

The amendment to Regulation .06 under COMAR 20.61.03 **Renewable Energy Credit** is being withdrawn at this time.

This action was considered by the Public Service Commission at a scheduled public rule-making meeting, notice of which was given under State Government Article, §10-506, Annotated Code of Maryland. This action, which was proposed for adoption in 35:12 Md. R. 1150 — 1151 (June 6, 2008), has been adopted as proposed.

Effective Date: December 1, 2008.

TERRY J. ROMINE
Executive Secretary
Public Service Commission

Title 26 DEPARTMENT OF THE ENVIRONMENT

Notice of Final Action

[07-320-F]

On October 30, 2008, the Secretary of the Environment adopted:

(1) Amendments to Regulations .02 and .04 under **COMAR 26.04.07 Solid Waste Management**;

(2) New Regulations .01 — .08 under a new chapter, **COMAR 26.04.10 Management of Coal Combustion Byproducts**;

(3) New Regulation .08 under **COMAR 26.20.24 Special Performance Standards**; and

(4) New Regulations .01 — .12 under a new chapter, **COMAR 26.21.04 Utilization of Coal Combustion Byproducts in Noncoal Surface Mine Reclamation**.

This action, which was proposed for adoption in 34:26 Md. R. 2287 — 2298 (December 21, 2007), has been adopted with the nonsubstantive changes shown below.

Effective Date: December 1, 2008.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

26.04.10 Management of Coal Combustion Byproducts

Authority: §1-404 is being added to the section that cites the Authority for the regulation.

Regulation .02B(2)(a): In response to public comments, the definition of “beneficial use” is being revised. These changes are made to address the concerns of commentors that the definition was unclear and that the term “contribute to adverse effects” was not an appropriate standard for determining whether a use should be considered “beneficial”. After considering the comments, the agency believes that providing a risk-based standard is more appropriate. The term “as determined by the Department” is being added as suggested by public comment because the agency is tasked with making these types of determinations. These changes do not decrease, in a significant way, the benefits

that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .02B(3)(b): In response to public comment, the word “flyash” is being replaced with “fly ash” to be consistent throughout the regulations.

Regulation .02B(4): In response to public comments, the definition of “coal combustion byproducts facility” is being revised and changed to “coal combustion byproducts disposal facility”. The changes clarify the definition, which several commentors found overbroad and confusing. Because the term “coal combustion byproducts facility” was used in the proposed regulations and is used in the final regulations principally in the context of disposal, this change clarifies the regulation and removes extraneous terms from the definition. It does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .02B(9): In response to public comment, the stand-alone definition of “facility” is being deleted and incorporated into the definition of “coal combustion byproducts disposal facility.” Several commentors found the definition confusing and unnecessary. Recognizing the context in which the term is used in the regulations, the change is being made to clarify and simplify the regulation by incorporating it into the definition of “coal combustion byproducts disposal facility”. The term “facility” is still used in this chapter as an undefined, generic term. Because it is commonly understood in the context in which it is used, the agency does not believe it needs to be defined separately. This change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .02B(9) — (13): These subsections are being renumbered because of the deletion of the former Regulation .02B(9).

Regulation .02B(13) and (14): These changes correct the numbering to reflect the deletion of Regulation .02B(9) and reflect the change to the definition of “coal combustion byproducts facility”. The use of the terms “facility, site and storage system” instead of “coal combustion byproducts facility” clarifies the regulation because the terms “operator” and “owner” are used in this chapter only in the context of storage. These changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .02B(15) — (23): These subsections are renumbered because of the deletion of the former Regulation .02B(9).

Regulation .03B(1): This change is made in response to public comment to clarify that previously authorized coal combustion byproducts disposal facilities operating under Regulation .04E may operate without being in violation of Regulation .03B(1). The change is necessary to make Regulations .03B(1) and .04E consistent with one another, and therefore, the change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .03B(2): This change is made to reflect the change to the definition of “coal combustion byproducts facility”.

Regulation .04B: This change is made to reflect the change to the definition of “coal combustion byproducts facility”.

Regulation .04C: This change is made in response to public comment to clarify the identity of the person who will apply for a permit under this section. The date in this section is also being updated so it is more closely tied to the effective date of the regulations. The revisions do not change the requirement that a person must apply for a permit before constructing a new coal combustion byproducts disposal facility, and therefore, the changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .04D: This change is made to reflect the change to the definition of “coal combustion byproducts facility” and to update the date so it is more closely tied to the effective date of the regulations.

Regulation .04E: This change is made to reflect the change to the definition of “coal combustion byproducts facility”, and to update the date so it is more closely tied to the effective date of the regulations.

Regulation .04F: This change is made to reflect the change to the definition of “coal combustion byproducts facility”.

Regulation .05C: This change is being made in response to comments that preventing all contact with precipitation is virtually impossible to achieve and that the primary environmental issue of concern is contamination of surface or groundwater. After evaluating the comments, the agency believes that the revised language provides the intended environmental protection. Therefore, this change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .05D(2): This change is made in response to comments received that a standard of imperviousness is impossible to achieve. Because the section still contains the same performance standards, deleting the requirement for imperviousness does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation. The word “unlawful” is being added in response to public comment and in recognition of Regulation .03A(3), which allows permitted discharges. This change is being made to be consistent with other requirements of the regulation, and therefore, does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .05E: This change is made in response to comments received that the term “near” is vague. After evaluating the comments, the agency believes that the language in the regulation (“in an area likely to pollute”) provides the intended environmental protection. Therefore, the change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .05F: This change is necessary because of the change to the definition of “coal combustion byproducts facility”. Using the undefined terms “facility” and “site” instead of the previously defined term “coal combustion byproducts facility” is clearer and accomplishes the same objective. Therefore, this change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

nificant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .05H: This change is necessary because of the change to the definition of “coal combustion byproducts facility” and to be consistent with Regulation .05F which provides that the responsibility for control, containment, releases, and clean up will be with the owner and operator of the facility or site (previously, coal combustion byproducts facility) and storage system. This change clarifies the regulation, accomplishes the same objective intended by the proposed regulation, and provides consistency with the requirements of Regulation .05F. Therefore, this change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .07A: This change clarifies the regulation while accomplishing the same objective as the proposed language. Persons impacted by the regulations may still apply for a variance as provided in Regulation .07. Therefore, the change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08A(3): The word “calendar” is being added for clarification. In response to public comments, the regulation is being revised to avoid duplicative reporting. The first annual report will still require information for the last 5 calendar years, and thereafter, information will only need to be reported for the last calendar year. The agency will always still have at least 5 years of reporting data and this change does not affect the nature of the information that needs to be reported; therefore, this change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08A(5): The word “chemical” is being added for clarification in response to a public comment. This change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08A(6) and (7): These sections are being deleted in response to public comments. After reviewing the regulations, evaluating the comments, and noting that inspection rights are already granted by law and in permits, the agency has determined that these provisions are not necessary here. Because these requirements are duplicative of rights the Maryland Department of the Environment already has, this change does not decrease, in a significant way, the benefits that would have been achieved by the regulation as proposed.

Regulation .08A(6) and G: Section A(6) is being renumbered from §A(8) because of the deletion of the former §A(6) and (7). The word “calendar” is being added for clarification. In response to public comments, the regulation is being revised and §G added to avoid duplicative reporting. The first annual report will still require information for the last 5 calendar years, and thereafter, information will only need to be reported for the last calendar year. The agency will always still have at least 5 years of reporting data and this change does not affect the nature of the information that needs to be reported; therefore, this change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08A(6)(a): Information that a generator is required to report is being added to this paragraph because of the deletion of information to be reported under Regulation .08A(6)(c). The information required under this paragraph is substantially the same as the information that was required under the former paragraph (c), except for the removal of specific names and contact information, about which commentors raised confidentiality concerns. That information will still be available to the agency under Regulation .08C, but will not need to be reported. The information that will be available to the agency under the final regulation remains substantially the same as under the proposed regulation; therefore, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08A(6)(b): The word “and” is being deleted because it is not necessary due to reorganization.

Regulation .08A(6)(c): In response to public comments, this paragraph is being deleted to address concerns about the confidentiality of customer and business information. Instead, substantially similar information is required to be reported under Regulation .08A(6)(a), and generators will be required under Regulation .08C to maintain and make available for agency review the more detailed records that were required under the proposed regulation. The information that will be available to the agency under the final regulation remains substantially the same as under the proposed regulation; therefore, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08A(7): This subsection is being renumbered from (9) to (7) because of the deletion of the former §A(6) and(7).

Regulation .08A(7)(a): Information that a generator is required to report is being added to this paragraph because of the deletion of information to be reported under Regulation .08A(7)(c). The information required under this paragraph is substantially the same as the information that was required under the former paragraph (c), except for the removal of specific names and contact information, about which commentors raised concerns that the information is confidential business information and speculative. The information that will be reported under this paragraph is substantially the same as what was proposed under the former paragraph (c) and continues to serve the agency’s objective; therefore, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08A(7)(b): The word “and” is being deleted because it is not necessary due to reorganization.

Regulation .08A(7)(c): In response to public comments, this paragraph is being deleted to address concerns about the speculative and confidential nature of the information requested. Instead, substantially similar information is required to be reported under Regulation .08A(7)(a), which adequately serves the objective of the regulation. The infor-

mation to be reported under the final regulation remains substantially the same as under the proposed regulation; therefore, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08C: This section is being added because Regulation .08A(6)(c) is being deleted in response to public comments. Instead of requiring a generator to disclose information under Regulation .08A(6)(c), a generator will be required by this section to maintain substantially the same information, which will be available for agency review. The term “direct recipient” is being deleted and replaced with alternative language because of comments received that the term was unclear. The information that will be available to the agency under the final regulation remains substantially the same as under the proposed regulation; therefore, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08D: This section is being renumbered from §C to §D because of the insertion of the new §C. Language is being added to this section to reflect the addition of the new §C. Under the proposed regulation, this information would have been reported to the agency; now this information is being maintained and made available to the agency. Therefore, this change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08E: This section is being renumbered from §D to §E because of the insertion of the new §C. The words “chemical constituents” replace the term “pollutants” for clarification, as this is a more accurate term. It better serves the intent of this regulation, which is to identify new constituents in the coal combustion byproducts before they are actually discharged to or pollute the environment. This change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08F: This section is being renumbered from §E to §F because of the insertion of a new §C.

26.20.24 Special Performance Standards

Regulation .08: Authority: §1-404 is being added to the section that cites the Authority for the regulation.

Regulation .08B(2)(a): The words “through processing” are being deleted in response to comments received that the same or better level of net neutralization potential can be achieved by using coal combustion byproducts in conjunction with alkaline materials at a placement site. Deleting the words “through processing” clarifies the regulation because there are different means by which the required net neutralization potential can be achieved, for example, by layering or applying lime in conjunction with the placement of CCBs. This change provides consistency with Regulation .08D(4)(t), which recognizes that different processes and procedures can be used to augment the net neutralization potential of the coal combustion byproducts. This change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation because the CCBs placed at the mine site would still need to exhibit the required net neutralization potential to be con-

sidered alkaline coal combustion byproducts and the same or better environmental results can be achieved through various means. The change also does not increase, in a significant way, the burdens that would have been imposed by the proposed regulation as it provides more flexibility in how the required net neutralization potential can be achieved.

Regulation .08B(2)(b)(ii): In response to public comment, the word “flyash” is being replaced with “fly ash” to be consistent throughout the regulations.

Regulation .08D(4)(k): In response to public comment, boron, lithium, and molybdenum are being added to this paragraph, and the numbering is being corrected to reflect these additions. Under the proposed regulation, a solids analysis was already required, and the agency could require other information. Therefore, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08D(4)(l): A typographical error is being corrected. Also, in response to public comments that testing methods other than a TCLP analysis may be more appropriate in certain circumstances, this paragraph is being revised to provide flexibility as to the type of testing that will be required. Because appropriate testing will still be required and the proposed regulation already required an analysis to be performed, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08D(4)(n): This language is being revised to correct the regulation because the required water quality analysis is to be provided in a utilization request, and there will be situations where a mine drainage control system has not been installed at the time a utilization request is filed. The change does not alter the intent of the section, which is to document background water quality in the utilization area. Also, in response to public comment, boron, lithium, and molybdenum are being added, and the numbering is being corrected to reflect these additions. Under the proposed regulation, a water quality analysis was already required, and the agency could require other information. Therefore, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .08F(1): This change is being made to correct a typographical error.

Regulation .08G: This section is being revised in response to comments received. Commentors were concerned that the provision creates an untenable and impossible compliance standard in that violations that have no environmental impact or that can be easily remedied would automatically require compliance with solid waste laws, which compliance would be impossible. The section is being revised to provide the agency flexibility to determine the seriousness and impact of a violation. This change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation because the agency retains authority to determine the seriousness and environmental impact of a violation and if warranted, subject a violator to applicable laws and regulations for unlawful disposal of a solid waste.

26.21.04 Utilization of Coal Combustion Byproducts in Noncoal Surface Mine Reclamation

Chapter Title: In response to public comment, the word “By-products” is being replaced with “Byproducts” to be consistent throughout the regulations, and the word “Noncoal” is being added for clarification.

Authority: §1-404 is being added to the section that cites the Authority for the regulation.

Regulation .02B(1)(b): In response to public comment, the word “flyash” is being replaced with “fly ash” to be consistent throughout the regulations.

Regulation .02B(6): The defined term “operator” is being deleted because it is not used in this chapter.

Regulation .02B(6) — (16): These subsections are being renumbered because of the deletion of the defined term “operator”.

Regulation .02B(13): This change is being made in response to a comment that the definition of the term “site” is too broad and creates uncertainty as to what it covers. The change in the final regulation clarifies the definition. It does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .02B(16): This change corrects a typographical error.

Regulation .03B(4): The regulation is being revised in response to a comment. The agency agrees with the commenter that the difference in compaction level will have little, if any, environmental impact, and therefore, the change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .03B(6): This subsection is being revised in response to a comment to clarify the regulation and to provide consistency with the language in Regulation .04C(5). This change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .03B(10)(a): Language is being added to this paragraph in response to comments to provide flexibility as to the measures that can be taken to minimize dust. Because the regulation retains the requirement that dust be controlled while providing additional means to do so, the change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .03B(12): This change is being made because the permittee may not necessarily be the owner of the land where the coal combustion byproducts are being placed. To carry out the objective of the regulation, it is necessary to reference the owner of the site. This change clarifies the regulation and is necessary to carry out its intent. The substantive part of the regulation relating to the 200-foot setback is unchanged. Therefore, the change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .03B(13): This change is being made to correct an incorrect COMAR reference.

Regulation .04C(14)(c) and (d): These changes are being made because of the deletion of paragraph (e).

Regulation .04C(14)(e): This provision is being deleted in response to comments received because it contradicts and is inconsistent with Regulation .03B(8). This clarifies the agency's intent that coal combustion byproducts must be immediately placed and not stockpiled, as provided in the proposed and final regulations. Therefore, the change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .04C(17): In response to public comment, the word "by-products" is being replaced with "byproducts" to be consistent throughout the regulations.

Regulation .05B(1): In response to comments received, the word "pollutants" is being replaced with "parameters" and "Sulfate" is being replaced with "Total Sulfur" because in both cases, the terms are more accurate. These changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .05E: The change of the word "pollutants" to "parameters" is being made to be consistent with the change made to Regulation .05B(1).

Regulation .07B(4): In response to a comment, "pollutants" is being replaced with "parameters" because it is more accurate. Because of this change, the phrase "and monitoring parameters" is unnecessary and is being deleted. This change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .07C(7): The reference to certification is being deleted because this is an obsolete reference. The Department of Health and Mental Hygiene no longer certifies laboratories, and the State only certifies laboratories that perform drinking water analysis. This change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .07C(11): This subsection is being clarified because several commentors found the language regarding the timing of resampling unclear. The final regulation continues to require immediate resampling and provides that only in the case of impossibility may the agency approve a longer time period, which would not be longer than the time period provided in the proposed regulation. The language at the end of the provision is being deleted to clarify the regulation. These changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .07C(12): Two typographical errors are being corrected in this subsection. Also, in response to comments received, language is being added regarding notification of the local health department of an exceedance. Under the proposed regulation, a permittee was required to notify the agency of an exceedance. Adding another party to that notification does not increase, in a significant way, the burdens that would have been imposed by the proposed regulation or decrease, in a significant way, the benefits that would have been achieved by the proposed regulation.

Regulation .07C(17): In response to public comments that testing methods other than a TCLP analysis may be more appropriate in certain circumstances, this subsection is being revised to provide flexibility as to the type of testing that will be required. Because appropriate testing will still be required and the proposed regulation already required an analysis, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .07D: The PQL value for arsenic is being revised because this was an error, as pointed out by a comment. The PQL for selenium was also an error and is being corrected. The word "total" is being added to "sulfate" because it is more accurate. In response to public comment, boron, lithium, and molybdenum are being added. Under the proposed regulation, the agency could already require an alternative or additional list of parameters. Therefore, these changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .09H: Language is being added to this provision in response to a comment to clarify certain factors that the agency will consider to determine whether off-site impact will occur. As clarifying language, this change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .10: The regulation is being revised in response to several comments received. Commentors were concerned about how to determine and define "impact" and when they should be required to provide a temporary water supply. The regulation is being revised to clarify that the agency will make these determinations and that an impact may occur off-site. The provision regarding notification of the Department of an impact is being deleted because the agency will be determining what an impact is and because the Department will already be notified of exceedances under Regulation .07C. The other changes in the regulation are clarifying language or changes for accuracy. "Property owners" is being revised because affected individuals may not necessarily be property owners. These changes do not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation or increase, in a significant way, the burdens that would have been imposed by the proposed regulation.

Regulation .12: This regulation is being revised in response to comments received. Commentors were concerned that the provision creates an untenable and impossible compliance standard because violations that have no environmental impact or that could be easily remedied would automatically require compliance with solid waste laws, which compliance would be impossible. The regulation is being revised to provide the agency with flexibility to determine the seriousness and impact of a violation. This change does not decrease, in a significant way, the benefits that would have been achieved by the proposed regulation because the agency retains authority to determine the seriousness and environmental impact of a violation and if warranted, subject a violator to applicable laws and regulations for unlawful disposal of a solid waste.

**Subtitle 04 REGULATION OF WATER SUPPLY,
SEWAGE DISPOSAL, AND SOLID WASTE**
**26.04.10 Management of Coal Combustion
Byproducts**

Authority: Environment Article, §§1-404, 2-301, 9-252, 9-302, 9-313, 9-314,
15-503, 15-702, and 15-803,
Annotated Code of Maryland

.02 Definitions.

A. (proposed text unchanged)

B. *Terms Defined.*

(1) (proposed text unchanged)

(2) *Beneficial Use.*

(a) "Beneficial use" means the use of coal combustion byproducts in a manufacturing process to make a product, or as a substitute for a raw material or commercial product, which, in either case, does not [[contribute to adverse effects]] create an unreasonable risk to public health or the environment as determined by the Department.

(b) (proposed text unchanged)

(3) *Coal Combustion Byproducts.*

(a) (proposed text unchanged)

(b) "Coal combustion byproducts" includes [[flyash]] fly ash, bottom ash, boiler slag, pozzolan, and other solid residuals removed by air pollution control devices from the flue gas and combustion chambers of coal burning furnaces and boilers, including flue gas desulfurization sludge and other solid residuals recovered from flue gas by wet or dry methods.

(4) "Coal combustion byproducts disposal facility" means a facility or site where coal combustion byproducts are [[generated, stored, handled, processed, recycled,]] or will be disposed of, [[or used]] and includes the entirety of any lot or parcel and all contiguous land and structures, other appurtenances, and improvements on the land, which are owned, leased, or used by, or under the control of, the owner or operator.

(5) — (8) (proposed text unchanged)

[[9] Facility.

(a) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the generation, storage, handling, processing, disposal, recycling, or use of coal combustion byproducts, which are owned, leased, or used by, or under the control of, the owner or operator.

(b) "Facility" includes the entirety of any lot or parcel on which generation, storage, handling, processing, disposal, recycling, or use of coal combustion byproducts occurs or has occurred.]]

[[10]] (9) — [[13]] (12) (proposed text unchanged)

[[14]] (13) "Operator" means a person responsible for the overall operation of a [[coal combustion byproducts]] facility, site, or storage system.

[[15]] (14) "Owner" means a person who owns [[a coal combustion byproducts facility or any part of a coal combustion byproducts facility]] all or part of a facility, site, or storage system.

[[16]] (15) — [[24]] (23) (proposed text unchanged)

.03 General Restrictions and Specifically Prohibited Acts.

A. (proposed text unchanged)

B. *Specific Prohibited Acts.*

(1) Operating an Open Dump. Except as provided in Regulation .04E of this chapter, [[A]] a person may not:

(a) — (b) (proposed text unchanged)

(2) Accepting Controlled Hazardous Substances. A person may not accept a material that meets the definition of hazardous waste under COMAR 26.13.02 at a coal combustion byproducts disposal facility unless the facility is in compliance with the permit requirements of COMAR 26.13.07.01.

(3) (proposed text unchanged)

.04 Disposal.

A. (proposed text unchanged)

B. A person shall dispose of coal combustion byproducts only in a coal combustion byproducts disposal facility or a solid waste acceptance facility that has been authorized by the Department for the disposal of coal combustion byproducts.

C. On or after December 1, 2008, before a new coal combustion byproducts disposal facility may be constructed, [[A]] a person [[who wants to dispose of coal combustion byproducts in a new coal combustion byproducts facility constructed after April 1, 2008,]] shall apply for a permit for an industrial waste landfill under Environment Article, §9-204, Annotated Code of Maryland, and comply with the requirements for industrial waste landfills in COMAR 26.04.07 to the satisfaction of the Department, including but not limited to:

(1) — (5) (proposed text unchanged)

D. A new coal combustion byproducts disposal facility [[that will accept coal combustion byproducts for disposal]] may not be constructed or operated on or after [[April]] December 1, 2008 unless a permit for an industrial waste landfill has been issued by the Department authorizing the facility.

E. A coal combustion byproducts disposal facility that the Department has authorized for the disposal of coal combustion byproducts before [[April]] December 1, 2008, may continue to operate under the Department's authorization, except that the Department reserves the right to modify an existing authorization to require additional controls or requirements as it considers necessary to protect public health and the environment or to prevent nuisance conditions.

F. An existing coal combustion byproducts disposal facility that intends or proposes to expand beyond its current authorization or operations shall notify the Department in writing. The Department may impose additional controls or requirements on the expansion of the facility as it considers necessary to protect public health and the environment or to prevent nuisance conditions, including, but not limited to, a requirement that the proposed expansion obtain a refuse disposal permit for a new industrial waste landfill or other solid waste acceptance facility as the Department considers appropriate, in accordance with applicable regulations.

.05 Storage.

A. — B. (proposed text unchanged)

C. A person shall store coal combustion byproducts in a manner that prevents contact with [[precipitation and the]] waters of this State and that is designed either to minimize contact with precipitation or to collect leachate that may result from contact with precipitation.

D. A person may not use a storage system for coal combustion byproducts unless the storage system is:

(1) (proposed text unchanged)

(2) [[Constructed of impervious materials and provided]] Provided with a roof or other protections to prevent nuisance, air pollution, and unlawful discharges of contaminated stormwater or leachate to the waters of this State.

E. A person may not store coal combustion byproducts ~~[[near or]]~~ in an area likely to pollute the waters of this State.

F. Responsibility for the prompt control, containment, and removal of any released coal combustion byproducts or for placing coal combustion byproducts in a position likely to pollute the waters of this State shall be with the person responsible for the release, and with the owner and operator of the ~~[[coal combustion byproducts]]~~ facility, site, or storage system where the release occurred. This responsibility shall continue until removal or clean up of any contamination or pollution from the release has been accomplished to the satisfaction of the Department.

G. (proposed text unchanged)

H. The owner and operator of a facility, site, or storage system shall ensure that:

(1) — (3) (proposed text unchanged)

.07 Variances.

A. ~~[[An owner, operator, or person proposing to generate, store, handle, process, recycle, dispose of, or use coal combustion byproducts]]~~ A person may apply to the Department for a variance from one or more of the provisions of this chapter.

B. — D. (proposed text unchanged)

.08 Reporting.

A. A generator of coal combustion byproducts shall maintain records of, and deliver to the Department by March 1 of each year an annual report that contains, the following:

(1) — (2) (proposed text unchanged)

(3) The annual volume of coal combustion byproducts generated during the last 5 calendar years, including an identification of the different types of coal combustion byproducts generated and the volume of each type generated, except that after a generator has submitted its first annual report, which shall report the information in this subsection for the last 5 calendar years, subsequent annual reports need only provide the information in this subsection for the last calendar year;

(4) (proposed text unchanged)

(5) All laboratory reports of all chemical characterizations of the coal combustion byproducts;

~~[[6]]~~ A statement that authorizes the Department staff to conduct inspections of the processes that generate the coal combustion byproducts;

(7) A statement that authorizes the Department staff to collect samples of the coal combustion byproducts;]]

~~[[8]]~~ (6) ~~[[A]]~~ Except as provided in §G of this regulation, a description of how the generator disposed of or used its coal combustion byproducts in the last 5 calendar years, identifying:

(a) The types and volume of coal combustion byproducts disposed of or used, the location of disposal, mine reclamation and use sites, and the type and volume of coal combustion byproducts disposed of or used at each site; and

(b) The different uses by type and volume of coal combustion byproducts; [[and

(c) The names, addresses, and telephone numbers of the direct recipients of the coal combustion byproducts, the type and volume of coal combustion byproducts provided to each recipient, and, if known, how each recipient used the coal combustion byproducts; and]]

~~[[9]]~~ (7) A description of how the generator intends to dispose of or use its coal combustion byproducts in the next 5 years, identifying:

(a) The types and volume of coal combustion byproducts intended to be disposed of or used, the location of in-

tended disposal, mine reclamation and use sites, and the type and volume of coal combustion byproducts intended to be disposed of or used at each site; and

(b) The different intended uses by type and volume of coal combustion byproducts [[; and]].

~~[[c]]~~ The names, addresses, and telephone numbers of the intended recipients of the coal combustion byproducts, the type and volume of coal combustion byproducts intended to be provided to each recipient, and, if known, how each recipient intends to use the coal combustion byproducts.]]

B. (proposed text unchanged)

C. A generator shall maintain records of the names, addresses, and telephone numbers of the persons to whom the generator sold, transferred, or provided coal combustion byproducts for disposal, storage, use, or recycling; the type and volume of coal combustion byproducts provided to each person; and, if known, how each person disposed of, used, or recycled the coal combustion byproducts.

~~[[C.]]~~ D. The generator shall maintain all records required by §§A and C of this regulation for a minimum of 5 years and shall make the records available to the Department upon request.

~~[[D.]]~~ E. If changes in the raw materials or processes used by a generator result in the identification of new [[pollutants]] chemical constituents in the coal combustion byproducts, the generator shall submit a report to the Department, identifying the new [[pollutants]] chemical constituents and the change in raw materials or processes that resulted in the creation of the new [[pollutants]] chemical constituents.

~~[[E.]]~~ F. (proposed text unchanged)

G. After a generator has submitted its first annual report, which shall report the information in §A(6) of this regulation for the last 5 calendar years, subsequent annual reports need only provide the information in §A(6) of this regulation for the last calendar year.

Subtitle 20 SURFACE COAL MINING AND RECLAMATION UNDER FEDERALLY APPROVED PROGRAM

26.20.24 Special Performance Standards

Authority: Environment Article, §§1-404, 15-503 and 15-702, Annotated Code of Maryland

.08 Utilization of Coal Combustion Byproducts.

A. (proposed text unchanged)

B. Definitions.

(1) (proposed text unchanged)

(2) Terms Defined.

(a) “Alkaline coal combustion byproducts (ACCBs)” means coal combustion byproducts which, either naturally or [[through processing]] by the addition of lime or other alkaline materials, exhibit a net neutralization potential of 5 tons per 1,000 tons CaCO₃ equivalent or greater.

(b) Coal Combustion Byproducts.

(i) (proposed text unchanged)

(ii) “Coal combustion byproducts” includes [[fly-ash]] fly ash, bottom ash, boiler slag, pozzolan, and other solid residuals removed by air pollution control devices from the flue gas and combustion chambers of coal burning furnaces and boilers, including flue gas desulfurization sludge and other solid residuals recovered from flue gas by wet or dry methods.

(c) — (d) (proposed text unchanged)

C. (proposed text unchanged)

D. Coal Combustion Byproducts Utilization Request.

(1) — (3) (proposed text unchanged)

(4) *The utilization request shall be signed and certified by a duly authorized official of the person proposing to utilize the coal combustion byproducts and shall include at a minimum the following information:*

(a) — (j) (proposed text unchanged)

(k) *A copy of a solids analysis of the coal combustion byproducts, performed within the last 60 days, which at a minimum provides analysis for the following:*

(i) — (iii) (proposed text unchanged)

(iv) *Boron;*

[[iv]] (v) — [[vii]] (viii) (proposed text unchanged)

(ix) *Lithium;*

[[viii]] (x) — [[ix]] (xi) (proposed text unchanged)

(xii) *Molybdenum;*

[[x]] (xiii) — [[xii]] (xv) (proposed text unchanged)

(l) *A copy of a Toxicity Characteristics Leaching [[Procedures]] Procedure (TCLP) leachate analysis, or other test approved by the Department, of the coal combustion byproducts, performed within the last 60 days, which at a minimum includes analysis for the following:*

(i) — (xii) (proposed text unchanged)

(m) (proposed text unchanged)

(n) *A copy of water quality analyses for the [[mine permit drainage control system]] proposed coal combustion byproducts utilization area, performed within the last 60 days, which provides analysis for the following parameters:*

(i) — (ix) (proposed text unchanged)

(x) *Boron;*

[[x]] (xi) — [[xiv]] (xv) (proposed text unchanged)

(xvi) *Lithium;*

[[xv]] (xvii) — [[xvi]] (xviii) (proposed text unchanged)

(xix) *Molybdenum;*

[[xvii]] (xx) — [[xx]] (xxiii) (proposed text unchanged)

(o) — (u) (proposed text unchanged)

E. (proposed text unchanged)

F. *Testing and Monitoring. Before using ACCBs in a surface coal mining and reclamation operation or in an abandoned coal mine, and annually thereafter or on such other basis as the Bureau may require, a person using or proposing to use ACCBs shall:*

(1) *Submit to the Bureau a chemical analysis of the ACCB that includes a Toxicity Characteristic Leaching [[Procedures]] Procedure (TCLP), an acid-base accounting, and any other analysis required by the Bureau; and*

(2) (proposed text unchanged)

G. *A utilization of coal combustion byproducts in a surface coal mining and reclamation operation or in an abandoned coal mine that is not in compliance with the provisions of this regulation as determined by the Department [[is]] may be a disposal of a solid waste as determined by the Department and [[is]] subject to all applicable laws and regulations governing the disposal of a solid waste, including applicable permit requirements of the Department.*

H. (proposed text unchanged)

Subtitle 21 MINING

26.21.04 Utilization of Coal Combustion [[By-products]] Byproducts in Noncoal Surface Mine Reclamation

Authority: Environment Article, §§1-404 and 15-803, Annotated Code of Maryland

.02 Definitions.

A. (proposed text unchanged)

B. *Terms Defined.*

(1) *Coal Combustion Byproducts.*

(a) (proposed text unchanged)

(b) *“Coal combustion byproducts” includes [[flyash]] fly ash, bottom ash, boiler slag, pozzolan, and other solid residuals removed by air pollution control devices from the flue gas and combustion chambers of coal burning furnaces and boilers.*

(c) (proposed text unchanged)

(2) — (5) (proposed text unchanged)

[[6]] *“Operator” means a person with overall responsibility for the operation of a site.]]*

[[7]] (6) — [[13]] (12) (proposed text unchanged)

[[14]] (13) *“Site” means a noncoal surface mine where coal combustion byproducts are used, or are proposed to be used, for reclamation of the surface mine, including areas contiguous to the mine, which are covered by the surface mining permit.*

[[15]] (14) — [[16]] (15) (proposed text unchanged)

[[17]] (16) *“TCLP” means Toxicity Characteristic Leaching [[Procedures]] Procedure.*

.03 Authorization of Use and General Requirements.

A. (proposed text unchanged)

B. *General Requirements.*

(1) — (3) (proposed text unchanged)

(4) *To minimize leachate generation, coal combustion byproducts used in noncoal surface mine reclamation shall be placed in layers and compacted to at least [[95]] 90 percent of its maximum dry density based on ASTM D698 (Standard Proctor), or to a permeability of less than 10⁻⁵ centimeters/second. Thickness of each layer may not be greater than 12 inches.*

(5) (proposed text unchanged)

(6) *Coal combustion byproducts may not be placed in ground or surface waters and may not be placed within 3 feet of the [[regional ground water table]] maximum expected ground water elevation at the site, unless the Department approves otherwise upon a demonstration that ground water contamination will not occur.*

(7) — (9) (proposed text unchanged)

(10) *Adequate measures shall be taken to minimize dust at a site as follows:*

(a) *A person shall control dust by moisture-conditioning the coal combustion byproducts before they leave the coal combustion byproducts generating facility, or by handling them in sealed containers designed for transportation of powdery solids and moisture-conditioning them prior to off-loading them to the ground;*

(b) — (e) (proposed text unchanged)

(11) (proposed text unchanged)

(12) *Coal combustion byproducts may not be placed within 200 feet of any lands not owned by the permittee or owner.*

(13) *A permittee shall implement an erosion and sediment control plan that satisfies the requirements of Environ-*

ment Article, Title 4, Subtitle 1, Annotated Code of Maryland, and COMAR ~~[[26.09.01]]~~ 26.17.01.

(14) — (15) (proposed text unchanged)

.04 Application for Use.

A. — B. (proposed text unchanged)

C. The plans shall contain the following at a minimum:

(1) — (13) (proposed text unchanged)

(14) Proposed operating procedures, including:

(a) — (b) (proposed text unchanged)

(c) Means to control dust and wind erosion; and

(d) Procedures to be followed upon delivery of the coal combustion byproducts; ~~[[and~~

(e) Where and how coal combustion byproducts will be stored before placement;]]

(15) — (16) (proposed text unchanged)

(17) A description, including flow diagrams, of the processes generating leachate, including raw materials, intermediate ~~[[by-products]]~~ byproducts, final products, and process streams;

(18) — (22) (proposed text unchanged)

.05 Initial and Ongoing Characterization.

A. (proposed text unchanged)

B. The sampling plan shall include the following:

(1) A list of the ~~[[pollutants]]~~ parameters to be analyzed and their detection limits (Practical Quantitation Limits — PQL), which shall include, at a minimum, the following:

ELEMENTS AND INDICATOR PARAMETERS	PQL(mg/kg)
Total Aluminum	40
Total Antimony	1
Total Arsenic	1
Total Barium	1
Total Beryllium	1
Total Boron	20
Total Cadmium	1
Total Chromium	1
Total Calcium	1
Total Cobalt	1
Total Copper	2
Total Iron	500
Total Lead	1
Total Magnesium	100
Total Lithium	1
Total Manganese	1
Total Mercury	0.2
Total Molybdenum	10
Total Nickel	5
Total Potassium	100
Total Selenium	4
Total Silver	1
Total Sodium	100
Total Sulfur	10
Total Thallium	50.0
Total Vanadium	4
Total Zinc	10

~~[[Sulfate]]~~ ~~[[10]]~~

(2) — (3) (proposed text unchanged)

C. — D. (proposed text unchanged)

E. If there is a change in the raw materials or processes that generate the coal combustion byproducts, the generator of the coal combustion byproducts shall characterize the byproducts in accordance with the sampling plan and submit the results to the Department. All subsequent characterizations shall include any additional ~~[[pollutants]]~~ parameters found in the coal combustion byproducts.

.07 Monitoring.

A. (proposed text unchanged)

B. The monitoring plan shall be prepared in accordance with the following requirements and include at least the following information:

(1) — (3) (proposed text unchanged)

(4) A list of ~~[[pollutants]]~~ parameters to be monitored ~~[[and monitoring parameters]]~~;

(5) — (6) (proposed text unchanged)

C. Monitoring and Reporting Requirements.

(1) — (6) (proposed text unchanged)

(7) A permittee shall arrange for a qualified independent laboratory ~~[[certified for water quality analysis by the Department of Health and Mental Hygiene]]~~ or which is otherwise acceptable to the Department to perform the analyses.

(8) — (10) (proposed text unchanged)

(11) Upon detection of the exceedance of a State or federal drinking water or ground water quality standard for the first time, a permittee shall immediately resample each monitoring point in which the standard was exceeded to verify the initial detection. This resampling shall occur as soon as possible ~~[[, and]]~~. If circumstances make immediate resampling impossible, the permittee shall notify the Department of the circumstances, and the Department may approve a longer period for resampling which shall be not later than 30 days following notification of a permittee of the initial exceedance ~~[[of the standard by the analytical laboratory performing the analysis of the sample which indicated the exceedance]]~~.

(12) If the ~~[[exceedance]]~~ exceedance continues beyond the 30-day resampling period, a permittee shall submit a noncompliance report to the Department within 5 days, and notify the local health department of the exceedance. The Department may require a permittee to submit a clean up and containment plan or take such other action as it considers necessary to address the ~~[[exceedance]]~~ exceedance.

(13) — (16) (proposed text unchanged)

(17) Each report shall include a TCLP analysis, or other test approved by the Department analyzing the chemical characteristics of the coal combustion byproducts.

(18) — (19) (proposed text unchanged)

D. Table I — Monitoring Parameters.

ELEMENTS AND INDICATOR PARAMETERS	PQL (ppm)
Total Antimony	0.0020
Total Arsenic	[[0.0500]] 0.0040
Total Barium	0.0100
Total Beryllium	0.0020
Total Boron	0.013
Total Cadmium	0.0040
Total Chromium	0.0100
Total Calcium	0.08

<i>ELEMENTS AND INDICATOR PARAMETERS</i>	<i>PQL (ppm)</i>
<i>Total Cobalt</i>	<i>0.0100</i>
<i>Total Copper</i>	<i>0.0100</i>
<i>Total Iron</i>	<i>0.0050</i>
<i>Total Lead</i>	<i>0.0020</i>
<i>Total Lithium</i>	<i>0.016</i>
<i>Total Nickel</i>	<i>0.0110</i>
<i>Total Magnesium</i>	<i>0.004</i>
<i>Total Manganese</i>	<i>0.0100</i>
<i>Total Mercury</i>	<i>0.0002</i>
<i>Total Molybdenum</i>	<i>0.016</i>
<i>Total Potassium</i>	<i>0.39</i>
<i>Total Selenium</i>	<i>[[0.0500]] 0.0120</i>
<i>Total Silver</i>	<i>0.0100</i>
<i>Total Sodium</i>	<i>0.2</i>
<i>Total Thallium</i>	<i>0.0020</i>
<i>Total Vanadium</i>	<i>0.0100</i>
<i>Total Zinc</i>	<i>0.0100</i>
<i>PH 0.1</i>	<i>(SU)</i>
<i>Alkalinity</i>	<i>1</i>
<i>Hardness</i>	<i>0.5</i>
<i>Chloride</i>	<i>0.39</i>
<i>Specific conductance</i>	<i>1</i>
<i>Nitrate</i>	<i>0.06</i>
<i>Chemical oxygen demand</i>	<i>1</i>
<i>Turbidity</i>	<i>0.11 (NTU)</i>
<i>Ammonia</i>	<i>1</i>
<i>Total Sulfate</i>	<i>0.38</i>
<i>Total dissolved solids</i>	<i>10</i>

.09 Post-Closure Monitoring and Maintenance.

A. — G. (proposed text unchanged)

H. *The Department may retain the full surface mine bond required under Environment Article, §15-823, Annotated Code of Maryland, until the Department is satisfied that no offsite impacts from the coal combustion byproducts will occur. In making this determination, the Department shall consider the monitoring and post-closure monitoring results reported by the permittee pursuant to Regulations .07 and .09 of this chapter.*

.10 Drinking Water Supply.

Based upon monitoring data, if a drinking water supply is impacted ~~[[at a site]]~~ *as determined by the Department during active operation or during post-closure up to the time of bond release, a permittee shall:*

~~[[A. Notify the Department within 24 hours of the impact to the water supply, identifying the contaminants and contamination levels;~~

~~B.]]~~ *A. Immediately provide a temporary potable water supply as directed by the Department until a permanent replacement ~~[[can be]]~~ is restored or replaced; and*

~~[[C.]]~~ *B. Replace at no cost to affected ~~[[property owners]]~~ persons a permanent potable water supply that meets the minimum yield requirements established in COMAR 26.04.04.*

.12 Unauthorized Use of Coal Combustion Byproducts.

A use of coal combustion byproducts in a noncoal surface mine reclamation operation that is not in compliance with the provisions of this chapter as determined by the Department ~~[[is]]~~ may be a disposal of a solid waste as determined by the Department and ~~[[is]]~~ subject to all applicable laws and regulations governing the disposal of a solid waste, including applicable permit requirements of the Department.

SHARI T. WILSON

Secretary of the Environment

Withdrawal Of Regulations

Title 13A

STATE BOARD OF EDUCATION

Subtitle 09 NONPUBLIC SCHOOLS

13A.09.09 Educational Programs in Nonpublic Schools

Authority: Education Article, §§2-206, 2-206.1, 2-304, 7-301, 7-302, and 7-405; Family Law Article, §§5-561 and 5-704; Annotated Code of Maryland

Notice of Withdrawal

[08-172-W]

The Maryland State Board of Education withdraws amendments to Regulations **.02**, **.03**, **.06**, **.07**, **.10**, and **.12** under **COMAR 13A.09.09 Educational Programs**

in **Nonpublic Schools**, as published in 35:13 Md. R. 1202 — 1204 (June 20, 2008).

NANCY S. GRASMICK
State Superintendent of Schools