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Proposed Regulation Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC15-60
VAC Chapter title(s)	Small Renewable Energy Projects (Solar) Permit by Rule
Action title	2019 Amendments Solar PBR
Date this document prepared	March 26, 2020 (Revised: February 10, 2021)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Small Renewable Energy Projects (Solar) Permit by Rule, 9VAC15-60, establishes criteria, procedures and permit requirements as required under the Code of Virginia (§10.1-1197.5 et seq.) which requires the Department of Environmental Quality (DEQ) to create a permits-by-rule (PBR) for solar energy projects 150 megawatts or less. The PBR requirements for a complete application to construct and operate are identified under the regulation rather than being developed on a case-by-case basis. Key application criteria include the following: public notice and comment period, local government approval, interconnection requirements, natural and cultural resource assessments, and a fee structure that should be sufficient to support the entire program including compliance and enforcement efforts.

The purpose of this amendment is to clarify specific definitions, establish clear timeframes for data submittals and recordkeeping activities, provide clarity for natural and cultural resource studies, clarify the public participation procedures and address the fee structure to adequately fund the program. The goals of this amendment are to clarify the requirements for applicants, operators and permitted facilities, thus improve permitting procedures while enhancing protection of natural resources and human health.

In addition, a periodic review/small business impact review was conducted as part of this regulatory action. Please see the periodic review/small business impact review result section for additional information

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

- CAPZ – means Coastal Avian Protection Zone.
- CPV – means concentrating photovoltaics.
- DACS – means Department of Agriculture and Consumer Services.
- DCR – means Department of Conservation and Recreation.
- DEQ – means Department of Environmental Quality.
- DHR – means Department of Historic Resources.
- DWR – means Department of Wildlife Resources.
- MW – means megawatts, a measure of generated electricity.
- NOI – means notice of intent.
- PBR – means Permit by Rule.
- PV – means photovoltaic.
- T&E – means threatened and/or endangered.
- VLR – means Virginia Landmarks Register.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The Regulation for Small Renewable Energy Projects (Solar) became effective in 2012. The number of projects permitted under the program has grown exponentially, beginning with one PBR in 2015, to more than 50 permits or modifications in five years. This represents over 1,700 MW that has been permitted under this program. In addition to the permitted projects, over 60 projects have provided notice of their intention to construct and operate a solar project, 33 representing an additional 3,300 MW. In addition to the rapid growth of the program, the 2017 legislative modification to increase the size of projects eligible for a PBR from 100 MW to 150 MW has resulted in much larger projects seeking permits and applications. These larger scale projects are more complex as these projects sometimes need hundreds or thousands of acres of land. Recommendations in the 2018 Virginia Energy Plan call for solar and onshore wind to achieve at least 3,000 MW of the 5,000 MW of solar and wind resources deemed in the public interest with a target date of 2022. With these considerations, regulatory action is necessary in order to clarify the requirements for applicants, operators and permitted facilities, thus improve permitting procedures while enhancing protection of natural resources and human health. Additionally, as part of this regulatory process, the agency conducted a periodic review of the regulation.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the

promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The legal basis for the Small Renewable Energy Projects (Solar) Permit by Rule (9VAC150-60) is the Small Renewable Energy Projects Act (Article 5, Chapter 11.1 of Title 10.1 of the Code of Virginia). Specifically, §10.1-1197.5 et seq. of the Code of Virginia authorizes the DEQ to permit renewable energy projects up to and including projects of 150MW or less in the Commonwealth and to promulgate regulations necessary to carry out appropriate powers and duties for such permitting activities.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulatory action is to clarify the regulatory requirements for applicants and permitted facilities in order to improve the current permitting process. Additionally, an appropriate fee structure is proposed in order to fully support the program, including compliance and enforcement activities. The proposed changes are necessary to provide protection of natural resources and still protect the health, safety, and welfare of citizens.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The PBR regulation establishes the specific criteria required for a complete application to construct and operate a small renewable solar project in Virginia. Rules for public notice and public comment, determining potential significant impact to natural and cultural resources, and establishing an appropriate fee structure, are also included. Additional substantive provisions that are being considered include:

- Clarifying definitions;
- Clarifying the procedures for natural and cultural resource analysis for project applications submitted after 12 months after the effective date of the amendments;
- Clarifying size of projects exempt from permitting;
- Clarify public participation requirements as part of the application process;
- Specifying operation, recordkeeping, and reporting requirements;
- Clarifying procedures for modification or transfer of ownership or name change of a permitted facility; and
- Establishing a new fee structure for project applications submitted after the effective date of the amendments.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The regulation will enhance protection of significant natural resources while still maintaining a streamlined PBR permitting process for solar development. Public health, safety, and welfare will also be protected while meeting the stated goals for renewable energy throughout the Commonwealth as mandated by the Small Renewable Energy Projects Act Article 5, Chapter 11.1 of Title 10.1 of the Code of Virginia and the Virginia 2018 Energy Plan. The PBR permitting process will not infringe on personal property rights yet will provide additional considerations for impacts to prime forestland, so vital for the water quality and economic development. The proposed amendments minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law while ensuring the identification and protection of valuable natural and cultural resources of the Commonwealth in an efficient, cost-effective manner. Fees are increased to cover the cost of the program, as required by law. Including the use of standard forms for some required regulatory activities will make the process more efficient and easier for solar developers, and the information received and made available to the public will be more consistent.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal regulations.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

The other state agencies affected include the Department of Conservation and Recreation, Department of Historic Resources and Department of Wildlife Resources. All are involved in the review of permit applications.

Localities Particularly Affected:

There are no localities particularly affected by the proposed regulation amendments.

Other Entities Particularly Affected:

There are no other entities particularly affected by the proposed regulation amendments.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact,

specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The fee schedule presented in the proposal is designed to recover DEQ’s ongoing costs (Fund 09036). The implementation and enforcement of the program, by law, is designed to be funded through permit fees. Fees will be collected from permit applicants and project owners or operators. The application fee is a one-time fee. Project applications submitted on or after the effective date of the amendments will be subject to higher application fees. All projects permitted after the effective date of the amendments will be assessed an annual maintenance fee to cover ongoing inspection and compliance costs. There are no other sources of revenue for this program..</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Provisions addressing analysis for natural heritage resources and a broader T&E species including potential mitigation for these resources ensures a more comprehensive protection of vital Commonwealth resources. A definitive timeframe for agency response to preliminary studies means more certainty for projects looking to be permitted with an efficient process.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>The regulation amendments are not expected to create costs for localities, unless a locality itself chooses to develop a solar energy project, in which case the locality’s costs will be similar to the costs of any other permit applicant (as summarized below). There might be potential costs and benefits to a locality if a project is developed within its jurisdiction, particularly a project encompassing a large number of acres; however, those costs and benefits would occur because of the existence of the project – with potential access or road construction issues, for example – and not because of these regulations. The locality, pursuant to its land use authority, has the power to determine if a project can be located within its jurisdiction. A locality’s decisions in this regard are separate from the operation of the proposed regulations. Pursuant to the 2009 statute, DEQ only requires that the</p>
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	local government certify that the applicant has met all local land-use ordinances.
Benefits the regulatory change is designed to produce.	It is important to recover the program costs as required under law. Real-time information posted to the DEQ web page including mapped locations of proposed and build projects is of great value to the general public, local governments, planning authorities and ancillary businesses.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Individuals, businesses or other entities wishing to develop a solar energy project (>5 – 150 MW) will be affected by the regulation amendments for both application and annual maintenance fees if permitted after 12 months after the effective date of the regulation amendments. Projects submitting PBR applications prior to 12 months after the effective date of the regulation amendments will be subject to the existing permit fees. To the extent that small businesses seek to develop smaller projects (5 MW or less, mounted on rooftops, etc.), they will not be affected by the new regulation, pursuant to the proposed provisions for no notification or certification requirements or greatly reduced requirements. A definitive timeframe for agency response to preliminary studies means more certainty and efficiency in the permitting process.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Sixty-three (63) projects have active notices of intent to submit the documentation for a PBR representing 3,302 MW. DEQ does not know how many other projects developers in Virginia may pursue. The proposed fee schedule is based upon a base fee of \$7,500 per application with an additional assessment of \$150 per MW for projects 20 MW or less and \$165 for projects over 20MW. The actual cost of the application fee will be contingent upon the size of the project. Small businesses involved in the manufacture or distribution of solar equipment, consultants involved in environmental assessments or cultural resource evaluations or other ancillary businesses affiliated with the solar industry (law firms, etc.) may benefit from the increase of solar development within the Commonwealth.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;	Current application fees for projects permitted prior to 12 months after the effective date of the regulation amendments is as follows: One-time Fee – by rated capacity: >5 MW up to and including 25 MW: \$8,000 >25 MW up to and including 50 MW: \$10,000 >50 MW up to and including 75 MW: \$12,000 >75 MW up to and including 150 MW: \$14,000

<p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p> <p>c) fees;</p> <p>d) purchases of equipment or services; and</p> <p>e) time required to comply with the requirements.</p>	<p>Permit by rule modification: \$4,000</p> <p>There are neither annual maintenance fees nor requirements for any ongoing reporting, nor recordkeeping requirements for the life of the project, regardless if significant impact to cultural or natural resources are identified at the project site.</p> <p>The proposed application fee for projects permitted after the effective date of the regulation amendments is as follows:</p> <p>NOI fee: \$2,000</p> <p>>5 MW up to and including 20 MW: \$7,500 base fee plus \$150 per MW</p> <p>>20 MW: \$7,500 base fee plus \$165 per MW</p> <p>Modification fee: 20% of original application fee.</p> <p>Incomplete fee: 20% of original application fee assessed for review of supplemental information after receipt of an incomplete determination.</p> <p>There is also an annual maintenance fee for projects permitted after the effective date of the amendments of \$500 plus \$15 per MW.</p> <p>There are no additional fees associated with recordkeeping or reporting, as the amendments only require access to maps that must be generated as part of the application.</p> <p>Costs for developing the application materials may increase for projects submitting applications twelve months after the effective date of the regulation due to enhanced natural resource assessments for significant forest land (C1 and C2 ecological cores) as ranked in the Virginia Natural Landscape Assessment and an additional expense affiliated with filling out the Virginia Solar Site Pollinator/Bird Habitat Scorecard.</p> <p>Costs for conducting studies and assembling the PBR information for an application regardless of when the application is submitted could increase depending on several factors (e.g., specialized species surveys, wetland/stream delineations, phase II/III cultural surveys, etc., if the results of the requirements prescribed in the proposal indicate that mitigation or follow-up measures are in order).</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Enhanced natural resource analysis coupled with a definitive timeframe for agency response to preliminary studies means more certainty and efficiency in the permitting process and better protection of natural resources.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The Small Renewable Energy Projects Act (Article 5, Chapter 11.1 of Title 10.1 of the Code of Virginia), specifically, §10.1-1197.5 et seq. of the Code of Virginia, authorizes the DEQ to permit renewable energy projects up to and including projects of 150 MW or less in the Commonwealth and to promulgate regulations necessary to carry out appropriate powers and duties for such permitting activities including a fee structure necessary to cover costs. A permit by rule provides certainty for the regulated community which is strongly supported by industry. The requirements for evaluation of impacts to natural resources and required mitigation for resources significantly impacted provides for the protection of those resources. The only alternative is to develop amendments to the existing regulation. Not doing so would result in insufficient funding required to support the permitting program. This would cause further permit delays for the industry and compromised protection of resources potentially impacted by such development.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

In working with the Regulatory Advisory Panel (RAP) to develop the proposed regulation amendments, the Department sought to establish permitting and fee requirements that provide a balance for competing outcomes; comprehensive analysis and appropriate mitigation, if necessary, of potential significant impacts to natural resources while ensuring that the permitting process efficiencies offered through a permit by rule are not compromised. Changes made to provide more clarity make the regulation more understandable; use of forms provides a simple process for submitting required information and ensure that the information will be consistent and simplifying requirements for projects locating in brownfields encourages development on previously disturbed land, protecting additional forest lands or prime agricultural land.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Pursuant to Executive Order 14 (as amended July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, DEQ conducted a periodic review and small business impact review of this regulation as part of the NOIRA public comment period. The comment period conducted from May 27 through June 26, 2019 (35 VAR20:2309) was to determine whether this regulation should be terminated, amended, or retained in its current form. The Department has determined that the regulation is necessary for the protection of public health, safety, and welfare or for the economic performance of important governmental functions as mandated by the Small Renewable Energy Projects Act, Article 5, Chapter 11.1 of Title 10.1 of the Code of Virginia and the Virginia 2018 Energy Plan. The proposed amendments minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law while still ensuring the identification and protection of valuable natural and cultural resources of the Commonwealth in an efficient, cost-effective manner. Changes have been made to provide more clarity and make the regulation more understandable. There are no overlaps, duplicates, or conflicts with federal or state law or regulation. Significant technology changes have occurred in the solar industry since the last review including cost decreases associated with panel technology and construction, battery storage, and improved economic conditions resulting in a high demand for commercial solar projects.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

The NOIRA was published in the Virginia Register on May 27, 2019. The comment period ended on June 26, 2019. There were 31 submittals in total and most were requests to serve on the Regulatory Advisory Panel. Of the 30 submittals, six submittals provided comment on the NOIRA in addition to the request to serve on the Regulatory Advisory Panel.

Commenter	Comment	Agency response
Hannah C. Coman Staff Attorney Southern Environmental Law Center	The Southern Environmental Law Center (“SELC”) is pleased to submit the following comments on the Virginia Department of Environmental Quality (“DEQ”) Notice of Intended Regulatory Action to amend the regulations for Small Renewable Energy Projects (Solar) Permit by Rule. SELC applauds DEQ for recognizing the need to revise the regulations in order to clarify the requirements, improve permitting procedures, and increase agency coordination while still	Recommendations are accepted and were taken under consideration during the drafting of the regulation.

	<p>protecting natural resources and human health. The amended regulations should encourage the rapid deployment of renewable energy to reduce carbon emissions and address climate change, but also minimize the impacts of large-scale solar facilities on our environment.</p> <p>SELC is eager to support DEQ's efforts to improve the regulation and looks forward to being actively involved throughout the process. At this stage we will focus our comments on the importance of adequately funding the program, encouraging agency coordination, and increasing transparency and facilitating public participation. In addition, we would like to express our interest in serving on the regulatory advisory panel to develop the proposed regulation. (If our request is granted, I would serve as SELC's representative.)</p> <p>Against this backdrop, SELC offers the following comments to help guide and support DEQ and the Regulatory Advisory Panel in developing amended regulations</p> <p>1. Fund Staff Resources with Higher Permit Fees</p> <p>The number of applications for large-scale solar facilities has increased exponentially in the last three years and, due in large part to the huge appetite of data centers for renewable energy, it will not be slowing down any time soon. In order to facilitate the growth of large-scale solar generation, it is imperative that DEQ and other agencies have sufficient staff resources to meet permit requests and fund compliance and enforcement activities. We recommend raising the application fee to ensure DEQ and other agencies reviewing these applications have sufficient staff resources to review applications in a timely manner and respond effectively to compliance and enforcement issues.</p>	
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	<p>2. Encourage Agency Coordination and Review The current regulations require applicants to engage with DEQ, the Virginia Department of Historic Resources, the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation. This multi-agency review is essential to adequately identify and avoid or minimize any adverse impacts from the siting of these large-scale projects. However, it is also important that the roles and responsibilities of each agency involved in this review process are clearly spelled out in the regulations to help ensure that these reviews are done efficiently and effectively.</p> <p>3. Increase Transparency and Facilitate Public Participation These amended regulations should require increased collaboration and communication by and between DEQ and the other agencies that review the applications, local government, and solar developers. A byproduct should be increased transparency and public access to information. While the prompt and substantial deployment of renewable energy generation is necessary in order to reduce carbon emissions and address climate change, there are sites such as post-mining lands and brownfields that should be prioritized for this type of development over forests, agricultural parcels, and other lands with historic, cultural, or scenic value. The public should have access to pertinent project information and adequate opportunities to raise concerns and provide suggestions to help inform the application process. Specifically, the public should be able to easily access from the DEQ website a list of the projects that have submitted notices of intent, where these projects are in the approval process,</p>	
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	<p>notice of public input opportunities, and the anticipated dates of construction and operation. Additionally, an accurate way to track future projects through the permitting process would help agencies manage their workload and solar developers and local governments plan for the future.</p> <p>Conclusion The General Assembly has made it clear through the passage of the Grid Transformation and Security Act that Virginia needs to deploy more renewable energy projects. SELC actively supports increased renewable energy generation to address climate change. However, large-scale solar projects need to take into account site-specific conditions. Careful planning and collaboration among developers, localities, community members and state agencies can help ensure that solar power continues to be one of the cleanest forms of energy at our disposal.</p>	
<p>Kate G. Wofford Executive Director Alliance for the Shenandoah Valley and John D. Hutchinson V Director of Conservation Shenandoah Valley Battlefields Foundation</p>	<p>Thank you for the opportunity to comment on possible future amendments to DEQ’s Permit By Rule process for utility-scale projects of 150 MW or less. Alliance for the Shenandoah Valley is a regional nonprofit working to conserve the natural resources, cultural heritage and rural character of the Shenandoah Valley. Formed in 2018 from a merger of community-based conservation groups, we envision a Shenandoah Valley where “our way of life is sustained by rural landscapes, clean streams and rivers, and thriving communities.” Shenandoah Valley Battlefields Foundation works with partners to preserve the hallowed ground of the Valley’s Civil War battlefields, to share its Civil War story with the nation, and to encourage tourism and travel to the Valley’s Civil War sites.</p> <p>As you likely know, localities in Virginia’s Shenandoah Valley have</p>	<p>Recommendations are accepted and were taken under consideration during the drafting of the regulation.</p>

	<p>received multiple proposals for utility-scale solar projects (six proposals on roughly 4,000 acres in four counties) over the past year, with more inquiries coming. The Shenandoah Valley is predominately rural, with agriculture and tourism as the leading economic sectors. The proposed solar projects can be of a scale and complexity beyond what our localities are accustomed to dealing with, and they bring a new and uncertain set of potential impacts and benefits. Unfortunately, our local governments tend to be quite small, without the staff or resources to quickly develop comprehensive plan updates, zoning ordinance language, and recommended conditions for special use permit applications to properly consider these applications.</p> <p>To help address this, our organizations have produced utility-scale solar ordinance guidelines for localities in the Shenandoah Valley, and we have partnered with our Planning District Commissions on two half-day workshops to provide technical guidance and an information exchange for local officials and staff of the counties, cities, and towns in the region. These workshops were well-received, and we greatly appreciate the helpful participation of Mary Beth Major.</p> <p>Based on this recent work with local communities in our region, we encourage DEQ and the Commonwealth to consider improvements in the following areas:</p> <ol style="list-style-type: none"> 1. More staffing is needed at state agencies to oversee utility-scale solar project permitting. According to the 2018 Grid Transformation and Security Act's statement that 5 GW of utility-owned and utility-operated wind and solar resources are deemed in the public interest and Virginia's Energy Plan calling for 3 GW of solar and wind investment to occur by 2022, the development of 	
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	<p>utility-scale solar is a priority for the General Assembly and the Administration. The level of resources allocated to the state agencies that administer the programs and permit the projects, however, does not reflect these priorities.</p> <p>We encourage an increase in the staff capacity at DEQ that administers the PBR program. We also encourage increased staff capacity for providing input on utility-scale solar projects at the state agencies charged with protecting natural and cultural resources—DEQ, DGIF, DCR and DHR. We understand that DMME will likely increase staffing to work with localities, and we support that addition. We hope that the Advisory Panel will consider a significant increase in permit fees to provide revenue for increased staff capacity at the state agencies.</p> <p>2. More engagement with localities is needed on energy planning and preparation for projects. Just as the state seems to be overwhelmed by the number and size of utility-scale solar projects, so are the local governments. To get the best designed and vetted projects and give developers more certainty, we suggest the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Provide more guidance on local planning for renewable energy, especially to help localities address the topic well in their comprehensive plans and to stay informed on a fast-changing technology. <input type="checkbox"/> Update the state’s model solar ordinance and provide a clearinghouse of information and examples. <input type="checkbox"/> Consider how the PBR process could be modified to provide feedback and exchange of information among the developer, the state agencies, PJM, and the local government. The goal would be to help scope projects more effectively by having the information on the table earlier for all parties. For example: currently developers tend to seek Local Government 	
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	<p>Certification first (understandable, given the cost of interconnection reviews), but this precludes the local government from having the benefit of information from the state review and can be too early in the process for them. Possible options: a two-phase certification process; differing processes by size of the project or if significant concerns arise; standard format for providing and updating project information; preliminary consultation including state representative.</p> <ol style="list-style-type: none"> 1. Consider a working group or other listening process to receive input on this. 2. Is there state-wide consideration given to the relative value of renewable energy production compared to other important goals such as protecting prime soils, cultural resources and retaining forest cover? While solar energy production will not take up a large percentage of farmland overall, these projects can have a large local impact. 3. Localities need more direction and support from the Commonwealth. We encourage DEQ to provide more technical support to localities on best practices. To be clear, we are not advocating for additional mandates or regulations; localities should retain local zoning and siting decisions and the ability to develop additional standards that go beyond minimum state standards. However, localities would benefit from guidance. For example: <ul style="list-style-type: none"> <input type="checkbox"/> Improved erosion and sediment control and stormwater management. The Commonwealth is investing significant resources in the Chesapeake Bay recovery and the associated clean-up of local streams and rivers. We must ensure that our renewable energy goals are not in conflict with water quality goals. Localities need more guidance and examples of appropriate permit conditions to minimize run-off during construction 	
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	<p>and post-construction. There is much room for improvement in the water quality area of the regulations (ex: defining only the solar panel post tops as impervious area is quite a low minimum; it should not be fully on each individual locality to research and figure out appropriate standards.)</p> <ul style="list-style-type: none"> □ Guidance on costs to review and oversee projects and what to expect in negotiations with developers, including options for bonding and decommissioning. □ Guidance on fee structures and processes for engaging qualified third party review of project proposals and site plans. <p>4. Taxing and incentives structure needs re-evaluation. As described above, localities need to better understand the fiscal impacts of these projects, particularly in light of the Machinery & Tools tax exemption. While we recognize that M&T tax exemption is beyond the purview of this regulatory review process, we encourage the Advisory Panel to consider the financial implications of the M&T tax exemption on localities in their recommendations. Legislation to update the exemption to reflect the changing market conditions may be appropriate.</p> <p>5. Project siting and the development process could be demystified for the public. The amended regulations should require increased collaboration and communication by and between DEQ and the other agencies that review the applications, local government, and solar developers, with an eye toward increased transparency and public access to information. Public access to pertinent project information with adequate opportunities to raise concerns and provide suggestions will only result in better sited projects. Specifically, the public should be able to easily access from the DEQ website a list of the projects that have submitted notices</p>	
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	<p>of intent, where these projects are in the approval process, notice of public input opportunities, and the anticipated dates of construction and operation. Additionally, an accurate way to track future projects through the permitting process would help agencies manage their workload and solar developers and local governments plan for the future.</p> <p>6. What's coming in the future? Localities and communities would benefit from a better understanding of the needs of the industry and what to expect. Can the Commonwealth help localities predict where and what is coming? For example:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Where are future projects likely to be proposed? Near existing transmission lines or will developers have the financial and regulatory ability to upgrade or build the lines? <input type="checkbox"/> Should we expect the trend of larger and larger projects to continue? Is battery storage something that localities should plan for? If so, what potential impacts should be considered? <p>Finally, there is strong support from Shenandoah Valley residents for increased distributed-scale and community-scale solar power. While many of these needed policy changes may be beyond the purview of this comment period, we strongly encourage any changes to help break down barriers for homeowners, farms and other small businesses, schools, and communities to generate their own solar power.</p> <p>Thanks for your consideration of these comments. We look forward to an additional opportunity to consider and provide comment on the recommendations of the Advisory Panel.</p>	
<p>Dan Holmes Director of State Policy Piedmont Environmental Council</p>	<p>The Piedmont Environmental Council (PEC) appreciates the opportunity to review and comment on the potential amendments to DEQ's Permit By Rule process for utility-scale projects of 150 MW or</p>	<p>Recommendations are accepted and were taken under consideration during the drafting of the regulation.</p>

	<p>less. PEC is a non-profit environmental group that has advocated since 1972 for the preservation of natural, scenic and historic resources throughout a nine county area in Virginia, extending from Loudoun County to Albemarle County.</p> <p>The Piedmont Environmental Council is an advocate for solar energy, especially distributed solar power generation - small scale solar primarily designed to meet the immediate demands of the property in which it is located. We believe distributed solar power generation is a great way to meet current environmental challenges and localized energy demands, while reducing the need for traditional centralized fossil fuel power production and its associated infrastructure – mainly transmission lines.</p> <p>The steadily declining cost of panels and the rising demand for green energy has spurred interest in the development of large-scale solar facilities throughout Virginia. These facilities are often sited in rural areas and referred to by many as solar farms. They have many of the same environmental benefits as rooftop solar. These benefits include zero emissions and the ability to provide power at times of peak-demand. But at a certain scale, it is difficult at best to protect specific values associated with our agricultural areas. Utility-scale solar facilities require a vast amount of acreage for energy production at this scale - as much as 7 to 10 acres per MW of production. Proposals for solar facilities of over a thousand acres are becoming the norm in our region. Based on size, location, visibility, impacts to agricultural and natural resources, any changes to the current process for the Permit by Rule (PBR) need to be carefully considered and should address some of the challenges that have become clear as we ramp up use of this technology.</p>	
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	<p>As an organization that has been active in the education of localities, both in and outside of our region, on issues related to the siting of utility scale solar, we have some concerns with the proposed changes under consideration. We also offer comment on general considerations for the Commonwealth to assist in reducing environmental impact and in support of a more sustainable approach to solar deployment. PEC supports the following:</p> <ol style="list-style-type: none">1. Appropriate Staffing and Resources - State agencies (and localities) are struggling to meet the demands related to the permitting of these facilities. Permitting fees should support the operation the program and need to be set at levels that provide for the appropriate staffing and the resources required to process the applications in a manner that results in optimal environmental outcomes and in a timely fashion. We support increases in funding to all associated agencies in the review process including the Virginia Department of Environmental Quality (VDEQ), the Virginia Department of Historic Resources (VDHR), the Virginia Department of Game and Inland Fisheries (VDGIF), The Virginia Department of Agriculture and Consumer Services (VDACS) and the Department of Conservation and Recreation (DCR), as well to those that will provide additional support to localities like the Virginia Department of Mines Minerals and Energy (VDMME).2. Development of Best Practices and Standards for the Industry The Commonwealth should be developing a portfolio of Best Management Practices (BMPs) and standards for the industry. Too often, localities are left to sort out for themselves whether an applicant is providing appropriate levels of protection for multiple values and resources. Local governments do not have the expertise or education related to these matters. The PBR	
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	<p>process should be designed to address as many of these issues as possible. Virginia can also play a role in setting clear expectations of the industry prior to applications being submitted at the local level. We find the current PBR process leaves a lot to be desired as it pertains to avoidance and mitigation of significant impacts to prime agricultural soils, water quality, scenic and historic resources and the ecology of specific sites. The Commonwealth should play a significant role in providing clear direction to the industry as it relates to the protection of these resources. In this way, Virginia can proactively and positively shape projects, ensuring superior site selection and the best practices to be employed by the industry. This effort also supports other goals and objectives of Virginia related to environmental protection. BMPs and standards should include, but not be limited to:</p> <ul style="list-style-type: none"> a. Site development guidance - guidance on the phasing of site development and setting maximum disturbance thresholds to reduce impacts associated with erosion and sedimentation b. Avoidance of forested areas and prime agricultural soils c. Standards for creating pollinator habitat or continued agricultural use d. BMPs for issues related to dripline erosion, impervious surfaces, general site restoration and overall protection of soil health e. Guidance on appropriate screening/buffering including recommendations on species f. Guidance on avoidance or mitigation of impacts to scenic resources g. Guidance on decommissioning and recycling of panels at the end of a project's useful life. <p>Projects that adopt standards and BMPs recommended by the state should be recognized for their contribution. This would also assist localities and the general public in determining whether a project proposed for their jurisdiction is</p>	
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	<p>meeting the “gold standard” in environmental protection.</p> <p>3. Local Authority Local governments are often the best judge as it pertains to what specific values are held by their community as represented in their comprehensive plan and whether or not a particular land use is appropriate for a specific site. For this reason, local authority should not be altered. However, local governments would be better served by education on projects of this nature and siting considerations as well as the development of state standards and best practices.</p> <p>4. Education of the Public We have found that misinformation is currently being spread as it relates to the impacts and benefits of this technology. In an effort to achieve stated goals related to renewable energy and to increase citizen support for renewable projects, the state has a role to play in ensuring accurate information is provided to the general public. PEC and other organizations have hosted workshops and panel discussions, bringing industry professionals, knowledgeable experts, experienced planners and agency staff together to provide citizens with accurate information related to the impacts and benefits of large-scale projects. The Commonwealth should continue this effort by hosting regional meetings where a significant number of proposals occur.</p> <p>5. Removing Barriers to Distributed Generation Virginia has acres and acres of flat roof space devoid of solar panels in areas of moderate to high energy demand. We also have contaminated and/or underutilized industrial sites that we should prioritize for this purpose. It is our belief that we should be looking to these developed areas as the low-hanging fruit of future solar sites. We support a study on regulatory, legislative and physical barriers to</p>	
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	<p>the utilization of brownfields, greyfields, landfills, post-mining lands and other underutilized industrial or commercial sites in an effort to remove some of the pressure for greenfield development of rural lands for utility scale solar. We also support the removal of barriers to greater citizen and municipal deployment of distributed generation.</p> <p>In conclusion, when done well, utility scale solar can be a true “win-win” situation for both developers and host communities. Unfortunately we are seeing too many cases of poorly sited projects creating “win-lose” situations, such as those projects that result in the large scale clearing of forests or conversion of prime agricultural lands.</p> <p>Thank you for consideration of these comments and for our request for inclusion on the Regulatory Advisory Panel related to this matter.</p>	
<p>Margaret L. (Peggy) Sanner Virginia Assistant Director & Senior Attorney Chesapeake Bay Foundation</p>	<p>On behalf of the Chesapeake Bay Foundation, Inc. (CBF), I submit the following comments regarding the review by the Virginia Department of Environmental Quality (DEQ) of the Small Renewable Energy Projects (Solar) Permit Regulation by Rule, 9VAC15-60 (Permit by Rule). CBF is a 501(c)(3) nonprofit organization dedicated to restoring and protecting the Chesapeake Bay, the largest estuary in the United States. CBF has more than 85,000 members in Virginia and operates from offices in Richmond and Virginia Beach, Virginia, as well as in Maryland, Pennsylvania, and the District of Columbia. CBF has worked for decades with DEQ and myriad other stakeholders in the protection of water quality in the Commonwealth. Its efforts have focused on restoration of the Chesapeake Bay and tributary waters through the Chesapeake Bay Total Maximum Daily Load (Bay TMDL) and Virginia’s Watershed Implementation Plans (WIPs), but have also extended beyond the Bay watershed. Indeed, CBF has always</p>	<p>Recommendations are accepted and were taken under consideration during the drafting of the regulation.</p>

	<p>recognized the deep connections between healthy landscapes, smart land use practices, and clean water quality. Among many other initiatives, CBF works with the region’s agricultural and development communities to prioritize use of effective best management practices that protect water quality, with regulators to urge caution on projects that would cause forest fragmentation and associated water quality concerns, and with legislators on proposals to enhance tree canopies in urban and suburban areas. We appreciate the opportunity to comment as part of DEQ’s four-year review of the Permit by Rule.</p> <p>As described more fully below, we urge DEQ to require explicit consideration of solar projects’ potential impacts to water quality as part of the Permit by Rule’s required framework for protecting natural resources. Consistent with the Virginia Constitution’s directive to protect and preserve the Commonwealth’s natural resources for the people,⁸ requiring specific consideration of water quality impacts will also enhance Virginia’s ability to ensure the alignment of its various conservation programs and the achievement of their collective goals.</p> <p>COMMENTS</p> <p>There can be no doubt but that the widespread development of renewable energy sources, including solar, is an essential step in transforming our economy to address climate change. As this process proceeds, Virginia must ensure this industry develops in a manner that recognizes and does not conflict with the important objectives of programs protecting other natural resources, including water.</p> <p>A. DEQ Should Require Explicit Consideration of Water Quality Impacts.</p>	
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	<p>The Small Renewable Energy Projects Act, first enacted in 2009, is an important step in Virginia’s efforts to incentivize and accelerate development and reliance on renewable energy resources and ensure that this development proceeds in a manner consistent with all relevant environmental standards and permits and local land use requirements. Notably, the statute clearly indicates that an applicant for a solar project approval under this Permit by Rule must provide DEQ with an “analysis of the beneficial and adverse impacts of the proposed project on natural resources,” a term that the Act leaves undefined, although its framework for protection of natural resources’ requirements includes specific preconstruction analyses regarding impacts to wildlife and to historic resources.</p> <p>The current Permit by Rule regulation expressly implements the statutory requirements for wildlife and historic resources. It accords scant attention to “other natural resources,” however, currently requiring only a preconstruction desktop survey of natural heritage resources within the disturbance zone. For this purpose, “natural heritage resource” does not include water resources, but is defined to mean the “habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.”</p> <p>Despite the dearth of regulatory attention to potential water quality impacts, recent solar projects in Virginia suggest that, unless carefully designed and implemented, such projects can have deleterious effects on water quality. Thus, adverse impacts may occur through poor design or implementation of required pre- or post-construction stormwater</p>	
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	<p>management rules. They may also occur indirectly by a project's conversion of significant acreages of valuable resource lands, such as forests and well-managed agricultural operations, to make way for solar development projects. Conversion of these lands through deforestation and large-scale disturbance can dramatically reduce the land's ability to perform important environmental services, including air quality improvement and protection, and also water-related services, such as removing pollutants from runoff via infiltration and vegetative uptake, to protect surface and groundwater. While careful adherence to existing erosion and sediment control and stormwater management rules is necessary and helpful, serious questions remain over the extent to which such rules are adequate to meet Virginia's commitment to ensure no new pollutant loads from new development. As a result, ensuring potential impacts to water quality are taken into consideration in the application process is important and will assist the project developer and local and state regulators in minimizing adverse impacts.</p> <p>Recommendation #1. The current regulation at 9VAC15-60-30.A.7 should be amended as follows: [The owner or operator of a small solar energy project . . .] furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources, <i>including forests and water resources.</i></p> <p>Recommendation #2. The current regulation at 9VAC15-60-40.C. should be amended as follows: [The owner or operator of a small solar energy project . . .] shall also conduct a preconstruction desktop survey of <i>forests, water resources, other natural resources and</i> natural heritage resources within the disturbance zone.</p>	
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	<p>Recommendation #3. The current regulation should be amended in 9VAC15-60-40.D as follows: The applicant shall provide to the department a report presenting the findings of the studies and analyses conducted pursuant to subsections A, B, and C of this section, along with all data and supporting documents. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife, forests, water resources and historic resources identified by these studies and analyses.</p> <p>B. DEQ Should Amend Site Plan and Context Map Requirements.</p> <p>The present review proceeding is intended, among other purposes, to provide “clarity for natural and cultural resource studies” and to streamline the Permit by Rule regulation for ease of use while still protecting natural resources and human health. Those goals would be well served by expanding the current requirement that an applicant submit a site plan and a context map of the site and the vicinity. As amended, the required context map should show, not only the features currently specified (state and federal resource lands and other protected areas, Coastal Avian Protection Zones, historic resources, state roads, waterways, locality boundaries, forests, open space and transmission, and substation infrastructure), but also farmlands and brownfields. Current estimates indicate that solar farms currently cover approximately 5,100 acres within Virginia’s portion of the Bay watershed. As this essential industry grows, comprehensive information made available through the suggested change will assist industry members, state and local regulators, and policy makers in making the wisest decisions regarding competing land uses, and in particular, in devising flexible, cost-effective strategies to prioritize use of brownfields, rather than</p>	
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	<p>resource lands like forests and agricultural lands, for solar projects. Recommendation #4. The current regulation, at 9VAC15-60-70.B, should be amended as follows: The applicant shall submit a context map including the area encompassed by the site and within five miles of the site boundary. The context map shall show state and federal resource lands and other protected areas, Coastal Avian Protection Zones, historic resources, state roads, waterways, locality boundaries, forests, open spaces, <i>farmland</i>, <i>brownfields</i>, and transmission and substation infrastructure. CONCLUSION DEQ's review of the Permit by Rule regulation is an opportunity to ensure the growth and development of the solar energy industry in the Commonwealth in a manner consistent with Virginia's commitment to protect its water resources, including the Chesapeake Bay, local rivers, and streams. Incorporating requirements that will ensure consideration of water quality protections will help the Commonwealth enjoy the benefits of an increased reliance on renewable energy.</p>	
<p>S. Rene' Hypes Department of Conservation and Recreation- Natural Heritage</p>	<p>The Department of Conservation and Recreation's Division of Natural Heritage's (DCR) mission is conserving Virginia's biodiversity through inventory, protection, and stewardship. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal, unique or exemplary natural communities, and significant geologic formations. Please find below the following DCR Solar Permit by Rule (PBR) recommendations and comments: * As part of the PBR application, DCR requests a map identifying the array layout, buffer areas, fencing, grid interconnect infrastructure including battery storage, access roads, etc. to aid in the review of the solar project.</p>	<p>Recommendations are accepted and were taken under consideration during the drafting of the regulation.</p>

	<p>* Based on desktop reviews and on site surveys, DCR recommends avoidance, minimization and mitigation of impacts to documented natural heritage resources within proposed solar projects. DCR may recommend field surveys for natural heritage resources based on nearby documented occurrences or intersection of the project footprint with predicted suitable habitat (PSH) models developed by DCR for rare, threatened and endangered species.</p> <p>* DCR recommends the development of an invasive species management plan for proposed solar projects and the planting of Virginia native pollinator plant species that bloom throughout the spring and summer, to maximize benefits to native pollinators. DCR recommends planting these species in at least the buffer areas of the planned facility, and optimally including other areas within the project site. Guidance on plant species can be found here: http://www.dcr.virginia.gov/natural-heritage/solar-site-native-plants-finder.</p> <p>* Based on the proposed planting plan, DCR recommends the completion of a cost analysis of planting native plants including pollinators species compared to the long-term maintenance of turf grass. As part of that analysis, DCR also recommends the completion of the solar scorecard https://www.dcr.virginia.gov/natural-heritage/document/va-solar-site-pollinator-bird-habitat-scorecard.pdf as part of the PBR application.</p> <p>* When C1 (Outstanding ecological integrity) or C2 (Very High ecological integrity) cores as identified in the Virginia Natural Landscape Assessment (https://www.dcr.virginia.gov/natural-heritage/vaconvisvnl) are intersected by a proposed solar facility, prior to timber harvest an investigation of these forest fragmentation impacts is warranted. DCR can conduct a formal</p>	
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	<p>fragmentation analysis upon request. This analysis would estimate direct impacts to cores and habitat fragments and indirect impacts to cores. Thank you for the opportunity to provide comments for this regulatory action.</p>	
<p>Jim Orrell; Stantec Consulting Services Inc.</p>	<p>As you know Stantec is currently representing several developers with projects in the PBR process. A couple of areas of concern from them are: <input type="checkbox"/> Are there ways that the process could be more streamlined? Could this be based on project size or whether a federal permit action is required? <input type="checkbox"/> Will there be requirements imposed related to pollinators? I think you heard some of these concerns voiced at the stakeholder meeting yesterday. I am not under the impression that the developers are against the concept but the upfront cost and the unknowns of doing it for the entirety of these large sites raises issues that still need to be worked through.</p>	<p>Recommendations are accepted and were taken under consideration during the drafting of the regulation.</p>

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Mary E. Major, P.O. Box 1105, Richmond, VA 23218; Telephone: (804) 698-4423; Fax: (804) 698-4178; Email Address: mary.major@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC15-60-10		Terms and definitions.	Added the following definitions for clarity: "Archaeological field survey" "Architectural field survey" "Begin commercial operation" "Begin construction" "Complete application" "DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard" "Document certification" "Land disturbance" "Open area" "Panel zone" "Previously disturbed or repurposed areas" "Responsible person" "Virginia Pollinator Protection Strategy" "Virginia Natural Landscape Assessment Ecological Cores"
9VAC15-60-10		Terms and definitions.	Added clarifying language to the following definition: "Disturbance zone"
9VAC15-60-10		Terms and definitions.	The definitions of T&E and wildlife have been moved to §§ to 9VAC15-60-40 and 9VAC15-60-45 as the definitions are different for projects applications depending upon whether an application is submitted prior to or within 12 months after the effective date of the amendments.
9VAC15-60-20		Applicability of the regulation.	Removes redundant language and clarifies that the regulation applies throughout the Commonwealth of Virginia.
9VAC15-60-30 A			Removes redundant language. Simplifies the notification process by

			creating forms for Notice of Intent and for Notice of Withdrawal.
9VAC15-60-30 A 7		Requires an analysis of impacts to natural resources for small renewable energy projects.	Requires an analysis of impacts to natural resources for projects depending upon whether an application is submitted prior to or after the effective date of the regulation amendments.
9VAC15-60-30 A 8		Requires a mitigation plan if there is a finding of significant impact to natural resources from small renewable energy projects.	Clarifies the requirements for a mitigation plan if there is a finding of significant impact to natural resources depending upon whether an application is submitted prior to or after the effective date of the amendments.
9VAC15-60-30 A 14		Requires a public comment period "prior to authorization of the project".	Clarifies that the public comment period, public meeting and summary report are a part of the PBR application.
9VAC15-60-30 A 14		Requires an applicant to furnish the appropriate fee to the department.	The fees have been increased to cover the program costs; provides reference for the correct regulation citation for the new fee schedule.
9VAC15-60-30 B		Provides the statutory review with sister agencies within the Natural Resource Secretariat and the completeness determination within 90 days for application review.	Clarifies exactly how an application should be submitted including the requirement for a document certification by a responsible person and identification of the individual to receive the PBR authorization.
	9VAC15-60-30 C		Provides the statutory review with sister agencies within the Natural Resource Secretariat and the completeness determination within 90 days for application review. Provides clarification for applications found to be incomplete.
9VAC15-60-40		Provides the requirements for analysis of impacts to natural resources.	Applications submitted prior to twelve months after the effective date of the amendments will remain unchanged.
	9VAC15-60-45		Specifies the analysis of impacts to natural resources for project applications submitted twelve months after the effective date of the amendments: 1. T&E species must include insects; 2. DHR must provide comments on a complete historical resource analysis within 30 days; 3. Virginia Natural Lands Assessment Ecological Cores (C1 and C2) must be included in the natural resource review and analysis; and 4. Virginia Solar Site Pollinator/Bird Habitat Scorecard must be included in review and analysis.
9VAC15-60-50		Provides the determination of likely significant adverse impacts for projects.	Applications submitted prior to twelve months after the effective date of the amendments will remain unchanged.

	9VAC15-60-55		Provides the determination of likely significant adverse impacts for project applications submitted twelve months after the effective date of the amendments. The provisions are essentially unchanged from 9VAC15-60-50 and add T&E insects, and impacts to natural heritage C1 and C2 ecological cores.
9VAC15-60-60		Provides for mitigation plans based on analysis conducted under 9VAC5-60-40 and 50.	Applications submitted prior to twelve months after the effective date of the amendments will remain unchanged.
	9VAC15-60-65		Provides for mitigation plans for projects applications submitted twelve months after the effective date of the amendments to be based on analysis conducted under 9VAC5-60-45 and 55.
9VAC15-60-70		Provides requirements for both site and context maps.	Includes the addition of Chesapeake Bay Resource Protection Areas, farmland and brownfields to the requirements to the context map. Post construction maps need to be submitted within 6 months from beginning operation.
9VAC15-60-80		Provides for submittal of design standards and operation plan.	Clarifies that an operation plan is required for projects; identifies minimum information to be included in the plan.
9VAC15-60-90		Provides guidance for conducting the public comment period.	Clarifies that the public comment period must be conducted and summarized as part of the application submittal. Clarifies that low income and minority populations need to be notified.
9VAC15-60-100		Provides for the change of ownership, modification and permit termination.	Clarifies that an administrative modification is available for change of ownership or project name with no fee. All other permit modifications remain at the current fee. Streamlines and ensures consistent information by providing a form for change of owner, operator or name. Clarifies that certain records, i.e. map of resources to be avoided or mitigated be on site during construction and provides notification milestones and reporting deadlines. Provides clarifying language for permit termination.
9VAC15-60-100		Provides a table for fees in 4 categories: 5-25MW, 26-50MW, 51-75MW and 76 to 150MW. Modification fee is fixed.	Provides for a NOI fee. Application fee includes a base fee of \$7,500 plus an amount per MW – projects 5 to 20 MW have a smaller per MW fee, \$150; projects over 20 MW have a larger per MW fee, \$165. Modification fee base is 20% of original application fee

			<p>Incomplete review fee is 20% of original application fee</p> <p>Provides for an annual maintenance fee.</p> <p>Provides for fee adjustments based U.S. Department of Labor Consumer Price Index.</p> <p>Clarifies that CAPZ mitigation fees are due at the time of application submittal.</p> <p>Fee amounts are based on revenue necessary to cover the current costs of the program.</p>
9VAC15-60-120		Provides information for internet-based information.	Removes unnecessary language.
9VAC15-60-130		Provides coverage for projects 5MW or less; or impact 10 acres or less; identifies criteria for exemption from some PBR requirements.	Clarifies that projects proposed for previously disturbed land or brownfields, regardless of MW size, are exempt from some requirements of the PBR provided that they do not impact more than 10 acres.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no anticipated adverse impact on the institution of the family and family stability; however, improvements in renewable energy generation throughout the Commonwealth does have a positive impact on reduced pollutants from fossil fuel energy generation which does have a positive impact on health which may indirectly impact families.