



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20-85
Regulation title	Coal Combustion Byproduct Regulations
Action title	Amendment 2- Consideration of including additional restrictions on the use and placement of coal combustion byproduct
Date this document prepared	March 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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 byproducts (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, operation, and closure of projects using CCB.

During the development of amendment 7 to the Virginia Solid Waste Management Regulations (VSWMR), the amendment 7 technical advisory committee (TAC) discussed (i) incorporating the Coal Combustion By-Products Regulation into the VSWMR and (ii) areas of the Coal Combustion By-Products Regulations that should be reviewed. As a result of those discussions, the amendment 7 TAC recommended that the Coal Combustion Byproducts Regulation remain separate from the VSWMR and that any necessary revisions to the program should be undertaken in a separate rulemaking.

The CCB regulations will be updated to incorporate changes to state statute enacted by the 2009 General Assembly. These statutory changes address the placement of CCB in an area located within a 100-year floodplain. This amendment will also consider including additional restrictions on the use and placement of CCB.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., 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.

In response to legislation passed by the 2009 General Assembly, the CCB regulations will be revised to address the placement of CCB in an area located within a 100-year floodplain. This amendment will also consider including additional restrictions on the use and placement of CCB that will protect human health and the environment.

In response to legislation passed by the 2009 General Assembly, the regulations will be amended to specify unamended coal combustion byproduct placed in an area designated as a 100-year floodplain is not excluded or exempt from being a solid waste or from solid waste permit requirements. This amendment will consider including additional restrictions on the use and placement of coal combustion byproduct that will protect human health and the environment.

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.

The CCB regulations will be revised to address the placement of CCB in an area located within a 100-year floodplain. The agency currently is considering amending the locational restrictions included in the current regulations to address this new requirement.

The regulatory amendment will include a complete review of the regulation and consider changes as necessary to the regulations. Among the items to be discussed include public participation on coal combustion byproduct project, additional restrictions on the use and placement of coal combustion byproduct, evaluating and clarifying, as necessary, the use of the term “amended” as it relates to coal combustion byproduct, and any restrictions on the use of amended or unamended CCB.

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, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

One alternative is to not amend the regulations, and allow statutory requirements to govern this process. This approach would be more confusing to the regulated community and agency staff since the regulations and statute would contain different requirements. Revising the regulations would reduce confusion concerning requirements for the use of CCB. Revising the regulations also allows for additional issues that are identified during the NOIRA comment period to be considered during the development of the regulation.

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 hearing is to be held to receive comments on this notice.

The agency 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 background document or other alternatives, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public meeting or by mail, email or fax to Ms. Melissa Porterfield, P.O. Box 1105, Richmond, VA 23218, telephone (804) 694-4238, FAX (804) 698-4346 or email msporterfield@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.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 last day of the public comment period.

A public meeting will be held and notice of the meeting may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov). Both oral and written comments may be submitted at that time.

Regulatory Advisory Panel

Please indicate, to the extent known, if a regulatory advisory panel will be involved in the development of the proposed regulation.

The Board is using a regulatory advisory panel to develop a proposal. In December 2008, a notice was published requesting volunteers to participate on the panel for this regulation. A panel has been established for this regulation.

Family impact

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 byproducts. However, the Coal Combustion Byproduct Regulations have no other direct impact on the institution of the family.