

Monroe County Wind Energy System Siting Ordinance Chapter 45

ARTICLE I – GENERAL PROVISIONS

45-1 Title

This ordinance is entitled the Monroe County Wind Energy System Siting Ordinance.

45-2 Purpose

The purpose of this ordinance is to adopt and incorporate the requirements of Wis. Stat. § 66.0401 and Wis. Admin. Code Ch. PSC 128 as a local ordinance and to establish local regulations on the installation and use of wind energy systems that are authorized by, compliant with, and no more restrictive than the rules promulgated by the Wisconsin Public Service Commission and that serve to preserve or protect the public health or safety, do not significantly increase the cost of the system or significantly decrease its efficiency, or allow for an alternative system of comparable cost and efficiency.

45-3 Authority

This ordinance is adopted pursuant to Wis. Stat. § 66.0401 and Wis. Admin. Code § PSC 128.

45-4 Applicability

This ordinance applies to all lands within the boundaries of the county lying outside the limits of incorporated cities and villages.

45-5 Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

45-6 Administration

This ordinance shall be administered by the Monroe County Zoning Department.

45-7 Definitions

Terms found in this Ordinance shall have the same meaning as defined in Wis. Admin. Code PSC 128.01 unless noted specifically below or unless context requires otherwise.

“Committee” means the Monroe County Planning and Zoning Committee.

“Department” means the Monroe County Zoning Department.

“Department director” or “director” means the director of the Monroe County Zoning Department or the department director’s designee.

“Large wind energy system” or “large wind” means a wind energy system that has a total installed nameplate capacity of more than 300 kilowatts and that consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts.

“Permit” means a zoning permit issued by the Monroe County Zoning Department

“PSC 128” means Wis. Admin. Code Ch. PSC 128, Wind Energy Systems.

“Small wind energy system” or “small wind” means a wind energy system that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts.

“Wind energy system” means equipment and associated facilities that convert and then store or transfer energy from the wind into usable forms of energy.

ARTICLE II – PERMIT APPLICATION FILING AND PROCESSING REQUIREMENTS

45-20 Permit Requirement and Fee

(1) The owner, or his agent, of the property on which a wind energy system is proposed to be installed, constructed, or expanded must apply for and receive a zoning permit from the Department before any such work can commence. The applicant shall pay an application review fee, which is applied to the cost of reviewing the application. The applicant shall pay a separate permit fee before any permit is issued. All fees shall be established by a resolution by the Monroe County Board of Supervisors.

(2) For large wind energy systems:

- a.) The applicant is responsible for paying all costs incurred by the county in connection with the review and processing of the application, including the cost for services provided by outside attorneys, engineers, environmental specialists, planners, and other consultants and experts deemed necessary by the county.
- b.) The county shall make the applicant aware of any such costs prior to incurring the cost and, if the applicant decides not to pay the costs, the application shall be denied.
- c.) The county shall invoice the applicant for the actual and necessary costs incurred pursuant to this ordinance. The applicant will be provided 15 days from the date of the invoice to reimburse the county.
- d.) The department is authorized to contract with one or more engineers, environmental specialists, planners, and other consultants and experts to perform necessary services in connection with this ordinance.
- e.) The corporation counsel is authorized to contract with outside legal counsel to perform services in connection with this ordinance.

45-21 Permit Expiration and Extension

A zoning permit issued under this ordinance shall expire if at least 51% of the project construction has not been completed within 12 months of the permit issue date. An extension may be requested in writing to the director for up to 12 additional months provided the original permit has not yet expired. The director shall grant an extension provided the project is not inconsistent with any subsequently enacted law, rule or regulation under the purview of the department.

45-22 Application Requirements

(1) For small wind energy systems - An owner shall file an application with the department that, at a minimum, includes the following information:

- a.) Wind energy system description and maps showing the locations of all proposed wind energy facilities
- b.) Technical description of wind turbines and wind turbine sites
- c.) Timeline and process for constructing the wind energy system
- d.) Information regarding anticipated impact of the wind energy systems on local infrastructure
- e.) Information regarding noise anticipated to be attributable to the wind energy system
- f.) Information regarding shadow flicker anticipated to be attributable to the wind energy system
- g.) Information regarding the anticipated effects of the wind energy system on existing land uses adjacent to the wind energy system
- h.) Information regarding the anticipated effects of the wind energy system on airports and airspace
- i.) Information regarding the anticipated effects of the wind energy system on line-of sight communications
- j.) A list of all state and federal permits required to construct and operate the wind energy system
- k.) Information regarding the planned use and modification of roads during the construction, operation, and decommissioning of the wind energy system, including a process for assessing road damage caused by wind energy system activities and for conducting road repairs at the owner’s expense
- l.) A representative copy of all notices issued under ss. PSC128.10 (5) and ss. PSC 128.105(1), which are:

Pre-application notice – At least 60 days before an owner files an application to construct a wind energy system, an owner shall use commercially reasonable methods to provide written notice of the planned wind energy system to all of the following:

- 1) Adjacent landowners to the planned wind turbine host property
- 2) Political subdivisions within which the wind energy system may be located

(2) For large wind energy systems - An owner shall file an application with the department that, at a minimum, includes the following information:

- a.) All information required under 45-22(1)(a-f) and (h-k) of this ordinance
- b.) Information regarding the anticipated effects of the wind energy system on existing land uses within 0.5 mile of the wind energy system
- c.) A representative copy of all notices issued under ss. PSC 128.105(1) and 128.42, which are:

1)PSC 128.105(1): Pre-application notice – At least 90 days before an owner files an application to construct a wind energy system, an owner shall use commercially reasonable methods to provide written notice of the planned wind energy system to all of the following:

- a) Land owners within one mile of the planned wind turbine host property
- b) Political subdivisions within which the wind energy system may be located
- c) Emergency first responders and air ambulance service providers serving the political subdivisions within which the wind energy system may be located
- d) The Wisconsin department of transportation
- e) The public service commission
- f) The Wisconsin department of natural resources
- g) The Wisconsin department of agriculture, trade and consumer protection
- h) The office of the deputy undersecretary of the U.S. department of defense

2)PSC 128.42(1): Notice of process for making complaints – Before construction of a wind energy system begins, an owner shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within 0.5 mile of any wind energy system facility. An owner shall include in the notice the requirements under PSC 128.40(1) for submitting a complaint to the owner, a petition for review to the political subdivision, and an appeal to the commission, and shall include a contact person and telephone number for the owner for receipt of complaints or concerns during construction, operation, maintenance and decommissioning.

- d.) A copy of all emergency plans developed in collaboration with appropriate first responders under s. PSC 128.18(4)(b). An owner may file plans using confidential filing procedures as necessary.
- e.) A decommissioning and site restoration plan providing reasonable assurance that the owner will be able to comply with s. PSC 128.19.

(3) For all applications, the owner shall ensure that information contained in the application is accurate.

(4) Evidence shall be included for all applications to show that, on the same day an owner filed an application under this ordinance, the owner did use commercially reasonable methods to provide written notice of the filing of the application to property owners and residents as required under ss. PSC128.10 (5), ss. PSC 128.105(1) and 128.42 as applicable.

(5) An owner shall submit 8 copies of an application and one copy of the application to the clerk of each town in which any wind energy system facility is located. A digital copy shall also be submitted in a format acceptable to the county. Additional copies may be required for review by the public. Each copy of the application shall include all documents, drawings, maps, worksheets, and other materials that are included in the original application.

45-23 Application Processing

- (1) Within 45 days of receiving the application, the department shall notify the applicant in writing whether the application is complete and, if it is not, what the applicant must do in order to make it complete.
 - a.) The applicant shall provide the additional information specified in the notice to the department within 60 days of the date of the notice.
 - b.) An additional 45-day completeness review period shall begin the day after the department receives responses to all items identified in the notice under par. (a).
 - c.) If the applicant fails to provide additional information specified in the notice to complete the application within 60 days of the date of the notice, the application shall be deemed abandoned. The owner may file a new application at a later date, subject to payment of a new application fee. There is no limit to the number of times that an owner may file an application.
 - d.) An application shall be deemed complete if it complies with the filing requirements of section 45-22 of this ordinance and of PSC 128.50.
- (2) A date and time for a public hearing on the application shall be set as soon as possible after receiving a complete application. The department shall publish a class 1 notice, under ch. 985 Stats. stating that an application for approval has been filed with the county. If the application is deemed incomplete, the notice shall state the reason for the determination. The notice shall include a brief description of the proposed wind energy system and its proposed location, the locations where the application is available for public review, the method and time period for the submission of public comments to the department, and the approximate schedule for review of the application by the county.
- (3) The application shall be made available for public review at one or more local libraries, in the Zoning Department and on the county website.
- (4) The county shall make a record of its decision making on an application for approval, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the county in connection with the application for approval.
- (5) The county shall base its decision on an application for approval on written findings of fact that are supported by the evidence in the record of any public hearing.
- (6) The county shall grant or deny an application for a wind energy system no later than 90 days after the day on which it notifies the applicant that the application for approval is complete. The county may extend this time period in writing provided the extension is done during the initial 90-day period. Any combination of the following extensions may be granted:
 - a.) An extension of up to 45 days if the county needs additional information to determine whether to approve or deny the application.
 - b.) An extension of up to 90 days if the applicant makes a material modification to the application.
 - c.) An extension of up to 90 days for other good cause specified in writing by the county. If the county fails to act within the initial 90 days, or within any extended time period, the application is considered approved.
- (7) For large wind energy systems with a nominal capacity of at least one megawatt, the county may deny an application if the proposed site of the wind energy system is in an area primarily designated for future residential or commercial development as shown in an adopted comprehensive plan.
- (8) The county shall provide a written decision to the applicant and the public service commission. Said decision shall contain findings of fact supported by evidence in the record.

ARTICLE III – LOCAL REGULATIONS

45-40 Real Property Provisions.

- (1) EASEMENT RECORDING REQUIRED. A wind energy system easement or wind access easement shall be recorded under ch. 706, Stats. A wind energy system easement or wind access easement shall include the term of the easement and a full legal description of the property subject to the easement.
- (2) WIND LEASE AND WAIVER PROVISIONS. A wind energy system lease and any waiver under Sec. 45-42(4) or 45-46(2) shall hold harmless and indemnify the real property owner for all of the following:
 - (a) Any violation of federal, state or local law by the owner of the wind energy system.
 - (b) Any damages or bodily injury caused by the construction, operation or decommissioning of the wind energy system.

45-41 Existing property uses.

- (1) LAND USE AND COMMERCIAL ENTERPRISES. An owner shall make reasonable efforts to ascertain and accommodate any land use or commercial enterprise located on a nonparticipating property within 0.5 mile of a proposed wind turbine site if the land use or commercial enterprise exists when the owner gives notice under s. PSC 128.105 (1), or if complete publicly-available plans for construction are on file with a political subdivision within 30 days of the date the owner gives notice under s. PSC 128.105 (1).
- (2) LAND USE AND COMMERCIAL ENTERPRISES-Small wind. Sec. 45-41(1) applies to small wind energy systems but only for existing land uses and enterprises that are located on adjacent nonparticipating properties.
- (3) AGRICULTURAL USE. An owner shall design a wind energy system to reasonably minimize the conversion of land from agricultural use.

45-42 Shadow flicker.

- (1) PLANNING.
 - (a) The shadow flicker requirements in this section apply to a nonparticipating residence or occupied community building that exists when the owner gives notice under s. PSC 128.105 (1) or for which complete publicly-available plans for construction are on file with a political subdivision within 30 days of the date on which the owner gives notice under s. PSC 128.105 (1).
 - (b) An owner shall design the proposed wind energy system to minimize shadow flicker at a residence or occupied community building to the extent reasonably practicable.
 - (c) An owner of a large wind energy system shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by a wind energy system and shall design the wind energy system so that computer modeling indicates that no nonparticipating residence or occupied community building will experience more than 30 hours per year of shadow flicker under planned operating conditions.
- (2) SHADOW FLICKER LIMITS. An owner shall operate the wind energy system in a manner that does not cause more than 30 hours per year of shadow flicker at a nonparticipating residence or occupied community building. If a nonparticipating residence or occupied community building experiences more than 30 hours per year of shadow flicker under the wind energy system's normal operating conditions, the owner shall use operational curtailment to comply with this subsection.

(3) SHADOW FLICKER MITIGATION.

- (a) An owner of a wind energy system shall work with an owner of a nonparticipating residence or occupied community building to mitigate the effects of shadow flicker to the extent reasonably practicable.
- (b) An owner of a large wind energy system shall provide reasonable shadow flicker mitigation at the owner's expense for a nonparticipating residence or occupied community building experiencing 20 hours or more per year of shadow flicker.
- (c) An owner of a large wind energy system shall model shadow flicker and a nonparticipating residence or occupied community building is eligible for mitigation if computer modeling shows that shadow flicker at the nonparticipating residence or occupied community building will be 20 hours or more per year. An owner of a nonparticipating residence or occupied community building is not required to document the actual hours per year of shadow flicker if modeling indicates the nonparticipating residence or occupied community building is eligible for mitigation. A nonparticipating residence or occupied community building that experiences 20 hours or more per year of shadow flicker based on records kept by the resident of a nonparticipating residence or the occupant of an occupied community building shall also be eligible for mitigation.
- (d) An owner of a large wind energy system may provide shadow flicker mitigation for any residence or occupied community building in addition to the mitigation required under par. (b).
- (e) The requirement under par. (b) to mitigate shadow flicker applies when the owner of a large wind energy system receives a complaint or request for mitigation regarding shadow flicker for an eligible nonparticipating residence or occupied community building. If shadow flicker mitigation is required, the owner of the wind energy system shall allow the owner of the nonparticipating residence or occupied community building to choose a preferred reasonable mitigation technique, including installation of blinds or plantings at the wind energy system owner's expense.

(4) WAIVER. Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the wind energy system owner of a requirement under Sec. 45-42 (2) or 45-42(3)(b) at the affected nonparticipating residence or occupied community building by written contract with the wind energy system owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned, and shall be recorded under ch. 706, Stats.

(5) NOTIFICATION.

- (a) Before entering into a contract under Sec. 45-42(4), a large wind energy system owner shall provide notice of the requirements of this section to individual owners of an affected nonparticipating residence or occupied community building.
- (b) Before the initial operation of the large wind energy system, a large wind energy system owner shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a contract under Sec. 45-42(4).

45-43 Signal Interference.

(1) PLANNING.

- (a) Except as provided in Sec. 45-43(4), the signal interference requirements in this section apply to commercial communications and personal communications in use when the wind energy system begins operation.
 - (b) An owner shall use reasonable efforts to avoid causing interference with commercial communications and personal communications to the extent practicable.
 - (c) An owner may not construct wind energy system facilities within existing line-of-sight communication paths that are used by government or military entities to provide services essential to protect public safety. The county may require an owner to provide information showing that wind turbines and other wind energy system facilities will be in compliance with this paragraph.
- (2) **COMMERCIAL COMMUNICATIONS INTERFERENCE MITIGATION.** An owner of a large wind energy system shall use reasonable and commercially available technology to mitigate interference caused by a wind energy system with commercial communications in use when a wind energy system begins operation. Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for commercial communications interference problems. Except as provided in 45-43(4), an owner shall mitigate commercial communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.
- (3) **PERSONAL COMMUNICATIONS INTERFERENCE MITIGATION.**
- (a) An owner of a large wind energy system shall use reasonable and commercially available technology to mitigate interference with personal communications in use when a wind energy system begins operation caused by a wind energy system. The county may require an owner to use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the wind energy system began commercial operation, if a wind energy system is causing the interference and the interference occurs at a location at least 0.5 mile from a wind turbine.
 - (b) Before implementing mitigation measures, the owner of a large wind energy system shall consult with affected parties regarding the preferred mitigation solution for personal communications interference problems. Except as provided in Sec. 45-43(4), an owner shall mitigate personal communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.
- (4) **MITIGATION PROTOCOL.** The county may, under a protocol established under s. PSC 128.50 (2), require an owner to implement a new mitigation solution that becomes commercially available before the wind energy system is decommissioned to address interference for which mitigation is required under Sec. 45-43(2) or 45-43(3) and for which the original mitigation solution implemented is only partially effective.

45-44 Stray Voltage.

(1) **TESTING REQUIRED.**

- (a) An owner shall work with the local electric distribution company to test for stray voltage at all dairy and confined animal operations within 0.5 mile of a wind energy system facility pursuant to the stray voltage protocol established by the commission before any wind energy system construction activity that may interfere with testing commences and again after construction of the wind energy system is completed, except as otherwise specified by commission staff under par. (b).
- (b) Before any testing under par. (a) begins, an owner shall work with commission staff to determine the manner in which stray voltage testing will be conducted and on which properties. The electric distribution

company serving a dairy or confined animal operation where testing is required under par. (a) shall conduct or arrange to conduct all required testing at the expense of the owner.

- (2) RESULTS OF TESTING. An owner and the electric distribution company shall provide to commission and department staff the results of all stray voltage testing in writing.
- (3) REQUIREMENT TO RECTIFY PROBLEMS. An owner shall work with the electric distribution company and farm owner to rectify any stray voltage problems attributable to the construction and operation of the wind energy system, in compliance with the commission's stray voltage protocol.

45-45 Lighting

- (1) Large wind energy systems:
 - a.) An owner shall use shielding or control systems approved by the federal aviation administration to reduce visibility of light to individuals on the ground.
- (2) Small wind energy systems:
 - a.) A small wind energy system may be artificially lighted only if lighting is required by the Federal Aviation Administration.
 - b.) An owner shall use shielding or control systems approved by the Federal Aviation System to reduce visibility of light when viewed from the ground.

45-46 Noise

- (1) The noise generated by the operation of a wind energy system may not exceed 50 dBA during the daytime hours and 45 dBA during the nighttime hours as measured at the outside wall of a nonparticipating residence or occupied community building that existed when the owner gave notice pursuant to PSC 128.105(1) or for which complete publicly available plans for construction were on file with a political subdivision within 30 days of the date when the owner gave notice pursuant to PSC 128.105(1).
- (2) The owner of an adjacent nonparticipating residence or adjacent occupied community building may relieve the owner of the small wind energy system of the requirement to meet any of the noise limits in this section by written contract as provide in PSC 128.14(5) and (6).
- (3) The owner shall provide the notice as prescribed by PSC 128.14(6)(b) and PSC 128.61(4) as applicable.
- (4) If an owner receives a complaint of a violation of the noise standards contained in PSC 128.14 and the owner has not provided the department with the results of an accurate test conducted within 2 years of the date of the complaint showing that the small wind energy system is in compliance with the noise standard at the location relating to the complaint, the owner shall promptly conduct a noise study to evaluate compliance with the noise standards at that location using the most current version of the noise measurement protocol as described in PSC 128.50(2).
- (5) In the event audible noise due to wind energy system operations contains a steady pure tone, such as a whine, whistle, screech, or hum, the owner shall promptly take corrective action to permanently eliminate that noise. This paragraph does not apply to sound the wind energy system produces under normal operating conditions.

45-47 Setbacks

- (1) An owner shall measure wind turbine setback distances as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature, as applicable.
- (2) An owner shall work with owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships.
- (3) For small wind energy systems:

- a.) A small wind energy system must be set back at least 1.0 times the maximum blade tip height from any nonparticipating property line, nonparticipating residence, occupied community building, or overhead communication and electrical transmission line, not including utility service lines to individual houses or outbuildings.
- b.) The owner of an adjacent nonparticipating property, adjacent nonparticipating residence or adjacent occupied community building may waive the required setback distance by providing a written agreement with the owner to the department.

(4) For large wind energy systems:

- a.) A large wind energy system shall comply with the setback distances shown in Table 1 in PSC 128.13, which are:

Table 1

Setback Description	Setback Distance
Occupied Community Buildings	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Residences	1.1 times the maximum blade tip height
Nonparticipating Residences	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	1.1 times the maximum blade tip height
Public Road Right-of-Way	1.1 times the maximum blade tip height
Overhead Communication and Electric Transmission or Distribution Lines — Not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height
Overhead Utility Service Lines— Lines to individual houses or outbuildings	None

- b) The owner of a nonparticipating residence or occupied community building may waive the applicable wind turbine setback distances in Table 1 for those structures to a minimum setback distance of 1.1 times the maximum blade tip height. The owner of a nonparticipating property may waive the applicable wind turbine setback distance in Table 1 from a nonparticipating property line.

45-48 Monetary Compensation for Nonparticipating Residences.

- (1) An owner shall offer an agreement to the owner of a nonparticipating residence, if the residence is located within one-half mile of a constructed wind turbine, that includes the following initial annual monetary compensation of \$600 for 1 turbine located within one-half mile of a nonparticipating residence, \$800 for two turbines located within one-half mile of a nonparticipating residence, and \$1,000 for 3 or more turbines located within one-half mile of a nonparticipating residence.
- (2) The initial annual monetary compensation under this subsection shall apply to agreements entered into in 2011. For agreements entered into in 2012 and thereafter, the initial annual amounts shall increase each year by the greater of two percent or the increase in the Consumer Price Index, as described in Wis. Stat. §196.374(5)(bm)2 from the previous year.
- (3) An agreement offered under this subsection shall specify in writing any waiver of a requirement or right under this ordinance or PSC 128 and whether the landowner’s acceptance of payment establishes the landowner’s property as a participating property under this ordinance or PSC 128.

ARTICLE IV – MODIFICATIONS TO AN APPROVED SYSTEM

45-60 Material change

An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the department. An owner shall submit an application for a material change to an approved wind energy system to the county. The county may not reopen the merits of the earlier

approval, but shall consider only those issues relevant to the proposed change. An application for material change is subject to PSC 128.35. At its discretion, the county may hold at least one public meeting to obtain comments on and to inform the public about a proposed material change to an approved wind energy system.

45-61 Ownership Change

An owner shall provide the county with notice of any change in ownership of the wind energy system on or before the effective date of the change. A notice of change in ownership of a large wind energy system shall include information showing that the financial responsibility specified under section 45-100(2) of this ordinance will be met by the new owner.

ARTICLE V – CONSTRUCTION, OPERATION, AND MAINTENANCE

45-80 Physical Characteristics

- (1) An owner may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine. An owner may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. An owner may attach a safety feature or wind monitoring device to a wind turbine.
- (2) An owner shall ensure that a wind turbine has a conventional or unobtrusive finish.
- (3) An owner shall install lighting at a wind energy system that complies with standards established by the federal aviation administration. A political subdivision may not establish lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration. A political subdivision may require use of shielding or control systems approved by the federal aviation administration to reduce visibility of lighting to individuals on the ground.
- (4) An owner shall take appropriate measures to ensure that a wind turbine is not readily climbable except by authorized personnel.
- (5) An owner shall ensure that all wind turbine access doors and electrical equipment are locked when authorized personnel are not present.
- (6) An owner shall place appropriate warning signage on or at the base of each wind turbine.
- (7) An owner of a large wind energy system shall post and maintain up-to-date signs containing a 24-hour emergency contact telephone number, information identifying the owner, and sufficient information to identify the location of the sign within the wind energy system. An owner shall post these signs at every intersection of a wind energy system access road with a public road and at each wind turbine location.
- (8) An owner shall clearly mark guy wires and supports for a wind energy system, meteorological tower or other device for measuring wind speeds so that the wires and supports are visible to low flying aircraft under fair weather conditions.

45-81 Electrical Standards

- (1) An owner shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and ch. PSC 114 and shall construct, maintain, and operate all wind energy system facilities in a manner that complies with the national electrical code.
- (2) An owner of a large wind energy system shall construct collector circuit facilities for a wind energy system underground to the extent practicable.
- (3) An owner of a large wind energy system shall establish an inspection schedule for all overhead collector circuits to ensure that third-party facilities, including cable television and telecommunications cables, are not attached or bonded to overhead collector circuit grounding. If third-party facilities are found attached to the overhead collector facilities, the owner shall ensure that the third-party facilities are promptly removed.

45-82 Construction, Operation and Maintenance Standards

- (1) An owner shall construct, operate, repair, maintain and replace wind energy system facilities as needed to keep the wind energy system in good repair and operating condition and in a manner that protects individuals from injury.
- (2) Large Wind Energy Systems.
 - (a) An owner of a large wind energy system shall carry general liability insurance relating to claims for property damage or bodily injury arising from the construction, operation or decommissioning of the wind energy system and shall include turbine host property owners as additional insured persons on the policy.
 - (b) An owner shall minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land during the construction or decommissioning of the wind energy system.
 - (c) An owner shall utilize all applicable best practices in the placement, construction, operation, and maintenance of its wind energy facilities in order to minimize soil compaction, protect the topsoil, prevent topsoil mixing, and avoid and repair any damage to drainage systems on agricultural land.
 - (d) An owner shall describe the applicable best practices that it intends to use in the placement, construction, operation, and maintenance of its wind energy facilities in its application.
 - (e) Except for the area physically occupied by the large wind energy system facilities, an owner shall restore the topography, soils and vegetation of the project area to original condition after construction is complete, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements.

45-83 Emergency Procedures for Small Wind Energy Systems

- (1) An owner shall notify a political subdivision of the occurrence and nature of a wind energy system emergency within 24 hours of the wind energy system emergency.

45-84 Emergency Procedures for Large Wind Energy Systems

- (1) An owner shall notify a political subdivision of the occurrence and nature of a wind energy system emergency within 24 hours of the wind energy system emergency.
- (2). An owner shall establish and maintain liaison with the county and with fire, police, and other appropriate first responders serving the wind energy system to create effective emergency plans that include all of the following:
 - a.) A list of the types of wind energy system emergencies that require notification under par. (1).
 - b.) Current emergency contact information for first responders and for the wind energy system owner, including names and phone numbers.
 - c.) Procedures for handling different types of wind energy system emergencies, including written procedures that provide for shutting down the wind energy system or a portion of the system as appropriate.
 - d.) Duties and responsibilities of the owner and of first responders in the event of a wind energy system emergency.
 - e.) An emergency evacuation plan for the area within 0.5 mile of any wind energy system facility, including the location of alternate landing zones for emergency services aircraft.
- (3) The owner shall review the emergency plan at least annually in collaboration with fire, police and other appropriate first responders to update and improve the emergency plan as needed.

- (4) The owner shall distribute current copies of the emergency plan to the Monroe County Emergency Management Department, fire, police and other appropriate first responders as identified by the County.
- (5) The county may require the owner to provide annual training for fire, police and other appropriate first responders regarding responding to a wind energy system emergency until the wind energy system has been decommissioned.
- (6) An owner of a large wind energy system shall do all of the following:
 - a.) Furnish its operator, supervisors and employees who are responsible for emergency action a copy of the current edition of the emergency procedures established under this subsection to ensure compliance with those procedures.
 - b.) Train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective.
 - c.) As soon as possible after the end of a wind energy system emergency, review employee activities to determine whether the procedures were effectively followed.

45-85 Third Party Construction Inspector

For a large wind energy system the department may contract with a third party inspector to monitor and report to the department regarding the owner's compliance with permit requirements during construction. The inspector monitoring compliance under this section shall also report to a state permitting authority upon the state permitting authority's request. The inspector shall make monthly written reports to the department. The owner shall reimburse the county for the actual and necessary cost of the inspector.

45-86 Postconstruction Filing Requirement

- (1) Within 90 days of the date a large wind energy system commences operation, the owner shall file with the department and the public service commission an as-built description of the wind energy system, an accurate map of the wind energy system showing the location of all wind energy system facilities, geographic information system information showing the location of all wind energy system facilities, and current information identifying the owner of the wind energy system.
- (2) An owner shall label each wind turbine location described in its filing and shown on the map of the wind energy system with a unique identifier consistent with the information posted at the wind turbine location under Sec. 45- 80(7).

45-87 Compliance Monitoring

This subsection applies to large wind energy systems only.

- (1) An owner shall maintain a maintenance log for each wind turbine. The log must contain the following information:
 - a.) date and time maintenance was performed
 - b.) nature of the maintenance performed
 - c.) reason for the maintenance
- (2) An owner shall, at the owner's expense, provide the department with a copy of the maintenance log for each wind turbine for each month upon the request of the county.
- (3) The department may retain such consultants or experts as it deems necessary to assess and determine whether the wind energy system facilities are compliant or to assess whether the wind energy system facilities are being maintained in good repair and operating condition.

45-88 Information

- (1) An owner shall, within 30 days of consulting with any federal or state agency about the construction, operation, or decommissioning of the wind energy system, provide the county with information about the reason for the consultation.
- (2) An owner shall, within 30 days of receiving any non-binding recommendation for the construction, operation, or decommissioning of the wind energy system from any federal or state agency, provide the county with information about the consultation

45-89 Studies

An owner shall cooperate with any study of the effects of wind energy systems that is coordinated by a state agency.

ARTICLE VI- ABANDONMENT AND DECOMMISSIONING

45-100 Abandonment and Decommissioning

(1) For small wind energy systems:

- a) A small wind energy system that does not generate electricity for a continuous period of 540 days will be deemed abandoned and the department may issue a Notice of Abandonment to the owner.
- b.) If, within 30 days of receipt of a Notice of Abandonment, the owner provides the department with information showing that the small wind energy system has not been abandoned, the department will withdraw the Notice.
- c.) Unless the department withdraws the Notice of Abandonment, a small wind energy system tower must be decommissioned as prescribed by PSC 128.19. If the owner fails to remove a small wind energy system and reclaim the site, the county may remove or cause the removal of the small wind energy system and arrange for the reclamation of the site. The cost of removal and reclamation will become a lien upon the property and may be collected in the same manner as property taxes.

(2) For large wind energy systems:

- (a)** An owner of a large wind energy system shall decommission and remove the wind energy system when the system is at the end of its useful life.
- (b)** A large wind energy system is presumed to be at the end of its useful life if the large wind energy system generates no electricity for a continuous 360-day period. This presumption may be rebutted under par. (c).
- (c)** Upon application by the owner, and except as provided in par. (d), the department shall grant an extension of the time period for returning the wind energy system to service by one or more additional 180 day periods if the owner demonstrates it is likely the wind energy system will operate again in the future and any of the following occur:
 - 1.** The owner submits a plan to the department that demonstrates an ongoing good faith effort to return the large wind energy system to service and outlines the steps and schedule for returning the large wind energy system to service in a reasonable period of time, including by repairing, replacing or repowering the large wind energy system facilities as necessary to generate electricity.
 - 2.** The owner demonstrates that the large wind energy system is part of a prototype or other demonstration project being used for ongoing research or development purposes.
 - 3.** The owner demonstrates that the large wind energy system is being used for educational purposes.

- (d) The department may deny a request for an extension under par. (c) if the large wind energy system has not generated any electricity for a continuous period of 540 days or more and the department finds that the owner is not capable of returning the wind energy system to service within a reasonable period of time.
- (e) A large wind energy system is irrefutably presumed to be at the end of its useful life if the large wind energy system generates no electricity for a period of 540 days and any of the following occur:
 - 1. The owner does not request an extension of the time period for returning the large wind energy system to service under par. (c).
 - 2. The department denies a request for an extension under par. (d) and any appeal rights have expired.
- (f) When decommissioning is required, the owner shall begin decommissioning within 360 days after the large wind energy system has reached the end of its useful life. The owner shall complete decommissioning and removal of the large wind energy system within 540 days after the large wind energy system has reached the end of its useful life.

45-101– Decommissioning Review

An owner of a large wind energy system with a nameplate capacity of one megawatt or larger shall file a notice of decommissioning completion with the county and any political subdivision within which its wind energy system facilities are located when a wind energy system approved by the county has been decommissioned and removed.

- (1) The department shall conduct a decommissioning review to determine whether the owner has decommissioned and removed the wind energy system as required by PSC 128.19 and whether the owner has complied with its site restoration obligation under PSC 128.19(4).
- (2) The owner shall cooperate with the county by participating in the decommissioning review process.

45-102 Financial Responsibility –Large Wind Energy System

- 1) An owner of a large wind energy system with a nameplate capacity of one megawatt or larger shall provide the county with financial assurance of the owner’s ability to pay the actual and necessary cost to decommission the wind energy system before commencing major civil construction activities.
- 2) An owner shall provide the county with 3 estimates of the actual and necessary cost to decommission the wind energy system. The cost estimates shall be prepared by third parties agreeable to the owner and the county. The amount of financial assurance required by the county will be the average of the 3 estimates.
- 3) An owner shall establish financial assurance that is acceptable to the county and that places the county in a secured position. The financial assurance must provide that the secured funds may only be used for decommissioning the wind energy system until such time as the county determines that the wind energy system has been decommissioned, as provided for in PSC 128.19(5)(b), or the county approves the release of the funds, whichever occurs first. The financial assurance must also provide that the county may access the funds for the purpose of decommissioning the wind energy system if the owner does not decommission the system when decommissioning is required.
- 4) The county may periodically request information from the owner regarding industry costs for decommissioning the wind energy system. If the county finds that the future anticipated cost to decommission the wind energy system is at least 10 percent more or less than the amount of financial assurance provided under this section, the county may correspondingly increase or decrease the amount of financial assurance required. The county may not adjust the financial assurance under this paragraph more often than once in a 5-year period.
- 5) The county may require an owner to submit a substitute financial insurance of the owner’s choosing if an event occurs that raises material concern regarding the viability of the existing financial assurance.

ARTICLE VII – APPEALS

45-120 Appeals

A decision by the department that the application is not complete, to approve or disapprove the application, or to impose a restriction on a wind energy system may be appealed to the public service commission as per PSC 128.51.

- (1) Any action by the county to enforce a restriction on a wind energy system may be appealed to the public service commission.
- (2) An appeal must be filed with the public service commission within 30 days after the date of the decision or the start of the enforcement action that is being appealed.

ARTICLE VIII – COMPLAINTS

45-140 Complaint process for wind energy systems

- (1) An aggrieved person who has made a complaint to an owner in accordance with PSC 128.40 may petition the county for review of the complaint if it has not been resolved within 45 days of the day the owner received the original complaint.
- (2) The petition for review must be filed with the department within 90 days of the date of the original complaint and shall contain the following:
 - a.) Name, address, and telephone number of the person filing the petition
 - b.) Copy of the original complaint to the owner
 - c.) Copy of the owner's original response
 - d.) Statement describing the unresolved complaint
 - e.) Statement describing the desired remedy
 - f.) Any other information the complainant deems relevant to the complaint
 - g.) Notarized signature of the person filing the petition
- (3) The department shall forward a copy of the petition to the owner by certified mail within 10 days of the department receiving the petition.
- (4) The owner shall file an answer to the petition with the department and provide a copy of its answer to the complainant within 30 days of its receipt of the petition.
- (5) The answer must include the following:
 - a.) Name, address, and telephone number of the person filing the answer
 - b.) Statement describing the actions taken by the owner in response to the complaint
 - c.) Statement of the reasons why the owner believes that the complaint has been resolved or why the complaint remains unresolved
 - d.) Statement describing any additional action the owner plans or is willing to take to resolve the complaint
 - e.) Any other information the owner deems relevant to the complaint
 - f.) Notarized signature of the person filing the answer
- (6) The complainant and the owner may, within 30 days following the owner's filing of its answer, file such additional information with the department as each deems appropriate.
- (7) The department may request such additional information from the complainant and the owner as it deems necessary to complete its review.
- (8) The department may retain such consultants or experts as it deems necessary to complete its review.

(9)The department shall issue a written decision and may take such enforcement action as it deems appropriate with respect to the complaint.

(10) The decision of the department and enforcement action is subject to review under Wis. Stat. § 66.0401(5).

45-141 Additional process for large wind energy systems

(1) An owner shall comply with the notice requirements contained in PSC 128.42(1).

(2) An owner shall, before construction of a large wind energy system begins, provide the department with a copy of the notice issued pursuant to PSC 128.42(1), along with a list showing the name and address of each person to whom the notice was sent and a list showing the name and address of each political subdivision to which the notice was sent.

(3) An owner shall, before construction of a large wind energy system begins, file with the department the name and telephone number of the owner's contact person for receipt of complaints or concerns during construction, operation, maintenance, and decommissioning. The owner shall keep the name and telephone number of the contact person on file with the department current.

(4) Pursuant to PSC 128.41 a monitoring committee may be established to oversee resolution of complaints regarding a wind energy system.

ARTICLE IX – VIOLATIONS, ENFORCEMENT, AND PENTALTIES

45-170 Violations

(1) It is unlawful for any person to violate any provision of this ordinance.

(2) It is unlawful for any person to knowingly provide false information, make a false statement, fail to provide, or misrepresent any material fact to a county agent, board, commission, committee, department, employee, official, or officer acting in an official capacity under this ordinance.

(3) It is unlawful for a person to disobey; fail, neglect, or refuse to comply with; or otherwise resist a permit or order issued pursuant to this ordinance.

(4) A separate offense is deemed committed on each day that a violation occurs or continues.

45-171 Enforcement

(1) Department Authority. The department shall enforce this ordinance and may conduct inspections and investigate complaints relating to compliance with this ordinance.

(2) Inspection Authority. The department may request permission to inspect, at a reasonable time and date, any premises or structure for which a permit has been applied for or granted to determine compliance with this ordinance. Refusal to grant permission is grounds for denial or revocation of a permit. If permission is not given, the department may apply for, obtain, and execute a special inspection warrant pursuant to Wis. Stat. § 66.0119.

(3) Notice of Noncompliance. If the department finds a violation of any provision of this ordinance, the department may issue a written notice to the owner stating the conditions of non-compliance, specifying the action required to come into compliance, and providing a reasonable amount of time within which compliance is required.

- (4) Permit Revocation Authority. The department may revoke a permit for substantial noncompliance with any provision of this ordinance, refusal to permit inspection of wind energy systems facilities for which a permit has been granted, or failure to comply with the action requirement contained in a notice of noncompliance.
- (5) Citation Authority. The department may issue a citation for any violation of this ordinance. The department is not required to issue a notice of noncompliance or take any other action prior to issuing a citation.
- (6) Legal Referral. The department may refer a violation of this ordinance to corporation counsel for legal action, including an action seeking injunctive relief. The department is not required to issue a notice of noncompliance or take any other action prior to referring a violation to corporation counsel.
- (7) Other Enforcement Means. Nothing in this section may be construed to prevent the county from using any other lawful means to enforce this ordinance.

45-172 Penalties

- (1) A person will, upon conviction for any violation of this ordinance, forfeit not less than \$100 nor more than \$1,000 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.
- (2) The minimum and maximum forfeitures specified in this section are doubled each time that a person is convicted for the same violation of this ordinance within any 12 month period.
- (3) A person who has the ability to pay a forfeiture entered pursuant to this ordinance, but who fails or refuses to do so may be confined in the county jail until the forfeiture and costs are paid, but the period of confinement may not exceed 30 days. In determining whether a person has the ability to pay, all items of income and all assets may be considered regardless of whether the income and assets are subject to garnishment, lien, or attachment by creditors.
- (4) The failure of a county employee, official, or officer to perform an official duty imposed by a section of this code will not subject the employee, official, or officer to a penalty unless the section imposing the duty also specifies the penalty.

ARTICLE X - EFFECTIVE DATE

This ordinance is effective on the day following publication per Wisconsin Statute.