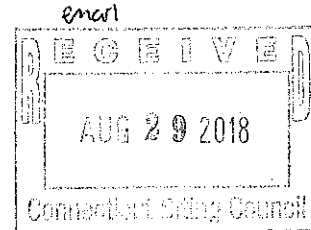




Via e-mail to [Melanie.Bachman@ct.gov](mailto:Melanie.Bachman@ct.gov)

August 29, 2018

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



Re: Petition 1137 – Second amendment

Dear Ms. Bachman:

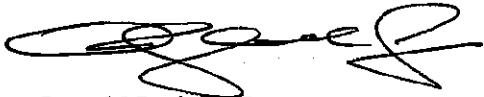
I write on behalf of the Department of Energy and Environmental Protection (“Department”) to express the Department’s concerns about the request from Windham Solar LLC (“Windham”) for Connecticut Siting Council (“Council) approval of a second amendment to the above-referenced petition. The Council should not approve the request at this time because the Department rejected the application for coverage under the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (“General Permit”) for the work proposed at this location due to applicant’s history of noncompliance. As I have already informed the Council, Windham’s site in Lebanon and Franklin that is the subject of this petition is also the subject of an ongoing enforcement action brought by the Department. The Department issued a Cease and Desist Order to the Petitioner on May 3, 2018 for significant violations of the General Permit, including conducting significant grading activities without an approved Stormwater Pollution Control Plan; not adhering to requirements to clear and stabilize the site in phases; not adequately stabilizing the site during construction and after construction was complete; and clearing, without a separate approval under the General Permit, an additional two-acres that are within the area that is the subject of the requested second amendment.

The Cease and Desist order remains in effect for the site in Franklin and Lebanon despite the Department’s effort to resolve the matter through a consent order. Although the Petitioner has made efforts to comply with the Cease and Desist Order and stabilize the site in Lebanon and Franklin, the Petitioner still has not fully and properly implemented the required stormwater controls at this site despite being in operation. The site remains out of compliance with the requirements of the General Permit and will remain so until an agreement on the consent order is reached or until the Petitioner fully implements all requirements of the Cease and Desist Order to the satisfaction of the Commissioner. Again as a result of this current non-compliance and the lack of authorization from the Department to implement the proposed request, the Department urges the Siting Council to deny the Petitioner’s request or, in the alternative, to table its decision until the Department approves the activity under a discharge permit.

The Department is also concerned that Windham will use Council approval as a justification to start site activity without an approval under a discharge permit. At this particular site, Windham has referred to completion of Council requirements as justification for commencing activity without the proper approval under the General Permit. In part, Windham addressed its current compliance history at this site in a response to Council interrogatories on another petition by referencing receipt of local approval, a Council requirement, as part of an excuse for why it commenced construction without approval. See Petition 1220 – Windham’s Response to Interrogatory #7 – 8/17/18, p. 3. Windham proceeded that way at this site at its own risk and to the detriment of nearby resources. The Council’s approval should not be used to justify conducting unauthorized activity and the best way to avoid this is for the Council to deny the second amendment without prejudice or table the matter until Windham has the proper approvals from the Department. If the council were to approve the second amendment under its limited jurisdiction, then it should clarify as a condition of any approval that activity on site may not commence until DEEP approves the proposed work under a discharge permit.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Oswald Inglese, Jr.', written in a cursive style.

Oswald Inglese, Jr.

Director

Water Permitting and Enforcement Division