

June 30, 2023

Adelaide Giantelli, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State and Tribal Programs
Office of Nuclear Material Safety and Safeguards

Dear Ms. Giantelli:

Thank you for your sufficiency review of the legal authorities for Connecticut to enter into an agreement with the US Nuclear Regulatory Commission (NRC) to regulate certain radioactive materials¹ as documented in your review letter dated January 25, 2023. We have reviewed your comments and have provided resolution to each as identified in the enclosure. Our resolution includes statutory changes made in Connecticut Public Act 23-153 as well as legal clarification of existing statutory authorities provided by the State Solicitor General who is responsible for legal opinions from the Office of the Attorney General.

If you have any questions regarding the comments, or the Connecticut General Statutes, in our response, please contact me at 860-424-4190 (jeffrey.semancik@ct.gov) or Paul Kritzler, Air Bureau Legislative Coordinator, at 860-424-3889 (paul.kritzler@ct.gov).

Sincerely,



Jeffrey D. Semancik
Director, Radiation Division
Dept of Energy and Environmental Protection

Enclosures:

1. NRC comment table resolution
2. Letter from Joshua Perry, Solicitor General to US NRC dated April 17, 2023, "Re Connecticut DEEP's Existing Statutory Authority to Perform Inspections, Seek Warrants, and Issue Cease and Desist Orders"
3. Connecticut Public Act 23-153

¹ In accordance with section 274 of the Atomic Energy Act of 1954, as amended.

Enclosure 1 NRC Compatibility table resolution

State Section		State Suggested Legislation Section	NRC Subject and Comments	Connecticut Response
1	--	Section 12	<p>Inspection CT will consult with Attorney General regarding proposing legislation to enable entry to private property and inform the NRC of any proposed legislation.</p> <p>Comment Stands from NRC letter dated September 13, 2022/ML22256A236 and is modified as follows: Connecticut needs to provide a letter from the Attorney General confirming that inspectors will have the authority to enter a private residence if necessary. CT will evaluate effect requiring concurrence before entry onto federal property for the radiation control program would affect their responsibilities under their other delegated environmental programs and inform the NRC of the results.</p> <p>Comment Stands from NRC letter dated September 13, 2022/ML22256A236 and is modified as follows: Connecticut needs to provide a letter from the Attorney General confirming that concurrence will be obtained before entering federal property.</p>	<p>Enclosed letter from CT’s Solicitor General affirms DEEP and the Office of the Attorney General (OAG) have the necessary procedures in place to ensure that DEEP can act with sufficient urgency were a time sensitive search of a private residence deemed necessary.</p> <p>Enclosed letter from CT’s Solicitor General affirms DEEP will obtain concurrence of NRC before entering federal property.</p>
2	22a-7	Section 17	<p>Administrative Procedure and Judicial Review Connecticut omits Section 17 (f). Connecticut needs to provide an explanation or justification as to the reason for the omissions; or supply the missing information. To address this comment, Connecticut could adopt either the language in SSL Section 17(f) or Vermont 18 VSA §1655(b). SSL Section 17(f), “Whenever the agency finds that an emergency exists requiring immediate action to protect the public health and safety, the agency may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this act, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but on application to the agency shall be afforded a hearing within [] days. On the basis of such hearing, the</p>	<p>Enclosed letter from CT’s Solicitor General affirms DEEP’s emergency order authority is consistent with the requirements of the Council of State Governments Suggest State Legislation (SSL) section 17(f).</p>

Enclosure 1 NRC Compatibility table resolution

State Section		State Suggested Legislation Section	NRC Subject and Comments	Connecticut Response
			<p>emergency regulation or order shall be continued, modified or revoked within [30] days after such hearing.”</p> <p>Vermont–18 VSA §1655(b), “[W]henver the Department finds that an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet it. Notwithstanding any contrary provision of this chapter, the order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but on application to the Department shall be afforded a hearing within ten days. On the basis of the hearing, the emergency order shall be continued, modified, or revoked within ten days after the hearing.”</p> <p>Comment Stands from NRC letter dated September 13, 2022/ML22256A236, but is modified as follows:</p> <p>In its October 11, 2022, letter to the NRC (ML23024A201), Connecticut explained their current statutory framework related to cease-and-desist orders. In order to be accepted by the NRC, Connecticut will need to provide an interpretation of the current statutory framework in an Attorney General letter explaining how Connecticut's provisions fulfill the emergency order requirements in SSL Section 17(f).</p>	
3		Section 20	<p>Impounding</p> <p>CT’s proposed legislation to address the issue of emergency impoundment in Section 22a-158, new subsection (d), authorizes impoundment of radioactive material without a hearing, however, it does not meet all of the requirements in SSL Section 17(g).</p> <p>Comment changed and is modified as follows:</p> <p>In order to be accepted by the NRC, CT will need to provide an interpretation of the proposed statutory framework in an Attorney General Letter explaining how Connecticut's provisions fulfill the emergency impoundment requirements in SSL Section 17(g).</p>	<p>Emergency impoundment authority has been added to Connecticut General Statute in Public Act 23-153.</p> <p>Enclosed letter from CT’s Solicitor General affirms DEEP’s emergency impoundment authority is consistent with the requirements of SSL section 17(g).</p>



OFFICE OF THE ATTORNEY GENERAL
CONNECTICUT

April 17, 2023

Bethany K. Cecere, Acting Chief
State Agreement and Liaison Program
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, MD, 20852-2738

Re Connecticut DEEP's Existing Statutory Authority to Perform Inspections Seek Warrants and Issue Cease and Desist Orders

Dear Ms. Cecere,

Pursuant to Connecticut General Statute §3-125, the Connecticut Attorney General has general supervision over all legal matters in which the state is an interested party. The Environment Section of the Connecticut Attorney General's Office (OAG) represents the Radiation Division of the Bureau of Air Management at the Connecticut Department of Energy and Environmental Protection (the Department, DLEP). The OAG is assisting the Department in its pursuit of "Agreement State" status from the Nuclear Regulatory Commission (NRC). This letter is to further clarify for the NRC the Department's authority under existing Connecticut law to conduct inspections, to timely apply for administrative search and seizure warrants, and to issue cease and desist orders.

Existing Statutory Authority to Inspect

The Department's ability to enter and inspect certain premises is found in Connecticut General Statutes § 22a-6(a)(5), which provides, in relevant part, that the Commissioner of Energy and Environmental Protection may

in accordance with constitutional limitations, enter at all reasonable times, without liability, upon any public or private property, except a private residence, for the purpose of inspection and investigation to ascertain possible violations of any statute, regulation, order or permit administered, adopted or issued by him and the owner, managing agent or occupant of any such property shall permit such entry, and no action for trespass shall lie against the commissioner for such entry, or he may apply to any court having criminal jurisdiction for a warrant to inspect such premises to determine compliance with any statute, regulation, order or permit administered, adopted or enforced by him.

Accordingly, the Commissioner has general authority to enter and inspect most premises to conduct inspections as is required by the NRC. General Statutes § 22a-6(a)(5) is thus similar to the

NRC's suggested state legislation (*See*, Sec 12) regarding inspections by state agencies. There are two major distinctions between Connecticut's existing statutory framework regarding inspections and the NRC's suggested state legislation, but neither should impact the Department's ability to timely inspect premises for sources of ionizing radiation.

The first difference is that under Connecticut law, an administrative search warrant signed by Superior Court Judge is a requisite for any non-consensual inspection of a private residence, as such inspections are not included in the Commissioner's general inspection authority. The probable cause required to obtain an administrative warrant is similar to that required for criminal search warrants, as is the process for obtaining them.¹ This office has assisted the Commissioner in successfully obtaining administrative search and seizure warrants on short notice in the past. The OAG and DEEP have the necessary procedures in place to ensure that DEEP can act with sufficient urgency were a time sensitive search of a private residence deemed necessary. Further, it is the understanding of this office that the Department will require—either through permit terms, or by regulation—that any permittee or registrant of a source of ionizing radiation consent to the Department's inspection of any premises where the licensee or registrant maintains a such a source of radiation—including a private residence. Such regulatory or permit conditions will significantly limit the need to obtain search warrants.

The second distinction between Conn. Gen. Stat. § 22a-6(a)(5) and the NRC's suggested state legislation is that § 22a-6(a)(5) does not contain any language conditioning the Commissioner's authority to inspect federal properties in the state. Our understanding is that if DEEP needs to inspect a source of radiation stored at a federal property, then the Commissioner will prior coordinate any such inspection with the applicable federal authorities.

Cease and Desist Orders

As related in an October 11, 2022, letter from DEEP counsel Brendan Schain to the NRC's Brian Anderson, DEEP also has existing statutory authority to issue cease and desist orders. *See* Conn. Gen. Stat. § 22a-7. This authority is consistent with the NRC's requirements as set forth in its suggested state legislation. Sec. 17(f) of the NRC's suggested state legislation provides that an agency has the authority "without notice or hearing" to "issue [an] order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency." Sec. 17(f) requires immediate compliance with any order issued under its provisions. General Statutes § 22a-7 meets each of these requirements. First, like in Sec. 17(f), the Commissioner's authority under Conn. Gen. Stat. § 22a-7 provides that an order may issue after investigation to any person causing, engaging or maintaining (or whom is about to cause, engage in, or maintain) any condition or activity, which, in the Commissioner's judgment, will result or is likely to result in imminent or and substantial damage to the environment, or to public health within the jurisdiction.

¹ *See State v. Saturno*, 322 Conn. 80, 97 (2016). warrants may be sought twenty-four hours a day, seven days a week, and each judicial geographical area in the state routinely maintains a "duty" Judge to handle warrant applications made outside of normal court hours.

of the commissioner.² Second, the Commissioner's order authority under Conn Gen Stat § 22a-7 may require the person under order to "abate or alleviate such condition or activity" thus fulfilling the NRC's requirement that a person take action as is necessary to meet the emergency. Third, as in Sec 17(f), an order issued under Conn Gen Stat § 22a-7 must be complied with "immediately" upon receipt. Of note, Conn Gen Stat § 22a-7 further provides that the Attorney General may seek a court injunction to compel compliance with any order issued under Conn Gen Stat § 22a-7. Finally, as in Sec 17(f) any cease-and-desist order issued by the Commissioner is effective immediately upon receipt.

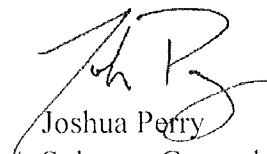
It is true that Conn Gen Stat, § 22a-7 requires an "investigation" as a condition precedent to issuing a cease-and-desist order. However, neither that section, nor any regulation that implements it, specifies the nature or the duration of such an investigation. The only "investigation" that is required is that which is necessary to gather the facts needed to satisfy the standards identified in Conn Gen. Stat § 22a-7. The term "investigation" in Conn Gen Stat § 22a-7 will not cause unnecessary delay or impede the Commissioner's ability to act when needed.

Judicial Review of Impoundments

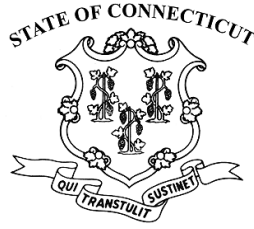
Connecticut's proposed legislation for the emergency impoundment of radioactive materials (Conn Gen Stat § 22a-158) also meets the NRC's requirements for judicial review of any such impoundment (*See*, SSL, Sec 17(g)). Specifically, if enacted, Conn Gen Stat § 22a-158(b) provides that the Commissioner will hold a hearing within ten days of any impoundment during which any person contesting the validity of the impoundment may "be heard and show that" the impoundment was unwarranted either because there was no violation, or that a license was not required, or a license had been obtained and was properly adhered to. The statute further requires that within fifteen days after the hearing that the Commissioner issue a "new decision based on the hearing." This decision will be "final decision" in a contested case and thus the statute secures the right to judicial review under Connecticut's Uniform Administrative Procedures Act. *See* Conn Gen Stat, § 4-183.

Conclusion

We are of the opinion that the Department's existing statutory authority is consistent with the NRC's current requirements as outlined in its suggested state legislation.


Joshua Perry
Solicitor General
165 Capitol Avenue

² As correctly stated by Mr. Schain in his previous correspondence, the requisite "investigation" means only the identification of information necessary to make the factual showing required under Conn Gen. Stat. § 22a-7(a)—it adds no additional burden, nor any further time requirement, on the Commissioner's ability to issue orders under the statute.



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Public Act No. 23-153

**AN ACT CONCERNING MINOR REVISIONS TO THE STATE'S
AUTHORITY TO REGULATE CERTAIN NUCLEAR MATERIALS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 16a-100 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The state of Connecticut endorses the action of the Congress of the United States in enacting the Atomic Energy Act of 1954 to institute a program to encourage the widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public; and therefore declares the policy of the state to be (1) to cooperate actively in the program thus instituted; (2) to develop programs for the control of ionizing and nonionizing radiation compatible with federal programs for regulation of by-product, source and special nuclear material; and (3) to the extent that the regulation of special nuclear materials and by-product materials, of production facilities and utilization facilities and of persons operating such facilities may be within the jurisdiction of the state, to provide for the exercise of the state's regulatory authority so as to [conform, as nearly as may be, to] be compatible with the Atomic Energy Act of 1954 and regulations

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issued thereunder, to the end that there may, in effect, be a single harmonious system of regulation within the state.

Sec. 2. Subsection (a) of section 22a-6 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner may: (1) Adopt, amend or repeal, in accordance with the provisions of chapter 54, such environmental standards, criteria and regulations, and such procedural regulations as are necessary and proper to carry out [his] the department's functions, powers and duties; (2) enter into contracts with any person, firm, corporation or association to do all things necessary or convenient to carry out the functions, powers and duties of the department; (3) initiate and receive complaints as to any actual or suspected violation of any statute, regulation, permit or order administered, adopted or issued by [him] the department. The commissioner shall have the power to hold hearings, administer oaths, take testimony and subpoena witnesses and evidence, enter orders and institute legal proceedings including, but not limited to, suits for injunctions, for the enforcement of any statute, regulation, order or permit administered, adopted or issued by [him] the department; (4) in accordance with regulations adopted by [him] the department, require, issue, renew, revoke, modify or deny permits, under such conditions as [he] the commissioner may prescribe, governing all sources of pollution in Connecticut within [his] the department's jurisdiction; (5) in accordance with constitutional limitations, enter at all reasonable times, without liability, upon any public or private property, except a private residence, for the purpose of inspection and investigation to ascertain possible violations of any statute, regulation, order or permit administered, adopted or issued by [him] the department and the owner, managing agent or occupant of any such property shall permit such entry, and no action for trespass shall lie against the commissioner for such entry, or [he] the

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commissioner may apply to any court having criminal jurisdiction for a warrant to inspect such premises to determine compliance with any statute, regulation, order or permit administered, adopted or enforced by [him] the department, provided any information relating to secret processes or methods of manufacture or production ascertained by the commissioner during, or as a result of, any inspection, investigation, hearing or otherwise shall be kept confidential and shall not be disclosed except that, notwithstanding the provisions of subdivision (5) of subsection (b) of section 1-210, such information may be disclosed by the commissioner to the United States Environmental Protection Agency and the Nuclear Regulatory Commission pursuant to the federal Freedom of Information Act of 1976, (5 USC 552) and regulations adopted thereunder or, if such information is submitted after June 4, 1986, to any person pursuant to the federal Clean Water Act (33 USC 1251 et seq.); (6) undertake any studies, inquiries, surveys or analyses [he] the commissioner may deem relevant, through the personnel of the department or in cooperation with any public or private agency, to accomplish the functions, powers and duties of the commissioner; (7) require the posting of sufficient performance bond or other security to assure compliance with any permit or order; (8) provide by notice printed on any form that any false statement made thereon or pursuant thereto is punishable as a criminal offense under section 53a-157b; (9) construct or repair or contract for the construction or repair of any dam or flood and erosion control system under [his] the department's control and management, make or contract for the making of any alteration, repair or addition to any other real asset under [his] the department's control and management, including rented or leased premises, involving an expenditure of five hundred thousand dollars or less, and, with prior approval of the Commissioner of Administrative Services, make or contract for the making of any alteration, repair or addition to such other real asset under [his] the department's control and management involving an expenditure of more than five hundred thousand dollars but not more than one million dollars; (10) in

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consultation with affected town and watershed organizations, enter into a lease agreement with a private entity owning a facility to allow the private entity to generate hydroelectricity provided the project meets the certification standards of the Low Impact Hydropower Institute; (11) by regulations adopted in accordance with the provisions of chapter 54, require the payment of a fee sufficient to cover the reasonable cost of the search, duplication and review of records requested under the Freedom of Information Act, as defined in section 1-200, and the reasonable cost of reviewing and acting upon an application for and monitoring compliance with the terms and conditions of any state or federal permit, license, registration, order, certificate or approval required pursuant to subsection (i) of section 22a-39, subsections (c) and (d) of section 22a-96, subsections (h), (i) and (k) of section 22a-424, and sections 22a-6d, 22a-32, 22a-134a, 22a-134e, 22a-135, 22a-148, 22a-150, 22a-174, 22a-208, 22a-208a, 22a-209, 22a-342, 22a-345, 22a-354i, 22a-361, 22a-363c, 22a-368, 22a-372, 22a-379, 22a-403, 22a-409, 22a-416, 22a-428 to 22a-432, inclusive, 22a-449 and 22a-454 to 22a-454c, inclusive, and Section 401 of the federal Clean Water Act, (33 USC 1341). Such costs may include, but are not limited to the costs of (A) public notice, (B) reviews, inspections and testing incidental to the issuance of and monitoring of compliance with such permits, licenses, orders, certificates and approvals, and (C) surveying and staking boundary lines. The applicant shall pay the fee established in accordance with the provisions of this section prior to the final decision of the commissioner on the application. The commissioner may postpone review of an application until receipt of the payment. Payment of a fee for monitoring compliance with the terms or conditions of a permit shall be at such time as the commissioner deems necessary and is required for an approval to remain valid; and (12) by regulations adopted in accordance with the provisions of chapter 54, require the payment of a fee sufficient to cover the reasonable cost of responding to requests for information concerning the status of real estate with regard to compliance with environmental statutes, regulations, permits or orders. Such fee shall be paid by the person

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requesting such information at the time of the request. Funds not exceeding two hundred thousand dollars received by the commissioner pursuant to subsection (g) of section 22a-174, during the fiscal year ending June 30, 1985, shall be deposited in the General Fund and credited to the appropriations of the Department of Energy and Environmental Protection in accordance with the provisions of section 4-86, and such funds shall not lapse until June 30, 1986. In any action brought against any employee of the department acting within [his] the scope of delegated authority in performing any of the above-listed duties, the employee shall be represented by the Attorney General.

Sec. 3. Section 22a-151 of the general statutes is amended by adding subdivision (13) as follows (*Effective from passage*):

(NEW) (13) "Sources of ionizing radiation" means, collectively, radioactive materials and radiation generating equipment.

Sec. 4. Subsection (a) of section 22a-154 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Commissioner of Energy and Environmental Protection shall adopt regulations, in accordance with the provisions of chapter 54, for the general or specific licensing of sources of ionizing radiation or devices or equipment utilizing such sources. The commissioner may issue, deny, renew, modify, suspend or revoke such licenses and may include such terms and conditions in such licenses that the commissioner deems necessary. Nothing in this section shall be construed to confer authority to the commissioner to regulate materials or activities reserved to the Nuclear Regulatory Commission under 42 USC 2021(c) and 10 CFR 150.

Sec. 5. Section 22a-158b of the general statutes is amended by adding subsection (c) as follows (*Effective from passage*):

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(NEW) (c) (1) Whenever the commissioner finds after investigation that any person is causing, engaging in or maintaining, or is about to cause, engage in or maintain, any condition or activity that, in the commissioner's judgment, will result in or is likely to result in imminent threat to human health or the environment within the jurisdiction of the commissioner under the provisions of this chapter, or whenever the commissioner finds after investigation that there is a violation of the terms and conditions of a permit or license issued by the department that is, in the commissioner's judgment, substantial and continuous and it appears prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, or whenever the commissioner finds after investigation that any person is conducting, has conducted or is about to conduct an activity that will result in or is likely to result in imminent damage to the environment, or to public health within the jurisdiction of the commissioner under the provisions of chapter 446a for which a license, as defined in section 4-166, is required under the provisions of chapter 446a without obtaining such license, the commissioner may, without prior hearing, impound the source of ionizing radiation, or contract to impound such source.

(2) The commissioner shall, not later than ten days after the date of impounding material pursuant to subdivision (1) of this subsection, hold a hearing to provide any such person an opportunity to be heard and show that such violation does not exist or such violation has not occurred or a license was not required or all required licenses were obtained. All briefs or legal memoranda to be presented in connection with such hearing shall be filed not later than ten days after such hearing. Such order shall remain in effect until fifteen days after the hearing, during which time a new decision based on the hearing shall be made by the commissioner.

(3) Any person who is found by the commissioner to have violated any provision of this chapter, resulting in impoundment pursuant to

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this subsection, shall be liable for any costs of such impoundment, provided any provisions of this subsection concerning a continuing violation shall not apply to a person during the time when a hearing on an order issued pursuant to this subsection or an appeal is pending. The Attorney General, upon complaint of the commissioner, shall institute a civil action in the superior court for the judicial district of Hartford to recover such costs.

(4) The commissioner shall have the authority to enter into a contract for the storage of impounded material, as necessary, to carry out the provisions of this subsection.