Virginia Wind Energy Projects:
DEQ’s PERMIT BY RULE

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Previous Practice

Developer applies to SCC for individual approval/order

Environmental agencies submit recommendations to SCC re proposed site via Environmental Impact Review

SCC decides what site-specific environmental requirements to include in the order
Example of SCC Process

Highland County Wind
DEQ’s New System

DEQ Renewable Energy Permit by Rule (Wind)
DEQ’s Small Renewable Energy Projects Permit by Rule

2009 Legislation Gave DEQ Authority

Wind PBR Regulation Finalized December 22, 2010

Agency Guidance on DEQ Website: http://www.deq.virginia.gov
New System: Overview

- 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 the DEQ Permit by Rule Approach?
Renewable Energy
PBR Legislation

Virginia General Assembly
“Small Renewable Energy Projects” Legislation
HB 2175 & SB 1347
Approved: April 8, 2009
Renewable Energy
PBR Legislation
(Cont’d)

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.”
Key Terms in DEQ’s Statute

- “Small Renewable Energy Projects”
- “Construction and Operation”
- “Permits by Rule”
- “Protect Natural Resources”
What is a “Small Renewable Energy Project”?
A “small renewable energy project” has rated capacity not exceeding 100 MW

SCC retains jurisdiction over projects with rated capacity >100 MW

Both SCC and DEQ have minimal/no requirements for projects <5 MW
“Construction and Operation”
“Construction & Operation”

- 10.1-1197.6.A gives DEQ permitting authority over **CONSTRUCTION** and **OPERATION** of small renewable energy projects.

- DEQ has no statutory authority over **SITING** and **DECOMMISSIONING** (usually local government jurisdiction).
What is a “Permit by Rule”?
A Permit by Rule is...

- Expedited permitting process originally 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, then DEQ notifies that project is authorized under the PBR
Unlike the SCC Process, A Permit by Rule is **Not**...

- An individual permit/approval
- Site-specific
- Based on a case-by-case technical analysis
DEQ PBR Statute

Sets forth 14 PBR requirements each applicant must meet.
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
PBR Criteria (Continued)

7. Analysis of impact on natural resources

8. Determination of likely significant adverse impacts; mitigation plan & post-construction monitoring
PBR Criteria (Continued)

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
“Protect the Commonwealth’s Natural Resources”
KEY STEPS:
(PBR requirements #7 & #8)

- **Analysis** of likely natural-resource impacts
- **Determination** of significant impact
  - Wildlife
  - Historic resources
- **Mitigation** & post-construction monitoring
Taken together, these key statutory terms and provisions direct DEQ to accomplish two goals . . .
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
Neither current SCC process nor DEQ’s new PBR approach:

- Abrogates applicant's need to obtain state regulatory environmental permits
- Removes from local-government jurisdiction issues like siting, health, safety, nuisance
Therefore . . .

DEQ’s PBR statute will **not affect** time necessary for regulatory permits or local-government authorizations to be determined, appealed, or otherwise resolved.
Advantages of the PBR Approach

What do stakeholders potentially achieve in the proposed Wind PBR?
Industry

- **Certainty** – Requirements spelled out in advance in PBR
- **Timeliness** (90 days in proposed regulation)
- **Reasonableness** – RAP & DEQ 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 significant 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 are not encompassed by the 2009 statute.

- All concurred:
  These issues remain the subject of local-government authority as VACO recommended.
Wind PBR Regulation & Guidance

Posted on DEQ’s Website at

Wind PBR Regulation & Guidance

Regulation 9VAC15-40:

- 14 Full PBR Project Requirements: § 30
- Analysis: § 40
- Mitigation: § 60
- De Minimis” Projects: § 130

Guidance:

- Provided side-by-side with regulatory provisions
Contact

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