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Exempt Action: Final Regulation Agency Background Document

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| Agency name | Virginia Waste Management Board |
| Virginia Administrative Code (VAC) Chapter citation(s) | 9VAC20-85 |
| VAC Chapter title(s) | Coal Combustion Byproduct Regulations |
| Action title | Virginia Erosion and Stormwater Management Regulation Citation Correction |
| Final agency action date | October 23, 2024 |
| Date this document prepared | September 30, 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.

With the repeal of the Erosion and Sediment Control Regulations, 9VAC25-840, the consolidation of erosion and sediment control and stormwater management regulations into a new chapter, the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875, a change is needed to the Coal Combustion Byproduct Regulations, 9VAC20-85, to update a citation to reference the new regulation, 9VAC25-875, instead of 9VAC25-840, which was repealed effective July 1, 2024.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Effective July 1, 2024, the Erosion and Sediment Control Regulations, 9VAC25-840, were repealed and replaced with the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875.

This regulatory amendment is necessary to update a citation in the Coal Combustion Byproduct Regulations, 9VAC20-85, to reference the new Virginia Erosion and Stormwater Management Regulation, 9VAC25-875, instead of 9VAC25-840, which was repealed effective July 1, 2024. This regulatory amendment is exempt from the state administrative procedures for adoption of regulations because it consists only of changes in style or form or corrections of technical errors § 2.2-4006(A)(3) of the Code of Virginia.

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.

VAC – Virginia Administrative Code

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.

The Virginia Waste Management Board adopted the amendment to the Coal Combustion Byproduct Regulations, 9VAC20-85, at its meeting on October 23, 2024 and affirmed that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

This regulatory amendment is exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006(A)(3) of the Code of Virginia as they are changes in form, style, and technical corrections.

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.

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.

Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act pursuant to § 2.2-4006(A)(3) of the Code of Virginia).

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 includes a citation correction to a chapter of regulations governed by the Virginia Waste Management Board. This correction is to a citation referencing the Erosion and Sediment Control Regulation, 9VAC25-840, which was repealed and consolidated into the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875, effective July 1, 2024.

The Coal Combustion Byproduct Regulations will be updated to reflect this change. The benefit of this update is to provide the most accurate and up-to-date regulatory references to the regulated community. The impact will be a decrease in confusion and an increase of ease of use of the regulations, by providing the accurate regulatory citations.

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 |
|-------------------------|-----------------------------------|--|---|
| 9VAC20-85-90 Operations | N/A | 7. Fossil fuel combustion products site development shall be in accordance with the Erosion and Sediment Control Regulations, 9VAC25-840, or the Coal Surface Mining Reclamation Regulations, 4VAC25-130, as applicable. | 7. Fossil fuel combustion products site development shall be in accordance with the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875, or the Coal Surface Mining Reclamation Regulations, 4VAC25-130, as applicable. |

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.

With the repeal of the Erosion and Sediment Control Regulations, 9VAC25-840, and the consolidation of erosion and sediment control and stormwater management regulations into a new chapter, the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875, a change is needed to the Coal Combustion Byproduct Regulations, 9VAC20-85, to update a citation to reference the new regulation, 9VAC25-875, instead of 9VAC25-840, which was repealed effective July 1, 2024. There are no regulatory flexibility alternatives to consider, other than maintaining the status quo, which would result in confusion for the regulated community.

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.

With the repeal of the Erosion and Sediment Control Regulations, 9VAC25-840, and the consolidation of the erosion and sediment control and stormwater management regulations into a new chapter, the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875, a change is needed to the Coal Combustion Byproduct Regulations, 9VAC20-85, to update a citation to reference the new regulation, 9VAC25-875, instead of 9VAC25-840, which was repealed effective July 1, 2024. There is no potential impact of the proposed regulatory action on the institution of the family and family stability.