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By email chris.stone@ct.gov

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Department of Energy and Environmental Protection
Water Permitting and Enforcement Division
Bureau of Materials Management and Compliance Assurance
79 Elm Street
Hartford, CT 06106 5127

Subject: Notice of Tentative Decision of Intent to Reissue the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities

Mr. Stone:

RENEW Northeast, Inc. (“RENEW”) submits these comments in response to the notice published on January 2, 2020, by Department of Energy and Environmental Protection (“Department” or “DEEP”) on the matter of its tentative decision to reissue with modifications the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities.¹ Thank you for the opportunity to provide feedback.

RENEW is a non-profit association uniting environmental advocates and the renewable energy industry whose mission involves coordinating the ideas and resources of its members with the goal of increasing environmentally sustainable energy generation in the Northeast from the region’s abundant, indigenous renewable resources. RENEW members own and/or are developing large-scale renewable energy projects, energy storage resources and high-voltage transmission facilities across the Northeast. They are supported by members providing engineering, procurement and construction services in the development of these projects and members that supply them with multi-megawatt class wind turbines. RENEW seeks to promote policies that will increase energy diversity, promote economic development, and achieve the Commonwealth’s policy goals including those found in the Renewable Portfolio Standard (“RPS”) and the Global Warming Solutions Act (“GWSA”).

The current General Permit requirements have been effective in regulating stormwater management from solar projects of all sizes. The Department has successfully permitted many solar projects through to construction. While there have been instances of non-compliance,

¹ The comments expressed herein represent the views of RENEW and not necessarily those of any particular RENEW member.

RENEW respectfully submits that the compliance issues highlighted by the Department in its January 8, 2020, presentation occurred in limited circumstances where the terms of the General Permit were disregarded. This does not mean that the terms of the current General Permit are ineffective, or that an entire Appendix devoted solely to solar development is necessary. RENEW generally supports the Department's efforts to increase stormwater reporting and monitoring requirements.

However, in reacting to several discrete compliance failures, the Department paints the entire solar industry with a broad brush, and proposes significant changes that could have far-reaching impacts. Many of the Department's proposals will increase costs to Projects that are already land and cost constrained. The Revised General Permit, as proposed, could also significantly affect projects in the midst of ongoing regulatory approvals as well as those about to begin construction. RENEW urges the Department to implement meaningful substantive and process revisions to the proposed Revised General Permit to ensure regulatory certainty regarding current and future stormwater compliance obligations for the Connecticut solar industry.

I. The Revised General Permit Intrudes on the Exclusive Jurisdiction of the Siting Council

The Department proposes requirements regarding the regarding the vertical clearance of panels, panel configuration, panel orientation and effectively prohibits installation on post-construction slopes greater than 15 percent. While the Department has exclusive jurisdiction over stormwater management, the Connecticut Siting Council maintains exclusive jurisdiction over the location and type of electric generating facilities.² RENEW submits that seasoned stormwater engineers can appropriately manage sites to utilize slopes up to 20 percent and provide stable, vegetated surfaces beneath solar panels.

II. The Revised Permit Fails to Identify a Bright Line Effective Date or Specific Reregistration Requirements

The Revised General Permit fails to specify a bright line effective date for the proposed changes. As the Department is aware, solar projects take years to develop, permit and construct. The Department's Bureau of Energy and Technology Policy has selected multiple solar projects in competitive Requests for Proposals, some of which were selected in 2016 and designed based on the applicable standards in effect at that time. These projects remain in the permitting process, either before the Siting Council, or in some cases before the Department. The Department released the Proposed Revisions to the General Permit on December 31, 2019, and additional time is needed to incorporate the revisions into early stage projects. Projects that have already been designed under the current standard, and are in the midst of permitting or

² Connecticut General Statutes § 16-50x(a). In the event of a conflict with other provisions of the General Statutes, the Public Utility Environmental Standards Act takes precedence. See Connecticut General Statutes § 16-50w.

construction, should be allowed to file under the current General Permit through a date certain, up to and including September 30, 2020.

In addition, the Department proposes that sites that registered under the previous version of the General Permit must re-register. While the Department proposes to waive the registration fee for sites registered on or after August 1, 2018, the Department fails to specify what requirements Re-Registrants will be subject to. The Department should provide a Re-Registration form for stakeholder review and should be clear and transparent regarding the Re-Registration Requirements.

III. Additional Clarifications Are Necessary

The definition of “solar array” in Section 2 of the Revised General Permit is unclear. The Department has proposed to define “solar array” as “an on-the-ground installation of arrays of photovoltaic cell panels, supporting structures and related equipment for the production of electricity.” Does the Department intend to include access roads, perimeter fences or for solar facilities in this definition? Clarification on this definition is essential, as it appears throughout the permit and frames the rest of the requirements therein.

The Department proposes a minimum one hundred-foot buffer between any part of the solar array and any “wetland,” “wetlands” or “water” as defined in Title 22a of the Connecticut General Statutes. As discussed above, this requirement ignores the exclusive jurisdiction of the Connecticut Siting Council regarding the placement of electric generating facilities. In addition, this requirement fails to account for wetlands that may exist offsite, or already impacted low-value wetlands that are less ecologically valuable. This site-specific regulatory balancing is necessary to achieve the right approach. While RENEW appreciates the Department’s concerns related to stormwater runoff, the appropriate agency to engage in this regulatory balancing is the Siting Council. As a result, this provision should be removed from the Final Revised General Permit.

The Department proposes a significant financial assurance requirement of \$15,000 per acre of disturbance. RENEW urges the Department to review this proposal in light of other existing financial assurance requirements, such as those for Hazardous Waste. For example, owners/operators of petroleum underground storage tanks that handle an average of more than 10,000 gallons of petroleum per month are required to demonstrate financial responsibility of \$1 million for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases.³ A per-acre requirement structured as the Department proposes unnecessarily impacts large-scale solar projects.

Moreover, the Department should not single out solar developers to provide financial security. If the Department believes financial security is necessary, it should require all Registrants to provide some form of financial assurance. In addition, the Department should also

³ See Regulations of Connecticut State Agencies § 22a-449(d)-109(d).

Christopher Stone, P.E.

February 18, 2020

Page 4

allow flexibility in the type of financial assurance instrument, including a surety bond, insurance, or corporate guarantee. The Department permits this flexibility for Hazardous Waste facilities,⁴ and should do so for Stormwater Registrants.

Finally, the Department proposes to extend the permitting timeline for all registrants through October of the year following the cessation of construction activities. The Department proposes to issue a Notice of Termination only once this time has passed. It is unclear why an additional growing season is necessary. For example, if a project finishes construction in April, under the proposed Revised General permit, the Department will not terminate the registration until the following November at the earliest. This represents an additional eighteen months. This requirement is unduly burdensome, particularly on solar developers, and has the potential to impact project financing timelines. This requirement will only serve to increase Project costs and make the cost of solar energy more expensive, and will not ensure that Projects follow the terms of the General Permit. DEEP should focus its efforts on monitoring and reporting during construction to ensure compliance.

IV. Conclusion

RENEW appreciates the opportunity to submit comments on these important issues and looks forward to working with the Department to help Connecticut achieve its stormwater management and renewable energy goals.

Sincerely,



Francis Pullaro
Executive Director

⁴ See Financial Assurance for Closure, Post-Closure and Corrective Action, Financial Assurance Instrument Formats, available at https://www.ct.gov/deep/cwp/view.asp?a=2718&q=434406&deepNav_GID=1646.