

**Coal Combustion Byproduct (CCB) Regulations**  
**Regulatory Advisory Panel meeting #3**  
**May 19, 2009**

Meeting attendees

David Bernard- Sierra Club  
Bob Waldrop- Full Circle Solutions  
Thomas Adams- ACAA  
Rob Reash- American Electric Power  
Scott Reed- Dominion  
Rick Parrish- Southern Environmental Law Center  
John Heard- Va. Coal Association  
Lisa Cooper- PMI Ash Technologies  
W. Lee Daniels- Va. Tech  
William Hopkins- Va. Tech  
Brenda Robinson- Environmental Solutions

DEQ staff present-

Jason Williams  
Debra Miller  
Melissa Porterfield  
Leslie Beckwith

Other public observers-

Davis Phaup- Old Dominion Electric Cooperative  
Barbara Brumbaugh- City of Chesapeake  
Donald Hintz- Dominion

Introduction

A meeting of the Regulatory Advisory Panel (RAP) for the Coal Combustion Byproduct (CCB) Regulations took place on May 19<sup>th</sup> at 10 a.m. DEQ's Piedmont Regional Office. This meeting was open to the public and members of the public were in attendance.

Introductions were conducted and the group was reminded that the goal was to work together at these meetings on issues to reach consensus. The definition of consensus was reviewed with the group. Consensus is defined as a willingness of each member of the RAP to be able to say that he or she can live with the decisions reached and recommendations made and will not actively work against them outside of the process. When consensus is not reached by members of the group, the different viewpoints will be explained to Agency management by agency staff. Meeting minutes will be circulated informally to group members for review prior to posting on the Virginia Regulatory Town Hall website.

Since the CCB RAP's last meeting, the Governor's office has approved the Notice of Intended Regulatory Action (NOIRA) for the Coal Combustion Byproduct Regulations. The next step in the regulatory process is for the NOIRA public comment period and

public meeting to be announced. The announcement of the NOIRA comment period is scheduled to be announced in the June 8, 2009 publication of the Virginia Register. The comment period is scheduled to begin June 8, 2009 and end July 10, 2009. A NOIRA public meeting will be held on July 7, 2009, at 10 am at DEQ's Central Office in downtown Richmond. Members of the RAP are welcome to attend the NOIRA public meeting but the purpose of the public meeting is to receive comments from the public and the RAP will not meet to discuss issues that day. RAP members may submit comments during the comment period if they wish. No proposed language is associated with the NOIRA public comment period. The agency hopes to have proposed regulations developed by the fall of 2009.

### Topics discussed

#### **Operational Requirements**

At the April 28, 2009 RAP meeting, changes to operational requirements at CCB sites were discussed. This included the following changes:

- adding a regulatory requirement for surface wetting or surfactant agents to be applied to control dust.
- Adding a reference to Virginia's air regulations concerning fugitive dust (9 VAC 5-40-60. et seq.)
- adding a requirement for the fossil fuel combustion products to be compacted within 72 hours of placement on the site.
- Revising the regulatory citation for surface water control to reflect the appropriate applicable regulatory agencies responsible for regulating control of stormwater (the agency will consult water staff to identify the appropriate agency or agencies responsible for regulating stormwater- DCR and/or DEQ. This change does not change the applicable requirement, but only changes identification of the responsible agency or agencies.
- Adding a requirement for sites larger than 15 acres to be developed in phases. Phases shall be limited to a maximum size of 15 acres. No more than 2 phases shall be open at any given time. Once an area has not received material for 60 days, soil shall be placed on top of the area.

Consensus was reached on including the 5 bulleted items listed above into the regulations.

#### **Ecological studies**

Ecological issues were discussed at this meeting. Views were expressed that an early scoping process could be conducted in advance to protect threatened and endangered species. There was concern with including species of concern as a category of species included in site investigation studies. Statements were made that it would be beneficial to include measures in the regulations to limit the attraction of wildlife to fossil fuel combustion product sites, and that steps could also be taken to minimize exposure to wildlife through the addition of operational requirements. Phased operations, as discussed previously at this meeting would be beneficial to limiting the exposure to wildlife. The use of physical barriers was discussed as a potential way to minimize exposure to wildlife but was believed to be not practical for use at these

sites. The availability of information on the location of threatened and endangered species, as well as species of concern will be investigated further by the agency and reported back to the RAP.

Since stormwater collection ponds will attract wildlife during operation of the site and will continue to remain after the site is closed, the group discussed the periodic cleaning of these sediment ponds prior to closure of the site and the placement of the sediments from these storage basins that potentially contain fossil fuel combustion products back into the fill area. The group reached consensus concerning the idea of removing the sedimentation from these ponds prior to closure of the site and placing the material into the fill area to minimize future exposure to wildlife after the site closes. Language will be drafted by the agency and circulated to the group. A suggestion was made to review the Department of Conservation's stormwater regulations when drafting this language. The agency will develop language for review by the RAP at a future meeting.

#### **Closure requirement- cap**

Installation of a cap to minimize the infiltration of water into the site was discussed. The agency provided language for the RAP to review that included two options concerning installation of a cap at the site. One option is a soil cap that included 12 inches of soil with a hydraulic conductivity of no greater than  $1 \times 10^{-7}$ . The other option includes the installation of a geosynthetic membrane and a geocomposite drainage net. Incorporating a performance standard for the closure cap of facilities was also discussed. The idea of amending the top 12 inches of fossil fuel combustion product applied to the site to meet a required performance standard was an option that was discussed that could be included in the regulations. The specific performance standard (required minimum hydraulic conductivity) was not decided upon at this meeting but the group did mention hydraulic conductivities in the  $10^{-5}$  to  $10^{-7}$  range. The agency will develop revised language and discuss this topic with the group more in the future.

#### **Amended fossil fuel combustion product**

The group discussed creation of a definition of amended fossil fuel combustion product into the regulations. Some members had submitted potential definitions for amended fossil fuel combustion products for review by the group. The RAP discussed if a definition needed to be included in the regulations. The RAP did not believe that the term amended fossil fuel combustion product needed to be included at this time. The group may revisit this issue in the future.

#### **pH**

The group discussed the idea of including the requirement that the ash meet a pH standard of 5.5-8.5. Certain constituents may leach from the ash if the pH is higher than 8.5 which is why this topic is being discussed. The group discussed this concept and was not supportive of including this requirement. In general the group was more supportive of preventing water contact with the fossil fuel combustion products. Most fossil fuel combustion products generated in Virginia have a pH that is greater than

8.5. Including this requirement would exclude the use of ashes that are pozzolanic (meaning they cement themselves).

### **Agency Review of Projects**

The agency discussed with the RAP that the agency is proposing to make changes to the process the agency uses to review fossil fuel combustion products. Currently if the agency has not responded to the applicant within 30 days of submission, the applicant may proceed with the project. The agency discussed removing this requirement from the regulations and including a requirement for the applicant to wait for the agency's approval before proceeding with the project. Some RAP members strongly opposed this idea since it would remove a timeframe for the agency to take an action and would add uncertainty to project timelines and impact contractual obligations. The agency expressed concern that applicants believed that if the agency did not respond within the 30 day review period, then they believed that they had received agency approval and that the agency could not object to how the project was being conducted. There was also concern that additional time would be needed for the agency to review projects since the agency is proposing to include some additional requirements in the regulations. The agency will work toward revising this language further to clarify the review process.

### **Public notification**

The agency reiterated its intent to include a public notification or public notice component into the regulations. The agency discussed the issue of when a project is amended to either include more acreage or volume, that there should be a public notification component as part of the project change. The idea of requiring public notification to re-occur if a 15% volume or acreage increase was to occur. The idea was also discussed that it may be more appropriate to base this on the design plan and require public participation on the project in response to changes to the design plan.

The next meeting of the CCB RAP is scheduled for 10 a.m. Thursday June 11, 2009 at the DEQ Central Office in downtown Richmond.