



**Testimony of Connecticut Fund for the Environment
Before the Judiciary Committee**

In opposition to Senate Bill No. 431

**AN ACT CONCERNING CONSENT ORDERS ENTERED INTO BY THE
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.**

Submitted by
Roger Reynolds, Legal Director
Leah Schmalz, Program Director

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Connecticut Fund for the Environment (CFE) is a non-profit environmental organization with over 5,500 members statewide. The mission of CFE, and its bi-state program Save the Sound, is to protect and improve the land, air, and water of Connecticut and Long Island Sound. We use legal and scientific expertise and bring people together to achieve results that benefit our environment for current and future generations.

Connecticut Fund for the Environment, and its bi-state program Save the Sound (CFE/Save the Sound), expresses its objection to Senate Bill No. 431, which seeks to prohibit the Commissioner of Energy and Environmental Protection (DEEP) from modifying or revoking a consent order without the consent of the party and would allow litigious polluters to impede DEEP's ability to protect the public health and safety. It has been CFE's experience that consent orders issued by the Commissioner of DEEP are not modified without the consent of the party or parties. CFE is unaware of any change in that practice or in the agencies Rules of Practice. Current law and regulations give the Commissioner of DEEP the authority to revoke an order. Consent Orders issued by the Commissioner of DEEP are, by their own terms, deemed to be final orders of the Commissioner. The revocation of a consent order would be a highly unusual step for the Commissioner to take unless there were major issues of concern with a party's compliance with the terms of the consent order such as has recently occurred in the BIC Corporation case, which we understand is the impetus for this bill. For the continued protection of the public health and the environment, the Commissioner's use of this authority, in the rare instances where it is needed, should not be limited.

The bill also provides direct jurisdiction of the Superior Court, by way of declaratory and injunctive relief, to resolve disputes concerning terms of and compliance with a consent order issued by the Commissioner of DEEP. These matters are usually technical in nature and require

agency expertise to resolve. There currently exists an administrative process for an aggrieved party to seek review of such dispute through the use of a declaratory ruling and then, ultimately, review of the administrative ruling by the Superior Court. The proposed language would by-step the long used and effective administrative ruling process and require parties to abandon the less complicated administrative procedure for a more complicated Superior Court action.

Thank you for your time and consideration in this matter.

Respectfully submitted,

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