Read into the Record 12/6/22

Exhibit #33

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Having determined that the term "unreasonable" as used in the context of an independent action under CEPA does *not* mean something more than de minimis, we next turn to the question of what it *does* mean, at least in the context of this case. We conclude that when, as in the present case, as we discuss in more detail later in this opinion, the legislature has enacted an environmental legislative and regulatory scheme specifically designed to govern the particular conduct that is the target of the action, that scheme gives substantive content to the meaning of the word "unreasonable" as used in the context of an independent action under CEPA. Put another way, when there is an environmental legislative and regulatory scheme in place that specifically governs the conduct that the plaintiff claims constitutes an unreasonable impairment under CEPA, whether the conduct is unreasonable under CEPA will depend on whether it complies with that scheme.

We draw this conclusion from the overriding principle that statutes should be construed, where possible, so as to create a rational, coherent and consistent body of law. See, e.g., *Doe* v. *Doe*, 244 Conn. 403, 428, 710 A.2d 1297 (1998) ("we read related statutes to form a consistent, rational whole, rather than to create irrational distinctions"); *In re Valerie D.*, 223 Conn. 492, 524, 613 A.2d 748 (1992) (" '[s]tatutes are to be interpreted with regard to other relevant statutes because the legislature is presumed to have created a consistent body of law' "). It would be inconsistent with that principle to

circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.' " Id., 109, quoting General Statutes § 22a-19 (b). We note that this language applies to *agency determinations* in "administrative, licensing or other proceedings . . . ." General Statutes § 22a-19 (b). Today's holding does nothing more than ensure that, when a court remands an issue to an agency, the agency examines relevant statutes as part of its examination of "relevant surrounding circumstances and factors . . . ." General Statutes § 22a-19 (b).

conclude, absent some clear indication to the contrary, that the legislature intended that the same conduct that complies with an environmental legislative and regulatory scheme specifically designed to govern it, nonetheless could be deemed by a court to be an unreasonable impairment of the environment. Put still another way, it would be anomalous to conclude that the legislature has, as a general matter, enacted an environmental regulatory scheme that runs on two different tracks with respect to the same conduct: one that requires compliance with specific criteria promulgated by a regulatory agency pursuant to a specific legislative enactment; and a second that lodges in a court the determination of whether the same conduct comes within the very general standard of reasonableness, irrespective of whether it is in compliance with those specific criteria. Thus, in the present case, because we conclude, as the following discussion indicates, that, because the trial court found in effect that the Shepaug River is a stocked watercourse, and because both the defendants and the department have in this appeal assumed the propriety of that finding, the minimum flow statute and the regulations adopted pursuant to it apply to the Shepaug River. Therefore, the question of whether the impairment of the Shepaug River is unreasonable depends on whether its impaired flow meets the requirements of that statute and those regulations.

In this connection, we acknowledge that, as our previous discussion regarding the legislative rejection under CEPA of the exhaustion doctrine demonstrates, when CEPA was enacted there was significant legislative skepticism regarding the efficacy of the environmental regulatory agencies and, therefore, the legislature evinced an attitude favoring initial judicial, as opposed to initial regulatory, determinations of whether specific questioned conduct constituted unreasonable pollution, impairment or destruction of a natural resource.

Concurrent with and subsequent to that enactment, however, the legislature also has enacted numerous environmental regulatory programs, and it can hardly be said that our environmental regulatory agencies have lain dormant in implementing those programs.[33] In order to read our environmental protection statutes so as to form a consistent and coherent whole, we infer a legislative purpose that those other enactments are to be read together with CEPA, and that, when they apply to the conduct questioned in an independent action under CEPA, they give substantive content to the meaning of the word "unreasonable" in the context of such an independent action.

Furthermore, a contrary conclusion would also mean that, in defending against what a court deems to be a prima facie case of unreasonable conduct under CEPA, the only defense that could be offered would be the affirmative defense that there was no feasible and prudent alternative to the defendant's conduct. As will be

[33] For example, General Statutes §§ 26-141a through 26-141c, regulating the minimum stream flow for stocked rivers, was enacted during the 1971 legislative session, when CEPA was enacted. Furthermore, since the passage of CEPA in 1971, the legislature has enacted numerous environmental statutes that purport to regulate certain activities and set various compliance standards. See, e.g., General Statutes §§ 22a-36 through 22a-45 (Inland Wetlands and Watercourses Act, initially enacted in 1972); General Statutes §§ 22a-67 through 22a-76 (establishing state policy on noise pollution control, initially enacted in 1974); General Statutes §§ 22a-90 through 22a-112 (Coastal Management Act, initially enacted in 1978); General Statutes §§ 22a-114 through 22a-134q (state policy on handling of hazardous waste, initially enacted in 1980); General Statutes §§ 22a-163 through 22a-165g (creation of low-level radioactive waste facility, initially enacted in 1987); General Statutes §§ 22a-227 through 22a-229 (municipal solid waste management plan, initially enacted in 1985); General Statutes §§ 22a-257 through 22a-265 (Connecticut Solid Waste Management Services Act, initially enacted in 1973); General Statutes §§ 22a-354g through 22a-354bb (establishment of aquifer protection areas, initially enacted in 1989); General Statutes §§ 22a-365 through 22a-378 (Water Diversion Policy Act, initially enacted in 1982); General Statutes §§ 23-65f through 23-65qv (forest practices, initially enacted in 1986).

seen in our subsequent discussion of the minimum flow statute, however, in numerous areas the legislature has chosen to enact detailed regulatory schemes circumscribing a party's conduct. There is nothing in CEPA, or in its legislative history, to suggest that CEPA was intended to trump more specific statutes reflecting the legislature's environmental policy in a specific area. It is reasonable to conclude, therefore, that when the legislature has enacted a specific statutory scheme concerning conduct that is later complained of, it also intended that a party be able to offer evidence of compliance with that statute which, if believed, would rebut a prima facie showing under CEPA. Therefore, we do not interpret the term "unreasonable" in such a way as to relegate defendants in CEPA actions to the *sole* affirmative defense that there was no feasible and prudent alternative to their conduct.

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The Minimum Flow Statute

Having concluded that whether a watercourse has been unreasonably impaired may depend on a relevant regulatory scheme established by the legislature, we turn to Waterbury's claim regarding the minimum flow statute. Waterbury claims that flow in the Shepaug River is regulated by the minimum flow statute. Therefore, Waterbury asserts, as long as it was in compliance with that statute and its accompanying regulations, it could not be in violation of CEPA. The defendants argue that, assuming that the minimum flow statute applies to the Shepaug River, the trial court correctly concluded that the minimum flow statute was not intended to define "unreasonable impairment" of the river, because the minimum flow statute is concerned only with the protection of fish. We agree with Waterbury, and conclude that the minimum flow statute is the standard by which