

STATE OF MAINE

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

—
H.P. 313 - L.D. 496

**An Act to Address Battery Storage System Decommissioning and Clarify
Solar Energy Development Decommissioning**

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

Sec. 1. 35-A MRSA §3496, first ¶, as enacted by PL 2021, c. 151, §1, is amended to read:

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 which may include~~, but are 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 which may include~~, but are not limited to, the adoption of rules and the establishment of reasonable fees.

Sec. 2. 35-A MRSA §3497 is enacted to read:

§3497. Applicability

This chapter applies to a solar energy development with ground-mounted solar panels occupying 3 or more acres on which construction begins on or after October 1, 2021 and to any other solar energy development with ground-mounted solar panels occupying 3 or more acres that undergoes a transfer of ownership on or after October 1, 2021.

Sec. 3. 35-A MRSA c. 34-E is enacted to read:

CHAPTER 34-E

BATTERY STORAGE SYSTEM DECOMMISSIONING

§3498. 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 battery storage system development, including but not limited to battery storage modules 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 battery storage system 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. Battery storage system. "Battery storage system" means a commercially available technology that uses chemical processes for absorbing energy and storing it for a period of time for use at a later time, including but not limited to lithium-ion batteries.

3. Environmental permitting entity. "Environmental permitting entity" means:

A. The Department of Environmental Protection in the case of a battery storage system 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 battery storage system 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.

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

5. Transfer of ownership. "Transfer of ownership" means a change in the legal entity that owns or operates a battery storage system 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 battery storage system development remains the same.

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

§3499. Decommissioning plan required

1. Prohibition. A person may not construct, cause to be constructed or operate a battery storage system development with a capacity of 2 megawatts or more without first obtaining approval of a decommissioning plan from the environmental permitting entity under this section.

2. Plan requirements. A decommissioning plan must provide for the decommissioning of a battery storage system development and 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 section.

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

A. The plan, if implemented, will result in successful decommissioning of the battery storage system development, including the restoration of farmland sufficient to support resumption of farming or agricultural activities;

B. The plan provides for the recycling of the waste components of the battery storage system that are recyclable and disposing of the components that are not recyclable at facilities authorized to accept such components;

C. 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, including the cost of recycling the waste components of the battery storage system that are recyclable and disposing of the components that are not recyclable at facilities authorized to accept such components; and

D. 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 paragraph must be submitted to the environmental permitting entity on or before December 31st of the year in which such updates are required.

4. Applicability. This section applies to a battery storage system development on which construction begins on or after January 1, 2024. This section does not apply to a battery storage system development on which construction begins prior to January 1, 2024 unless the battery storage system development undergoes a transfer of ownership on or after January 1, 2024 in which case a person may not operate the battery storage system after the transfer of ownership without a decommissioning plan approved by the environmental permitting entity under this section.

Upon a transfer of ownership of a battery storage system development subject to a decommissioning plan approved under this section, 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.

5. Administration and enforcement; rulemaking. The Department of Environmental Protection shall administer and enforce this chapter with respect to the decommissioning of battery storage system 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, which may include, but are 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 battery storage system 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, which may include, but are not limited to, the adoption of rules and the establishment of reasonable fees.

Notwithstanding Title 5, section 8071, subsection 3, 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. 4. PL 2021, c. 151, §2 is repealed.