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Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation(s)	9VAC20-81
Regulation title(s)	Solid Waste Management Regulations
Action title	Revisions in response to EPA revisions to requirements concerning Inactive Coal Combustion Residual Surface Impoundments
Final agency action date	February 24, 2017
Date this document prepared	December 5, 2016

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

On August 5, 2016, EPA published in the Federal Register a direct final rule titled "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Extension of Compliance deadlines for Certain Inactive Surface Impoundments; Response to Partial Vacatur." The federal rule became effective October 4, 2016. The revised federal rule modified the requirements certain inactive coal combustion residuals (CCR) surface impoundments are required to meet.

Prior to this rule, federal regulations allowed inactive CCR surface impoundments to complete closure by April 17, 2018 and meet other notification requirements ("early closure provision") to avoid having to meet the same requirements as existing CCR surface impoundments. This provision was included in EPA's rule to incentivize the early closure of inactive CCR surface impoundments. Prior to EPA's revised rule, CCR surface impoundments were allowed to close the CCR surface impoundment by leaving CCR in place, removing free liquids, and installing a final cover system designed to minimize infiltration and

erosion. CCR surface impoundments were also allowed to remove the CCR from the surface impoundment as part of closing the surface impoundment. The federal rule did not require inactive surface impoundments to meet design, operating criteria, groundwater monitoring, corrective action, or closure and post closure care requirements. Virginia’s regulations however did require inactive CCR surface impoundments to conduct groundwater monitoring and post closure care monitoring and these activities would be included in a permit for the inactive surface impoundment.

The US Court of Appeals for the D.C. Circuit court ordered a vacatur of the “early closure” provisions for inactive CCR surface impoundments on June 14, 2016 and EPA issued a direct final rule that became effective October 4, 2016. The federal rule now requires inactive CCR surface impoundments that were complying with the “early closure” provision to meet the same requirements as existing CCR surface impoundments. This includes meeting the requirements for design, operating criteria, groundwater monitoring, corrective action, closure and post closure care requirements that are all applicable to existing CCR surface impoundments. EPA has extended the compliance deadlines for qualifying inactive CCR surface impoundments to comply with these requirements. Compliance deadlines for inactive surface impoundments are being extended by 547 days (the number of days between the signature date of the final EPA rule and the last business day of the week during which the order from the count granting the motion to vacate 40 CFR 257.100 (b), (c), and (d) was signed).

Virginia previously adopted the federal requirements concerning CCR landfills and surface impoundments by incorporating the federal requirements by reference into Virginia’s Solid Waste Management Regulations (VSWMR). This regulatory amendment incorporates the revised federal requirements concerning these inactive CCR surface impoundments into the VSWMR.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

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- CCR- Coal Combustion Residuals
 - EPA- Environmental Protection Agency
 - VSWMR- Virginia Solid Waste Management Regulations

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Virginia Waste Management Board approved this amendment, Revisions in response to EPA revisions to requirements concerning Inactive Coal Combustion Residual Surface Impoundments, to the Virginia Solid Waste Management Regulations (9VAC20-81) on February 24, 2017 as final regulations and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage

economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the institution of the family or family stability.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
800		Adoption of 40 CFR 257 Subpart D by reference	EPA revised 40 CFR 257 with changes becoming effective on October 4, 2016. This section is being revised to reference the effective date of the changes to EPA’s requirements for inactive CCR surface impoundments into Virginia’s Solid Waste Management Regulations.
810		Permits for CCR landfills and CCR surface impoundments	Language has been added to this section to clarify that permits for inactive CCR surface impoundments will include conditions to address the requirements found in 9VAC20-81-820.
820		Inactive CCR surface impoundments	This section is being revised to be consistent with the requirements for inactive CCR surface impoundments found in 40 CFR 257. Previously inactive CCR surface impoundments were incentivized to close by April 17, 2018. If inactive CCR surface impoundments met certain notification requirements, they were not required to meet the same requirements as existing CCR surface impoundments. Inactive CCR surface impoundments are now required to meet the same requirements as existing CCR surface impoundments; however, qualifying inactive CCR surface impoundments have extended compliance deadlines to comply with the requirements for CCR surface impoundments.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will

accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulatory amendment incorporates revised federal standards concerning coal combustion residuals (CCR) into Virginia's regulations. The agency analyzed the following alternative regulatory methods: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulations; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulations.

Making Virginia's requirements consistent with federal requirements reduces the regulatory burden on companies. The federal standards are protective of human health and the environment, and minimize the regulatory burden on companies to comply with these regulations, therefore the agency rejected including alternative regulatory methods in this rulemaking.