



HERE
COMES
THE SUN

... and Then What?

A Discussion on Decommissioning Requirements for Solar Facilities in Maryland

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MARYLAND'S CLIMATE SOLUTIONS NOW ACT OF 2022 outlines a comprehensive strategy to reduce the state's reliance on fossil fuels while promoting the increased adoption of clean energy sources, including solar and wind power.¹ In response, the solar energy industry has been expanding the development of solar facilities on land throughout the state. For purposes of this article, a "solar facility" is a large-scale installation of photovoltaic panels, mounted directly on land, designed to convert sunlight into electricity, typically spanning significant acreage and requiring State and local approvals.

¹ Maryland Climate Solutions Now Act of 2022, Md. Code Ann., Env't §§ 2-1201 to 2-1211 (2022).

The development of solar facilities sits at the intersection of real estate law and energy and environmental law. The legal process combines contracts of sale, lease and easement agreements, zoning approvals, coupled with compliance regulations and decommissioning obligations. While the State and local jurisdictions have similar requirements, the decommissioning process for a solar facility is not uniform across the board. Local jurisdictions may enforce different timelines, financial assurance obligations, and restoration of land standards when deconstructing and removing a solar facility from land where it once operated.

Decommissioning

The term for commercial leases for utility-scale solar facilities typically span between 25–45 years. What happens to the solar facility when the lease term ends? It will need to be decommissioned. Decommissioning is the process

Research Program (PPRP) division, will recommend to the PSC certain conditions be met to uphold environmental stewardship, including decommissioning standards. These recommendations are published by the PPRP in the applicant's docket on the PSC website.

An example of PPRP's decommissioning recommendations to the PSC include the following requirements:

➤ At least 90 days before construction, the applicant must submit a decommissioning plan to the PSC, PPRP, and the local jurisdiction for approval.

➤ The plan must detail responsible parties, timelines, and estimated costs for removing all components, including cables, wiring, and foundations, while addressing environmental preservation and site stabilization.

The plan must include evidence of insurance,

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of deconstructing and removing a solar facility from the subject land at either the end of the solar facility's useful life or the end of the applicable lease term, and restoring the land to certain conditions that were present prior to installation. The decommissioning process is regulated by both state and local jurisdictions, and though their approaches share similar intent, the distinct requirements ultimately determine how a solar facility must be removed.

State Decommissioning

A Certificate of Public Convenience and Necessity (CPCN), a legal authorization granted by the Maryland Public Service Commission (PSC), allows the construction and operation of energy infrastructure, including solar facilities.¹ The PSC's approval of a CPCN preempts local zoning regulations. To qualify for a CPCN, a facility must have an alternating current generating capacity exceeding two megawatts and is subject to regulatory review and approval. If a solar facility does not meet the threshold requirements for a CPCN, then the installation will be subject to local zoning approvals.

When reviewing an application for a CPCN, the Maryland Department of Natural Resources, through its Power Plant

➤ warranties, and recycling/reuse strategies. Construction cannot begin until the PSC approves the plan, comments are addressed, and financial guarantees are secured.

➤ A financial mechanism, such as a bond or letter of credit, must ensure decommissioning costs are not passed to the State or local jurisdiction in case of abandonment.

➤ The applicant must obtain an independent estimate of decommissioning costs to set the financial guarantee for safe removal of all components of the solar facility.

➤ Salvage value can offset up to 85% of decommissioning costs if the applicant shows evidence of a recycling market.

➤ Every five years, the applicant must update decommissioning costs and financial guarantees, submitting revised figures to the PSC for approval.

➤ Decommissioning must start within 12 consecutive months of non-operation unless a repowering request is pending, with notification to the PSC, PPRP, and local jurisdiction.

¹ Maryland Public Service Commission, CPCN Process, <https://www.psc.state.md.us/cpcn/> (last visited Sept. 25, 2024).



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Decommissioning Requirements by Local Jurisdictions

State and local jurisdictions often differ in their decommissioning requirements for solar facilities, with some jurisdictions imposing more localized standards for land restoration, decommissioning timelines, and ongoing oversight. Below are descriptions of the decommissioning requirements for two counties, Caroline County and Queen Anne's County.

Caroline County

Caroline County's solar decommissioning requirements differ from those established by the PSC, with local regulations mandating comprehensive removal of solar infrastructure to restore agricultural land suitability. Comparatively, restoring the land to make it "tillable" and "suitable for agricultural uses" exceeds the PSC requirements, which do not include specific agricultural restoration directives as mandated by Caroline County.

The Caroline County Code includes the following requirements (*emphasis added*):

Decommissioning. The solar energy system shall be completely decommissioned by the facility owner within 12 months after the end of the energy producing, abandonment or termination of such facility. Decommissioning shall include removal of all solar electric systems, buildings, cabling, electrical components, roads, foundations, pilings, and any other associated facilities, to the extents that any agricultural ground upon which the facility was located is again tillable and suitable for agricultural uses. Any components of the solar energy system buried greater than three feet may remain to avoid unnecessary topsoil disturbance. Disturbed earth shall be graded and re-seeded unless the landowner requests in writing that the access roads or other land surface areas not be restored. The owner of

the facility shall secure the costs of decommissioning by appropriate bond, letter of credit, or escrow agreement satisfactory to the County and shall include a mechanism for calculating increased removal costs due to inflation. Both a decommissioning plan and estimated costs shall be submitted by the owner and subject to approval by the County prior to issuance of any permits required.²

Queen Anne's County

Queen Anne's County's approach to solar decommissioning also differs from the PSC's broader regulations, particularly in terms of timelines for facility production and abandonment or inactivity, site restoration including the removal of underground structures, electrical wires, and the use of like-kind topsoil for replanting. These specific obligations imposed on solar developers reflect a desire by the Queen Anne's County's government to have localized oversight of the decommissioning process, such as the requirement for the County's Board of Appeals to review and approve any changes to a decommissioning plan.

Queen Anne's County's requirements include:

- A bond or financial assurance is required for complete removal of the solar array, renewable with notification of expiration and adjusted for inflation.
- Removal of the facility must occur within one year of the solar array's end of life or abandonment.
- The operator must notify Queen Anne's County if the solar array is inactive for 6 or more months.
- A solar array unused for 12 continuous months is considered abandoned unless an extension is granted by the Board of Appeals, where the owner is able to present evidence of extenuating circumstances.
- Removal and restoration must occur within one year of notice from Queen Anne's County, including the removal of all structures, underground components, and legal disposal of materials.

² Caroline County, Md., Code § 175-86 (2017).

- A Decommissioning Plan that must include the expected life of the solar array, timeline for decommissioning, estimated removal costs, and approved sediment and erosion control measures.
- All above and underground equipment, structures, fencing, and access roads must be removed, with only like-kind topsoil used for restoration.
- Legal documents must outline responsibility for any environmental pollution occurring after removal.
- Any alterations to the decommissioning plan require Board of Appeals approval.
- End Use Plan must propose the condition of the site after removal, including requests to retain vegetation, roads, and fencing, and if applicable, document open space use with restrictive covenants.³



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Conclusion

The PSC defines broad principles for solar decommissioning, concentrating on financial mechanisms such as a surety bond or letter of credit, operational deadlines, and environmental preservation.

Caroline County, on the other hand, stresses the total removal of all solar equipment, guaranteeing that the land is returned to agricultural use while leaving certain subsurface components in place to minimize topsoil disturbance. Queen Anne's County establishes unique financial assurance criteria and requires direct communication to the County when solar arrays are no longer in active energy production, demonstrating its commitment to local supervision and environmental care during the decommissioning process.

Both States and certain local jurisdictions vary in their approach and expectation for removal of solar projects from the underlying land. Understanding the conditions of the solar permitting process in Maryland, including the decommissioning process, is crucial for effectively drafting lease agreements and other related documents that address the specific obligations of solar companies.

³ Queen Anne's County, Md., Code § 18:1-95.5(a) (2024).



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