



ALLCO RENEWABLE ENERGY LIMITED
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*Thomas M. Melone
President and
Senior General Counsel*

August 17, 2018

Melanie Bachman, Esq.
Acting Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: Petition 1220—Windham Solar LLC

Dear Director Bachman,

Thank you for the opportunity to respond to Interrogatory #7 dated August 3, 2018, addressed to Windham Solar LLC (“Windham”), which requests that Windham respond to the letter dated August 2, 2018, from the Connecticut Department of Energy and Environmental Protection (“DEEP”). The DEEP letter was signed by Oswald Inglese and copied to Commissioner Klee, Deputy Commissioner Kaliszewski, and Staff Attorney Kenneth Collette.

As an initial matter, contrary to the conclusory assertion in DEEP’s letter, Windham’s Lebanon site is fully compliant with the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (the “General Permit” or “GP”). Windham invites the Council to visit the site to see for itself the excellent condition of the site.

DEEP’s Discussion of the Voluntown Projects

In the second paragraph of the DEEP letter, DEEP raises questions regarding the applicability of the General Permit to the projects in this proceeding. The responses to interrogatories 1 through 6 from Steve Broyer explain the method for the proposed tree cutting, the minimal amount of disturbance that may result, and thus why as a factual matter the General Permit should not be applicable at this time.

The General Permit should also not be applicable for another reason. The General Permit authorizes the discharge of stormwater to surface waters from construction activities on a site. GP §3(a). “Construction activity” is defined as “any activity associated with construction at a site including, but not limited to clearing *and* grubbing, grading, excavation, and dewatering.”

GP §2 (emphasis added). The specific list of activities in the definition of construction activity refer to activities that are designed to cause significant upheaval to the soil. Notably the definition in GP §2 refers to the action of “clearing and grubbing.” The action of “clearing and grubbing” is the complete removal of trees including stumps. The action of cutting trees (and not removing the stump) is not “clearing and grubbing”, but timbering. As the Siting Council is aware many projects commence similar timbering operations without being covered under the General Permit, and to our knowledge, Commissioner Klee has not taken any action against such practices.

Why DEEP has targeted Windham and not others is not known to Windham at this time. But here, Allco’s history of challenging Commissioner Klee’s energy policies (further discussed below) may or may not offer a possible explanation.

DEEP’s Discussion of the Lebanon/Franklin Projects

The remainder of DEEP’s letter to the Council discusses Windham’s projects in Lebanon and Franklin and refers to Windham’s alleged “poor performance” at those projects. DEEP’s characterization ignores the facts and is designed to impugn Windham’s character before this Council. For the Franklin/Lebanon projects, Windham hired Connecticut-based C-TEC Solar LLC (“C-TEC”) as its general contractor. Under the contract documents C-TEC was required to assume all the obligations under the General Permit and deliver a site that was fully stabilized and compliant with the General Permit at commercial operation. *See, Attachment 1* for an explanation of the specific contract provisions that required C-TEC to adhere to the General Permit and related requirements. C-TEC also was tasked to perform the required inspections and report submittals, which DEEP was aware of.

The first notice that Windham received from DEEP that there was any issue with the site came via email on April 24, 2018, from Oswald Inglesi, approximately two months after the projects were fully constructed and entered commercial operation. *See Attachment 2.* Windham responded immediately and scheduled a meeting with DEEP to review the actions that Windham would take to address DEEP’s issues. DEEP made it sound as if DEEP was trying to save Steve Broyer travel time (because he is based in Minnesota) by issuing the Cease & Desist Order. *See Attachment 3.*

A summary of the issues during construction activity are:

All-Points Technology Corporation, P.C. (“All-Points”) prepared a memo dated April 25, 2018, in response to a request by DEEP. *See Attachment 4.* The memo identified and made recommendations regarding conditions that it observed between October 26, 2017, and November 24, 2017, such as the lack of stabilization of one trap; side slope sluffing in two in temporary sediment traps, including the risk of failure at Temporary Sediment Traps identified as TST-P2 and TST-P1C; and compromised siltation fence in one location, including evidence of over topping at that location, and discharge of sediment from one trap to another trap.

That All-Points Memo was based upon All-Points' inspection reports dated October 26, 2017, and October 30, 2017, *see* Attachments 5 and 6, which were transmitted to C-TEC on November 15, 2017, with the statement that: "Generally, the site has performed well with the recent large rain events." *See* Attachment 7. The Respondents received those reports on November 17, 2017, with C-TEC's statement that the issues would be addressed the following week. *See* Attachment 7.

The next site report was dated January 14, 2018, and indicated that repairs has been completed, the site was performing well and the site was in stable condition. *See* Attachment 8. Reports subsequent to January 14, 2018, and pre-cease-and-desist-order, all indicate the site is performing well. Some note issues to be repaired and the repairs having been made. *See* Attachment 9. During one of the many rain events this past year some sediment overtopped the perimeter silt fence in two locations at the south end of the site adjacent to wetland buffers of an isolated hillside seep wetland with limited functional value. Although sediment traveled past the perimeter erosion control measures of the project, they did not leave the site and the small accumulations of sediments in the buffers have not resulted in any impacts to the wetlands or vegetation. *See* Attachment 10.

It is true that Windham proceeded with site disturbance prior to the end of the applicable period specified in section 3(c) of the GP. But there are several relevant facts. *First*, Windham submitted a fully compliant registration on July 27, 2017. *Second*, C-TEC was tasked to *at all times* proceed in compliance with the GP. *Third*, at the site visit held by the CSC on August 9, 2017, Windham explained how site disturbance would proceed after such site visit. *Fourth*, Windham first completed all stormwater measures in accordance with the GP. *Fifth*, the Town inspected and approved all Windham's installed erosion control measures. *See*, Attachment 11. *Sixth*, the general permit is issued under authority of Conn. Gen. Stat. §22a-430b, *see* GP, §1, which authorizes the Commissioner to issue a general permit to implement Conn. Gen. Stat. §22a-430. Conn. Gen. Stat. §22a-430 provides that "[n]o person or municipality shall initiate, create, originate or maintain any discharge of water, substance or material into the waters of the state without a permit for such discharge issued by the commissioner." At no time has Windham "initiate[d], create[d], originate[d] or maintain[ed] any discharge of water, substance or material into the waters of the state." DEEP's authorization for discharges, Permit GSN003212, *see* Attachment 12, confirms that it regulates only discharges. Despite DEEP's claims regarding the efficacy of the stormwater controls in place at the site, at no time was there a discharge from the site.

It is also true that Windham disturbed approximately 2 acres on the Site outside of the footprint shown in the registration for GSN003212. The disturbance of the 2-acre area was appropriately protected with perimeter silt fence and internal erosion control check dams.

Windham is the named permit holder, and once Windham was alerted by DEEP to deficiencies in C-TEC's performance, Windham immediately hired other contractors to address the issues noted by DEEP. Within a little more than a month after DEEP first notified Windham of issues, Windham had fully stabilized the site and completed and repaired all control measures

needed at that time, bringing it into full compliance with the General Permit. On June 6, 2018, as requested by DEEP, Windham sent DEEP the engineer's inspection report confirming that the site was fully stabilized and all necessary short-term erosion control measures had been completed. *See, Attachment 13.* Then Windham submitted an amended plan for post-construction measures to DEEP on June 6, 2018, which was informally approved by DEEP's engineer on June 15, 2018. All post-construction measures will be complete by August 31, 2018, weather permitting.

Allco's Challenges To DEEP's Energy Policies

Allco has brought legal challenges to Commissioner Klee's energy policies. The Public Utility Regulatory Policies Act, Pub. L. No. 95-617, 92 Stat. 3117 ("PURPA"), *see* 16 U.S.C. §824a-3, "was and remains a primary incentive for renewable power development." Steven Ferrey et al., *Fire and Ice: World Renewable Energy and Carbon Control Mechanisms Confront Constitutional Barriers*, 20 Duke Envtl. L. & Pol'y F. 125, 140 (2010). Allco has challenged Connecticut's failure to adhere to PURPA both at the Federal Energy Regulatory Commission (the "FERC") and in the courts. For example, DEEP's implementation of PURPA through its division, PURA, was declared unlawful in two declaratory orders issued by the FERC in response to complaints of Windham and Allco. *See, Windham Solar LLC*, 157 FERC ¶ 61,134 (2016) and *Windham Solar LLC*, 156 FERC ¶ 61,042 (2016). More than two years after FERC declared Connecticut's implementation of PURPA unlawful, DEEP and PURA have still not implemented PURPA properly, raising costs for Connecticut ratepayers, resulting in increased CO2 and other harmful emissions from fossil fuel, and continuing a cycle of un-ending delay with no real accountability that perpetuates our Thelma and Louise-like drive off the climate cliff.¹

Windham has continued its challenge to DEEP's implementation of PURPA in the Connecticut courts. *See, Windham Solar LLC v. Connecticut Pub. Utils. Regulatory Auth.*, Docket HHB CV-16-6035301-S (Conn. Super. Ct. July 9, 2018) *appeal docketed* A.C. 41918 (Conn. App. filed July 26, 2018).

Allco has also challenged Commissioner Klee's treatment of distributed energy projects located in Connecticut under his various RFPs. In a series of complaints in Federal court Allco unsuccessfully challenged Commissioner Klee's 2013 and 2015 RFPs under PURPA and the Federal Power Act. In the end, the Second Circuit ruled that the Connecticut utilities entered the PPAs "voluntarily," and were not compelled to do so by the Commissioner. *See, Allco Finance Limited v. Klee*, 861 F.3d 82 (2d Cir. 2017).²

¹ Allco has brought similar challenges in Massachusetts and California, both of which have led to those States' implementation of PURPA being declared unlawful. *Allco Renewable Energy Ltd. v. MA Elec. Co.*, 208 F. Supp. 3d 390 (D. Mass. 2016) *aff'd* 875 F.3d 64 (1st Cir. 2017) and *Winding Creek LLC v. Peevey*, No. 3:13-cv-04934-JS, 2017 U.S. Dist. LEXIS 201893, 47 ELR 20163, 2017 WL 6040012 (N.D. Cal. December 6, 2017) *appeal docketed* Nos. 17-17531 and 17-17532 (9th Cir. December 22, 2017).

² Similar Federal Power Act challenges by others are pending before the Seventh and Second Circuits involving non-Connecticut actions. Commissioner Klee's other RFPs may be subject to challenge,

Allco has also challenged, and continues to challenge, Commissioner Klee's refusal to disclose how DEEP evaluates how it spends billions of dollars of ratepayer funds. *See, Allco v. FOIC*, HHB-CV-18-6043138-S (Conn. Super. filed March 13, 2018).

In particular, Allco has challenged the evaluation and treatment of small (under 5MWs) renewable energy projects connected to the distribution system, which are treated as "load reducers" within ISO-New England.³ Commissioner Klee's RFPs have refused to properly account for the benefits of such projects, including the failing to account for (i) the economic benefit within Connecticut, (ii) the economic benefit from the ISO-New England load reducer treatment, and (iii) the economic and health benefits under a social cost of carbon ("SCC") analysis. Sound energy planning cannot ignore the off-balance sheet costs that are imposed on Connecticut ratepayers through climate change. The California Public Utilities Commission staff recently reported that the dollar value and other benefits from distributed renewable energy resources in abating the harmful effects of climate change and the adverse health effects of fossil-fuel use are very, very large. *See*, CPUC Docket R14-10-003, Order of March 14, 2018, *An Energy Division Staff Proposal Addendum #2*.⁴ Of course, such a conclusion comes as no surprise to Californians who are on the front lines of experiencing the effects of climate change—massive wildfires, mudslides, drought and other extreme weather events. But climate impacts from global warming are already being felt in Connecticut through increased floods, severe storms and heat waves, and will only become more frequent and more costly. Recently, the U.S. Administration released a dire report on the prospects for the climate, particularly the Northeast. *See USGCRP, 2017: Climate Science Special Report: Fourth National Climate Assessment, Volume I* [Wuebbles, D.J., D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 470 pp, doi: [10.7930/J0J964J6](https://doi.org/10.7930/J0J964J6).⁵ The report concludes that "[s]ea level rise will be higher than the global average on the East and Gulf Coasts of the United States." *Id.* Stronger storms will be more frequent

particularly in light of the FERC's recent order in holding that state subsidized generation results in unjust and unreasonable rates in the capacity markets. *See, Calpine Corporation v. PJM Interconnection, LLC*, 163 FERC ¶ 61,236 (2018). The uncertainty created for such large-scale projects makes it even more urgent that Connecticut start complying with PURPA.

³ A "load reducer" functions as a behind-the-meter project from ISO-New England's perspective. All of Windham's projects in Lebanon/Franklin and Voluntown are "load reducers." "Load reducers" reduce the capacity requirements for Connecticut's load serving entities *and* result in savings in the category of regional network service. Thus, for example, a 20-year power purchase agreement with a 20MW out-of-state solar project at a cost of 9 cents per kWh is more expensive to Connecticut ratepayers than four 5MW solar projects in Connecticut at 15 cents per kWh because the load reducer provides capacity cost savings of approximately 4.6 cents per kWh, and 1.9 cents per kWh of regional network service savings.

⁴ <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M212/K023/212023660.PDF>. Using the California staff proposed SCC numbers, a natural gas fueled generating facility imposes an added cost to Connecticut ratepayers of roughly 8 cents per kWh.

⁵ <https://science2017.globalchange.gov/chapter/executive-summary/>.

raising the costs to recover from such storms. The east coast in particular will see more frequent and stronger storms and hurricanes. *Id.* at Chapter 9.⁶ See also, *id.* at Fig. 9.2.

How DEEP Has Addressed Stormwater Issues In Consent Orders

Windham has proceeded, and still is proceeding, in good faith to negotiate a consent order, which is DEEP's requested method to resolve the issues DEEP has raised with the Lebanon site. The consent order needs to provide fair and equitable treatment to Windham. DEEP has stated on multiple occasions, however, that if Windham does not execute a consent order then DEEP will run interference on all of Allco's other projects in Connecticut, which is what it is doing here. Much like the way Chinese customs inspectors as retaliation let American farmers' products rot on the docks in China, DEEP has stated that it would also impose additional *de facto* penalties by, among other things, running interference such as it is doing here, requiring Allco projects to obtain individual stormwater permits with processing times of a couple of years, not processing applications for other Allco projects and proceeding with other *de facto* penalties against Allco and Allco's projects.

A comparison of how Commissioner Klee handled other similar alleged violations is instructive. The Commissioner's regulations specify a methodology for calculating penalties.

1. *Eastern Communications Inc.* See, <http://www.ct.gov/deep/lib/deep/enforcement/consentorder/COWRSW16001.pdf> — DEEP alleged the project had started prior to issuance of the General Permit but after the project had submitted a deficient application for registration under the General Permit. *See, id.*, page 1, Paras. A2-4. The civil penalty imposed was \$1,900. *See, id.* at para B8.
2. *Sunwood Development Corporation.* See, <http://www.ct.gov/deep/lib/deep/enforcement/consentorder/COWRSW16002.pdf> — DEEP alleged that the project had completely failed to register for the General Permit, failed to install and maintain adequate erosion and sediment control and stabilization practices. *See, id.*, page 1, paras. A2. That was March 2014. The project then registered for the General Permit I May 2014. No cease and desist order was issued by DEEP for those violations at that time. DEEP returned to the site nearly 13 months later and observed failure to install and maintain adequate control measures, failed to perform and document inspections and determined that the project in fact polluted the water of the State. *See, id.*, paras A3-5. The civil penalty was \$4,600. *id.*, para. 8.
3. *Newtown Transload, LLC* See, <http://www.ct.gov/deep/lib/deep/enforcement/consentorder/2014003DEEP.pdf> — DEEP alleged that the project had completely failed to register for the General Permit

⁶ <https://science2017.globalchange.gov/chapter/9/>.

and failed to prepare, implement and keep on site a pollution prevention plan. *See, id.*, pages 2-3, Paras. A3. The civil penalty imposed was \$3,200. *See id.* at para. B7.

4. *Exeter Energy LP* *See, http://www.ct.gov/deep/lib/deep/enforcement/consentorder/COAR2238.pdf* – DEEP alleged that the tire-fueled power generating facility failed to meet its reporting requirements, exceeded emission limits *fifteen (15)* times. *See, id.*, page 2, A9-A12. The civil penalty imposed was \$16,250. *See id.* at para B1.
5. *ReEnergy Sterling CT Limited Partnership* *See, http://www.ct.gov/deep/lib/deep/enforcement/consentorder/COWRIN14001.pdf* – DEEP alleged that the stormwater basins at the project site overflowed and discharge of *polluted* wastewaters went into the Moosup River. *See id.*, pages 1-2, A5 – A12. The civil penalty imposed was \$45,000. *See id.*, at B. 11.
6. *New Britain Heat Treating Corporation* *See, http://www.ct.gov/deep/lib/deep/enforcement/consentorder/COWRSW11004.pdf* – DEEP alleged that the owner of the project failed to monitor stormwater events for a 3-year period. *See, id.*, page 1, A3. The civil penalty imposed was \$3,700. *See id.*, at B. 6.
7. *Pepin Steel and Iron Works, LLC* *See, http://www.ct.gov/deep/lib/deep/enforcement/consentorder/COWRSW12003.pdf* – DEEP alleged that the owner of the project failed to monitor stormwater events for a 3-year period and failed to re-register for a stormwater permit. *See, id.*, page 1, A3 and A5. The civil penalty imposed was \$1,165. *See id.*, at B. 6.
8. *Fusion Solar Center LLC* (Attachment 14)—Fusion Solar is a 20MW project, four times the size of the five 1MW projects at Lebanon/Franklin. Fusion submitted its registration on July 18, 2016. *See id.*, para. A4. Fusion started construction on September 1, 2016 (*see* Attachment 15). DEEP approved Fusion’s registration on November 15, 2016. *See* Att. 14, para. A4. Fusion’s violations—failure to install required controls prior to before large-scale grading and to maintain records—were initially observed on March 7, 2017. *See id.*, para A6. On April 25, 2017, DEEP issued a notice of violation. It did not issue a cease and desist order. *See, id.*, para. A8. On May 5, 2017, the sediment basin failed and resulted in discharges to the waters of the state, adjacent properties and roadways. *Id.* A9. On May 15, 2017, DEEP inspected the site and found continuing violations. No cease and desist order was issued. *Id.*, A11. DEEP inspected the site again on July 18, 2017, after receiving complaints of discharge to neighboring properties. DEEP observed that there was no vegetative cover even though it was the middle of July. *Id.*, A14. No cease and desist order was issued. More than three months go by and on October 27, 2017, DEEP inspected the site again after receiving complaints of discharge from neighboring properties. *Id.*, A15. DEEP noted a lack of stabilization, failure of basins and control

measures and discharges to the waters of the State. *Id.*, A16. Fusion also according to DEEP violated dam safety requirements. A17-19. *Finally after 8 months from DEEP's first inspection and more than six months after its first notice of violation, and multiple inspections in between with apparently no significant action being taken, DEEP issued a cease and desist order to the project. Id.*, A21. Civil penalty was \$250,000 for a 20MW project. *Id.*, B10.

In comparison, within a little more than a month after DEEP first notified Windham of issues, Windham had fully stabilized the site and completed and repaired all needed control measures bringing the project into full compliance with the General Permit. On June 6, 2018, as requested by DEEP, Windham sent DEEP the engineer's inspection report confirming that all necessary erosion control measures had been completed, and the site fully stabilized. *See, Attachment 13.* Then Windham submitted an amended post-construction plan acceptable to DEEP on June 15, 2018. All post-construction measures will be complete by August 31, 2018, weather permitting.

Contrary to DEEP's characterization of *Windham* as performing poorly, the poor performance here would have been that of the contractor, *C-TEC*, and once DEEP notified Windham of the issues, Windham promptly and fully addressed and remedied the situation. Windham fully complied with the Cease and Desist Order, and the site is fully compliant with the GP.

Respectfully submitted,

/s/Thomas Melone
Thomas Melone
Juris No. 438879
Allco Renewable Energy Limited
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New York, NY 10019
Phone: (212) 681-1120
Email: Thomas.Melone@AllcoUS.com

ATTACHMENT 1

C-TEC and Windham entered into the following agreements: (i) “AIA Document A102-2007 -Standard Form of Agreement Between Owner and Contractor”, dated July 13, 2017, between Ecos Energy LLC (“Ecos”) and C-Tec Solar LLC (“A102”), (ii) “AIA Document A201-2007 General Conditions of the Contract for Construction, dated July 13, 2018, between Ecos and C-Tec (“A201”) and (iii) and exhibits, drawings and attachments to the A102 and A201 (collectively, the “Construction Contract”)⁷.

Pursuant to Section 16.1.4 of the A102, the Specifications required to be performed by C-TEC regarding the Project is the Contractor Scope of Work attached as Exhibit B to the Construction Contract (the “Scope”). The Scope includes the following items:

- “Hire AP Alternatives as racking and module installer and supervise all work.”
- “Hire and Supervise site development contractor
 - Site Development work includes:
 - Install 100% of erosion control measures per drawings
 - Install 100% of perimeter fence per drawings
 - *Maintain integrity of silt fence and installed erosion control measures throughout the duration of construction; if erosion control devices are ruined by weather, traffic, contractor negligence (AKA driving over wattles/compost filter socks, etc....if the contractor destroys them, the contractor replaces them)*
 - “Provide a stabilized site to owners at completion of project.”
(emphasis added)

The drawings, dated June 27, 2017 (Sheet 9 of 11) contain the following provision:

STORMWATER POLLUTION CONTROL PLAN (SWPCP):

1. REFER TO THE SWPCP PREPARED BY WESTWOOD PROFESSIONAL SERVICES DATED JUNE 2017 FOR DETAILED SEDIMENT AND EROSION CONTROL PROCEDURES, LOCATIONS OF BMPs, AND INSPECTION INFORMATION.
2. ALL AREAS DISTURBED DURING CONSTRUCTION ACTIVITIES AND NOT COVERED BY ROAD SURFACING MATERIALS, SHALL BE SEEDED IN ACCORDANCE WITH THE SWPCP PLAN.
3. **TEMPORARY EROSION CONTROL SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR. THE TEMPORARY**

⁷ Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Construction Contract.

EROSION CONTROL PLAN SHALL BE IN ACCORDANCE WITH STATE OF CONNECTICUT, THE EPA, AND THE SWPCP ON FILE.

SPECIAL PROVISIONS FOR GRADING AND EROSION CONTROL

THE CONTRACTOR SHALL PROVIDE EROSION CONTROL MEASURES AS PLANNED AND SPECIFIED FOLLOWING BEST MANAGEMENT PRACTICES AS OUTLINED BY THE STATE OF CONNECTICUT AND BEING IN CONFORMANCE WITH THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL STORMWATER PERMIT. SEE THE STORMWATER POLLUTION PREVENTION PLAN (SWPPP) FOR EROSION CONTROL AND RESTORATION SPECIFICATIONS. UNLESS OTHERWISE NOTED OR MODIFIED HEREIN, ALL SECTIONS OF THE GENERAL CONDITIONS SHALL APPLY

As such, it was C-TEC's responsibility to supervise the installation and maintenance of the erosion control measures for the Project, including, without limitation, adhering to all of the requirements in the General Permit and the Storm Water Pollution Control Plan prepared by Westwood Professional Services, Inc. (the "SWPCP").

ATTACHMENT 2

From: Inglese, Oswald [mailto:Oswald.Inglese@ct.gov]

Sent: Tuesday, April 24, 2018 12:41 PM

To: Steve Broyer <steve.broyer@ecosrenewable.com>

Cc: Yurasevecz, Sharon <Sharon.Yurasevecz@ct.gov>; Williams, Neal <Neal.Williams@ct.gov>

Subject: Windham Solar, LLC, 1 Williams Crossing Road, Lebanon, CT

Importance: Low

Dear Mr. Broyer,

Based on an inspection conducted on April 17, 2018 by the Department's Water Permitting and Enforcement staff, the Department has determined that the construction activities at the Windham Solar, LLC site, located on 1 Williams Crossing Road in Lebanon, CT are in significant noncompliance with the requirements of the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities ("General Permit") and the associated Stormwater Control Plan that was developed in accordance with the requirements of the General Permit. The Department is hereby directing Windham Solar LLC., as the Permittee of record (Permit No. GSN003212), to immediately cease further work associated specifically with the installation of the solar array and related appurtenances, and to immediately take any and all corrective measures, including but not limited to the implementation of any and all erosion and sedimentation controls, to ensure the effective management of stormwater at the subject site in full compliance with the General Permit and the associated Stormwater Pollution Control Plan.

We will be contacting you shortly to arrange a meeting to discuss this matter and the progress you have made to immediately address the outstanding noncompliance at the subject site.

Sincerely,

Oswald Inglese, Jr.

Director

Water Permitting and Enforcement Division Bureau of Materials Management and Compliance Assurance
Connecticut Department of Energy and Environmental Protection

79 Elm Street, Hartford, CT 06106-5127

P: 860.424.3725

F: 860.424.4074

E: oswald.inglese@ct.gov

www.ct.gov/deep

Conserving, improving and protecting our natural resources and environment; Ensuring a clean, affordable, reliable, and sustainable energy supply.

ATTACHMENT 3

-----Original Message-----

From: Inglese, Oswald [mailto:Oswald.Inglese@ct.gov]
Sent: Thursday, May 3, 2018 4:27 PM
To: Steve Broyer <steve.broyer@ecosrenewable.com>
Cc: Yurasevecz, Sharon <Sharon.Yurasevecz@ct.gov>; Williams, Neal <Neal.Williams@ct.gov>; Collette, Kenneth <Kenneth.Collette@ct.gov>
Subject: RE: Windham Solar, LLC, 1 Williams Crossing Road, Lebanon, CT
Importance: Low

Dear Mr. Broyer,

As a result of the lapse in time between our inspection, which detected significant non-compliance with the General Permit, my April 24th email to you (below), and the May 10th scheduled meeting regarding the site in Lebanon, DEEP is serving the attached Cease and Desist order on Windham Solar and its affiliates today to ensure proper and immediate steps are taken to stabilize the site and comply with the General Permit under which DEEP authorized the work.

In part, the decision to serve the order now is based on the legal requirement in Connecticut that a hearing on a cease and desist order is commenced within ten (10) days of service and the fact that you have arranged travel to CT for our meeting on May 10, 2018. Rather than have you and any other colleagues from Minnesota travel twice in a short span of time, DEEP's intent would be to open the hearing on the Cease and Desist Order with a DEEP hearing officer and then put the hearing on hold so the parties can have a more open discussion on site status and next steps for compliance as envisioned when the meeting was first scheduled.

We can be available for a call to discuss next steps prior to next week's meeting/hearing. Members of my staff also intend to visit the site prior to next week's meeting/hearing. Although DEEP deemed formal enforcement to be a necessary step, it fully intends to have an open dialogue with you regarding compliance with the General Permit and would like to avoid substantial interruption of the array's final construction and operation. In attendance at the May 10th meeting from the Department will be myself, Sharon Yurasevecz and Neal Williams of the Department's Stormwater Permitting and Enforcement Program, and Ken Collette from our Commissioner's Office of Legal Counsel.

Sincerely,

-Ozzie

Oswald Inglese, Jr.
Director
Water Permitting and Enforcement Division Bureau of Materials Management and Compliance Assurance
Connecticut Department of Energy and Environmental Protection
79 Elm Street, Hartford, CT 06106-5127
P: 860.424.3725(F: 860.424.4074 (E: oswald.inglese@ct.gov)

www.ct.gov/deep

Conserving, improving and protecting our natural resources and environment; Ensuring a clean, affordable, reliable, and sustainable energy supply.

-----Original Message-----

From: Inglese, Oswald
Sent: Tuesday, April 24, 2018 1:41 PM
To: 'steve.broyer@ecosrenewable.com' <steve.broyer@ecosrenewable.com>
Cc: Yurasevecz, Sharon <Sharon.Yurasevecz@ct.gov>; Williams, Neal <Neal.Williams@ct.gov>
Subject: Windham Solar, LLC, 1 Williams Crossing Road, Lebanon, CT
Importance: Low

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We will be contacting you shortly to arrange a meeting to discuss this matter and the progress you have made to immediately address the outstanding noncompliance at the subject site.

Sincerely,

Oswald Inglese, Jr.
Director
Water Permitting and Enforcement Division Bureau of Materials Management and Compliance Assurance
Connecticut Department of Energy and Environmental Protection
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www.ct.gov/dep

Conserving, improving and protecting our natural resources and environment; Ensuring a clean, affordable, reliable, and sustainable energy supply.

ATTACHMENT 4



MEMORANDUM

Date: April 25, 2018

To: Brandon Pizzoferrato
Commercial Project Manager
C-TEC Solar
1 Griffin Road South, Suite 200
Bloomfield, CT 06002

From: Matt Gustafson
Wetland Scientist
CPESC #6523

Re: Windham Solar Facility
Windham Road & Williams Crossing Drive
Lebanon & Franklin, CT
APT Project #: CT481140

This memo is intended to outline the status of the Erosion and Sedimentation Control Measures for the Windham Solar Facility during All-Points Technology Corporation's ("APT") time on the Windham Solar Facility site.

APT has been on site for this project in two capacities, one as the Environmental Compliance Monitor and the second as the interim Stormwater Pollution Control Plan ("SWPCP") Monitor. APT is under contract to perform Environmental Compliance Monitoring associated with the Wood Turtle Protection Program to satisfy the conditions of the Connecticut Siting Council declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required (Petition No. 1137). As part of this work APT has been on site three (3) times, once at the start of construction to provide the contractor with awareness training and twice to conduct inspections during construction activities (8/14/17, 8/23/17, and 9/26/17). It should be noted that as part of this specific scope of work APT was only periodically monitoring the installation and maintenance of erosion and sedimentation controls for the sole purpose of creating an isolation barrier for potentially migrating Wood Turtles.

Additionally, APT performed interim SWPCP Monitoring Inspections for C-TEC Solar ("C-TEC") for a period of four-weeks, from October 26, 2017 through November 24, 2017, to cover for the C-TEC personnel who was unable to complete the required tasks for that time period. During this time period APT was on site a total of five (5) times performing the weekly monitoring and monitoring within 24-hours of a storm that generates a discharge.

APT was on site for a total of eight (8) times from August 2017 through November 2017; below you will find a summary of our findings of the status of the erosion and sedimentation control measures during our time on site. Additional Photos and Sketch Maps could be provided if required.

Erosion and Sedimentation Control Measures Summary

Perimeter Exclusion Fence Inspections

8/23/17: The perimeter silt fence was first reviewed for its effectiveness as exclusionary fencing for the Wood Turtle. At that time, perimeter silt fence was not installed along the east side of the site per the SWPCP or the west side in an area that was not required for the SWPCP but required for the exclusion fence. Additionally, there were four (4) locations noted where the silt fence still required trenching in.

9/26/17: The perimeter silt fence was reviewed a second time for its purpose of exclusion fencing for the Wood Turtle. The perimeter silt fence along the east side of the site per the SWPCP had been installed. However, there were two (2) locations where it still required trenching in and one (1) location that required the proper connection of two silt fences coming together. The west side of the site that was not in the SWPCP but was required for the exclusion fence for the Wood Turtle still had not been installed. A hole in the silt fence was also noted along the south side of the site that required repair.

North Area - Inspections

10/26/17: Runoff was not properly being directed to TST-P1A low water crossing was not functioning.

10/26/17 through 11/24/17: Area south of building and northeast of TST-P1A was witnessed to have significant erosion causing over-topping of perimeter silt fence. Regrading of eroded channels, surface stabilization, sediment removal, repair of silt fence and straw wattle check dams across slope were recommended.

10/30/17: Rip-rap protected swale was installed to properly direct run off to TST-P1A.

South West (TST's - P1B, P1C, P2) - Inspections

10/26/17 through 11/24/17: Discharge from TST-P2 was directed across unprotected soils and ultimately to TST-P1C. Protection of TST-P2 discharge area and conveyance to TST-P1C was recommended.

10/26/17 through 11/24/17: Silt Fence at outlet zone of TST-P1C required sediment removal and repair.

10/30/17 through 11/24/17: TST-P2 side slopes were noted to be sluffing and seepage occurring along the base. It was noted that the basin was at risk if catastrophically failing.

11/10/17 through 11/24/17: TST-P1C side slopes were noted to be sluffing and seepage occurring along the base. It was noted that the basin was at risk if catastrophically failing.

11/17/17 through 11/24/17: Recommended all areas that had not been, or were not expected to be, subjected to, construction activities within the last/next 30 days to be temporarily stabilized per the guidelines.

South - East Interior (TST's – P3 & P4)

10/26/17 through 11/24/17: TST-P4 side slopes were not stabilized. Stabilization was recommended.

10/26/17 through 11/24/17: It was noted that areas draining to TST-P3 contained existing vegetation established from pre-construction condition.

Project Site-wide Notes

10/26/17 through 11/10/17: Recommended all Utility Trenches should be closed prior to storm events and stabilized or utilize an approved outlet protection measure.

10/26/17 through 11/24/17: Temporary Soil Stockpiles were not backed with silt fence or properly stabilized. Recommended stabilizing exposed soils site-wide with an approved surface stabilization method.

10/26/17 through 11/24/17: Straw wattles were installed throughout the entire solar array to break up slope lengths as shown in the SWPCP.

11/17/17 through 11/24/17: Recommended all areas that had not been, or were not expected to be, subjected to, construction activities within the last/next 30 days to be temporarily stabilized per the guidelines.

ATTACHMENT 5



SWPCP Monitoring Report

Report No. 1

Windham Solar Facility
Windham Road & Williams Crossing Dr.
Lebanon & Franklin, CT

APT Project #: CT481140

Date of Inspection: 10/26/2017	Weather Conditions: cloudy, mid 50°F
Time of Inspection: 10 a.m.	Latest Precipitation Event > ¼" (NOAA): 1.75" on 10/26/2017
Observed Precipitation (on-site rain gauge): N/A	Location of nearest NOAA Weather Station: Willimantic, CT
Inspection Frequency: <input type="checkbox"/> Monthly <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Within 24 hours of Rain Event	

Inspector Name: Matthew Gustafson	Contact Information: Cell – (860) 617-0613 Email – mgustafson@allpointstech.com
Inspector Qualifications: CPESC #6523	

Active and Completed Construction Activities since last documented inspection: All clearing and grubbing work has been completed. Utility trenching/routing is currently in progress. The security chain-link fence has been installed and all temporary erosion and sedimentation controls are installed. The access road and entrance have been installed.

Check if NOT Functioning Properly	Erosion Control Measure
<input type="checkbox"/>	Street Sweeping/ Construction Access and Entrance
<input checked="" type="checkbox"/>	Soil Stockpile Areas
<input checked="" type="checkbox"/>	Energy Dissipaters (Check Dams/ Level Spreader/ Outlet Protection etc.)
<input type="checkbox"/>	Drainage Swales/Diversion Features
<input checked="" type="checkbox"/>	Temporary/Permanent Sediment Basins/Traps
<input checked="" type="checkbox"/>	Perimeter Controls (Hay/Straw Bales/Wattles & Silt Fencing etc.)
<input type="checkbox"/>	Catch Basin Protection
<input checked="" type="checkbox"/>	Temporary/Permanent Slope/Surface Stabilization
<input type="checkbox"/>	Dewatering Basins and Filter Bags

ALL-POINTS TECHNOLOGY CORPORATION, P.C.

3 SADDLEBROOK DRIVE · KILLINGWORTH, CT 06419 · PHONE 860-663-1697 · FAX 860-663-0935

P.O. BOX 504 · 116 GRANDVIEW ROAD · CONWAY, NH 03818 · PHONE 603-496-5853 · FAX 603-447-2124

Check if NOT Functioning Properly	Pollution Prevention Practices
<input type="checkbox"/>	Construction Material Storage
<input type="checkbox"/>	Oil/Gas/Chemical Storage/Transport
<input type="checkbox"/>	Haz/Toxic Waste Storage/Transport
<input type="checkbox"/>	Construction/Sanitary Waste
<input type="checkbox"/>	Off-Site Vehicle Tracking
<input type="checkbox"/>	Dust Control

* In the event of a spill refer to Spill Response Procedures in the SWPCP and contact appropriate agencies.

Are stormwater discharges from the site present?

<input type="checkbox"/> No	If yes, describe type, location, and if discharge resulted in a sediment/pollution discharge: Stormwater discharge was observed from the two temporary sediment traps in the southern end of the site. Discharge from both sediment traps consisted of generally sediment free water (mostly clear in color).
<input checked="" type="checkbox"/> Yes	

Are sediment/pollution discharges from the site present?

<input checked="" type="checkbox"/> No	If yes, describe type, location, and resulting corrective action:
<input type="checkbox"/> Yes	

Corrective Action Items:					
	Location of Item	Description of Item	SWPCP Update Necessary (Y/N)	Date of Observation	Date of Completion
1.					
2.					
3.					
4.					
5.					

Maintenance Action Items:					
	Location of Item	Description of Item	SWPCP Update Necessary (Y/N)	Date of Observation	Date of Completion
1.	Northeast project area south of existing building	<p>Long slope length has eroded along channel erosive pattern into and overtopping the silt fence. Sediment release is contained within uplands directly adjacent to the silt fence barrier and has not migrated off-site.</p> <p>Consider stabilizing slopes with straw wattle check dams, surface stabilization, and repairing the silt fence. All accumulated and released sediments should be removed and any resulting disturbed soils should be stabilized.</p>	N	10/26/2017	
2.	Northwest project area	<p>Ponding water within array footprint.</p> <p>Ensure proper drainage across access road into temporary sediment trap.</p>	Y	10/26/2017	

3.	Southcentral project area including and between the two temporary sediment traps	Discharge from western trap drains east across unprotected disturbed soils and the access road into the western trap. Drainage between the two traps should be stabilized (consider using modified rip-rap to stabilize drainage area). Repair silt fence at outlet zone.	Y	10/26/2017	
4.	Southwest project corner temporary sediment trap	Stabilize temporary sediment trap side-slopes.	N	10/26/2017	
5.	Project-Wide	All utility trenches should be closed prior to storm events, stabilized, or utilize an approved outlet protection measure.	N	10/26/2017	
6.	Soil Stockpile on southern project extents	Soil stockpiles should be backed with silt fencing or the surface compacted and stabilized.	N	10/26/2017	

Stabilization of Exposed Soil:				
	Stabilization Area	Stabilization Method	Date(s) of Stabilization	Notes
1.	Side-slopes to access road	Loose hay mulch	Started on 8/23/2017	Straw wattles have been installed off-contour along solar PV array lines to break up slope lengths.
2.				
3.				
4.				
5.				

Summary:

At the time of the referenced inspection, the Site is:

In Compliance Out of Compliance

With the terms and conditions of the SWPCP and General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Constructing Activities.

Notes:

Refer to Corrective Action Items section for conditions resulting in the Site being Out of Compliance.

Refer to Maintenance Action Items section for interim measures to be implemented to minimize the potential for the Site becoming Out of Compliance.

Non-engineered corrective actions (as identified in the Guidelines) shall be implemented on site within 24 hours and incorporated into a revised SWPCP within three (3) calendar days of the date of inspection unless another schedule is specified in the Guidelines.

Engineered corrective actions (as identified in the Guidelines) shall be implemented on site within seven (7) days and incorporated into a revised SWPCP within ten (10) days of the date of inspection unless another schedule is specified in the Guidelines or is approved by DEEP.

CERTIFICATION STATEMENT

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that a false statement made in this document or its attachments may be punishable as a criminal offense, in accordance with Section 22a-6 of the General Statutes, pursuant to Section 53a-157b of the General Statutes, and in accordance with any other applicable statute."

Inspector:

SIGNATURE: _____
PRINTED NAME: Matthew Gustafson _____
TITLE: SWPCP Monitor _____
AFFILIATION: All-Points Technology _____
ADDRESS: 3 Saddlebrook Drive, Killingworth, CT 06419 _____
PHONE: (860) 617-0613 _____
DATE: 10/26/17 _____

Permittee or his/her authorized representative:

SIGNATURE: _____
PRINTED NAME: _____
TITLE: _____
AFFILIATION: _____
ADDRESS: _____
PHONE: _____
DATE: _____

**A copy of this report shall be placed in the Monitoring Section of the Stormwater Pollution Prevention Plan maintained at a central location at the project site, if applicable.



Photo 1: View of access entrance looking north.



Photo 2: View of southern open field area looking east.



Photo 3: View of unprotected soil stockpile looking south (Maintenance Action Item #6).



Photo 4: View of silt fence requiring repair (Maintenance Action Item #3).



Photo 5: View of ponding water looking west across access (Maintenance Action Item #2).



Photo 6: View of open trenches and ponding water looking north (Maintenance Action Item #5).



Photo 7: View of channel erosion looking east (Maintenance Action Item #1).



Photo 8: View of sediment build-up and discharge from channel erosion looking east (Maintenance Action Item #1).



Photo 9: View of southeast temporary sediment trap and discharge into trap looking east
(Maintenance Action Item #3).



Photo 10: View of southwest temporary sediment trap looking south.



SWPCP Monitoring Report
Report No. 2

Windham Solar Facility
Windham Road & Williams Crossing Dr.
Lebanon & Franklin, CT

APT Project #: CT481140

Date of Inspection: 10/30/2017	Weather Conditions: cloudy, mid 50°F
Time of Inspection: 10 a.m.	Latest Precipitation Event > ¼" (NOAA): 2.53" on 10/29/2017
Observed Precipitation (on-site rain gauge): N/A	Location of nearest NOAA Weather Station: Willimantic, CT
Inspection Frequency: <input type="checkbox"/> Monthly <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Within 24 hours of Rain Event	

Inspector Name: Matthew Gustafson	Contact Information: Cell – (860) 617-0613 Email – mgustafson@allpointstech.com
Inspector Qualifications: CPESC #6523	

Active and Completed Construction Activities since last documented inspection:
All clearing and grubbing work has been completed. Utility trenching/routing is currently in progress. The security chain-link fence has been installed and all temporary erosion and sedimentation controls are installed. The access road and entrance have been installed.

Check if NOT Functioning Properly	Erosion Control Measure
<input type="checkbox"/>	Street Sweeping/ Construction Access and Entrance
<input checked="" type="checkbox"/>	Soil Stockpile Areas
<input checked="" type="checkbox"/>	Energy Dissipaters (Check Dams/ Level Spreader/ Outlet Protection etc.)
<input type="checkbox"/>	Drainage Swales/Diversion Features
<input checked="" type="checkbox"/>	Temporary/Permanent Sediment Basins/Traps
<input checked="" type="checkbox"/>	Perimeter Controls (Hay/Straw Bales/Wattles & Silt Fencing etc.)
<input type="checkbox"/>	Catch Basin Protection
<input checked="" type="checkbox"/>	Temporary/Permanent Slope/Surface Stabilization
<input type="checkbox"/>	Dewatering Basins and Filter Bags

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P.O. BOX 504 · 116 GRANDVIEW ROAD · CONWAY, NH 03818 · PHONE 603-496-5853 · FAX 603-447-2124

Check if NOT Functioning Properly	Pollution Prevention Practices
<input type="checkbox"/>	Construction Material Storage
<input type="checkbox"/>	Oil/Gas/Chemical Storage/Transport
<input type="checkbox"/>	Haz/Toxic Waste Storage/Transport
<input type="checkbox"/>	Construction/Sanitary Waste
<input type="checkbox"/>	Off-Site Vehicle Tracking
<input type="checkbox"/>	Dust Control

* In the event of a spill refer to Spill Response Procedures in the SWPCP and contact appropriate agencies.

Are stormwater discharges from the site present?	
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	If yes, describe type, location, and if discharge resulted in a sediment/pollution discharge: Stormwater discharge was observed from the two temporary sediment traps in the southern end of the site. Discharge from both sediment traps consisted of generally sediment free water (mostly clear in color).

Are sediment/pollution discharges from the site present?	
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If yes, describe type, location, and resulting corrective action:

Corrective Action Items:					
	Location of Item	Description of Item	SWPCP Update Necessary (Y/N)	Date of Observation	Date of Completion
1.	Far southwest temporary sediment trap	Side walls to the sediment trap are sluffing and seepage is occurring at the base. These observations indicate a risk of the basin catastrophically failing.	N	10/30/2017	
2.					
3.					
4.					
5.					

Maintenance Action Items:					
	Location of Item	Description of Item	SWPCP Update Necessary (Y/N)	Date of Observation	Date of Completion
1.	Northeast project area south of existing building	<p>Long slope length has eroded along channel erosive pattern into and overtopping the silt fence. Sediment release is contained within uplands directly adjacent to the silt fence barrier and has not migrated off-site.</p> <p>Consider stabilizing slopes with straw wattle check dams, surface stabilization, and repairing the silt fence. All accumulated and released sediments should be removed and any resulting disturbed soils should be stabilized.</p> <p>10/30/17 UPDATE: Accumulated silt in front of the silt fence has been cleaned out.</p>	N	10/26/2017	
2.	Northwest project area	<p>Ponding water within array footprint. Ensure proper drainage across access road into temporary sediment trap.</p> <p>10/30/17 UPDATE: Rip-rap protected swale has been cut across access raid providing relief into temporary sediment trap.</p>	Y	10/26/2017	10/30/2017

3.	Southcentral project area including and between the two temporary sediment traps	Discharge from western trap drains east across unprotected disturbed soils and the access road into the western trap. Drainage between the two traps should be stabilized (consider using modified rip-rap to stabilize drainage area). Repair silt fence at outlet zone.	Y	10/26/2017	
4.	Southwest project corner temporary sediment trap	Stabilize temporary sediment trap side-slopes.	N	10/26/2017	
5.	Project-Wide	All utility trenches should be closed prior to storm events, stabilized, or utilize an approved outlet protection measure.	N	10/26/2017	
6.	Soil Stockpile on southern project extents	Soil stockpiles should be backed with silt fencing or the surface compacted and stabilized.	N	10/26/2017	
7.	Project-Wide	Stabilize exposed soils project-wide with an approved surface stabilization method.	N	10/26/2017	

Stabilization of Exposed Soil:				
	Stabilization Area	Stabilization Method	Date(s) of Stabilization	Notes
1.	Side-slopes to access road	Loose hay mulch	Started on 8/23/2017	Straw wattles have been installed off-contour along solar PV array lines to break up slope lengths.
2.				
3.				
4.				
5.				

Summary:

At the time of the referenced inspection, the Site is:

In Compliance Out of Compliance

With the terms and conditions of the SWPCP and General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Constructing Activities.

Notes:

Refer to Corrective Action Items section for conditions resulting in the Site being Out of Compliance.

Refer to Maintenance Action Items section for interim measures to be implemented to minimize the potential for the Site becoming Out of Compliance.

Non-engineered corrective actions (as identified in the Guidelines) shall be implemented on site within 24 hours and incorporated into a revised SWPCP within three (3) calendar days of the date of inspection unless another schedule is specified in the Guidelines.

Engineered corrective actions (as identified in the Guidelines) shall be implemented on site within seven (7) days and incorporated into a revised SWPCP within ten (10) days of the date of inspection unless another schedule is specified in the Guidelines or is approved by DEEP.

CERTIFICATION STATEMENT

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that a false statement made in this document or its attachments may be punishable as a criminal offense, in accordance with Section 22a-6 of the General Statutes, pursuant to Section 53a-157b of the General Statutes, and in accordance with any other applicable statute."

Inspector:

SIGNATURE: _____

PRINTED NAME: Matthew Gustafson _____

TITLE: SWPCP Monitor _____

AFFILIATION: All-Points Technology _____

ADDRESS: 3 Saddlebrook Drive, Killingworth, CT 06419 _____

PHONE: (860) 617-0613 _____

DATE: 10/30/17 _____

Permittee or his/her authorized representative:

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

AFFILIATION: _____

ADDRESS: _____

PHONE: _____

DATE: _____

**A copy of this report shall be placed in the Monitoring Section of the Stormwater Pollution Prevention Plan maintained at a central location at the project site, if applicable.



Photo 1: View of construction entrance looking north.



Photo 2: View of access road cross drainage from ponding water (Maintenance Action Item #2).



Photo 3: View of sediment accumulation at silt fence from channel erosion looking east
(Maintenance Action Item #1).



Photo 4: View of channel erosion looking southeast (Maintenance Action Item #1).



Photo 5: View of unprotected open trenches (Maintenance Action Item #5).



Photo 6: View of southwest temporary sediment trap looking northeast.



Photo 7: View of far eastern sediment trap looking southeast.



Photo 8: View of southwest temporary sediment trap outfall looking south (Maintenance Action Item #3).



Photo 9: View of southwest sediment trap looking north (Corrective Action Item #1).



Photo 10: View of drainage between two southern temporary sediment traps looking east (Maintenance Action Item #3).

ATTACHMENT 6

ATTACHMENT 7

Steve Broyer

From: Brandon Pizzoferrato <brandon.pizzoferrato@ctecsolar.com>
Sent: Friday, November 17, 2017 1:37 PM
To: Steve Broyer
Subject: Fwd: Windham Solar Facility SWPCP Monitoring Reports #1 & 2
Attachments: APT SWPCP Report 10-26-17.pdf; APT SWPCP Report 10-30-17.pdf

Categories: Windham

See attached Storm Water compliance reports from All-Points Tech.

There are some requirements where the SWPCP needs updating and they are requiring "engineered corrective actions"

We will be performing upgrades on site next week.

Brandon Pizzoferrato

Commercial Project Manager

 Right-click or tap and hold here to download pictures. To help protect your privacy, Outlook prevented automatic download of this picture from the Internet.

1 Griffin Road South. / Ste. 200 / Bloomfield, CT 06002
Cell: [\(860\) 818-9118](tel:(860)818-9118) / Office: [\(860\) 580-7174](tel:(860)580-7174) / Fax: [\(860\) 580-7915](tel:(860)580-7915)

----- Forwarded message -----

From: Matthew Gustafson <mgustafson@allpointstech.com>
Date: Wed, Nov 15, 2017 at 6:28 PM
Subject: Windham Solar Facility SWPCP Monitoring Reports #1 & 2
To: Brandon Pizzoferrato <brandon.pizzoferrato@ctecsolar.com>
Cc: Deb Leonardo <DLeonardo@allpointstech.com>, Dean Gustafson <dgustafson@allpointstech.com>, Mike Libertine <mlibertine@allpointstech.com>, Ellen Gustafson <EGustafson@allpointstech.com>

Good evening,

Please find attached the SWPCP Monitoring Reports #1 and 2 from October 26th and October 30th. **Generally, the site has performed well with the recent large rain events.** However, several action items have been identified require immediate repair. Reference the report for specifics and additional maintenance items requiring attention.

1. Northeast corner of the project area along the slope has experienced some channel erosion resulting in overwhelming of the silt fence a small release of sediment within uplands. The slope should be stabilized, sediment removed form in front of the silt fence, and any released sediment either removed or stabilized.
2. The two far southern basins have experienced sidewall sluffing and seepage. These are indications that the side-walls have been improperly constructed and are at risk for catastrophic failure. The traps should be pumped down and side-walls should be reconstructed and stabilized.

Other notable items for repairs are ensuring stabilization at outfalls from sediment traps (specifically between the two southern sediment traps) and general repair and maintenance of perimeter controls.

I will follow up with the report from last week's inspection later this week or first thing next week. I plan to take care of the inspection for this week Friday.

Please feel free to contact me with any questions or concerns.

Thank you,

Matthew D. Gustafson

Forester, Registered Soil Scientist, CPESC



3 Saddlebrook Drive

Killingworth, CT 06419

860.617.0613 (mobile)

mgustafson@allpointstech.com

ATTACHMENT 8

Site Inspection Worksheet for E&S and Stormwater Control Measures

Project #: _____ Plans Dated: June 2017 Last Revised: _____

District: New London County, Connecticut Reviewer: Anthony Gerolomo

Location: 1 Williams Crossing Rd. Lebanon, CT 06249

Project Description : 18,000 Module Ground Mounted Solar Array

Contact Person for the Site:

Name: Steve Broyer

Company: EcosEnergy, LLC Phone: (612)326-1500

Site Visit Date: January, 14 2018

Weather Conditions: fair Storm Event Rainfall Amount: .53 inches

Photographs Taken?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Contacted Responsible Party?

Inspection Submitted to CT DEEP?

Inspection Submitted to Permittee?

Comments:

Temperature of the site visit was 20 degrees with a 9 mph N wind. Visibility was 8 miles.

After walking the site there were some areas of silt fencing along the perimeter that needed minor repairs that were addressed.

No sediment accumulation has left the site.

The retention ponds were all properly holding water and all implementation of controls on site are in stable conditions. Area for concern is North at entrance right along side of barn the road is very muddy and soft with a small area of collecting water measures have been taken to stabilize the road. And it is in good condition with a good runoff .

The site remains in stable condition.

ATTACHMENT 9

Site Inspection Worksheet for E&S and Stormwater Control Measures

Project #: _____ Plans Dated: June 2017 Last Revised: _____

District: New London County, Connecticut Reviewer: Anthony Gerolomo

Location: 1 Williams Crossing Rd. Lebanon, CT 06249

Project Description : 18,000 Module Ground Mounted Solar Array

Contact Person for the Site:

Name: Steve Broyer

Company: EcosEnergy, LLC Phone: (612)326-1500

Site Visit Date: January, 24 2018

Weather Conditions: fair Storm Event Rainfall Amount: 1.14 inches

Photographs Taken?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Contacted Responsible Party?

Inspection Submitted to CT DEEP?

Inspection Submitted to Permittee?

Comments:

After walking the site I've noticed some areas of silt fencing that need repairs northwest of the barn down near the back of the White House there was silt fence that was broken no contamination or debris left the sit in that area but there was some water and clean soil that flowed through. Repairs have been made to that problem and now is stable. All retention ponds are holding water and in good condition. There is also a lot of water flowing on the site to the southwest part of the site forming a large pool of water. The water is clean and there is a moat at that part of the site containing the water from leaving. Repairs have been made to any areas of concern the site remains stable.

Site Inspection Worksheet for E&S and Stormwater Control Measures

Project #: _____ Plans Dated: June 2017 Last Revised: _____

District: New London County, Connecticut Reviewer: Anthony Gerolomo

Location: 1 Williams Crossing Rd. Lebanon, CT 06249

Project Description : 18,000 Module Ground Mounted Solar Array

Contact Person for the Site:

Name: Steve Broyer

Company: EcosEnergy, LLC Phone: (612)326-1500

Site Visit Date: Monthly for February 2018. 02/05/18.

Weather Conditions: _____ Storm Event Rainfall Amount: _____

Photographs Taken?

Yes No

Contacted Responsible Party?

Yes No

Inspection Submitted to CT DEEP?

Yes No

Inspection Submitted to Permittee?

Yes No

Comments:

After walking the site completely it was in good condition small repairs need to be performed on some of the silt fencing along the perimeter and also some straw wattle but no major problems. There is no contaminated debris leaving the site. The entry road is fully functional for all forms of transport, so the repairs to that were done properly. All water is running off toward the railroad tracks southwest on the site, collecting in the retention dam that is in place. All retention ponds are holding water properly and all practices put in place on the site is functioning and the site remains stable.

Site Inspection Worksheet for E&S and Stormwater Control Measures

Project #: _____ Plans Dated: June 2017 Last Revised: _____

District: New London County, Connecticut Reviewer: Anthony Gerolomo

Location: 1 Williams Crossing Rd. Lebanon, CT 06249

Project Description : 18,000 Module Ground Mounted Solar Array

Contact Person for the Site:

Name: Steve Broyer

Company: EcosEnergy, LLC Phone: (612)326-1500

Site Visit Date: Monthly for March, 2018. Performed 03/20/18

Weather Conditions: fair Storm Event Rainfall Amount: _____

Photographs Taken?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Contacted Responsible Party?

Inspection Submitted to CT DEEP?

Inspection Submitted to Permittee?

Comments:

The site remains in stable condition, after a perimeter check the silt fencing remains in good shape, with only 3 small areas where the fencing has been damaged. This will be replaced and repaired immediately.

There was an area where the silt fence failed to the point where sediments did pass through the fence. This failure occurred at the southern border of the site.

The area will be stabilized immediately with new silt fence and straw wattles upland in areas of visible erosion pathways.

All measures in place including the retention ponds are in working condition and the site remains stable.

Site Inspection Worksheet for E&S and Stormwater Control Measures

Project #: _____ Plans Dated: June 2017 Last Revised: _____

District: New London County, Connecticut Reviewer: Anthony Gerolomo

Location: 1 Williams Crossing Rd. Lebanon, CT 06249

Project Description : 18,000 Module Ground Mounted Solar Array

Contact Person for the Site:

Name: Steve Broyer

Company: EcosEnergy, LLC Phone: (612)326-1500

Site Visit Date: April, 17 2018

Weather Conditions: fair Storm Event Rainfall Amount: 2.46 inches

Photographs Taken?

Yes No

Contacted Responsible Party?

Yes No

Inspection Submitted to CT DEEP?

Yes No

Inspection Submitted to Permittee?

Yes No

Comments:

Temperature of the site visit was 42 degrees with an 8 mph W wind.

The perimeter of the site has been walked and I've found some areas of silt fencing that need repairs. One area is northeast of barn and these areas are being addressed in the coming days.

There is also an area of fencing down near the house northwest of barn where some sediment has penetrated the failed silt fencing. Actions have been put in place to clean that out and repair fence.

All retention ponds are currently working properly and all erosion channels of any running water is flowing toward the railroad tracks and being caught by the basin in place at bottom of the hill. There will also be additional straw wattle dams put into place to direct the proper line for any flowing water from any erosion channels forming on the site.

The site is stable.

Pictures to follow:





ATTACHMENT 10



Southwest sediment
location past silt
fence



ATTACHMENT 11

Steve Broyer

From: Jason Nowosad <jnowosad@lebanonct.gov>
Sent: Tuesday, August 15, 2017 2:08 PM
To: Steve Broyer
Subject: RE: Lebanon Solar

Categories: Windham

There is a driveway permit form but your plans are sufficient for approval. The trees will need to be posted by the tree warden prior to removal but everyone is on board with them being removed.

The silt fence looks very good and the fencing is coming along well. I spoke with Bob Gagnon about his schedule and everything sounds very good.

Thanks,

Jason E. Nowosad
Building Official, Town of Lebanon
860.642.6028
JNowosad@lebanontownhall.org

From: Steve Broyer [mailto:steve.broyer@ecosrenewable.com]
Sent: Tuesday, August 15, 2017 12:16 PM
To: Jason Nowosad
Subject: RE: Lebanon Solar

Jason-

Is there a separate "Driveway Permit" that is not associated with the submission? There is a tree warden currently on site, and he brought that up to our contractor. We're going to clear some additional trees on site at Williams Crossing road and our driveway entrance, for the site triangle leaving the site is dangerous. Furthermore, we're planting all that additional screening along the north fence line of the solar facility, and aesthetically it will look better, than the overgrown trees and brush currently against the road edge. Let me know if there is more you need from us relating to a driveway permit.

I'll also be forwarding you a tracking number for the check once our accounting gets it cut, the check should be arriving on Thursday of this week, to your attention.

Thanks,
Steve

From: Jason Nowosad [mailto:jnowosad@lebanonct.gov]
Sent: Tuesday, August 15, 2017 10:32 AM
To: Steve Broyer <steve.broyer@ecosrenewable.com>
Subject: RE: Lebanon Solar

Sounds Great. I'll let you know when we have Fire Marshall approval.

Jason E. Nowosad
Building Official, Town of Lebanon
860.642.6028
JNowosad@lebanontownhall.org

From: Steve Broyer [<mailto:steve.broyer@ecosrenewable.com>]
Sent: Monday, August 14, 2017 5:26 PM
To: Jason Nowosad
Cc: Betsy Petrie; Phil Chester
Subject: RE: Lebanon Solar

Jason-

I'll get the check cut ASAP, and issued to the town. You'll notice that Bob has begun some sitework. I'm hoping to have the permit fee to the town by the end of the week.

From: Jason Nowosad [<mailto:jnowosad@lebanonct.gov>]
Sent: Monday, August 14, 2017 2:37 PM
To: Steve Broyer <steve.broyer@ecosrenewable.com>
Cc: Betsy Petrie <bpetrie@lebanonct.gov>; Phil Chester <pchester@lebanonct.gov>
Subject: RE: Lebanon Solar

Steve,

I have not completed review of your permit documents; but everything reviewed to date looks sufficient and code compliant. We are also waiting on Fire Marshall approval.

The permit fee, based on your costs below, is calculated as \$81,349.80. We will need an affidavit of construction costs at the time a Certificate of Compliance is issued.

Bob Gagnon has asked for the silt fence inspection and I am headed there this afternoon. If you are putting up the perimeter fence next I could approve that portion of construction prior to issuing a full permit as long as the permit fee is submitted. I will relay to Bob that I'd like a few inspections of the fence install.

I look forward to working with you through this project,

Jason E. Nowosad
Building Official, Town of Lebanon
860.642.6028
JNowosad@lebanontownhall.org

From: Steve Broyer
Sent: Wednesday, August 09, 2017 1:25 PM
To: 'Jason Nowosad' <jnowosad@lebanonct.gov>
Cc: 'Phil Chester' <pchester@lebanonct.gov>
Subject: RE: Lebanon Solar

Jason-

I know we played some phone tag last week when I was on a short vacation at the end of last week, and I realized you are looking for the total project cost. Total modules for the project are 18,000 and our final module distribution is 65% (11,700) 340 watt modules and 35% (6300 modules) 345 watt modules, thus finalizing a total DC wattage for the project of 6151500 watts.

The total project cost given our current financial model which includes all materials associated labor (the civil sitework is also an element of this cost) is \$1.10 per watt. Therefore the total project valuation for the permit has been calculated at \$6,766,650.00.

We had our siting board meeting site walk yesterday, and they were receptive of all the changes. I know that fencing is going in today (also an element of the \$6.7MM calculation), and were pushing along DEEP on issuing the Stormwater permit, for the project. Please let me know the status of the review of the plans, calculated permit fee, and anything else I need to do to help get the permit issued.

If you have any additional questions, feel free to contact me.

Thanks,
Steve

From: Steve Broyer
Sent: Thursday, July 27, 2017 9:48 AM
To: Jason Nowosad <jnowosad@lebanonct.gov>
Cc: 'Phil Chester' <pchester@lebanonct.gov>
Subject: RE: Lebanon Solar

Jason-

Attached is the permit form, and the material cut sheets. I've also clouded the perimeter fence on the overall site plan. Let me know if you want this information printed and mailed as well. Let me know if you have any other questions.

Thanks,
Steve

Steve Broyer
Direct: (612) 326-1500
Mobile: (612) 770-4645
steve.broyer@ecosrenewable.com

Ecos Energy | www.ecosrenewable.com
222 S 9th St, Suite 1600
Minneapolis, MN 55402

ATTACHMENT 12



Bureau of Materials Management and Compliance Assurance

Notice of Permit Authorization

October, 17 2017

Steve Broyer
WINDHAM SOLAR LLC
222 S 9th St
Minneapolis, MN 55402-3382

Subject: General Permit Registration for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities
Application NO.: 201705717

Steve Broyer:

The Department of Energy and Environmental Protection, Water Permitting and Enforcement Division of the Bureau of Materials Management and Compliance Assurance, has completed the review of the Windham Solar (located at 1 Williams Crossing Rd, Lebanon) registration for the **General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities, effective 10/1/13 (general permit)**. The project is compliant with the requirements of the general permit and the discharge(s) associated with this project is (are) authorized to commence as of the date of this letter. Permit No. GSN003212 has been assigned to authorize the stormwater discharge(s) from this project.

Questions can be emailed to deep.stormwater@ct.gov.

ATTACHMENT 13

CLA Engineers, Inc.

Civil • Structural • Survey

317 MAIN STREET

• NORWICH, CT 06360

• (860) 886-1966

• (860) 886-9165 FAX

June 4, 2018

Sharon Yurasevecz
Department of Energy and Environmental Protection
Bureau of Materials Management & Compliance Assurance
Water Permitting and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

Re: Windham Solar
Lebanon and Franklin CT
CLA -6126

Dear Ms. Yurasevecz:

This letter is to serve as an update on the current status of the sedimentation and erosion controls at the referenced site, and accompanies the two latest (attached) inspection reports. CLA inspected the site last week on May 30th, 2018 as the regular, weekly inspection and again today in response to the 1.14 inches of rain that fell on Saturday June 2, 2018.

Over the course of the past three weeks, CLA has been inspecting the site and advising on site stabilization. During this time substantial improvements have been made including site wide hydro seeding and straw mulching mentioned in CLA's May 17th letter. In addition, Colchester Construction has installed a stable crushed stone access drive and a woodchip/hay bale barrier along the chain link fence on the down slope (southerly) side of the site. Over the same period of time, natural re-vegetation has been vigorous. Photographs are attached to this letter to document these conditions.

Photograph 1 shows the results of the site wide hydro seeding and mulch. Much of the area seeded has a good growth of grass as well as volunteer weeds.

Photograph 2 shows the hay bale woodchip barrier at the down slope edge of the site. This barrier has stabilized this portion of the site and CLA notes that to date there is no evidence of sediment making it past this barrier.

Photographs 3 and 4 show the volunteer vegetation that has propagated across much of the site and has stabilized the soil.

Based on the current site conditions and the planned ongoing maintenance of the measures that are in place, CLA believes that item No. 3- Site Stabilization requirement on the draft Consent Order has been accomplished and the site may be considered temporarily stabilized.

Please contact me if you have any questions.

Sincerely,

R C Russo

Robert C. Russo, C.S.S.



Photograph 1 – grass growth in hydro seeded area



Photograph 2 – Hay bale/woodchip barrier along southern perimeter



Photograph 3 – combination of hydro seed and volunteer vegetation at the down slope edge of the site



Photograph 4 – combination of straw mulch and volunteer vegetation between solar panels

ATTACHMENT 14

STATE OF CONNECTICUT

v.

FUSION SOLAR CENTER, L.L.C.

CONSENT ORDER NO. 2018002DEEP

Date Issued: April 18, 2018

A. The Commissioner of Energy and Environmental Protection (“the Commissioner”) finds:

1. Respondent Fusion Solar Center, LLC (“Respondent” or “Fusion”) is a Delaware corporation with a business address of 1166 Avenue of the Americas, 9th floor, New York, NY 10036.
2. The Respondent is currently engaged in the construction of a ground-mounted solar photovoltaic electric generating facility (“Solar Array”) located at 111 Potash Hill Road, in Sprague Connecticut (“the Site”). The Site is approximately 140 acres.

STORMWATER VIOLATIONS

3. Construction of this Solar Array has or will disturb greater than one acre at the Site and as such, requires, among other permits, a stormwater discharge permit from the Commissioner.
4. On July 18, 2016, Fusion submitted to the Department of Energy and Environmental Protection (“DEEP”) a registration under the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (“the General Permit”). On November 15, 2016, Fusion’s registration was approved by the Commissioner, as registration No. GSN003054. The approval included a stormwater pollution control plan (“SWPCP”) that was subsequently amended on January 3, 2017.
5. Since the approval of registration No. GSN003054 the Respondent has violated the requirements of the General Permit and the SWPCP resulting in unpermitted discharges from the Site. DEEP is aware of the violations described below. Some are recurrent.
6. Section 5(b)(2)(A) of the General Permit and the Site’s SWPCP requires that all temporary sediment traps and basins are required to be installed prior to the start of grading activities. This prevents run-off of sediments during rain events. On March 7, 2017, staff from DEEP’s Water Permitting and Enforcement Division inspected the Site and found that Fusion had conducted large-scale grading activities without first installing the required sediment traps and basins or maintaining in compliance with the General Permit whatever sediment traps and basins that were installed. In addition, DEEP’s staff found that Fusion failed to conduct and maintain records of a stormwater plan implementation inspections in accordance with Section 5(b)(4)(A) of the General Permit.

7. Section 5(b)(D)(4)(A) of the General Permit requires that registrants like Fusion hire an independent third party to conduct a plan implementation inspection of the activities regulated by the General Permit. Any non-compliance found is reported to registrants, like Fusion, for correction. Fusion hired the engineering firm of Fitzgerald and Halliday to perform these inspections. Fitzgerald and Halliday inspected the Site on April 4, 2017 and April 12, 2017. In reports of these inspections Fitzgerald and Halliday found violations similar to those observed by DEEP on March 7, 2017 including, but not limited to, its conclusion that temporary sediment traps and basins at the Site were “non-conforming.”
8. On April 25, 2017, based upon the results of its March 7, 2017 inspection, DEEP issued Notice of Violation No. WRSW 17 004 (“NOV”) to Fusion.
9. On May 5, 2017, a temporary sediment basin at the Site, SB-3, failed. This resulted in sediment discharges to the waters of the state, adjacent properties, and roadways as reported by Respondent’s on-site contractor, Depcom Power, to DEEP.
10. In a May 11, 2017 response to DEEP’s NOV Fusion submitted a Compliance Statement. In this statement Fusion stated that all temporary sediment basins and traps had been installed as of March 20, 2017, although this was after grading activities at the Site had occurred. Also, in April 2017, Fitzgerald and Halliday found that sediments traps and basins did not comply with the requirements of the General Permit.
11. On May 15, 2017, DEEP’s staff inspected the Site again and found continuing violations of the General Permit and the Site’s SWPCP. Although grading activity was taking place as early as February 2017, and all the temporary sediment traps and basins should have been completed prior to such grading activities, the temporary sediment basins and traps were still not completed. Moreover, despite Fusion’s NOV response, the temporary sediment traps and basins that had been built discharged stormwater to erodible soils and did not comply with the SWPCP’s specifications. Additionally, DEEP’s staff found that the Site was graded without grading stakes and stabilization of finished slopes did not comply with the General Permit and the Site’s SWPCP.
12. On June 9, 2017, Fitzgerald and Halliday inspected the Site and again found continuing violations of the General Permit and the Site’s SWPCP including, but not limited to, failure to meet requirements related to Site stabilization.
13. On June 15, 2017, an engineering firm working for the Respondent, Kleinfelder, sent to the Respondent’s on-site contractor, Depcom Power and Fusion the results of an inspection that Kleinfelder had conducted on June 8, 2017. Kleinfelder’s report noted violations of the General Permit and the Site’s SWPCP including, but not limited to, inadequate stabilization, lack of some of the required drainage ditches and temporary sediment traps and basins were not built to specifications. The report recommended corrective actions to be taken.

14. On July 18, 2017, DEEP staff inspected the Site after receiving a complaint alleging a discharge of sediment to neighboring properties. At the inspection DEEP staff confirmed that there had been discharges of sediment via stormwater from the Site. These releases discharged pollutants to wetlands and watercourses in violation of Conn. Gen. Stat. §§ 22a-427 and 22a-430. Notwithstanding this discharge of sediments, inspection reports prepared and signed by the Respondent's on-site contractor Depcom Power for the day in question contained no mention of the discharge of these sediments and stated that the Site was in compliance. DEEP staff also observed that the Site was still lacking stabilization; specifically, there was no vegetative cover.
15. On October 27, 2017, DEEP staff inspected the Site after receiving a complaint alleging a discharge of sediment to neighboring properties. DEEP staff found violations of the General Permit and the SWPCP, including that the Site still lacked stabilization, failure of sediment traps and basins, and improper installation and maintenance of erosion and sedimentation control measures (silt fences and hay bales). These violations resulted in discharges of stormwater off the Site and adversely impacted waters of the state in violation of Conn. Gen. Stat. §§ 22a-427 and 22a-430s.
16. As a result of the violations noted in paragraphs 6 to 15 above, eroded sediments from the Site entered adjacent lands, including inland wetlands and watercourses.

DAM SAFETY VIOLATIONS

17. In its registration under the General Permit, Fusion proposed using four sediment basins. The Respondent was informed by DEEP that two proposed sediment basins, SB-1 and SB 2, were dams under Conn. Gen. Stat. § 22a-402 and as such would require a dam safety permit to construct under Conn. Gen. Stat. § 22a-403(a).
19. After further communications with DEEP, to avoid the need for a dam permit, the Respondent replaced sediment basins SB-1 and SB-2 with temporary sediment traps and permanent dry swales.
20. The Respondent subsequently constructed a sediment basin (SB-3) that DEEP determined was a dam constructed without the required dam safety permit.

ENFORCEMENT SUMMARY

21. As a result of numerous and continuing violations at the Site, on November 9, 2017, the Commissioner issued Cease and Desist Order No. 2017004DEEP ("the Cease and Desist Order") to Fusion and DESRI prohibiting any continued construction at the Site, including construction of the Solar Array and requiring that a number of corrective measures be taken before construction could re-commence.
22. In response to, and as required by the Cease and Desist Order, the Respondent has taken a number of actions at the Site including:

- a. Applying tackifier; using crushed stone, straw matting, and erosion control blankets; and spraying hay as temporary measures to prevent erosion of sediments from the Site;
- b. Hiring consultants to implement certain actions required by the Cease and Desist Order;
- c. Surveying the Site to a T-2 survey standard;
- d. Developing Erosion and Sedimentation Control plans and a schedule for implementation of such plans, which were submitted to the Department, approved by the Commissioner and getting close to complete implementation; and
- e. Developing a report from a soil scientist regarding remediation of areas impacted by discharges of sediment from the Site. This remediation includes areas on and off-Site.

23. By virtue of the above, the Commissioner finds that the Respondent has violated and is continuing to violate the terms and conditions of the General Permit and registration No. GSN003054 and has violated and is continuing to violate Connecticut General Statutes §§ 22a-403, 22a-427 and 22a-430.

24. By agreeing to the issuance of this Consent Order, the Respondent makes no admission of fact or law with respect to the matters addressed herein, other than the facts asserted in paragraphs A.1 through A.4, inclusive.

B. Pursuant to Conn. Gen. Stat. §§ 22a-6, 22a-7, 22a-401, 22a-406, 22a-424, 22a-430, and 22a-432 the Commissioner orders the Respondent as follows:

1. Consultants.
 - a. The Respondent has retained the following consultants or firms to prepare documents and implement or oversee actions required by this Order in the subject area identified next to the consultant. Each of these consultants and firms has been approved by the Commissioner.

From Kleinfelder:
Al Bisacky, P.E. – Engineering Design and Implementation
Steve Wendland, P.E. - Engineering Design and Implementation
Kurt Violette – Engineering Design and Implementation

From VHB:
Jeffrey Peterson – Soil Scientist, Remediation and Construction Monitoring
Stephen J. O'Neill – Construction Monitoring
Steven J. Kochis – Construction Monitoring
Kurt Goldbach – Construction monitoring
John McGinn – Certified professional geologist approved for SWPCP inspection
Paul Vitaliano – P.E., for stormwater design

Fuss and O'Neill – Survey work

Steve Wendland – Dam Removal Consultant

- b. With the exception of Mr. Wendland, the Respondent shall continue to retain the consultants identified in paragraph B.1.a of this Order or other qualified consultants acceptable to the Commissioner, to prepare documents and implement or oversee actions required by this Order, until full compliance with this Order has been achieved. No later than three days after retaining any consultant other than one identified in paragraph B.1.a of this Order, the Respondent shall submit to the Commissioner the identity of such other consultant for the Commissioner's review and written approval. Unless otherwise specified in this Order, any consultant(s) retained by the Respondent shall be a Professional Engineer acceptable to the Commissioner with a current valid license to practice in Connecticut. If requested by the Commissioner, the Respondent shall submit to the Commissioner a description of a consultant's education, experience and training which is relevant to the work required by this Order within ten days after a request for such a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.
- c. The Soil Scientist and Construction Monitoring consultants identified in paragraph B.1.a of this Order, or other consultants approved by the Commissioner under paragraph B.1.b of this Order, shall be present at the Site during all phases of construction of the short and long term control measures required under paragraphs B.2 and B.3 of this Order.

2. Short Term Control Measures

- a. Site Stabilization
 - i. In accordance with the SWPCP and in response to the Cease and Desist Order, the Respondent has undertaken site stabilization measures including, but not limited to, applying tackifier; using crushed stone, straw matting, or erosion control blankets; and spraying hay at the Site to prevent erosion, including, but not limited to, the migration of sediments, at or from the Site. The Respondent shall maintain these site stabilization measures until permanent site stabilization is achieved through a vegetative cover or some other means approved in writing by the Commissioner.
 - ii. In the event that during any site activities the Respondent disturbs the tackifier or other measures used to establish stabilization of the Site, the Respondent shall reapply tackifier, or take whatever other measures are necessary to reestablish site stabilization, no later than at the end of each working day, to ensure that the Site remains stabilized and to prevent erosion, including, but not limited to, the migration of sediments at or from the entire Site.

- iii. Wherever the Respondent has applied tackifier as a site stabilization measure, if in the opinion of the Commissioner the tackifier has failed to stabilize and prevent erosion, including, but not limited to the migration of sediments, at or from the entire Site, the Respondent shall either reapply the tackifier or install Connecticut State Department of Transportation approved erosion control matting (depending on weather conditions and the growth cycle) in all areas where, in the Commissioner's opinion, stabilization has failed to occur.
- b. Erosion and Sedimentation Control: The Respondent shall implement the Erosion and Sediment Control Site Plans for Fusion Solar Center, prepared and stamped by Kleinfelder, dated January 2, 2018, 6 sheets (the "E & SC Plans") in accordance with the schedule for implementing these plans entitled "Fusion Solar – E and S control Modification schedule" dated January 3, 2018, prepared by DEPCOM. These documents were based upon the topographic survey completed for the Site by Fuss and O'Neill, dated December 18, 2017 and are referenced in the Commissioner's approval of such plans and schedule by letter dated January 5, 2018. (The Commissioner's approval letter is attached as Appendix A to this Order). The schedule for implementing the E & SC Plans was revised and approved by the Commissioner; as revised, the completion date was February 28, 2018.
- c. No later than April 20, 2018, after completing implementation of the E & SC Plans, the Respondent shall submit to the Commissioner:
 - i. As-built drawings, signed and sealed by a professional engineer with a current valid license to practice in Connecticut, of any new diversion channels, sediment traps and basins at the Site and any modifications or repairs to any existing sediment traps and basins at the Site; and
 - ii. A photographic record of any construction activity sufficient to demonstrate to the Commissioner that the E & SC Plans have been implemented in accordance with the plans approved by the Commissioner.
- d. After receipt of the materials required by paragraph B.2.c of this Order, the Commissioner shall determine, in writing, whether the Respondent's implementation of the E & SC Plans is satisfactory to the Commissioner. If implementation of the E & SC Plans is deemed unsatisfactory by the Commissioner, additional work shall be performed by the Respondent in accordance with a supplemental plan and schedule approved by the Commissioner. Unless otherwise specified in writing by the Commissioner, the supplemental plan and schedule shall be submitted by the Respondent for the Commissioner's review and written approval on or before thirty (30) days after notice from the Commissioner that additional work is necessary.

3. Long Term Control Measures:

- a. Within sixty (60) days of the issuance of this Order the Respondent shall submit for the Commissioner's review and approval a plan for Long Term Control Measures at the Site to be taken after construction of the Solar Array at the Site is complete. The plan shall include, but need not be limited to, the following:
 - i. A description of the post-construction stormwater controls to be implemented, monitored and maintained at the entire Site. This shall include the design criteria, stormwater calculations, and drainage patterns used in determining such controls that are based upon the topographic survey for the Site completed by Fuss and O'Neill, dated December 18, 2017, or any updates to that survey approved in writing by the Commissioner. Such controls shall also include a description of how permanent stabilization of the Site will be achieved, monitored and maintained once construction of the Solar Array is complete. This includes, but is not limited to, the area under the Solar Array. The proposal shall also include the application or reapplication of tackifier, or some other stabilization measure to be taken, where needed, at the end of each day, including, but not limited to during construction of any post-construction stormwater control measures, to ensure that the Site remains stabilized and to prevent erosion, including, but not limited to, the migration of sediments, at or from the Site;
 - ii. A proposed inspection and construction log, including a photograph record of milestones events, so that the Respondent can provide a photographic record demonstrating to the Commissioner's satisfaction that the post-construction stormwater controls, including, but not limited to permanent Site stabilization measures have been implemented in accordance with the Long-Term Measures plan approved by the Commissioner;
 - iii. A proposal for monitoring and maintaining the effectiveness of post-construction stormwater controls at the Site. At a minimum, such proposal shall include, for two years, inspections to determine whether the post-control stormwater controls, including, but not limited to, the permanent stabilization measures at the Site, are preventing erosion and the migration of sediments at or from the Site and monitoring at each discharge point at the Site for turbidity; and
 - iv. A schedule for installing, monitoring and maintaining the effectiveness of such post-construction stormwater controls.
- b. i. The Respondent shall implement the plan regarding Long-Term Control Measures as approved by the Commissioner. No later than twenty-one (21) days after completing installation of the post-construction stormwater controls, (exclusive of a permanent vegetative cover or other permanent stabilization measure or the maintenance and monitoring required under

section B.4 below), in accordance with the Long Term Control Measures plan approved by the Commissioner pursuant to paragraph B.3.a of this Order, the Respondent shall provide the Commissioner a written notification of such completion and submit the following to the Commissioner:

- I. As-built drawings of all post-construction stormwater controls at the Site, signed and sealed by a professional engineer with a current valid license to practice in Connecticut; and
- II. A photographic record sufficient to demonstrate to the Commissioner that such post-construction stormwater controls have been constructed in accordance with the Long Term Control Measures plan approved by the Commissioner pursuant to paragraph B.3.a of this Order.

- ii. After receipt of the materials required by paragraph B.3.b.i of this Order, the Commissioner shall determine, in writing, whether the Respondent's construction of the Long Term Control Measures post-construction stormwater controls is satisfactory to the Commissioner. If construction of the Long Term Control post-construction stormwater controls is deemed unsatisfactory, additional work shall be performed by the Respondent in accordance with a supplemental plan and schedule approved by the Commissioner. Unless otherwise specified in writing by the Commissioner, the supplemental plan and schedule shall be submitted by the Respondent for the Commissioner's review and approval on or before thirty (30) days after notice from the Commissioner that additional work is necessary.
- iii. No later than twenty-one (21) days after the establishment of a permanent vegetative cover or other permanent stabilization necessary for stabilization of the entire Site, the Respondent shall provide the Commissioner a written notification of such completion and submit to the Commissioner a photographic record sufficient to demonstrate to the Commissioner that such permanent vegetative cover or other permanent stabilization measure has been established at the Site in accordance with the Long Term Control Measures plan approved by the Commissioner.
- iv. After receipt of the materials required by section B.3.b.iii of this Order, the Commissioner shall determine, in writing, whether a permanent vegetative cover, or other permanent stabilization necessary for stabilization of the entire Site, has been established to the satisfaction of the Commissioner. If the Commissioner determines that permanent Site stabilization had not been established, the Respondent shall perform additional work in accordance with a supplemental plan and schedule approved by the Commissioner. Unless otherwise specified in writing by the Commissioner, the supplemental plan and schedule shall be submitted by the Respondent for the Commissioner's review and approval on or before thirty (30) days after notice from the Commissioner that additional work is necessary.

4. Monitoring. After the Commissioner determines, pursuant to paragraph B.3.c, that the post-construction stormwater controls, including, but not limited to, the permanent stabilization measures at the Site, have been satisfactorily implemented, to determine the effectiveness of such controls, the Respondent shall implement the monitoring in the Long Term Control Measures plan approved by the Commissioner pursuant to paragraph B.3.a of this Order. Such monitoring shall be conducted for not less than two years.
5. Compliance with the General Permit. Unless otherwise specified in writing by the Commissioner, the Respondent shall continue to comply with the General Permit and shall ensure that all activities at the Site remain in compliance with the General Permit.
6. Remediation:
 - a. The Respondent shall implement the remedial actions in the Soil Scientist Report from VHB dated January 8, 2018, as approved by the Commissioner on March 28, 2018. The Respondent shall implement this plan as soon as practicable, but no later than August 1, 2018. Within fifteen (15) days after completing such actions, the Respondent shall notify the Commissioner in writing that the actions required by the approved remedial plan have been completed.
 - b. If, in the Commissioner's judgment, the Respondent fails to reasonably complete the approved remedial actions or fails to reasonably abate erosion and sedimentation impacts from the Site, additional assessment and remediation shall be performed by the Respondent in accordance with a supplemental plan and schedule proposed by Respondent and approved in writing by the Commissioner. Unless otherwise specified in writing by the Commissioner, the Respondent shall submit such supplemental plan and schedule for the Commissioner's review and written approval on or before thirty (30) days after notice from the Commissioner that such plan is required.
 - c. The Respondent shall use best efforts to obtain access to property not owned or controlled by the Respondent to comply with paragraph B.6 of this Order. If the Commissioner determines that the Respondent cannot obtain access to property not owned or controlled by the Respondent to comply with the requirements of paragraph B.6 of this Order, the Commissioner shall notify the Respondent in writing and the requirements of this Order shall not apply to any such property.
7. Financial Assurance:
 - a. The Respondent has procured a letter of credit in the amount of \$500,000.00. See Appendix A, attached to this Consent Order. Except for the reduction in amount specified in paragraph B.7.b of this Order, the Respondent shall maintain this letter of credit in effect until the Commissioner notifies the Respondent, in writing, of the Commissioner's determination that the monitoring required under paragraph B.4 of this Order has been completed.
 - b. While not required, the amount of the letter of credit in Appendix A may be reduced in accordance with the following schedule:

- i. Upon payment of the civil penalty to DEEP, payment for the supplemental environmental project, and notification from the Commissioner that the Short Term Control Measures have been satisfactorily implemented in accordance with paragraph B.2.d. of this Order, the amount on the letter of credit may be reduced to \$250,000.
 - ii. Upon notification from the Commissioner that monitoring has been completed in accordance with paragraph B.4. of this Order, the letter of credit may be terminated.
- c. If the amount of the letter of credit in Appendix A is to be reduced in accordance with the preceding paragraph, the Respondent shall first submit a new letter of credit identical in all respects to the letter of credit in Appendix A, except for the reduced amount. Once the new letter of credit is received and the Commissioner determines that it is satisfactory, the Commissioner shall follow any reasonable instructions from the issuing bank regarding the termination or return of the previous letter of credit being cancelled.

8. Progress reports:

- a. Except as provided in paragraph b of this section or unless another schedule is approved by the Commissioner in writing, on or before the last day of each month following issuance of this Order and continuing until all actions required by this Order have been completed as approved and to the satisfaction of the Commissioner, the Respondent shall submit a progress report to the Commissioner that describes the actions which Respondent has taken during the month of the report to comply with this Order.
- b. During the time that the Respondent is constructing the post-construction stormwater controls, until the Respondent has completed implementation of such controls, the Respondent shall submit weekly progress reports. This weekly report shall identify the work performed during the week preceding the report, including but not limited to, details regarding how construction was performed and the work expected to be completed during the week following the report. Unless specifically requested by the Commissioner, in writing, such weekly reports do not need to be submitted when the post-construction stormwater controls are being monitored or maintained.
- c. Unless otherwise specified by the Commissioner in writing, progress reports under this section may be sent electronically to Neal.Willimas@ct.gov.

9. Full compliance. The Respondent shall not be considered in full compliance with this Order until the Respondent's activities at the Site are in compliance with the General Permit, and all other actions required by this Order have been completed as approved and to the Commissioner's satisfaction.

10. Civil penalty. The Respondent shall pay a penalty of \$250,000.00 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs 3-20 of this Order. This penalty is payable as follows: On or before thirty (30)

days after issuance of this Order the Respondent shall pay \$125,000.00 in accordance with paragraph B.11 of this Order, and Respondent shall pay \$125,000.00 as a Supplemental Environmental Project in accordance with paragraph B.12 of this Order.

11. **Payment of Penalties.** On or before thirty (30) days after the issuance of this Order, the Respondent shall pay \$125,000.00 by mail or personally delivery to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection" The check shall state on its face, "Bureau of Materials Management, Water Permitting and Enforcement Division, civil penalty, Consent Order No. 2018002DEEP
12. **Supplemental Environmental Project.**
 - a. Respondent shall undertake the following supplemental environmental project ("SEP") requiring an expenditure of at least \$125,000.00. No later than May 31, 2018, the Respondent shall make payment of \$125,000.00 to the Town of Sprague to be applied solely towards the purchase of certain parcels of land noted on Schedule A of this Order (collectively known as "the Bombero Properties") and for no other purpose. The Bombero Properties total approximately 102.5 acres, are located in Village of Baltic on the west side of the Shetucket River off of Route 97, and will be used for open space. No later than June 7, 2018 or seven days after the Town closes on the purchase of the Bombero Properties, whichever comes first, the Respondent shall obtain a letter signed by the First Selectman from the Town of Sprague, indicating that the Town has received \$125,000.00 from the Respondent and has used such funds for the purchase of the Bombero Properties and for no other purpose. The Respondent shall not request that the Commissioner approve the use of SEP funds for any purpose other than that identified in this paragraph.
 - b. If the Respondent fails to perform the SEP in accordance with paragraph B.12.a of this Order, regardless of the reason, including that the Town of Sprague did not purchase the Bombero Properties, no later than seven days after such non-performance, the Respondent shall notify the Commissioner in writing of such non-performance and shall remit a payment of \$125,000.00 to the Department in accordance with the payment of penalty procedures in paragraph B.11 of this Order.
 - c. If and when the Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, the Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
 - d. The Respondent shall not claim or represent that any SEP payment made pursuant to this Order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and the Respondent shall not seek or obtain any

other tax benefit such as a tax credit as a result of the payment under paragraph b. 12 of this Order.

13. Approvals. The Respondent shall use best efforts to submit to the Commissioner all documents required by this Order in a complete and approvable form. If the Commissioner notifies the Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within thirty (30) days of the Commissioner's notice of deficiencies. In approving any document or other action under this Order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this Order. Nothing in this paragraph shall excuse noncompliance or delay.
14. Definitions. As used in this Order, "Commissioner" means the Commissioner or a representative of the Commissioner.
15. Dates. The date of "issuance" of this Order is the date the Order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this Order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this Order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or personally delivered, whichever is earlier. Except as otherwise specified in this Order, the word "day" as used in this Order means calendar day. Any document or action which is required by this Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or a Connecticut or federal holiday.
16. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Order shall be signed by a responsible corporate officer of the Respondent or a duly authorized representative of such officer, as those terms are defined in section 22a-430-3(b)(2) of the Regulations of Connecticut State Agencies and by the individual(s) responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information is as a criminal offense under Conn. Gen. Stat. § 53a-157b and any other applicable law."
17. Noncompliance. Failure to comply with this Order may subject the Respondent to an injunction and penalties.
18. False statements. Any false statement in any information submitted pursuant to this Order

may be punishable as a criminal offense under Conn. Gen. Stat. § 53a-157b or any other applicable law.

19. Notice of and effect of transfer; liability of Respondent and others. Until the Respondent has fully complied with this Order, the Respondent shall notify the Commissioner in writing no later than fifteen days after the Respondent or its immediate parent transfers all or any portion of the facility, the operations, the Site or the business which is the subject of this Order or after obtaining a new mailing or location address. The Respondent's obligations under this Order shall not be affected by the passage of title to any property to any other person or municipality or by the transfer of the Respondent's interest in the Site, or the transfer of ownership or operation of the Solar Array. In addition, any such transfer shall contain a condition requiring that the Respondent retain the ability to comply with the requirements of this Order.
20. Commissioner's powers. Except as provided herein in this Order, with respect to payment of penalties, nothing in this Order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present or future violations of law. If at any time the Commissioner determines that the actions taken by the Respondent pursuant to this Order have not successfully corrected all violations, fully characterized the extent and degree of pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require the Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
21. Respondent's obligations under law. Nothing in this Order shall relieve the Respondent of other obligations under applicable federal, state and local law.
22. No assurance by Commissioner. No provision of this Order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by the Respondent pursuant to this Order will result in compliance or prevent or abate pollution.
23. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the Site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Order.
24. No effect on rights of other persons. This Order neither creates nor affects any rights of persons who or municipalities which are not parties to this Order.
25. Notice to Commissioner of changes. Within fifteen (15) days of the date the Respondent become aware of a change in any information submitted to the Commissioner under this Order, or that any such information was inaccurate or misleading or that any relevant information was omitted, the Respondent shall submit the correct or omitted information to the Commissioner.

26. Notification of noncompliance. In the event that the Respondent become aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this Order or of any document required hereunder, the Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, the Respondent shall submit in writing the date, time and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the Commissioner's review and written approval, dates by which compliance will be achieved, and the Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
27. Submission of documents. Any document submitted to the Commissioner under this Order shall, unless otherwise specified in writing by the Commissioner, be directed to:

Neal M. Williams
Department of Energy and Environmental Protection
Bureau of Materials Management & Compliance Assurance
Water Permitting & Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

25. Relationship to Cease and Desist Order No. 2017004DEEP. This Consent Order supersedes Cease and Desist Order No. 2017004DEEP issued to the Respondent and to DESRI on November 9, 2017. As a result, upon the Effective Date of this Order, the Cease and Desist Order No. 2017004DEEP shall no longer be considered in effect as if such Order was fully withdrawn.

The Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order.

FUSION SOLAR CENTER, L.L.C.

By:



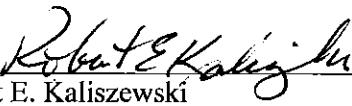
Name: John Dalby
Title: Authorized Signatory



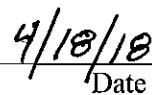
Date

Issued as an Order of the Commissioner of Energy and Environmental Protection.

DEPARTMENT OF ENERGY AND
ENVIRONMENTAL PROTECTION



Robert E. Kaliszewski
Deputy Commissioner



Date

CONSENT ORDER NO. 2018002DEEP
TOWN OF SRAUGE LAND RECORDS

SCHEDULE A

Being all property described in the following deeds recorded in the Town of Sprague land records maintained by the Town Clerk of the Town of Sprague as such:

Volume 85, Page 51
Volume 89, Page 558
Volume 65, Page 702
Volume 70, Page 251
Volume 67, Page 531

the legal descriptions in which are attached hereto.

PARCEL A
"SCHEDULE A"

This is to describe a parcel of land located on the easterly side of Thomas Avenue in the Town of Sprague, County of New London, State of Connecticut, being more particularly depicted as Parcel A on a sketch entitled, "SKETCH DEPICTING PARCELS TO BE CONVEYED, PREPARED FOR THOMAS BOMBERO, THOMAS AVENUE AND PAUTIPAUG HILL ROAD, SPRAGUE, CONNECTICUT, SCALE: 1"=60', DATE: MAY 2008," Prepared by Camp Land Surveyors, LLC, Susan F. Camp, L.S., 148 Route 2, Preston, Connecticut 06365 (860)889-1999.

Beginning at a point on the easterly right of way line of Thomas Avenue at the northwest corner of the herein described parcel and the southwest corner of lands now or formerly Vermont Lumber Company.

Thence along said Vermont Lumber Company lands, N 70°-01'-55" E, 200.00' to a point at the northeast corner of the herein described parcel, the southeast corner of said Vermont Lumber Company, and abutting land now or formerly Thomas F. Bombero, Trustee of the Thomas F. Bombero Revocable Trust Agreement, U/T/D November 6, 2002.

Thence along said Thomas F. Bombero, Trustee lands, S 13°-46'-09" E, 64.74' to a point at the southeast corner of the herein described parcel, the northwest corner of lands depicted as Parcel B on said Sketch, and abutting lands now or formerly One Pautipaug Hill, LLC to the south.

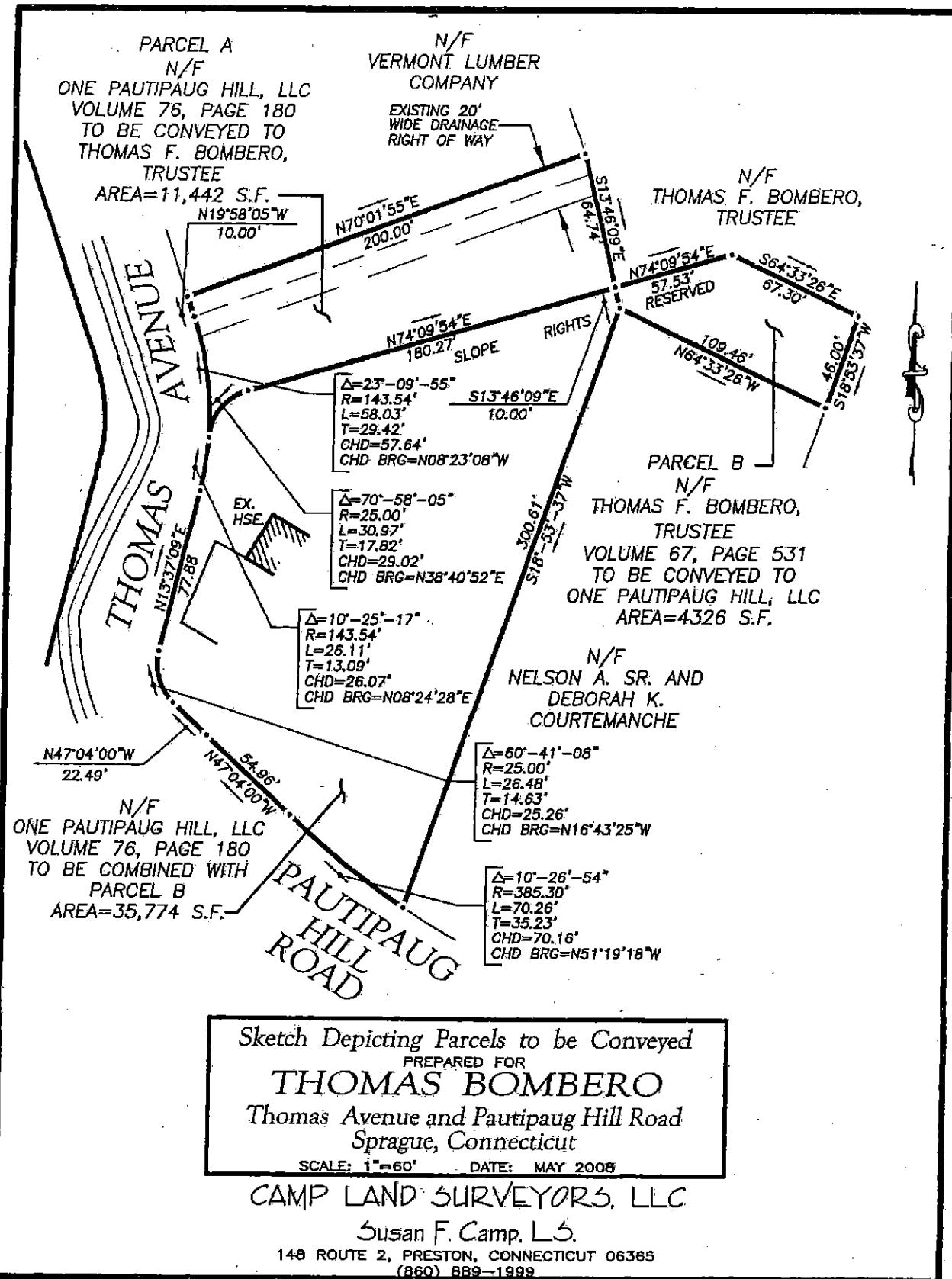
Thence along said lands now or formerly One Pautipaug Hill, LLC lands, the following: S 74°-09'-54" W, 180.27' to a point of curvature, Along a curve deflecting to the left having a central angle of 70°-58'-05", a radius of 25.00', and an arc length of 30.97', a tangent length of 17.82', a chord length of 29.02' along a bearing of S 38°-40'-52" W to a point on a curve at the southwest corner of the herein described parcel on the easterly right of way line of Thomas Avenue.

Thence along said easterly right of way line of Thomas Avenue the following: Along a curve deflecting to the left having a central angle of 23°-09'-55", a radius of 143.54', an arc length of 58.03', a tangent length of 29.42', a chord length of 57.64' along a bearing of N 08°-23'-08" W to a point of tangency. N 19°-58'-05" W, 10.00' to the point and place of beginning.

Said parcel contains 11,442 square feet or 0.26 acre of land more or less.

Said parcel is subject to a drainage right of way more particularly described in Volume 67, Page 531 of the Town of Sprague Land Records.

Said parcel to be conveyed together with slope rights over remaining lands now or formerly One Pautipaug Hill, LLC and over lands to be conveyed to One Pautipaug Hill, LLC.



89/658

3

Legal Map 24-06-21

Borrower: NA	File No.: 15-1114 final
Property Address: West Main Street	Case No.:
City: Sprague	State: CT
Lender: Thomas Bombero	Zip: 06330

SCHEDULE 'A'

A certain tract or parcel of land located northerly of the highway leading from Baltic to Franklin in the Town of Sprague, and more particularly bounded and described as follows:

Beginning at the southwesterly corner of the herein conveyed tract at a point on the dividing line between said tract and land now or formerly of Andie Donahoe and running thence northerly abutting westerly on said Donahoe about 735 feet; thence running easterly abutting northerly on land of the Baltic Mills Co. 321 feet; thence southerly abutting easterly on said Baltic Mills land 184 feet; thence easterly abutting northerly on said Baltic Mills land 184 feet; thence southerly 317 feet abutting easterly on land formerly of Donovan now of Martin; thence westerly 254 feet to an iron pipe abutting southerly on remaining land of Peter J. Kelly; thence continuing westerly 184.3 feet to another iron pipe abutting southerly on land formerly of Arthur Lacer; thence continuing westerly about 164 feet to the point of beginning abutting southerly on remaining land of said Kelly.

Together with a right of way 12 feet wide extending from the herein conveyed tract southerly to another right of way leading to the Baltic-Franklin Road as described in detail in Sprague Land Records Book 1, Page 531, and together also with a right of way from the southerly end of the above mentioned right of way to the said Baltic-Franklin highway described in Sprague Land Records Book 1, Page 432.

65/702

IA 1B 1C

(S)

Legal Map 9-01-01

Borrower: NA	File No.: 15-1114 final
Property Address: West Main Street	Case No.:
City: Sprague	State: CT
Lender: Thomas Bombero	Zip: 06330

VOL. 65 PAGE 702

NO STATE CONVEYANCE TAX

Elaine A. Bombero
TOWN CLERK OF SPRAGUE

QUIT-CLAIM DEED

NO CONVEYANCE TAX

Thomas F. Bombero
TOWN CLERK OF SPRAGUE

THOMAS F. BOMBERO and ELAINE A. BOMBERO of Shelton, Connecticut for consideration paid, ONE (\$1.00) DOLLAR(S), grant to THOMAS F. BOMBERO Trustee of the THOMAS F. BOMBERO REVOCABLE TRUST AGREEMENT, UITD November 6, 2002, of which the Grantee is the beneficiary of said Trust, and with QUIT-CLAIM COVENANTS.

FIRST PARCEL 1A

All that certain tract or parcel of land located in the Village of Baltic, in the Town of Sprague, State of Connecticut, bounded and described as follows.

BEGINNING at the northeasterly corner of Lot #13 on Plat B as made for the Baltic Mills Co. by Chandler & Palmer, Engineers, Norwich, Connecticut, dated June, 1939, and from said point running westerly 135.5 feet, this line bounding southerly on lots #13, 14 and 15 on said plan; thence deflecting 54 degrees 14 minutes to the left and running southwesterly 102.3 feet to a merestone; thence deflecting 36 degrees, 32 minutes to the left and running southerly 60 feet; the last 2 lines bounding southeasterly and easterly on said Lot #15; thence continuing southerly in the same line 35 feet; this line bounding easterly on a road known as Park Avenue; thence deflecting 90 degrees, 46 minutes to the right and running westerly 132.3 feet; this line bounding southerly on Lot #6 on said plan; thence N. 36 degrees, 42 minutes W. about 180 feet; thence S. 51 degrees 25 1/2 feet; the last 2 lines bounding northeasterly and southeasterly on land formerly of M.H. Donohue; thence generally northwesterly along the pond about 320 feet; thence N. 11 1/2 degrees East 424.8 feet; thence N. 71 1/2 degrees West 479.5 feet; the last 2 lines bounding northwesterly and southwesterly on land formerly of Delia Donovan; thence N. 16 1/2 degrees West 487.5 feet to a drill hole; bounding southwesterly on land formerly of Jonas Lucion; thence N. 89 1/2 degrees West partly along a wall, 505 feet bounding southerly on land of M.H. Donohue; thence N. 87 1/2 degrees West 381 feet; bounding southerly on land now or formerly of Francis T. Logan; thence N. 42 1/2 degrees West 91.5 feet; thence N. 17 1/2 degrees West 523 feet along a wall; this line bounding westerly on land now or formerly of Remi Gauvain; thence N. 31 1/2 degrees West 187.5 feet to a wall bounding westerly on said Gauvain land; thence N. 63 degrees east 319 feet; thence N. 70 1/2 degrees east 557 1/4 feet; thence N. 71 1/2 degrees east 586 feet; thence N. 66 1/2 degrees east 357 feet to the shore of the former pond of the Shetucket River; the last 4 lines bounding northerly of said Remi Gauvain land; thence continuing N. 86 1/2 degrees east to the center of the stream of the Shetucket River; thence south along the center line of the Shetucket River about 2560 feet; thence westerly in range with the first line of this description to the point of beginning. Containing about 79 acres.

Being Parcel B of page 8 of a Plan made for The Baltic Mills Co. by Chandler & Palmer Engineers, Norwich, Connecticut

EXCEPTING THEREFROM all that certain place or parcel of land, more particularly bounded and described and known and designated as Parcel B on a certain map entitled, "Map Showing Common Right of Way as agreed upon by Maurice D. Harrington and Thomas F. & Elaine A. Bombero-Baltic, Town of Sprague, Conn. Feb. 15, 1972 - Scale 1" - 40 ft. Stephen G. Bombero Sr. R.L.S.", reserving to Thomas F. Bombero and Elaine A. Bombero, their heirs and assigns, such slope rights as may be necessary to construct a road on land now or formerly owned by said Thomas F. Bombero and Elaine A. Bombero and adjacent to Parcel B.

1A 1B 1C

Legal Map 9-01-01

Borrower: NA	File No.: 15-1114 final
Property Address: West Main Street	Case No.:
City: Sprague	State: CT Zip: 06330
Lender: Thomas Bombero	

vol. 63 PAGE 703

The last described parcel being the same parcel conveyed by the Grantors heretofore to Henry J. Blosclair and Beatrice Blosclair by way of deed dated March 8, 1972 and recorded March 10, 1972 at Volume 24, Page 213 of the Sprague Land Records

SECOND PARCEL: 1B

All that certain tract or parcel of land on the westerly side of the Shetucket River in the Village of Baltic, Town of Sprague, State of Connecticut, bounded and described as follows

BEGINNING at the northerly corner of Lot #13 as shown on "Plat B, made for The Baltic Mills Company, by Chandler & Palmer, Engineers, dated June 1939", and from said point running southerly 147.35 feet to a milestone, this line bounding westerly on said Lot #13; thence running southerly along the easterly line of the road known as Little Flat 43 feet, thence easterly at right angles to the last line 130 feet, more or less, to the center of the Shetucket River, thence generally northwesterly along the center of the Shetucket River 190 feet more or less, thence westerly 125 feet, more or less, to the place of beginning, this last line being in range of the northerly lines of Lots #13, 14 and 15 as shown on said plat.

THIRD PARCEL: 1C

All that certain piece or parcel of land, more particularly bounded and described and known and designated as Parcel A on a certain map entitled "Map Showing Common Right of Way as agreed upon by Maurice D. Harrington and Thomas F. & Elaine A. Bombero Baltic, Town of Sprague Conn Feb 15, 1972 - Scale, 1" = 40 ft. Stephen C. Bombero Sr. R.L.S." including such above rights as may be necessary to construct a road on said Parcel A

FOURTH PARCEL: 1C

All that certain piece or parcel of land, more particularly bounded and described and known and designated as Parcel F on a certain map entitled "Map Showing Common Right of Way as agreed upon by Maurice D. Harrington and Thomas F. & Elaine A. Bombero Baltic, Town of Sprague, Conn Feb 15, 1972 - Scale 1" = 40 ft. Stephen Bombero Sr. R.L.S."

Said premises are subject to building lines, if established, all laws, ordinances or governmental regulations, including building and zoning ordinances, affecting said premises and taxes on the Grand Lists of October 1, 2001 and October 1, 2002

Witnessed by:

Sonya L. Casey

Pamela A. Olejarczyk

Sonya L. Casey

Pamela A. Olejarczyk

STATE OF CONNECTICUT

COUNTY OF NEW HAVEN

Being Signed

THOMAS F. BOMBERO

ELAINE A. BOMBERO

TOWN OF SPRAGUE, CONNECTICUT

NOV 13 2002

Received for Record

9:30 o'clock A.M. and Received

SS. MILFORD Sprague Land Records Vol. 25 Page 213-214

Class B. Claude Town Clerk

On November 6, 2002 before me, Pamela A. Olejarczyk, the undersigned officer

70/25-1

2

Borrower: NA	File No.: 15-1114 final
Property Address: West Main Street	Case No.:
City: Sprague	State: CT
Lender: Thomas Bombero	Zip: 06330

VOL. 70 PAGE 252

Schedule A

Beginning at a brown pin marking an angle in the northerly line of formerly East and Street now West Main Street, said point being at the dividing line between the herein described tract and land of the now or formerly Calisher Oil Company and hence running southerly along said Street line 11.0 feet to a drill hole at the southeasterly corner of land now or formerly of Edmund, thence deflating 45° 55' to the west and running northerly 39.79 feet to a railroad spike driven in the ground, abutting thereto on said Sprague land; thence continuing 11° 32' to

the left and running northerly 37.36 feet in an iron pipe, thence continuing northerly about 1/2 feet along land now or formerly of the Givens to an angle point on a stone retaining wall, thence along the face of said wall North 74° 38' West 66.74 feet, thence in part along the face of said wall North 41° 08' West 26.4 feet to an iron pipe, thence continuing northerly, thence North 17° 50' West 70.8 feet to an iron pipe at land now or formerly of the Baltic Mills Company, thence last 13.4 feet abutting northerly and northerly on land now or formerly of Charles L. Lunge South 56° 48' West 104.9 feet, passing through a rear tent located 15.6 feet northerly from the edge of a certain point, starting northerly on said land of the now or formerly Baltic Mills Company, thence following the approximate line of the point, at the former roadway level, northerly, southerly and southwesterly to the northerly corner of land now or formerly of the Rev. Theodore Gruett Corporation, the last three houses bounding successively by land now or formerly said Baltic Mills, land now or formerly of Alward H. and Anita T. Betts, land now or formerly of Wilfred A. Chamberlain and land now or formerly of Mary Gots, thence running southerly 66 feet, along a stone wall, abutting southerly on said land now or formerly of Rev. Theodore Gruett Corporation and land now or formerly of William H. Bokouw, thence running southerly 34 feet, thence running southerly along the face of a wall 102.5 feet, thence last two houses abutting southerly on said land now or formerly of Ernest Glance, running southerly 12.63 feet to the point of beginning, these last two houses abutting southerly and southwesterly on said land of the now or formerly Calisher Oil Company.

The aforesaid premises are conveyed together with and subject to such rights as may exist in Peter Knud, so called, which runs through the aforesaid premises and also together with the following rights, the right to maintain the use or uses and the right to enter

on the aforesaid premises for the purpose of maintaining, repairing and exempting said use or uses, all of which said rights of record appear.

The above described premises are conveyed subject to such right of way as the same now exist, over and across said premises which said rights of record appear.

Being a portion of the premises conveyed to this Trustee by Maxie Pepin, Jr. and recorded in the Sprague Land Records Vol. 18, Pages 367 and 370, and being shown on a "Plan made for Sherwood Wurtsville Mills, Inc. by Chandler & Palmer, Engineers, dated December 1942 Revised June 1951."

Conveyed subject to right of way described in a deed from the Trustee to himself and Raymond A. Dinsdale, recently recorded as about to be recorded in the Sprague Land Records.

Said premises are conveyed subject to easements, restrictions and agreements as of record appear, building and building line restrictions, any and all provisions of artificial

67/531

5

Legal Map 24-06-07

Borrower: NA	File No.: 15-1114 final
Property Address: West Main Street	Case No.:
City: Sprague	State: CT
Lender: Thomas Bombero	Zip: 06330

VOL. 67 PAGE 532

Schedule A

Certain tract of land located in the Village of Baline, within the Town of Sprague, County of New London and State of Connecticut, more particularly bounded and described as follows:

Commencing at a point on the northerly side of Paupaug Hill Road at the intersection of said Road with Thomas Avenue, said point being the northeasterly corner of a tract of land now or formerly of Salenbust, thence proceeding N. 31° 17' W for a distance of 97 feet, being bounded on the west by lands now or formerly of Salenbust, thence turning an angle to the left, continuing to be bounded on the west by lands now or formerly of Salenbust, thence proceeding in a general northwesterly direction for a distance of 286 feet, more or less, being bounded on the west by lands of Blas, thence turning a 90° angle and running in a westerly direction, being bounded on the south 80 feet, more or less, by lands of Blas, and an additional 100 feet or more, of Gallet, to the easterly side of Paupaug Hill Road, thence proceeding in a northerly direction along the easterly side of Paupaug Hill Road for a distance of 26 feet to the southwesterly corner of lands now or formerly of Gallet, thence turning a 90° angle and running in a easterly direction, being bounded on the north by 700 feet by lands of Gallet, and an additional 46 feet, being bounded on the west by lands of Gallet, thence turning a 90° angle and running in an easterly direction for an additional 103 feet, being bounded on the south by lands of Gallet, thence continuing in a general easterly direction along the southwesterly corner of lands of Gallet for a distance of 282 feet, more or less, to the easterly corner of Gallet, thence proceeding in a general southwesterly direction along a stone wall for a distance of 24 feet, more or less, to a stone wall corner, being bounded on the northeasterly by lands of Gallet, thence proceeding along a stone wall S 19° 56' 10" W for a distance of 299.2 feet, ending S 23° 24' W a distance of 254.1 feet to a stake, thence proceeding S 23° 25' 10" W for a distance of 100.4 feet to a dead hole in a rock, said point being set at the northeasterly corner of lands now or formerly of Gallet, the last three lots being bounded on the northeasterly by lands now or formerly of Baline Hill, thence proceeding N. 60° 10' 10" W for a distance of 138.33 feet, being bounded on the southwesterly by lands now or formerly of Baline Hill, thence proceeding in a general westerly direction along the northeasterly bound of lands of Gallet for a distance of 1.2 feet, more or less, to the northeasterly corner of lands of St. George, thence proceeding in a general northwesterly direction for a distance of 29 feet, more or less, being bounded on the west by other lands of St. George, thence proceeding in a general northwesterly direction along the northerly side of a drainage road a distance of 265 feet, more or less, to the west, is side of road as shown on a map, thence proceeding northerly along the west side of said road a distance of 167 feet, more or less, then turning an angle to the left with radius of 25 feet, a distance of approximately 20 feet, thence proceeding in a general westerly direction along the southerly side of said Thomas Avenue for a distance along the line of 160 feet, thence turning an angle to the left with radius of 70 feet, more or less, said point being a distance of 150 feet, thence proceeding in a southerly direction, being bounded on the east for 15 feet by lands now or formerly of said Gallet, 88 feet by lands of C. Potter and 65 feet by lands of Gallet, and 26 feet by lands of St. George, thence proceeding in a general southerly direction, being bounded on the east by lands of St. George and 59 feet parallel from the first set boundaries set forth in this deed to the northerly side of Paupaug Hill Road, thence proceeding along the northerly side of said Paupaug Hill Road in a westerly direction to the point of commencement.

Together with drainage rights to enter, ramifications, maintain the drainage line to the south of land 20 feet high, the strip being over a 200 foot strip running along the northerly side of lands of St. George, which strip above the southerly bound of lands now or formerly of Gallet.

ATTACHMENT 15

**DEPCOM POWER HEADQUARTERS**

9200 E. Pima Center Parkway, Suite 180
Scottsdale, AZ 85258

EAST COAST OFFICE

1430 Rt 206, Suite 250
Bedminster, NJ 07921

September 1, 2016

Fusion Solar Center, LLC
c/o Coronal Development Services
117 4th Street, S.E. | Suite B
Charlottesville, VA 22902

RE: Commence Construction Requirement

Dear Fusion Solar Center, LLC,

As of September 1, 2016, DEPCOM Power, Inc., the EPC Contractor performing the engineering, procurement and construction of the Fusion Solar Center located at 135 Potash Hill Rd in Sprague, CT has commenced construction on the project.

Sincerely,

A handwritten signature in black ink, appearing to read "Johnnie Taul".

Johnnie Taul
VP – Project Management & Engineering
DEPCOM Power, Inc.

EXHIBIT L

FORM OF NOTICE TO PROCEED

Fusion Solar Center, L.L.C.

August 31, 2016

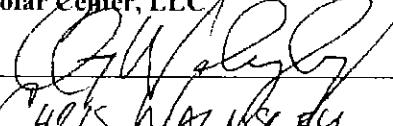
DEPCOM Power, Inc.
9200 East Pima Center Parkway
Suite 180
Scottsdale, AZ 85258
Attention: Vesselin Petrov

Dear Mr. Petrov:

Reference is made to that certain Engineering, Procurement and Construction Agreement, by and between Fusion Solar Center, LLC ("Owner") and DEPCOM Power, Inc. ("Contractor"), dated August 31, 2016 (the "Agreement"). Unless otherwise stated herein, all capitalized terms shall have the meaning given such terms as set forth in the Agreement.

Owner hereby gives Contractor the **Notice to Proceed** with the Work under the Agreement.

Fusion Solar Center, LLC

By: 

Name: Chris Wazensky

Title: MEMBER, BOARD OF MANAGERS

Agreed and Accepted:

DEPCOM Power, Inc.

By: 

Name: Vesselin Petrov

Title: Associate General Counsel