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May 26, 2021

Ms. Aida Camacho  
Board Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 0825-0350

Re: Comments Regarding Docket No QO20020184  
Solar Successor Program

Dear Ms. Camacho and Commissioners:

I am the Licensed Site Remediation Professional (LSRP) for CEP Renewables LLC. (CEP), on whose behalf I am submitting written comments to the New Jersey Board of Public Utilities (BPU) in response to the staff straw proposal (Straw Proposal) circulated under the above-referenced document number. This letter supplements the comments submitted by Mark S. Bellin, Esq., land development counsel for CEP.

The Straw Proposal included a new definition for contaminated land with the footnote explanation:

As discussed in the Siting section below, Staff is proposing to move away from using the term "brownfield" to determine whether a project qualifies for the desirable land qualification. Instead, Staff proposes to use the term "contaminated land" to be inclusive of both brownfields and marginal lands that may be contaminated or polluted, but which are not technically brownfields, to qualify as a desirable location for solar facilities. Staff intends to continue consulting with DEP to assess qualification of land as contaminated, comparable to today's process for certifying projects located on brownfields.

and elaborated further in the subsequent full-text discussion:

Further, the Straw proposes to use "contaminated" site as a replacement for the term "brownfield," which has previously been used to determine whether a project qualifies for preferred treatment (i.e., as part of the subsection (t) designation). The term "contaminated" land is inclusive of brownfield facilities, but is designed to allow marginal lands that may be contaminated or polluted, but which are not technically brownfields, to qualify for the preferred siting portion of the competitive solicitation. Staff intends to continue consulting with DEP to assess qualification of land as contaminated, comparable to today's process for certifying projects located on brownfields, but seeks comment on exactly how the term should be defined.

We support the BPU's goal in advancing the "contaminated site" approach of creating a broader category of sites on which grid supply solar facilities could be developed, which is consistent with the administration's

broader renewable energy goals. However, the Straw Proposal's proposed use of the term "contaminated land" is slightly different than the language of the Solar Act, which directly references historic fill material, properly closed landfills, and historic fill material.

We recommend that the Board use the term "Contaminated Site," which has been defined by NJDEP in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8. Likewise, the definition of closed sanitary landfill has been promulgated in the Solid Waste Regulations at N.J.A.C. 7:26-1.4 and N.J.A.C. 7:26A.9(b). The relevant NJDEP definitions have been included in Attachment A for ease of review. In our experience, consistency in definitions lends to clarity across programs during the review of complex submissions.

In addition, the definition of Contaminated Site in the Straw Proposal also should include the term "Industrial Establishment" as defined by the Industrial Site Recovery Act (ISRA) rules. These former industrial sites, and the surrounding contiguous properties, which are included in NJDEP's definition at N.J.A.C 7:26B-, are commonly abandoned and underutilized. The history of industrial use and potential for contamination that could exceed NJDEP's conservative standards and screening levels at such sites has led to their classification as brownfields. Since the entirety of the site comprising an Industrial Establishment must be remediated pursuant to the requirements of ISRA, the entire site should be considered as a preferred site, and not only the portions where contaminants remain above NJDEP's conservative standards and screening levels.

The Straw Proposal also should include the definition of legacy landfills, such as a Fenimore landfill. The legacy landfills, as defined by both statute and NJDEP's regulations, ceased operating prior to January 1, 1982, and should be preferred sites for grid supply solar redevelopment once NJDEP's applicable requirements have been met to protect human health, safety, and the environment. Under the Legacy Landfill Law and NJDEP's regulations, these landfills are not required to be remediated or capped unless they will receive solid waste or are redeveloped, although the latter requirement is only found in NJDEP's solid waste regulations. The legacy landfills should receive conditional approval for incentives from NJBPU pending the completion of the landfill remediation and NJDEP's written approval thereto. This would be consistent with the Board's conditional approval of brownfield sites prior to the submission of the final remediation document. Moreover, this would ensure such legacy landfills are addressed while expanding New Jersey's renewable energy profile.

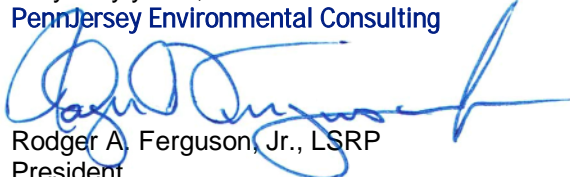
Brownfields, areas of historic fill, and industrial establishments are all generally considered "contaminated," but may already have been remediated according to NJDEP's requirements. Thus, we also suggest that the Board should not exclude brownfield and historic fill sites where the final remediation document has been issued and the contamination remediated such that the contamination is below NJDEP's standards and screening levels. Many brownfields may be awaiting re-development where grid supply solar will be the highest and best use of the property. This policy would be consistent with the BPU's approvals for a properly closed landfill.

Without a revision to the Straw Proposal, contaminated sites, including brownfields, historic fill material sites, and landfills, all preferred sites for solar redevelopment, will likely be excluded from redevelopment for grid supply solar because of their complexity, extraordinary costs, and long timeframes for their remediation. Without certainty of an administratively set incentive, solar developers will not undertake the financial risk for these projects – leaving a shortfall in the generation of sustainable energy for years to come as well as leaving these sites, many of which have no other viable redevelopment opportunities, as brownfields - underutilized, not generating tax revenue to the municipality, and being a continued risk to the residents of and environment in the State of New Jersey. By modifying the Straw Proposal as discussed above, the BPU stands in a position to both achieving the societal goals of achieving sustainable power for generations to come and protecting the environment.

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We thank you for the opportunity to present this information. Please feel free to call me at (908) 329-6060 extension 8450, or contact me via email at [rferguson@pennjerseyenv.com](mailto:rferguson@pennjerseyenv.com), with any questions or comments you may have.

Very truly yours,  
PennJersey Environmental Consulting

A handwritten signature in blue ink, appearing to read "Rodger A. Ferguson, Jr.", written over the company name.

Rodger A. Ferguson, Jr., LSRP  
President  
Licensed Site Remediation Professional No. 573794

## Attachment A NJDEP Definitions

### NJDEP Technical Requirements for Site Remediation, N.J.A.C 7:26E-1.8

**“Brownfield”** means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

**"Contaminated site"** means all portions of environmental media and any location where contamination is emanating, or which has emanated there from, that contain one or more contaminants at a concentration above any remediation standard or screening criterion.

**“Contamination”** or **“contaminant”** means a discharged hazardous substance as defined in N.J.S.A. 58:10-23.11b, hazardous waste as defined in N.J.S.A. 13:1E-38 and/or a pollutant as defined in N.J.S.A. 58:10A-3.

**"Historic fill material"** means non-indigenous material, deposited to raise the topographic elevation of the site, which was contaminated prior to emplacement, and is in no way connected with the operations at the location of emplacement and which includes, without limitation, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, or nonhazardous solid waste. Historic fill material does not include any material that is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slag or tailings. In addition, historic fill material does not include a municipal solid waste landfill site.

### NJDEP Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-1.4

**"Industrial establishment"** means any place of business or real property at which such business is conducted, having the North American Industry Classification System (NAICS) codes listed in chapter Appendix C, incorporated herein by reference, dated and published in 2002 by the Executive Office of the President of the United States, Office of Management and Budget, ISBN 0-934213-87-9 NTIS PB2002-502024, subject to the specified exceptions and limitations and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-2.1. For properties which are owner occupied or are leased to a single tenant, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For leased properties with two or more leased spaces, the industrial establishment includes the leasehold and any areas of concern that provide, are associated with, or are utilized for, hazardous substances and wastes to or from the leasehold, regardless of their location.

### NJDEP Solid Waste Regulations, N.J.A.C. 7:26-1.4

**“Legacy landfill”** means a sanitary landfill that ceased operations prior to January 1, 1982, and received for disposal:

1. Solid waste; or
2. Waste material that was received for disposal prior to October 21, 1976, and that is included within the definition of hazardous waste adopted by the Federal government pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921 et seq.

**"Sanitary landfill"** means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it

shall not include any waste facility approved for disposal of hazardous waste. Sanitary landfills shall be further classified into one of the following classes:

1. "Class I sanitary landfill" means a solid waste facility that may accept all types of nonhazardous solid waste including ID 10, 13, 13C, 23, 25, 27, 27A and 27I.
2. "Class II sanitary landfill" means a solid waste facility which may accept only ID type 27 or a specific category of ID type 27 of nonhazardous solid waste; and
3. "Class III sanitary landfill" means a solid waste facility which may accept only inert nonputrescible nonhazardous solid waste, ID 13, 13C, or 23.

**NJDEP Solid Waste Regulations, N.J.A.C. 7:262A.9(b)**

**“Closed sanitary landfill facility”** means a sanitary landfill, or a portion of a sanitary landfill, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department, pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of earthen or vegetative cover, and the installation of methane gas vents, monitors, and air pollution control devices and leachate monitoring wells or collection systems at the site of any sanitary landfill.