



**DEPARTMENT OF THE ARMY**  
**US ARMY CORPS OF ENGINEERS**  
**NEW ENGLAND DISTRICT**  
**696 VIRGINIA ROAD**  
**CONCORD MA 01742-2751**

September 18, 2020

Regulatory Division  
File No. NAE-2012-02558

Paul Corey  
BNE Energy  
c/o Lee Hoffman, Pullman & Comley  
17 Flagg Hill Road  
Colebrook, Connecticut 06021  
[lhoffman@pullcom.com](mailto:lhoffman@pullcom.com)

Dear Mr. Corey:

We understand you intend to construct an access road for installation of a wind turbine at properties identified as 45 and 53 Flag Hill Road to complete work associated with a previously authorized, but now expired, project known as “Colebrook Wind South” in Colebrook, Connecticut. It appears that this project may involve activities in wetlands or waters that require a permit from the Corps of Engineers. The following is an explanation of Corps jurisdiction as defined by Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

A permit is required under Section 10 for all work seaward of mean high water in navigable waters of the United States. In New England, for purposes of Section 10, navigable waters of the United States are those subject to the ebb and flow of the tide and a few of the major waterways used to transport interstate or foreign commerce.

Permits are also required under Section 404 for discharges of dredged or fill material into all waters of the United States, including navigable waters, inland rivers, lakes, streams, and wetlands, as well as discharges associated with excavation/grading within these waters/wetlands. On the coastline, our jurisdiction extends landward to the high tide line (i.e., the highest predictable tide) or to the landward limit of any wetlands, whichever is more extensive. In interior waters, our jurisdiction extends landward to the ordinary high water mark or to the landward limit of any wetlands, whichever is more extensive.

The term “wetlands” is defined by Federal regulations as “...those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions...” (Federal Register, November 13, 1986 33 CFR Part 328.3(b)). Wetlands generally include swamps, marshes, and bogs; however, forests and meadows that lack surface waters can also be wetlands. In addition, wetland delineations as determined for Federal, state, and local agencies might not be interchangeable.

Information regarding permit applications is located at [www.nae.usace.army.mil/Missions/Regulatory.aspx](http://www.nae.usace.army.mil/Missions/Regulatory.aspx), “Forms and Publications,” and then “Application for Army Permit & Instructions.” You can view samples of the necessary plans under “Forms and Applications,” and then “Guide for Permit Applicants.” Applications need to include sufficient information for us to verify our limits of jurisdiction. This will include wetland delineation data sheets for work in wetlands. Contact us if you need information or would like us to mail you paper copies. When corresponding with us or applying for a permit, please reference your file number, NAE-2012-02558.

Please note that the Department of the Army authorization must be obtained before any work or filling is done in areas subject to Corps jurisdiction. Performing such work or filling without first obtaining Corps authorization could result in substantial penalties.

If you have any questions, please contact me at your earliest convenience at (978) 318-8306 or [cori.m.rose@usace.army.mil](mailto:cori.m.rose@usace.army.mil).

Sincerely,

*Cori M. Rose*

Cori M. Rose, PWS  
Senior Project Manager  
Permits & Enforcement Branch

cc:

[William.sigmund@ct.gov](mailto:William.sigmund@ct.gov), CT DEEP LWRD  
[Siting.council@ct.gov](mailto:Siting.council@ct.gov), CT Siting Council, Petition 983  
Town of Colebrook, Inland Wetlands Commission c/o [mhalloran@colebrooktownhall.org](mailto:mhalloran@colebrooktownhall.org)