

Memorandum in Strong Opposition of S.1730-B (Schneiderman) similar to A.4272 (Brodsky)

June 17, 2010

S.1730-B (Schneiderman) similar to A.4272 (Brodsky) AN ACT to amend the environmental conservation law, in relation to enforcement actions for violations of such law

The Independent Power Producers of New York, Inc. (IPPNY) is a trade association representing companies involved in the development of electric generating facilities, the generation, sale, and marketing of electric power, and the development of natural gas facilities in the State of New York. IPPNY represents almost 75 percent of the electric generating capacity in New York.

IPPNY strongly opposes the passage of S.1730-B. Enactment of this legislation would send chilling signals that will discourage new investment and job creation in the state, as well as create competitive disadvantages, in relation to other areas of this country, for New Yorks industries, workers, and consumers. As a result, much needed economic development in this state that is vital to our economic recovery would occur in other states.

The bills will encourage additional litigation, without significantly enhancing environmental protection in New York. This legislation is unnecessary, given the existing broad powers and enforcement duties of the New York State Department of Environmental Conservation (DEC) and the New York State Attorney General. In particular, existing law provides that, whenever in his judgment the public interest requires it, the Attorney General inquires into matters concerning the public peace, public safety and public justice. Also, the DEC Commissioner has adopted a formal policy (CP-29), which provides guidance for incorporating environmental justice concerns into the DEC environmental permit review process, the DEC's application of State Environmental Quality Review Act (SEQRA), its enforcement program, and public participation.

Additionally, a private party is able to employ existing Federal citizen suit provisions against alleged violations of Federal law. In many cases, a private party also can use Federal citizen suit provisions against alleged violations of New York State permits and regulations, which are developed pursuant to Federal statutes and / or related to Federal programs that have been delegated to the state.

For the reasons stated above, IPPNY opposes S.1730-B and A.4272.