

# DEQ's Renewable Energy Permit by Rule: Overview & Background

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For  
Water-Related Regulatory Advisory Panel  
September 27, 2011  
DEQ Piedmont Regional Office





VIRGINIA ACTS OF  
ASSEMBLY -- 2009  
RECONVENED SESSION  
CHAPTER 808 & 854

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”**



# Statutory Goals:

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



What is a  
**“small renewable energy  
project”?**



An electrical generation producing electricity from

- ☸ sunlight
- ☸ wind
- ☸ falling water
- ☸ motion
- ☸ tides
- ☸ geothermal



**OR**





An electrical generation facility  
producing electricity from . . .

wind

sunlight

falling water

motion

tides

geothermal power

biomass

energy from waste

municipal solid waste

**Statutory Deadlines for Permits by Rule:**

**January 1, 2011, for WIND**

**July 1, 2012, for all others**



# ***PBR TIMELINES***



# WIND

- 22 Regulatory Advisory Panel Meetings
- 2 Public Comment Periods
- 1 Public Hearing
- 1 Public Meeting
- Approval by DEQ Director
- Executive Review
- Final Regulation on December 22, 2010
- Guidance Drafting in Progress



# SOLAR

- ☸ 4 RAP Meetings
- ☸ Proposal approved by DEQ Director
- ☸ Executive Review (ongoing)
- ☸ To be followed by Public Comment Period
- ☸ Deadline for Final: July 2012



# COMBUSTION

- ♻️ Biomass, energy from waste, municipal solid waste
- ♻️ RAP is completing its work
- ♻️ Deadline for Final: July 2012



# WATER RELATED

- ❁ Falling water, wave motion, tides, geothermal
- ❁ First RAP meeting: September 27, 2011
- ❁ Deadline for Final: July 2012



*What process  
does the PBR  
replace?*



# 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
- ⌘ DEQ, in consultation with other agencies, reviews application
- ⌘ If applicant meets requirements and submits required certifications, then DEQ notifies applicant that project is authorized under PBR



# 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 regulation
- ✿ If complete (& adequate), then DEQ notifies that project is authorized under the PBR



# A Permit by Rule is **not** . . .

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



***Statutory  
Permit by Rule  
Requirements***



# PBR Criteria

## 10.1-1197.6.B

- ⌘ Notice of intent
- ⌘ Local-government certification
- ⌘ Interconnection studies
- ⌘ Final interconnection agreement
- ⌘ PE certification of generation capacity
- ⌘ Analysis of impacts on NAAQS



# PBR Criteria (continued)

- ⌘ **Analysis of impact on natural resources**
- ⌘ **Determination of likely significant adverse impacts; mitigation plan & monitoring**
- ⌘ PE certification of design
- ⌘ Operating plan
- ⌘ Site plan
- ⌘ Certification re environmental permits
- ⌘ Public meeting
- ⌘ Public comment period



# *DEQ's Operative Provisions*

## *10-1:1197.6.B.7 & 8:*

- ✿ Analysis of natural resources
- ✿ Determination of likely significant impact
  - **Wildlife**
  - **Historic resources**
- ✿ Mitigation & post-construction monitoring



# *Chief PBR Operative Provisions by Resource*

☸ <b><u>Analysis</u></b>	Wildlife	HR	Other
☸ <b><u>Significant impact?</u></b>	Wildlife	HR	
☸ <b><u>Mitigation &amp; Monitoring</u></b>	Wildlife	HR	



*Note regarding afternoon agenda:*

***All necessary environmental  
permits***

*(obtained or applied for)*

***are a statutory prerequisite***

***for***

***PBR coverage (including DEQ  
permits).***



## *Further Note:*

*10.1-1197.6.A DEQ has authority over*

**CONSTRUCTION**

and

**OPERATION**

*of*

*small renewable energy projects*



# But note – Phases of a Project:

☸ *Siting*

☸ **CONSTRUCTION**

☸ **OPERATION**

☸ *Decommissioning*



# *Local Government Authority*

- ⌘ ***Siting*** – compliance with local land-use ordinances
- ⌘ ***Decomissioning***
- ⌘ Health, safety, welfare
- ⌘ Police powers



***Remember . . .***

***Local government certification  
of compliance  
with land-use ordinances  
is a prerequisite  
for PBR coverage***



# *Local Outreach*

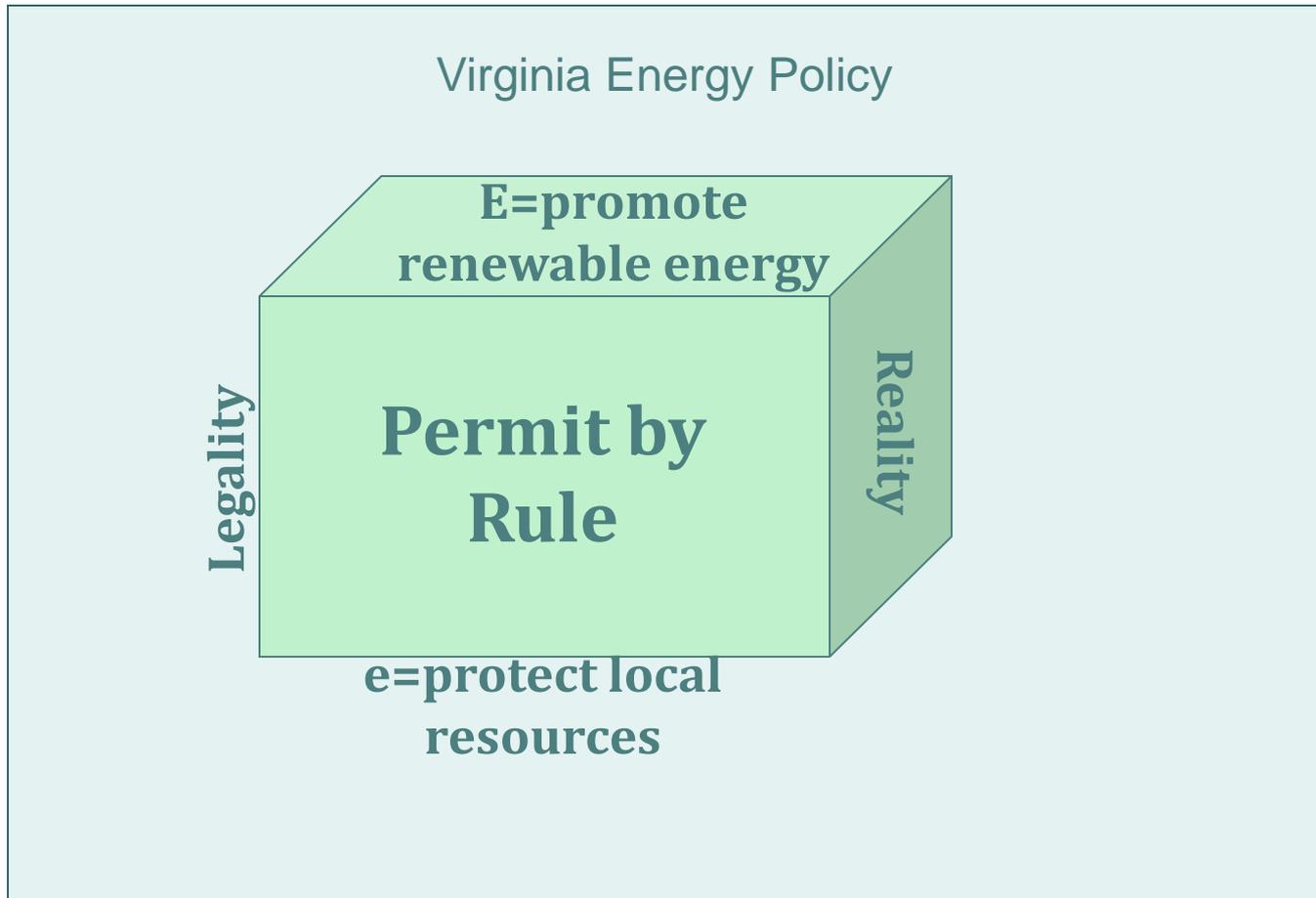
- ✿ Chairman, DEQ Director David Paylor
- ✿ First meeting of informal Stakeholder Group held on March 31, 2011
- ✿ Tentative goals include model ordinances, technical support, and repository of research



***Notes  
on  
Statutory  
Construction***



# “Small Renewable Energy Project” PBR





## *“Guiding Principle”*

We should not make it more difficult to permit a renewable-energy facility than to permit other types of development, unless there is a very good reason (e.g., wind turbines’ impact on bats – a special, unique impact).



# Our special challenges:

- ❖ One-size-fits-all regulation vs. site-specific resource protections
- ❖ Authority vested in DEQ Director – a first
- ❖ Substantive expertise resides in other state agencies; however, regulatory authority resides in DEQ
- ❖ Significant experience in renewable-energy development lies outside state government
- ❖ RAP must complete work on 9 renewable media in roughly 3 years, when one regulatory action usually = 1 ½ to 2 years

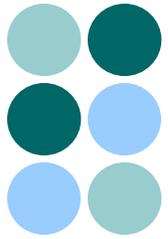


# Special Issues for Water-Related RAP:

## Question: Is a PBR necessary?

Statute: “if it is determined by the Department that one or more such permits by rule are necessary”

- **Falling Water: Pre-Empted by FERC?**
- **Tides, Wave Motion, Geothermal: Are projects currently feasible?**



We welcome your input  
in assisting DEQ to  
address these questions.





*Thank you  
for your participation  
in this process*



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***Program Information – Renewable Energy***



*Questions?*