



Virginia  
Regulatory  
Town Hall

## Periodic Review and Retention of Existing Regulations Agency Background Document

<b>Agency Name:</b>	Virginia Department of Environmental Quality
<b>VAC Chapter Number:</b>	9 VAC 20-85-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Management of Coal Combustion By-products
<b>Action Title:</b>	
<b>Date:</b>	04/25/01

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

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 mine land reclamation projects. It applies to 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 mine land reclamation or mine refuse disposal on sites permitted by the Virginia Department of Mines Minerals and Energy.

The regulation contains provisions regarding the siting of projects, the design and construction of run-off and cover systems, and closure of projects. It also provided minimum requirements for operation of the site.

**Basis**

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

---

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.

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).

**Public Comment**

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

---

The six organizations commenting during the notice of periodic review indicated that the regulation should be retained in its current form.

One organization stated that the department had misinterpreted a provision of the regulation. This issue can be resolved without modifying the regulation.

**Effectiveness**

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

---

The goal of the regulation is to protect public health, safety and welfare and the environment from the harmful results of mismanagement of CCB when it is beneficially used with the least

possible costs and intrusiveness to the citizens and businesses of the Commonwealth. The department has determined that the regulations are necessary to accomplish this goal.

Based on the above goals, the regulations appear to be performing as intended.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

---

Although the regulation has not been used often, the regulated community has consistently stated that the regulation fills a gap left by the VSWMR for some engineering uses of CCB. Amendment 2 of the VSWMR has recently been modified to address one area of concern regarding CCB and includes new provisions for the beneficial use of waste materials.

The Regulations Governing the Management of Coal Combustion By-products can be retained in its current form, or the critical provisions of the regulation can be incorporated into the Virginia Solid Waste Management Regulations, where many exemptions are already available for the use of CCB, and other waste materials.

The regulated community has indicated during the public comment period, that a separate regulation is the less burdensome alternative

## Recommendation

*Please state that the agency is recommending that the regulation should stay in effect without change.*

---

The Agency recommends that the regulation be retained at this time. Amendment 2 of the VSWMR has only recently been modified to allow for the beneficial use of waste materials including CCB in a more streamlined manner. The department will monitor the applications submitted under this regulation for CCB activities until the next periodic review of this regulation.

## Family Impact Statement

*Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases 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.