

Coal Combustion Byproduct (CCB) Regulations
Regulatory Advisory Panel meeting #5
July 28, 2009

RAP members present

David Bernard- Sierra Club
Bob Waldrop- Full Circle Solutions
Thomas Adams- ACAA
Joe Ryder- 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
Danny McCormick- Town of South Boston

DEQ staff present-

Jason Williams
Debra Miller
Melissa Porterfield
Leslie Beckwith
Don Brunson
Milton Johnston
James Golden
Mary Judge

Other public observers-

Barbara Brumbaugh- City of Chesapeake
Terry Phillips- Golder Associates
Carrie Pendleton- Geosyntec Consultants
Davis Phaup- ODEC
Thornton Newlon- Va. Coal Association

Introduction

A meeting of the Regulatory Advisory Panel (RAP) for the Coal Combustion Byproduct (CCB) Regulations took place at 10 a.m. on July 28th at DEQ's Central Office in Richmond. This meeting was open to the public and members of the public were in attendance.

The group was reminded that the goal was to work together at these meetings on issues to reach consensus.

The NOIRA comment period for the CCB Regulations began on June 8, 2009 and ended July 10, 2009. Members of the RAP were provided with a summary of comments received. Comments were submitted by Dominion but were not received during the NOIRA comment period and were not distributed to the RAP. However if a RAP

member would like a copy of the comments, Ms. Porterfield offered to provide them. The comments received during the comment period were general in nature and raised issues that the RAP has previously discussed.

Topics discussed

Closure Criteria

At the last meeting, the group discussed including three options for capping a CCB site into the proposed regulations. The three options include a compacted soil option, a compacted FFCP option, and a geosynthetic liner. In conjunction with the capping requirements, vegetation restrictions would be placed upon the site. Additional discussion took place concerning adding a requirement to include an additional 6 inches of soil, in addition to the 24 inches of soil being placed on top of the FFCPs as part of the compacted soil option. This would increase the amount of soil above the soil barrier layer to 18 inches of uncompacted soil and match the amount of soil required to be placed above the compacted FFCP layer. No consensus was reached on requiring an additional 6 inches of soil to be added to the 12 inches of soil required to be placed on top of the compacted soil layer as part of the soil option.

The group also discussed whether the soil under the topsoil layer should be capable of sustaining growth of indigenous plant species or species adapted to the area. The RAP reached consensus that there was not a need for the 12 inches of soil that acts as the protection layer to be capable of sustaining growth of indigenous plant species or species adapted to the area, but that the layer should be able to sustain plant rooting. The RAP also discussed the soil protection layer and discussed if the soil layer should be compacted. There was concern that if this layer was to become too compacted, that the compaction would restrict root growth. With normal spreading of the soil, some compaction will occur, but over compaction should be avoided. Revising the language to state that the 12 inches of soil acting as the protection layer in the compacted FFCP and geosynthetic options should address this concern since over compacted soil would restrict root growth.

The group also discussed the use of the terms soil and earthen material in the description of the closure requirements. The RAP reached consensus on using the term earthen material to describe the compacted barrier layer in the soil option, and the protective layer in the compacted FFCP option and the geosynthetic option. The term soil will be used to describe the uppermost layer to be applied as part of the cap of at FFCP site.

Consensus was also reached on revising the standard for the geosynthetic membrane to be 40 mils HDPE or equivalent.

Discussion also took place concerning whether or not vegetative cover would be required to be established prior to a site being closed. There was discussion concerning the Erosion and Sediment Control plan required for these sites and how a requirement for vegetation to occur on the site under these regulations would interact with requirements of Erosion and Sediment Control plans. Adding a requirement to the regulations to

specify that vegetation shall be established on the site was discussed. Including a time period during which vegetation shall be established was discussed, as well as the challenges faced with establishing vegetation.

Restricting future disturbance of the site was also discussed by the RAP. Language circulated to the RAP by the agency addressed the disturbance of the cap for installation of utilities. The RAP suggested and reached consensus on revising this to include all disturbances of the cap. The final cover is required to be maintained. The RAP also reached consensus that these sites should be inspected semiannually by the owner or operator to verify that the final cover is being maintained.

The RAP also discussed disturbance of the final cover due to installation of pavement that prevents infiltration. If the final cover is disturbed and pavement is installed, the pavement must minimize infiltration into the subsurface. This language addresses the use permeable pavement, which would not prevent infiltration into the FFCP fill site.

Consensus was reached concerning the note to be placed on the deed. The note on the deed will state that the future owner or operator has an obligation to restrict disturbance, maintain final cover, and comply with the applicable requirements of 9 VAC 20-85-10 et seq.

Public notification/participation

The RAP again discussed public notification and public participation. Members of the RAP have not reached consensus on the level of involvement DEQ should have in the public notification/participation process, nor is there consensus of the group that public participation should be required for these projects. Concerns were expressed that including public comment would cause delays that would make projects less competitive with dirt filling. Many members of the RAP suggested that DEQ play a role in public meetings, if only to serve in an informational role to inform the public about the applicable regulatory requirements.

Draft language circulated by the agency contained three categories of sites, and the categories were based on the amount of fossil fuel combustion products (FFCP) to be used as fill at the site. Different public notification requirements would be required for each category, and public notification requirements would increase as the amount of fill material to be placed on the site increases. At a minimum a sign would be required to be placed on the site. The group discussed the size categories listed by the agency and attempted to help members of the RAP visualize the volume of the material by equating the amounts to football field sizes and number of trucks that would hold the volume of FFCP listed in relation to the three categories.

The RAP discussed the concept of publishing a notice in a newspaper as a method to use to inform the public of proposed activities for a site. Consensus was only reached on the concept of using a notice published in a newspaper to inform the public, contingent upon further discussions occurring concerning issues surrounding any required notice such as

when the notice would be required, information to be provided in the notice and timing of the notice.

An idea was discussed that if a public informational meeting was to be required by the regulations, that a meeting conducted for the site as part of satisfying a meeting requirement to receive an approval from the locality, or as part of a rezoning project, that the previous meeting would satisfy the meeting requirement of the regulations. If public meetings are held for a purpose other than to satisfy these requirements, it should be clear that FFCP would be used at the site. Public meetings and who should conduct the meetings as well as the role DEQ should play in the meetings was discussed.

There was a suggestion made to make the meetings held informational in nature, and to not have a comment period that was supported by multiple members of the RAP.

Alternative language for public participation was presented by a RAP member that provided for notice by mail to adjacent property owners and an opportunity to submit comments to DEQ during the 30 day review period after the owner or operator of the project submits the information to DEQ required by 9VAC-20-85-150 was discussed by the RAP.

Consensus was reached by the RAP concerning the posting of a sign, the wording of the sign, and the amount of time the sign would be required to be posted. The sign would contain the following information- Proposed Coal Ash Fill Project, Questions- (provide phone #, e-mail or website). The agency's regional office phone number could also be included on the sign, as long as the owner or operator has previously informed the regional office about the project. Consensus was reached on requiring the sign to be posted 30 days prior to initial placement of FFCP. Consensus was also reached that the sign should be placed on the site prior to or concurrent with submittal of information to the agency. Suggested regulatory language for this concept is as follows "Prior to or concurrent with the submittal of information to the agency, the owner or applicant shall post a sign. The sign shall remain on site no less than 60 days or until initial placement of FFCP." Owners and operators would be required to pay the costs of the signs, and at their option, could include a company logo on the sign. Consensus was not reached on the required size of the sign.

No additional meetings have been scheduled for the CCB RAP.