

DEQ's Renewable Energy Permit by Rule: Wind RAP's Next Steps

Comments by Carol C. Wampler
Virginia Department of Environmental Quality

For
Wind Regulatory Advisory Panel Meeting
October 13, 2009





VIRGINIA ACTS OF
ASSEMBLY -- 2009
RECONVENED SESSION
CHAPTER 808

Virginia General Assembly
**“Small Renewable Energy
Projects” Legislation**
HB 2175 & SB 1347
Approved: April 8, 2009





Directs DEQ to develop
by regulations

**“permits by rule . . . for the
construction and operation of
small renewable energy projects,
including such conditions and
standards necessary to protect
the Commonwealth’s natural
resources**



What is a
“small renewable energy project”?



100 MW



An electrical generation facility producing electricity from . . .

☸ biomass

☸ energy from waste < 20 MW

☸ municipal solid waste





An electrical generation facility
producing electricity from . . .

sunlight

***** WIND ***** < 100 MW

falling water

motion

tides

geothermal power

**Statutory Deadline for Wind Permit by Rule:
January 1, 2011**



2009 Timeline

- ✿ April: Legislation Approved
- ✿ May: Project Leader Hired
- ✿ June: Notice of Opportunity to Serve on Regulatory Advisory Panel (RAP)
- ✿ July – November: 7 RAP Meetings Convened
- ✿ November – December: Regulation Drafted (Goal)



2010

- ⌘ Draft Regulation Submitted to DEQ Director for Approval
- ⌘ Executive Review
- ⌘ Public Comment and Public Hearing



Current Practice:

- ⌘ Developer applies to SCC for individual permit
- ⌘ Environmental agencies submit recommendations to SCC re proposed site
- ⌘ SCC decides what environmental requirements to include in order



New System:

- ⌘ Developer applies to DEQ for permit by rule (PBR)
- ⌘ Environmental requirements are set forth “up front” in regulation for all sites
- ⌘ If applicant meets requirements and submits required certifications, then DEQ notifies applicant that he is deemed to have the permit by rule.



WHAT IS THIS “PERMIT BY RULE”?





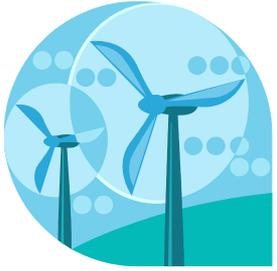
A Permit by Rule (PBR) is . .

- ✿ Expedited permitting process used by DEQ for certain solid waste facilities
- ✿ Regulation stating “up front” the criteria that applicant must meet
- ✿ Requirement that applicant submit docs/certification that has met requirements
- ✿ Requirement that DEQ review submission for completeness & adherence to reg
- ✿ If complete, then DEQ notifies that deemed to have PBR



A Permit by Rule is not . . .

- ✎ An individual permit
- ✎ Site-specific
- ✎ Based on a case-by-case technical analysis



So how should DEQ draft a permit by rule for renewable-energy projects?





Wind Regulatory Advisory Panel (RAP)

State Government Representatives

- DCR
- DGIF
- DHR
- VMRC
- DEQ
- DMME
- DOF
- VDACS
- Deputy Secretary of Natural Resources



Wind Regulatory Advisory Panel (RAP)

- ✿ **Industry**
 - Independent Wind Developers – 2
 - Utility Wind Developers – 2
- ✿ **Environmental Organizations – 4**
- ✿ **Academia – 1**
- ✿ **Local Government – 1**



Subcommittees

Living Resources

Chairman: Judy Dunscomb, TNC



Landscape

Co-Chairmen: Jonathan Miles & Maria Papadakis, JMU



General

Chairman: Nikki Rovner, Deputy Secretary Natural Resources



Offshore

Postponed until VMRC completes mapping/leasing study





Goals for Wind Permit by Rule

✿ **Faithfully implement provisions
& intent of the legislation**

and

✿ **Comport with state energy
policy/plan**



BY

- ✿ **Promoting renewable energy** – provide certainty, timeliness, reasonable regulatory requirements
- ✿ **Protecting natural resources** – provide enforceable standards that are protective of wildlife & historic resources at/near project site

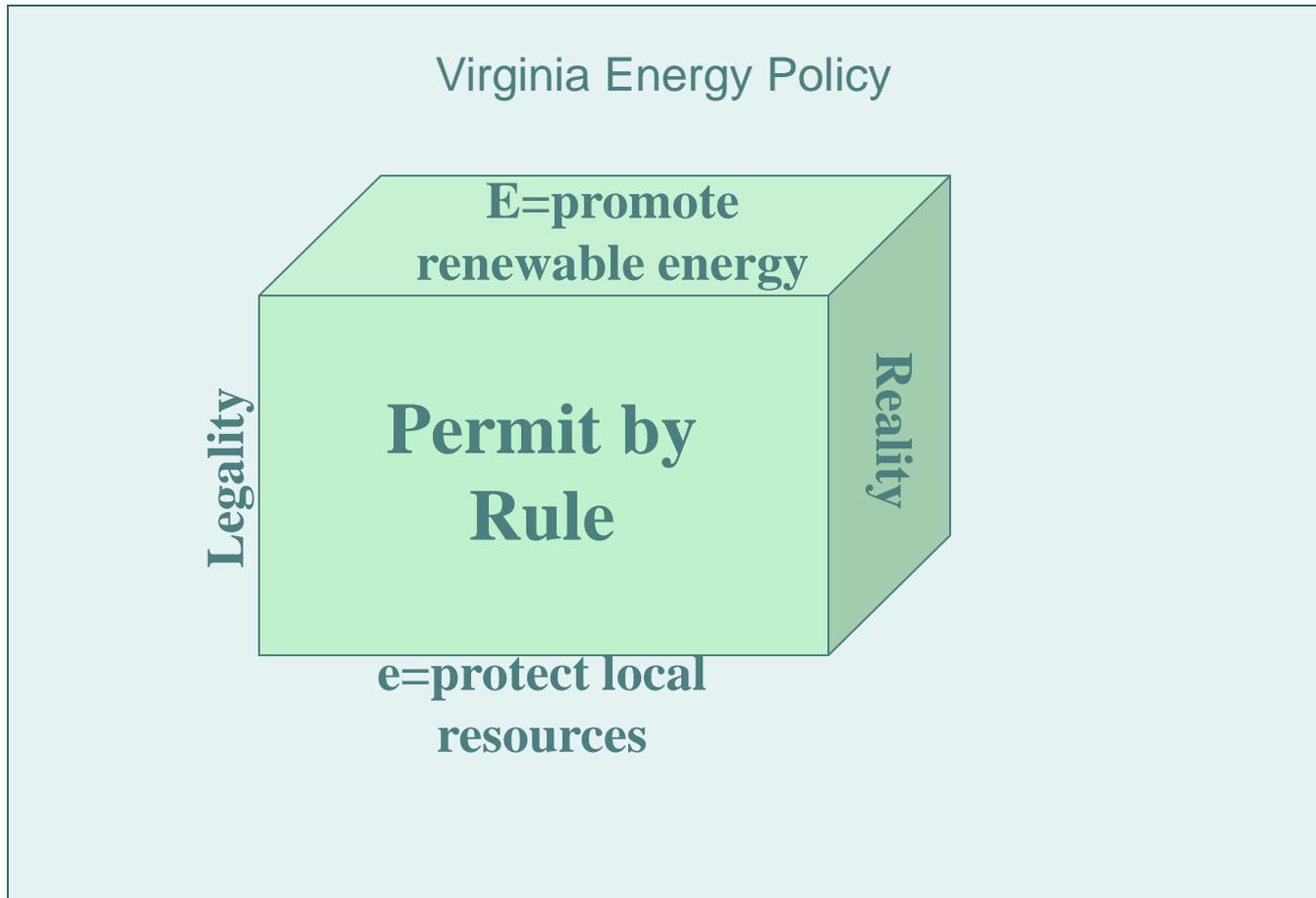


UTILIZING

- ✿ **Procedures that are practicable**
 - Administratively (by DEQ)
 - Legally (per OAG)



“Small Renewable Energy Project” PBR





Our special challenges:

- ❖ One-size-fits-all regulation to accommodate site-specific resource protections
- ❖ Authority vested in DEQ Director – a first
- ❖ Substantive authority/expertise vested in other state agencies; however, regulatory authority & extensive experience in administering permit programs reside in DEQ
- ❖ Most experience in wind energy is outside state government
- ❖ RAP must complete work on wind PBR in roughly 3 ½ months



Our next steps . . .

🌿 **Future RAP Meetings**

- October 13 – complete subcommittee work
- October 29 – plenary session
- November 12 – plenary session
- Other? (Doodle survey)
- Disband RAP

🌿 **Draft proposed regulation**

- Confer as needed with panel members & others

🌿 **Reconvene RAP to review proposal**

🌿 **Submit proposal to DEQ Director**



Post-October 13th Meeting

- ✿ Subcommittee chairs send recommendations to Carol by 10/19
- ✿ Carol send to Roger for legal review
- ✿ Carol send to James for administrative feasibility review
- ✿ Deb create spreadsheet of recs
- ✿ Send summary of recs to RAP



October 29th Meeting

Each Subcommittee Present Recommendations

- Designated presenters for each issue
- Substance, authority, rationale
- Degree of subcommittee support
- Questions from RAP for clarification
- Defer discussion of merits until all recommendations presented



October 29th Meeting (cont.)

Consideration of Recommendations

- Identify controversial vs non-controversial recommendations
- Remove controversial “from the bloc”
- Tentatively adopt non-controversial “en bloc”
- Discuss controversial recommendations individually (at future meetings)



November 12th meeting forward . . .

- ✚ Discuss each controverted recommendation
- ✚ Establish arguments “pro” and “con”
- ✚ Seek to reach consensus
 - Explore amendments to recommendation if will encourage consensus
 - If consensus still not possible, then formulate “sense of RAP,” possibly including multiple recommendations



There are no "bad guys" in our RAP
discussions.
Everyone is trying to do something
good for the environment!

