

State of Connecticut

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March 21, 2016.

The Honorable Eric D. Coleman
Co-Chair, Judiciary Committee
Legislative Office Building
Room 2500
Hartford, CT 06106-1591

The Honorable William Tong
Co-Chair, Judiciary Committee
Legislative Office Building,
Room 2502
Hartford, CT 06106-1591

RE: SB 431

Dear Senator Coleman and Representative Tong:

I write in opposition of SB 431, AN ACT CONCERNING CONSENT ORDERS ENTERED INTO BY THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.

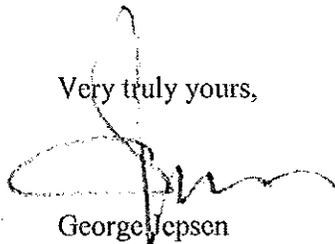
SB 431 has the consequences of interfering with the judicial process associated with a pending appeal and with an ongoing administrative hearing in which my Office represents the Department of Energy and Environmental Protection ("DEEP"). By way of background, former Commissioner Esty asked my Office to file suit against BIC Corp. to enforce a partial consent order. The Commissioner alleged that BIC had failed to comply with the partial consent order because BIC had submitted an inadequate water pollution investigation for its former facility in Milford, Connecticut. BIC had submitted reports to the Commissioner under the consent order that the Commissioner later determined were questionable. The Commissioner sought the assistance of my Office in forcing BIC to fill in data gaps to complete the required investigation and to produce more reliable reports documenting the investigation of its site as a possible source of pollution, which BIC refused to do.

My Office brought a court action on behalf of the Commissioner to obtain a reliable investigation. BIC filed counterclaims against the state. The case was sharply contested and all attempts to resolve the dispute failed. DEEP made a decision to undertake the required investigation on its own when it became clear that further investigation by BIC would not be constructive. It revoked the consent order and asked this Office to withdraw the complaint, which my staff did. BIC still sought to litigate its counterclaims against the state. My Office moved to dismiss on the grounds of sovereign immunity. The court agreed with our arguments and dismissed the case on those grounds. The court concluded that the Commissioner had the authority to revoke the partial consent order. BIC has appealed the dismissal. That appeal is pending. Also ongoing, is an administrative hearing on a separate unilateral administrative order issued to BIC regarding what actions it must take to address the source of pollution on its former property.

SB 431 applies retroactively. It would reinstate the consent order and permit BIC to bring an action in court against the state to pursue declaratory and injunctive relief in court to resolve disputes concerning the terms and conditions of the consent order, matters which are generally considered beyond the court's jurisdiction. This proposed legislation would unreasonably interfere with the litigation as it has developed in court, create uncertainty with the pending appeal, give BIC an unfair advantage in the pending administrative action, and will undoubtedly lead to further litigation.

For all of these reasons, I urge you to reject SB 431.

Very truly yours,

A handwritten signature in black ink, appearing to read "George Jepsen", written over a horizontal line.

George Jepsen
Attorney General