



Legislative Memorandum of Support for S.8154/A.10236 (Harckham/Galef)
An act to amend the public service law, in relation to providing for decommissioning oversight boards for nuclear power plants in New York State

Hudson River Sloop Clearwater strongly supports **S.8154/A.10236**, which establishes the framework for the oversight of decommissioning nuclear power plants in the state. These New York State Decommissioning Oversight Boards will enable a science-based and health protective approach from relevant New York State agencies and valuable public input and expertise from impacted communities, labor representatives and informed stakeholders.

Introduction: Legislation to create a Decommissioning Oversight Boards (Boards or DOBs) for nuclear reactors in New York State is currently pending in the State Senate and Assembly. It has made its way through the appropriate committees and we strongly support its passage by both chambers this session. Given the environmental, public health and economic implications of the decommissioning of nuclear power plants, this is an issue that affects all New Yorkers, whether or not there is a facility in your district.

Why do we need DOBs? Decommissioning a nuclear plant is a major deconstruction and demolition project that can have serious environmental, economic, and public health consequences. Like other complex energy projects, it needs appropriate regulation and oversight. The Nuclear Regulatory Commission (NRC) only oversees certain aspects of the process. The State has jurisdiction over economic impacts of decommissioning and related issues, and over the standard to which a reactor site must be cleaned up before it can be sold or redeveloped. However, often as a practical matter, it can be difficult to exercise the State's authority. In other reactor communities, States and local municipalities have found it difficult to hold the companies doing the work accountable, particularly in deregulated states such as New York.

This DOB legislation would help change that. Relevant New York State agencies, who now have specific State authority to monitor the project will meet regularly at least 4 times per year, and their oversight will be coordinated and focused through the DOB. The Board will include professionals in the relevant fields and have the ability to hire consultants to supply additional expertise.

The Oversight Will Apply to All Reactors in the State: Many nuclear plants across the country are closing due to high costs to operate these aging systems. Indian Point is already in the process of closing and will be fully shut down in April 2021. Other plants in upstate New York will follow suit in the years ahead. In order to protect the interests of the State and the host communities, this legislation creates an individual DOB for each plant at the time it announces its closure.

The DOB is Uniquely Necessary and Not Duplicative: Shortly after New York State, Entergy and Riverkeeper announced a settlement agreement to close Indian Point's two operating reactors in 2020 and 2021, New York State convened an Indian Point Closure Task Force. The Task Force has been chaired by Tom Congdon of the New York Public Services Department, the department which would lead the proposed DOBs. That Task Force is also scheduled to disband when the IP3 reactor closes in April 2021. At that point, without a DOB the state may well lose its ability to monitor and oversee Indian Point decommissioning, which will be actively underway for at least 15 years, and which will encompass spent fuel storage and other issues that will last many decades, or centuries into the future.

When Entergy announced that Indian Point plant would be closing, the Town of Cortlandt also established a Community Unity Task Force, which is will also expire once the reactors close.

To expand local involvement, a Nuclear Decommissioning Citizens' Advisory Panel (NDCAP) was created by the Village of Buchanan Mayor, Theresa Knickerbocker, who serves as its Chairperson and Linda Puglisi, the Town of Cortlandt Town Supervisor, who serves as Vice-Chairperson. The CAP is comprised of elected officials and other community leaders. Its goal is "to work with other task forces and ensure that local concerns are prioritized." Clearwater is honored to serve as a representative of the environmental community on this local task force.

The effort to establish a true oversight board has been underway for well over two years. Input from all concerned local and regional elected officials has been sought and incorporated into the DOB proposal and draft legislation. The legislation has been modified to include expanded involvement of State agencies after discussions with and suggestions from the sponsors, NY State Senator Pete Harckham, NYS Assemblymember Sandy Galef, and others. It is designed to complement operations of the local and State Task Forces, including the NDCAP, while focusing and coordinating State authorities on an ongoing basis throughout the decommissioning process.

People living and working in an extended area outside reactor host communities are deeply concerned and impacted by decommissioning decisions. Reactor host communities experience the greatest financial effects of plant closures; others are also subject to a variety of more intense impacts than surrounding towns. In Indian Point's case, workers and local businesses most affected by cessation of the plant's operations come from Peekskill, Ossining, Yorktown. Some live within the 10-mile radius, i.e. inside the emergency planning zone (EPZ) from which people would be evacuated in the event of a serious radiological accident during Indian Point's operation phase. However, radiological emergencies elsewhere have required the evacuation of a 50-mile radius or more around nuclear plants. Tax increases due to Indian Point's closure impact everyone in the state, The DOBs will consider the input from and reflect the interests of both the local community and the wider, potentially-affected community.

Although the NRC has recently studied community advisory boards' role in the decommissioning process, it hasn't endorsed any particular type of organization and various formats have been used in other places where plants have closed or are closing. No single model has emerged as being the most effective. Learning from what has and has not worked well in other states, Clearwater believes that New York's ground-breaking DOB legislation can serve as a model for the many states with reactor communities that will soon be facing decommissioning as well.

Members of the DOB

Nine DOB members will represent State agencies that have jurisdiction over the applicable regulatory areas, including the:

- Chief Executive Officer of the NYS Department of Public Service, who will chair the Board, the Secretary of State,
- Commissioner of Environmental Conservation, the Commissioner of Health,
- Director of the Office of Emergency Management,
- President of the NYS Energy Research and Development Authority,
- Commissioner of Labor,
- President and Chief Executive Officer of the NYS Power Authority,
- Commissioner of the Division of Homeland Security and Emergency Services,
- NYS Comptroller, and
- NYS Attorney General.

The Governor and members of both parties in the NYS Senate and Assembly will appoint a total of 12 community members to serve on the Board

To provide representation for the range of people impacted at each plant, the appointed members are expected to be individuals who have experience, knowledge and a track record of well-informed advocacy for the public interest on relevant issues related to nuclear plant decommissioning. These include representatives of labor unions whose members were employed at the plant, members of

citizens' organizations working for environmental justice, experts with relevant scientific or technical background in nuclear engineering, decommissioning, and risk management, people serving in local or regional emergency planning and first responder entities, and local or regional elected officials, including the chief executive of the host community or a person he or she chooses to delegate.

Functions and Authority of the DOB: The DOB's core functions include monitoring and overseeing decommissioning decisions and expenditures, and providing transparency and a channel for public input into how the licensee and its private contractors conduct decommissioning work.

One particular area of concern is the adequacy of the Decommissioning Trust Fund (DTF) that New York ratepayers paid for through surcharges on the electric bills over many decades. It currently amounts to nearly \$2 billion. If the companies responsible for decommissioning are left to do as they please with these funds, there is a strong possibility that ratepayers, taxpayers, and New York State could be left holding the bag.

Holtec, the company seeking to acquire Indian Point, has a history of malfeasance, including lying to public officials, bribery, and risk-taking, and it lacks capitalization of its own. The subsidiaries Holtec plans to use to take over the plant are structured as limited liability corporations which can easily go bankrupt without damaging their parent companies. They will bring no financial resources of their own to the table, instead they will rely on public money, including the DTF and Department of Energy funding. Their financial incentive is to leverage as much public money as they can, and do the work as cheaply as they can, keeping whatever public money is left over as profit. If they can't leverage enough of it to guarantee their profits, we need the DOB to help make sure that they won't use up the DTF, walk away, and leave New York State liable for remaining cleanup costs.

Will the DOB be able to achieve results? According to an announcement from Holtec, the company has come to an agreement with the State of Massachusetts on key issues related to their decommissioning of the Pilgrim Nuclear Station. The agreement with Massachusetts officials provides limited decommissioning trust fund protection, somewhat more stringent radiological clean-up limits, and some additional site monitoring and oversight beyond what Holtec originally proposed. Holtec granted these concessions only after the Massachusetts Attorney General sued the Nuclear Regulatory Commission for excluding the State from having any input into the approval process for transfer of Pilgrim's license to Holtec. These concessions are limited, though they were the best that Massachusetts could obtain in a difficult situation where the State had little leverage, and it had to resort to a lawsuit and a negotiated settlement to get even this level of protection. By creating a DOB for each nuclear power facility, which is empowered to monitor the decommissioning process for its duration, NY State can enable better, more implementable protections for New Yorkers.

Why Now? This year, even amid the coronavirus crisis, the Legislature passed three other bills to help reactor communities and their residents, which are now awaiting the Governor's signature. These bills will help retain existing nuclear plant workers during decommissioning, extend payment in lieu of taxes (PILOT) agreements for closed electrical facilities, and enable taxation of the spent fuel rods and casks that will remain on site. They were passed this year in recognition of the fact that as Indian Point is already closing down (the IP2 reactor went offline permanently in April 2020 and IP3 will close in April 2021), and key decisions related to decommissioning are already being made. These bills do not however provide the direct oversight that the DOB legislation provides. That oversight needs to be in place starting this year to protect New Yorkers as Indian Point undergoes decommissioning. Establishing the NYS Decommissioning Oversight Boards cannot wait until the next legislative session; the DOB really needs to be brought to a vote, passed, and signed into law this session.

For further information, please contact:

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