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Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation(s)	9VAC20-85
Regulation title(s)	Coal Combustion Byproduct Regulations
Action title	Changes needed as a result of federal standards for the disposal of coal combustion residuals from electric utilities being adopted
Final agency action date	December 4, 2015
Date this document prepared	November 9, 2015

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 April 17, 2015, EPA published in the Federal Register a final rule titled "Disposal of Coal Combustion Residuals from Electric Utilities." The federal rule will become effective on October 19, 2015. Virginia previously adopted regulations concerning the use of Coal Combustion Byproducts (9VAC20-80-85 et seq.), which need to be revised to be consistent with the new federal rule. Virginia's rule regulates the use of coal combustion byproducts (CCB), and the federal rule regulates coal combustion residuals (CCR). CCR are a specific type of CCB, and definitions, applicability, and a locational restriction are being revised to be consistent with the federal rule.

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.

CCB- coal combustion byproduct means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by burning coal.

CCR or coal combustion residuals- means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

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, Changes needed as a result of federal standards for the disposal of coal combustion residuals from electric utilities being adopted, to 9VAC20-85 on December 4, 2015 as a final regulation 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
10		Definitions as established in Solid Waste Management	The regulations reference the definitions included in Part I of the Virginia Solid Waste

		Regulations	Management Regulations (VSWMR). As a result of the federal rule, the VSWMR regulations are being amended to incorporate the federal definitions related to CCR into Part VIII of that regulation. The CCB regulation is being modified to reference all definitions included in the VSMWR, not only the definitions in Part I.
20		Definitions	Adding a definition of CCR which is a new term defined by EPA's final rule titled "Disposal of Coal Combustion Residuals from Electric Utilities." The definition of Coal combustion byproducts is being amended to be consistent with the term as defined in the VSWMR.
40		Applicability	The federal rule does not regulate use, reuse, or reclamation of 12,400 tons or less of unencapsulated CCR on the land in non-roadway applications. This regulation is being amended to specify that use, reuse, or reclamation of 12,400 tons or less of unencapsulated CCR on the land in non-roadway applications shall be in accordance with the requirements of Virginia's CCB regulations. Use, reuse, or reclamation of greater than 12,400 tons of unencapsulated CCR on the land in non-roadway applications shall comply with the VSWMR.
70		Locational Restrictions	The federal rule concerning the use of CCR requires a 5 ft separation from the maximum seasonal water table. The CCB regulation has been amended to require a 5 ft. separation instead of the current 2 ft. separation.
90		Operations	Updated regulatory citation with correct citation.

Amendments being made to make the CCB regulations consistent with the federal rule titled "Disposal of Coal Combustion Residuals from Electric Utilities" and the VSWMR.

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.

The agency examined alternative regulatory methods that would be protective of human health and the environment that would minimize adverse impacts on small businesses. The agency considered 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 regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulation is being amended in response to a final federal rule concerning CCR. The revisions were made to make the regulations consistent with federal regulations as well as the Virginia Solid Waste Management Regulations. EPA issued the final CCR rule to ensure that human health and the environment was protected from the disposal of CCR in landfills and surface impoundments and established beneficial use criteria. The agency has established minimum requirements that are needed to be protective of human health and the environment for the use, reuse or reclamation of 12,400 tons or less of unencapsulated CCR in non-roadway applications. Exempting small businesses from regulatory requirements found in this regulation would not be protective of human health and the environment.