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Connecticut DEEP Intends to Reissue Stormwater General Permit with New Requirements for Solar Facilities – Public Information Session to be Held January 8, 2020

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By Lee D. Hoffman

The Connecticut Department of Energy and Environmental Protection notified individuals by e-mail on December 27, 2019 of its Notice of Tentative Decision of Intent to Reissue the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (the “Draft General Permit”). If approved, the Draft General Permit would replace the current General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities, which expires on September 30, 2020.

The Draft General Permit makes several modifications to the current General Permit, including the addition of two new appendices – Appendix I and Appendix J. Appendix I has been known to those in the solar industry, as DEEP has been circulating guidance labeled “Appendix I – Stormwater Management at Solar Array Construction Projects” on an informal basis since August of 2019. More information on the August 2019 version of Appendix I can be found here.

DEEP made further modifications to Appendix I when it issued the Draft General Permit, but the basic requirements for enhanced stormwater measures at sites where solar arrays are being constructed are largely unchanged. For example, all solar panels at a site must be considered impervious surfaces for the purpose of calculating water quality volume, unless certain conditions are met. In addition, regional conservation districts must be consulted before and during construction of solar arrays. Perhaps most importantly, throughout the construction process, a letter of credit must be maintained in an amount equal to \$15,000 per acre of disturbance, and the letter of credit must be identical to the form provided for in

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Appendix J of the Draft General Permit.

DEEP will require permittees that have registrations under the existing General Permit to re-register under the new permit, once the Draft General Permit becomes final. It is unclear, however, how new engineering requirements and the posting of security would work as permittees transition from the existing General Permit program to a new one. Furthermore, DEEP has indicated that it will be providing additional information to users in the coming weeks as to how they should view the previously-existing iteration of Appendix I versus the newer version of the Appendix as they develop their solar projects.

DEEP has also stated its desire for comments from the general public, however, there appears to be a short time frame to provide such commentary. For public comments, DEEP will allow for a formal comment period of 45 days from the publication of its Notice of Tentative Decision in various newspapers across Connecticut. This would result in comments being due sometime between February 14 and 18, 2020, depending on dates of such publication. Written comments should be directed to: Christopher Stone, P.E., Water Permitting and Enforcement Division, Bureau of Materials Management and Compliance Assurance, Department of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106 5127 or may be submitted via electronic mail to: chris.stone@ct.gov.

Before such comments are due, however, DEEP will hold an informational session regarding the changes to the General Permit. This public informational meeting will be held at DEEP Headquarters, 79 Elm Street, Hartford in the Gina McCarthy Auditorium (5th floor) on January 8, 2020 at 1:30 pm. There is no public hearing currently scheduled for the Draft General Permit, although that can change if either the Commissioner decides in her discretion that such a hearing would be in the public interest, or if twenty-five individuals sign a petition requesting such a hearing.

More information on the Draft General Permit can be found [here](#). In addition, a clean version of the Draft General Permit can be found at [this link](#), and a marked up/redline version can be found [here](#).

For ease of review, click to view copies of Appendix I and Appendix J. For more information on this topic, please contact Lee Hoffman, Amanda Gurren or your Pullman & Comley attorney contact.

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