason said that not many plans specify a specific closure year, they provide an anticipated date. Bob Dick said he was once asked by a permit writer to provide a closure date for each cell, and he protested. Bob Dick said this could have ramifications, although he does want the permits to be accurate—he just didn't see this an amendment issue, unless the facility went past its closure date.

Steve Dietrich suggested that the TAC could decide 1. to accept draft language, or 2. to not accept it, or 3. to modify the draft language.

Becky quoted closure plan requirements from 250.E.—including anticipated date when waste will no longer be received and anticipated date of final closure and intervening milestone dates. Mike Isper said that if the dates aren't set in stone, why change them? Under any date changes, in that scenario it would be a major permit amendment.

Either way the choice goes, it will still require guidance. Bob Dick asked if the Director can reject a permit amendment? What if it is a hostile administration in the future, this could become a means by which a facility could be stopped from operation. He said he was worried about what facilities with future closure dates, years from now, will have to do.

Ray said that a change of a closure date is not a reason for an amendment. Karen said this is obviously a more controversial issue than we originally thought it was. So Karen said lets drop Item 17 in this Amendment, and that we will consider guidance for this area.

Bob Dick asked if he could bring the issue of agenda item 17 back to the VWIA. Leslie said they could go to their groups and have any responses sent to Allen Brockman by email (arbrockman@deq.va.gov).

On to Item 18—Leslie said she would send out the citations (in the next 2 weeks) to the TAC where we have changed from should to shall and vice versa. Also, there is no change on the PE certification.

Back to Item 10—RDD. Bob Dick led off. He said that VWIA is supportive of the State implementing the RDD rule. It is a significant change to 258. VWIA applauds the DEQ initiative here to get Federal approval of incorporation into the VSWMR. Having said that, the Federal RDD rule addressed three major issues: 1. authorized control systems to prevent run on; 2. addition of liquid restrictions and condensate restrictions; 3. cover design criteria for alternate covers.

Bob Dick—9 VAC 20-80-485.D.(1) in the draft proposed by the department, allows the addition of offsite liquids to landfills, but nothing about run on systems and cover design criteria—so DEQ appears more restrictive here. Bob asked why this appears to be more restrictive?

Also, Bob Dick asked the TAC to refer to p. 13 of the department's draft, reading from the section which begins "Landfills for disposal of municipal solid waste..." Mr. Dick pointed out that the standard, as written here, was not communicated in the Federal rule. Mr. Dick stressed that there is no hard and fast specification of the Alternate Bottom Liner (ABL) in the Federal standard. He went on to state that a minimum hydraulic conductivity of 1×10^{-5} is not specified in the Federal rule. Therefore, Mr. Dick reasoned, this draft language should allow the design of *any* ABL system, because the department already has approved ABL facilities which do not meet the standard proposed here in the department's draft. Mr. Dick then asked the department staff why they didn't just incorporate the original Federal language into this draft.

At this point, Paul Farrell, the author of this draft RDD language, entered into the discussion to address Mr. Dick's issues. Mr. Farrell replied that Paul Cassidy, his contact at USEPA, told him that the Federal RDD language constitutes the minimum standards with which a State could comply. Mr. Farrell went on to say that USEPA had not intended that the bare minimum standards, as proposed in the Federal RDD rule, should substitute for the State's language in its entirety. The base Federal language does not provide the many technical standards that are needed to determine compliance with the new RDD standard, Mr. Farrell stated, and the department and its regional offices would require extensive guidance to support the base regulation if the base federal rule was adopted in place of embellishment by the State. Further, Mr. Farrell said that the department's draft was merely following the example of other states that have modified the Federal RDD language, such as Wisconsin, Illinois, and Minnesota. However, Mr. Farrell assured the TAC that the department could go back to USEPA and ask if Virginia can adopt the base language and then support it with extensive technical guidance.

At this point, Mr. Farrell addressed Mr. Dick's initial RDD question—that is, why the draft language specifically didn't mention run-on and final cover. Mr. Farrell explained that the intent was for the offsite liquids language to address the concern of the predominant RDD activity in Virginia--the bioreactor landfill. However, Mr. Farrell said

he could clarify the existing language as needed to make it more expansive for run-on and final cover.

Then Mr. Farrell addressed the ABL issue. He said Virginia is approving ABLs all across the state, but the model specified here is the geologic clay liner condition. Mr. Farrell said the point is, the standard here provides protection for the geosynthetic clay liner, and if it is not used, the integrity of the liner likely would be lost. Mr. Farrell said he based this specific liner design on modelling results on data from across the State. From these modelling results, Mr. Farrell said the ABL standard presented in the draft is the primary protection needed. He went on to state that where there is perched groundwater use of an ABL that did not meet the proposed standard could result in loss of the landfill liner. Also, Mr. Farrell noted that the standard was meant to be protective for landfills with inward gradients. He explained that the draft standard was not intended to exclude any facility, it was meant to rely on the results of our modelling research. Mr. Farrell concluded that it should not be hard for the department to accommodate the three ABL operations that do not meet the proposed standard.

Mr. Dick suggested to the department that the draft proposed ABL standard could be moved out of the regulation, and restated as an alternative for a potential design consideration. Mr. Farrell said the department could petition USEPA to put alternative standards in the Federal regulation. Mr. Dick agreed this would be fair enough.

Mr. Dick then asked if the narrow ABL requirement listed in the department's draft could not be opened up to allow alternate designs? Mr. Dick stated that the draft, as proposed, appears to restrict RDD design to include only facilities that have the selected design. Those facilities obtain favorable status from the department, while other facilities have to provide additional information to meet the required standards.

Mr. Farrell replied that the whole RDD program is optional at this point. He said today's draft is a first step. However, Karen Sismour, , interjected that she doesn't want to put forth a draft regulation that restricts the field from using the RDD option. Jeff Crate asked we could include language "or the approved equivalent." The language would be inserted at 9 VAC 20-80-485.D.(1)(b), "Landfills for disposal of municipal solid waste shall be designed with a composite liner and a composite capping layer or an approved Subtitle D Alternate Liner or the approved equivalent." The TAC agreed.

Bob Dick said he agreed that this RDD program is optional, but that he is concerned that some facilities that don't exactly meet this requirements will be approved. Also, he noted that some of his facilities use pressure transducers to measure pressure on the liner directly. Such a technique can prove that there is less than 12 inches of head on the liner. Bob Dick noted that Mike Dieter, a former department staff member, told him that Bob would have to conduct [transducer] research to meet the standards for getting an RDD permit. Bob said that he satisfied Mr. Dieter's conditions, but now Bob is concerned that the proposed standards will prevent him from moving forward. Mr. Dick concluded by saying that model calculations should be supported with actual monitoring data.

Mr. Dick asked--why have these standards at all in the draft language, unless you are saying this one gets to the head of the line. He said he reads draft 9 VAC 20-8—485.D.(1)(b) as requiring this standard as an absolute, rather than as a minimum. Karen Sismour concurred. She said the department will change the language accordingly.

At this point, Steve Dietrich suggested that the department can craft language to get a standard that is functionally equivalent the decisions the TAC has made in today's discussions.

Mr. Dick requested that the department address his concerns that the run-on control aspect of the Federal rule is missing from the State draft language and that alternate final covers should be addressed. He said that after Mr. Farrell's explanation today, Bob now understands why we didn't just adopt the Federal standard, because there would be a hefty guidance requirement to fill in missing technical details.

Jeff Crate asked if the language at 9 VAC 20-80-485.D.(2)—the Other Requirements section--prohibits existing facilities, that are not expanding, from qualifying for the RDD program. Mr. Farrell replied that facilities could be existing or new, and would qualify for the RDD program. Mr. Farrell agreed to clarify this point.

With regard to 9 VAC 20-80-485.D.(2)(b) and (c), Jeff Crate asked why the total term for an RDD project couldn't be extended beyond 12 years. Both Becky Dietrich and Paul Farrell explained that the term is the USEPA requirement. Mr. Farrell said he has asked USEPA if the department can put the RDD system into the permanent permit, if it is found to be successful. However, Mr. Farrell said that, so far, USEPA has been noncommittal on permanent RDD systems.

Karen Sismour pointed out that the last sentence of (b) 1.: "DEQ Air Division should provide an applicability determination ..." will have to be reworded. We should not put requirements on other divisions in the regulations.

Jason Williams suggested that 9 VAC 20-80-485.D(3) should be clarified. For example (c) the department needs to clarify the meaning of "significant" with regard to leachate heads on the liner. All instances of "significant" and "excessively," etc. in this section need to be quantified. Paul Farrell agreed to research the answers, but that those answers may not be specified in Subtitle D. Jason Williams noted that the section may not be enforceable without such quantification. Paul Farrell suggested the numbers would be proposed in the permit application, if not in the regulations themselves.

At this point, Allen Brockman asked the TAC if they thought the department should move forward with this RDD draft by this fall Board meeting, if the department adjusts the language as recommended today. The TAC agreed that the department should proceed with the RDD draft and that they would support the RDD draft if the language is adjusted per the TAC's recommendations today.

Ray McGowan asked if the department could just adopt the USEPA RDD rule by reference and then develop the guidance after the Board meeting. Karen Sismour replied she wasn't certain we could just reference the USEPA rule, given Paul Farrell's discovery that other States had required additional language to make the RDD rule whole.

Leslie Beckwith noted that the TAC today had achieved consensus on aspects of 9 VAC 20-80-485.D.(1)(b) (for example, revising the draft language to clarify that it is a minimum rather than an absolute and adding language for approved equivalents to alternate liners). Ms. Beckwith then asked if the termination language in 9 VAC 20-80-485.D.(3) that once revised was all that remained for the TAC to review and approve.

At this juncture, Karen Sismour asked Paul Farrell if the department could submit the RDD procedures as a package to EPA, with resolution through some other means than as incorporation into a regulation at this time. Paul Farrell agreed that this alternate route was feasible, as long as the RDD process is put into a State regulation in the future. Bob Dick said VWIA is supportive of this and would help us for however long it takes. Karen Sismour then asked the TAC if we should pull the RDD draft from Amendment 5.

Scott Sheridan asked if the blanket provisions in the RDD draft need to be so extensive. Bob Dick agreed that our State rule appears to be leaning toward bulk liquids concerns. Paul Farrell reiterated that most of the demand in Virginia is for bulk liquids concerns..

At this point, Dick Sedgley addressed the TAC with concerns about disposal of gas condensate derived from the landfill but sold to a concern offsite. Mr. Sedgley noted that some of the projects are on the landfill footprint and others are off of the landfill footprint. The landfill operator sells gas (water has already dropped out of it) to the buyer. These are real sales. The gas then goes offsite, but first more liquids are removed from the gas. Then the gas goes underground in a pipeline. Mr. Sedgley explained that these are not large volumes of liquids (only 10's of 100's of gallons). He said his clients would like to pipe the water back to the landfill and reuse it in the landfill. Mr. Sedgley explained that the regulations say you can return condensate to the landfill if the gas is derived from the landfill. However, Mr. Sedgley said this language from the regulations had not been adequate for a couple of the Regional Offices. Mr. Sedgley then asked the TAC if they agreed that a revision in the regulations could be included in Amendment 5 to handle these small quantities of condensate and return it to the landfill site.

Mr. Sedgley noted that concerns had been expressed at the February meeting, by at least one of the TAC members, that such condensate might be hazardous. Then Mr. Sedgley asked what happens if they can't return this water to the landfill—he said he assumed the condensate has to go to the sewage treatment plant (POTW). Mr. Sedgley reasoned that if the condensate's status as nonhazardous/hazardous is the problem, it would be the same problem whether it is disposed at the landfill or at the POTW. Mr. Sedgley said he wanted to clarify that condensate from the gas sent off site can be brought back to the landfill. He suggested the regulations could be revised in the operating requirements at 9 VAC 20-80-250.C.17 to read:

“17. Sanitary landfills may not receive the following wastes:

a. Free liquids.

(1) Bulk or noncontainerized liquid waste unless:

(a) ...

(b) The waste is leachate or gas condensate (*whether generated onsite or offsite*) derived from that landfill and the facility is designed with a composite liner and leachate collection system as described in subdivision B 9 of this section and 9VAC20-80-290 B; or “

Bob Dick asked whether there was any guidance written by DEQ on this issue. Paul Farrell said the guidance in question only dealt with traps, not with the condensate issue raised here.

Bob Dick asked why the sale of the gas raised an issue? Steve Dietrich said the issue is not the sale, but rather that the gas is going offsite. Ray McGowan noted that in the regulations, the requirement is that the condensate be “derived from the landfill.” Ray said the proposed change is okay. Bob Dick said he interprets the regulations as already allowing the return of the condensate to the landfills. Bob said he doesn’t see why sale of the gas should make it be managed any differently once it has left the landfill. The TAC consensus was to include Dick Sedgley’s proposed draft language on this issue in Amendment 5.

Steve Dietrich closed the meeting.

End of Minutes for TAC of September 25, 2006.

Persons attending this meeting as members of the public:

Jeff Crate and Frank Fitzgerald—Draper Aden Associates

John Robins and William Opie—Fluvanna County

Scott Sheridan—Golder Associates

Jason Williams—Waste Management

Dick Sedgley—AquaLaw

Joe Levine—New River Resource Authority

Debbie Spiliotopoulos—Northern Virginia Regional Commission

Ed Hollos—Resource International