



CITY OF STAMFORD, CONNECTICUT  
INTER-OFFICE CORRESPONDENCE

To: Kathryn Emmett, Esq.  
From: Dana B. Lee, Esq. (Electronically signed: /DLEE)  
Copy: Judith Isidro; Monika White  
Date: September 15, 2020  
RE: **Opinion Regarding State Preemption of Municipal Air Quality Regulations**

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**ISSUE:**

Does the City of Stamford have jurisdiction to monitor and/or regulate air quality, or has the field been preempted by the State?

**BRIEF ANSWER:**

The City lacks the authority and jurisdiction to *independently* monitor and/or regulate air quality because Chapter 446c of the Connecticut General Statutes has preempted the field of regulation of air emissions to the Commissioner of Environmental Protection. *Bristol Resource Recovery Facility Operating Committee v. City of Bristol*, 1995 WL 410806 at \* 21 (Conn. Super. 1995)(Parker, J.); *Polymer Resources, LTD., et al. v. Farmington Town Plan and Zoning Commission*, 1996 WL 457009 (Conn. Super. 1996)(Fineberg, J.).

However, the City has been granted authority to enact air quality regulations, but those regulations must first be approved by the Commissioner.

**ANALYSIS:**

The law governing State preemption of municipal ordinances is as follows:

[A] local ordinance is preempted by a state statute whenever the legislature has demonstrated an intent to occupy the entire field of regulation on the matter ... or ... whenever the local ordinance irreconcilably conflicts with the statute ... Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives ...

(Citations omitted.) *Shelton v. Commissioner*, 193 Conn. 506, 517 (1984).

The powers granted to the Commissioner of Environmental Protection by Chapter 446c are fully comprehensive in scope. For example, § 22a-174(a) grants to the Commissioner the “power to formulate, adopt, amend and repeal regulations to control air pollution throughout the state.” Section 22a-174(c) elaborates thereon by empowering the Commissioner to issue permits and set conditions and procedures therefor, to require periodic inspection, maintenance, and record keeping, and to set reporting requirements. Sections 22a-175 and 22a-180 provide penalties for violation including civil fines and criminal sanctions. All-inclusive criteria for making regulations and issuing orders are set forth in § 22a-176, and enforcement and emergency action procedures are set forth in § § 22a-177, 22a-178 and 22a-181. Finally, Section 22a-174(d) empowers the Commissioner with “all incidental powers necessary to carry out the purposes” of Chapter 446c. The entire field of regulation is occupied. *Bristol Resource Recovery Facility Operating Committee v. City of Bristol*, 1995 WL 410806 at \* 21 (Conn. Super. 1995)(Parker, J.); *Polymer Resources, LTD., et al. v. Farmington Town Plan and Zoning Commission*, 1996 WL 457009 (Conn. Super. 1996)(Fineberg, J.). Consequently, the City does not have the authority to *independently* monitor and/or regulate air quality. *Id.*

However, the legislature has granted some authority to municipalities to enact air quality regulations, but by law, those municipal regulations must first be approved by the Commissioner. Specifically, General Statute Section 22a-185<sup>1</sup> authorizes a municipality to “adopt ordinances or regulations for the control of air pollution within its territorial limits,” and authorizes a municipal ordinance or regulation to impose “stricter controls” than the regulations promulgated by the Commissioner, “subject to the approval of the Commissioner.”

Similarly, on the specific question of “monitoring,” the legislature has granted some authority to municipalities to monitor the effect of New York’s Cricket Valley Energy Center. However, this limited grant of is also qualified by the comprehensive involvement of the

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<sup>1</sup> General Statute § 22a-185 provides, in its entirety, that “(u)pon approval of the commissioner, any municipality, pursuant to ordinance, may join with any other municipality or combination thereof, in the formation of a district for the control of air pollution. Any municipality or such district may adopt ordinances or regulations for the control of air pollution within its territorial limits. Such ordinances or regulations may embody the regulations promulgated hereunder, in whole or in part, or may consist of other ordinances or regulations in conformity with the regulations promulgated hereunder. No such ordinance or regulation shall be effective until fifteen days after approval by the commissioner. If the commissioner fails to act upon such ordinances or regulations within sixty days after submission to him, such ordinances or regulations shall be deemed to be approved. In acting upon such ordinances or regulations the commissioner shall give due consideration to the standards set forth in section 22a-176. Nothing contained in this section shall be construed to prevent the enforcement of any municipal ordinance or regulation for the control of air pollution not in conflict with this chapter or any regulations promulgated hereunder, which ordinance or regulation was adopted by the legislative body of any municipality prior to July 6, 1967. Subject to the approval of the commissioner, nothing contained in this section shall prohibit a municipal ordinance or regulation from imposing stricter controls than the regulations promulgated hereunder.

Commissioner. Specifically, Section 22a-185a, entitled “Assistance with establishing municipal air quality baseline and effect of Cricket Valley Energy Center,” authorizes municipalities to use “air monitoring equipment for the purpose of establishing an air quality baseline in such municipality and determining any effect on such baseline by the Cricket Valley Energy Center in the state of New York.” However, the statute requires the Department of Energy and Environmental Protection to provide technical assistance and support to the municipality which “shall include, but not be limited to, the provision of information on best practices for the establishment of such baseline, guidance on the siting and placement of such air quality monitors, information concerning the maintenance and practices required to assure the accuracy of such monitors, proposed schedules for data retrieval from such monitors during the calendar year and review of and conclusion from the results of such data retrieval.”

Consequently, while the City has some authority to enact regulations in this field and some authority to monitor the effects of the Cricket Valley Energy Center, the City does not have any independent authority to do so. This statutory scheme has led at least one court to conclude that, “(t)he legislature has given little but illusory authority to municipalities in this regard. In fact, where the legislature has ceded any power to the municipalities in the domain of air pollution control, it has qualified the same by making it subject to the approval of or aegis of the commissioner.” *Bristol Resource Recovery Facility Operating Committee v. City of Bristol*, 1995 WL 410806 at \* 21.