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6 KEY TAKEAWAYS

Legislative Developments in Decommissioning Requirements in North Carolina

Kilpatrick's John Livingston recently spoke at "The 2023 Appalachian Clean Energy CLE Workshop" where he led a panel discussing recent legislative updates to the decommissioning requirements in North Carolina for utility scale solar farms and their impact on the industry. Key takeaways from the panel, include:

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As a result of recent increases in solar energy production, states across the country have implemented decommissioning requirements for solar farms. Thirty-two states have instituted some form of decommissioning requirement, with the majority of those having requirements to maintain financial assurance to ensure completion of the decommissioning.

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North Carolina has been studying this issue for years. 73% of counties with solar projects have some form of decommissioning requirements. House Bill 329 (2019) required a report by the Department of Environmental Quality (DEQ) and the Environmental Management Commission, which issued a report on January 1, 2021, that recommended further study. House Bill 951 (2021) directed DEQ to complete that study, which was completed on March 1, 2022.

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As a result of the concern on pending decommissioning and the DEQ studies, North Carolina passed significant legislation to regulate decommissioning at the state level. House Bill 130 (2023) adopted many of the DEQ recommendations but not all of them. The statute applies to solar projects greater than 2 MWac in size but excludes solar facilities owned or leased by a retail electric customer intended primarily for the customer's own use or to offset the customer's own retail electrical energy consumption at the premises or for net metering. Requirements can also be triggered by expansion or rebuilding the project.

The legislation instituted some requirements by law that DEQ recommended be instituted by regulations. The bill sets specific requirements for the decommissioning process following cessation of operations, requirements on newly constructed facilities to provide decommissioning plans and financial assurance, and registration with DEQ. The bill allows for more stringent requirements by local governments or in agreements with the landowners. The final bill requires financial assurance at the time of construction where DEQ suggested within five years of end of the facility's life.

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DEQ will be required to adopt regulations to flesh out requirements of the statute. DEQ must make rules regarding the calculation of the amount of financial assurance and salvage value of equipment and any other matter required to fulfill the statute's requirements. Rules must be finalized by August 1, 2025.

Recycling of solar panels and hazardous materials are of particular concern. The bill sets a preference for reusing components, then recycling, and last disposal in compliance with applicable laws, including hazardous materials laws. The bill directs DEQ and the Department of Commerce to pursue grants for research and development and locating recycling industries in North Carolina. Hazardous materials concern is mostly related to lead content, which has been minimized in more recent modules.

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