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Periodic Review Report of Findings

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9VAC20-85
Regulation title	Coal Combustion By-Product Regulations
Date this document prepared	November 21, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. 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 by-product
CCR- coal combustion residuals
EPA- Environmental Protection Agency
FFCP- Fossil Fuel Combustion Products

Legal Basis

Please 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.

Section 10.1-1402 (11) authorizes the Virginia Waste Management Board to promulgate and enforce regulations to carry out its powers and duties. Section 10.1-1402.02 prohibits the use, reuse, or reclamation of unamended coal combustion by-product in an area designated as a 100-year flood plain. The Virginia Waste Management Board has adopted this regulation to establish requirements pertaining to coal combustion by-products.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

During the periodic review the agency reviewed the requirements concerning the use of CCB and the agency believes changes to the requirements concerning the use of CCB are needed to be consistent with the federal requirements for management of CCR and to include additional measures to be more protective of human health and the environment. An alternative to this regulation is to include the CCB

requirements into the Virginia Solid Waste Management Regulations. This alternative will be considered further as part of the amendment of this regulation.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An advisory group was not formed to assist with the periodic review. No comments were submitted during the public comment period.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation is necessary for the protection of public health, safety, and welfare. The regulation establishes criteria for the use of coal combustion by-products. The regulation is clearly written and understandable; however, the agency believes changes to the requirements concerning the use of CCB are needed to be consistent with the federal requirements for management of CCR and to include additional measures to be more protective of human health and the environment.

Decision

Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation will be amended. The agency believes changes to the requirements concerning the use of CCB are needed to be consistent with the federal requirements for management of CCR and to include additional measures to be more protective of human health and the environment.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

The requirements included in this regulation continue to be needed. Without these requirements, there would be no criteria for the use of coal combustion by-products.

No comments were received during the public comment period.

The regulation is complex in nature and establishes criteria for the use of coal combustion by-products and establishes appropriate standards for siting, design, construction, operation and administrative procedures pertaining to their use, reuse or reclamation.

This regulation contains requirements on the use of coal combustion byproducts (CCB). CCB are a type of fossil fuel combustion products (FFCP). Coal Combustion Residuals (CCR) are also considered to be both CCB and FFCP. Federal rules and the Virginia Solid Waste Management Regulations regulate coal combustion residuals (CCR). This regulation applies to all persons who use, reuse, or reclaim FFCP by applying them to or placing them on land in a manner other than addressed in 9VAC20-81-95 of the Solid

Waste Management Regulations. This regulation also applies to all persons who use, reuse, or reclaim 12,400 tons or less of unencapsulated coal combustion residuals (CCR) on the land in nonroadway applications.

This regulation was last amended in 2016 to incorporate changes needed as a result of federal standards for the disposal of coal combustion residuals from electric utilities being adopted.

This regulation does not adversely impact small businesses. Exemption of small businesses from these requirements would be less protective of the environment and human health.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

This regulation does not have a direct impact on the institution of the family or family stability.