

**Coal Combustion Byproduct (CCB) Regulations**  
**Regulatory Advisory Panel meeting #4**  
**June 11, 2009**

Meeting attendees

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  
William Hopkins- Va. Tech  
Harry Gregori - Environmental Solutions  
Joey O'Quinn- Va. Dept.

DEQ staff present-

Jason Williams  
Debra Miller  
Melissa Porterfield  
Leslie Beckwith  
Don Brunson  
Aziz Farahmand  
Becky Dietrich  
Milton Johnston

Other public observers-

Barbara Brumbaugh- City of Chesapeake  
Terry Phillips- Golder Associates  
Tim Kelley- Joyce Engineering

Introduction

A meeting of the Regulatory Advisory Panel (RAP) for the Coal Combustion Byproduct (CCB) Regulations took place at 10 a.m. on June 11<sup>th</sup> at DEQ's Central Office in Richmond. 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.

The NOIRA comment period for the CCB Regulations began on June 8, 2009 and will 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.

### Topics discussed

#### **Operational Requirements**

The group reviewed the revised operations section. Since the last meeting the references to the regulatory requirements for the runoff from these sites has been revised. A RAP member pointed out that the citation to one of the regulations was incomplete- 9 VAC 25-32 should be 9 VAC 25-31-10 et seq. Also, as agreed to at the last RAP meeting, the regulatory language adding a requirement for sites larger than 15 acres to be developed in phases was included in the draft operations section prepared for discussion at the June 11<sup>th</sup> meeting.

At the May RAP meeting 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. The agency prepared language for the RAP to review and there was consensus on including this language into the regulations.

#### **Closure Criteria**

The group discussed multiple options for final cover systems on Fossil Fuel Combustion Products sites. The discussions included concerns with the depth of soil that should be included in the final cover above the layer meeting the required hydraulic conductivity ( $1 \times 10^{-5}$  cm/sec). There was discussion concerning the measures needed to protect the impermeable layer from freeze and frost as well as root penetration. Prevention of erosion was also a concern. Two different proposals were discussed, and after discussion the following two options were arrived at for further consideration. The two final cover options discussed include the following-

12 inches soil (which includes the 6" vegetative layer)

12 soil with hydraulic conductivity  $1 \times 10^{-5}$  cm/sec

Coal Combustion Byproduct

With a requirement that no vegetation will be placed on the site that will penetrate a root depth of 12 inches

or

6 inches soil vegetative layer

12 inches soil

Top 12 inches of Coal Combustion Byproduct meeting hydraulic conductivity  $1 \times 10^{-5}$  cm/sec or geomembrane

With a requirement that no vegetation will be placed on the site that will penetrate a root depth of 18 inches

The installation of a geosynthetic membrane was also an option that could be included in the regulations; however, many on the group believed that this option would not be selected for use, but did not disagree with including this as an option in the regulations. The agency will revise the closure standards and present the revisions to the RAP at the next meeting. There was discussion about the language needed to describe the prohibition concerning the type of vegetation that would be prohibited on the cap. The agency will work with Dr. Daniels to find information on how to define the prohibition concerning placing specific vegetation on the site. This information will be presented to the RAP at the July meeting. It was also discussed that if vegetation with deeper roots needs to be planted on the cover, then additional soil will need to be placed to address protection of the barrier layer.

### **Administrative requirements**

Submission of the pH of the fossil fuel combustion byproduct will not be required to be submitted to the agency.

There was also a request from a RAP member to change the term “applicant” throughout the section to owner or operator to be consistent with other sections of the regulations. Language was also submitted at the meeting to clarify when the 30 day administrative review period begins. The Department’s completeness review period begins the day it receives notification from the owner or operator of an FFCP fill project. In the event that the department notifies the owner or operator of a deficiency in that notification, then the department’s 30 day review period would begin again after the owner or operator submits information to the department that corrects deficiencies identified by the department, not 30 days from the original submission of deficient information. The agency will review these suggestions and provide feedback to the RAP at the next meeting.

The agency presented information to the RAP concerning the issue with the owner or operator’s responsibility to meet all regulatory requirements if they proceed with the project prior to the agency completing review of the project. Consensus was reached on including this language into the regulations.

Consensus was also reached concerning requiring public participation to re-occur if changes are made to the design plan of the project.

A suggestion was also made to revise the language in the general section 9 VAC 20-85-150 9. to simply reference the submission of information required in the public comment section.

### **Public Participation**

The agency reiterated that it intends to include public participation in the proposed regulations. The agency provided draft language to the RAP for review. One member expressed concern with the wording of the regulations associated with the agency’s ability to extend comment periods. There was concern that the wording would allow the

agency to extend comment periods numerous times to delay a project which was not the intent of the agency. The agency will review this language and provide the RAP with revised language.

The RAP also discussed the agency conducting the public notice after the owner or operator submits information for review. There was some concern expressed by RAP members that the public would feel that their comments would be more appropriately addressed by the agency than the owner or applicant. Some believe that DEQ should be a participant in the comment process and should receive and review comments, not the applicant. Other members remain opposed to conducting public notice on these projects.

The RAP also discussed the concept of having different public notification requirements based on site size or volume of material used. This approach was not agreed to by RAP members.

In general, the RAP has not reached any agreement on the process for conducting public notification or public participation for CCB projects.

### **Ecological studies**

The agency briefed the RAP on the availability of information on threatened and endangered species available from the Department of Conservation and Recreation and the Department of Game and Inland Fisheries. Both agencies have review processes that can be used to investigate the potential presence of threatened and endangered species on a specific site. Not all development projects require a search for the presence of threatened or endangered species. Most searches are conducted as a result of federal funding being utilized on a project or due to federal permit requirements. Consensus was reached by the RAP to not include a requirement in the CCB regulations to perform a search for threatened or endangered species since other similar projects are not currently required to perform this type of study. Not adopting a requirement for an ecological study to be conducted does not relieve the owner or operator from avoiding impacts to threatened or endangered species.

### **Maximum Seasonal Water Table**

The RAP discussed including a definition of maximum seasonal water table into the regulations. After discussing the different methods for identifying the maximum seasonal water table, the RAP discussed and reached consensus on including a definition of seasonal high water table. The definition discussed for inclusion in the regulations is one used by the Soil Conservation Service, US Dept. of Agriculture which states- "Seasonal high water table means the highest level of a saturated zone (the apparent or perched water table) over a continuous period of more than 2 weeks in most years, but not a permanent water table."

The next meeting of the CCB RAP is scheduled for 10 a.m. Thursday July 28, 2009 at the DEQ Central Office in downtown Richmond. At this time, this is the last scheduled meeting of this group. If another meeting is needed, it will likely be scheduled for September 2009.