

Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

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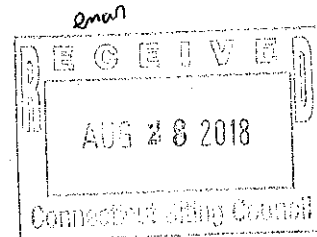
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Via e-mail to melanie.bachman@ct.gov

August 28, 2018

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



Re: Petition 1220 – Site clearing request

Dear Ms. Bachman:

I write on behalf of the Department of Energy and Environmental Protection (DEEP/Department) in response to the detailed information that Windham Solar LLC (“Windham”) has provided to the Connecticut Siting Council (“Council”) in response to the interrogatories from the Council and in direct response to DEEP’s letter dated August 2, 2018. DEEP has reviewed the information submitted and based on the scope of work in the proposed clearing plan, it maintains that the Council should not approve the work at this time because the work is not yet covered by the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (“General Permit”). In the alternative, if the Council does approve the plan under its limited jurisdiction, it should include a condition that the clearing activity should not begin until DEEP has approved the registration and Stormwater Pollution Control Plan for this site. Despite my disagreement with some of Windham’s discussion in its response to my original letter to the siting council, I found much of the discussion irrelevant to the issue at hand. Therefore I have focused this letter on the proposed site-clearing activity and the need for it to be covered by the General Permit prior to commencing.

The clear cutting of 22.7 acres of trees and 11.2 acres of brush is construction activity required to be covered by the General Permit.

DEEP previously cited its concerns that the scope of activity proposed is a construction activity covered by the General Permit. The more detailed information provided does not change its opinion as the activity is clearly the first phase of overall site development. The large scale mowing of brush and, more critically, the large-scale tree removal will disturb existing vegetation and soils resulting in a risk that erodible soil will be exposed. There is also an increased risk that sediments will be transported as stormwater will be less able to infiltrate and more likely to run over the site in increased volumes and with greater velocity due to the

widespread nature of the activity and resulting compaction of soils. Although the proposed activities are not grading or excavation, those are not the only activities covered by the General Permit. The list of activities provided in the General Permit is purposefully not an exclusive one. Here, the proposed activities associated with overall site construction will significantly alter the site and proper stormwater controls must be put in place prior to these activities to ensure unpermitted discharges do not occur.

DEEP's experience with grid-scale solar sites shows that it is critical to limit activity until proper controls are in place. Such limitations, including sequencing and phasing requirements for site-wide development activity, offer important protection to surface waters and tributary resource areas on and off-site from the discharge or potential discharge of sediment laden stormwater. In this particular location, the sites are crossed by wetlands and watercourse tributary to nearby Pachaug Pond, which is Connecticut's largest lake east of the Connecticut River and less than 1000 feet from portions of the proposed activity. In DEEP's judgment, such large scale mowing and tree removal will disturb the site sufficiently to impact the existing stormwater discharge, yet Windham has no plan for stabilization, no plan for silt fencing or other erosion and sedimentation control, and no plan for regular site inspection. As with its site in Lebanon, Windham appears poised to turn things over to the contractor and take the risk that such impact will not occur without any protection in place or a plan to address unforeseen issues. DEEP finds this plan unacceptable.

Windham's responses to the Siting Council's second set of interrogatories and to the Department's August 1, 2018 letter do not alleviate DEEP's concern and demonstrate a lack of understanding of the General Permit.

Windham discusses at length its reliance on its contractors at its site in Lebanon. Although apparently discussed as an excuse for the compliance issues at that site, such reliance was not successful there or protective of the environment. History should not be allowed to repeat itself at this site. Despite any improvement in the condition of Windham's Lebanon site, there were significant compliance issues when DEEP inspected the site in April as the site lacked stabilization and adequate stormwater controls. At some point, the level of activity will impact how water drains from this site. There will be no brush or trees remaining to slow the runoff and compacted soils from the continuous use of equipment for six days a week and the sudden, widespread exposure of the soils to sunlight will all impact the ability of stormwater to infiltrate. Advance plans for monitoring and inspection and installation of controls are required because impacts to stormwater flow may only become evident during or after a significant rain event. DEEP warns the Council against accepting Windham's rushed judgment that the disturbance will be sufficiently limited and that such protection is not required.

Without further explanation, Windham calculates the area of disturbed soil to be less than one acre and therefore indicates that coverage under the General Permit is not required. The total disturbed area based on the plan provided with the clearing request is far beyond one acre. Tree clearing is proposed to occur over 22.7 acres and brush clearing over 11.2 acres. This type of clear cutting operation will cause far more disturbance than indicated by Windham. Despite the planned use of tracked equipment, the use of other trucks and equipment to haul away trees

and wood chips will cause rutting and compaction of soils and the clear cutting of brush and trees will expose entire areas of the site to full sunlight resulting in further compaction and hardening of soils. Falling trees themselves can create ruts and divots that will expose soils and impact stormwater flow. Windham clearly misses the point in calculating a disturbance area apparently based only on the area of the rock construction entrances that will provide access to areas of the site. Again, DEEP requires that this site-wide activity be approved under the General Permit prior to it commencing as it is clearly a phase of overall site construction.

In answer to Windham's concern that DEEP is trying to control a timbering operation, DEEP's interest in this property is not solely in the plan to cut trees but stems from the plan for continued development activity and related disturbance over a lengthy timeframe. DEEP has seen firsthand the consequences of commencing widespread activity without proper planning and stormwater controls at Windham's facility in Lebanon and at other solar facilities in Sprague and Pomfret. Once activity at a site commences and stormwater flow is impacted, it is challenging to slow it down and reverse course. A site may appear stable but continued activity across the site may compact soils and lead to unanticipated excess runoff that causes erosion and sedimentation beyond the project limits. This risk would be minimized through compliance with an approved Stormwater Pollution Control Plan and associated best management practices under the General Permit.

Conclusion

The fact that Windham focused its response to DEEP's letter to the Council on completely irrelevant issues such as the flaws of its selected contractor and its disagreement with the Commissioner's energy policies does little to alleviate the Department's concern. The department is trying to be proactive and guide Windham down a path of compliance so that Windham can move on from past compliance issues and avoid issues on its sites to be developed. DEEP has asked Windham to communicate directly with staff about its plans for this clearing activity. Unfortunately, Windham has not taken advantage of this opportunity.

Since the August 2, 2018 letter, Windham has not provided any information to convince DEEP that coverage under the General Permit is not required. If Windham proceeds with the clearing activity without the necessary stormwater controls, DEEP remains convinced, despite the representations from Windham, that the activity will impact nearby water resources. The proposed site-clearing activity is subject to the General Permit and Windham can only begin the activity in accordance with an approved Stormwater Pollution Control Plan. The Council's action on Windham's request should ensure this occurs.

Thank you for your consideration.

Sincerely,



Oswald Inglese, Jr.

Director, Water Permitting and Enforcement Division