

Pennsylvania DEP Official: Regulation of Utility-Scale Solar Projects in Pennsylvania is a Local Matter

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At a virtual Solar Energy Symposium hosted by Penn State's Center for Agriculture and Shale Law on June 17, Robert Young, Energy Program Specialist with the Pennsylvania Department of Environmental Protection (DEP), reported that the regulation of solar energy development in the Commonwealth is primarily a local issue. Unlike the development of coal, and oil and gas resources in the state, where DEP plays a substantial role in regulating projects, Young said DEP is far less involved in the development of utility-scale solar energy projects because the land, air, and water impacts of those projects are relatively negligible. Aside from issuing permits applicable to any large-scale land development, such as stormwater management permits, Young said that the DEP's role in solar development in the Commonwealth is primarily education and outreach, including to local lawmakers faced with the need to enact new ordinances as proposed solar projects begin to proliferate in their counties and regions.

Many townships with land advantageous to solar developers do not have ordinances governing solar energy development. If there is no township zoning ordinance in place, which is the case in many rural townships across the Commonwealth, the risk to solar energy developers is low. But a general or underdeveloped zoning ordinance represents a bigger risk of slowing down or scuttling a project because those ordinances can be applied in a manner that disadvantages solar development in the township.

While DEP's role in regulating solar energy development is minimal, it is nonetheless the Commonwealth agency playing the greatest role in the space. Unlike in many states where the public utility commission exercises jurisdiction over solar energy project siting and development, the Pennsylvania Public Utility Commission plays no role in solar siting or development.

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One other Pennsylvania agency that does impact solar siting is the Department of Agriculture, which operates the Commonwealth's Clean and Green Program and Agricultural Security Areas, and the Conservation Easement Purchase Program. The Clean and Green Program provides preferential tax treatment to agricultural lands enrolled in the program. Utility-scale solar projects may not be sited on land enrolled in this program, but landowners can break the program covenant to install a solar array if they pay back taxes for the period of enrollment, which taxes can be covered by the developer. The Agricultural Security Area and Conservation Easement Programs, however, pose a greater hurdle to solar energy project siting. If a farmer includes land in a qualifying Agricultural Security Area, state or local governments can purchase conservation easements from the farmer encumbering the land, which exist in perpetuity and prevent the landowner from engaging in commercial solar development on the land. Therefore, utility-scale solar developers must ensure that land selected for development in Pennsylvania is not subject to a conservation easement.

Local zoning ordinances present important issues for solar developers because a lack of guidance creates the risk of delay and increases soft costs, which can negatively impact project economics. Accordingly, townships hoping to attract solar energy development should consider addressing the use specifically in their zoning ordinances and seek input from industry experts in the process. Several Pennsylvania counties, including Cumberland, Dauphin, Lancaster, Monroe, Montgomery, Perry, and York, have drafted model solar energy ordinances for use by municipalities seeking to update or create their own ordinances.

During his presentation at the symposium, Young acknowledged Pennsylvania Senate Bill 284, which was first introduced in February and would require the operator of any "alternative energy production project," including utility-scale solar, to post a bond with DEP for the duration of the project's operation until a reclamation plan is completed.

Frost Brown Todd's Renewable Energy industry team is monitoring any activity related to potential legislative action to assist clients

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seeking to pursue utility-scale solar energy development in Pennsylvania.

If you have any specific questions about utility-scale solar development in Pennsylvania, please contact Daniel Craig or any attorney in Frost Brown Todd's Renewable Energy industry team.

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