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Sierra Club Launches Multi-State Effort to Cut Mercury, Toxic Pollution

Club Moves to Secure Health Protections from New Coal-Fired Power Plants; Two Texas Plants Targeted, Another Plant May Be Added

Just days before Mother's Day, the Sierra Club on May 6 launched a massive, multi-state effort to educate the public about the dangers of mercury pollution and ensure that all new coal-fired power plants employ modern mercury pollution controls. The group put new coal plants in Arizona, Georgia, Kentucky, North Carolina, Texas, and Wyoming on notice for failing to include the necessary mercury and other toxic pollution controls in their plant plans that are required under the federal Clean Air Act.

In Texas the Sierra Club – joined by Public Citizen – sent “notice of intent to sue” letters to the U. S. EPA, the Texas Commission on Environmental Quality (TCEQ), and the operating companies of two recently permitted coal plants currently under construction. The two plants are the Sandy Creek plant (owned by Dynegy/LS Power) in Riesel near Waco and the Oak Grove plant

(owned by the “new” TXU) near Robertson in Franklin County, east of Waco.

In sum the Sierra Club's effort will hold almost 30 new coal plants across the nation accountable

see MERCURY, page 2

Sierra Club National Coal Campaign

The nationwide legal action against new coal-fired power plants announced by the Sierra Club this week is part of the Sierra Club's National Coal Campaign in partnership with state Sierra Club chapters such as the Lone Star Chapter. The Coal Campaign is working to ensure coal is mined responsibly, burned cleanly, and does not contribute to global warming. Across the country the Campaign is fighting to stop the construction of dirty new conventional coal plants and direct the proposed investments into low carbon buildings, communities, and electricity.

MERCURY, *continued from page 1*

for skirting public health protections, including plants in Massachusetts, Missouri, Nebraska, North Dakota, Pennsylvania, Montana, Iowa, Louisiana and South Carolina, which are currently under investigation for failing to properly control toxic pollution like mercury. A third plant in Texas, the Sandow plant near Rockwall in Milam County is one of the plants the Sierra Club is investigating for possible legal action.

The Legal Basis for the Action

The Sierra Club's legal action comes in the wake of a federal appeals court ruling on February 8 of this year that tossed out the lax mercury regulations for coal-fired power plants implemented by the U. S. EPA under the Bush Administration. The court said that those regulations were not protective of human health and did not meet the requirements of Section 112 of the federal Clean Air Act.

In effect that section of **the Clean Air Act requires that any major source of air pollution will use Maximum Achievable Control Technology ("MACT") levels for controlling the emissions of hazardous air pollutants ("HAPs") from that source.** EPA was directed by the Act to develop MACT levels for all categories of major sources.

In the absence of such a MACT determination for a particular type of source, the determination

is to be made on a case-by-case (plant-by-plant) basis. EPA under the Bush Administration tried to exempt coal plants from this MACT requirement for HAPs and regulate only some HAP emissions under a weaker "Clean Air Mercury Rule." It was this lax regulatory approach that was struck down by the federal appeals court. Prior to the ruling, however, these weak regulations helped to make the recent spate of coal plant proposals possible.

"Sierra Club and Public Citizen are stepping into the breach caused by EPA and TCEQ's failure to enforce the law. As the notice letters point out, no competent lawyer could have thought, after [the federal court ruling], that continued construction of these plants was legal," said **Attorney David Frederick.** Frederick's firm - Lowerre, Frederick, Perales, Allmon, & Rockwell - sent the "notice letters" for the Texas plants on behalf of the Sierra Club. **"The absence of the required preconstruction analyses for hazardous air pollutants (e.g., mercury) places the environment and human health at unnecessary risk.** Congress sought to avoid this, and the Sierra Club and Public Citizen are going to do their parts to support the law, even if the companies, TCEQ, and EPA have not the gumption to do so."

Mercury and Coal Plants

Coal-fired power plants are the largest single man-made source of mercury pollution

see MERCURY page 5

EPA Proposes to Strengthen Air Standard for Lead

Controls Would Reduce Lead Air Pollution and Protect Children's Health But EPA Proposal Itself Needs to be Strengthened

The U. S. Environmental Protection Agency (EPA) on May 1 announced a proposal to strengthen the National Ambient Air Quality Standard (NAAQS) for lead air pollution to better protect public health.

EPA's proposed options on a new lead standard are a big step in protecting children from lead pollution, but the Lone Star Chapter of the Sierra Club believes the agency needs to adopt a lead standard that follows what its own scientific advisers recommended was needed for adequate human health protection. That recommendation was based on more than 6,000 health and environmental studies over the last thirty years.

Children are the most vulnerable to lead exposures. The EPA is proposing a new lead NAAQS ranging from 0.10 to 0.30 micrograms per cubic meter for the averaging period. The current lead NAAQS is 1.5 micrograms per cubic meter adopted in 1978. The EPA scientific advisers, however, recommended a standard as low as 0.02 micrograms per cubic meter. EPA is taking public comment not only on its own proposal but also on alternative levels up to 0.50 micrograms per cubic meter and down below 0.10 micrograms per cubic meter (indeed, down to zero).

Background

“Despite the dramatic decrease in environmental lead exposure, lead toxicity remains a major public health problem in Texas. **Progress has been made in cleaning up lead in the air in Texas, but the latest medical science indicates that Texans in many large urban areas are likely still breathing too much dirty air with lead in it,**” said Neil Carman, Clean Air Director for the Sierra Club's Lone Star Chapter. “Moreover, we face threats from proposed new coal-fired power plants and restart of the Asarco copper smelter in El Paso that will add more lead and make that air even dirtier. In light of all of this, we need for EPA to set a new lead standard that provides an honest, scientifically based target for cleaning up our air and protecting public health.”

“**The EPA adopted its existing air standard for lead pollution in 1978 and had failed to update the standard for nearly 30 years. Since then, we have seen cleaner fuels with no lead added, cleaner factories emitting less lead, and some cleaner power plants,**” continued Carman. “**These measures were put in place because of that 1978 standard. As a result, air quality in many instances is**

see Lead, page 4

LEAD, *continued from page 3*
improving, but there is much yet to be done before all Texans are breathing healthy air without a risk of toxic lead exposure.”

The Public Health Problem from Lead Air Pollution

Lead air pollution is released from more than 230 industrial plants in Texas and more than 40 counties and most of the largest cities. The largest facilities that lead is released from are copper smelters, steel-iron mfg., cement kilns, coal-fired power plants, chemical plants, oil refineries, lead battery plants, plumbing fixture factories, and from large numbers of small sources such as aviation gasoline.

Texas ranked fourth in the nation in 2006 with more than 68,000 pounds of airborne lead and lead compounds emitted, according to the latest available data from U.S. EPA's Toxic Release Inventory at www.epa.gov/triexplorer/.

“Strong air quality standards are imperative to protect our health” said **Ken Kramer, Director of Sierra Club's Lone Star Chapter, “That means the health of all of us here in Texas, especially the children, who suffer from lead exposure due to air pollution.”**

The scientific community's understanding of lead's health effects, especially at lower levels once thought safe, has grown. Lead pollution can cause a wide range of health problems even

among the healthiest of individuals, including: Environmental lead exposure in children has been associated with lower IQ's, increased risks for reading problems, school failure, Attention Deficit Hyperactivity Disorder (ADHD), delinquency, and criminal behavior. Among U.S. children, eight to fifteen years old, those in the highest quintile ($> 2 \mu\text{g}/\text{dl}$) of lead exposure were four times more likely to have doctor-diagnosed ADHD.

Moreover, there is no evidence of a threshold for the adverse consequences of lead exposure; studies show that the decrements in intellectual (cognitive) functions in children are proportionately greater at blood lead concentrations below federal guidelines of the CDC.

Lead's effects extend beyond childhood. In adults, lead exposure is a risk factor for some of the most prevalent diseases or conditions of industrialized society, including cardiovascular disease and renal disease. There is also compelling evidence that the risks for mortality from stroke and myocardial infarction are increased at lead blood levels below $10 \mu\text{g}/\text{dl}$, which is considerably lower than those considered acceptable for adults.

Finally, although less definitive, there is also evidence that lead exposure during pregnancy is a risk factor for spontaneous abortion or miscarriage

Mercury, *continued from page 2*

Section 112(g)(2)(B) of the Federal Clean Air provides:

After the effective date of a permit program under subchapter V of this chapter in any State, *no person may construct or reconstruct any major source of hazardous air pollutants*, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

in the United States. When the plants release mercury into our air, it rains down into our lakes, rivers and streams. The toxic mercury then makes its way to our dinner tables via contaminated fish. In addition to mercury, coal plants also emit hazardous pollution like arsenic and acid gases. And they are one of the largest sources of global warming pollution, creating almost 40% of our country's carbon dioxide emissions.

“There are affordable technologies widely available today that can substantially reduce mercury and other toxic pollution,” said Pat Gallagher, Director of the Sierra Club's Environmental Law Program. “In their rush to build new coal plants, developers have turned a blind eye to these technologies, and correspondingly the health of children everywhere.”

“The good news is that there is something we can do about mercury pollution,” said Dr. Neil Carman, Clean Air Director for the Lone Star Chapter of the Sierra Club.

“Coal plants across the country must reduce their mercury pollution and update their pollution controls to comply with new, more protective pollution standards. Most importantly, we don't need new coal plants to meet our energy needs. We need to implement already available efficiency measures across all sectors and build more and more renewable energy – wind and solar power.”

Mercury and Human Health

“Mercury is a neurotoxin associated with developmental and cognitive disorders in babies and increased risk of heart disease in men,” noted Clean Air Director Carman. “There is especially great concern about the levels of mercury that are showing up in the bodies of women of child-bearing age.”

One in six women of childbearing age already has enough mercury in her body to put a baby at risk of developmental disorders

LEAD, *continued from page 4*

at blood lead concentrations < 10 µg/dl.

**The Solution -
What Texans can do to Reduce Lead**

Lead emissions from industrial sources operate under air pollution control permits issued and monitored by the Texas Commission on Environmental Quality (TCEQ), to which EPA has delegated the federal permitting process and which must abide by EPA rules.

Texas will likely have new lead “non-attainment” areas once the final lead air standard is adopted September 1, 2008 and lead air monitoring is conducted to determine compliance. Almost all major urban areas in Texas need to perform lead ambient air monitoring, and several may exceed the new lead standard when it is adopted later this year. **“Texas needs to accelerate efforts to implement already available energy efficiency measures which will help to reduce lead**

pollution,” concluded Carman. **“In addition, the state needs to accelerate the transition from burning polluting fossil fuels towards relying more upon renewable energy sources such as wind, solar, and geothermal power. They will help us clean lead from our air as well.”**

For More Information

To review the EPA proposal to strengthen the lead standard and for an EPA fact sheet and other information on the issue, go to: <http://www.epa.gov/air/lead/actions.html>. There is a 60-day comment period currently underway for those who wish to express their opinion to EPA on the proposal. At a later time the Sierra Club will make available sample comments for people to use in developing their own comments.



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SIERRA CLUB
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P.O. Box 1931 Austin, TX 78767
tel: (512)477-1729 fax: (512) 477-8526
lonestar.chapter@sierraclub.org
<http://texas.sierraclub.org>

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MERCURY, *continued from page 5*

and learning disabilities. As noted above, coal-fired power plants emit mercury into our air, and it rains down into our rivers and streams and finds its way to our bodies via contaminated fish we eat.

The concern about mercury levels in women was emphasized at events the Sierra Club held at hair salons in Dallas and Austin this week. The women who lined up at Jan's of Dallas on Tuesday and at Wet Salon in South Austin on Wednesday were not there for an ordinary hair cut—they came because they were concerned that they may be at risk of mercury poisoning, and the Sierra Club offered a simple hair-test to find out exactly how much mercury was in their bodies.

The hair test involved cutting a small sample of hair and sending it to an academic laboratory, the Environmental Quality Institute at the University of North Carolina-Asheville, which analyses the sample and reports the results. The participant's data will also be added anonymously to a UNC research study, which will have the largest sample size of any study to date, on the effects of mercury in the U.S. population.

The women who showed up for the Sierra Club hair-testing events voiced indignation about the danger posed to them and their children from the mercury and other hazardous air pollutants being emitted by power plants.

“I find it outrageous that polluters are allowed to spew mercury into the air that ends up on my dinner table,” said **Karin Ascot**, Sierra Club mother of six-month old Theo. **“Public health should be the first priority, and we already have the solutions to clean up mercury. These companies must use them.”**

[Editor's Note: For women – and men – who missed the testing events at hair salons in Dallas and Austin, it's not too late to find out how much mercury is in your body. The testing kits for this project can be purchased online for a small non-profit fee at www.sierraclub.org/mercury.]

What's Next?

Under the relevant federal laws, at any point 60 days after the “notice letters” were sent, the Sierra Club may file suit against the companies building the coal plants for violating Section 112 of the federal Clean Air Act. To avoid further litigation Sierra Club is asking the coal plant developers to go back to the drawing board and develop new plans to control mercury and other toxic pollution that would meet the requirements of federal law before the plants may be built.

Copies of the notice letters for the Sandy Creek and Oak Grove plants may be found on the Lone Star Chapter Sierra Club website at www.texas.sierraclub.org.



SIERRA CLUB LONE STAR CHAPTER
 STATE CONSERVATION OFFICE
 PO BOX 1931
 AUSTIN TX 78767

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INSIDE:

Cut Coal, Cut Mercury Page 1
 Lead Standard Page 3
 Coastal Forums Page 6



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