

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
SITE SUITABILITY (REV. G20)**

REGULATORY ADVISORY PANEL MEETING MINUTES

**PIEDMONT REGIONAL OFFICE TRAINING ROOM
4949-A COX ROAD, GLEN ALLEN, VIRGINIA
DECEMBER 8, 2021**

Members Present:

Gustavo Angeles, Sierra Club	Lisa Kardell, Waste Management
Cathy Binder, King George County	Christy Morton, VEDP
Patrick Fanning, CBF	Susan Miller, VCCA
Steve Fischbach, VPLC	Mark Sabath, SELC
Michelle Gowdy and Josette Bulova, VML	Kyle Shreve, VA Agribusiness Council
Jim Guy, Mecklenberg Electric Cooperative	Randy Wingfield, Town of Christiansburg
Yesika Kain, Newport News Shipbuilding	Andrea W. Wortzel, Troutman-Pepper

Members Absent:

Eric Gates, Celanese	S.Z. Ritter, City of Chesapeake
Leigh Mitchell, Upper Mattaponi Tribe	Mitchell Smiley, VA Municipal League

Department of Environmental Quality:

Jeffery Steers, Director, Central Operations	Tamera M. Thompson, Air Division
Michael G. Dowd, Air Division	Karen Sabasteanski, Air Division
Lauren R. Stewart, Air Division	

The meeting began at approximately 9:32 a.m..

Meeting Purpose: This regulatory advisory panel (RAP) has been established to advise and assist the department in the development of proposed amendments to provisions of board's regulations to provide greater detail as to how the site suitability requirements of Code of Virginia § 10.1-1307 E are to be met. The purpose of this meeting is for DEQ to coordinate and facilitate discussions of this group in an effort to find common ground and elements that could be included in the regulation amendments.

Introduction and recap of prior meetings: Mr. Steers welcomed the group as the facilitator for this meeting. After a brief summary of logistics, Mr. Steers asked that each member introduce themselves, and state why the issue under discussion was important; members identified environmental impacts on health, environmental justice, air quality permitting, and how to address these issues in light of electricity demand and telecom needs. Mr. Steers stated that the goal of this meeting was to come up with recommendations for the department with an eye toward attempting to reach consensus. He requested Mr. Dowd speak to the group on the State Air Pollution Control Board's recent decision concerning the Lambert Compressor Station, as it

directly pertains to issues of site suitability that the group is actively discussing. Mr. Dowd summarized the department's recommendations and the board's formal decision; because this action may or not be a subject of litigation, DEQ will not speculate on the propriety of the board's actions. Ms. Sabasteanski then posted the agenda and a summary of previous meetings (see Attachment).

Summary and directed discussion of community engagement issues: Mr. Steers reiterated the group's original charge, specific key questions on which discussion had focused, and general areas of agreement and disagreement (see Attachment). The discussion broadly covered the scope of site suitability in applicable laws, and how objective criteria can be developed to determine whether a project complies with applicable law.

The group also discussed what constitutes community engagement and meaningful involvement, and how it figures in the broader concept of site suitability. The timing and scope of such involvement at different stages of a project was covered in detail, as well as the necessity of developing a good record of how an affected community was determined and how the engagement was implemented. Essentially, effective community engagement must be early and ongoing. The group appeared to generally agree that community engagement is an important aspect of the air permitting process.

Directed discussion: The group then undertook the question of what factors make a site "unsuitable" from an air quality perspective, and how they are identified. Individual members of the group suggested the following factors:

- lack of local government approval
- type of activity proposed and if it will exacerbate a public health problem
- a disproportionate impact on an environmental justice or minority community
- a site that is subject to a preexisting regulatory protection
- incompatibility with neighboring uses
- not meeting air quality standards
- a major impact on a community as a whole
- a high concentration of an activity in an area
- the site does not allow technology or means of improvements to reduce impacts
- wider public health impacts
- other existing pollution sources/stressors
- lack of proximity to resources/infrastructure

The group also discussed what information should be considered in determining whether an activity is "reasonable" within the meaning of § 10.1-1307 E, and the following factors were offered by individual members of the group. An item marked with an asterisk would be a new requirement beyond what is currently required by existing state regulation.

- meet applicable laws and regulations
- identify relevant environmental justice communities and assess the impact*

- identify communities/individual sites that are vulnerable by reasons of health using currently available health data (such as VDH databases) and demographic data*
- notifications and providing information including availability of broadband, etc., who gets the information and when
- availability of publically available databases such as EPA, DEQ, and DEQ EJ
- socioeconomic data, and whether a facility location is dictated by an inflexible infrastructure need or unique features
- mapping of sensitive land uses *[in terms of degree]
- DEQ internet availability of detailed permitting information *[expanded bandwidth, both IT and staff]
- identify other environment/health/etc. stressors, i.e., known problem sites, involving other boards and additional modeling*
- economic factors in a demonstration of how the community benefits*
- mitigation factors that enable project to meet or exceed emission standards; what control are imposed and relative costs
- outreach done by locality/applicant/DEQ and when*
- health consequences of specific pollutants being emitted*

Additionally, other issues of interest were earmarked for possible further review:

- Identify where development should take place. This is typically done at the community level through formal comprehensive and economic development plans.
- Show the benefit of existing facility modifications that improve air quality; potentially develop a means by which a site may be presume suitable.
- Address what to do if a post-facto stressed community moves in.
- Determine what is an adequate health assessment and what is the area to be assessed.
- Examine the relationship between site suitability and "reasonableness" per the Code.

Recommendations: The group then attempted to identify specific recommendations. Although no consensus was reached, there was general agreement on the following: DEQ should develop guidance to establish an appropriate radius around a proposed site, depending on its major or minor source status, for purposes of identifying environmental justice communities, with the understanding that the radius may shift based on specific criteria.

The group attempted but was unable to develop a recommendation for how vulnerable communities within the defined radius should be identified.

Final discussion and wrap-up: The group discussed several general issues, such as the role of DEQ's EJ staff, and regulatory processing steps. The group expressed interest in continuing to meet.

Mr. Steers concluded the meeting. The meeting adjourned at approximately 3:35 p.m. No further meetings for this group have been scheduled at this time; however, the results of this meeting will be reported to DEQ management, and group may be asked to re-convene if necessary.

Attachment

REG\DEV\G20-RP05-MINUTES



Site Suitability for Air Quality

Regulation Revision G20

Regulatory Advisory Panel (RAP)

Fifth Meeting, December 8, 2021

Site Suitability for Air Quality Permitting RAP Meeting Agenda

Wednesday, December 14, 2021

9:30 - 9:35	Welcome and Introductions
9:35 - 9:45	Process and Goals
9:45 - 11:30	Summary and discussion of community engagement
11:30 - 12:30	Lunch (on your own)
12:30 - 3:15	Development of Recommendations
3:15 - 3:30	Next Steps
3:30	Adjourn

Our Previous Meetings

CHARGE AND ISSUES TO BE DISCUSSED

The group's charge is to develop potential recommendations for the regulations as to how site suitability should be used as a criterion for the issuance of air permits including the definition of site suitability, situations or criteria for when site suitability should be delegated to local zoning authority, and situations or exemptions for when DEQ should use site suitability in its decisionmaking for air permits. Site suitability is governed in the Virginia Air Pollution Control Law at § 10.1-1307 E.

CHARGE AND ISSUES TO BE DISCUSSED

Several key points were generally identified: the need for clarity and certainty, the need for tools to identify and address environmental justice and suitability issues in the context of an evolving environmental justice framework, and the need to create a new framework for permit development and review. The group was also asked to consider the following specific questions:

1. Site suitability determinations for air permits should consider what specific criteria?
2. Should these criteria apply to all applications for air permits?
3. When should site suitability be determined in the air permitting process?
4. Who has the knowledge, skills, and objective ability to perform the site suitability determination?
5. What else needs to be considered?

GENERAL AGREEMENT

1. Site suitability is important, and must be considered in the light of environmental justice, particularly given the Virginia Environmental Justice Act. Environmental justice communities, local governments, and DEQ need to work collaboratively to assure a successful outcome for all parties.
2. Clarity and certainty are important to all involved parties: the public, particularly potentially disproportionately affected communities, local governments, and the regulated community. *This might be resolved by developing checklists or otherwise providing detailed paths for all parties to follow.*
3. The local population must be considered and characterized, including the identity of any EJ communities, to determine disproportionate or adverse impacts; and to look at socioeconomic costs and benefits of a project. *Community engagement is necessary in order to accomplish this; improvements to this part of the process are ongoing.*
4. Outreach and engagement with the locality and its communities is important-- addressing environmental justice issues up front can make a project more desirable or stop an unwanted project before time, effort, and monetary costs by the locality and/or the applicant are expended. *A draft or preliminary determination might accomplish this.*

UNRESOLVED ISSUES

1. Whether there is existing legal authority to implement wholesale changes to the permitting process to achieve environmental justice goals.
2. At what point(s) in the process should public outreach and DEQ involvement occur.
3. What should be on each checklist/series of required actions.
4. The proper role of each affected party, that is, when and how should local authorities, DEQ and the applicant identify and work with potentially disproportionately affected communities.
5. How to address each element of § 10.1-1307 E--individually, holistically, or both. Tied to this is the need to determine the scale and extent of this process: are there de minimis project sizes or types/amounts of pollutants? Where should the boundaries be drawn--on a case-by-case basis, or should specific standards be set?

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2. Should these criteria apply to all applications for air permits?

3. When should site suitability be determined in the air permitting process?

4. Who has the knowledge, skills, and objective ability to perform the site suitability determination?

5. What else needs to be considered?