

RESOLUTION NO. 25-13

ST. CLAIR COUNTY, MICHIGAN

A RESOLUTION APPROVING THE ST. CLAIR COUNTY HEALTH DEPARTMENT REGULATION REGARDING SOLAR ENERGY AND BATTERY ENERGY STORAGE FACILITIES AND PROVIDING FOR SUCH REGULATIONS TO BE GIVEN IMMEDIATE EFFECT

WHEREAS, the State of Michigan Legislature adopted Public Act 233 of 2023 (“PA 233”). PA 233 creates “a certification process, through the Michigan Public Service Commission (MPSC) for wind, solar, and energy storage facilities with specified capacities.” (Legislative Analysis of Act as Passed – February 5, 2024).

WHEREAS, PA 233 took effect on November 29, 2024.

WHEREAS, PA 233 recognizes that solar energy facilities and battery energy storage facilities may pose dangers to public health. Specifically, as part of the PA 233 certification process, it must be demonstrated that solar energy facilities and battery energy storage facilities do not pose unreasonable threats to public health or safety, by meeting certain requirements, including, noise generation limitations and height limitation. MCL §460.1226(7),(8).

WHEREAS, PA 233 requires solar energy facilities and battery energy storage facilities which are subject to PA 233 to provide for a decommissioning plan, inclusive of financial assurance, that ensures the return of all participating properties to a useful condition similar to that which existed before construction, including removal of above-surface facilities and infrastructure that have no ongoing purpose. MCL §460.1225(1).

WHEREAS, the Michigan Public Health Code (the “Code”) permits local health departments, such as the St. Clair County Health Department (the “Health Department”) to “adopt regulations to properly safeguard the public health and to prevent the spread of diseases and sources of contamination.” MCL §333.2435(d).

WHEREAS, the Code further permits the Health Department to “adopt regulations necessary or appropriate to implement or carry out” its duties and functions. MCL §333.2441.

WHEREAS, the Code requires that regulations adopted by the Health Department “shall be at least as stringent as the standard established by state law” and “regulations of a local health department supersede inconsistent or conflicting local ordinances.” MCL §333.2441.

WHEREAS, pursuant to the Code, prior to adopting regulations, the Health Department must conduct a public hearing and offer any person the opportunity to present data, views, and arguments. MCL §333.2442.

WHEREAS, the Health Department prepared proposed regulations (the “Regulations”) that seek to mitigate adverse health risks and dangers to the public health caused by Industrial Solar Energy and Battery Energy Storage Facilities located or proposed to be located in rural areas of St. Clair County (“Energy Facilities”) by, among other things: (i) establishing a Health Department application and approval process for Energy Facilities; (ii) setting standards regulating permissible noise levels generated by Energy Facilities measured at the boundaries of nonparticipating, occupied properties; (iii) setting standards to reduce visual pollution created by Energy Facilities; and (iv) requiring financial security sufficient to completely decommission Energy Facilities by removal of all above surface and below surface improvements.

WHEREAS, on April 4, 2025, the Health Department published notice of a public hearing (the “Public Hearing”) to take place on April 16, 2025, regarding the proposed Regulations.

WHEREAS, the Health Department conducted the Public Hearing on April 16, 2025, at which the public was afforded the opportunity to present data, views, and arguments regarding the proposed Regulations.

WHEREAS, as of April 24, 2024, after considering the comments from the Public Hearing, the Health Department adopted the Regulations.

WHEREAS, the Code provides that the Regulations “shall be approved or disapproved by the local governing entity” which is the St. Clair County Board of Commissioners. MCL §333.2441; MCL §333.2406. The Code further provides the Regulations “shall become effective 45 days after approval by the local health department's governing entity or at a time specified by the local health department's governing entity.” MCL §333.2441.

WHEREAS, the St. Clair County Board of Commissioners has reviewed the Regulations, the authority identified in the footnotes in the Regulations, and the minutes from the Public Hearing.

WHEREAS, based upon the reasons detailed in the Purpose section of the Regulations and based upon the evidence detailed in the footnotes of the Regulations, the St. Clair County Board of Commissioners makes the following findings:

BOARD OF COMMISSIONERS FINDINGS

1. Energy Facilities, as defined in the Regulations, pose risks and dangers to public health which are subject to Health Department regulations under the Code with respect to noise levels (including Tonal Noise as defined in the Regulations), Visual Pollution (as defined in the Regulations), and decommissioning.
2. PA 233 does not apply to Facilities that do not seek or are denied state certification under PA 233. Such Facilities pose dangers to the public health with respect to noise (including Tonal Noise), Visual Pollution, and decommissioning.

3. The restrictions/requirements detailed in PA 233 related to noise, Visual Pollution and decommissioning do not adequately protect the public from risks and dangers to the public health created by Energy Facilities that are granted state certification under PA 233. Further, PA 233 does not restrict, limit or measure Tonal Noise created by Facilities.
4. To protect against dangers posed to the public health, it is necessary to regulate noise created by Energy Facilities, including prohibiting any Tonal Noise. Specifically, it is reasonable and necessary to require Energy Facilities be designed, operated and maintained such that when operating at full power output, as measured at any point at or beyond a non-participating property line of a parcel with an existing residential dwelling, it does not produce measurable Tonal Noise, and the broadband noise level from the Energy Facility does not exceed 45 decibels A-weighted averaged over a 10 minute period (dB(A) Leq).
5. To protect against dangers posed to the public health resulting from Visual Pollution, it is necessary to regulate the visual impact of Energy Facilities. Specifically, it is reasonable and necessary to require Energy Facilities be designed, operated and maintained such that they are obscured from view from adjacent roadways and from all points on adjacent non-participating properties including from all occupied stories of included buildings, including through use of opaque gating or fencing at points of vehicular access, perimeter berms, or a buffer of at least 25' in ground depth consisting of sufficiently dense natural healthy vegetation including deciduous trees, or a combination thereof, which is sufficient to obscure the Energy Facility from view.
6. To protect against dangers posed to the public health from Energy Facilities which are not properly decommissioned, it is necessary to regulate the decommissioning process for Energy Facilities. Specifically, it is reasonable and necessary to require a decommissioning agreement that ensures the return of all participating properties to their useful natural condition similar to that which existed before construction, including removal of all above-surface and below surface facilities and infrastructure. The decommissioning plan shall include, but is not limited to, financial assurance in the form of a surety bond or an irrevocable standby letter of credit, in the amount of at least \$100,000 per megawatt nameplate capacity of the Energy Facility, as adjusted annually for inflation based upon the CPI-U from the date of the Regulations. To be acceptable, a surety bond must be posted and maintained by a surety authorized to do business in Michigan and which is rated A+ or better by A.M. Best. To be acceptable, an irrevocable standby letter of credit must be issued and maintained by a bank authorized to do business in Michigan with a 1 rating pursuant to the CAMELS rating system. St. Clair County shall be identified as named beneficiary on such surety bond or irrevocable letter of credit.
7. The Regulations are reasonable and necessary to safeguard the public health and

protect the public from the negative health impacts of Energy Facilities (as defined in the Regulations) whether such Energy Facilities are granted PA 233 certification or not.

WHEREAS, the St. Clair County Board of Commissioners has determined that due to the nature of the dangers to public health posed by Energy Facilities the Regulations should be given immediate effect as permitted pursuant to MCL §333.2441.

NOW, THEREFORE, IT IS HEREBY RESOLVED the St. Clair County Board of Commissioners approves the St. Clair County Health Department Regulation Regarding Solar Energy and Battery Energy Storage Facilities and that such Regulations are hereby given immediate effect.

Adopted at a regular meeting of the Board of Commissioners of the County of St. Clair, on the 1st day of May 2025.

Dated: May 1, 2025

Approved by:



Gary A. Fletcher
Corporation Counsel
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