Goal 6b: Nonpoint source pollution of streams, wetlands and other water resources is minimized.

The applicant has indicated that runoff will be directed onto on-site wetlands, which could affect the water balance, which would impact not only the wetlands but the wildlife it supports.

Goal 10b: New commercial growth is done in a manner that complements and enhances the existing small town and rural character of the Town, and in a way that does not negatively impact the environment.

A. 3. Rural siting guidelines include minimizing the clearing of woodlands, avoiding construction in open fields or on ridgelines, maintaining or enhancing scenic views on the site by careful placement of structures.

(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of exiting community or neighborhood character;

Not only does this project conflict with the goals stated in our Comprehensive Plan, but also it conflicts with standards in our Site Plan Review Law, for example:

Section 4.010
1. Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture (including but not limited to roof style and façade), massing and placement, shall harmonize with traditional elements of the area, and shall avoid features such as flat roofs, large expanses of undifferentiated facades and long plain wall sections. Architectural design shall be in keeping with the small town architectural character of the area... Structures should be optimally placed to protect important viewsheds."

(vii) the creation of a hazard to human health;

We have submitted information showing hearing loss occurs if you are within 300' of a pile driver.

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreation resources, or in its capacity to support existing uses;

There is obviously a substantial change in the use of this land.

And importantly,
(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment,, but when considered together result in a substantial adverse impact on the environment;

I believe that using this criteria, a determination of a large significant impact is justified.

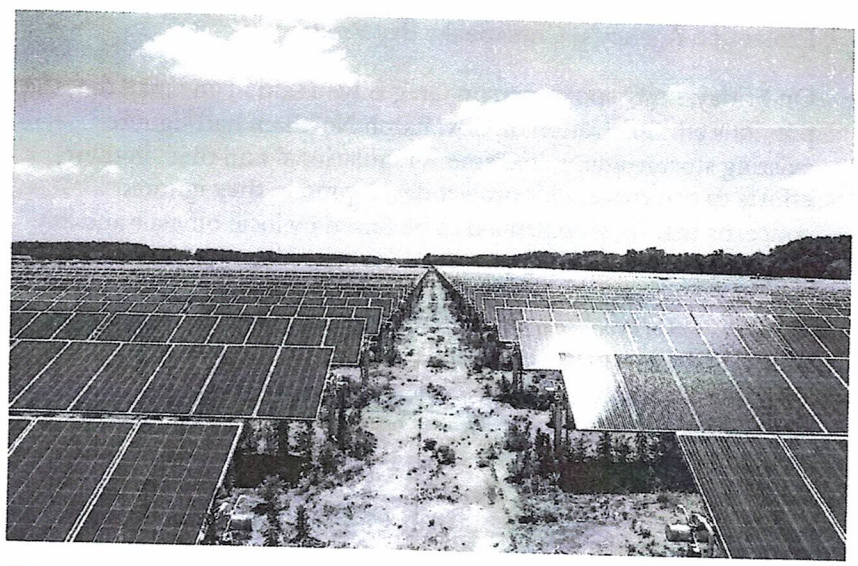
Respectfully submitted,
Chris Ferla

C Fiske
1/25/23

Youngkin administration sets stricter runoff rules for solar farms

Solar industry caught off guard by changes, but some local governments concerned about project impacts

BY: **SARAH VOGELSONG** - APRIL 18, 2022 12:02 AM



Dominion Energy's Whitehouse solar farm in Louisa County generates 20 megawatts on a 250 acre site. The Virginia Department of Environmental Quality is imposing more stringent stormwater regulations for solar development. (Dominion Energy)

The Virginia Department of Environmental Quality late this March abruptly rolled out several major changes to how Virginia will manage stormwater runoff from solar farms, saying prior policies may have underestimated water quality impacts.

Previously, Virginia had considered only the foundations or bases of solar panels to be impervious surfaces, or those unable to absorb runoff. But under Gov. Glenn Youngkin's administration, the solar panels themselves will begin to be classified as impervious surfaces, albeit unconnected ones.

The distinction could have significant effects on solar development in Virginia, which has set ambitious goals for achieving a carbon-free electric grid by midcentury, including the deployment of large quantities of solar power.

But while the solar industry worries that the sudden policy shift could dampen efforts to build out renewables, some local officials

and environmental groups say it could help better account for how precipitation, which is increasing in both frequency and intensity due to climate change, interacts with solar farms.

Virginia, like other states, has wide-ranging stormwater rules for new development because of the impact runoff from sites can have on erosion and water quality. Stormwater concerns are particularly acute in the roughly 56 percent of the state that lies in the Chesapeake Bay watershed. There, the federal government has imposed targets Virginia must meet in reducing nutrient pollution, much of which comes from runoff.

In the March 29 memo announcing the policy change, Virginia DEQ Director Mike Rolband explained the move as an effort "to safeguard the protection of downstream waterways and properties as well as ensure consistency with [the U.S. Environmental Protection Agency's] Chesapeake Bay Program."

On Friday, DEQ spokesperson Greg Bilyeu said in an email that the previous administration of Gov. Ralph Northam had "ignored existing stormwater management regulations" and that "in their efforts to prioritize solar project development, they ignored concerns that have continued to be raised by local officials and key stakeholders."

DEQ did not provide specific numbers of stormwater violations linked to solar projects that have occurred, but several high-profile cases have made headlines over the past few years as solar development has accelerated. The most notorious concerned sediment pollution from the Essex Solar project in Essex County, which led to a settlement with former Attorney General Mark Herring's office and a $245,000 fine. More recently, problems with stormwater runoff from the Belcher Solar facility in Louisa County led owner Dominion Energy to apologize to the local board of supervisors.

Some environmental groups hailed the announcement. Bill Street, president and CEO of the James River Association, called the new policy "a common sense way to protect the health of Virginia's rivers and streams as the commonwealth transitions to the use of clean, renewable energy."

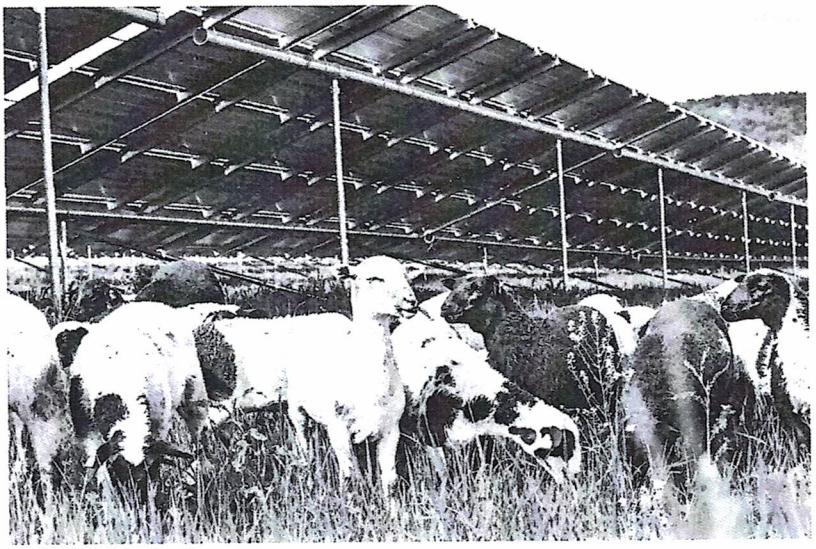
Patrick Mauney, executive director of the Rappahannock-Rapidan Regional Commission covering five north-central counties, said treating panels as impervious is generally "something that most of our localities would agree with."

"The rain hitting the panels can cause concentrated flow and cause erosion when it drips off the panels," said commission planner Michelle Edwards. "That's a concern."

'A shockwave through the industry'

standards and processes can therefore be unpredictably variable for solar development, both increasing development costs...and diminishing water quality outcomes."

To Murray, that ongoing research "speaks to the importance of not issuing any regulation in this field until we have a robust understanding of how vegetation strategies and design practices affect stormwater management."



Sheep graze under a solar array. (Photo courtesy Solar Power World and Nexamp)

DEQ walks back implementation date

Following an industry outcry, DEQ released a new memo Thursday that walked back the new policy's effective date by several years. Under the new guidance, only a solar project "that does not obtain an interconnection approval by a regional transmission organization or electric utility by December 31, 2024" will have to comply with the stricter stormwater requirements.

"The department recognizes the contractual, financial and other obligations with many utility-scale or community solar projects currently in design – especially for those in advanced stages of design or implementation," Rolband wrote in the April 14 update.

DEQ spokesperson Bilyeu said the new effective date was "consistent with the timing" of a state law recently signed by Youngkin that will require Virginia to analyze the impact of certain small- and medium-sized solar projects on forested lands and those with prime agricultural soils.

Bilyeu also noted that DEQ intends to develop a formal guidance document on the issue with "necessary stakeholder involvement."

Nevertheless, industry members said they remained concerned about the uncertainty caused by the memos and whether it could dampen the state's solar market.

effective date of the March 29 policy also sparked fears that plans would have to be redrawn on the fly.

"That can present challenges for projects that have already been permitted by the locality and state based on prior stormwater assumptions," said Matt Gooch, a partner at Richmond-based law firm ReisingerGooch, which works extensively with solar projects. "It can present significant financial harm where a project has already entered into a power purchase agreement or interconnection agreement based on a system size that is no longer possible to build."

Some members of the industry also argue it makes little sense to treat solar panels as equivalent to impervious surfaces like parking lots, because such a designation doesn't accurately reflect sites' vegetated cover and how water travels through it.

The impervious classification "doesn't seem to account for probably what's happening literally on the ground as the rainfall falls off the panels and hits what's usually a pasture" or low-growth turf, said Williams Mullen attorney Speaker Pollard on a webinar held by the firm Thursday morning.

Exactly how stormwater interacts with solar farms and how its impacts should be quantified is far from settled. Some states, like Minnesota, classify the panels as impervious surface, in line with the administration's new approach. Others, like Maryland, do the opposite: there, a 2012 law says that only panel foundations or bases can be classified as impervious.

Given the range of policies in place on the issue, the federal National Renewable Energy Laboratory is currently leading research to evaluate how panels affect stormwater and water quality.

"The science of stormwater regulation was not ... developed with the unique characteristics of large-scale PV installations in mind," found a recent report produced for the NREL project. "Permitting

C Ferla
1/25/23

SIERRA CLUB CHAPTER

The New York State Legislature and Governor Pass Sweeping Freshwater Wetlands Protection Reforms, Safeguarding more than 1 Million Additional Acres Statewide

by Roger Downs and Elizabeth Ahearn, Chapter Conservation Staff

On April 8, 2022 Governor Hochul and the State Legislature came to an agreement on a $220 billion state Budget which included historic wetlands protection reform, the same reforms that the Sierra Club and partner organizations have been fighting to enact for almost two decades. This victory came at a pivotal time when existing wetlands both are becoming the centerpiece of the state's climate resiliency plans and in the cross hairs of increasing development and degradation. The crisis for New York wetlands, which have diminished by 60% over the last two centuries, stems from unchecked development, regressive court decisions, federal regulatory rollbacks, insufficient DEC permitting capacity, and political pressure to stifle an already broken wetlands mapping program.

This new law will remove cumbersome red tape that has stymied wetlands protection and give the Department of Environmental Conservation (DEC) new tools to better identify and protect wetlands as they become threatened. Before the new law was passed a wetland could only receive protection in New York if it was delineated on an existing freshwater wetlands map prepared by DEC after lengthy public comment. But most of the State's official wetlands maps have not been updated in over 20 years, making them woefully outdated, and the amendment process could be time-consuming and overly burdened with administrative costs. As a result there were hundreds of thousands of acres of wetlands in high development areas of New York State that were not on official maps and did not receive desperately required protection. All that is about to change.

Specifically, the wetlands reforms passed in the SFY 2022-23 Budget will:

- Forgo the jurisdictional nature of NY's existing state freshwater wetlands maps (starting in 2025 after new rules and regulations are promulgated.)
- Allow the DEC to protect ANY wetland that is 12.4 acres or greater in size or smaller wetlands of "unusual importance" that meet the scientific requirements of wetlands, based upon criteria plants and hydric soils.
- Lower the threshold for mandatory permitting for freshwater wetlands from 12.4 to 7.4 acres (in 2028).
- Identify criteria for permitting smaller wetlands of 'unusual importance,' such as wetlands that attenuate significant flooding, filter drinking water, provide habitat for rare species, or are located in an urban area.
- For the first time add protection to vernal pools - some of NY's smallest but most ecologically significant wetlands for breeding amphibians and invertebrates.
- Add language creating a rebuttable presumption that freshwater wetlands are subject to regulation and permitting until proven otherwise.

Burden on Establishing No Significant Adverse Environmental Impacts of Type I Actions: The burden is on the applicant to demonstrate the absence of substantial environment impacts. *In re Tubridy*, Commissioner NYS Dept. of Environmental Conservation (DEC Case No. 2-6308-001162) at p. 25 (April 19, 2001) ("The Applicants have the burden of overcoming the presumption that the requested use is incompatible."); Bowers (Ass't Counsel for Regulatory Affairs/SEQRA Counsel, NYS Dept. of Environmental Conservation), "New York's SEQRA in the Courts", 5 Pace Environmental Law Review 25 at p. 45 (1987) ("The Type I presumption puts the burden on the project sponsor, in the first instance, to prove there will be no significant impact.")

CHRIS FERLA

Submitted by Steven Weiner

I urge the board to vote no to these solar projects on the schedule tonight. The solar projects will permanently damage the rural nature of Harpersfield. [I asked Dean Darling if the planning board was required to vote Yes to any site plan that received required permits and he stated that the planning board is not required to vote Yes or No to any site plan.] I haven't heard one statement at these public meetings in support of the solar projects. However, as a matter of fairness to the public, if the planning board is inclined to vote yes then it should immediately do what Jefferson did:

1. Jefferson recently enacted an additional 6 month moratorium on solar and wind projects. As reported by Liz Page in the Mountain Eagle the reasoning behind Jefferson's decision is to allow time to make changes and corrections to the local laws

I don't believe the planning board, the town board or the public have enough information to make informed decisions about allowing commercial solar fields in our town. It will take time to get and understand the information and factors necessary to make a decision. It will also take time enact local ordinances, rules, or regulations concerning solar fields, including how the real estate taxes of the leased properties will be dealt with. There should not be any pressure to rush into this decision without consideration of all these factors.

2. As a reminder, the planning board and town gave the approval to the race track. That major decision has damaged property values and quality of life for neighbors at varying distances from the track. The noise is audible for miles as far away as Stamford. Right now the town has the opportunity to deny these corporate requests for commercial solar fields and to protect the town and its residents from large companies coming in, promising one thing, and then doing another, while being in violation of the appoved permit every day, denying access to the site, and generally not caring at all who they hurt. As we all know, the town is economically mismatched against these companies. That may be one reason these companies come to small towns with their harmful proposals. The proposed solar projects cannot be allowed to turn into a similar situation. The race track example is another reason why, at a minimum, the town should enact a 6 month moratorium on issuing any additional permits for solar or to the racetrack.

3. If the moratoriums need to be extended then they should because the most important thing is what's right for the residents of Harpersfield.

4. The Blue Wave solar project sited along Route 23 is admitted to be publicly visible from the road which ruins the viewscape of an otherwise rural agricultural community. At the last planning board meeting in November, the Blue Wave rep compared the visual effect of its 35 acre solar field to a Dollar General store. That is not accurate. Unless the rep means that his project would a 35 acre large Dollar General store. I don't think anyone would welcome that in Harpersfield.

5. Another interesting comment made by the Blue Wave rep is that if a fire breaks out they recommend just letting it burn itself out. What chemicals are released when this happens. Where do the chemical go? Are we certain that these fumes won't endanger the health and lives of our neighbors? Does anyone on the planning board want to take that chance with someone else's health. These companies don't care -- they call it capitalism.

Rural planning boards and towns around the country have rejected solar fields for the same reasons expressed by most people here.

6. Solar companies decommission fields, go out of business, abandon projects, solar installations become outdated or not economical, and the town is left with a useless ugly field of waste. The solar company can away and the risk of loss is left to the property owner and town. This town cannot afford any economic risk in connection to a project like this

7. Harpersfield is a rural community with just a few commercial developments. All we have is the beauty of the natural landscape and of woods and farmland. I don't oppose green energy but I believe solar projects belong in places like former industrial sites or on city and suburban rooftops. Imagine if every supersized Walmart, mall, and big box stores and warehouses permitted their roofs to be covered with commercial solar panels.

Once one site is developed the entire town is at risk. Because that will be followed by other sites. The companies say they can tie into the grid without placing new wires or poles but at some point they will need a transmission substation and the installations just get bigger and bigger. I worry about the health

and safety of people residing near solar fields and all of our property values going down. They say they don't use herbicide but who will monitor this? There is a risk that these chemicals will contaminate ponds, wells, and groundwater. There is also the risk that some of the heavy metals such as cadmium and lead found in solar panels can leach out over time. If a company abandons the solar field and it needs to be decommissioned there is no easy way to dispose of the panels.

Finally, solar fields don't belong here. The last two weeks and today are a good example of why not. The sun hasn't been visible for about the last 2 weeks. We had a heavy snow a couple days ago and now today. So the panels will just sit covered with snow making them useless.

Questions:

I have questions that should be fully answered before any decision is made regarding any of the proposed solar projects

1. Why is the solar business structuring these deals like the oil and gas business does with wells and pump? They lease the property. Why not buy it outright at an overall lower cost than paying rent every year. I believe this has to due with long term care of the property and distribution of economic risk and liability.

2. Does the planning board have a complete copy of the proposed contracts between the solar companies and the landowners? If not, the board ought to have these contracts to review so an analysis what rights and responsibilities the company and the landowner have and if the risks make sense for this town. Imagine what would happen if the solar company disappears and landowner walks away. Who, ultimately, is responsible when the small reserve fund established for decommissioning is used up 15, 20, 30 years from now -- Harpersfield will be responsible.

3. Has Blue Wave Solar produced a realistic rendering of what the solar field will look like from the road? Why won't the company provide a demonstrate an accurate realistic rendering of the altered viewscape so that we can see what every tourist and resident will see every time we drive on Rt 23. The company is capable of doing this and I asked the rep in

November to provide it but they have not.

4. Has Delaware River Solar given any indication what can be seen of their proposed solar field from other properties or from the road?

5. What kinds of scheduled maintenance is there going to be? How frequently? Do the companies use herbicide to control vegetation? If so, what kind, how much and what intervals?

6. The proposals provided to the planning board should be put online as a pdf so we can all see them. [Blue Wave principal at the meeting said he would put it on his website but as of 2/1/23 it is not there]

I ask that the public comment period be left open as well.

Follow up comments: Blue Wave stated at the January meeting that he is 37% funded by Federal and NY State funds and grants and that he is also able to sell tax credits to other companies. The planning board should require an analysis of Blue Wave's balance sheet and recent tax filings and profit and loss statements. This financial analysis can be done by an independent consultant at Blue Wave's and Delaware River Solar's expense Because if these grants and government funds go away or are reduced it is highly likely that these solar companies will have financial difficulty putting the Town of Harpersfield as risk.