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## Periodic Review Report of Findings

<b>Agency name</b>	Department of Environmental Quality
<b>Virginia Administrative Code (VAC) citation</b>	9VAC15-70
<b>Regulation title</b>	Small Renewable Energy Projects (Combustion) Permit by Rule
<b>Date this document prepared</b>	February 27, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

## Acronyms and Definitions

*Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

PBR- Permit by Rule

## Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

The Department of Environmental Quality is authorized by § 10.1-1197.6 of the Code of Virginia to adopt regulations for permits or permits by rule if the Department determines permits are necessary for the construction and operation of small renewable energy projects. The Department of Environmental Quality determined that a permit by rule was needed for small renewable energy combustion projects with a rated capacity greater than five megawatts and adopted the Small Renewable Energy Projects (Combustion) Permit by Rule (PBR) on August 28, 2013. These projects must not exceed twenty megawatts. State law requires other necessary environmental permits to be obtained in addition to this PBR. (§10.1-1197.6 B 12)

## Alternatives

*Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

As part of this review, the Department considered requiring a case by case analysis of each project. This alternative was rejected since the regulation contains requirements that are applicable to all projects that

are protective of human health and the environment. The current method of regulating this activity by the use of a PBR protects human health and the environment through addressing potential impacts to wildlife, historic resources, and natural resources while minimizing the burden on the operators of renewable energy combustion projects. The PBR process encourages the development of renewable energy combustion projects.

### Public Comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

An informal advisory group was not formed for the purpose of this periodic review. No comments were received during the public comment period.

### Effectiveness

*Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

This regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable. The regulation provides a permitting process for small renewable energy combustion projects with a rated capacity greater than five megawatts and less than twenty megawatts that is protective of human health and the environment. State law requires other necessary environmental permits to be obtained in addition to this PBR. (§10.1-1197.6 B 12)

### Decision

*Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

As a result of this review, the regulation will be retained without changes.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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 the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.*

The regulation is needed to provide a permitting process for small renewable energy combustion projects.

No comments were received during the public comment period.

The regulation details the permitting process, and a small renewable energy combustion project is deemed to operate under the PBR provision if it meets the requirements of the regulation. Other necessary environmental permits will need to be obtained in addition to the PBR.

This regulation does not overlap, duplicate, or conflict with federal or state law or regulations.

This regulation was adopted in 2013 and amended in 2017 to amend the definition of a small renewable combustion energy project to conform to amendments in Chapter 368 of the 2017 Acts of Assembly.

This regulation provides a process for seeking approval to operate a small renewable combustion energy project with a rated capacity greater than five megawatts and less than twenty megawatts. PBR application reviews are required to be conducted within 90 days of receipt of a complete PBR application. The review process for these projects occur in lieu of review of the project by the State Corporation Commission.