

**Regulatory Advisory Panel (RAP)**  
Small Renewable Combustion Energy Permit by Rule  
June 20, 2011 Meeting  
Draft Meeting Notes

**Location:** DEQ Piedmont Regional Office  
Glen Allen, VA 23060

**Start:** 9:34 a.m.

**End:** 3:48 p.m.

**RAP Leader/Facilitator:** Carol Wampler, DEQ

**Recorder:** Debra Miller, DEQ

**RAP Members Present:**

Tom Smith, DCR

Tatyanna Patten, Public Policy Virginia  
(alternate)

Ray Fernald, DGIF

Ron Jenkins, DOF

Robin Jones, DMME

Stephen Versen, VDACS

Rebekah Remick, DEQ

Kathryn Perszyk, DEQ

John Hart, AEC Idom

Lynne Rhode, Troutman Sanders

Robert Greene, Ingenco

Donna Wirick, Recast

Randy Bush, Virginia Forest Products  
Association

Larry Jackson, APCO

Larry Land, VACO

Tony Banks, VA Farm Bureau

**RAP Members Absent:**

Scott Sklar, Stella Group

Al Weed, Public Policy Virginia (Alt Present)

Bob Bisha, Dominion

Roger Kirchen, DHR

Kelly Bonds, Aegis

Thomas Numbers, ERM

Nikki Rovner, TNC

**Guests and Public Attendees:**

Kerri Nicholas, OAG

Cal Whitehead, Covanta Energy

Ralston King, Covanta Energy

Ernie Aschenbach, DGIF (Alt)

**Agenda Item: Welcome, Introductions, & Overview – Carol Wampler, DEQ**

**Discussion:** Ms. Wampler welcomed all attendees. Those present introduced themselves. Ms. Wampler explained her role as the facilitator and the role the RAP members play in this process. In addition to her role as a neutral discussion leader, the facilitator also has an advocacy role for the faithful implementation of the statute and for the process of the regulation's development under the APA. The role of the RAP members is to make recommendations to the Director regarding the regulatory requirements. In order to move the process forward, the RAP members were reminded that the issues are important and that unless new information is provided, once the RAP recommends a requirement (preferably via consensus), it is hoped that the issue will not be continually revisited. In most RAP's, the deliberative process involves reaching agreement on an issue and then building on that agreement when addressing the subsequent issues. Ms. Wampler went on to explain the importance of consensus and why we seek consensus decisions. Consensus is something that all can "live with," and it also is a general agreement that those involved will not work against or oppose the consensus decision of the group in other forums. It was further noted that consensus agreements will hold more weight with the decision makers than RAP recommendations where consensus is not reached. Additionally, there was a quick review of

**Regulatory Advisory Panel (RAP)**  
Small Renewable Combustion Energy Permit by Rule  
June 20, 2011 Meeting  
Draft Meeting Notes

the SCC process and the group was reminded that, under the SCC process, energy generation facilities less than or equal to 5MW rated capacity are exempt.

**Agenda Item: Perspectives of OAG, DCR, VDACS, DMME, & DOF**

**Discussion:** Kerri Nicholas, OAG, provided perspectives on the authorities provided by the enabling legislation as they apply to the various scenarios presented in the *Straw Man Combustion PBR Overview DRAFT* (see attached). It was explained that if a PBR was determined to not be required as provided Scenario 1, then it is likely that projects would fall under the jurisdiction of the current SCC process. SCC is not bound by regulation and each issue is handled on a case by case basis. There was some discussion on the current process for these facilities under the SCC and the benefit for doing a PBR as the PBR process does provide some type of certainty and streamlined process.

Regulation provides the requirements up front and allows developers to make more informed decisions. If a PBR regulation is developed, then it will be that process in lieu of the SCC process that these energy facilities will go through. Scenarios 2, 3, and 4 all would require promulgation of a PBR regulation. Ms. Nicholas clarified that a PBR under any of these scenarios would have to include all 14 statutory criteria. The group discussed various issues that will need to be decided regarding rated capacity, which has a direct effect on the applicability standard of less than 20 MW for these energy generation facilities that generate electricity from biomass, energy from waste, or municipal solid waste. The RAP will need to decide the basis of rated capacity to be defined as electric generation only (MW) or electric and thermal output (MW and BTU) of these facilities. The RAP will need to work out the best way to deal with these and other issues, which is why definitions specific to this technology will need to be developed. It was further noted that connection to the grid is specified in the PBR statutory criteria, but failure to connect to the grid has not previously been argued as a jurisdictional requirement – that is, in the Wind PBR and the proposed Solar PBR, projects that do not connect to the grid are still covered by the regulation. The RAP will need to decide how to deal with thermal generation. For facilities that produce only steam (thermal), there is no SCC process currently required (to the best of our knowledge).

The statute lists 14 items that are to be provided in order for to meet the requirements of a PBR. To what extent each of these is to be provided is considered in each of the “straw man” scenarios, and will be a major task for the RAP to decide. Ms. Wampler reminded the group to remember that the PBR process provides the requirements up front so that they are understood and the process can be more expeditious. In accordance with the statute, the PBR process requires analysis for natural resources and mitigation for significant impacts to wildlife and historic resources.

Stephen Versen, VDACS, then presented his agency’s concerns. VDACS concern and involvement in this process is with respect to the analysis of the impacts on T&E plant and insects species. It was noted that VDACS authority on this issue does not extend to privately-held lands (or leased to parties who act under the authority of the owner). The Wind PBR and proposed Solar PBR likewise limit the reach of DEQ’s authority. VDACS is interested in helping farmers find markets for their crops; therefore, biomass projects are important to this agency.

**Regulatory Advisory Panel (RAP)**  
Small Renewable Combustion Energy Permit by Rule  
June 20, 2011 Meeting  
Draft Meeting Notes

Ron Jenkins, DOF, provided his agency's point of view regarding this issue. Their concerns lie more with the producers of the biomass, especially those using forest-related biomass. DOF has some concern with the offsite impacts to forested land. Mr. Jenkins then provided some statistics regarding Virginia's forest land and its economic value and why sustainable use is essential.

Robin Jones, DMME, expressed her agency's support for development of renewable energy projects, including combustion projects.

Tom Smith, DCR, noted that the PBR regulation is desirable as it provides certainty of the requirements for not only the developers, but for the agencies and the public as well. He asked that the RAP consider the addition of the analysis of natural heritage resources to any Combustion PBR desktop survey requirements, as was done in the Wind PBR regulations. DCR's additional issues for consideration are the on-site storage of fuel materials and if these are adequately dealt with through the other environmental permits needed. The SFI (Sustainable Forest Initiative) was also presented. This initiative is a voluntary one and is not used by many in Virginia, due to Virginia's successful program for silviculture and agriculture with DOF providing oversight on the harvesting.

It was noted that the off-site issues (such as sustainable silvicultural and agricultural practices) are likely outside the scope or authorities of the PBR statute and, therefore, may not be regulated under the PBR provisions. These issues are nonetheless important ones, and Ms. Wampler thanked agency representatives for sharing their perspectives with the RAP.

**Agenda Item: Public Comment on Combustion NOIRA from Public Policy Virginia –  
Tatyanna Patten, Public Policy Virginia**

**Discussion:** Tatyanna Patten provided a summary of the comments made by Public Policy Virginia and noted that some were beyond the scope of this group (i.e., marketing initiatives). These comments are provided in Attachment 2. The RAP received the comments and will consider them during the regulatory development process. These comments were the only ones received by DEQ during the NOIRA public comment period.

**Agenda Item: Introduction of "Straw Man" Scenarios – Carol Wampler, DEQ**

**Discussion:** Carol reviewed the "box" regarding consideration of Virginia Energy Policy, statutory goals, legal issues, and factual realities as they relate to the PBR regulation's development. The Virginia Energy Policy is the backdrop for this regulation. Goals and considerations are: streamline this process over the current method; provide timeliness and certainty through the PBR regulation; protect natural resources; provide mitigation for wildlife and historic resources when needed; be cognizant of the authorities provided by the statute; and consider reality when developing requirements (what can and cannot be done; for example, the impossibility of carcass searches for offshore energy projects). Further considerations are to consider what is currently required for similar projects and if a requirement is recommended that is not currently required, there needs to be justification for doing so. For example, if an applicant is not required to protect wildlife or historic resources when developing a coal-fired plant, then RAP members who might want to require those protections for a renewable-energy plant would need to provide a reason for doing so. The issue of

**Regulatory Advisory Panel (RAP)**  
Small Renewable Combustion Energy Permit by Rule  
June 20, 2011 Meeting  
Draft Meeting Notes

concerns “outside” the box was discussed. How to manage the forest and agricultural lands from which biomass is “harvested” may not be within the box of our authorities.

The scenarios presented in the straw man were summarized for the RAP (see Attachment 1 and 4. Note: Attachment 1 is an outline for consideration by the RAP. Attachment 4 is a longer version drafted for preliminary consideration by DGIF & DHR.). Scenario 1 requires no PBR for these energy projects. Under this, the RAP would have to decide if the current permits (including Air, Water, and Waste permits) and requirements are adequate to protect wildlife and historic resources. The group discussed the issues with Scenario -- mainly that the SCC process would likely apply for combustion projects if DEQ does not develop a PBR regulation. It was noted that the PBR regulation could provide more certainty and clarity for everyone than the SCC process regarding the requirements to be met.

Scenario 2 would require a “fatal flaw analysis.” This would require desktop analysis of T&E wildlife and known historic resources (i.e., already VLR listed or VLR eligible). Scenario 3 would require a similar process to the provisions proposed for solar facilities. The RAP discussed the issues and noted that Scenario 3 may be more than is necessary for combustion facilities. Scenario 4 would be a process similar to what is required for wind facilities. The scenarios were discussed with most indicating that Scenario 2 and 3 seemed the most reasonable.

The issue of disturbance zone as related to significant adverse impacts was discussed. It was clarified that the disturbance zone definition is necessary to focus the analysis and where to look for the effects and impacts from the project.

Ray Fernald, DGIF, summarized his agency’s review comments on the straw man scenarios (see Attachment 3). The issues are the water usage; storage facilities; other environmental permits requirements; and, DEQ/sister agency coordination. Of the scenarios presented, Scenario 2 with some additional criteria as related to size of the facility (under 10 acres) and stack height may be workable. Facilities over 10 acres would do more regarding the analysis. It was noted that stack height is important for wildlife in some areas (birds in the coastal avian protection zones was provided as an example). Some RAP members commented that the threshold is around 200’ in certain other contexts. It was also noted that many localities have limits on heights as well. Ms. Wampler will refer Mr. Fernald’s questions regarding water resources to DEQ’s Water Division.

*The RAP broke for lunch at 12:40pm and reconvened at 1:48pm.*

The discussion of the scenarios was continued with a focus on Scenarios 2 and 3. The RAP agreed that Scenario 4 would be removed from consideration. The issue of applicant certification of the natural resource analysis to be performed was discussed and possible issues that arise with self-certification vs. submitting analytical findings to local government. The RAP discussed the issues of Scenario 3 and noted that it was likely this scenario required more than was necessary for these combustion/conversion projects but it was likely that more than the presented Scenario 2 would be needed for some projects. DGIF’s proposal of adding conditions to Scenario 2 regarding the size of the facility and stack height was discussed. The 10 acres size was taken from the solar

**Regulatory Advisory Panel (RAP)**  
Small Renewable Combustion Energy Permit by Rule  
June 20, 2011 Meeting  
Draft Meeting Notes

“de minimis” level. The issue of the Scenario 2 process, local government certification prior to fatal flaw analysis was discussed. It was noted that the order of PBR submittals presented was not the order that work necessarily needed to be done and reordering of this list could be done for clarity. The issue of the 10 acres was discussed with some saying that it is too small a footprint to require additional analysis and possible mitigation. It was also requested that to check to make sure that natural heritage analysis was performed as part of Scenario 2. How the significant impact criteria would be defined was discussed for Scenario 2. The RAP was asked to continue to think about the scenarios.

**Agenda Item: Plans for Drafting Key PBR Definitions**

**Discussion:** Debra Miller, DEQ, presented research findings of key PBR terms (municipal solid waste, biomass, and energy from waste). (See Attachment 5.) These terms are not defined by the authorizing PBR statute but there are definitions provided in other statutes and/or regulations for both biomass and municipal solid waste. Those definitions were presented to the RAP. The term “energy from waste” was not found to be a defined term but rather one used by Covanta and others. Representatives from Covanta advised the RAP of how their company uses the term. After Ms. Miller’s presentation, the RAP discussed those and other key terms for this regulation. The terms discussed were divided among the RAP members to draft a tentative definition for the RAP to discuss at their meeting next week.

Tatyanna Patten and John Ignosh (nominated in his absence) will look at possible definitions for “biomass,” “energy from waste,” and “municipal solid waste.” Donna Wirick will examine whether the term “combustion” is the best umbrella term to refer to biomass, energy from waste, and municipal solid waste. Donna Wirick and Bob Greene will look at definitions for “disturbance zone,” “site,” and “project,” as well as any needed adjustments to the definition of “pre-construction.” Stephen Versen and Tony Banks will suggest a definition for “rated capacity.” Lynn Rhode and Larry Land will consider possible adjustments to Scenario 2 to try to address issues raised by DGIF and DHR. The facilitator will circulate any of the above-referenced work to the entire RAP if she receives it prior to the June 28 RAP meeting.

**Agenda Item: Public Forum**

**Discussion:** No one signed up to speak during the public forum.

The meeting adjourned at 3:48 p.m. The RAP will meet again on June 28 at 9:30 a.m. at DEQ’s Piedmont Regional Office.

**Regulatory Advisory Panel (RAP)**  
Small Renewable Combustion Energy Permit by Rule  
June 20, 2011 Meeting  
Draft Meeting Notes



6 14 2011 Straw Man  
Combustion PBR Scer

**Attachment 1**



NOIRA Comments  
from PPVIR on 9VAC1

**Attachment 2**



6 15 2011 DGIF  
CombustionStrawmar

**Attachment 3**



6 9 2011 Straw Man  
Combustion PBR Scer

**Attachment 4**



6 20 2011 Deb Miller  
re definitions Combustion

**Attachment 5**