

DEQ's Renewable Energy Permit by Rule: Background of Proposed Wind Regulation

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Virginia Department of Environmental Quality

For
Public Hearing for Wind Permit by Rule
August 3, 2010
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 . . .

☸ biomass

☸ energy from waste < 20 MW

☸ municipal solid waste





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



Timeline

WIND:

- May '09: RAP Leader hired
- June '09: Regulatory Advisory Panel (RAP) established
- July '09 to January '10: 15 RAP meetings and 11 inter-agency meetings convened
- January: DEQ Director approved draft reg
- February 18 – June 1: Executive Review
- Public Comment Period & Public Hearing



Proposed Wind PBR:

9 VAC 15-40

Proposed Text

<http://www.townhall.virginia.gov/L/ViewXML.cfm?textid=4259>

Agency Statement - Town Hall Document (TH-02)

<http://www.townhall.virginia.gov/L/viewstage.cfm?stageid=5451&display=documents>



Public Participation Original Wind PBR

- ❁ Public Comment Period:
June 21 through August 20, 2010
- ❁ Public Hearing:
August 3, 2010
DEQ's Piedmont Regional Office



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



Note . . .

- ❖ *Neither current practice nor DEQ's new PBR approach abrogates applicant's need to obtain state regulatory environmental permits.*



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 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:*

Applicant shall provide

“an **ANALYSIS** of the
beneficial and adverse impacts
of the proposed project on
NATURAL RESOURCES”



Operative provisions (continued)

10.1-1197.6.B.8:

- (1) **Department determines**
if foregoing analysis
“indicates that
significant adverse impacts
to **wildlife**
or **historic resources**
are **likely**”



If so, then . . .

(2)

 **MITIGATION PLAN**

 **MEASURE EFFICACY**

(post-construction monitoring)



Operative Statutory Provisions:

10.1-1197.6.A DEQ authority over

CONSTRUCTION

and

OPERATION

of

small renewable energy projects



But note – Phases of a Project:

☸ *Siting*

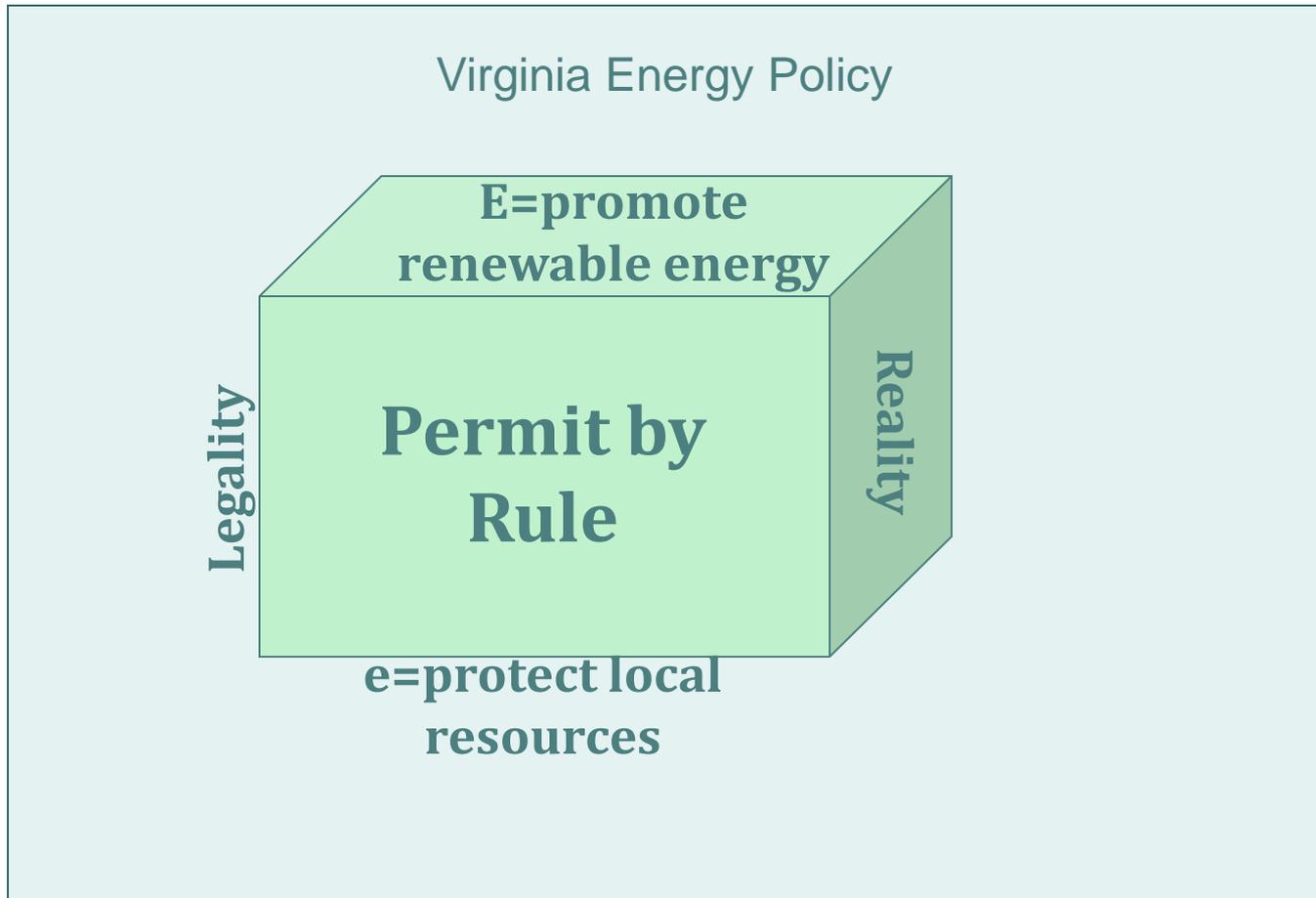
☸ **CONSTRUCTION**

☸ **OPERATION**

☸ *Decommissioning*



“Small Renewable Energy Project” PBR





Original Wind Regulatory Advisory Panel (RAP)

State Government Representatives

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



Original Wind Regulatory Advisory Panel (RAP)

Industry

- Independent Wind Developers – 2
- Utility Wind Developers – 2

Environmental Organizations – 4

Academia – 1

Local Government – 1



Wind RAP Members

State Government

DCR – Tom Smith; John Davy & Chris Ludwig,
alternates

DGIF – Ray Fernald; Rick Reynolds, alternate

DHR – Julie Langan; Roger Kirchen, alternate

VMRC – Tony Watkinson; Elizabeth Murphy,
alternate

DOF – Ronald Jenkins

DMME – Ken Jurman

VDACS – Stephen Versen; Larry Nichols, alternate

DEQ – James Golden

Deputy Secretary of Natural Resources Nikki Rovner



Environmental Groups

TNC – Judy Dunscomb; David Phemister,
alternate

PEC – Dan Holmes; Todd Benson,
alternate

Sierra Club (Virginia) – Jayme Hill; Ivy
Main & Steve Bruckner, alternates

Audubon – Mary Elfner; Debi Osborne,
alternate



Academia

Jonathan Miles, JMU & various wind organizations/research groups; Maria Papadakis, alternate

Local Government

VACO – Larry Land



Ex officio

Carol Wampler, RAP Leader, DEQ

Recorder

Debra Miller, DEQ

Counsel

Roger Chaffe & Elizabeth Andrews, OAG



After long deliberations . . .

the RAP AGREED

on all

but 3 issues!!!



Those 3 issues . . .

- ⌘ What exemption/notice requirement should apply for projects 5 MW and less
- ⌘ What wildlife – other than bats – should constitute a mandatory trigger for mitigation
- ⌘ What avian field studies should be done in coastal zone



Director's Decisions on Non-Consensus Issues:

- ✿ Projects of 5 MW and less will only have to notify DEQ and provide local-government certification
- ✿ Bats and T&E wildlife will trigger necessity of mitigation plan
- ✿ Coastal avian desktop study only; field studies will be addressed by Offshore/Coastal RAP



What
are some benefits
to stakeholders
that the RAP tried to achieve
in the proposed
Wind PBR?



Industry

- ⌘ **certainty** – requirements spelled out in advance in PBR
- ⌘ **timeliness** (90 days)
- ⌘ **reasonableness** – interpreted statute as reasonably as possible
- ⌘ **channels of legal redress** – clearly set forth in Administrative Process Act



Environmental Interests

At the cutting edge among states
in having across-the-board ...

- ✿ **Analysis of natural resources at/near the project site**
- ✿ **Mitigation for wildlife and historic-resource impacts**
- ✿ **Required post-construction monitoring for life of project**



“Sister” State Agencies

- ⌘ **All had a voice** on the RAP in developing the wind PBR proposal
- ⌘ Pursuant to the 2009 statute, DEQ will **consult SNR agencies** before rendering permit-approval decision



Local Governments

The RAP, OAG, and DEQ agreed:

health and safety issues, land-use and zoning/siting are not encompassed by the 2009 statute

All concurred:

these issues remain the subject of local-government authority, as VACO recommended



Our special challenges:

- ❖ One-size-fits-all regulation vs. 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 of experience in wind-energy development is outside state government
- ❖ RAP must complete work on original wind PBR in roughly 6 months



There were no "bad guys" in our RAP
discussions.

Everyone was trying to do something
good for energy and the environment!



***Thank you
for your participation
in this process***



Questions?



Contact information . . .

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