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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC15-100
VAC Chapter title(s)	Small Energy Storage Facilities Permit by Rule
Action title	Amend 9VAC15-100 to comport with the requirements of § 10.1-1197.5 <i>et. seq.</i> of the Code of Virginia
Final agency action date	
Date this document prepared	May 14, 2026

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 *et seq.* of the Code of Virginia). Regulations must conform to 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.

This final exempt action corrects three technical errors identified in the existing Small Energy Storage Facilities Permit by Rule regulation (“regulation”), 9VAC15-100 *et seq.* The first technical error is the current definition of “rated power capacity” in 9VAC15-100-10. This definition is more aligned with maximum storage capacity that is measured in kilowatt or megawatt hours (kWh or MWh) as opposed to amount of energy in kilowatts or megawatts (kW or MW) available at any given time. DEQ researched existing expert technical definitions and determined that the definition that most accurately reflects the intent of the statute and regulation is utilized by the National Laboratory of the Rockies (NLR): “Rated power capacity is the total possible instantaneous discharge capability (in kilowatts (kW) or megawatts (MW)) of the energy storage system, or the maximum rate of discharge that the energy storage system can achieve, starting from a fully charged state.” The second technical error is found in 9VAC15-100-30 A

5 where the regulation currently uses “maximum storage capacity” in the certification requirement. To be consistent with the language of the definition of “small renewable energy project” in the statute, § 10.1-1197.5, and the corrected definition of “rated power capacity” as discussed above, “maximum storage capacity” in this instance needs to be replaced with “rated power capacity” in the certification requirement described in 9VAC15-100-30 A 5. Finally, the third technical error is found in 9VAC15-100-130 B 4, which also currently uses the term “maximum storage capacity” in the certification requirement. To be consistent with the language of the definition of “small renewable energy project” in the statute, § 10.1-1197.5, and the corrected definition of “rated power capacity” discussed above, “maximum storage capacity” in this instance needs to be replaced with “rated power capacity” in the certification requirement described in 9VAC15-100-130 B 4.

These technical corrections are exempt from Article 2 of the Administrative Process Act pursuant to § 2.2-4006 A 3 of the Code of Virginia.

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, internal staff review, 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.”

The intent of § 10.1-1197.5 of the Code of Virginia is to limit the amount of *power* that can be delivered to the grid by an energy storage facility permitted pursuant to DEQ’s PBR process to 150 MW. The units used to measure rated power capacity are kW or MW and the units used to measure maximum storage capacity are units of energy (kWh or MWh). Currently energy storage PBR applicants are unable to correctly certify the *rated power capacity* of the facility as intended by the statute due to the definition of “rated power capacity” conflating units of power and energy. In addition, the application requirements for projects subject to both 9VAC15-100-30 A 5 and 9VAC15-130 B 4 erroneously require a signed and stamped certification by a professional engineer that the *maximum storage capacity* of the facility does not exceed 150 MW, again conflating units of power and energy. Technical corrections are necessary to resolve these errors.

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, May 14, 2026, the Department of Environmental Quality adopted final amendments to the Small Energy Storage Facilities Permit by Rule regulation (9VAC15-100). The regulatory action is to be effective as provided in the Administrative Process Act.

In adopting these amendments, the Department of Environmental Quality affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.