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## NEW MEXICO ENVIRONMENT DEPARTMENT

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RYAN FLYNN  
Cabinet Secretary  
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Deputy Secretary

### **Certified Mail - Return Receipt Requested**

March 30, 2016

Mr. Dave Cook  
Senior Business Manager  
NextEra Energy Resources LLC  
700 University Blvd.  
Juno Beach, FL 33408

**Re:** Roswell Solar Project; Major; Construction Stormwater; SIC 1522; NPDES Compliance Evaluation Inspection; NPDES Permit NMU001911; March 10, 2016

Dear Mr. Cook:

Enclosed please find a copy of the report for the referenced inspection that the New Mexico Environment Department (NMED) conducted at a construction site for which you may be an "operator" (see Appendix A in permit). The NMED conducted this inspection on behalf of the U.S. Environmental Protection Agency (USEPA). This inspection report will be sent to the USEPA in Dallas for their review. These inspections are used by USEPA to determine compliance with the National Pollutant Discharge Elimination System (NPDES) permitting program in accordance with requirements of the federal Clean Water Act.

Problems noted during this inspection are listed in the checklist section of the inspection report. You are encouraged to review the inspection report, required to correct any problems noted during the inspection, and to modify your operational and/or administrative procedures, as appropriate. If you have comments on or concerns with the basis for the findings in the NMED inspection report, please contact us (see the address above) in writing within 30 days from the date of this letter. Further, notify in writing both USEPA (Racquel Douglas, USEPA (6EN), 1445 Ross Ave., Dallas, Texas, 75202), NMED (at the above address) regarding modifications and compliance schedules.

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Mr. Cook  
March 30, 2016

If you have any questions about this inspection report, please contact Daniel Valenta at 505-827-2575 or at [daniel.valenta@state.nm.us](mailto:daniel.valenta@state.nm.us).

Sincerely,

*/s/Bruce Yurdin*

Bruce J. Yurdin  
Program Manager  
Point Source Regulation Section  
Surface Water Quality Bureau

Cc: Carol Peters-Wagnon (6EN-AS) by email  
Everett Spencer, USEPA (6EN-AS) by email  
Darlene Whitten-Hill, USEPA (6EN-AS) by email  
Racquel Douglas, USEPA (6EN-WM) by email  
William Chavez, NMED District I Manager, by email



**Roswell Solar Project**  
**NPDES Compliance Evaluation Inspection**  
**NPDES Permit NMU001911**  
**March 10, 2016**

**Introduction**

On March 10, 2016, a Compliance Evaluation Inspection was conducted at a > 1 acre disturbed area at 445 Wrangler Road, Roswell, New Mexico.

The inspector met with Mr. Chris Werderitch, Blattner Energy, Mr. Loren Magnus, Blattner Energy, and Mr. Jordan Peterson, NextEra Energy at the property, presented his credentials and explained the purpose of the inspection.

The purpose of this inspection was to document the facility's status regarding the NPDES storm water permit program and storm water regulations at **40 Code of Federal Regulations Part 122.26**. This report is based on a review of the EPA on-line notice of intent (NOI) database, on-site observation by NMED personnel, and verbal information provided by the construction site representative, Mr. Werderitch.

**Findings**

For purposes under the CGP, an “operator” is any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).

Where there are multiple operators associated with the same project, all operators are required to obtain permit coverage. The following applies in these situations:

1. If one operator has control over plans and specifications and a different operator has control over activities at the project site, they may divide responsibility for compliance with the terms of this permit as long as they develop a group SWPPP (see Part 7.1.1), which documents which operator has responsibility for each requirement of the permit.
2. If an operator only has operational control over a portion of a larger project (e.g., one of four homebuilders in a subdivision), the operator is responsible for compliance with all applicable effluent limits, terms, and conditions of this permit as it relates to the activities on their portion of the construction site, including protection of endangered species, critical habitat, and historic properties, and implementation of control measures described in the SWPPP in the areas under their control.
3. You must ensure either directly or through coordination with other permittees, that your activities do not render another party's pollutant discharge controls ineffective.
4. If the operator of a “construction support activity” (see Part 1.3.c) is different than the operator of the main construction site, that operator is also required to obtain permit coverage.

**Roswell Solar Project**  
**NPDES Compliance Evaluation Inspection**  
**NPDES Permit NMU001911**  
**March 10, 2016**

NextEra Energy Resources LLC did not obtain permit coverage under the NPDES permitting program for construction. NextEra Energy is required to complete a Stormwater Pollution Prevention Program (SWPPP) and submit an eNOI to USEPA prior to any land disturbance greater than one (1) acre.

*Section 301 (a) of the Federal Water Pollution Control Act states that “Except as in compliance with this section and sections 302, 306, 307, 318, 402 and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.”*

*Per 40 CFR Part 122.26, storm water discharges associated with construction activity are required to obtain coverage under an NPDES permit. Large construction activity is defined in 40 CFR Part 122.26(b)(14)(x), as follows: “Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.”*

*In addition, beginning on March 10, 2003, storm water discharges associated with small construction activity became regulated according to 40 CFR Part 122.26(b)(15)(i) for “[c]onstruction activities including clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre and less than five acres.”*

*40 Code of Federal Regulations Part 122.21(a) Duty to apply (1) states “Any person who discharges or proposes to discharge pollutants ...must submit a complete application to the Director in accordance with this section and part 124 of this chapter.”*

A SWPPP should include the following:

- Site Description
- Effluent limitations applicable to all discharges from construction sites
  1. Erosion and Sediment Control
  2. Site Stabilization
  3. Pollution Prevention
- Description of interim and permanent stabilization practices (e.g., seeding, mulching, etc.)
- Structural Practices (e.g., silt fences, check dams, sediment traps, earth dikes, subsurface drains, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins, etc.)
- Storm Water Management Controls (e.g., detention or retention structures, vegetated swales, etc.) to be installed during the construction process to reduce pollutants in storm water discharged from the site after construction has been completed
- Description of other controls (e.g., waste disposal, procedures to minimize off-site vehicle tracking, dust control, etc.)
- Maintenance and inspection procedures
- Appropriate certifications

**NMED/SWQB  
Official Photograph Log**

Photo # 1

|  |                      |                  |
|--|----------------------|------------------|
| Photographer: Daniel Valenta                                 | Date: March 10, 2016 | Time: 1510 hours |
| City/County: Roswell/ Chaves                                 |                      |                  |
| Location: 445 Wrangler Rd                                    |                      |                  |
| Subject: Solar panels are too installed on the support arms. |                      |                  |



**NMED/SWQB  
Official Photograph Log**

Photo # 2

|  |                      |                  |
|--|----------------------|------------------|
| Photographer: Daniel Valenta   | Date: March 10, 2016 | Time: 1411 hours |
| City/County: Roswell/ Chaves   |                      |                  |
| Location: 445 Wrangler Rd  |                      |                  |
| Subject: Some areas of the site has more disturbed soil than other, area was not regraded. |                      |                  |

