

Working Paper: State Regulation of Solar Decommissioning

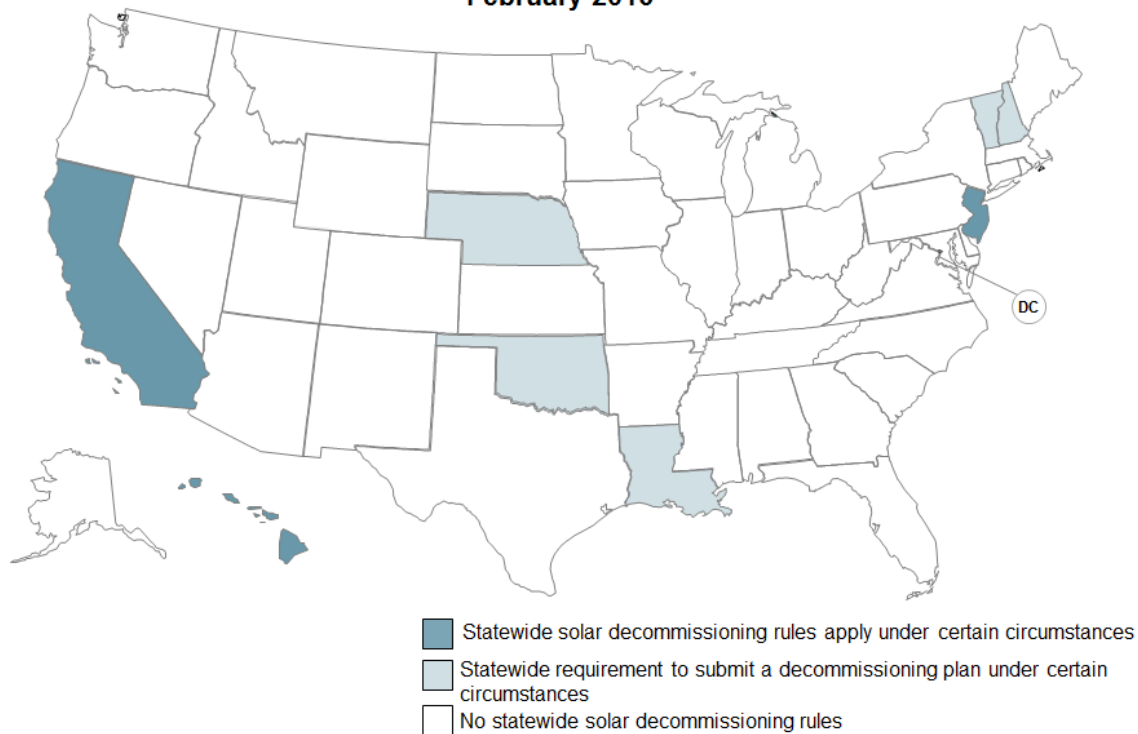
*This is a working paper prepared by the North Carolina Clean Energy Technology Center.
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Typically, solar decommissioning is regulated at the local level; however, states have the authority to enact specific solar decommissioning rules. A total of 41 states plus the District of Columbia leave solar decommissioning fully to local governments. Of these states at least two (Massachusetts and North Carolina) have model or template ordinances to provide guidance to local governments, and one (Virginia) has a statewide requirement that local government ordinances addressing solar siting must also address decommissioning.

Another five states do not have specific statewide decommissioning rules, but require a decommissioning plan to be submitted under certain circumstances. In Louisiana, a plan must be submitted for solar facilities on state-owned lands. In Nebraska and Oklahoma a plan must be submitted in order to receive a solar easement. In New Hampshire and Vermont, a plan must be submitted for solar facilities over a certain size; this limit is 30 Megawatts (MW) in New Hampshire and 1 MW in Vermont.

State Solar Decommissioning Policies

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Washington does not have statewide mandatory decommissioning rules, but does have an optional certification process. This certification is in lieu of all individual state permits that would otherwise be required, and is intended to be a “one-stop-shop” for regulatory compliance. To obtain this certification, certain site restoration and financial security requirements must be met.

New Jersey is one of three states with statewide decommissioning rules that apply under certain circumstances. Solar facilities located on commercial farm lands must be decommissioned in accordance with a conservation plan designed to address the impacts of the decommissioning process. Decommissioning rules also apply to facilities located in the state's Pinelands Management Area; facilities must be decommissioned within twelve months, and the site must be restored unless it's to be put into active agricultural use or another form of approved development.

Summary of State Solar Decommissioning Policies:

Statewide/federal decommissioning rules and financial security requirement under certain circumstances.	CA, HI, BLM (federal)
Statewide decommissioning rules apply under certain circumstances. No requirement to provide financial security.	NJ
Statewide optional certification process. Includes site restoration and financial security requirements.	WA
Statewide requirement to submit a decommissioning plan under certain circumstances.	LA, NE, NH, OK, VT
No statewide policy; local government ordinances that address solar siting must address decommissioning.	VA
No statewide policy; local government authority.	AL, AK, AZ, AR, CO, CT, DC, DE, FL, GA, ID, IL, IN, IA, KS, KY, MA, MD, ME, MI, MN, MS, MO, MT, NC, NM, NV, NY, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, WV, WI, WY

California and Hawaii also each have some type of statewide decommissioning rules that apply under certain circumstances, as well as requirements to provide a non-specific financial security. In Hawaii, solar facilities located on certain classes of agricultural land are required to be decommissioned within twelve months at the owner's expense. A site must be restored to its previous condition, and proof of some form of financial security must be presented to the county planning board. California requires those applying for a solar-use easement to comply with certain site restoration requirements and submit some form of financial security. A solar-use easement is required to install a solar facility on land set aside by California's 1965 Williamson Act for agricultural use.

Detailed Summary Table of State Solar Decommissioning Policies:

State(s)	Applicability	Details	Source
Federal - Bureau of Land Management	BLM-managed lands	The Bureau of Land Management (BLM) has a policy for approving utility-scale solar developments on BLM managed lands. BLM requires solar right-of-way	43 U.S.C. 1764(i)

		holders to post a bond that covers environmental liabilities during operation, decommissioning and disposal, and site restoration.	43 CFR 2805.12(g)
Hawaii	Class A, B, and C Agricultural Land	Solar energy facilities on Class B or C agricultural land that have received a special use permit must be decommissioned at the owner's expense within twelve months of the conclusion of operation or useful life. The land must be restored to substantially the same physical condition as existed prior to the development of the solar energy facility. Proof of financial security to decommission the facility must be provided to the county planning commission. [The same requirements apply to solar facilities on Class A agricultural land that have met the additional requirements to be sited on this land.]	HRS § 205-4.5
California	Statewide; Solar-use easement applicants	Department of Toxic Substances Control has the authority to designate end-of-life PV modules that are hazardous waste as universal waste and subject them to the state's universal waste management procedures. Examples of universal wastes in California include batteries, cell phones, and other electronics. To obtain a perpetual solar-use easement, the local government may require financial security for site restoration. To obtain a term or self-renewing solar-use easement, a performance bond or other restoration security must be posted. A solar-use easement is a right or interest acquired by a local government in a parcel of land that will restrict the land's use to solar PV facilities.	Cal Health & Saf Code § 25259 Cal Gov Code § 51191.3
New Jersey	Commercial Farm Lands; Pinelands Management Area	Decommissioning of solar energy facilities on commercial farm lands must be done in accordance with a conservation plan designed to address the impacts of the decommissioning process. Decommissioning of solar energy facilities is subject to local ordinances. Solar energy facilities in any Pinelands Management Area shall be decommissioned within twelve months of cessation of utilization. Decommissioning includes removal of all energy facilities, structures, and equipment; restoration of the parcel unless it is to be put into active agricultural use or is approved for development; and any other measures necessary to address ecological and visual impacts.	N.J.A.C. § 2:76-2A.12 N.J.A.C. § 7:50-5.36
Washington	Statewide	Solar energy projects may opt in to receive certification from the Energy Facility Site Evaluation Council. This certification is in lieu of any other state or local permits. This certification includes requirements for site restoration and financial assurance of such restoration.	WAC 463-72

Vermont	Statewide; systems >1MW	As a requirement for a state-issued Certificate of Public Good, applications for solar systems greater than 1 MW must include a decommissioning plan.	CVR 30-000-056
New Hampshire	Statewide; systems >30MW	Solar energy systems greater than 30 MW require a certificate from the Public Utilities Commission. A description of the decommissioning plan and financial assurances for decommissioning is required to apply for this certificate.	RSA 162-H
Nebraska	Statewide for solar easements	A description of the decommissioning plan is required to obtain a solar easement. ¹	R.R.S. Neb. § 66-911.01
Oklahoma	Statewide for solar easements	A description of the decommissioning plan is required to obtain a solar easement. ¹	60 Okl. St. § 820.1
Louisiana	State-owned lands	Must submit a decommissioning plan if the facility is on state-owned land.	LAC 43:V.921
Virginia	Local Governments Statewide	No statewide decommissioning rules, but local ordinances addressing the siting of solar facilities must also address decommissioning.	Va. Code Ann. § 67-103
Massachusetts, North Carolina	No statewide policy	No statewide decommissioning rules, but guidance is provided to local governments in the form of a model ordinance.	N/A
AL, AK, AZ, AR, CO, CT, DC, DE, FL, GA, ID, IL, IN, IA, KS, KY, MA, MD, ME, MI, MN, MS, MO, MT, NM, NV, NY, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, WV, WI, WY	No statewide policy	These states have no statewide policy regarding solar decommissioning. Local governments may adopt ordinances including decommissioning rules.	N/A

¹ A solar easement allows the owner of a solar energy system to secure rights to continued access to sunlight from a neighboring party whose property could be developed in such a way (e.g., building, foliage) as to restrict the system’s access to sunlight. This is not the same instrument as California’s “solar-use easement.”