

FINAL NOTES
Virginia Solid Waste Management Regulations – Amendment 7
9VAC20-80-10 *et seq*
Technical Advisory Committee (TAC) Public Meeting - May 19, 2008

F. Scott Reed—Dominion Virginia Power—(had to leave after lunch)

Bob Dick—Virginia Waste Industries Association (VWIA) and private consultants

Atman Fioretti—Sierra Club, Virginia Chapter—(absent)

Rick Guidry—King George County Landfill, Inc.

Jerry Martin—Augusta County Service Authority

Jimmy Sisson—Virginia Recycling Markets Development Council

Fouad Arbid—Solid Waste Association of North America

Joe Levine—Southwest Virginia Solid Waste Management Association

(Other’s in attendance): (1) names of DEQ staff members that were present to answer questions raised by the TAC: Bob Goode, Sanjay Thirunagari, Vijay Satyal, Angie Jenkins, Don Brunson, Jason E. Williams, Allen Brockman, and (2) names of public attendees: Jeff Crate (Draper Aden), Larry Bertolet (Joyce Engineering), Scott Whitehurst (SPSA), Ed Hollos (Resource International), Ray McGowan (Allied Waste).

Today’s meeting notes:

The TAC meeting began at 10:07 am; Leslie Beckwith of DEQ served as facilitator.

Leslie opened the discussion by noting that definitions were sent to TAC members on May 7, 2008, for their review. She noted that “responsible official” is a new definition that inadvertently was not highlighted as new text in the May 7 transmission.

Leslie also noted that any of the definitions (highlighted or not) remain open for discussion today.

Staff Action Item #1 – Fouad Arbid requested that DEQ staff provide the TAC with a separate reference text with (pending) Amendment 5 of the solid waste regulations highlighted, both definitions and other text.

Leslie noted that in Amendment 5, the only new definitions were “airport” and “closure.” Leslie requested the TAC’s views on “capacity” in the new definitions for Amendment 7.

Fouad asked if it was accurate to frame the definition around “airspace.” Jimmy Sisson agreed with this concern.

Fouad clarified that the capacity used in this context is the “design capacity.” Therefore, he suggested that the definition distinguish between “disposal capacity” and “throughput” or “processing capacity.”

Rick Guidry urged that the distinctions in the capacity definition be clear cut and able to withstand the scrutiny of DEQ’s Air and Water Divisions for their respective regulatory interpretations.

TAC Action Item # 1 and Staff Action Item # 2 – In advance of the June 5 meeting, Rick and Fouad were asked to frame the “disposal capacity” arm of the capacity definition and Don volunteered to write a “processing capacity” definition for further consideration by the TAC.

It was also noted that 9VAC20-80-115 (Solid Waste Information and Assessment Program or “SWIA”) annually requires facilities to provide “information on the available capacity and expected life of the facilities.” And the the definition of capacity should be adequate to address the meaning of the term in this regulatory provision.

Bob Dick pointed out that the SWIA “capacity” calculation requires the conversion of a mass-based capacity figure (volume of waste) into density-based capacity figure (weight of waste in tons). Bob further noted that each landfill is applying its own unique facility-based conversion factor to calculate the SWIA numbers. Bob suggested that DEQ, with the TAC’s assistance may need to revise the terminology or calculations in 9VAC20-80-115, accordingly.

Fouad commented that “Part B capacity” is a design volume. He said we shouldn’t expand that capacity figure to include potential volumes that aren’t permitted yet.

Fouad asked why, under the current regulations, waste capacities have to be converted tons, rather than to remain as a volume calculation. He suggested that if we continue to require such a conversion, then the respective “capacity” numbers should be calculated both from—1. a “flyover” type determination, and 2. a “tonnage/density” determination. In his view, Fouad said that the flyover/volume determination is actually a more accurate calculation of capacity.

Bob Dick, asked why do we continue to specify capacity both in terms of “air space” and “weight”?”

Joe Levine agreed that capacity should only be based on volume, not on tonnage.

The TAC will return to further consideration of “capacity” when the draft definitions are available for review.

Leslie moved to the next new definition, “clean wood.” The TAC expressed no comments.

Next, Leslie offered “construction” for discussion.

Fouad asked what “base grade” was being referred to in the definition. Don replied that it is the base grade of your landfill cell, which you have yet to design. Fouad asked if there is any case where new landfill construction might not excavate to base grade, which the TAC might want to address here?

Don suggested that “excavation” phase could be struck from the definition, like so: “*Construction* means the initiation of permanent physical change at a property with the intent of establishing a solid waste management facility. This does not include land clearing activities, ~~excavation to base grades~~, or activities necessary to obtain Part A siting approval (i.e., advancing of exploratory borings, digging of test pits, groundwater monitoring well installation, etc.)”

Bob Dick noted that some landfills *fill* to base grades. Further, he said his impression was that, in Virginia, you could, at your own risk, construct the base of the landfill without having a permit.

Bob questioned the need for the new definition. Don said construction is a local issue—whether a building permit is required, but initiation of such construction does not in any way obligate the Department to grant a solid waste permit.

Jeff Crate noted that if pre-permit construction commenced and the Department then identified the need to revisit earlier construction phases, for example additional subgrade testing, before the permit could be approved, it could be a messy proposition.

Fouad announced that he agreed with Don’s proposed alteration of the definition to remove the “excavation” phrase.

However, Rick Guidry replied that he preferred that the definition retain the excavation wording. He said he felt that the definition as written was flexible enough and puts liability for mistake in advance construction on the owner.

Fouad then suggested that “facility” should be replaced by “unit,” as follows: “*Construction* means the initiation of permanent physical change at a property with the intent of establishing a solid waste management ~~facility~~ unit. . . .”

No consensus on the construction definition was reached, and the TAC agreed to keep the “construction” definition under discussion in later meetings.

Staff Action Item #3 – Fouad Arbid requested that DEQ staff provide the TAC with a draft of the definitions text indicating the definitions which were removed from the text circulated to the TAC.

In the new “operation” definition, Bob suggested adding “transfer or processing.”

Sanjay noted that the definition of “treatment” includes “processing” and recycling. Therefore only “transfer” needs to be added to “operation.” A consensus of the TAC agreed with the final statement of the operation definition as: “*Operation* means all waste management activities at a solid waste management facility beginning with the initial receipt of solid waste for treatment, storage, ~~or~~ disposal, or transfer and ceasing with the initiation of final closure activities at the solid waste management facility subsequent to the final receipt of waste.”

Next, Jason Williams explained the need for the new “responsible official” definition. Bob asked for how DEQ would interpret this new term with respect to County landfills. Jason replied that the executive officer of the County would be the “responsible official” in that setting. Bob asked if the solid waste administrator could be officially delegated as the responsible official. Jason confirmed.

Bob said the definition appeared flexible and that he could support it. Fouad asked why not use “owner” instead of “responsible official.” He noted that the permit is issued to the “owner.” Rick seconded Bob’s original view. Rick said he felt “responsible official” presented here, is a good and flexible definition. Leslie Beckwith further explained that some documents have to be signed by the corporate office (in the case of financial assurance documents). Fouad stated his remaining concern that adding this definition of “responsible official” could cause confusion with existing terminology. Leslie underscored the Department’s concern that an unofficial person (non-agent) at the landfill could sign financial assurance documents without the new definition. At this point, the TAC voted for a consensus in favor of the new “responsible official” definition.

After this vote, Leslie opened discussion for comments on any of the definitions that had been circulated to the TAC. Fouad mentioned the need to clarify and weed through existing definitions for “facility boundary,” “property boundary,” “unit boundary,” etc. These issues remained unresolved from the Amendment 5 TAC discussions, and remain potential sources of confusion.

Leslie noted that it was time for lunch, and the TAC agreed to return to this discussion of Fouad’s concerns following lunch.

*****TAC disbursed for LUNCH*****

At 12:45, Leslie reconvened the TAC meeting.

Fouad initiated the discussion of boundary terms with “facility boundary.” During this discussion, Fouad assisted Leslie Beckwith in drawing the areas on a blank poster display. Fouad noted that there are no definitions for property or property boundary in the new definitions, however Fouad discussed these particular boundaries in relative terms.

Fouad designated the property boundary as the outer limit of the various area designations. Inside or in conjunction with the property boundary is the “facility boundary.” The “landfill disposal area” is next--within the facility boundary. Within the landfill disposal area is the “site.”

Fouad indicated that the “landfill disposal area” seems to be more or less coextensive with the “solid waste boundary.” He noted that a “solid waste disposal facility” seems to be synonymous with “landfill.” “Unit” could be the whole area (out to the facility boundary) or anything within the facility boundary. The “unit” doesn’t have to be for solid waste disposal.

Don pointed out that neither a transfer station or a Materials Recovery Facility (MRF) require Part A permits. He went on to note that for purposes of entering data into the Department’s environmental data database (CEDDS), each “unit” is denoted as a separate facility. Sanjay rephrased this as a CEDDS designation of “separate units” under one permit in such cases.

Bob Dick returned to the discussion of the map which Leslie was drawing. He noted that the Part A limit is the Waste Management Unit boundary. The gas compliance units extend to the facility boundary. The groundwater point of compliance is the waste management unit. From this discussion, Bob summed up that it looks like you only need three divisions—the “facility boundary,” the “waste management unit boundary,” and the “cell footprint.” Sanjay replied that the cell footprint is a design element rather than an official facility subdivision. So, Bob recast his “cell footprint” as a disposal unit boundary.

Fouad then asked how we could streamline these divisional terms?

Sanjay replied that in practice, we build the solid waste facility based on activity.

Fouad then proposed that we define “activity” to encompass those facilities holding multiple activities.

Don noted that some existing permits don’t separate out the underlying activities. Leslie suggested that a single unit could be based on sharing of a common groundwater monitoring network or of a leachate water collection area.

Fouad noted that the distinction of units gets even more confusing when the facility has a piggyback landfill unit overlying earlier landfill units.

Bob Dick said the Waste Industry's concern is that unit boundaries are not designated as clear cut lines, but even so, the facility has to measure offsets from those unit boundaries.

Bob stated that he sees the need for a "facility boundary," a "waste management unit boundary," and a "landfill disposal area" boundary.

Fouad said the "unit" should default to the landfill disposal area. A landfill disposal area can have multiple disposal areas within it.

Fouad asked how many facilities have multiple activities. He noted that the terminology model should fit the majority of permitting situations. Sanjay said that the 3-division model envisioned by Bob is the majority position, but acknowledged that there are exceptions. Fouad suggested that we could recast all subdivisions into the three divisions that Bob has described. Sanjay agreed that the facility is the over-all entity with more than one waste management unit area within it.

Bob Dick suggested that we should encourage the best model to promote the waste hierarchy. He further noted that under this new system he's proposing, we need to watch the wording of the closure sections in the other sections of Amendment 9 text. We can eliminate terms like "site." Once the TAC decides on the definitions section and terminology, the staff should scan through and eliminate the terms not retained.

Fouad reiterated that units can be associated with units, activities, or other things within the Waste Management Boundary. (The Waste Management Boundary doesn't have to be a single unit). He suggested that the following definitions could be eliminated: *unit* within Waste Management Boundary; *unit boundary*, *site*, (*solid waste boundary*, *solid waste disposal area*, and *landfill disposal area* need to be reduced to a single term).

. Bob suggested dispensing with "existing unit" and "new unit." HOWEVER, Angela Jenkins said some sections of the Code may require those two definitions for HB1205, etc. So the staff should observe Code and EPA requirements where they exist.

Sanjay suggested that we tie the permit to the unit at the unit level rather than at the facility level—so that we can close the permits more neatly.

Leslie noted that "Solid Waste Management Facility" is defined in the Code. Fouad replied that we then should replace "Facility Boundary" throughout the text with "Solid Waste Management Facility."

Bob asked the TAC to return to their constituencies for more input on this issue. After obtaining their input, DEQ's action item would be to do the word search associated with this change in terminology and any other key terminology triggers, such as capacities (extension, vertical, horizontal, etc).

Staff Action Item #4 - Bob requested that DEQ staff devise a term/definition for a lesser unit—like a cell, to help make closure and phases more performance based or triggered. There's a lot of closure before final closure.

Staff Action Item #5 – Leslie volunteered her staff would provide the TAC with further info about what definitional requirements are set forth by the Code of Virginia and EPA, and the pertinent parts of the EPA Amendment 7 crosswalk by June 19. The TAC agreed.

Next, Fouad questioned the purpose for a new definition about *daily maximum disposal limits* (tons or cubic yards). Jason said that the cubic yards requirement was for those landfills that don't have scales. Don said that it is a function of the required waste management infrastructure at each facility.

Bob mentioned that such a definition/limit would cause a problem at specific time periods—like the day after Christmas and Christmas holiday waste. Rick concurred that the “maximum” days often occur after holidays after the landfill has been shutdown for a short period, and double duty is performed the following day. Fouad suggested that if we don't really need the daily maximum definition, we should take it out. If we keep it, it needs to be enforceable (do not include the option for an estimated capacities--for landfills w/o scales).

Allen Brockman assured the TAC that he would look further into the source of the proposed maximum disposal limits definition.

At this point, Leslie guided the TAC to Part II of the draft text which had been circulated to the TAC.

Fouad asked about clarification of 9 VAC 20-81-45 B 2 f:

- f. “In addition to those exceptions found in 40 CFR 257.1(c), the open dump criteria does not apply to sites that are remediating under the oversight of the department or the Environmental Protection Agency.”

Fouad asked the Department to state this provision more clearly. He advised the staff to clarify the remediation regulations that apply and find the proper corrective action process that applies, to avoid regulatory loopholes. Angela Jenkins asked that that the staff specify that citations to the Code of Federal Regulations apply to through the most current update. -- **Staff Action Item #6**

At this point, Jason Williams noted that the Virginia Department of Agriculture and Consumer Services no longer has authority for the gypsum wall board standard in 9 VAC 20-81-95 C. 7. o. (of the text circulated to the TAC after the May 5 meeting) because it is not a commercial product. Jason requested any input from the TAC for changes in this exemption status (**TAC Action Item # 2**) :

“Clean gypsum wall board when used as a soil amendment or fertilizer, provided the application rate of the gypsum wall board is limited to the nutrient need of the crop or plant grown on the land on which the gypsum wall board will be applied and provided that such application meets the requirements of the ~~Virginia Department of Agriculture and Consumer Services (2 VAC 5-400 and 2 VAC 5-410).~~”

Consideration of this issue was left as an action item for the June 5 meeting.

At this point in the discussion, it was time for the TAC meeting to come to a close. Bob Goode and Jason briefly explained what was in Part III and the remaining discussion of Part II text was continued to the June 5 meeting.

SUMMARY OF ACTION ITEMS FROM THIS MEETING:

For DEQ Staff:

1. Allen Brockman will provide the TAC with a separate reference text with (pending) Amendment 5 of the solid waste regulations highlighted.
2. By the June 5 meeting, Don Brunson will write a “processing capacity” definition for further consideration by the TAC.
3. Allen Brockman will provide the TAC with a draft of the definitions text indicating any strike-throughs and any definitions which were removed from the text circulated to the TAC.
4. By the June 19 meeting, Debbie Miller’s staff will devise a term (and definition) for a lesser unit—like a cell, to help make closure and phases more performance-based or triggered (there’s a lot of closure before final closure).
5. By the June 19 meeting, Allen Brockman will provide the TAC with further info about what definitional requirements are set forth by the Code of Virginia and EPA, and the pertinent parts of the EPA Amendment 7 crosswalk.
6. By the June 5 meeting, Debbie Miller’s staff will clarify the remediation regulations that apply in 9 VAC 20-81-45 B 2 f and find the proper corrective action process that applies. Also, the staff will specify throughout the text that citations to the Code of Federal Regulations apply to through the most current update.

For designated members of the TAC:

1. By the June 5 meeting, Rick Guidry and Fouad Arbid will write a “disposal capacity” definition for further consideration by the TAC.

2. For all members of the sitting TAC – please comment on what the staff should do with the gypsum board exemption provision in the text circulated on May 7 at 9 VAC 20-81-95 C. 7. o., now that the Department of Agriculture and Consumer Services no longer oversees such application of gypsum board materials.
3. The staff would appreciate any proposed wording from all the TAC members on how the facility boundary, waste disposal boundary, etc. boundary definitions could be worded in Amendment 7, based on our discussions from Monday. At the same time, the staff will peruse the Waste Management Act and EPA regulations to see what terminology is used in those sources.