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## Connecticut Department of Energy and Environmental Protection Set to Re-Issue Lapsed Stormwater Permit for Construction Activities

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by Lee D. Hoffman

As readers of prior client alerts may be aware, DEEP's General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities ("Stormwater General Permit") expired on October 1, 2020 and DEEP has stopped issuing Stormwater General Permit registrations. DEEP issued draft revisions to the Stormwater General Permit which received extensive public comments. Certain environmental and industry groups requested a hearing concerning DEEP's January 2020 revisions to the Stormwater General Permit, and the Stormwater General Permit was allowed to lapse without a renewal or a public hearing.

Many of the issues related to the Stormwater General Permit focused on DEEP's insertion of "Appendix I," which was designed to regulate construction activities on commercial solar projects. Even though solar farms were at the center of the Stormwater General Permit controversy, all Stormwater General Permit registrations have been suspended since October 1st, so no projects of any type were being authorized. As a result, any large-scale construction projects, whether they involved energy generation, apartment complexes or distribution centers were unable to obtain permits.

Fortunately, DEEP and the parties were able to reach a temporary agreement regarding the Stormwater General Permit which will soon have Stormwater General Permit registrations taking place once again. DEEP is anticipated to re-issue the current version of the Stormwater General Permit for a period of 90 days sometime later this week. Nothing in the previously-existing Stormwater General Permit will have changed; the Stormwater General Permit will simply be

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re-issued for a limited time. DEEP will be using the authority granted to it by Governor Lamont's COVID-19 Executive Orders (such as EO 7M and 7DDD) to extend the Stormwater General Permit for this temporary period. Any projects that filed a Stormwater General Permit application prior to October 1, 2020 will be subject to the requirements of the old Stormwater General Permit and should expect to receive their Stormwater General Permit registrations (or denials) by the end of 2020.

Since this is only a temporary fix, before the year ends, DEEP will also issue a revised Stormwater General Permit that incorporates the changes agreed to by DEEP and the other parties involved in the Stormwater General Permit negotiations. These changes will be found both in the body of the Stormwater General Permit itself and a substantial revision to Appendix I. Projects that file a Stormwater General Permit application after October 1, 2020 will be subject to these new permit requirements. It is anticipated that the new Stormwater General Permit will be promulgated by DEEP by the end of October, if not sooner.

It is also anticipated that DEEP will seek further refinements on the permitting of solar farms, but those changes are likely to take about a year to finalize. Therefore, DEEP decided to re-authorize the old version of the Stormwater General Permit to get registrations moving again while making a new version of the Stormwater General Permit an interim goal, with more revisions to come after that interim goal is achieved. In other words, once a new version of the Stormwater General Permit is in place, DEEP will have the further ability to make refinements to the Stormwater General Permit for commercial solar projects. In that time, DEEP is also likely to develop a "bright line" rule to determine when projects should appropriately apply for a Stormwater General Permit and when an application for an individual stormwater permit will be appropriate.

More information on the changes that were proposed for the Stormwater General Permit can be found at: <https://portal.ct.gov/DEEP/Water-Regulating-and-Discharges/Stormwater/Construction-Stormwater-GP>. If you would like additional information regarding the timing or substance of the changes to the Stormwater General Permit, please feel free to contact any of our Environmental attorneys.

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