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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Approving authority name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20-85
Regulation title	Regulation Governing Management of Coal Combustion By-Products
Action title	Amendment 1- Fossil Fuel Combustion Products
Document preparation date	August 2, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#excreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This regulation provides for the use, reuse and reclamation of coal combustion by-products (CCB). Administrative procedures are provided for the submission of appropriate documentation for the use of CCB. In addition, the regulation establishes appropriate standards for siting, design, construction and operation of projects using CCB.

The regulation allows for the use of CCB in structural fills and mined land reclamation projects. It establishes minimum standards for all persons who use, reuse, or reclaim the CCB by applying it or placing it on the land and to owners and operators of coal mining facilities that accept CCB for mined land reclamation or mine refuse disposal on sites permitted by the Virginia Department of Mines Minerals and Energy (DMME). The regulation contains provisions regarding the siting of projects, the design and construction of run-off and cover systems, and closure of projects involving CCB. It also provided minimum requirements for operation of the site.

The Virginia Solid Waste Management Regulations were recently modified to include provisions for fossil fuel combustion products. Provisions for fossil fuel combustion products should be reflected in the regulations governing CCB as well.

The department will also discuss the possibility of eliminating the regulation and placing all provisions of the regulation into the Virginia Solid Waste Management Regulations (VSWMR), or removing the provisions addressing coal ash from the VSWMR and consolidating the provisions in this regulation.

Additional issues that are identified during the NOIRA comment period, the technical advisory committee meetings, and during the public comment period will be considered during the development of the proposed regulation.

Legal Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board (Board) to issue regulations as may be necessary to carry out its powers and duties required by the Virginia Waste Management Act (Act). Section 10.1-1402(5) of the Act authorizes the Board to promote the development of resource conservation and recovery systems. Virginia code §10.1-1402(1), and (11) state:

“The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth. “

...”11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. “

Section 10.1-1406.2 contains provisions for exemptions pertaining to the use of coal ash at facilities regulated by DMME.

The regulation provides special provisions for the proper disposal of CCB, or coal ash, which is one of the numerous solid wastes otherwise covered in the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) (VSWMR).

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

A definition of fossil fuel combustion products was added in Amendment 3 of the VSWMR effective September 24, 2003. Guidelines from the EPA provided the framework for the management of this material. The definition of fossil fuel combustion products and the uses of this material allowed under the VSWMR should be incorporated into or referenced by this regulation.

The department will also discuss the possibility of eliminating the regulation and placing all provisions of the regulation into the VSWMR, or removing the provisions addressing coal ash from the VSWMR and consolidating the provisions in this regulation.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

A definition of "fossil fuel combustion products" should be incorporated into the regulations. The use of the term "coal combustion by-products" and "fossil fuel combustion products" currently used within the regulation will be examined to determine the need for modifying the terms throughout the regulation.

References contained within the regulation to the use of "coal combustion by-products" and "fossil fuel combustion products" under the provisions of the other regulations including the VSWMR must be updated where necessary.

The department will also discuss the possibility of eliminating the regulation and placing all provisions of the regulation into the VSWMR, or removing the provisions addressing coal ash from the VSWMR and consolidating the provisions in this regulation. Various uses of CCB and fossil fuel combustion products are allowed under the provisions for beneficial use in 9 VAC 20-80-150 E and the conditional exemptions under 9 VAC 20-80-160. Additional provisions from these regulations can be placed in these sections and other sections of the VSWMR, or the exemptions and exclusions from the VSWMR can be placed in these (the CCB) regulations.

Additional issues that are identified during the NOIRA comment period, the technical advisory committee meetings, and during the public comment period will be considered during the development of the proposed regulation.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

Terminology associated with fossil fuel combustion products will be added to the regulation. These materials should be managed the same way that CCB is managed under the provisions of the regulation.

Additional issues that are identified during the NOIRA comment period may also be considered during the development of the regulation.

The department will also discuss the possibility of eliminating the regulation and placing all provisions of the regulation into the VSWMR, or removing the provisions addressing coal ash from the VSWMR and consolidating the provisions in this regulation. Various uses of CCB and fossil fuel combustion products are allowed under the provisions for beneficial use in 9 VAC 20-80-150 E and the conditional exemptions under 9 VAC 20-80-160. Additional provisions from these regulations can be placed in these sections and other sections of the VSWMR, or the exemptions and exclusions from the VSWMR can be placed in these (the CCB) regulations.

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this notice or other alternatives and 3) impacts of the regulation on farm and forest land preservation. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail, email or fax to Michael Dieter, P.O. Box 10009, Richmond, Virginia 23240-0009, Phone(804)698-4146, fax (804)698-4327 and mjdieter@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to assist the agency in the development of a proposal.

Impact on family

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.

The regulations protect the public's health, safety and welfare and the environment from harmful results of the mismanagement of coal combustion by-products. However, the Regulations Governing the Management of Coal Combustion By-products has no other direct impact on the institution of the family.