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By Meg Sheehan

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## OF NUCLEAR INTEREST: Pilgrim Nuclear and the public's rights to the shoreline

Is Entergy Corporation legally occupying the public shoreline on Cape Cod Bay? That's the question local residents want answered. Entergy's Pilgrim Nuclear Power Station occupies about one mile of prime waterfront in Plymouth, near White Horse Beach.

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Pilgrim is a nuclear power station that makes electricity. Like all traditional power plants, it heats up water to make steam to run turbines. Instead of using coal or natural gas, Entergy uses a nuclear reactor. It takes in about 510 million gallons per day of sea water, heats it up, then dumps it heated and polluted back into Cape Cod Bay. Without using water from our Bay, Pilgrim cannot operate.

In order to build the intake structure that takes in water from the Bay, and to dump out the polluted water through the discharge canal, state laws required Entergy's predecessor, Boston Edison, to get several local, state and federal permits. In the late 1960s, the state granted "waterways licenses" so Boston Edison could put the intake structures and discharge canal on public tidelands – the area between high and low water. The state can give a corporation the right to use the public tidelands, but only if the corporation can show a proper public purpose. The question is whether Entergy's current use of the tidelands serves a proper public purpose, due to ongoing pollution and the risk of future radiological contamination in the event of a nuclear accident.

Under public trust law, even though shorefront may be privately owned (here, by Entergy) the public has rights in the "tidelands" – the area between the low and high water mark. The law also protects the public's rights to the natural resources that live in the tidelands.

The laws preserving public rights in the tidelands date back to England. Early settlers in Massachusetts brought that concept of ownership with them. The Colonial Ordinance of 1641-1647 granted ownership to private landowners from the low tide line to the high tide line as long as "navigation of the stream be not materially impaired." This means that the public's right to "fish, fowl and navigate" in these tidal waters are a "public trust" right. Someone with a license from the state to use the tidelands cannot significantly interfere with the public's rights to fish, fowl and navigate.

The public's rights in the tidelands include swimming and boating as well as access to fish and hunt. Entergy excludes the public from over one mile of tidelands in front of Pilgrim, and it pollutes the tidelands by dumping contaminated cooling water out through the discharge canal.

Now, 43 years since the first "waterways" license was granted, Entergy has asked the state for yet another tidelands license to use public lands and resources for a pump that it says will help cool the reactor and spent-fuel pool and prevent a meltdown in the event of an unplanned power outage. Under Entergy's plan, the radiologically contaminated water will drain back out into the tidelands and Cape Cod Bay. This is the same "emergency" method being used at the crippled Fukushima reactor. Over two years later, contaminated cooling water is still be drained into the ocean from the Japanese coast.

The state Department of Environmental Protection is currently considering whether to grant Entergy another tidelands license for the use of emergency cooling water from Cape Cod Bay. Local residents have asked the state to hold a hearing to allow the public to voice their opinion on whether this private corporation should be allowed to use public trust resources in this manner.

*Meg Sheehan is an environmental advocate and volunteer with Cape Cod Bay Watch. As a fourth generation native Plymouthean, she and her family grew up clamming, fishing, sailing, swimming and walking Plymouth's waterways and tidelands.*

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