

February 18, 2020

Christopher Stone, P.E.
Water Permitting and Enforcement Division
Bureau of Materials Management and Compliance Assurance
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106

Re: Comments on Intent to Reissue the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities.

Dear Mr. Stone:

Eversource Energy Service Company (“Eversource”), submits this comment letter in response to the December 27, 2019 Notice of Tentative Decision of Intent to Reissue the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (the Construction General Permit).

Eversource operates New England’s largest utility system serving more than 3.6 million electric and natural gas customers in Connecticut, Massachusetts and New Hampshire. In order to meet our obligations to provide vital public services, Eversource must access its physical utility systems to conduct routine maintenance, construction and emergency repair operations and to ensure system reliability and safety standards are maintained in compliance with national, regional, and industry standards and policies. Eversource values its role as an environmental steward and strives to ensure that all required activities are carried out in accordance with numerous federal, state, and local environmental regulations including CT DEEP’s Construction General Permit.

As you know, Eversource frequently works with the Water Permitting and Enforcement Division to obtain coverage under the Construction General Permit for many of our linear utility and electric substation projects and feels CT DEEP’s existing review and approval process is appropriate. We therefore appreciate the opportunity to provide these comments which focus generally on District review of Eversource projects, revised inspection and reporting requirements, the extended Notice of Termination timeframe, the applicability of the financial assurance provision to Eversource and the applicability and prescriptive nature of Appendix I.

Soil and Water Conservation District Involvement in Linear Utility Projects

The draft Construction General Permit language now specifies that a stormwater pollution control plan (SWPCP or Plan) “*For locally exempt projects (including solar arrays)*” must have a Plan Review Certification by the appropriate regional Soil and Water Conservation District (District) upon submittal of the Construction General Permit registration to the CT DEEP. Historically, Eversource’s projects have been considered “locally exempt” because the company falls under the jurisdiction of the Connecticut Siting Council, as opposed to the local inland wetland commissions. In conflict with Section 3(b)(10) of the Construction General Permit, the text within draft Appendix F indicates District review for locally exempt projects may not be mandatory, but assuming the intent of the draft language is to subject Eversource to District review, we have several concerns.

First, in addition to incorporating this additional (and somewhat open ended) cost for review by a District, Eversource will now need to add the 30 – 60-day District review period into our existing 60-90 day permitting schedule, resulting in a potential 150-day review period. This could prove to be disruptive to Eversource’s urgent electric reliability projects, so we therefore ask CT DEEP to reconsider if District Review is required for linear utility projects, or at the very least, allow concurrent CT DEEP and District review.

Section 3(b)(15) of the draft Construction General Permit language specifies that, “*In the case of solar arrays and any other projects that may be reviewed by a District, the preconstruction meeting and site walk shall also include the appropriate District personnel.*” It is unclear if this requirement to engage the Districts for preconstruction meetings, which has both cost and schedule implications, is meant to apply to all locally exempt projects, including linear electric transmission line or substation projects.

Further, given the nature of Eversource’s linear utility projects, there will likely be projects that span the auspices of multiple Districts. Procedures for addressing such instances should be included in the final Construction General Permit.

Another apparent conflict of language pertains to the requirement in Appendix F that Plan implementation inspections be performed by the District, which is not mandated by the inspection provisions of the language of Construction General Permit itself. This should be clarified in the final Construction General Permit.

Section 5: Inspections

The draft Construction General Permit language specifies the SWPCP must identify the designing qualified professional engineer, District personnel (as appropriate), and the qualified inspector (including documentation of the qualifications of the inspector). However, it is unclear if this would be a requirement for Plan approval by either the appropriate District and/or CT DEEP, or if this information can be included after approval of the Plan but prior to the start of construction. Identification of the specific qualified inspector in the SWPCP document anywhere from 90-120 days prior to construction may not always be feasible for Registrants and/or their contractors. Additionally, with the qualifications for the Qualified Inspector being clearly defined within the Construction General Permit, it seems unnecessary for Registrants to identify a specific qualified inspector that far in advance of construction.

Requiring Plan implementation inspections to be performed by the designing qualified professional could be problematic in that such individuals may no longer be available to conduct such inspections at the time of construction for any number of reasons. It would be preferable that CT DEEP modify the Construction General Permit language to specify that such Plan implementation inspections could be conducted by any qualified professional engineer or qualified soil erosion and sediment control professional (as it is written in the current Construction General Permit).

The draft language in Section 5(b)(4) also seems to mandate that all routine inspections be submitted to CT DEEP electronically whereas Section 5(c)(3) indicates inspection reports are only to be submitted to CT DEEP if requested. The requirement for submitting inspections to CT DEEP should be clarified. If the intent is to submit all inspections to CT DEEP, this seems to be an excessive and unnecessary amount of data that CT DEEP will now need to manage for little environmental benefit. Eversource understands the intent of the requirement, but perhaps it should be modified to require only inspections identifying violations or necessary corrective actions be submitted to CT DEEP.

Section 5(f): Duty to Correct and Report Violations

The draft Construction General Permit includes new provisions requiring Registrants to report all violations to CT DEEP within two (2) hours of becoming aware of such violation, or at the start of the next business day after becoming aware of such violation outside of normal working hours. A signed and stamped written report of such violation that details the cause of the violation, duration, and corrective actions taken to address and prevent future violations would also need to be submitted to CT DEEP within 5 days. The current Construction General Permit simply requires written notification to CT DEEP within 5 days of the Registrant learning of such violation and corrective actions taken to prevent further violation.

The proposed provision to notify CT DEEP within two hours of becoming aware of such a violation is an extremely onerous requirement to meet for Registrants. Two hours may not be sufficient time to adequately determine the cause of a violation, extent of potential adverse effects to wetlands, streams or other receiving waterbodies, and notify all responsible parties working for the Registrant, let alone identify corrective actions to stop the violation and prevent such violation from continuing. These identification, assessment, communication, and corrective actions should be the primary concerns within the first few hours of learning of a violation. Near real-time notification to CT DEEP of a violation before these key causes and corrective actions are identified would not address or resolve the violation and would likely be of minimal utility, and at worst could simply serve to miscommunicate critical details of a potential violation.

Eversource recommends that this provision of the draft Construction General Permit be revised to require notification to CT DEEP within a reasonable timeframe after the Registrant's learning of such a violation, such as 24 hours. This would allow Registrants to focus on correcting the conditions that resulted in the violation in the immediate near-term hours and determine any additional corrective actions to prevent any future violation(s). After such immediate efforts the Registrant would notify CT DEEP of the details of the violations and corrective actions, followed by submission of a written report within five days. Additionally, the proposed language in the draft Construction General Permit does not specify whom must sign and stamp the required written report to CT DEEP. Eversource recommends that CT DEEP provide additional information in the final Construction General Permit clarifying such signatory and stamp requirements.

An additional concern with this section is the requirement to "cease all construction activities" once a violation is identified. This requirement may not make sense for a linear utility project where a potential stormwater violation may be self-identified potentially miles away from other construction happening concurrently on the same project.

Section 6(a): Notice of Termination

The new language extends the timeframe at which Registrants would be able to submit a Notice of Termination (NOT) from three (3) months after final stabilization is reached to the end of one full growing season (i.e., April through October) in the year following cessation of construction activities. The provisions for the Final Stabilization Inspection have similarly been modified such that this inspection could not occur until one full growing season (i.e., April through October) following the end of construction.

While the intent of this provision is understood to allow for a longer period for re-establishment of vegetative cover prior to completion of the Final Stabilization Inspection, this requirement would seem only to delay timely review and closeout of projects and potentially leave many months between final stabilization and the end of the next growing

season where the project site is not required to be reviewed at all. Eversource believes that mandating a NOT not be filed until the site has achieved "Final Stabilization" as defined in Section 2, is adequate.

An additional new provision for post-construction inspections is that Registrants of locally exempt projects will need to have a post-construction inspection completed by a qualified soil erosion and sediment control professional and/or a qualified professional engineer "that is included on the list of such professionals approved by the CT DEEP pursuant to Section 3(b)12" of the draft. However, the details for development and maintenance of this list of professional by CT DEEP are not well defined within that subsection, including but not limited to how CT DEEP will review/screen prospective professionals that want to be added to the list, how often CT DEEP will maintain and/or update the list, and if there will be any ongoing renewal requirements for previously listed professionals, etc. And there is no requirement in the draft Construction General Permit for the designing professional engineer, the qualified soil erosion and sediment control professional (and/or qualified professional engineer), or the qualified inspector hired by the Registrant at the outset of design/permitting/construction to be included on such a list. Therefore, this requirement seems somewhat arbitrary in that the qualified erosion and sediment control, engineering, and inspection professionals that have been involved in a project for the entire duration of construction, and are most familiar with it, would not be allowed to complete the post-construction inspection for such a simple reason as not being included on a list.

Financial Assurance

Section 3(b)(15)(D) requires the submittal of financial assurance to the town in which the project is being conducted for any locally exempt projects subject to approval by the Connecticut Siting Council. The mechanisms for compliance with this provision are not identified, nor is there a method to address the common occurrence of a locally exempt Eversource linear project which spans multiple municipalities. Again, Eversource suggests that CT DEEP, rather than the Districts or individual towns, is the more appropriate reviewer of linear utility projects such as those routinely completed by Eversource.

Solar Arrays (Appendix I)

Though Eversource does not construct solar arrays in CT, we do have experience constructing and operating them in other states. While we agree that solar facilities may create sedimentation and erosion control issues if not properly designed, constructed and maintained, we feel the various mandates within Appendix I are overly prescriptive and the Construction General Permit should instead rely on a more performance-based approach.

In closing, we appreciate your consideration of our comments and concerns with the draft language. Should you have any comments or questions, please contact me at 860-871-3456.

Sincerely,



Robert Deptula

Supervisor, Environmental Licensing and Permitting