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Final Regulation 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	April 27, 2026

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 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.

Section 10.1-1197.6 C of the Code of Virginia directs the Department to establish a schedule of fees, to be payable by the owner or operator of small renewable energy projects, for the purpose of funding the costs of administering and enforcing the Department's Small Renewable Energy permit by rule programs. Section 10.1-1197.6 D of the Code of Virginia further provides that the fees shall include an additional amount to cover the Department's costs of inspecting projects.

The current fees set in these regulations are inadequate to cover the costs of the Small Renewable

Energy permit by rule programs. From FY 2021 through FY 2025 the current fees have generated on average about \$128,400 in fee revenue. To reduce program costs, the number of full-time employees in the program was reduced from four to three in FY 2026 to align program costs with lower revenue totals. After accounting for this reduction in staff, the current cost to run the Small Renewable Energy permit by rule programs is projected to be about \$396,125 for FY 2026.

The intent of this regulatory action is to amend or modify Department regulations to increase fees assessed by these regulations for the Small Renewable Energy permit by rule programs. 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 used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

- CPI - Consumer Price Index
- DEQ or Department – Department of Environmental Quality
- FY – Fiscal Year
- NOIRA – Notice of Intended Regulatory Action
- SCC – State Corporation Commission
- VAC – Virginia Administrative Code

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On April 27, 2026, the Director of the Department of Environmental Quality (DEQ) adopted final amendments to the Small Renewable Energy Projects (Wind) Permit by Rule Regulations (9VAC15-40), Small Renewable Energy Projects (Solar) Permit by Rule Regulations (9VAC15-60), Small Renewable Energy Projects (Combustion) Permit by Rule Regulations (9VAC15-70) and Small Energy Storage Facilities Permit by Rule Regulations (9VAC15-100).

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

Section 10.1-1197.6 C of the Code of Virginia directs the Department to establish a schedule of fees, to be payable by the owner or operator of small renewable energy projects, for the purpose of funding the costs of administering and enforcing the Department’s Small Renewable Energy permit by rule programs. Section 10.1-1197.6 D of the Code of Virginia further provides that the fees shall include an additional amount to cover the Department’s costs of inspecting projects.

The current fees set in these regulations are inadequate to cover the costs of the Small Renewable Energy permit by rule programs. From FY 2021 through 2025 the current fees have generated on average about \$128,400 in fee revenue. Current cost to run the Small Renewable Energy permit by rule programs is projected to be about \$396,125 for FY 2026.

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 pursuant to § 10.1-1197.6 of the Code of Virginia. Sections C through F of § 10.1-1197.6 of the Code of Virginia authorize the establishment of fee schedules, purposes for which the fees shall be used, and the establishment of a special, non-reverting fund known as the Small Renewable Energy Project Fee Fund. Specifically, section 10.1-1197.6 C of the Code of Virginia directs the Department to establish a schedule of fees, to be payable by the owner or operator of small renewable energy projects, for the purpose of funding the costs of administering and enforcing the Department's Small Renewable Energy permit by rule programs. Section 10.1-1197.6 D of the Code of Virginia further provides that the fees shall include an additional amount to cover the Department's costs of inspecting projects.

Promulgating Agency: Department of Environmental Quality

State Authority: Code of Virginia § 10.1-1197.6

Federal Authority: There are no federal standards associated with this regulation

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 is intended to solve.

The small renewable energy program is funded through the fees established pursuant to § 10.1-1197.6 of the Code of Virginia. The regulatory amendments are necessary to effectively administer and cover expenses associated with the Department's small renewable energy program, including permit review and issuance, inspections, compliance, enforcement, program administration and guidance development. The program expenses also include costs associated with Department oversight functions and database management.

Section 10.1-1197.6 C and D of the Code of Virginia states that the fees shall be used to fund the costs of administering and enforcing the program, including inspection and monitoring of projects. Fees collected to date have been insufficient to meet this requirement. From FY 2021 through 2025 the current fees have generated on average about \$128,400 in fee revenue. Current costs to run the Small Renewable Energy permit by rule programs are projected to be about \$396,125 in FY 2026.

The regulatory action is essential to protect the health, safety, and welfare of Virginia citizens because the fees will provide financial resources to be used for the oversight of Virginia's natural resources that may be affected by the construction and operation of small renewable energy projects.

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 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. The wind PBR fees have not changed since 2010, when the regulation became effective. The final amendments revise the fee schedule in 9VAC15-40-110 to a level the Department has determined is adequate to fund the cost of administering and enforcing this permit, including inspections, as required by § 10.1-1197.6 C and D of the Code of Virginia.

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. The solar PBR fees have not changed since 2012, when the regulation became effective. The final amendments revise the fee schedule in 9VAC15-60-110 to a level the Department has determined is adequate to fund the cost of administering and enforcing this permit, including inspections, as required by § 10.1-1197.6 C and D of the Code of Virginia.

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. The combustion PBR fees have not changed since 2013, when the regulation became effective. The final amendments revise the fee schedule in 9VAC15-70-110 to a level the Department has determined is adequate to fund the cost of administering and enforcing this permit, including inspections, as required by § 10.1-1197.6 C and D of the Code of Virginia.

Small Energy Storage Facilities Permit by Rule Fees

These fees are paid by the owner or operator of a small energy storage facility for the purpose of funding the costs of administering and enforcing the provisions of the program including inspection and monitoring to ensure compliance. The small energy storage facility fees have not changed since 2022, when the regulation became effective. The final amendments revise the fee schedule in 9VAC15-100-110 to a level the Department has determined is adequate to fund the cost of administering and enforcing this permit, including inspections, as required by § 10.1-1197.6 C and D of the Code of Virginia.

This regulatory action also proposes to add an annual inflation adjustment to all Small Renewable Energy permit by rule fees based on changes to the Consumer Price Index (CPI). Fees will be adjusted annually by the change in the CPI and will be posted on DEQ’s website. The CPI as used for this adjustment refers to the average CPI for all-urban consumers published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0, for the 12-month period ending on June 30 of the calendar year preceding the year the fee is due.



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 primary advantage of this regulatory change for the public is a Small Renewable Energy permit by rule program that will be properly funded and administered. This will result in improved compliance and consistency with the Small Renewable Energy permit by rule program.

The regulated community will also benefit from a properly funded and staffed Small Renewable Energy program because the Department uses program funds to provide assistance to developers by conducting pre-application meetings and coordinating assistance with other state agencies involved in the review of permit applications.

The primary disadvantage of this final regulation is increased permit, modification and retrofit fees for the regulated community. It is possible that the higher application fees, modification fees and retrofit fees could potentially discourage some developers from pursuing renewable energy projects that would have been pursued under the current fee structure or reduce their electricity generating rated capacity to less than or equal to five MW to avoid owing any fee or choosing to pursue the project in a different state. Alternatively, some developers may decide that with the higher fees, applying for a permit through the SCC may be preferable since the SCC does not assess permitting fees for solar projects. However, the existing fee schedules are insufficient to support the Small Renewable Energy permit by rule program, as required by the Code of Virginia. The fees will allow for proper funding of permit program oversight and administration.

The fee structure in the final amendments, which is based upon the actual costs of administering the Small Renewable Energy permit by rule program, is not expected to disadvantage localities, other state agencies, or the Department.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies will be particularly affected by this regulatory change.

Localities Particularly Affected

No localities will be particularly affected by this regulatory change.

Other Entities Particularly Affected

The final amendments increase the fee schedules contained in the permit by rule regulations and will affect developers of small renewable energy projects that choose to obtain approval for their projects through the permit by rule program.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s 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.

Commenter	Comment	Agency response
Virginia resident	Unaffordable, Unreliable, and Low quality service How is wind energy and solar energy going to help us survive in the future? It will not. It is low standards from the tyrannical government forcing one option to survive on. Third world living and then being forced to rely upon China and other countries for basic needs. This is not Capitalism or Democracy.	The current regulatory proposal seeks to increase application fees, modification fees and retrofit fees for the Small Renewable Energy permit by rule program. DEQ appreciates the comments submitted; however, they are not pertinent to this regulatory action.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

The final amendments to Chapters 40, 60, 70 and 100 contain identical corrections to the CPI adjustment. The changes are not substantive but provide clarity to the CPI adjustment process.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
9VAC15-40-110		The Consumer Price Index is the	The Consumer Price Index, <u>as used for</u>	The updated requirement adds clarifying language,

<p>9VAC15-60-110</p> <p>9VAC15-70-110</p> <p>9VAC15-100-110</p>		<p>Consumer Price Index for all-urban consumers (CPI-U) for the 12-month period ending on April 30 of the calendar year preceding the year the fee is due.</p>	<p><u>this adjustment, refers to the average Consumer Price Index for all-urban consumers for the 12-month period ending on June 30 of the calendar year preceding the year the fee is due... The department shall calculate the adjusted fees using the CPI by January 1 each year and the adjusted fees shall be effective beginning July 1 of the same year.</u></p>	<p>“as used for this adjustment,” and changes the end of the 12-month period to June 30 so that the adjustment uses the average CPI for the 12-month period that ends six months before the adjusted fees become effective. The term “CPI-U” has been replaced for clarity with “CPI” to avoid the dash symbol being interpreted as a minus sign.</p> <p>The last sentence of the subsection provides clarity to the regulated community by specifying the department will calculate fee adjustments, when these will be done, by January 1, and when the adjustments will be effective, January 1 of that same year.</p> <p>The change allows the regulated community to estimate fees as much as 5 months in advance of their effective date. The regulated community would be able to estimate changes to fees as soon as the June CPI data is released.</p>
<p>9VAC15-40-110</p> <p>9VAC15-60-110</p> <p>9VAC15-70-110</p> <p>9VAC15-100-110</p>		<p>ΔCPI = the difference between CPI-U and 320.795, (the average of the Consumer Price Index values for all-urban consumers for the period ending on April 30, 2025) expressed as a proportion of 320.795.</p>	<p><u>ΔCPI = the difference between CPI and 317.731, expressed as a proportion of 317.731 (the reference base is 1982-84=100; 317.731 is the unadjusted 12-month average CPI for all urban consumers for July 2024 through June 2025.</u></p>	<p>Changed the CPI index value from 320.795, which was the value for the month of April 2025, to <u>317.731</u>, which is a 12-month average CPI for the period July 1, 2024, through June 30, 2025. The 12-month average more accurately reflects the change in prices over the adjustment period. Using the 12-month average is consistent with other DEQ programs that use a CPI adjustment for fees (e.g., 9VAC25-20-</p>

				142, 9VAC5-80-2282, 9VAC20-90-114, 9VAC25-875-1375). Updated equation to reflect the revised CPI.
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Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
9VAC15-40-110		Application and modification fees for the Small Renewable Energy Permit by Rule (Wind) regulation.	Revised the application and modification fees. New fee amounts are based on revenue necessary to cover the costs of the program as required under § 10.1-1197.6 of the Code of Virginia. Added language to adjust the fees by the CPI on an annual basis.
9VAC15-60-110		Application fee schedule for the Small Renewable Energy Permit by Rule (Solar) regulation.	Revised the application fee schedule. New fee amounts are based on revenue necessary to cover the costs of the program as required under § 10.1-1197.6 of the Code of Virginia. Added language to adjust the fees by the CPI on an annual basis.
9VAC15-70-110		Application and modification fees for the Small Renewable Energy Permit by Rule (Combustion) regulation.	Revised the application and modification fees. New fee amounts are based on revenue necessary to cover the costs of the program as required under § 10.1-1197.6 of the Code of Virginia. Added language to adjust the fees by the CPI on an annual basis.
9VAC15-100-110		Application and retrofit fees for the Small Energy Storage Facilities Permit by Rule.	Revised the application and retrofit fees. New fee amounts are based on revenue necessary to cover the costs of the program as required under § 10.1-1197.6 of the Code of Virginia.

			Added language to adjust the fees by the CPI on an annual basis.
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