

Coal Combustion Byproduct (CCB) Regulations
Regulatory Advisory Panel meeting #6
December 8, 2009

RAP members present

David Bernard- Sierra Club
Bob Waldrop- Full Circle Solutions
Joe Ryder- American Electric Power
Lisa Moerner- Dominion
Rick Parrish- Southern Environmental Law Center
Thornton Newlon- Va. Coal Association
Lisa Cooper- PMI Ash Technologies
Bill Hopkins- Va. Tech
Danny McCormick- Town of South Boston
David Spears- DMME
Brenda Robinson- Environmental Solutions

DEQ staff present-

Jason Williams
Debra Miller
Melissa Porterfield
James Golden

Other public observers-

Barbara Brumbaugh- City of Chesapeake
Terry Phillips- Golder Associates
John Payne- AECOM
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 December 8th at DEQ's Central Office in Richmond. This meeting was open to the public and members of the public were in attendance.

Melissa Porterfield welcomed the group to the meeting. James Golden began with talking points regarding the process and why we have reconvened the RAP for this meeting. Melissa then provided an update on the regulatory process.

A RAP member wanted to propose that there be no further action on these regulations until EPA puts out their regulations which are due to be released this month. There were other members present that agreed with this point of view. Others expressed the point of view that there is still uncertainty in when EPA will have a final regulation and that they did not believe the agency should delay work on developing this proposal. Melissa Porterfield summarized that even though there are individuals that believe that the proposal should be held, there are topics dealing with the regulations that need to be

discussed. RAP members were provided an opportunity to review and provide feedback to Melissa Porterfield on draft language in November. In response to feedback received there are additional issues to be discussed.

Groundwater Monitoring

At this point in time, the agency is considering removing the groundwater monitoring requirement from the proposal; however the agency wants to receive feedback and discuss the concept of including groundwater monitoring in the regulations.

Views were expressed supporting the inclusion of groundwater monitoring as well as views that groundwater monitoring should not be included for these sites. No consensus was reached concerning groundwater requirements for CCB sites.

Those supporting inclusion of groundwater monitoring indicated that there needs to be verification of the performance standards included in the regulations. There was also concern expressed with how this monitoring requirement will be enforced after closure.

Those opposing inclusion of monitoring requirements stated that there had been information provided by an expert in previous meetings that the sites should be designed to be isolated from groundwater and that the sites should prevent water from rising into the CCB material. A statement was made that the additional requirements (excluding groundwater monitoring) proposed to be added to the regulations such as requirements for permeability, cover and hydrogeological reports were discussed and agreed upon by this RAP specifically for the protection of groundwater. A member of the RAP that opposes inclusion of groundwater monitoring indicated that if groundwater monitoring is to be included in the proposed regulations, that the entire process of discussions by the RAP must be revisited. Cost associated with monitoring these sites was expressed as a concern as well as the perception that monitoring these sites will give to the beneficial use of these materials.

General comments were made concerning how these rules would impact existing sites—those in place prior to the effective date of the regulations. There were also comments made that the tiered approach of requiring groundwater monitoring for complex sites made sense.

Maximum amount of CCB to be placed on a site

Members of the RAP had previously provided written feedback to the agency concerning the inclusion of a maximum amount of material that could be placed on a site under the CCB regulations. The maximum amount of material to be placed on a site was discussed. There was discussion surrounding the concern that limiting the amount of material would possibly cause more smaller sites to be developed and that it may be more appropriate for the material to be placed in less places in larger quantities. There were comments made that larger sites could be properly engineered and one industry representative stated that their preference was to develop larger sites vs. smaller sites. The economic benefit for larger projects was discussed as well. Some members strongly objected to the inclusion of a maximum amount of material that could be placed on a site in the regulations.

One member indicated that they were concerned with the use of this material under these regulations as a way to circumvent regulations concerning the proper disposal of this material. The concept of defining beneficial reuse was suggested as a way to address this concern.

Tiers as they relate to the review of projects and public notification

If a tiered approach is included in these regulations, the tiers would apply to the public notification and the review of projects.

There was no consensus on the issue of tiers, the review of projects and public notification.

The concept of having a registration statement for some smaller sites was discussed. Concern was expressed that all sites should receive the same level of scrutiny, while others supported the concept of registration statements for smaller sites. Some indicated that the smallest tier, 50,000 yd³ was too small of a threshold and that that number should be raised.

One member stated that tiers might be more appropriately used for the public participation requirements only. Other members indicated they liked the tiered approach based on having more requirements for larger sites. The unresolved question is how to establish the breakpoints for the tiers.

Melissa Porterfield asked members to indicate their opinion for using a two tier approach to public notification, category 1 – post a sign and category 2 post a sign and place a notice in a newspaper. This idea was embraced by some but others were concerned that this would not provide adequate notice. James Golden discussed with the RAP public notice and the value of conducting public notice. Who should receive and respond to comments received is an issue of concern.

Melissa Porterfield provided the RAP with three options concerning tiers and allowed them to think about which option they liked the most. The three options were:

Option A - Retain 3 tiers and make GW monitoring applicable only to the largest category sites

	Size	Public notification	Project review	Groundwater Monitoring
Category 1	up to 50,000 yd ³	Post sign	Registration statement (14 days)	Not required
Category 2	50,001 yd ³ to YYY,000 yd ³	Post sign and publish notice	Completeness review of materials & technical review	Not required
Category 3	YYY,001 yd ³ to ZZZ,000 yd ^{3*}	Post sign and publish notice	Completeness review of materials & technical review	Required?

		concerning public meeting	of GW plan	
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Option B - revise the number of tiers from three to two and change the category sizes

	Size	Public notification	Project review	Groundwater Monitoring
Category 1	up to 50,000 yd ³	Post sign	Completeness review of materials	Not required
Category 2	50,001 yd ³ to upper limit yd ³	Post sign and publish notice concerning public meeting	Completeness review of materials & technical review of GW plan	Required?

Option C- Have the same requirements for all sites

	Size	Public notification	Project review	Groundwater Monitoring
All sites	up to upper limit yd ³	Post sign and publish notice concerning public meeting	Completeness review of materials & technical review of GW plan	Required?

Individuals were given the opportunity to identify which option they liked the most out of the three and state the reason why and how they suggested changing the option. This provided the agency with feedback concerning the various options available and no one option was favored by members of the RAP. One individual indicated they did not like any of the options. As there were many different options concerning the tiered approach, no consensus was reached for including any of the following options into the regulation.

Time limits for DEQ review were discussed and some members believe that there needs to be a limit on the amount of time DEQ has to review a project. The current language is 30 days and one individual has advocated retaining that requirement in the regulations.

Conclusion

After discussing the topics listed above, the RAP revisited the idea of whether a proposal should be taken to the Waste Board next week. The general consensus is that the proposal should be held until EPA releases a proposal in December 2009. There was concern with the agency waiting until EPA finalized a CCB rule, but that waiting the few weeks to see the EPA proposal would be the recommendation of the group.

The meeting ended at 12:10 p.m.