

Marina Regulations Advisory Committee was held on Thursday, March 15, 2011, at the Perimeter Center located at 9960 Mayland Drive Richmond, VA.

The following members were in attendance;

Allen Knapp, VDH Director, Division of Onsite Sewage, Water Services, Environmental Engineering and Marina Programs
Preston Smith, VDH Marina Program Manager
Kemper Lloyd, VDH Environmental Engineering
Gigi Meyer, VDH-Office of Drinking Water
Peter Basanti, VDH Environmental Health Services Legal Hearings Officer
Danielle Schools-VDH Marina Program
Jayne Deichmeister-VDH Marina Program
David Fridley, VDH-Three Rivers Health District
Alan Pollock, VDEQ
James Adams, VDGIF
Anne Smith, VIMS
Lew Grimm, Deltaville Yachting Center
Dave Gohsman, Virginia Marine Trade Association
A.J Erskine, Cowart Seafood Corporation
Jacque Knight, Chesapeake Bay Yacht Club Association
Ed Knight, Chesapeake Bay Yacht Club Association

The meeting was called to order by Preston Smith, Marina Program manager at 10:00am. Introductions were made.

The following statement was read by Preston Smith, Marina Program Manager, VDH

“This is a meeting of the Marina Regulations Advisory Committee held at the Perimeter Center, Training Room 2, 9960 Mayland Drive Richmond, Virginia pursuant to § 2.2-4007.01 B of the Administrative Process Act of the Code of Virginia for the purpose of receiving public comment on the Board of Health's proposed amendments to the *Sanitary Regulations for Marinas and Boat Moorings* (Regulations) that were posted in the Virginia Register on October 25, 2010, Volume 27, Issue 4. This regulatory action will involve amending current regulations to address sanitary facilities at boat ramps, addressing liveboards slips, manual sanitary waste pump out systems and sanitary waste dump stations in the Commonwealth of Virginia. The regulations will also include additional requirements for sanitary waste pump out systems necessary to protect public health in accordance with Title 32.1-246 of the Code of Virginia.

The Virginia Department of Health, Marina Program identified the need to amend the existing regulations in response to the evolving trends in the marina industry in an effort to improve boater accommodations and to ensure that boaters have a place to dispose of sewage in a sanitary manner so as not to present a public health or environmental hazard resulting in a degradation of water quality. This regulatory action is intended to replace the current regulations dated 1990.

The Virginia Department of Health, Marina Program will receive comments from 10:00 am to 4:00 am today. Comments can be received from any member of the advisory committee but may be limited depending on the number of individuals who wish to speak.

Danielle Schools will record the minutes. If you would like a copy of the minutes they will be posted on the Virginia Regulatory Town Hall. At the beginning of your comments, we ask that you state your name.

If you have a question for the Board of Health or health department staff, then please forward your question to Mr. Allen Knapp, Director, Division of Onsite Sewage, Water Services, Environmental Engineering and Marina Programs at Allen.Knapp@vdh.virginia.gov, 109 Governor Street, 5th Floor, Richmond, Virginia or 804-864-7458.

Any speaker, who wishes to provide a written statement in addition to their oral testimony, or in lieu of oral testimony, may do so today.”

Discussion opened with the issue of a proposed definition of “Liveaboard”. The proposed amendments to the *Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings* (Regulations) consisted of the following;

“Liveaboard” means residential slips or mooring spaces, which may be used by boaters for periods including lodging overnight for greater than 10 consecutive days.”

Discussion continued amongst the members concerning what defined a liveaboard and how would it be determined that the boat owner/operator was using the vessel as a residence. Suggestions were made concerning the appearance of items related to a household, number of days the vessel is occupied, or whether mail is received at the marina facility. Comments were made concerning the use of a boat for vacation purposes of one month or more which were not intended to make the vessel a residence but more of a recreational occupancy for short periods of time. Concerns were expressed in regards to the layover a family may have at a marina which may exceed 10 days for which boat repairs are being sought. Comments were shared concerning if a liveaboard slip was different from a transient in the waste water generation figures dictating the gallons per day per type of slip requirement.

The justification for the definitions of a liveaboard slip, seasonal slip and a transient slip was discussed. The issue of waste water figures assigned to the different types of slips was addressed, and this led to comments concerning the actual use of water at a facility and the impact on the marina owners whose onsite system may be inadequate for proposed expansion and permitting through the Virginia Marina Resource Commission. The suggestion was made that liveaboards should be grouped with transient so that there would only be 2 types of slips, seasonal and transient.

Suggestions were made concerning changing the number of days in the definitions for the two types of slips, using the definitions available from other states, and the intention of the definition.

The representatives from the private sector raised some concern over the designation of slips as transient versus seasonal based on the possible impact to the business model of a marina as they rely on supply and demand for revenue.

Comments were made on providing the justification for the definitions of a seasonal and transient slips and the associated assigned volume of waste water generated for each type of slip.

The next item for discussion was the proposed addition of a definition for “boat ramp” to the Regulations.

12 VAC 5-570-10. Definitions

"Boat Ramp" means installation operating under public or private ownership, which provides a boat launching facility with parking space for fifty (50) or more boat trailers either on a free, rental or fee basis for the convenience of the boater.

The definition of a boat ramp was debated amongst the group. The question was proposed over where the number 50 came from. A suggestion was made to lower the number of parking spaces as most boat ramps have less than 50 spaces. A representative from VDGIF questioned whether VDH has the authority to regulate boat ramps. VDH staff responded to this comment in saying that these proposed changes would be reviewed by the attorney general's office and at that time jurisdictional authority would be evaluated. The representative from VDGIF previously had emailed comments to the VDH Marina Program and provided copies of the email at the meeting. He has asked that the comments be presented in the meeting notes. Those comments are as follows;

1. The Code of Virginia, §32.1-246 (Marinas) provides the authority to the Board “to adopt and promulgate all necessary regulations establishing minimum requirements for adequate sewerage facilities at marinas and other places where boats are moored according to the number of boat slips and other persons such marinas and places are designed to accommodate.”

The proposed definition (12 VAC 5-570-10) of “Boat Ramp” [means an installation operating under public or private ownership, which provides a boat launching facility with parking space for fifty (50) or more boats trailers either on a free, rental or fee basis for the convenience of the public] as stated does not comply with the authority of the Board. The use of “boat ramp” in the proposed regulations appears four (4) times; this is problematic due to the lack of jurisdiction by the Board. It is important that the definition be within the legal authority of the Board as provided by the General Assembly and Code of Virginia.

2. Consider adding the phrase “where boats are moored” to the definition of “Boat Ramp” in order to comply with the authority provided in §32.1-246 (Marinas). Otherwise, remove all references to “Boat Ramp” in the proposed regulations.

The definition of “Dry Storage” was discussed and a statement was made concerning the lack of clarification as to whether dry storage consisted of a storage yard or a boatel.

Following the discussion over definitions, the proposed changes to the sanitary fixture requirement was presented to the group.

12 VAC 5-570-140. Availability, ~~and marking of sanitary facilities.~~

The sanitary facilities shall be available and readily accessible to users, during normal business hours in accordance with Federal, State and Local requirements. They shall be appropriately marked with signs readily identifiable to ~~all personnel~~ sighted patrons who might desire to use the facilities.

No objections were provided to this change.

12 VAC 5-570-150. ~~Marinas.~~ Extent.

When the number of seasonal slips are less than 25, a minimum of one sanitary facility to serve both gender shall be provided and shall contain at least one commode and one lavatory.

A. ...Proposed change- strike out of “Showers are not required for dry storage boat usage”

B. ~~Transient slip.~~ When transient slips are available additional sanitary facilities shall be provided, as listed in Table No. 2, below shows the minimum number of additional fixtures required. These fixtures may be included in a structure or structures with those fixtures provided for the seasonal slip, slips, provided the accessibility and convenience standards of 12 VAC 5-570-130 and 12 VAC 5-570-140 of this chapter are met. These fixtures may be located in the same structure or structures as those provided for the seasonal slips. The accessibility and convenience standards of 12 VAC 5-570-130 and 12 VAC 5-570-140 of this chapter shall be met except that sanitary facilities shall be accessible to transient slipholders 24 hours per day.

No objection to the use of a Unisex bathroom for less than 25 slips.

A comment was made questioning the need for showers at dry storage facilities.

Question on what data resulted in those figures for transient fixtures

A suggestion was made to make the existing table more comprehensive, and to add a unisex column.

12 VAC 5-570-160. Sanitary facilities Facilities.

~~at~~ At other places where boats are moored, and boat ramps ~~Where~~ where piped potable water is available, sanitary facilities shall consist of a minimum of one commode and one lavatory for females and one commode and one lavatory for males for each 100 seasonal slips or fraction thereof, and each 50 transient slips or fraction thereof. Other places where boats are moored accommodating transient boaters shall provide the minimum number of sanitary fixtures in accordance with Table 2. Requirements for dry storage boat usage shall be identical to those specified in 12 VAC 5-570-150 for marinas. Sanitary facilities may consist of privies where piped potable water is not available. Sanitary facilities at boat ramps may consist of privies or portable toilets. Walking distance to these facilities shall comply with 12 VAC 5-570-130.

There was one objection to this proposed amendment claiming the phenomenon of a transient boater mooring at a facility which does not provide services at the dock is unusual and would place unnecessary economic burden on facility owners.

Discussion over sanitary facilities at boat ramps-may consist of privies or portable toilets.

VDGIF questioned authority of VDH to regulate facilities at boat ramps and the justification for the need for sanitary facilities at boat ramps.

A reference was made by VDH personnel to the *Virginia Sewage Handling and Disposal Regulations 12VAC5-610* which provides guidance on the need for sewage disposal facilities based on the number of people congregating in a place.

VDGIF provided the fact that out of the roughly 215 boat ramps the agency operates approximately five have 50 parking spaces. Concern was expressed over this proposed change presenting an unfunded mandate. VDGIF expressed support will be provided for this regulation if it is correct in its application. The question was presented over the intent of the regulation as boat ramps are not places where people congregate and are not parks. VDGIF does provide portable toilets at numerous boat ramps based on data obtained from surveys where the public desired such facilities but also maintains several primitive sites.

The next proposed change to the Regulations involved sewage pump outs.

12 VAC 5-570-180. Pump-out.

A. Availability and operation. ~~Where pump-out facilities are required, the owner shall install, them and maintain them in good operating condition and provide pump-out make them available during normal working hours to users of the marina or other places where boats are moored except in those cases~~

~~*where adequate facilities are provided in accordance with subsection B of this section, then, the normal working hours requirement will apply to the facility using the agreement, as well as the facility with the alternate pump-out service. The owner shall make pump-out facilities available for removing sewage from boats to all users of the marina during normal operating hours. The pump-out equipment shall be maintained in serviceable condition and located in an area convenient for utilization.*~~

One member expressed concern over the NDZ designation and the lack of availability of pump outs. DEQ representative discussed the process for the NDZ designation and gave an example of the water quality improvement that has occurred in the Lynnhaven River as a result of the NDZ and the return of the seafood industry.

Discussion continued concerning the proposed amendments to the Dump Station Section.

12VAC 5-570-190. Sewage dump station.

- A. **Requirements. All marinas, other places where boats are moored, and boat ramps regardless of size or number of boat moorings, shall have an acceptable receiving station for sewage from portable containers used on boats. The owner shall install, maintain in good operating condition and provide placecards or signs identifying the location and boat restrictions for use of the sewage dump station. Exempt from this provision are marinas or other places where boats are moored, which also qualify for the 12 VAC 5-570-120 B or C exemption, provided the owner of the sanitary facility will allow the dumping of the contents of sewage container in the sanitary facilities.**

- B. **Availability and operation. Where a sewage dump station is required, the owner shall install, maintain in good operating condition and make the facilities available provide the facilities to users of the marina, or other places where boats are moored and boat ramps. The sewage dump station shall be maintained in a serviceable and sanitary condition and located in an area covenant for utilization.**

- C. **Minimum design criteria for a sewage dump station. The purpose of these minimum design criteria is to provide the owner and the Department of Health with acceptable methods of discharging sewage from a portable container into a sewage holding tank or a sewage treatment system. The same criteria as set forth in 12 VAC 5-570-180 (C) (5) for contents from boat holding tanks will apply for sewage dump stations. The sewage dump station receiving unit shall be a minimum of 12 inches in diameter and be equipped with a cover that has a lip of sufficient size to prevent it from accidentally being removed. If the unit is designed to drain, the drain shall**

be a minimum of four inches in diameter and equipped with a fly tight cover.

D. Exempt from the requirements of subsection C are marinas and other places where boats are moored which have an operational pump-out facility equipped with a device to pump the portable toilet.

The comment was made that the exemption should be for all of Section 190 and not just section C. Support was given for the exemption of a sanitary waste dump station in lieu of a potty wand device at the pump out.

The written comments from VDGIF regarding this proposed change are as follows;

The current proposed definition of "boat ramps" would require a "dump station" (not pump out facility) at certain VDGIF boating access facilities. Again, the proposed definition of a "boat ramp" with this dump station requirement is still beyond the legal authority of the Board based on §32.1-246, unless, the phrase "where boats are moored" were added to the definition of "boat ramp". With a change in the definition of "boat ramp" to bring the definition within the legal authority of the Board, then VDGIF would not have any objections to the proposed rule. VDGIF recommends to amend the definition of "Other places where boats are moored" by making it clear that this does not mean the temporary tying of a boat to a courtesy pier after launching in order to park vehicles/trailers or the temporary tying of a boat to a courtesy pier in order to retrieve vehicles/trailers in order to trailer the boat. Mooring traditionally means that a boat is managed at a dock or pier for an extended period of time, or at least overnight. Keep in mind that all VDGIF boating access facilities do not allow the mooring of boats and only allow the temporary tying of boats to a courtesy pier in order to address the parking and retrieval of vehicles/trailers. Under the Heading of "Purpose" in the "Town Hall" notice, it states, the proposed regulation is "to ensure that boaters will have a place to dispose of sewage in a sanitary manner so as not to present a public health or environmental hazard resulting in a degradation of water quality" Under the Heading of "Substance" in the "Town Hall" notice, it states, "The placement of sanitary facilities at boat ramps will address the public health and environmental impacts associated with the discharge of raw sewage. VDGIF is concerned with these statements as there has been no scientific data offered that would demonstrate the need to regulate boat ramps, particularly relating to the need for pump out stations. VDGIF requests supportive information which demonstrates impacts exist and are ongoing, particularly at VDGIF operated boat ramps.

Other comments provided by the committee referenced most trailerable boats-under 21ft. do not have portable toilets. A suggestion was made to strike boat ramps from dump station requirement. Comments were exchanged on the possibility of a permit by rule application

Meeting concluded at 3:00pm

