

Regulatory Advisory Panel (RAP) Meeting
Small Renewable Water-Related Energy Permit by Rule
October 21, 2011
Final Meeting Notes

Location: DEQ Piedmont Regional Office
4949-A Cox Road, Glen Allen, VA 23060
Start: 10:05 a.m.
End: 11:02 a.m.

RAP Leader/Facilitator: Carol Wampler, DEQ
Recorder: Heather Mackey, DEQ

RAP Members Present:

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|------------------------------------|----------------------------|
| Tony Banks, VA Farm Bureau | Billy Newcomb, Draper Aden |
| Bob Bisha, Dominion Virginia Power | Nikki Rovner, TNC |
| John Evans, ACOE | Frank Simms, AEP |
| Ray Fernald, DGIF | David Spears, DMME |
| Larry Land, VACO | Lyle Varnell, VIMS |
| Rick Lutz, ESS | Tony Watkinson, VMRC |
| Sally McNeilan, Fugro | |

RAP Members Absent:

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|------------------------|-------------------------------------|
| Ron Jenkins, DOF | Richard Street, Spotsylvania County |
| Roger Kirchen, DHR | Bill Tanger, FORVA |
| Laura McKay, DEQ/CZM | Stephen Versen, VDACS |
| Amanda Myers, Navy/DoD | Bev Wade, Float Fishermen of VA |
| Tom Smith, DCR | |

Guests and Public Attendees:

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| Kerri Nicholas, OAG | Ernie Aschenbach, DGIF alternate |
| Cindy Berndt, DEQ Regulatory Affairs | |

Agenda Item: Welcome, Introductions & Overview

Discussion Leader: Carol Wampler, DEQ

Ms. Wampler welcomed all attendees, who then proceeded to introduce themselves. Ms. Wampler presented an overview of the RAP's discussions and tentative recommendations from the last meeting. For falling water, the RAP heard from RAP member Frank Simms that the Federal Energy Regulatory Commission (FERC) regulates dams and hydro-electric projects. The FERC regulatory process includes extensive public participation and review of wildlife and historic resources. Research and expert advice concerning tidal and wave action, and geothermal resources indicated that Virginia does not have adequate resources, nor does adequate technology exist at this time, to generate more than 5 megawatts of electricity. Since the last RAP meeting, additional information was provided by RAP members Frank Simms and John Evans concerning wave and tidal resources and the potential for FERC jurisdiction in projects. That information was forwarded to RAP members as email and added to the research compilation provided by DEQ staff.

Agenda Item: Discussion of RAP's Recommendations to the Director

Discussion Leaders: Carol Wampler

Ms. Wampler reviewed the meaning of consensus for the group being that they can "live with" a RAP recommendation and will not oppose it in another forum. At the end of the last meeting, the RAP's tentative agreement was that no permit by rule (PBR) is necessary at this time for waves, tides, falling water or geothermal resources. In addition, the RAP recommended that DEQ re-evaluate the potential need for a PBR concerning water related renewable energy resources no later than 2014; or sooner, if circumstances or public requests so indicate.

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Ms. Wampler had drafted a recommendation reflecting the RAP's earlier deliberations, accompanied by the RAP's rationale for making the recommendation and distributed the document to the group for review. Ms. Wampler mentioned that three RAP members who knew they could not be in attendance at today's meeting had expressed their support of the tentative recommendation in advance. Ms. Wampler asked the RAP to take a few minutes to review the updates to the research compilation document and the draft recommendation and rationale document.

The RAP discussed what actions or circumstances would be needed to prompt DEQ to re-evaluate the need for a PBR; the extent to which FERC's authority over wave and tidal (hydrokinetic) projects might pre-empt DEQ authority; and whether "current" should be considered a renewable water related resource. Some changes were made to the rationale for geothermal projects, regarding the applicability of DMME regulatory oversight of commercial and industrial projects (4 VAC 25-170). Following this discussion and a thorough review of the rationale behind the "no PBR at this time" recommendation for each of the water related renewable resources, **the RAP recommended by unanimous consensus that no PBR is necessary for falling water/hydro-electric, wave motion, tides or geothermal projects at this time. The RAP further recommended that DEQ re-evaluate the potential need for a PBR regulation concerning these water related renewable energy resources in 2014, or sooner if circumstances or public requests so indicate.**

Ms. Wampler reviewed next steps in the process which include a recommended 30-day public comment period prior to submitting the RAP's recommendation and its rationale to the Director for approval. The RAP was in support of the public comment period, during which the RAP would remain in force. If necessary, the RAP would reconvene to discuss any public comments; otherwise, the recommendation would proceed to the Director for review and approval.

Public Forum

No one signed up to speak during the public forum.

Other Business and Adjournment

There being no other business, the meeting adjourned at 11:02 a.m.



Water-related Research
Summary 10 20 2011

Attachment 1: Water-related Research Findings Memorandum, updated October 20, 2011



Water Related RAP
Recommendations 10

Attachment 2: Water-related RAP draft recommendation