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## STATE CAPITOL REPORT

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# Sierra Club Sues Shell Oil Company

## Clean Air Act Violations Cited at Deer Park Facilities

### *Millions of Pounds of Illegal Air Pollution Over Five-Year Period*

On January 7 the Sierra Club and Environment Texas filed a lawsuit in federal district court against Shell Oil Company and several affiliates. The suit – the first case in Texas in which citizen groups are suing to stop illegal air emissions from so-called “upset” events – claims that Shell has repeatedly violated the Clean Air Act at its Deer Park, Texas, oil refinery and chemical plant, resulting in the release of millions of pounds of excess air pollutants over the past five years, including toxic chemicals such as benzene and 1,3-butadiene.

Shell’s Deer Park facility is a 1,500-acre complex on the Houston Ship Channel in Harris County, about 20 miles east of downtown Houston. It is the nation’s eighth largest oil refinery and one of the world’s largest producers of petrochemicals. The facility is also the second largest source of air pollution in Harris County, and among the worst in the nation in several measures of air quality.

### Citizen Concerns

“I live and work downwind from Shell, in Channelview. My family and my employees simply can’t afford to breathe in any more air pollution,” said Sierra Club member and small business owner Karla Land. “We have laws to protect air quality for a reason. Shell is breaking those laws and they need to be made to stop.”

“On average of more than once a week for at least the past five years, Shell has reported that it violated its own permit limits by spewing a wide range of harmful pollutants into the air around the Deer Park plant,” said Luke Metzger, Executive Director of Environment Texas. “Because the state of Texas and the U.S. EPA have both failed to put a stop to these blatant violations, ordinary citizens are stepping up to enforce the law themselves.”

The Clean Air Act contains a “citizen suit”  
see *Violations*, page 2

**Violations**, *continued from page 1*

provision that allows private citizens affected by violations of the law to bring an enforcement suit in federal court if state and federal regulators do not.

**Shell's "Upset Emissions"**

Shell's permits contain both hourly and yearly limits on the amounts of pollutants it may emit into the atmosphere. The lawsuit alleges that equipment breakdowns, malfunctions, and other non-routine incidents at the Deer Park complex result in the release of millions of pounds of pollutants into the surrounding air, frequently in violation of legal limits.

A single such "upset" or "emission event" can result in the release of thousands of pounds of air pollutants in a matter of minutes or hours. Some emission events at Shell Deer Park have involved pollutant releases in the hundreds of thousands of pounds.

According to the groups' analysis of Shell's own reports to the Texas Commission on Environmental Quality, air pollutants released during upsets at Deer Park since 2003 include:

- Over 2 million pounds of sulfur dioxide;
- Over 1 million pounds of volatile organic compounds (VOCs);
- Over 600,000 pounds of carbon monoxide;
- Over 250,000 pounds of nitrogen oxides;
- Over 90,000 pounds of benzene and 60,000 pounds of 1,3-butadiene.

Nitrogen oxides and VOCs contribute to the formation of ground-level ozone, which, according to EPA, can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Air quality in Harris County regularly violates standards for ground-level ozone set by EPA.

Sulfur dioxide contributes to respiratory illness, particularly in children and the elderly, and aggravates existing heart and lung diseases. Sulfur dioxide also contributes to the formation of acid rain. Benzene and 1,3-butadiene are carcinogens.

**The Lawsuit**

The lawsuit seeks a court order requiring Shell to end its Clean Air Act violations. In addition, Shell faces civil penalties of up to \$32,500 per day for each violation of the Clean Air Act. Shell Oil Company is an affiliate of Royal Dutch Shell, ranked by Fortune as the third largest company in the world.

The lawsuit was filed by Josh Kratka, a Senior Attorney at the National Environmental Law Center, attorney David Nicholas of Newton, Massachusetts, and Houston attorney Philip Hilder; copies of the complaint are available on the Sierra Club's Lone Star Chapter website at [www.texas.sierraclub.org](http://www.texas.sierraclub.org).

See Fact Sheet on Page 7 for more details on Shell air emissions.

## New Uranium Mining Activity Approvals Sought South Texans Express Concerns

The push for new nuclear power plants, the high price of uranium, and the lack of new uranium sources has spurred a renewed interest in mining the “uranium belt” of South Texas. Recently, the Texas Commission on Environmental Quality (TCEQ) held a public meeting in Benavides in Duval County on South Texas Mining Venture’s proposed in-situ uranium mine in that county. A public meeting will be held on January 24 in Goliad on Uranium Energy Corporation’s proposed uranium mine in northern Goliad County.

Over the last 12 to 18 months, the Railroad Commission of Texas has granted or is considered granting 19 separate applications by six different uranium mining companies for uranium exploratory activities (see Table). The Lone Star Chapter of the Sierra Club has been monitoring the permitting activity and assisting local citizens in participating in the permitting process and raising concerns about the uranium activities.

### Duval County Hearing

At the public meeting in Duval County on January 10, local groundwater officials, land owners, ranchers, workers, officials and lobbyists for South Texas Mining Ventures, and TCEQ employees discussed the proposed application from the company, owned principally by the multinational company Uranium One. While there was no outright opposition expressed to the mine, both the local Duval County Groundwater District and a representative

from nearby San Diego Municipal Water District and local land owners asked questions and expressed concerns about proper clean-up, monitoring, plugging of production wells, and enforcement of mining regulations.

“Our wells are only five or six miles away,” explained Vic Casas, with the San Diego Municipal Water District. While he said he understood no one would drink the actual water used in the mining process, he stated that water does migrate, and the local aquifers are used for livestock and human drinking. “How can we get assured that our potable water will be protected... and that financial assurance will be here 50 years from now?”

### Goliad County

In Goliad County, the meeting promises to be more colorful. Local opposition has emerged since UEC began exploratory mining in early 2007. Local landowners and the local groundwater district have reported that drinking water has already been impacted and that filters have had to be installed to keep a red slurry-like material out of their drinking water. The County has stated that it does not want the permit for full-scale mining to be granted and is seeking a contested case hearing on the application, which still must undergo technical review.

### Implementation of HB 3837

In the meantime, other communities in

**Table. Active and Pending Permit Applications to Conduct Uranium Exploration Activities as of 01/14/2008**

| Permittee/Applicant        | Permit No. | Date of Application | Permit Approval Date | County             |
|----------------------------|------------|---------------------|----------------------|--------------------|
| Mesteña                    | 125A       | 08-08-2007          | 07-24-2007           | Brooks & Jim Hogg  |
| PPT Energy Co. LLP         | Pending    | 03-08-2007          | Pending              | Karnes             |
| S. Tx Mining Venture       | 124B       | 05-01-2007          | 06-05-2007           | Duval              |
| Signal Equities LLC        | 134        | 04-18-2007          | 06-22-2007           | Atascosa           |
| Signal Equities LLC        | 135        | 04-23-2007          | 06-22-2007           | Live Oak           |
| Uranium Energy Corp. (UEC) | 123A       | 01-29-2007          | 02-06-2007           | Goliad             |
| Uranium Energy Corp. (UEC) | 126A       | 11-08-2006          | 11-29-2006           | Karnes             |
| Uranium Energy Corp. (UEC) | 126A       | 11-20-2007          | Pending              | Karnes             |
| Uranium Energy Corp. (UEC) | 127        | 01-26-2007          | 04-25-2007           | Goliad             |
| Uranium Energy Corp. (UEC) | 128        | 02-26-2007          | 05-01-2007           | Zavala             |
| Uranium Energy Corp. (UEC) | 129        | 03-07-2007          | 05-01-2007           | Goliad             |
| URI, Inc.                  | 118        | 10-24-2000          | 11-14-2006           | Duval              |
| URI, Inc.                  | 118Ren     | 10-01-2007          | Pending              | Duval              |
| URI, Inc.                  | 121A       | 09-27-2007          | 01-09-2008           | Kleberg            |
| URI, Inc.                  | 122A       | 10-01-2007          | 01-09-2008           | Duval              |
| URI, Inc.                  | 131        | 03-15-2007          | 05-22-2007           | Jim Wells & Duval  |
| URI, Inc.                  | 132        | 03-16-2007          | 05-22-2007           | Duval & McMullen   |
| URI, Inc.                  | 133        | 04-24-2007          | 05-22-2007           | Jim Wells & Nueces |
| URI, Inc.                  | Pending    | 12-10-2007          | Pending              | Kleberg            |

**Uranium**, *continued from page 3*

South Texas have only recently discovered that their area is also being targeted for uranium mining. Under provisions of HB 3837, passed during last year's regular session of the Texas Legislature, applicants for uranium mining exploratory activities must notify the local county, city, and groundwater district when an application is made or granted for a permit (through the Railroad Commission) to explore for uranium deposits. Nonetheless, companies have been using a provision within the law to declare their applications confidential, making it difficult to obtain even the most basic information about the proposed activity – such as the boundaries of the exploratory area.

While the Railroad Commission has proposed rules to implement HB 3837 that would continue to interpret the statutes rather broadly in terms of what a company can declare confidential, they have yet to approve them. Officials and citizens in these counties are pushing for a more narrow interpretation of the statute, so that basic information like boundaries, well location, and baseline water quality data can not be kept from the public.

Finally, TCEQ is planning to develop new rules on the uranium mining permitting process as a result of the passage of two other pieces of legislation – HB 3838 and SB 1604 – with an advisory committee expected to meet this spring. With more mining applications on the horizon, more explicit rules on monitoring, bonding and clean-up are considered a necessity by South Texas citizens and the Lone Star Chapter Sierra Club.

## Lone Star Chapter Tells Homeland Security: Scrap Border Wall

### More Public Meetings Planned for Eagle Pass and Del Rio

In public comments submitted at the end of December, the Lone Star Chapter of the Sierra Club has called on the U. S. Department of Homeland Security (DHS) to scrap its plan to build 70 miles of single and double-lined fencing in the Lower Rio Grande Valley. The proposed border wall would cut through state and local parks and the Lower Rio Grande Valley National Wildlife Refuge.

The Chapter stated simply that the wall and refuge were incompatible and that the Draft Environmental Impact Study (DEIS) did not adequately explore alternatives to the wall, detail the impacts of the wall, nor consult with the U.S. Fish and Wildlife Service about the impacts of the wall on the Wildlife Refuge.

The Chapter told DHS to begin anew by consulting with local experts and officials to design a plan that served the border security goals without impacting the local economy, wildlife and endangered species, and human rights. In the meantime, Sierra Club will comment on two new proposals to build fences in the Del Rio, Eagle Pass and Presidio areas, with similar concerns about the impact on

**The Wall**, *continued from page 5*  
water, wildlife, and the economy.

## Impact of New Federal Law

The Lone Star Chapter in its December comments argued that the DHS must restart the process of devising new border protection measures, given recent statutory changes adopted by the U.S. Congress through an Omnibus Appropriations Bill. Part of this bill, adopted last month, requires public consultation on developing a border strategy and allows DHS to take a more flexible approach on whether or not to build a wall, depending on local conditions.

The new, flexible language was pushed both by U. S. Representative Ciro Rodriguez as well as U. S. Senator Kay Bailey Hutchinson in a bipartisan effort to secure borders and match the flexibility needed on the ground at the Texas-Mexico border. A variety of organizations, including a coalition of local

mayors, Friends of the Earth, and Sierra Club, have all called on the DHS to abandon the present plan to build tens of miles of fences cutting through protected habitat that serves wildlife and tourists important to the local economy. Almost 300 Sierra Club members and other citizens also submitted comments on the draft EIS through the Lone Star Chapter's action alert system.

## Another Part of the Border Targeted

Meanwhile, the DHS has released two new Environmental Assessments on proposed fences along the Texas-Mexico border, scheduling meetings in Marfa and Del Rio on January 23 and January 24, respectively. Public comments are due by February 5 on the two draft Environmental Assessments, which cover the proposed construction of a border wall through the cities and surrounding areas of Eagle Pass, Del Rio, Ojinaga and parts of Hudspeth County. **Information on border wall proposals and public meetings are found at Department of Homeland Security at [www.borderfencenepa.com](http://www.borderfencenepa.com).**

The Lone Star Chapter will comment on these new environmental assessments. Those comments will be available on the Chapter website at [www.texas.sierraclub.org](http://www.texas.sierraclub.org). The Chapter's December comments on the Lower Rio Grande Valley Section DEIS are also available on the Chapter website.



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## FACT SHEET: AIR POLLUTION FROM “EMISSION EVENTS” AT SHELL DEER PARK

Since 2003, Shell Oil Company’s oil refinery and chemical plant in Deer Park, Texas, have emitted more than **four million pounds of air pollutants** during hundreds of so-called “upsets” or “emission events” – equipment breakdowns, malfunctions, and other non-routine occurrences. Environment Texas and Sierra Club allege that these upsets resulted in

approximately **a thousand separate violations** of the federal Clean Air Act and state-issued air emission permits during that time.

The **Texas Commission on Environmental Quality** has issued fines and violation notices to Shell, but **Shell has failed to solve the problem:**

### POLLUTION FROM SHELL’S EMISSION EVENTS IS GETTING WORSE <sup>(1)</sup>

| <b>POLLUTANT</b>           | <b>2003</b>    | <b>2004</b>      | <b>2005</b>      | <b>2006</b>    | <b>2007</b>      | <b>Total</b>     |
|----------------------------|----------------|------------------|------------------|----------------|------------------|------------------|
| <b>SO<sub>2</sub></b>      | 501,840        | 742,378          | 329,876          | 95,187         | 519,562          | <b>2,188,843</b> |
| <b>VOCs <sup>(2)</sup></b> | 63,625         | 325,208          | 380,449          | 116,471        | 421,172          | <b>1,306,926</b> |
| <b>Carbon monoxide</b>     | 12,236         | 143,714          | 266,116          | 49,660         | 205,850          | <b>677,576</b>   |
| <b>NOx <sup>(3)</sup></b>  | 11,299         | 20,780           | 85,036           | 5,978          | 132,969          | <b>256,061</b>   |
| <b>Benzene</b>             | 28,674         | 1,620            | 44,470           | 13,077         | 3,752            | <b>91,594</b>    |
| <b>1,3-Butadiene</b>       | 180            | 34,475           | 22,497           | 2,725          | 3,283            | <b>63,160</b>    |
| <b>Hydrogen sulfide</b>    | 4,848          | 11,266           | 3,807            | 982            | 6,639            | <b>27,542</b>    |
| <b>TOTAL</b>               | <b>593,848</b> | <b>1,243,346</b> | <b>1,065,284</b> | <b>268,278</b> | <b>1,286,192</b> | <b>4,456,948</b> |

(1) Emission data is calculated from Shell’s own emission event reports to TCEQ; only emissions that violated a permit limit (even if not all of the amount emitted was above the limit) are included here.

(2) VOC totals include benzene and butadiene.

(3) NOx includes NO<sub>2</sub>, NO and nitric oxide.

### SHELL’S UPSET EMISSIONS AND AIR QUALITY IN HARRIS COUNTY

Air quality in Harris County is consistently among the worst in the nation, particularly for ground-level ozone, or smog. On 50 separate occasions beginning in 2003, Shell Deer Park emitted nitrogen oxides (NOx) and/or volatile

organic compounds (VOCs) – which contribute to the formation of ground-level ozone – during upset events within 24 hours of an ozone exceedance day in the Houston Ozone Non-Attainment Area.



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