

OHIO POWER SITING BOARD

IN THE MATTER OF THE OHIO POWER
SITING BOARD'S CONSIDERATION OF
OHIO ADM.CODE CHAPTER 4906-4.

CASE No. 19-778-GE-BRO

ENTRY

Entered in the Journal on June 20, 2019

I. SUMMARY

{¶ 1} The Ohio Power Siting Board invites all interested persons to file initial and reply comments regarding the proposed modified rules in Ohio Adm.Code Chapter 4906-4 by July 11, 2019, and July 26, 2019, respectively.

II. DISCUSSION

{¶ 2} The Ohio Power Siting Board (Board) has jurisdiction to issue certificates for construction of major utility facilities or economically significant wind farms, and to ensure that such facilities are constructed, operated, and maintained in compliance with the certificate obtained. R.C. 4906.04, 4906.20(A), 4906.98(A)-(B). Ultimately, the Board sets forth certificated conditions directed at, among other things, ensuring the safe operation of major utility facilities.

{¶ 3} In light of recent weather-related incidents involving wind turbines, the Board initiated this rulemaking proceeding in order to investigate whether to adopt a rule requiring turbine operators to report incidents to the Board. Additionally, the Board is also seeking comment on a proposed revision to its rules to make explicit that economically significant wind farms and major utility facilities consisting of wind-powered generation adhere to local building codes for non-generating plant facilities.

{¶ 4} Pursuant to a March 29, 2019 Entry, a workshop was scheduled to take place on April 9, 2019. In order to provide interested persons more time to prepare and to better focus the comments for discussion at the workshop, the administrative law judge,

by Entry issued April 4, 2019, rescheduled the workshop for April 30, 2019, and included a list of topics to generate discussions at the workshop. The workshop was held as rescheduled on April 30, 2019.

{¶ 5} R.C. 107.53 sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Board must review any proposed rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and, amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, have had negative unintended consequences, or unnecessarily impede business growth.

{¶ 6} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Board must conduct a business impact analysis regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Board is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the business impact analysis (BIA) instrument.

{¶ 7} Attached to this Entry is a new proposed rule (Ohio Adm.Code 4906-4-10) which would adopt notice and reporting requirements when an incident causes a shut down of a wind turbine. Also attached to this Entry are proposed edits to Ohio Adm.Code 4906-4-09 to ensure that construction and operation of non-generating plant wind farm facilities are consistent with local building codes. The proposed rule changes are included in Attachment A and the BIA is included as Attachment B to this Entry which is also posted on the Public Utilities Commission of Ohio's Docketing Information System website at <http://dis.puc.state.oh.us>.

{¶ 8} The Board now requests comments from interested persons to assist with review of the proposed rule amendments. Comments should be filed, via electronic filing or in hard copy, by July 11, 2019. Reply comments should be filed by July 26, 2019.

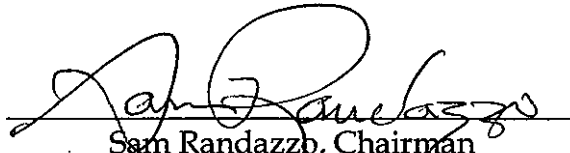
III. ORDER

{¶ 9} It is, therefore,


{¶ 10} ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Board regarding the proposed rules do so no later than July 11, 2019, and July 26, 2019, respectively. It is, further,

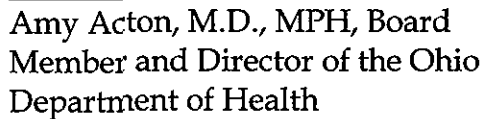
{¶ 11} ORDERED, That notice of this Entry be served upon the persons filing comments in Case No. 16-1109-GE-BRO, Greenwich Neighbors United, the county commissioners of Champaign, Crawford, Cuyahoga, Erie, Hardin, Huron, Logan, Paulding, Richland, Seneca, and Van Wert counties, Ohio Environmental Council and Ohio Environmental Defense Fund, Seneca County Park District, and parties of record in Case Nos. 18-488-EL-BGN, 17-2295-EL-BGN, 16-1871-EL-BGN, and 18-1607-EL-BGN.

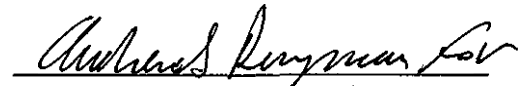
THE OHIO POWER SITING BOARD



 Sam Randazzo, Chairman
 Public Utilities Commission of Ohio

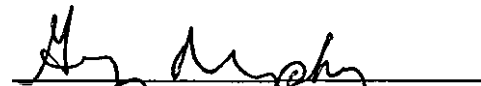

 Lydia Mihalik, Board Member
 and Director of the Ohio
 Development Services Agency


 Mary Mertz, Board Member
 and Director of the Ohio
 Department of Natural Resources


 Amy Acton, M.D., MPH, Board
 Member and Director of the Ohio
 Department of Health

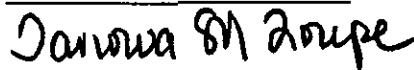

 Laurie Stevenson, Board Member
 and Director of the Ohio
 Environmental Protection Agency


 Dorothy Pelanda, Board Member
 and Director of the Ohio
 Department of Agriculture


 Greg Murphy, Board Member
 and Public Member

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 Secretary

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AMENDED

4906-4-09 Regulations associated with wind farms.

For both an economically significant wind farm and a major utility facility consisting of wind-powered electric generating units, the application shall state the applicant's commitment to comply with the following regulations and the board shall require that each of the following requirements be satisfied.

(A) Construction, location, use, maintenance, and change.

- (1) Adherence to other regulations. Construction and operation of all proposed wind farms shall be consistent with all applicable state and federal requirements, including all applicable safety, construction, environmental, electrical, communications, and federal aviation administration requirements. Subject to section 4906.13 of the Revised Code, an applicant shall comply with state building code regulations for structures not involved in generation or transmission of electricity.

(2) Construction, operations, and maintenance safety.

(a) Equipment safety

- (i) The applicant shall comply with the manufacturer's most current safety manual, unless such safety manual conflicts with paragraph (C)(2) of rule 4906-4-08 of the Administrative Code.
- (ii) The applicant shall maintain a copy of this safety manual in the operations and management building of the facility.

(b) Geological features

- (i) Sixty days prior to the preconstruction conference, the applicant shall provide a fully detailed geotechnical exploration and evaluation to confirm that there are no issues to preclude development of the facility.
- (ii) The geotechnical exploration and evaluation shall include borings at each turbine location to provide subsurface soil properties, static water level, rock quality description, per cent recovery, and depth and description of the bedrock contact and recommendations needed for the final design and construction of each wind turbine foundation, as well as the final location of the transformer substation and interconnection substation.
- (iii) The applicant must fill all boreholes and borehole abandonment must comply with state and local regulations.
- (iv) The applicant shall provide copies of all geotechnical boring logs to board staff and to the Ohio department of natural resources division of geological survey prior to construction.

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- (c) **Blasting.** Should site-specific conditions warrant blasting, the applicant shall submit a blasting plan to the board, at least thirty days prior to blasting.
 - (i) The applicant shall submit the following information as part of its blasting plan:
 - (a) The name, address, and telephone number of the drilling and blasting company.
 - (b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records.
 - (c) A plan for liability protection and complaint resolution.
 - (ii) Prior to the use of explosives, the applicant or explosive contractor shall obtain all required licenses and permits. The applicant shall submit a copy of the license or permit to the board within seven days of obtaining it from the local authority.
 - (iii) The blasting contractor shall utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph shall be placed beside the nearest dwelling, or at least at the nearest accessible property line to the dwelling, and the other placed at the discretion of the blasting contractor.
 - (iv) At least thirty days prior to the initiation of blasting operations, the applicant must notify, in writing, all residents or owners of dwellings or other structures within one thousand feet of the blasting site. The applicant or explosive contractor shall offer and conduct a pre-blast survey of each dwelling or structure within one thousand feet of each blasting site, unless waived by the resident or property owner. The survey must be completed and submitted to the board at least ten days before blasting begins.
- (3) **Location.** Wind farms shall be sited in locations that comply with paragraph (C)(2) of rule 4906-4-08 of the Administrative Code and applicable provisions of this rule.
- (4) **Maintenance and use.**
 - (a) The applicant shall maintain the wind farm equipment in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.
 - (b) The applicant shall have a construction and maintenance access plan based on final plans for the facility, access roads, and types of equipment to be used. The plan shall consider the location of sensitive resources, as identified by the Ohio department of natural resources, and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall include locations of erosion control measures. The plan shall provide specific details on all wetlands, streams, and/or ditches to be impacted by the facility, including those where construction or maintenance vehicles and/or facility components such as access roads

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cannot avoid crossing the waterbody. In such cases, specific discussion of the proposed crossing methodology for each wetland and stream crossing, and post-construction site restoration, must be included. The plan shall include the measures to be used for restoring the area around all temporary access points, and a description of any long-term stabilization required along permanent access routes.

- (c) The applicant shall have a vegetation management plan. The plan must identify all areas of proposed vegetation clearing for the project, specifying the extent of the clearing, and describing how such clearing work will be done so as to minimize removal of woody vegetation. The plan must also describe how trees and shrubs around structures, along access routes, at construction staging areas, during maintenance operations, and in proximity to any other project facilities will be protected from damage. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities; low-growing trees and shrubs in particular should be protected wherever possible within the proposed right-of-way. The vegetation management plan should also explore various options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and recommend methods that minimize the movement of heavy equipment and other vehicles within the right-of-way that would otherwise be required for removing all trees and other woody debris off site.
 - (d) For both construction and future right-of-way maintenance, the applicant shall limit, to the greatest extent possible, the use of herbicides in proximity to surface waters, including wetlands along the right-of-way. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or future right-of-way maintenance should only be used where no other options exist, and with prior approval from the Ohio environmental protection agency. Prior to commencement of construction, the applicant shall describe the planned herbicide use for all areas in or near any surface waters during initial project construction and/or future right-of-way maintenance.
 - (e) Within its plans for post-construction site restoration and stabilization of disturbed soils, such restoration plans shall include:
 - (i) The applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner.
 - (ii) The applicant shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio environmental protection agency regulations.
- (5) Change, reconstruction, alteration, or enlargement.

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- (a) Any amendment to a wind farm certificate shall be proposed by the applicant to the board as an amendment application, as provided in rule 4906-3-11 of the Administrative Code.
 - (b) Unless otherwise ordered by the board or administrative law judge, modification(s) shall not be considered amendments under this rule if such modification(s) would be minimal in nature, and would be adequately addressed by the conditions of a certificate.
 - (c) An applicant may seek review of a proposed modification(s) sought under paragraph (A)(5)(b) of this rule by filing the proposed modification(s) in the public docket of the certificate case and shall provide written notification of such filing to staff and all landowners immediately adjacent to the site of the proposed modification(s). The notification shall reference, and include a copy of, paragraph (A)(5) of this rule. In the filing submitted in the public docket, the applicant shall present its rationale as to why the applicant is seeking the proposed modification(s) and must demonstrate that the proposed modification(s) satisfies paragraph (A)(5)(b) of this rule. Staff or any interested person may file objections to the applicant's proposal within twenty-one days. If no objections are filed within the twenty-one day period, the applicant may proceed with the proposed modification(s). If objections are filed within the twenty-one day period, board staff may subsequently docket its recommendation on the matter. The board will process proposed modification(s) under the suspension process set forth for accelerated applications as outlined in rule 4906-6-09 of the Administrative Code.
- (B) Erosion control. Within its procedures for inspection and repair of erosion control measures, the applicant shall employ the following erosion and sedimentation control measures, construction methods, and best management practices when working near environmentally-sensitive areas or when in close proximity to any watercourses:
- (1) During construction of the facility, seed all disturbed soil, except within actively cultivated agricultural fields, within seven days of final grading. Denuded areas, including spoils piles, shall be seeded and stabilized in accordance with the applicant's approved stormwater pollution prevention plan, if they will be undisturbed for more than twenty-one days. Re-seeding shall be conducted in accordance with the applicant's approved stormwater pollution prevention plan as necessary until sufficient vegetation in all areas has been established.
 - (2) Inspect and repair all erosion control measures after each rainfall event of one half of an inch or greater over a twenty-four-hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.
 - (3) Delineate all watercourses, including wetlands, by fencing, flagging, or other prominent means.
 - (4) Avoid entry of construction equipment into watercourses, including wetlands, except at specific locations where construction has been approved.
 - (5) Prohibit storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas.

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(6) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved.

(7) Divert all storm water runoff away from fill slopes and other exposed surfaces to the greatest extent possible, and direct instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.

(C) Aesthetics and recreational land use.

(1) In the event of vandalism on any generating facility, the applicant shall immediately remove or abate the damage to preserve the aesthetics of the project to pre-vandalism condition.

(2) No commercial signage or advertisements may be displayed on any turbine, tower, or related infrastructure, except for reasonable identification of the manufacturer or operator of the wind farm.

(3) All structures that require lighting by the federal aviation administration, including construction equipment, shall be lit with the minimum lighting required by the federal aviation administration. Lighting of other parts of the wind farm, such as associated structures and access roads, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from adjacent properties.

(4) The visible surfaces of wind farm structures shall be a non-reflective, matte finished, non-obtrusive, and neutral color such as white, off-white, gray, or beige.

(5) The applicant shall provide a plan to avoid adverse impacts of the proposed facility on landmarks in the surrounding area. Landmarks, for the purpose of this rule, refer to those districts, sites, buildings, structures, and objects that are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, the state historic preservation office, or the Ohio department of natural resources. If avoidance measures are not feasible, the applicant shall describe why impacts cannot be avoided and shall provide an evaluation of the impact of the proposed facility on the preservation and continued meaningfulness of registered or potentially eligible landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance and describe plans to mitigate any adverse impact. The mitigation plan shall contain measures to be taken should previously-unidentified archaeological deposits or artifacts be discovered during construction of a project.

(6) The applicant shall provide photographic simulations or artist's pictorial sketches of the proposed facility from at least one vantage point in each area of three square miles within the project area, showing views to the north, south, east, and west. The photographic simulations or artist's pictorial sketches shall incorporate the environmental and atmospheric conditions under which the facility would be most visible.

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- (D) Wildlife protection. The applicant shall satisfy the following requirements to avoid or mitigate impacts to federal or state listed and protected species.
- (1) The applicant shall coordinate with the United States fish and wildlife service, the Ohio department of natural resources division of wildlife, and board staff to determine if any actions are necessary to avoid impacts to federal or state listed and protected species or other species which may be impacted. The applicant shall provide coordination letters received from the United States fish and wildlife service and the Ohio department of natural resources division of wildlife. If the United States fish and wildlife service, the Ohio department of natural resources division of wildlife, or board staff identify any recommendations for the avoidance of impacts to specific species, the applicant shall describe how it shall address all recommendations.
 - (2) The applicant shall contact board staff within twenty-four hours if federal or state listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the applicant, board staff, and other applicable administrative agencies.
 - (3) The applicant shall avoid construction in federal or state listed and protected species' habitats during seasonally restricted dates, or at restricted habitat types, as provided by the Ohio department of natural resources and the United States fish and wildlife service, unless coordination efforts with the Ohio department of natural resources and the United States fish and wildlife service allows a different course of action.
 - (4) The applicant shall submit a post-construction avian and bat monitoring plan to the board. During operation of the facility, if significant mortality occurs to birds or bats, the applicant will develop a mitigation plan.
 - (5) At least sixty days prior to the first turbine becoming operational, the applicant shall describe plans for maintaining turbine blades in a stationary or nearly stationary stance during low wind speed conditions at night during bird and bat migratory seasons.
 - (6) If construction activities result in significant adverse impact to federal or state listed and protected species, the applicant will develop a mitigation plan or adaptive management strategy.
- (E) Ice throw.
- (1) The ice throw analysis shall, at a minimum, include the probability of ice throw impacts at the nearest property boundary and public road.
 - (2) The applicant's plans to minimize potential impacts shall include:
 - (a) Restricting public access to the facility with appropriately placed warning signs or other necessary measures,

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(b) Instructing workers on the potential hazards of ice conditions on wind turbines, and

(c) Installing and utilizing an ice warning system to include an ice detector installed on the roof of the nacelle, ice detection software, warranted by the manufacturer to detect ice, for the wind turbine controller, or an ice sensor alarm that triggers an automatic shutdown.

(3) In addition to the use of the safety measures enumerated in paragraph (E)(2) of this rule, the potential impact from ice throw shall be presumptively deemed to satisfy safety considerations if the probability of one kilogram of ice landing beyond the statutory property line setback for each turbine location is less than one per cent per year.

(F) Noise.

(1) General construction activities shall be limited to the hours of seven a.m. to seven p.m., or until dusk when sunset occurs after seven p.m. Impact pile driving, hoe ram, and blasting operations, if required, shall be limited to the hours between ten a.m. to five p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Sensitive receptor, for purposes of this rule, refers to any occupied building. The applicant shall notify property owners or affected tenants within the meaning of paragraph (B)(2) of rule 4906-3-03 of the Administrative Code of upcoming construction activities including potential for nighttime construction activities.

(2) The facility shall be operated so that the facility noise contribution does not result in noise levels at any non-participating sensitive receptor within one mile of the project boundary that exceed the project area ambient nighttime average sound level (Leq) by five A-weighted decibels (dBA). During daytime operation only (seven a.m. to ten p.m.), the facility may operate at the greater of: the project area ambient nighttime Leq plus five dBA; or the validly measured ambient Leq plus five dBA at the location of the sensitive receptor. After measured ambient Leq plus five dBA at the location of the sensitive receptor. After commencement of commercial operation, the applicant shall conduct further review of the impact and possible mitigation of all project-related noise complaints through its complaint resolution process. Non-participating, as used in this context, refers to a property for which the owner has not signed a waiver or otherwise agreed to be subject to a higher noise level.

(G) Blade shear. The applicant shall provide its plans to minimize potential impacts from blade shear. These plans shall include restricting public access to the facility with appropriately placed warning signs or other necessary measures, and instructing workers on the potential hazards.

(1) To minimize the possibility of blade shear, all wind turbine generators must be equipped with:

(a) Two independent braking systems, which may include aerodynamic overspeed controls and mechanical brakes operated in a fail-safe mode, but shall not include stall regulation;

(b) A pitch control system;

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- (c) A lightning protection system; and
 - (d) Turbine shutoffs in the event of excessive wind speeds, uncontrolled rotation, excessive blade vibration, stress, or pressure on the tower structure, rotor blades, and turbine components.
- (2) Bypass or override of wind turbine safety features or equipment is prohibited.
- (3) At a minimum, the design of the wind turbine generators shall conform to industry standards, as effective at the time the applicant submits its application, including those of the American national standards institute, the international electrotechnical commission, or an equivalent industry standard. The applicant shall submit certificates of design compliance obtained by the equipment manufacturers from underwriters laboratories, det norske veritas, Germanischer Lloyd wind energies, or other similar certifying organizations.
- (H) Shadow flicker.
- (1) The facility shall be designed to avoid unreasonable adverse shadow flicker effect at any non-participating sensitive receptor within one thousand meters of any turbine. At a minimum, the facility shall be operated so that shadow flicker levels do not exceed thirty hours per year at any such receptor. Non-participating, as used in this context, refers to a property for which the owner has not signed a waiver or otherwise agreed to be subject to a higher shadow flicker level.
 - (2) After commencement of commercial operation, the applicant shall conduct further review of the impact and possible mitigation of all project-related shadow flicker complaints through its complaint resolution process.
- (I) Decommissioning and removal.
- (1) The applicant shall provide the final decommissioning plan to the board and the applicable county engineer(s) at least thirty days prior to the preconstruction conference. The plan shall:
 - (a) Indicate the intended future use of the land following reclamation.
 - (b) Describe the engineering techniques and major equipment to be used in decommissioning and reclamation; a surface water drainage plan and any proposed impacts that would occur to surface and ground water resources and wetlands; and a plan for backfilling, soil stabilization, compacting, and grading.
 - (c) Provide a detailed timetable for the accomplishment of each major step in the decommissioning plan, including the steps to be taken to comply with applicable air, water, and solid waste laws and regulations and any applicable health and safety standards in effect as of the date of submittal.
 - (2) The applicant shall file a revised decommissioning plan to the board and the applicable county engineer(s) every five years from the commencement of construction. The revised plan shall include advancements

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in engineering techniques and reclamation equipment and standards. The revised plan shall be applied to each five-year decommissioning cost estimate.

- (3) The applicant shall, at its expense, complete decommissioning of the facility, or individual wind turbines, within twelve months after the end of the useful life of the facility or individual wind turbines. If no electricity is generated for a continuous period of twelve months, or if the board deems the facility or turbine to be in a state of disrepair warranting decommissioning, the wind farm or individual wind turbines will be presumed to have reached the end of its useful life. The board may extend the useful life period for the wind farm or individual turbines for good cause as shown by the applicant. The board may also require decommissioning of individual wind turbines due to health, safety, wildlife impact, or other concerns that prevent the turbine from operating within the terms of the certificate.
- (4) Decommissioning shall include the removal and transportation of the wind turbines and towers off site. Decommissioning shall also include the removal of buildings, cabling, electrical components, access roads, and any other associated facilities, unless otherwise mutually agreed upon by the facility owner and/or facility operator and the landowner. All physical material pertaining to the facility and associated equipment shall be removed to a depth of at least thirty-six inches beneath the soil surface and transported off site. The disturbed area shall be restored to the same physical condition that existed before construction of the facility. Damaged field tile systems shall be repaired to the satisfaction of the property owner.
- (5) During decommissioning, all recyclable materials, salvaged and non-salvaged, shall be recycled to the furthest extent practicable. All other non-recyclable waste materials shall be disposed of in accordance with state and federal law.
- (6) The facility owner and/or facility operator shall not remove any improvements made to the electrical infrastructure if doing so would disrupt the electric grid, unless otherwise approved by the applicable regional transmission organization and interconnection utility.
- (7) At least seven days prior to the preconstruction conference, the applicant shall retain an independent, registered professional engineer, licensed to practice engineering in the state of Ohio to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment. Said estimate will be converted to a per-turbine basis calculated as the total cost of decommissioning of all facilities divided by the number of turbines in the most recent facility engineering drawings. This estimate shall be conducted every five years. Said estimate shall include:
 - (a) An identification and analysis of the activities necessary to implement the most recent approved decommissioning plan including, but not limited to, physical construction and demolition costs assuming good industry practice and based on publication or guidelines approved by staff;
 - (b) The cost to perform each of the activities; and

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- (c) An amount to cover contingency costs, not to exceed ten per cent of the above calculated reclamation cost.
- (8) The applicant, facility owner, and/or facility operator shall post and maintain for decommissioning a performance bond in an amount equal to the per-turbine decommissioning costs multiplied by the sum of the number of turbines constructed and under construction. For purposes of this condition, a turbine is considered to be under construction at the commencement of excavation for the turbine foundation. The form of the performance bond shall be mutually agreed upon by the board and the applicant, the facility owner, and/or the facility operator. The performance bond shall ensure the faithful performance of all requirements and reclamation conditions of the most recently filed and approved decommissioning and reclamation plan. At least thirty days prior to the preconstruction conference, the applicant, the facility owner, and/or the facility operator shall provide an estimated timeline for the posting of decommissioning funds based on the construction schedule for each turbine. Prior to commencement of construction, the applicant, the facility owner, and/or the facility operator shall provide a statement from the holder of the performance bond demonstrating that adequate funds have been posted for the scheduled construction. Once the performance bond is provided, the applicant, facility owner and/or facility operator shall maintain such funds or assurance throughout the remainder of the applicable term. The applicant, facility owner, and/or facility operator shall obtain a new performance bond every five years with an updated decommissioning cost estimate from its engineer and revised decommissioning plan.
- (9) The facility owner and/or facility operator shall repair damage to government-maintained (public) roads and bridges caused by decommissioning activity. Any damaged public roads and bridges shall be repaired promptly to their pre-decommissioning state by the facility owner and/or facility operator under the guidance of the appropriate regulatory agency. The applicant shall provide financial assurance to the counties that it will restore the public roads and bridges it uses to their pre-decommissioning condition. These terms shall be defined in a road use agreement between the applicant and the county engineer(s) prior to construction. The road use agreement shall contain provisions for the following:
- (a) A pre-decommissioning survey of the condition of public roads and bridges conducted within a reasonable time prior to decommissioning activities.
 - (b) A post-decommissioning survey of the condition of public roads and bridges conducted within a reasonable time after decommissioning activities.
 - (c) An objective standard of repair that obligates the facility owner and/or facility operator to restore the public roads and bridges to the same or better condition as they were prior to decommissioning.
 - (d) A timetable for posting of the decommissioning road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges.

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- (10) The performance bond shall be released by the holder of the bond when the facility owner and/or facility operator has demonstrated, and the board concurs, that decommissioning has been satisfactorily completed, or upon written approval of the board, in order to implement the decommissioning plan.

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NEW

4906-4-10 Notice and reports of incidents involving wind farm facilities.

(A) Telephone notice of incidents.

- (1) Wind farm operators shall notify the board's executive director or the executive director's designee as well as local law enforcement and first responders on all incidents involving a wind turbine, within thirty minutes after discovery unless notification within that time is impracticable under the circumstances.
- (2) For purposes of this rule incidents include, but are not limited to, events such as tower collapse, turbine failure, thrown blade or hub, collector or feeder line failure, damaging ice throw, nacelle fire, or injury to any person.

(B) Written reports regarding incidents.

- (1) Within thirty days after the incident is discovered, a wind farm operator shall submit a written report to the executive director describing the cause of the incident, where ascertainable, and any damage to the wind farm facility or to neighboring properties or persons, on a form provided by the board.
- (2) Each wind farm operator shall also docket, in the wind farm certificate case, a final written report on a form provided by the board within sixty days after discovery of the incident, unless the wind farm operator:
 - (a) For good cause shown, demonstrates more time is needed; and
 - (b) Submits interim reports to the executive director at intervals of not more than sixty days until a final report is docketed.

(C) Each final written report shall address:

- (1) Cause of the incident;
- (2) Date and time the incident occurred and date and time it was discovered;
- (3) If the incident involved a turbine, the distance between debris and the wind turbine base;
- (4) If the incident involved a turbine, the distance between debris to habitable structures and property lines, and photographs of the debris field;
- (5) A narrative description of the incident and actions taken by the wind farm operator, including a timeline of events;

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- (6) What, if any, damage occurred to the other wind farm facilities;
- (7) What steps were necessary to repair, rebuild, or replace damage to the wind farm facilities;
- (8) What, if any, personal injury was caused by, or related to, the incident.
- (9) What, if any, damage to properties within or adjacent to the wind farm project area was caused by, or related to, the incident;
- (10) What, if any, steps were, or will be, taken to prevent future incidents.

(D) Staff investigation and restart

- (1) Staff shall investigate every incident that results in a report being submitted pursuant to this rule. Except as necessary for public safety, a wind farm operator shall not disturb any damaged facilities or the site of a reportable incident until after staff has made an initial site visit.
- (2) A wind farm operator shall not restart facilities involved in a reportable incident until such restart is approved by the board's executive director or the executive director's designee.

CSI – Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Power Siting Board (OPSB)
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Regulation/Package Title: Ohio Adm.Code Chapter 4906-4 Certificate Applications for Electric Generation Facilities

Rule Number(s): 4906-4-09 and 4906-4-10

Date: June 20, 2019

Rule Type:

☒ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

☐ No Change

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

- 1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.**

4906-4-09 – Generally, this rule sets forth regulations applicable to economically significant wind farms and major utility facilities consisting of wind-powered electric generating units. The purpose for the amendment to this rule is to clarify that for non-generation facilities, a wind farm applicant must comply with the Ohio Building Code for structures not involved in the generation or transmission of electricity.

4906-4-10 – This is a new rule which would require notice and written reports to the OPSB when wind farm facilities experience an incident such as a tower collapse, turbine failure, thrown blade or hub, collector or feeder line failure, damaging ice throw, nacelle fire, or injury to any person.

- 2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Rule	Statutory Authority – Ohio Revised Code
4906-4-09	4906.20, 4906.03
4906-4-10	4906.20, 4906.03

- 3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**

No.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose for the additional language added to Ohio Adm.Code 4906-4-09 is to clarify the circumstances when the Ohio Building Code would apply to non-generating utility plant.

The public purpose for new rule Ohio Adm.Code 4906-4-10 is to standardize and make transparent to the public a reporting obligation when an incident impacts a wind farm facility.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The OPSB will measure the success of the amended regulation and the new rule based upon comments from wind farm operators and from property owners located in the proximity of the wind farm projects.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.***

On April 4, 2019, in Case No. 19-778-GE-ORD, the OPSB issued an entry by U.S. mail and email indicating that a workshop would be conducted on April 30, 2019, so that interested persons could offer comments on the proposed amended rule and the new rule. The entry was served upon a wide range of persons interested in wind farm applications before the OPSB including parties of record from pending wind farm applications, Ohio Environmental Council and Ohio Environmental Defense Fund, Seneca County Park District, persons filing comments in the last rule review proceeding (Case No. 16-1109-GE-BRO), the county commissioners where wind farm certification proceedings are pending (i.e., Champaign, Crawford, Cuyahoga, Erie, Hardin, Huron, Logan, Paulding, Richland, Seneca, and Van Wert counties), Greenwich Neighbors United, and wind farm owners/operators with applications pending before the OPSB. The workshop was held as scheduled.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Attendees at the workshop included landowners, representatives from the Ohio Environmental Council and Environmental Law & Policy Center, and several law firms with wind farm applicant clients.

The comments offered at the workshop were generally supportive of the concept of a reporting requirement covering incidents at wind farm facilities.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No scientific data was used to develop the draft rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Since the purpose of the draft regulations is transparency and consistent reporting of wind farm incidents, no regulatory alternative would suffice.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

As noted in response to question 10 above, since the purpose of the draft regulation is to ensure transparency and consistent reporting obligations of wind farm incidents, performance-based regulations would not achieve the necessary compliance.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The OPSB has widely publicized notice of the consideration of these rules to the wind farm industry, as well as other organizations and interest groups. The OPSB has sole jurisdiction over wind farm facilities and has found no duplicate, nor has a duplicate regulation been identified by any stakeholder.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The OPSB will take steps to ensure that the wind farm industry and interested stakeholders are fully aware of these regulations. The opportunity for continued feedback and input from interested stakeholders always exists through interaction with OPSB staff and better ensures that implementation of these rules occurs consistently and predictably.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. *Specifically, please do the following:*

a. Identify the scope of the impacted business community;

The impacted business community will be the wind farm operators who will comply with these rules.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The rules were drafted in an effort to minimize any adverse impact on businesses. Any adverse impact results from the time and expense of notifying the OPSB of a reportable incident and reporting the results of the companies' investigation of an incident to the OPSB in the form of a written report.

c. Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

Any adverse impact in terms of dollars and hours to comply should, in most instances, be minimal. Whenever an incident as defined by the rule occurs, a responsible wind farm operator will conduct an investigation to determine the cause and extent of the damage to its facilities to ensure that the facility returns to full generating capacity as soon as possible. Adoption of this rule just standardizes the investigation process and requires that the results of the investigation be shared with the OPSB.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Transparency and standardized reporting of wind farm incidents justify the minimal impact on the regulated business community of adopting these rules.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Small businesses do not develop wind farm projects. However, there is a rule applicable to this chapter which affords an impacted entity with the opportunity to seek a waiver of these rules.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The amended and new rules do not impose specific fines or penalties for failure to comply. Fines or penalties for violation of these rules may only be ordered by the OPSB after notice and hearing. The OPSB will fully comply with R.C. 119.14 and it is not the OPSB's intent to seek and recover administrative fines or civil penalties on any small business for a first-time paperwork violation.

18. What resources are available to assist small businesses with compliance of the regulation?

OPSB staff works with affected entities, including small businesses if applicable, to assist such companies with compliance.