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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC15-40 9VAC15-60 9VAC15-70 9VAC15-100
VAC Chapter title(s)	Small Renewable Energy Projects (Wind) Permit by Rule Small Renewable Energy Projects (Solar) Permit by Rule Small Renewable Energy Projects (Combustion) Permit by Rule Small Energy Storage Facilities Permit by Rule
Action title	Amend regulations to increase fees assessed by Department of Environmental Quality Permit by Rule Regulations
Date this document prepared	October 28, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The intent of this regulatory action is to amend or modify Department regulations to increase fees assessed by these regulations for permits by rules. The fees assessed by these regulations for wind, solar, and combustion small renewable energy projects were last modified over ten years ago and the fees for small energy storage facilities were last modified in 2022.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Department or DEQ – Department of Environmental Quality

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 the ORM procedures, “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

There is no mandate from the General Assembly, federal government, or court that requires these amendments.

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 Department is authorized to adopt regulations for permits by rule for small renewable energy projects, including fee schedules, pursuant to § 10.1-1197.6 of the Code of Virginia.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The regulatory amendments are necessary support the Department’s small renewable energy program.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The substance of this action is to increase fees assessed through Department regulations to support the activities of the Department’s small renewable energy program. An overview of the fees to be increased is listed below.

Wind Permit by Rule Fees

These fees are paid by the owner or operator of a small renewable wind energy project for the purpose of funding the costs of administering and enforcing the provisions of the program including inspection and monitoring to ensure compliance. These fees were last revised in 2010,

Solar Permit by Rule Fees

These fees are paid by the owner or operator of a small renewable solar energy project for the purpose of funding the costs of administering and enforcing the provisions of the program including inspection and monitoring to ensure compliance. These fees were last revised in 2012.

Combustion Permit by Rule Fees

These fees are paid by the owner or operator of a small renewable combustion energy project for the purpose of funding the costs of administering and enforcing the provisions of the program including inspection and monitoring to ensure compliance. These fees were last revised in 2013.

Small Energy Storage Facilities Permit by Rule Fees

These fees are paid by the owner or operator of a small energy storage facilities project submitting an application for a permit by rule or an application to retrofit a permit by rule. These fees were last revised in 2022.

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.

No alternatives to this regulatory action were considered.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

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, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. The Department is also 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Susan Tripp, PO Box 1105, Richmond, Virginia 23218, (804) 664-3470, susan.tripp@deq.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

This NOIRA is not being used to announce a periodic review or a small business impact review.

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

Public Hearing at Proposed Stage

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Department is not using a panel to develop a proposal.