

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
S.P. 113 - L.D. 802

An Act To Ensure Decommissioning of Solar Energy Developments

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA c. 34-D is enacted to read:

CHAPTER 34-D

SOLAR ENERGY DEVELOPMENT DECOMMISSIONING

§3491. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Decommissioning. "Decommissioning" means the physical removal of all components of a solar energy development, including but not limited to solar panels and associated anchoring systems and foundations to a depth of at least 24 inches or to the depth of bedrock, whichever is less, and other structures, buildings, roads, fences, cables, electrical components or associated facilities and foundations to a depth of at least 24 inches or to the depth of bedrock, whichever is less, to the extent the components of the development are not otherwise in or proposed to be placed in productive use or otherwise authorized to remain in place by the environmental permitting entity.

For any portion of a solar energy development located on land classified as farmland any time within 5 years preceding the start of construction of the development, "decommissioning" means the physical removal of all such components of the development to a depth of at least 48 inches or to the depth of bedrock, whichever is less, to the extent such components are not otherwise in or proposed to be placed in productive use or otherwise authorized to remain in place by the environmental permitting entity.

"Decommissioning" includes the grading to postconstruction grade and revegetation of all earth disturbed during construction and decommissioning, except for areas already restored.

2. Environmental permitting entity. "Environmental permitting entity" means:

A. The Department of Environmental Protection in the case of a solar energy development:

- (1) Located wholly or partly outside of the unorganized and deorganized areas; or
- (2) Subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6; or

B. The Maine Land Use Planning Commission in the case of a solar energy development located wholly in the unorganized and deorganized areas and not subject to the jurisdiction of the Department of Environmental Protection pursuant to Title 38, chapter 3, subchapter 1, article 6.

3. Farmland. "Farmland" has the same meaning as in Title 36, section 1102, subsection 4.

4. Transfer of ownership. "Transfer of ownership" means a change in the legal entity that owns or operates a solar energy development. A sale or exchange of stock or membership interests or a merger is not a transfer of ownership as long as the legal entity that owns or operates the solar energy development remains the same.

5. Unorganized and deorganized areas. "Unorganized and deorganized areas" has the same meaning as in Title 12, section 682, subsection 1.

§3492. Prohibition

A person may not construct, cause to be constructed or operate a solar energy development with ground-mounted solar panels occupying 3 or more acres without first obtaining approval of a decommissioning plan from the environmental permitting entity under section 3495.

§3493. Transfer of ownership

Upon a transfer of ownership of a solar energy development subject to a decommissioning plan approved under section 3495, a person that transfers ownership of the development remains jointly and severally liable for implementation of the plan until the environmental permitting entity approves transfer of the decommissioning plan to the new owner or operator.

§3494. Decommissioning plan

A decommissioning plan must:

1. Decommissioning. Provide for the decommissioning of a solar energy development. For any portion of the development located on land classified as farmland any time within 5 years preceding the start of construction of the development, the plan must provide for the restoration of that farmland upon decommissioning sufficient to support resumption of farming or agricultural activities;

2. Grading and revegetation of earth. Provide for the grading and revegetation of all earth disturbed during construction and decommissioning, except for areas already restored; and

3. Financial capacity. Include demonstration of current and future financial capacity, which must be unaffected by the owner's or operator's future financial condition, to fully fund decommissioning in accordance with an approved decommissioning plan under this chapter.

§3495. Standards

An environmental permitting entity shall approve a decommissioning plan whenever it finds the following:

1. Successful decommissioning. The plan, if implemented, will result in successful decommissioning of the solar energy development, including the restoration of farmland sufficient to support resumption of farming or agricultural activities;

2. Financial assurance. The person identified in the plan as responsible for decommissioning demonstrates financial assurance, in the form of a performance bond, surety bond, irrevocable letter of credit or other form of financial assurance acceptable to the environmental permitting entity, for the total cost of decommissioning; and

3. Update. The plan requires the financial assurance be updated 15 years after approval of the plan and no less frequently than every 5 years thereafter. Updates to financial assurance required under this subsection must be submitted to the environmental permitting entity on or before December 31st of the year in which such updates are required.

§3496. Administration and enforcement; rulemaking

The Department of Environmental Protection shall administer and enforce this chapter with respect to the decommissioning of solar energy developments for which it is the environmental permitting entity, subject to the same powers and authorities granted to it pursuant to Title 38, chapter 2, including but not limited to the adoption of rules and the establishment of reasonable fees. The Maine Land Use Planning Commission shall administer and enforce this chapter with respect to the decommissioning of solar energy developments for which it is the environmental permitting entity, subject to the same powers and authorities granted to it pursuant to Title 12, chapter 206-A, including but not limited to the adoption of rules and the establishment of reasonable fees.

Rules adopted by the Department of Environmental Protection or by the Maine Land Use Planning Commission pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Application. This Act applies to a solar energy development on which construction begins on or after October 1, 2021 and to any other solar energy development that undergoes a transfer of ownership on or after October 1, 2021.