



ST. CLAIR COUNTY HEALTH DEPARTMENT

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3415 28th Street Port Huron MI 48060

November 25, 2024

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MEMORANDUM FOR: St. Clair County Board of Commissioners

FROM: Dr. Remington Nevin, Medical Director, St. Clair County Health Department

SUBJECT: Public Health Risks of Industrial Solar Plants and Data Centers

At the November 7, 2024 meeting of the St. Clair County Board of Commissioners, public concerns were raised regarding the potential health risks posed by the proposed construction and operation of certain industrial solar plants and data centers in St. Clair County. The county administrator subsequently asked the St. Clair County Health Department to investigate these concerns. This memorandum is provided in response to this request. The opinions expressed in this memorandum are those of the St. Clair County Health Department medical director, acting in his regulatory role "to provide direction [to the local governing entity] in the formulation of medical public health policy and program operation," and in "advising the administrative health officer on matters related to medical specialty judgments." *Mich. Admin. Code R 325.13001(d)*. These opinions may not represent those of the administrative health officer or the St. Clair County Health Department.

In my professional medical opinion, and based upon my education, training, and experience, and my review of the pertinent facts and circumstances, the construction or operation of industrial solar plants and data centers, located in whole or in part within St. Clair County, and comprising energy facilities eligible for certification under *Public Act 233 of 2023*, constitute a potential public health risk to the residents of St. Clair County, and are therefore subject to local public health oversight and action.

The *Michigan Public Health Code* (codified in *MCL 333*) provides statutory authority for local governing bodies (i.e., within St. Clair County, its Board of Commissioners) to establish a local health department. *MCL 333.2413*. The local health department so established is required by statute to "promote the public health through organized programs, including prevention and control of **environmental health hazards**; prevention and control of diseases; [and] **prevention and control of health problems of particularly vulnerable population groups.**" *MCL 333.2433(1)*, *emphasis added*. The identification of "particularly vulnerable population groups" and the provision of direction on appropriate medical public health policy and program operation to prevent and control health problems among this group constitutes, as above, a matter of medical specialty judgement by the local medical director.

In my professional medical opinion, and based upon my education, training, and experience, and my review of the pertinent facts and circumstances, residents of St. Clair County in proximity to proposed or existing construction or operation of such industrial solar plants and data centers, constitute a “particularly vulnerable population group” per MCL 333.2433(1), requiring by statute that the local health department “diligently endeavor” to prevent and control health problems among them.

As provided by statute, local health departments “[h]ave powers necessary or appropriate to perform the duties and exercise the powers given by law to the local health officer and which are not otherwise prohibited by law,” MCL 333.243(2)(f), and to “[i]mplement and enforce laws for which responsibility is vested in the local health department.” MCL 333.2433(2)(a).

More specifically, local health departments are empowered by statute with independent regulatory authority, including the authority to “[a]dopt regulations to properly safeguard the public health and to prevent the spread of diseases and sources of contamination,” MCL 333.2435 (d), and to “adopt regulations necessary or appropriate to implement or carry out the duties or functions vested by law in the local health department.” MCL 333.2411, *emphasis added*.

Statute also provides for broad investigatory powers to ensure compliance with such law and regulation, specifically, “the local health department may inspect, investigate, or authorize an inspection or investigation to be made of, any matter, thing, premise, place, person, record, vehicle, incident, or event.” MCL 333.2446.

In the event of the creation of imminent danger, defined as a “condition or practice which could reasonably be expected to cause death, **disease**, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided,” MCL 333.2451(3)(a), statute provides that the local health officer shall “issue an order which shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. The order shall incorporate the findings of the local health department and require immediate action necessary to avoid, correct, or remove the imminent danger.” MCL 333.2451(1).

As with the identification of “particularly vulnerable population groups,” the determination of imminent danger for the purposes of the issuance of a health order by the local administrative health officer is a matter of medical specialty judgement by the local medical director.

In my professional medical opinion, and based upon my education, training, and experience, and my review of the pertinent facts and circumstances, the construction or operation of such industrial solar plants and data centers, contrary to a local health regulation adopted to properly safeguard the public health, would constitute a condition or practice which could reasonably be expected to cause disease immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided, and thus be amenable to action through local health order.

Even absent a reasonable expectation of imminent danger, statute also provides for a local health department to issue an order “to avoid, correct, or remove, **at the owner's expense**, a building or condition which violates health laws or which the local health officer or director reasonably believes to be a **nuisance**, unsanitary condition, or cause of illness.” *MCL 333.2455(1), emphasis added.* “If the owner or occupant does not comply with the order, the local health department... may cause the violation, nuisance, unsanitary condition, or cause of illness to be removed and may seek a warrant for this purpose. **The owner of the premises shall pay the expenses incurred.**” *MCL 333.2455(2), emphasis added.* “**A court, upon a finding that a violation or nuisance may be injurious to the public health, may order the removal, abatement, or destruction of the violation or nuisance at the expense of the defendant**, under the direction of the local health department where the violation or nuisance is found.” *MCL 333.2455(4), emphasis added.*

In my professional medical opinion, and based upon my education, training, and experience, and my review of the pertinent facts and circumstances, the construction or operation of such industrial solar plants and data centers, contrary to a local health regulation adopted to properly safeguard the public health, would constitute a potential public health nuisance to the residents of St. Clair County.

Except as otherwise provided by law, “a person who violates a regulation of a local health department or order of a local health officer under this act is guilty of a **misdemeanor punishable by imprisonment for not more than 6 months** or a fine of not more than \$200.00, or both.” *MCL 333.2443, emphasis added.* Additionally, “a local governing entity may adopt a schedule of monetary civil penalties of not more than \$1,000.00 for each violation or day that the violation continues which may be assessed for a specified violation of this code or a rule promulgated, regulation adopted, or order issued which the local health department has the authority and duty to enforce.” *MCL 333.2461(1).* “Notwithstanding the existence and pursuit of any other remedy, a local health officer, without posting bond, may maintain injunctive action to restrain, prevent, or correct a violation of a law, rule, or order which the officer has the duty to enforce, or to restrain, prevent, or correct an activity or condition which the officer believes adversely affects the public health.” *MCL 333.2465(1).*

Public Act 233 of 2023 provides for certification of solar energy facilities with a nameplate capacity of 50 megawatts or more; and energy storage facilities with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more, such as may be collocated with a data center or separately sited. *Sec. 222(1)(a)-(c)*.

In my professional medical opinion, and based upon my education, training, and experience, and my review of the pertinent facts and circumstances, the provisions of *Public Act 233 of 2023* are insufficient to provide appropriate public health protections to the residents of St. Clair County, including its particularly vulnerable population groups, from environmental health hazards, the spread of sources of contamination, nuisance potentially injurious to the public health, health problems, and other conditions or practices which could reasonably be expected to cause disease, through the construction or operation of such facilities.

The Michigan Department of Health and Human Services (MDHHS), and the Michigan Department of Environment, Great Lakes, and Energy (EGLE), have likewise failed to advocate effectively against these risks, adopting positions favorable to the construction and operation of such facilities, and contrary to the public health interests of St. Clair County residents and its particularly vulnerable population groups. Although the positions of MDHHS and EGLE may often align with those of a local health department, the Public Health Code provides for local health departments to exercise independent authority precisely in anticipation of such failures, or when the state's administrative priorities are otherwise misaligned with those of local health departments.

Although *Public Act 233 of 2023* provides that if "a certificate is issued, the certificate and this part preempt a **local** policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in the commission's certificate," *Sec. 230(3)*, *emphasis added*, the term "local," is formally undefined in statute, but reasonably is synonymous with "[l]ocal unit of government" or "local unit," defined, in *Sec. 221(n)*, as a "county, township, city, or village." Specifically excluded from this list, however, are local health departments, operating under the independent authority of a local health officer. As *Public Act 233 of 2023* was conceived during a time when local health departments and local health officers were regularly exercising their independent authorities, including in ordering masking, closure, quarantine, and isolation in response to the novel coronavirus – often at direct odds with the wishes of local units of government – it is reasonable to conclude that it was the specific intent of the legislature, in adopting *Public Act 233 of 2023* and the language in *Sec. 230(3)*, to permit local health departments to continue to regulate such energy facilities under their existing statutory authorities, independent of local governing bodies and notwithstanding any other preemption provision.

This interpretation is consistent with the broad authorities ascribed in recent years by state officials to local health officers and local health departments, even when these introduce additional requirements to those provided in other statutes.

For example, by statute, Michigan parents may obtain an exemption from mandatory vaccination for their children on presenting a “written statement to the administrator of the child's school or operator of the group program to the effect that the requirements of this part cannot be met because of religious convictions or other objection to immunization.” *MCL 333.9215(2)*.

Despite the otherwise clear statutory provision of *MCL 333.9215(2)*, the Office of the Attorney General has nonetheless held that, given the nature of local public health powers, a local health department may introduce additional requirements for a parent to effect such an exemption, including satisfying additional requirements introduced by local health regulation. *State of Michigan Opinion No. 7205, September 14, 2007*.

Under this interpretation, *MCL 333.9215(2)* may be considered analogous to *Sec. 231(3)* and similar sections of *Public Act 233 of 2023*, which provide for the preemption of legislative or regulatory requirements that might otherwise limit the construction or operation of an energy facility, upon the operator obtaining a certificate from the commission. Analogous with the Attorney General’s opinion, and notwithstanding any other provisions of law or regulation, including *Secs. 226(7)(g)-(8) of Public Act 233 of 2023*, it would be within the public health authority of a local health department to issue a regulation specifying additional requirements be met prior to authorizing the construction or operation of such a facility within its jurisdiction.

This interpretation is consistent with a key provision of the Public Health Code, namely that it “shall be liberally construed for the protection of the health, safety, and welfare of the people of this state,” *MCL 333.1111(2)*, and that local health regulations, “shall be at least as stringent as the standard established by state law applicable to the same or similar subject matter.” *MCL 333.2441*.

Consistent with the statutory duties required of it under the Public Health Code, I will therefore be recommending to the health officer, in my independent regulatory advisory capacity, that the St. Clair County Health Department adopt regulations and develop draft health orders to provide for appropriate protections against the potential public health risks posed by the construction or operation of industrial solar plants and data centers, located in whole or in part within St. Clair County, and comprising energy facilities eligible for certification under *Public Act 233 of 2023*.

I will be recommending, in my independent regulatory advisory capacity, that these regulations provide for the requirement that any energy facility, to be located in whole or in part within St. Clair County, and eligible for certification under *Public Act 233 of 2023*, and notwithstanding any potential prior approval by a local governing body, must first obtain a certificate from the commission per the provisions of the *Act*, prior to independent review and approval of the proposed energy facility by the St. Clair County Health Department.

I will be recommending further, in my independent regulatory advisory capacity, that these regulations provide for review and approval by the St. Clair County Health Department, which considers the input of St. Clair County residents, including its particularly vulnerable population groups, concerning environmental health hazards, the spread of sources of contamination, nuisance potentially injurious to the public health; health problems, and other conditions or practices which could reasonably be expected to cause disease, through the construction or operation of such facilities.

The development and adoption of such regulations and draft health orders are the appropriate responsibility of the administrative health officer in consultation with counsel. Per *MCL 333.2442*:

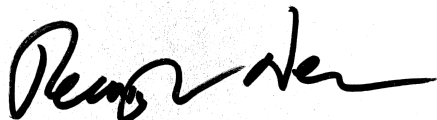
“Before adoption of a regulation the local health department shall give notice of a public hearing and offer any person an opportunity to present data, views, and arguments. The notice shall be given not less than 10 days before the public hearing and not less than 20 days before adoption of the regulation. The notice shall include the time and place of the public hearing and a statement of the terms or substance of the proposed regulation or a description of the subjects and issues involved and the proposed effective date of the regulation. The notice shall be published in a manner calculated to give notice to persons likely to be affected by the proposed regulation. Methods which may be employed, depending on the circumstances, include publication of the notice in a newspaper of general circulation in the jurisdiction, or when appropriate, in a trade, industry, governmental, or professional publication.”

The Public Health Code requires that, upon adoption, “[t]he regulations shall be approved or disapproved by the local governing entity. The regulations shall become effective 45 days after approval by the local health department's governing entity or at a time specified by the local health department's governing entity. **Regulations of a local health department supersede inconsistent or conflicting local ordinances.**” *MCL 333.2441, emphasis added*. As above, it is reasonable to interpret local health regulations so approved as being nonetheless specifically excluded from and independent of the provisions of *Sec. 230(3) of Public Act 233 of 2023*.

However, in the event of an alternative interpretation which deprives the local health department of its regulatory authority over these matters, consistent with my determination, above, that the construction or operation of such industrial solar plants and data centers, contrary to a local health regulation adopted to properly safeguard the public health, would constitute a public health nuisance and may pose a reasonable expectation of imminent danger, I will be recommending further, in my independent regulatory advisory capacity, and as determined by the specific facts and circumstances, that the health officer take comparable action through local public health order.

In formulating the above, I have relied upon my education, training, and experience, and my review of the pertinent facts and circumstances. I am a physician licensed in the State of Michigan, board certified in Public Health and General Preventive Medicine and in Occupational Medicine by the American Board of Preventive Medicine. I am further Certified in Public Health by the National Board of Public Health Examiners. Prior to serving as the medical director for the St. Clair County Health Department, I was a Major and Preventive Medicine Officer the U.S. Army, and I was later a faculty associate in the Department of Mental Health at the Johns Hopkins Bloomberg School of Public Health, in Baltimore, Maryland. I hold a medical degree from the Uniformed Services University of the Health Sciences, and a master's degree and a doctoral degree in public health from the Johns Hopkins Bloomberg School of Public Health, where I specialized in epidemiology. I am widely published in the medical and scientific literature, and my publications have over 1,550 citations. I regularly provide expert opinion and have testified at trial in various matters in the field of public health.

As recent experience with the novel coronavirus has amply demonstrated, the *Public Health Code* does not require that a precise scientific or medical rationale be articulated, much less proven, at the time that health regulations or health orders are adopted by local health departments. Instead, recent experience has demonstrated that with favorable expert opinion, these are often sufficiently motivated by the concerns and testimony of individual members of the public – for example, those demanding masking, closure, quarantine, or isolation orders in response to perceived risk. The *Public Health Code* anticipates that the scientific or medical rationale for such action is most appropriately articulated and defended by the medical director only as may be directed by a court, in the event that such actions are legally challenged. In the context of my favorable expert opinion, it is therefore appropriate that the St. Clair County Health Department and the administrative health officer now solicit the concerns and testimony of local residents in determining whether to take the above recommended actions on these matters.



Remington Nevin, MD, MPH, DrPH

Medical Director, St. Clair County Health Department