



Michigan Department of Agriculture and Rural Development (MDARD)

Commercial Solar Facilities on PA 116 Land FAQ

Revised February 7, 2024

- 1. Question:** Why does the drainage need to be maintained on the property where the solar panels are located?

Answer: It is important to maintain the drainage so the land may be restored to agricultural use. Also, if the drainage is not maintained, the land may revert into a wetland area which may come under State of Michigan regulation. If the land becomes a wetland regulated by the State of Michigan, the land may not be used for farming.

- 2. Question:** While the solar panels are in place will my land remain designated as Qualified Agricultural Land? This designation provides an exemption for up to 18 mills of school operation millage and makes the land eligible for a Qualified Agricultural Land Affidavit which would keep the taxable value of the property capped in the event of a sale of the land to another landowner.

Answer: It is not clear whether the land would lose the Qualified Agricultural Land designation once the solar panels are installed. It is important to check with your local assessor to determine how the land will be classified for purposes of taxation.

- 3. Question:** As a landowner I am signing an Amended Agreement with the State of Michigan which commits me to be responsible for the removal of the solar panels, restoration of the site to agricultural use, maintaining the drainage, planting a cover crop beneath the solar panels, and to provide financial assurance that these commitments will be accomplished. Why am I required to do this when the electric provider is installing the solar panels?

Answer: As the landowner and Amended Agreement holder you are required to assure these requirements are met. As part of your negotiations with the electric provider, you may wish to designate all or some of these commitments to the electric provider as part of your lease or contract. MDARD will assure that these commitments are fulfilled through periodic review and inspection.

- 4. Question:** Will my land continue to be enrolled under the Farmland and Open Space Preservation Program (PA 116) while I am under contract/lease with the electric provider?

Answer: Yes. Your land will continue to be enrolled in the PA 116 Program; however, you may not claim tax credits while the solar panels are located on your property.

5. **Question:** What happens to the Amended Agreement when the solar panel lease/contract has expired, and the solar facility has been removed?

Answer: The landowner will be issued a PA 116 Agreement, with the portions referencing the solar facility removed from the wording. The term of the Agreement will be the same as the number of years remaining in the original PA 116 Agreement that was replaced by the Amended Agreement, or it may be extended by the landowner as long as the total term does not exceed 90 years.

6. **Question:** Is it possible to request an early release from the PA 116 Amended Agreement while the land is under contract/lease with the electric provider?

Answer: Yes. If the land is under contract/lease with the electric provider or if the land or landowner qualifies for early release from the Amended Agreement, an application may be made to MDARD for removal of the land from the Amended Agreement. The conditions that allow for early release under an Amended Agreement are the same as under a PA 116 Agreement. As with all releases from Agreements under the PA 116 Program, if tax credits have been claimed, there is a required repayment of a portion of the tax credits claimed under the Agreement. Since you are not able to claim tax credits under the Amended Agreement, the repayment amount will be based on the tax credits claimed for the seven years preceding the execution and recording of the Amended Agreement.

7. **Question:** Can salvage or resale values be used in the decommissioning cost estimate for the surety bond or irrevocable letter of credit?

Answer: The surety bond or irrevocable letter of credit must be for the amount that a licensed engineer determines is sufficient to cover any and all costs associated with the removal and disposal of all commercial solar facility structures and any and all costs associated with restoring the land under the solar lease to agricultural production. Estimated salvage and/or resale values may not be included in the estimated decommissioning cost due to the unpredictability of future salvage values. MDARD does not have the funds on hand to pay for the decommissioning even if those funds may potentially be recouped by salvaging materials from the solar facility. All of the funds for decommissioning must come from the owner of the solar facility or from the decommissioning bond.

8. **Question:** What if the farmland was previously enrolled in PA 116 and currently has a lien on the property as a result?

Answer: Before the construction of a solar facility can commence, the PA 116 Lien will need to be paid in full. When a PA 116 Agreement expires there is a calculation of the last seven years of tax credits received which are to be paid to the State of Michigan by the landowner. If this amount is not repaid within 30 days of the notification to the landowner, then MDARD is obligated to place a lien on the property for that amount. This lien becomes due and payable at the time any part of the property is sold or is converted to a use prohibited by the former PA 116 Agreement, which includes a solar facility.

- 9. Question:** What if the landowner wants to enroll land that has a solar facility?
Answer: MDARD will not enroll property that has a commercial solar facility on it in PA 116. The landowner may apply to enroll the property in PA 116 after the solar facility has been removed and the land restored to agricultural use.
- 10. Question:** Can grading be done and/or topsoil be removed as part of the construction of the solar facility?
Answer: Any grading or moving of soil will need to be specifically approved by the local governing body and MDARD. The PA 116 Agreement states that land improvements shall not be made except for use consistent with farm operations or with the approval of the local governing body and MDARD. The PA 116 Agreement also states that, with exception of natural gas and oil, the extraction of surface and sub-surface minerals is prohibited unless specifically approved by the local governing body and MDARD.
- 11. Question:** Will I be able to claim tax credits on my PA 116 enrolled land that is not under a solar lease?
Answer: Yes. Your PA 116 enrolled land which has not been converted to an Amended Agreement may still be used to claim tax credits. The PA 116 Agreement will need to be split to separate the land which will be used for solar energy generation from the land that will continue to be used for agricultural production.