Navigating
DEQ’s Wind Energy Permit by Rule

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Virginia Wind Energy Collaborative
State Wind Energy Symposium
James Madison University
June 16, 2010
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 facility producing electricity from sunlight, wind, falling water, motion, tides, or geothermal power with capacity less than 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 . . .

**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:

- July ’09 to January ‘10: 15 Regulatory Advisory Panel (RAP) meetings and 11 inter-agency meetings convened
- January: DEQ Director approved draft reg
- February – June 1: Executive Review
- Public Comment and 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

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 SCC process 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
What are key operative provisions of DEQ’s 2009 renewable energy statute?
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
PBR Criteria 10.1-1197.6.B

1. Notice of intent
2. Local-government certification – *project complies with land use ordinances*
3. Interconnection studies
4. Final interconnection agreement
5. PE certification of generation capacity
6. Analysis of impacts on NAAQS
7. **Analysis of impact on natural resources**

8. **Determination of likely significant adverse impacts; mitigation plan & monitoring**
9. PE certification of design
10. Operating plan
11. Site plan
12. Certification re environmental permits – applied for or received
13. Public meeting
14. Public comment period
[15. Fees]
Focus on Specific 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”
(1) **Department determines** if foregoing analysis “indicates that **significant adverse impacts to WILDLIFE OR HISTORIC RESOURCES are likely”**
If so, then . . .

(2)

MITIGATION PLAN

ASURE EFFICACY
(post-construction monitoring)
KEY STEPS:

- Analysis

- Determination of significant impact
  - Wildlife
  - Historic resources

- Mitigation & post-construction monitoring
What do stakeholders potentially 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 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
Remember . . .

PBR described today is proposed, not final
Next steps . . .

- Public comment period on proposed Wind PBR (June 21 – August 20)

- Consideration of PBR provisions for
  - Coastal wind projects
  - Offshore projects in state waters
Offshore/Coastal Wind

RAP & NOIRA

RAP began meeting on June 8, 2010

NOIRA:
Executive Review ongoing
http://www.townhall.virginia.gov/L/ViewStage.cfm?
stageid=5469

Complete work ASAP – catch up with original Wind PBR, if possible
DEQ’s coastal/offshore wind PBR will build on...

- Original proposed wind PBR
- VMRC’s leasing and permit requirements
- Other existing requirements
  - Army Corps
For further information . . .

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