



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.

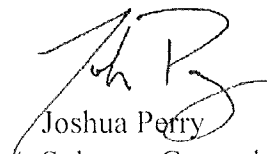
It is true that Conn Gen Stat, § 22a-7 requires an "investigation" as a condition precedent to issuing a cease-and-desist order. However, neither that section, nor any regulation that implements it, specifies the nature or the duration of such an investigation. The only "investigation" that is required 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
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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.