

**Facility and Aboveground Storage Tank Regulations 9VAC 25-91 se seq.
Regulatory Advisory Panel Meeting Notes
DEQ Central Office
December 12, 2011**

RAP members present

PJ Smith, P.G., Faulkner & Flynn, Inc.
Clement Mesavage, Antea Group
Michael D. Ward, Virginia Petroleum Council
Mike O'Connor, Virginia Petroleum Convenience and Grocery Association
Joseph J. Croce, representing Virginia Manufacturers Association
Walter Beck (*alternate for Sam Hollins*), Vulcan Materials
Donald L. Struminger, P.E. Southern Textile Service
Bob Alvis, CITGO
Mike Younce, Buckeye Partners, L.P.
Mike Neish, Morgan Oil Corporation
Steve McNelly, TransMontaigne
Roger Cryan, Ph. D., Immediate Past President of the Mantua Citizen's Association
Tom Burrell, Barrister's Keep Homeowner's Association
Vernon Hodge (*alternate for Emory Rodgers*), VA Dept. of Housing and Community Development
Andrew Wilson, City of Fairfax
Ms. Martha Neave (*representing citizens*)
Mr. Mace Carpenter (*representing citizens*)
Randy Chapman, DEQ

RAP Members not present

Bill Wilkinson- Dominion
Emory Rodgers- VHCD

Public Attendees

Sam Hollins
George Conover
Barbara Brumbaugh
John Roland

DEQ Staff

Melissa Porterfield
Alicia Meadows
Betty Lamp
Russ Ellison
Renee Hooper
Steve Hughes

Introductions

Melissa Porterfield welcomed RAP members and introductions were conducted. A draft agenda was distributed to the RAP and members of the public. Mrs. Porterfield indicated that there may be revisions to the agenda as the meeting progressed. Mrs. Porterfield thanked the RAP members for their willingness to assist the agency by serving on the RAP. The meeting was audio recorded to assist with the preparation of meeting notes.

Administrative Issues

Mrs. Porterfield discussed administrative issues with the group. The RAP is a public body (subject to FOIA) and meeting minutes will be prepared and circulated for review by members prior to being posted to the Virginia Regulatory Town Hall website. Members will be asked to provide any necessary corrections to meeting minutes in a short period of time since meeting minutes must be posted to the Virginia Regulatory Town Hall Website within 10 days of the meeting. The meeting minutes will capture meeting attendees, general issues discussed and list items on which consensus is reached. Mrs. Porterfield also indicated to the group that they should be cautious to not discuss business of the RAP in groups larger than two in order to avoid violating the FOIA policy.

Rules and possibilities for electronic meetings were discussed. If an electronic meeting is held, a quorum will still be needed in Richmond; the other location must be connected by phone during the entire meeting. The meeting must be in a public place. The group reached a consensus to conduct the next meeting via teleconference between DEQ's Northern Regional Office (Woodbridge) and DEQ's Central Office (Richmond). Mrs. Porterfield will poll RAP members concerning available meeting dates for late January/early February. When you receive the doodle.com poll link please make sure you indicate all days you are available to meet, not just your first choice. Mrs. Porterfield will also need to make sure that attendees indicate which meeting location they will be attending.

The goal of the RAP is to discuss topics and concepts and to reach a consensus concerning the topics and concepts discussed. 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. Regulatory Advisory Panel Guidelines for the Facility and Aboveground Storage Tank Regulations were previously distributed to RAP members.

Alternates for RAP members must be approved by the director. If RAP members would like to have an alternate approved they should send the alternate's name and contact information to Melissa Porterfield. Vernon Hodge- DHCD has been approved as Emory Rodger's alternate.

An interested parties email distribution list has been created. All RAP members and alternates do not need to sign up for this list since they already receive information from

the agency concerning these regulatory revisions. Anyone interested in being included in the interested parties list should contact Melissa Porterfield (Melissa.Porterfield@deq.virginia.gov) and request to be added to the list.

Today's meeting agenda does not include a public forum. The NOIRA public comment period is underway. NOIRA meetings are scheduled for Jan 10, 2012 (Richmond) and Jan 17, 2012 (Woodbridge). RAP members are not required to attend these meetings. These meetings are to provide the public an opportunity to provide the agency with verbal public comments. In the future, a portion of the meeting's agenda may be designated as a public forum. The public forum portion of the meeting provides an opportunity for the public to provide comments to the RAP. Individuals that are interested in speaking during the public forum will be asked to contact Mrs. Porterfield prior to a designated time. In the event that there are no individuals that sign up for the public forum, the public forum will not be held. These public forums provide an opportunity for members of the public to provide feedback to the group.

Any information that needs to be distributed to the RAP should be sent to Melissa Porterfield for distribution.

Mrs. Porterfield provided the group with a brief overview of the regulatory process and how the RAP fits in. As the agency's regulatory process takes on average 18 months, any changes to be made to the regulations will take time to implement. Within 6 months of the close of the NOIRA comment period the agency must present a proposed regulation to the State Water Control Board. Essentially, the agency needs to have proposed changes to the regulation drafted by May 2012. The RAP assists the agency with developing a proposal; however, it's the agency that actually drafts the regulations. In areas where the group does not reach consensus, the agency management will be briefed on those areas. The board will be made aware of any areas where the agency's recommendation differs from that of the RAP. The board then decides which recommendation will be put forth for public comment.

Review of NOIRA

Betty Lamp reviewed the Notice of Intended Regulatory Action that was issued for the Facility and Aboveground Storage Tank Regulations. The NOIRA document outlines areas where the regulations will be reviewed and possibly revised. Ms. Lamp provided the RAP members with a handout of current AST performance standards. Mrs. Porterfield indicated that she would make Ms. Lamp's presentation available to the RAP members.

Question and Answer Session

The RAP members had many preliminary questions regarding the existing Facility and Aboveground Storage Tank Regulations and possible revisions. Ms. Lamp indicated that the RAP members will be provided a redline version of the proposed regulations after the NOIRA public comment period closes and possibly during the next RAP meeting. RAP members asked general questions concerning the following topics:

- 25,000 gallon tank capacity appears differently in “New Performance Standards” for 25,000 gallon capacities versus 1 million gallon capacities
- 25,000 gallon number came from statute, Article 11
- Variances were explained
- Ms. Lamp summarized the regulatory process for regulation in relation to public comment and RAP
- Clarification of the City of Fairfax requirements versus the broader applicability of the regulation
- Bundling state-wide regulation review with the Fairfax requirements
- AST registration requirements
- 1320 gallons versus 660 gallon capacities in federal regulations (SPCC, FRP) and Virginia regulations
- No. 6 and No. 5 oil regulatory exclusions
- 2003 draft AST regulation

Priority issues identified by RAP for addressing in the regulations

Individual RAP members were asked to provide feedback to the group concerning the most important issues that they believe should be reviewed in the regulations. The list below includes all issues brainstormed by RAP members on how the regulations should be revised to address SB843 and other significant changes to the regulations.

- General containment vs. constructed
 - PE currently makes determination
 - Small tanks
 - EPA exclusions
 - EPA inspector document regarding new types of general containment
 - Bring VA's requirements in line with EPA requirements for containment
- Aggregate ODCP capacities versus EPA capacities (660 gallons and 1320 gallons)

- State regulations should match federal at 30,000 gallon (EPA-BMP Manual) aggregate capacity vs. 25,000 gallon (State aggregate)
- All pipe in containment area be exempt from pressure testing
- Pressure test exempt aboveground piping containing No. 5 or No. 6 oil that is less than 100 ft. in length within compound to building
- Fairfax Tanks – Would like to see work completed 10 years from final regulation instead of 2021 due to other requirements (10 yr intervals for testing)
- Wording from Fairfax law changed in regulation
 - Instead of containment – release prevention barrier; secondary bottom, etc.
 - RPB doesn't lock into old methods but will allow for new methods/technologies
 - May find pros/cons of prevention barriers in API 341
- Would like to see state regulations line up with federal and local regulations
- Adopt most current equipment (double-bottoms and aboveground piping)
- Reference VA USBC where it says State BOCA in regulation
- 25,000 gallon aggregate capacity for ODCP requirements
 - Clarify which tanks count towards
 - Increase limit
 - Increase size of tank that actually goes into limit
 - Focus on intent
- Registration
 - Remove 5 yr registration requirement
 - Only require for closure or change
 - Clarify 1320 gallons versus 660 gallons
- Closure section – add a section that will exempt requirement for soil sampling if have fully enclosed impervious secondary containment (could even be clay liner)
- Use consistent terminology; change regulation to match the law in relation to 25,000 gallons or greater versus greater than 25,000 gallons (applicability)
- Do not extend compliance deadline for Fairfax past July 1, 2021
- Clarify public notifications when spill happens
- Focus on Fairfax issues first and then rest of regulation

- Discussed releases at Pickett Road facility, current remediation status, installation history, type of equipment, and aboveground versus underground piping
- Focus on Fairfax issues only
There are different opinions concerning the scope of the regulatory amendment. Some stakeholders stated they believe only changes needed to address the additional requirements to be placed on tanks in the City of Fairfax. Other members believe that the agency should consider other changes to the regulations at this time. The group has not reached consensus on this issue.
- Clarify possible changes to other areas of regulation
- Ensure legislative intent of new law by seeking guidance from OAG

Wrap up

Mrs. Porterfield indicated that DEQ had to discuss whether or not to limit scope of the RAP to Fairfax only regulatory changes. Mrs. Porterfield summarized public comment period and procedures (online). RAP members are not required to attend public meetings.

The meeting adjourned at 12:09pm.