

NANCY BURTON  
ATTORNEY AT LAW  
147 CROSS HIGHWAY  
REDDING RIDGE, CONNECTICUT 06876  
TELEPHONE (203) 938-3952  
FAX (203) 938-3168  
EMAIL: nancyburtonesq@aol.com

4/27/04  
69FR18409

9

June 4, 2004

Richard Emch  
U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001

RECEIVED  
JUN 23 PM 1:46  
Rufus S. J. Dierckx  
E. J. J. J. J.

Re: Millstone Nuclear Power Station Environmental Scoping

Dear Mr. Emch:

With regard to the Millstone relicensing application, I enclose a copy of the complaint filed in the U.S. District Court on February 16, 2004 by the Connecticut Coalition Against Millstone. The complaint was docketed as 3:04 CV 00262. The complaint correctly alleges that Dominion Nuclear Connecticut, Inc. lacks valid authority under the federal Clean Water Act to discharge wastewater and thermal effluent into the Long Island Sound. The Connecticut Coalition Against Millstone is in possession of a document in which Connecticut Department of Environmental Protection Commissioner Arthur J. Rocque, Jr. acknowledged in 1999 his lack of authority to issue "emergency authorizations" to allow otherwise-prohibited discharges of the chemical hydrazine and other substances into the Long Island Sound. Nevertheless, Commissioner Rocque has continued to issue such illegal waivers on a routine basis. Thus, it is correct to say that Millstone has been operating in a state of emergency since 1998, when DEP began to issue emergency authorizations to allow discharges such as had been occurring in violation of federal law and for which conduct Millstone's prior owner, Northeast Utilities, pleaded guilty to felonies in the U.S. District Court in 1998. These facts require the U.S. Nuclear Regulatory Commission to consider the prospect of its relicensing of the Millstone nuclear reactors when the reactors are being operated in continuing flagrant violation of the federal Clean Water Act.

The intake structures of the Millstone reactors are recognized as a significant, if not predominant, contributor to the collapse of the indigenous winter flounder population in the Niantic River-Bay. I encourage you to inquire of the Marine Fisheries Division of the Connecticut Department of Environmental Protection, located in Old Lyme, as to its analysis of this phenomenon. Fishing logs filed with the Marine Fisheries Division by local commercial fisherman paint a downward spiraling curve of the indigenous winter flounder population since 1986, when Unit 3 went online. I encourage you to request further information from me as will assist your environmental analysis. For example, the Connecticut Coalition Against Millstone presented the testimony of an expert in chemistry in a

Template = ADM-013

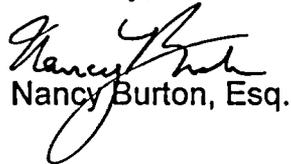
E-RFD5 = ADM-013  
Adm = B. Emch (RLE)

Connecticut Superior Court proceeding in which the expert testified about the synergistic effects of toxic chemical and radioactive waste byproduct releases to the Millstone environment.

I also encourage you and the NRC staff to investigate the high incidences of ionizing radiation-related cancers and other related diseases in the Millstone vicinity. You are well advised to consult Millstone and Me by Michael Steinberg as an introductory source. If the NRC is not in possession of this volume, please advise and I will be happy to assist in obtaining a copy for you. May I trust that the NRC will conduct a complete investigation of Millstone workers' incidences of illness and early mortality during the 30 years the plant has operated, as well as the incidences of illness and early mortality in the surrounding community?

Please advise if I may be of further assistance.

Sincerely,

  
Nancy Burton, Esq.

Encl.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CONNECTICUT COALITION :  
AGAINST MILLSTONE :

v.

DOMINION NUCLEAR :  
CONNECTICUT, INC. :  
NORTHEAST NUCLEAR ENERGY :  
COMPANY :  
MIKE LEAVITT, In His Official :  
Capacity As Administrator of the :  
U.S. Environmental Protection :  
ARTHUR J. ROCQUE, JR., In His :  
Official Capacity as Commissioner :  
of the Connecticut Department of :  
Environmental Protection :

FEBRUARY 16, 2004

COMPLAINT

Nature of the Action

This action is brought by Connecticut Coalition Against Millstone, an environmental organization with its office in the State of Connecticut, under 33 U.S.C. §1365 for declaratory and injunctive relief against defendant Dominion Nuclear Connecticut, Inc. to enjoin it from acting in violation of the Clean Water Act, 33 U.S.C. §1251 *et seq.*, as more particularly described below.

This action is brought under 33 U.S.C. §1365 for declaratory and injunctive relief against defendant Mike Leavitt, in his official capacity as Administrator of the U.S. Environmental Protection Agency, seeking an order that EPA conduct a hearing to consider withdrawal of its approval of the program administered by Arthur J. Rocque, Jr., Commissioner of the Connecticut Department of

Environmental Protection, pursuant to 3 U.S.C. §1342 et seq., the National Pollutant Discharge Elimination System.

### THE PARTIES

1. The plaintiff, Connecticut Coalition Against Millstone ("the Coalition"), is an environmental organization with its office in the state of Connecticut whose membership consists of families with children who reside within and beyond the five-mile emergency evacuation zone of the Millstone Nuclear Power Station ("Millstone") in Waterford, Connecticut. Its membership also includes statewide groups and individuals devoted to safe and sustainable energy and Millstone whistleblowers. Its membership includes individuals who own property and reside within close proximity to Millstone and who engage in recreational pursuits in and around the waters surrounding Millstone and are thus within the zone of interests intended by Congress to be protected by implementation of the provisions of the Water Pollution Control Act.

2. The defendant, Dominion Nuclear Connecticut, Inc. ("DNC"), is a limited liability company which owns and operates the Millstone Nuclear Power Station ("Millstone") located in Waterford, Connecticut.

3. The defendant, Northeast Nuclear Energy Company ("NNECO"), formerly owned and operated Millstone until it sold the facility to Dominion on March 31, 2001.

4. The defendant, Mike Leavitt, is Administrator of the U.S. Environmental Protection Agency ("EPA") and as such has jurisdiction over permitting issues under the Clean Water Act, 33 U.S.C. §1251 *et seq.*, in the state of Connecticut.

5. The defendant, Arthur J. Rocque, Jr. ("Commissioner"), is Commissioner of the Department of Environmental Protection ("DEP") and as such is authorized to direct the DEP in all matters within its jurisdiction relating to the preservation and protection of the air, water and other natural resources of the state in accordance with the provisions of Conn. Gen. Stat. Sec. 22a-2 *et seq.*

#### **JURISDICTION AND VENUE**

6. The Coalition's claims arise under the laws of the United States, 33 U.S.C. §1251 *et seq.*

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331.

8. Venue is proper in his district pursuant to 33 U.S.C. §1365.

#### **THE FACTS**

9. The Millstone Nuclear Power Station utilizes a "once-through" cooling system whereby it draws into its intake structures more than two billion gallons of water daily from the Long Island Sound to provide cooling for its two operating nuclear reactors, their spent fuel pools and other components.

10. The "once-through" cooling system does not qualify as the "best technology available for minimizing adverse environmental impact" pursuant to the Water Pollution Control Act, 33 U.S.C. §1326(b).

11. A closed cooling system would avoid substantially all adverse marine impacts and is the best technology available pursuant to 33 U.S.C. §1326(b).

12. Millstone discharges more than two billion gallons of water daily into the Long Island Sound; such discharges contain radioactive waste byproducts of the fission process and toxic chemicals which are used at the facility; the discharges from each reactor create a thermal plume of heated water in the Long Island Sound. Such chemicals and radionuclides include but are not limited to the following: hydrazine, ethanolamine, chromium, lead, nickel, strontium, cesium, tritium, chlorine, copper, ammonia, zinc, oil, grease, boric acid, diaminoethane, beryllium, cadmium, oxalic acid, nitric acid, permanganate, ethylenediamine, tetracetic acid, hydrogen peroxide and formic acid.

13. Millstone's water consumption routinely kills billions of aquatic organisms; its heated discharges, laced with radioactive and chemical waste byproducts, create adverse impacts on the marine environment.

14. Millstone's intake operations, through entrainment and impingement, are largely responsible for the virtual collapse of the indigenous Niantic River winter flounder stocks.

15. The Millstone discharges require a National Pollution Discharge Elimination System ("NPDES") permit under the federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*

16. On September 26, 1973, the U.S. Environmental Protection Agency ("EPA") delegated implementation of the NPDES program in Connecticut to DEP pursuant to its authority under Section 402(b) of the federal Water Pollution Control Act, 33 U.S.C. 1251.

17. On May 24, 1974, DEP issued the first in a series of NPDES permits to NNECO for Millstone operations.

18. On December 14, 1992, DEP issued a renewal of NPDES Permit CT0003263 to NNECO for its Millstone operations.

19. 33 U.S.C. 1342(b)(1)(B) provides that an NPDES permit may be issued for a maximum fixed term of five years.

20. The five-year term of the permit issued on December 14, 1992 ended on December 13, 1997.

21. The permit has not been renewed.

22. In December 1997, DEP instituted an enforcement proceeding against NNECO alleging persistent violations of NPDES Permit CT0003263, including illegal discharges of the toxic chemical hydrazine, a carcinogen known to cancer in fish.

23. On September 27, 1999, NNECO pleaded guilty in the U.S. District Court for the District of Connecticut to committing felonies in violation of NPDES Permit 0003263 in that it admitted *inter alia* that it illegally discharged hydrazine in violation of the permit.

24. Wilful violation of the terms an NPDES permit provides sufficient grounds

for termination and revocation of the permit, pursuant to 33 USC 1342(b)(1)(C)(i) and Conn. Gen. Stat. Section 22a-424(i).

25 . The Commissioner has been requested to exercise his statutory authority to terminate and revoke Permit No. CT0002363 because of NNECO's persistent wilful and felonious violations of the permit, but to date the Commissioner has failed and neglected to do so.

26. On or about June 13, 1997, NNECO filed an application for renewal of the NPDES permit, in accordance with Conn. Gen. Stat. Section 4-182a(b), which provides that a permittee of an operation of a continuing nature may have the benefit of operating under an expired NPDES permit as long as it files a renewal application 180 days prior to expiration of the permit.

27. NNECO's renewal application was invalid and a legal nullity in that at the time such application was filed, Millstone Units 1, 2 and 3 were shut down pursuant to orders of the U.S. Nuclear Regulatory Commission, were not generating electricity and were not engaged in operations of a continuing nature within the meaning of Conn. Gen. Stat. Section 4-182a(b). Units 1, 2 and 3 were subsequently removed from the rate base by the Connecticut Department of Public Utility Control because the three nuclear reactors had discontinued operations and were deemed no longer used and useful.

28. Connecticut General Statutes Section 22a-6k authorizes the Commissioner to issue emergency authorizations for certain regulated activities.

29. Section 22a-6k(a) authorizes the Commissioner to issue an emergency

authorization provided he finds that "such authorization is necessary to prevent, abate or mitigate an imminent threat to human health or the environment . . ."

30. Routinely since the NPDES Permit CT0003263 expired on December 13, 1997, the Commissioner has issued and renewed emergency authorizations to NNECO for Millstone operations in the absence of a legally basis sufficient to satisfy the statutory criteria for such issuance.

31. The Commissioner has routinely issued and renewed said emergency authorizations without notice to the public and without permitting public participation.

32. Such acts of issuance of emergency authorizations violate the letter and spirit of the federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*, and are outside the delegated authority granted DEP by the EPA.

33. On or about December 20, 1999, the Commissioner acknowledged his lack of authority to issue such emergency authorizations; prior to authorizing the renewal of such an emergency authorization for Millstone operations, Commissioner Rocque made the following handwritten notation on an internal DEP document: "I really hate these [applications for renewal of Millstone emergency authorizations]. Statutes are very limited in what the [sic] define as 'emergency.' Continuing emergency is **not** even contemplated." [Emphasis in original.] A copy of such document is appended hereto as Exhibit A.

34. On or about October 13, 2000, the Commissioner, acting by and through Jane K. Stahl, a deputy commissioner, issued an emergency authorization to NNECO ("the EA").

35 . The Commissioner issued the EA on October 13, 2000 in part purportedly to consolidate other emergency authorizations which had not yet "expired."

36. The EA permits acts of pollution otherwise forbidden by NPDES Permit CT0003263, including discharges of hydrazine and ethanolamine, and the following activities otherwise not allowed under the NPDES permit:

- a. Discharging Unit 2 and Unit 3 chlorinated and non-chlorinated pump lubrication water and pump leak off water to existing cooling water intake structures and existing discharge locations;
- b. Discharging Unit 2 and Unit 3 service water and circulating water strainer backwash wastewater and screenwash wastewater;
- c. Increasing the total maximum daily flow for Millstone Unit 3 from 1,313,200,000 gallons per day (gpd) to 1,410,600,000 gpd;
- d. Discharging "incidental" concentrations of ethanolamine (ETA) without setting a specific effluent limitation;
- e. Discharging condenser hotwell wastewater on a continuous basis in the event of automatic plant shutdown;
- f. Discharging "incidental" non-radioactive wastewaters in undefined quantities from intermittent sources from Unit 2 and Unit 3;
- g. Discharging "incidental" concentrations of hydrazine without setting an effluent limitation;
- h. Discharging Unit 3 condensate surge tank wastewater to DSN 006;
- i. Discharging wastewater treated for hydrazine removal through air sparging and/or hydrogen peroxide addition from the Unit 2 Condensate Polishing Unit, which wastewaters may also contain concentrations of ammonia, hydrogen peroxide and ETA;
- j. Discharging wastewater containing hydrazine during start-up, hot standby and shutdown conditions;
- k. Discharging Unit 1 service water strainer backwash to DSN 002;

- l. Discharging chlorinated and non-chlorinated intake pump seal waster from Unit 1 service water, circulating water, and screenwash pumps to the existing cooling water intake structure and existing discharge locations;
- m. Discharging fire water system wastewaters including fire pump gland runoff water to DSN 009 or to the ground, pressure relief valve discharge from fire pump to a trap rock dispersion area, fire pump gland runoff to DSN 009, diesel powered fire pump cooling water and relief valve discharges to DSN009, fire pump gland runoff to pump house floor drains;
- n. Redirecting the discharge of Unit 1 and Unit 2 chemistry laboratory wastewaters from DSN001A-2 to DSN001B-2;
- o. Increasing the maximum daily flow from DSN001B from 820,000,000 to 844,550,000 gallons per day;
- p. Increasing the maximum daily flow from DSN001B-5 from 28,800,000 to 51,840,000 gallons per day;
- q. Converting the primary source of Unit 2 circulating water pump lubrication water from chlorinated domestic water to plant service water;

37. The EA was issued without notice to the public and without affording an opportunity for a hearing and public participation.

38. The EA was issued without notice to the plaintiff, CCAM, a party which had intervened in all proceedings pertinent to Permit No. CT003263, and without affording CCAM an opportunity for a hearing and participation in the proceedings.

39. Issuance of the EA violates Conn. Gen. Stat. Section 22a-6k in that:

- a. Such authorization is not necessary to prevent, abate or mitigate an Imminent threat to human health or the environment;

- b. Such authorization is inconsistent with the federal Water Pollution Control Act in that:

- i. NPDES Permit No. CT0003263 has expired as a matter of law and therefore the Commissioner is without legal authority to issue an emergency authorization which presumes the validity and viability of the underlying permit;
- ii. It is tantamount to issuance of a National Pollution Discharge Elimination System permit, which issuance requires notice to the public and an opportunity for a hearing and public participation pursuant to 33 USC Section 1342(b)(3);
- iii. It is in violation of 33 USC Section 1342(b)(1)(B) which provides that a NPDES permit may be issued for a fixed term no longer than five (5) years while the stated term of the EA is as follows: it "shall expire upon a final determination of NNECO's application for reissuance of NPDES Permit. No. CT0003263 or upon the Commissioner's determination that the requirements of Section 22a-6k of the Connecticut General Statutes Section are no longer applicable to the activities authorized herein, whichever is sooner";
- iv. It violates the Water Pollution Control Act's anti-backsliding rule, 33 USC Section 1342(o);
- v. It is illegal on its face respecting activities at Millstone Unit 1, which shut down on November 4, 1995 and has never resumed electricity generation activities.

40. On or about November 2000, DNC and NNECO made inquiries at DEP with regard to a potential transfer of NPDES Permit CT0003263 and the EA from NNECO to DNC.

41. On November 28, 2000, CCAM filed a verified notice of intervention with DEP whereby it intervened in the permit transfer proceedings pursuant to Conn. Gen. Stat. Section 22a-19(a).

42. On or about February 1, 2001, DNC formally applied to DEP for transfer to it of Millstone NPDES Permit CT0003263 and the EA, pursuant to Conn. Gen. Stat. Section 22a-6o.

43. Conn. Gen. Stat. Section 22a-6o provides in pertinent part as follows:  
"Notwithstanding any provision of this title or regulations adopted hereunder, no person shall act or purport to act under the authority of a license issued to another unless such license has been transferred to such person in accordance with this section and such transfer is not inconsistent with the federal Clean Air Act, the federal Water Pollution Control Act or the federal Resource Conservation and Recovery Act."

44. By letter dated January 2, 2001, CCAM requested the DEP to convene declaratory proceedings to determine the factual and legal propriety of a transfer of Permit CT0003263 from NNECO to DNC.

45. By letter dated January 29, 2001, the Commissioner denied CCAM's request to convene such proceedings; further, the Commissioner denied CCAM the right to intervene in the DEP proceedings concerning a transfer of the expired NPDES permit to DNC.

46. The Commissioner lacked legal authority to deny CCAM intervention in the license transfer proceedings.

47. The Commissioner had no legal authority to permit NNECO to continue to operate Millstone pursuant to its expired NPDES permit.

48. The Commissioner had no legal authority to issue the emergency authorizations as set forth herein.

49. The Commissioner had no legal authority to transfer expired Permit CT0003263 or the EA to DNC in that such transfer is inconsistent with the federal Water Pollution Control Act and thereby violates Conn. Gen. Stat. Section 22a-6o.

50. Because at the time of the requested transfer, DNC had no assets, it lacked sufficient capitalization and other pertinent qualifications to ensure that it was able to comply with the terms and conditions of NPDES Permit CT0003263 and the EA, as required by Conn. Gen. Stat. Section 22a-6o(c).

51. The Commissioner had no legal authority to transfer the expired Permit CT0003263 or the EA to DNC in that DNC lacks sufficient capitalization and other pertinent qualifications to ensure that it is able to comply with the terms and conditions of NPDES Permit CT0003263 and the EA, as required by Conn. Gen. Stat. Section 22a-6o(c).

52. On or about April 13, 2001, CCAM served all defendants with a notice of intent to sue pursuant to 28 U.S.C. §1365.

**CAUSES OF ACTION**

**COUNT 1 (Declaratory and Injunctive Relief as to Dominion and NNECO)**

53. Paragraphs 1 through 52 are incorporated herein.

54. The intake and discharge activities described herein violate the Water Pollution Control Act in one or more of the following ways:

- a. The Commissioner lacked lawful authority to transfer the expired NPDES permit and the illegal EA from NNECO to Dominion;
- b. Dominion lacks a valid NPDES permit to carry out such activities;
- c. Dominion lacks lawful authority to conduct activities pursuant to the EA;
- d. The one-through cooling system does not qualify as the best available technology available for minimizing adverse environmental impact pursuant to the Water Pollution Control Act, 33 U.S.C. §1326(b)

**COUNT II (Declaratory and Injunctive Relief as to EPA and DEP)**

55. Paragraphs 1 through 54 are incorporated herein.

56. The DEP Commissioner has failed to implement the National Pollutant Discharge Elimination System consistent with the Water Pollution Control Act pursuant to 28 U.S.C. §1342(b).

## PRAYER FOR RELIEF

**WHEREFORE**, the plaintiff prays that the following relief be granted:

1. That the Court declare that:
  - a. The Commissioner lacked lawful authority to transfer the expired NPDES permit and the illegal EA from NNECO to Dominion;
  - b. Dominion lacks a valid NPDES permit;
  - c. Dominion lacks lawful authority to conduct activities pursuant to the EA;
  - d. The one-through cooling system does not qualify as the best available technology available for minimizing adverse environmental impact pursuant to the Water Pollution Control Act, 33 U.S.C. §1326(b);
  - e. A closed cooling system qualifies as the best available technology available for minimizing adverse environmental impact pursuant to the Water Pollution Control Act, 33 U.S.C. §1326(b);
2. That the Court order that the Millstone Nuclear Power Plant be converted to a closed cooling system forthwith.
3. That the Court issue an injunction enjoining Dominion from carrying out activities at the Millstone Nuclear Power Station which violate the Water Pollution Control Act as set forth herein;
4. That the Court declare that the DEP Commissioner has failed to implement the National Pollutant Discharge Elimination System consistent with the Water Pollution Control Act pursuant to 28 U.S.C. §1342(b);
5. That the Court direct EPA to conduct a public hearing pursuant to 28

U.S.C. §1342(c)(3) for the purpose of considering whether the EPA Administrator should withdraw EPA approval from the DEP plan to implement the NPDES program; and

6. That the Court enter such other orders as are necessary and proper; and
7. That the Court order attorney's fees and costs to the plaintiff.

**CONNECTICUT COALITION AGAINST MILLSTONE  
*THE PLAINTIFF***

By: \_\_\_\_\_

Nancy Burton, Esq.  
147 Cross Highway  
Redding Ridge CT 06876  
Tel. 203-938-3952  
Fed. Bar No. 10836