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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Waste Management Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC20-81
<b>VAC Chapter title(s)</b>	Solid Waste Management Regulations
<b>Action title</b>	Incorporation of Amendments to EPA's Standards for the Disposal of Coal Combustion Residuals from Electric Utilities
<b>Final agency action date</b>	October 23, 2024
<b>Date this document prepared</b>	October 2, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Section 2301 of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act amended Section 4005 of the Resource Conservation & Recovery Act to allow states to develop coal combustion residuals (CCR) permit programs and granted EPA authority to approve state programs or implement a federal permit program in non-participating states. Prior to this action, the Virginia Solid Waste Management Regulations (VSWMR), 9VAC20-81, was amended to incorporate EPA's 2015 Disposal of CCR from Electric Utilities final rule and establish permit requirements for applicable CCR units. The VSWMR was subsequently amended to incorporate the 2016 amendment applicable to inactive CCR surface impoundments. Separately, state statutes (§ 10.1-1402.03 and § 10.1-1402.04 of the Code of Virginia) define additional closure requirements for certain CCR units. Additionally, state statutes (§ 10.1-1402.05 of the Code of Virginia) specify additional coal ash landfill requirements.

Based on previous incorporations of the 2015 CCR Rule and 2016 amendment, Virginia drafted a state package for EPA program approval to administer a CCR permit program. EPA's review indicated that Virginia needed to incorporate additional CCR Rule amendments promulgated through December 2020 to request state program approval. An attachment detailing the changes from the October 2016 CCR Rule to the December 2020 CCR Rule is attached.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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Virginia drafted a state package for EPA program approval to administer a CCR permit program and was informed by EPA that CCR Rule amendments promulgated through December 2020 need to be addressed in 9VAC20-81 to be eligible to administer a CCR permit program. This final exempt regulatory action brings Virginia closer in line with federal requirements and is required to request approval to administer a CCR permit program.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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- APA – Administrative Process Act
- CCR – Coal Combustion Residuals
- EPA – Environmental Protection Agency
- VAC – Virginia Administrative Code
- VSWMR – Virginia Solid Waste Management Regulations

### Statement of Final Agency Action

*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.*

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The Virginia Waste Management Board approved the Incorporation of Amendments to EPA's Standards for the Disposal of Coal Combustion Residuals from Electric Utilities to 9VAC20-81 on October 23, 2024, 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.

### Legal Basis

*Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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The promulgating agency for this regulation is the Virginia Waste Management Board. The legal basis for this regulation is the Virginia Waste Management Act (Chapter 14 of Title 10.1 of the Code of Virginia). Specifically, § 10.1-1402 of the Code of Virginia authorizes the Board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties.

Additionally, Section 2.2-4006 A 4 (c) of the Code of Virginia allows the Board to adopt this regulatory amendment to 9VAC20-81 as a final exempt action as the changes are necessary to conform to changes in the federal regulations.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

This final exempt regulatory action incorporates the federal CCR Rule amendments promulgated through December 14, 2020. Incorporating changes to the CCR Rule since the previous incorporation date (October 4, 2016) in the VSWMR is necessary for DEQ to pursue approval from EPA for its CCR solid waste permitting program.

### Details of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC20-81-35.G.2.		Excludes VSWMR Part VIII applicability to "Electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015"	Striking because the exclusion to CCR Rule applicability was vacated by a 2018 D.C. Circuit Court ruling (see new 9VAC20-800.B.4. below).
9VAC20-81-35.G.3.	9VAC20-81-35.G.2.	Excludes Wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals.	No change. Renumbering only.

9VAC20-81-35.G.4.	9VAC20-81-35.G.3.	Excludes Fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal	No Change. Renumbering only.
9VAC20-81-35.G.5.	9VAC20-81-35.G.4.	Excludes Practices that meet the definition of a beneficial use of CCR	No change. Renumbering only.
9VAC20-81-35.G.6.	9VAC20-81-35.G.5.	Excludes CCR placement at active or abandoned underground or surface coal mines	No change. Renumbering only.
9VAC20-81-35.G.7.	9VAC20-81-35.G.6.	Excludes Municipal solid waste landfills that receive CCR.	No change. Renumbering only.
9VAC20-81-800 A		Applicability of incorporated CCR Rule requirements based on the date on which they became effective.	Update the 40 CFR 257 citation to the December 14, 2020, version.
	9VAC20-81-800 B 3		Added subdivision B.3. to exclude the phrase “or approval from the Participating State Director” throughout the incorporation requiring entities to instead provide certifications by professional engineers.
	9VAC20-81-800 B 4		Added subdivision B.4. to exclude the text of 40 CFR 257.50(e) as the language was vacated by a 2018 D.C. Circuit Court ruling and to exclude 40 CFR 257.90(g) as the language was voluntarily remanded back to EPA for reconsideration by a 2018 D.C. Circuit Court ruling.
	9VAC20-81-800 B 5		Added subdivision B.5. to exclude requirement for vegetative height not to exceed 6 inches as the language was remanded back to EPA for reconsideration by a 2016 D.C. Circuit Court ruling.

**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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

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Virginia drafted a state package for EPA program approval to implement a CCR permit program and was informed by EPA that CCR Rule amendments promulgated through 2020 need to be addressed in 9VAC20-81 in order to obtain approval to implement a state CCR permit program. This final exempt regulatory action brings Virginia in line with federal requirements and is required to seek state program approval. This final exempt regulatory action makes appropriate changes in applicable waste management regulations. There are no regulatory flexibility alternatives to consider, other than maintaining the status quo.

### **Family Impact**

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.*

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This action only incorporates federal minimum requirements into Virginia's regulations. There is the potential for the costs of implementing the requirements of these incorporated federal regulations to be passed on to the electric consumer, affecting and potentially decreasing disposable family income by an unknown amount. However, if Virginia does not incorporate these requirements and administer its own CCR permit program CCR facilities will still be required to follow the federal requirements through an EPA administered permit program, and the same costs could be passed on to electric consumers.

Attachment – Summary of Changes from October 2016 CCR Rule to December 2020 CCR Rule

Item	Effective Date - Docket Number	Federal Register (Publication Date)	Summary
1	August 29, 2018 EPA-HQ-OLEM-2017-0286	<a href="#">83 FR 36435</a> <a href="#">7/30/2018</a>	<b>Amendments to the National Minimum Criteria (Phase One, Part One)</b> In this rulemaking EPA is acting to finalize certain revisions to those criteria. First, EPA is adopting two alternative performance standards that either Participating State Directors in states with approved CCR permit programs (participating states) or EPA where EPA is the permitting authority may apply to owners and operators of CCR units. Second, EPA is revising groundwater protection standards (GWPS) for four constituents which do not have an established Maximum Contaminant Level (MCL). Finally, the Agency is extending the deadline by which facilities must cease the placement of waste in CCR units closing for cause in two situations: Where the facility has detected a statistically significant increase above a GWPS from an unlined surface impoundment; and where the unit is unable to comply with the aquifer location restriction. Provisions from the proposed rule that are not addressed in this rule will be addressed in a subsequent action.
2	September 28, 2020 EPA-HQ-OLEM-2019-0172 EPA-HQ-OLEM-2018-0524	<a href="#">85 FR 53516</a> <a href="#">8/28/2020</a>	<b>A Holistic Approach to Closure Part A: Deadline To Initiate Closure</b> This rule finalizes regulations, proposed on December 2, 2019, to implement the court's vacatur of the 2015 provisions. The court vacated provisions that allowed unlined impoundments to continue receiving coal ash unless they leak and classified "clay-lined" impoundments as lined, thereby allowing such units to operate indefinitely. In addition, EPA is establishing a revised date by which unlined surface impoundments must cease receiving waste and initiate closure, following its reconsideration of those dates in light of the USWAG decision. Lastly, EPA is finalizing amendments proposed on August 14, 2019, to the requirements for the annual groundwater monitoring and corrective action report and the requirements for the publicly accessible CCR internet sites.
3	December 14, 2020 EPA-HQ-OLEM-2019-0173	<a href="#">85 FR 72506</a> <a href="#">11/12/2020</a>	<b>A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments</b> This rule finalizes regulations proposed on March 3, 2020, including procedures to allow facilities to request approval to operate an existing CCR surface impoundment with an alternate liner, and to correct typographical and cross-referencing errors. Provisions from the proposed rule that are not addressed in this rule will be addressed in a subsequent action.
4	December 14, 2020 EPA-HQ-OLEM-2019-0173	<a href="#">85 FR 80626</a> <a href="#">12/14/2020</a>	<b>A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Correction</b> The Environmental Protection Agency (EPA or the Agency) is correcting a typographical error in a final rule published in the Federal Register on November 12, 2020.