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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)	Virginia Solid Waste Management Regulations
Action title	Amendment to incorporate federal standards for the disposal of coal combustion residuals from electric utilities
Final agency action date	December 4, 2015
Date this document prepared	November 12, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 became effective October 19, 2015. This regulatory action amends the Virginia's Solid Waste Management Regulations to incorporate the recently adopted federal standards concerning coal combustion residuals. The federal rule establishes standards for the disposal of coal combustion residuals from electric utilities in landfills and surface impoundments. The rule contains locational restrictions, design criteria, operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and recordkeeping requirements. These requirements are being incorporated by reference into Virginia's Solid Waste Management Regulations. Solid waste permits will be issued for coal combustion residual landfills and surface impoundments operating in Virginia.

The federal rule also modified 40 CFR 261.4 (b), which identifies materials excluded from being hazardous waste. The Virginia Hazardous Waste Management Regulations incorporate 40 CFR 261.4 by reference. The Virginia Hazardous Waste Management Regulations will be updated as part of a separate rulemaking process (the Annual Update 2015 to 9VAC20-60) to include the revisions made to 40 CFR 261.4 (b) (4) (Bevill exclusion).

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
- 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, incorporation of federal standards for the disposal of coal combustion residuals from electric utilities, to the Virginia Solid Waste Management Regulations (9VAC20-81) 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.

In general, the VSWMR is being amended to incorporate by reference federal standards for CCR landfills and CCR surface impoundments. For consistency, references to Part VIII have been added throughout the regulation.

9VAC 20-81 Virginia Solid Waste Management Regulations

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		Definitions	Additional definitions related to CCR are included in this section for clarity. All definitions being added to the regulation are terms defined in the federal CCR rule. One clarification is being made to the definition of CCR. The definition of CCR is being clarified to assist the reader with understanding that CCR is a specific type of coal combustion byproduct (CCB). CCB is a term that has been historically used in Virginia's regulations to describe a type of coal byproduct, and is more inclusive than the term CCR.
35		Applicability of chapter	Added two new subsections, F. and G. to address entities regulated under a new Part, Part VIII of this regulation. 35 F. describes who must comply with the requirements of Part VIII and 35 G. describes who is not required to comply with the requirements of Part VIII. The applicability requirements are identical to those found in 40 CFR 257.50. Part VIII contains requirements for coal combustion residuals.
45		Open dumps	The VSWMR incorporate federal open dump criteria found in 40 CFR 257.1 through 257.3-8 by reference. The federal CCR rule modified the open dump criteria to address CCR landfills and CCR surface impoundments. This section has been modified to include amendments made to the federal open dump criteria as part of the CCR rule.
90		Relationship with other regulations promulgated by the Virginia Waste Management Board	Clarification included in the regulation to specify that there are additional regulations concerning coal combustion byproducts that must be followed.
95		Identification of solid wastes	Clarification made to specify that there are uses allowed for fossil fuel combustion products that are not CCR.
97		Beneficial use determinations	Beneficial use of CCR is defined in 40 CFR 257.53 and this section has been modified to reference this requirement.
110		Applicability	The CCR rule establishes specific criteria for

			CCR landfills. Historically industrial landfills have been allowed to receive CCR if they meet specific requirements. The regulation clarifies that CCR landfills are a specific type of industrial landfill that must meet the requirements of Part VIII of the regulation in addition to industrial landfill requirements.
300		General	This section has been modified to include references to Part VIII of the regulation that contains requirements for CCR landfills and CCR surface impoundments.
310		Applicability	Subsection F was modified to address CCR surface impoundments.
370		Closure requirements of surface impoundments and lagoons	This section was modified to address the closure of CCR surface impoundments. CCR surface impoundments will be regulated under 9VAC20-81-370 A or Part VIII, whichever is more stringent.
450		Permit application procedures	CCR landfills and CCR surface impoundments will be issued permits. The federal rule includes a series of dates by which an owner or operator must demonstrate compliance with federal requirements. 450 B has been modified to state that the owner or operator of the CCR landfill or CCR surface impoundment must submit a permit application by October 17, 2017 to continue operation.
460		Part A permit application	CCR surface impoundments will be issued permits and the regulation has been modified to include submission of hydrogeologic and geotechnical reports as part of the permit application. These reports are required to be completed by the federal CCR rule (40 CFR 257).
470		Part B application for solid waste disposal facilities	470 A 2 has been modified to reference the closure requirements that are applicable to CCR landfills that are in Part VIII of the regulation.
	475	Part B application requirements for CCR surface impoundments	CCR surface impoundments will be required to obtain a permit and this section has been added to provide the regulated community with a list of items required to be submitted as part of the permit application. This list is based on the requirements for CCR surface impoundments found in Part VIII which are based on the requirements of the federal CCR rule (40 CFR 257).
485		Operations manual requirements for solid waste facilities	The regulation has been amended to state that an operations plan for CCR surface impoundments meeting the federal requirements will be prepared, implemented and placed in the facility's operating record.
550		Permit denial	Section modified to reference siting standards for CCR landfills and CCR surface

			impoundments. A permit will not be issued unless it meets the siting requirements incorporated by reference into this regulation.
600		Modification of permits	The section has been modified to include references to requirements CCR landfills and CCR surface impoundments are required to meet.
610		General	The section has been modified to include references to requirements CCR landfills and CCR surface impoundments are required to meet.
700		General	Regulation modified to state that variances to Part VIII requirements will not be granted. Requirements of Part VIII are federal standards adopted by EPA.
	Part VIII	Requirements for the Management of Coal Combustion Residuals	A new part has been added to the regulation that contains provisions applicable to CCR landfills and CCR surface impoundments
	800	Adoption of 40 CFR Part 257 Subpart D by reference- Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments	Incorporates federal requirements for CCR into VSWMR. The definitions found in 40 CFR 257.53 are incorporated into this part of the regulation, not the entire regulation since some definitions in 40 CFR 257.53 differ from those in the definition section (section 10) of the VSWMR.
	810	Permits for CCR landfills and CCR surface impoundments	This section has been added to require permits to be obtained for CCR landfills and CCR surface impoundments. Permit applications are to be submitted by federal compliance deadlines for demonstrating compliance with federal requirements found in 40 CFR 257.
	820	Inactive Surface impoundments	Requirements found in 40 CFR 257 for inactive surface impoundments have been included in this section.

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 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 regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Currently there are only two companies conducting activities in Virginia that are regulated by the federal CCR rule that is being incorporated by reference into this regulation. Both of the companies impacted by this regulatory action operate in multiple states and likely are not considered small businesses. Making Virginia's requirements consistent with federal requirements reduces the regulatory burden on companies since they are required to meet federally uniform standards for the disposal of CCR in landfills and surface impoundments, not individual state requirements which would likely increase compliance costs. The federal standards are protective of human health and the environment, and minimize the regulatory burden on companies to comply with this regulation, therefore the agency rejected including alternative regulatory methods in this rulemaking.