

**§3456. Siting considerations for smaller-scale wind energy development in organized areas**

**1. Construction and operation requirements.** A person may not construct or operate a wind energy development, other than a grid-scale wind energy development, without first obtaining a certification from the department that the generating facilities:

- A. Will meet the requirements of the noise control rules adopted by the Board of Environmental Protection pursuant to Title 38, chapter 3, subchapter 1, article 6; [PL 2007, c. 661, Pt. A, §7 (NEW).]
- B. Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and [PL 2007, c. 661, Pt. A, §7 (NEW).]
- C. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities. [PL 2007, c. 661, Pt. A, §7 (NEW).]

A person proposing a wind energy development subject to certification under this section shall apply to the department for certification using an application provided by the department and may not begin construction until the certification is received.

[PL 2011, c. 682, §29 (AMD).]

**2. Fees; outside review; approval process.** The department may charge a developer an appropriate fee for its review and certification pursuant to this section. Certification may be conditioned on specific requirements, including but not limited to setbacks from residential structures to address noise or safety concerns. The department may use an outside reviewer as provided in Title 38, section 344-A. If no other approval by the department is required for the development, the department shall issue its certification within 185 days of its acceptance of a request for certification as complete pursuant to Title 38, section 344. At the request of an applicant, the department may put the certification review period on hold. If another approval by the department is required for the development, the department shall consolidate its process for certification under this section with that regarding other approvals by the department as provided in the department's rules and may extend the review period as provided in those rules. Notwithstanding any other provision of law, the department's certification pursuant to this section regarding a development that does not otherwise require the department's approval pursuant to this Title is not itself subject to judicial review as final agency action or otherwise, except as an aspect of an appeal of a pertinent municipal land use decision.

[PL 2007, c. 661, Pt. A, §7 (NEW).]

**3. Enforcement of standards.** Following certification under this section and during construction and operation, the standards in subsection 1 for a wind energy development subject to certification under this section may be enforced by the municipality in which the generating facilities are located at the municipality's discretion pursuant to Title 30-A, section 4452. The department is not responsible for enforcement of this section.

[PL 2007, c. 661, Pt. A, §7 (NEW).]

**4. Exemption.** Certification under this section is not required for a wind energy development with a generating capacity of less than 100 kilowatts.

[PL 2007, c. 661, Pt. A, §7 (NEW).]

**SECTION HISTORY**

PL 2007, c. 661, Pt. A, §7 (NEW). PL 2011, c. 682, §29 (AMD).

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