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Potential New Restrictions on Siting Green Energy Projects

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by Fred Klein

There are new restrictions being proposed by a key advisory group with influence over regulators and legislators that would affect the siting of Green Energy Projects (aka solar projects) if those projects are likely to affect watershed or aquifer protection lands.

The Connecticut Water Planning Council (WPC) is charged with addressing issues involving water resources, water companies, and state policies regarding the future of the state's drinking water supply.

The WPC is comprised of four members representing the Department of Energy & Environmental Protection (DEEP), the Public Utilities Regulatory Authority (PURA), the Department of Public Health (DPH) and the Office of Policy and Management (OPM).

The WPC is advised by the Water Planning Council Advisory Group (WPCAG), which in turn has created the Watershed Lands Work Group. Recently, the Watershed Lands Work Group began looking into the siting of green energy projects on water company lands. Their work now appears to be expanding to consideration of green energy projects on watershed lands and aquifer protection areas, where a watershed could be any land that drains water into a waterbody, such as a reservoir, lake or a river. Similarly, aquifer protection areas encompass the land areas that contribute ground water to active public water supply wells (or well fields) that serve more than 1,000 people. There are aquifer protection areas for 126 active well fields located in seventy-eight Connecticut municipalities. They range in size from 40 to 3,000 acres, with an average size of 850 acres.

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As reported in an earlier Pullman & Comley Client Alert “Connecticut DEEP Intends to Reissue Stormwater General Permit with New Requirements for Solar Facilities” <https://www.pullcom.com/newsroom-publications-environmental-DEEP-stormwater-permit-solar>, DEEP has already proposed new requirements for permitting and inspection of large-scale solar projects during their construction. Some on the Watershed Lands Work Group would go farther, complaining that a few of Connecticut’s large solar installations have resulted in major water quality problems, and are discussing more **legislative changes regarding solar siting**, and, most recently, some members of the Watershed Lands Work Group have suggested that the **WPC look into any project potentially affecting water resources and the state's drinking water supply**.

Specifically, with respect to the siting of green energy projects on water company land, the Work Group has asked the WPCAG to review the following comments and suggestions:

Criteria:

*There should be no projects sited that would require the **clearing of forested, undisturbed land or land that could be restored to a forested or undisturbed state**.

*There should be **no projects that could disturb the ecology of water sources**.

*Renewable energy projects on water company lands should be for the **sole purpose of serving the energy needs of water company facilities. Projects should not be for the purpose of selling or supplying energy to the grid**.

***Renewable energy projects should not require substantial grading that could cause or increase runoff pollution**.

*Consider feasible and prudent alternatives. Determine if the project goals can be accomplished in another way with less disturbance to water sources on Class I or II lands.

*Storm water runoff and storm design standards are an essential factor to be considered and should be based upon the most recent data that includes realistic projections due to climate change and other factors

*The major factor to be considered when reviewing an application for change in use on water company land is the anticipated impact of the project on land and water resources – the purity and adequacy of the public drinking water supply. A question arose as to how the determination is made that a project may have “significant” impact? While this may be difficult to define, determination should be based on the lack of disturbance of Class I and Class II lands, the sensitivity of the resources involved and based on professional judgement.

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Transparency and public input into the DPH permitting process on Water Company land

To make the DPH permitting process more transparent, the group suggested:

*Post all permit applications with significant impact on water company land on the DPH website prior to a decision being made by DPH.

*In addition, to ensure relevant stakeholders receive notice without having to continuously monitor the DPH website, DPH should post the applications in the Environmental Monitor and send them to the WPCAG with an opportunity to comment.

*All sites should include where additional information on the application may be found, e.g. description of the project, anticipated impact on the land and water supply, etc. from either DPH or the applicant.

*Upon request, DPH should provide information on similar applications/projects they have reviewed such as size of project, purpose of project, lands disturbed, state of the lands disturbed, potential impact on water supply, etc. and the rationale for approving or denying them.

As noted above, the initial focus of the Work Group has been the impact of Green Energy Projects on Water Company lands. The discussion, however, appears to be expanding to any project potentially affecting water resources and the state's drinking water supply.

Right now, discussion has been limited to the Watershed Lands Work Group and the WPCAG. We expect that this topic will be brought up to the Water Planning Council with proposals for increased regulation and potential legislation.

Pullman & Comley partner Fred Klein is a member of the Water Planning Council Advisory Group. For more information, please contact Fred at fklein@pullcom.com or 860.424.4354 or your responsible Pullman attorney.

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