

Notice of Public Comment Opportunity
RAP Recommendation for
Small Renewable Energy (Water Related) Permit by Rule Regulation
9VAC15-80

Purpose of Notice: The Director of the Department of Environmental Quality (DEQ or the Department) intends to consider the consensus recommendation of the Regulatory Advisory Panel (RAP) concerning whether a permit by rule (PBR) regulation is currently necessary for projects that generate electricity from water related renewable energy sources (i.e., falling water, tides, wave motion, geothermal power). Prior to the Director's deciding whether to accept the RAP's recommendation, DEQ will conduct an informal public comment period during which members of the general public may submit their views concerning the RAP's recommendation.

Background: Pursuant to the Small Renewable Energy Projects Act of 2009 (§10.1-1197.5 et seq. of the Code of Virginia), the Department is directed to develop one or more permits by rule "if it is determined by the Department that one or more such permits by rule are necessary for the construction and operation of small renewable energy projects." DEQ filed a Notice of Intended Regulatory Action (NOIRA) for each renewable energy resource (or group of related resources). Based on expressions of interest by members of the public, DEQ also established a Regulatory Advisory Panel (RAP) of stakeholders to consider potential PBR's for each renewable energy resource and to make recommendations to DEQ's Director. Pursuant to the respective RAP's recommendations, the Director has approved a proposed PBR regulation for Wind projects and Solar projects, and will soon consider a proposed PBR regulation for Combustion energy projects (biomass, energy from waste, municipal solid waste). The Water Related NOIRA (9VAC15-80) was posted on August 15, 2011, and stated in pertinent part, "[t]he purpose of this regulatory action is to implement 2009 state legislation requiring the Department of Environmental Quality to develop one or more permits-by-rule for water-related energy projects with rated capacity not exceeding 100 megawatts, if the Department determines that a permit-by-rule is necessary." The Water Related RAP was established in September 2011 to consider a potential PBR for the water related renewable resources that are listed in the 2009 statute; *i.e.*, falling water, wave motion, tides, and geothermal power. The Water Related RAP considered all of the public comments that were submitted during the NOIRA public comment period (August 15 – September 14, 2011) when the RAP met on September 27 and October 21, 2011. No members of the public came to speak at the public forum available at each meeting. After careful consideration of the issues, it was the consensus recommendation of the Water Related RAP that it is **not necessary** or appropriate, under current conditions, for DEQ to develop a PBR regulation for renewable energy projects that generate electricity from **falling water, wave motion, tides, or geothermal power**. The RAP further recommended that DEQ re-evaluate the potential need for a PBR regulation concerning these water related renewable energy resources in 2014, or sooner if circumstances or public requests so indicate. The RAP remains an active public body so that it may address any comments submitted during the public comment period herein noticed, if needed. Although this informal public comment is not required by law, the Department would like to afford the public an opportunity to comment on the RAP's recommendations prior to the Director's final determination. Additional information about these recommendations is available on DEQ's website at http://www.deq.state.va.us/renewable_energy/water_related.html. Posted information includes a list of Water Related RAP members; the RAP's consensus recommendations and rationale; minutes of RAP meetings on September 27 and October 21; compilation of research and input

from experts (September 23, 2011; updated October 20, 2011); *First Iowa Hydro-Elec. Co-op. v. Federal Power Com'n*, 328 U.S. 152 (1946); and a memorandum written by law student intern Connor Kain (July 13, 2011).

Public Comment Period: October 27, 2011 to November 28, 2011

How to Comment: DEQ will accept written comments by email, fax and postal mail. All written comments must include the full name, address and telephone number of the person commenting and be received by the DEQ staff contact listed below no later than 11:59 p.m. on the last day of the comment period. All written comments, exhibits and documents received are part of the public record.

Final Decision: The Director's final decision on whether a PBR is necessary at the present time for projects that generate electricity from falling water, wave motion, tides, or geothermal power will occur at some time after the public comment period closes.

Staff Contact: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, ph: 804-698-4579, fax: 804-698-4346 or carol.wampler@deq.virginia.gov .