

**Coal Combustion Byproduct (CCB) Regulations
Regulatory Advisory Panel meeting
March 24, 2009**

Meeting attendees

David Bernard- Sierra Club
Brenda Robinson- Environmental Solutions
Bob Waldrop- Full Circle Solutions
Dave Goss- ACAA
Joe Ryder- American Electric Power
Scott Reed- Dominion
Joey O'Quinn- Va. DMME
Danny McCormick- Town of South Boston
Rick Parrish- Southern Environmental Law Center
John Heard- Va. Coal Association
Lee Daniels- Va. Tech

DEQ staff present-

Jason Williams
Debra Miller
Melissa Porterfield
Virginia Butler
Christine Arcari
Aziz Faramand
Don Brunson
Milton Johnston

Other public observers-

Tim Kelley- Joyce Engineering
Daniel Mc Grath- Golder Associates
Christopher Gill- Christian Botton LLP
Rob Braidwood- City of Chesapeake
Cameron Dupolnc- private citizen
Robert Billings- University of Phoenix
Thornton Newlon- Va. Coal Association

Introduction

A meeting of the Regulatory Advisory Panel (RAP) for the Coal Combustion Byproduct (CCB) Regulations took place on March 24th at 10 a.m. DEQ's Central Office. This meeting was open to the public and members of the public were in attendance.

Introductions were conducted. James Golden, Deputy Director for Program Development informed the group that EPA is currently examining requirements for Coal Combustion Byproducts which may impact the group's decisions in the future. That being said there were many issues DEQ wants to discuss with the group.

Ms. Porterfield discussed the process for the minutes of the meeting. Meeting minutes will be circulated informally to group members for review prior to posting on the Virginia Regulatory Town Hall website. Notes will include information on discussions that occur during the meetings and decisions made by the group.

The goal of the group is to discuss topics and concepts and to reach a consensus concerning the topics and concepts discussed. 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. Regulatory Advisory Panel Guidelines for the Coal Combustion Byproduct Amendments were distributed to RAP members.

Background information

DEQ issued a notice seeking volunteers for the RAP in December 2008, and this group has been formed in response to that notice. A Notice of Intended Regulatory Action (NOIRA) has not been filed to date. A public meeting and public comment period will be held in the future in conjunction with the NOIRA. The committee will be notified when the NOIRA is filed. Also the term Technical Advisory Committee or TAC was previously used to describe this group. The name of this group has been changed to Regulatory Advisory Panel or RAP to be consistent with the changes made to the DEQ's public participation guidelines.

The use of telephone meetings was discussed including the Freedom of Information Act requirements that must be met. The group decided to have the option of using telephone conference calls when conducting these meetings. Those interested in participating in the meetings via conference calls need to contact Ms. Porterfield in advance so that arrangements can be made to conduct these meetings.

Topics discussed

Copies of the recommendation of the Technical Review Committee (TRC) from Amendment 7 to the Virginia Solid Waste Management Regulations (VSWMR) were provided to the committee for review. The items listed were not consensus points but were issues that the TRC believed should be discussed further. The RAP will be discussing the issues identified by the TRC during the course of their meetings.

During the 2009 Virginia General Assembly, HB1918 and SB865 passed both the House and Senate and these bills are awaiting signature by the Governor. The legislative text was provided to the group for their review. This legislative requirement will need to be incorporated into the regulatory amendment.

Members of the group were asked to identify additional topics to discuss concerning the regulations that were not identified on the TRC recommendations list. Additional issues identified by members to be discussed at future meetings include:

- ◆ The need for DEQ to investigate and develop a list of pre-existing coal ash sites and a system to evaluate those sites. (a process that is similar to the process used to address abandoned coal mines) A suggestion was also made to create a funding mechanism

to address issues. (A list of the coal combustion byproduct sites created since 1993 (17 to date) will be provided to the group prior to the next meeting for review. The agency informed the committee that conditionally exempt activities are not tracked by the agency and that the agency had no information on activities on CCB sites that were created prior to 1993.)

- ◆ Discussion of activities that DEQ is responsible for as they pertain to CCB sites-inspections etc.
- ◆ Consider creating a tiered approach for CCB sites, and consider having different requirements for different sites.

Discussions took place concerning the modification of the regulations concerning the 2009 legislation. Discussions took place concerning the term base flood which is defined as a 100 year flood. There were discussions concerning whether the 500 year flood plain should be considered instead of the 100 year flood plain. The group requested information on the impact that this change would have on the ability to use coal combustion byproduct at sites. The agency will be contacting the Department of Conservation and Recreation concerning the availability of 500 year flood maps. The agency will provide additional information on the maps to the committee at the next meeting.

The term amended coal combustion byproduct was discussed in relation to the fact that if the statutory language was to be incorporated verbatim, the term amended would need to be defined. There was some discussion concerning what the term amended would mean. One idea would be to define amended as being combined with a cementitious binder as mentioned in the Virginia Solid Waste Management Regulations. No decision was made concerning the definition of amended.

Dr. Lee Daniel's August 8, 2008 memo was distributed to the group. Dr. Daniels summarized the contents of his memo for the group. Separation from the water table and minimizing water infiltration were two key issues that he discussed from his memo. Information was provided to the group concerning how the seasonal water table can be determined. A discussion took place concerning the current requirement for a 2 ft. separation to be maintained between the seasonal high groundwater and the coal combustion byproduct. Discussions took place concerning how the seasonal high water table is determined. Consensus was reached that the 2 ft. separation between the seasonal high water table and the coal combustion byproduct would remain in the regulations. A suggestion was made that the information be certified by a professional geologist or professional engineer. Language concerning the certification to be provided for the site and hydrogeologic and geotechnical report as part of the investigation of the 2 ft separation from groundwater was provided to the group. This language is similar to language that is currently utilized in the VSWMR.

Questions were raised concerning the ability of DEQ to oversee projects and the agency's ability to investigate CCB projects. The current review process that the agency uses to evaluate was explained briefly to the group. CCB projects do not receive a permit, they are self certifying. The agency relies on the certifications of professional engineers and

does not perform technical reviews of information submitted concerning CCB projects. This topic will be discussed further at a future meeting when the administrative process for reviewing these projects is discussed.

Karst terrain and the location of CCB sites was discussed. DEQ will contact DCR to obtain information on the availability of maps detailing Karst areas of the state. DEQ will also be checking with DCR to identify how DCR describes this type of terrain. More discussion is needed on this topic at a future meeting.

The setback distance that a CCB area must be from a well or spring was discussed. There was discussion concerning revising this setback distance from 100 feet to 500 ft to be consistent with the setback requirements in the VSWMR. There was discussion concerning the terminology that should be used to describe the features the setback is applicable to. DEQ will check the language that the health department uses to identify a consistent way to describe this water source. There was also discussion concerning the terminology used to describe the distance to a surface water body. Further discussion is needed on this topic. The agency will be drafting some revised wording for the group to review concerning these setbacks.

The agency also discussed with the group the addition of a setback requirement from residences, buildings/structures, schools and licensed daycare centers. The group discussed the concept of including this additional setback requirement for new sites. Questions concerning how the setbacks are to be measured were discussed. Further discussion of this topic is needed.

The concept of adding public notification and/or participation requirements to the regulations was discussed with the group. The group discussed that there were benefits of public participation. The agency will work to develop a list of different ways public notification and or public participation could be conducted. Future discussions will be held on this topic at a future meeting.

The committee was given a brief update on EPA's recent activity concerning CCB. It is anticipated that EPA will be making some decisions concerning surface impoundments storing CCB in April.

Phased filling of sites was discussed and consensus was reached that the idea was a good one and that language should be developed by the agency and presented to the committee. The details of this requirement will need to be discussed at a future meeting.

The issue of requiring weekly or daily cover was also discussed by the group. There was some discussion that this requirement would be problematic since it is difficult to remove this cover to reapply additional CCB to a site. One thought was that weekly or daily cover would prevent dust; however, an alternative approach to controlling dust is to wet the site or potentially utilize a material such as posi-shell to control dust. ASTM guidelines- ASTM 2277 addresses dust control.

Topics for future meetings

Ecological Studies

Permeability

Permit Issues- should these sites have a permit? Administrative review of information

Review 100 yr and 500 yr flood maps

Karst maps of Virginia

Public participation

Setback from residences, schools, licensed daycare facilities

Operations- phase filling, control of dust

Financial assurance for future sites- long term responsibility of sites

Mechanism for fund to address problems at site (CCB)