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## STATE CAPITOL REPORT

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### **Memorial Day 2008 Energy Star Products Sales Tax Holiday State Senator Rodney Ellis, Sierra Club, Texas Retailers Association Promote Tax Holiday**

Memorial Day Weekend 2008 will be even more of a holiday in Texas than it has been in previous years. This year, thanks to a new law enacted by the Texas Legislature in 2007, consumers in the state will also have a holiday from paying state and local sales taxes on a number of energy efficient products purchased that weekend.

The Lone Star Chapter of the Sierra Club is urging its 23,000 members and other Texans to take advantage of the new Memorial Day Weekend sales tax holiday to buy certain appliances and other products carrying the Energy Star label. The Chapter strongly supported passage of the tax holiday as a way of highlighting opportunities for the public to reduce energy use.

#### **Joining Forces to Promote Tax Holiday**

Earlier this week, State Senator Rodney Ellis (D-Houston), Lone Star Chapter Conservation Director Cyrus Reed, and Texas Retailers Association President and CEO Ronnie

Volkening spoke at a press conference at the Capitol about the benefits of the upcoming sales tax holiday for consumers, retailers, and the environment. The environment will benefit primarily from reduced demands for energy, which in turn means less air pollution, less water use, and fewer carbon emissions resulting from energy production.

“If you’ve been thinking about finally buying those energy efficient light bulbs, purchasing a programmable thermostat, or actually replacing your refrigerator, dishwasher, or air conditioner with a cleaner, more efficient one, this Memorial Day weekend is the time to do it. You’ll save money, while helping to reduce energy demand and greenhouse gas emissions,” noted Lone Star Chapter Conservation Director Reed at the press conference.

The sales tax holiday applies to Energy Star-rated products certified by the U.S. Department of Energy. Products exempted from sales taxes from 12:01 AM, Saturday, *see Energy Star, page 2*

**Energy Star**, *continued from page 1*

May 24 through 11:59 PM, Monday, May 26, include refrigerators, dishwashers, clothes washers, compact fluorescent lights, ceiling fans, dehumidifiers, and programmable thermostats.

“This is a win-win,” said Sen. Ellis. “Consumers save money when they purchase the Energy Star products and they save money each month on electricity. With the price of electricity and concerns about global warming both rising rapidly, energy efficiency

is becoming even more important.”

Ronnie Volkening, representing the Texas Retailers Association, said his association lobbied for the tax exemption because its member companies recognize the value of bringing more of these products into our homes. “Our hope is that consumers become aware of these products and take advantage of this tax holiday. This program can help Texans save money on their utilities while also promoting energy efficiency, which should help our environment,” said Volkening.

**Memorial Day Sales Tax Holiday**

The 2008 **Energy Star** sales tax holiday begins at 12:01 a.m. on Saturday, May 24, and ends at 11:59 p.m. on Monday, May 26 (Memorial Day).

Products qualifying for the exemption from state and local sales taxes are the following if they carry the Energy Star label:

- Air conditioners priced under \$6,000
- Clothes washers (but not clothes dryers)
- Ceiling fans
- Dehumidifiers
- Dishwashers
- Light bulbs (incandescent and fluorescent)
- Programmable thermostats
- Refrigerators priced under \$2,000.

Internet sales made during the period will also qualify for the tax break. Qualifying products will display the Energy Star logo, which may appear on the appliance, the packaging, or the Energy Guide label. **Energy Star** is a joint program of the U.S. EPA and the U.S. DOE. Earning the Energy Star means a product meets strict energy efficiency guidelines set by these two federal agencies.

**One of Three States**

Texas is one of only three states in the nation to offer a tax free holiday on energy efficient appliances. The Memorial Day Tax Holiday is the result of passage of the omnibus HB 3693 by State Rep. Joe Straus (R-San Antonio). The legislation was carried in the Senate by State Senator Troy Fraser (R-Horseshoe Bay). The Sierra Club’s Chapter Conservation Director Reed called the comprehensive legislation “the mother-of-all efficiency bills.” Both State Representative Lon Burnam (D-Fort Worth) and Senator Ellis had stand-alone tax holiday bills in the 2007 state legislative session that helped influence the final language on the tax holiday found in HB 3693.

Reed said a number of recent studies on meeting the state’s energy demands have shown that the quickest, cleanest, and most cost-

## Radioactive Waste License on May 21 TCEQ Agenda Sierra Club Seeking Contested Case Hearing on Proposed License

The Sierra Club filed its reply this week to the Texas Commission on Environmental Quality (TCEQ) in support of its request for a contested case hearing on Waste Control Specialists’ (WCS) proposed license for the disposal of radioactive “byproduct materials” at its facility in Andrews County near the Texas-New Mexico border. The contested case request will be considered by the three TCEQ Commissioners during a regular agenda meeting on May 21 in Austin.

The three commissioners will have three options: reject the contested case hearing request and grant the license, deny the license, or send the license to the State Office of Administrative Hearings (SOAH) for a contested case hearing on the license. Because of statutory changes approved by the Legislature in 2007 as part of SB 1604 (sponsored by State Sen. Robert Duncan, R-Lubbock), any contested case hearing on this type of radioactive byproducts license must be expedited and completed within one year of referral to SOAH.

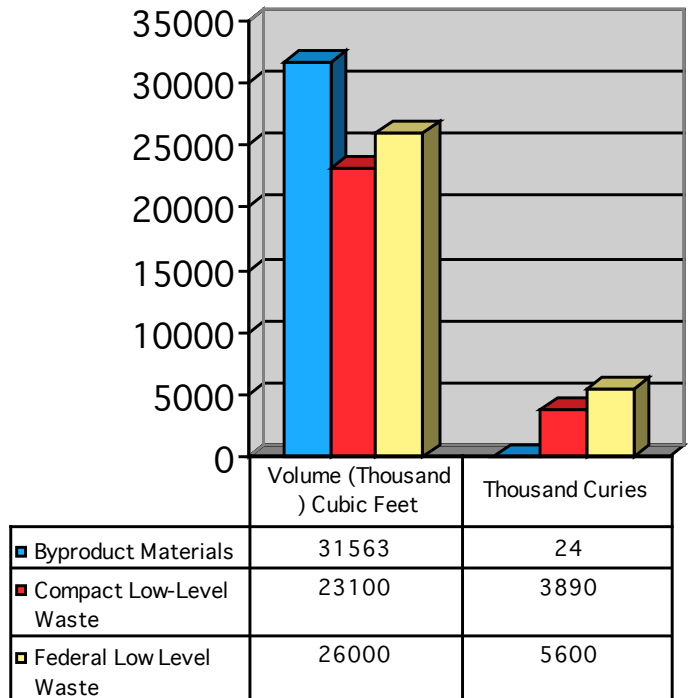
### The Sierra Club Request

In making its request for a contested case hearing a few months

ago, the Sierra Club noted that the various individuals (including Sierra Club members) living in the Eunice, New Mexico – just across the border from Andrews County where the WCS site is located – would depend on the same groundwater resources, roads, and other resources of the area as the industrial giant and that those things could be jeopardized by the operation of the disposal facility. Needless

*see Radioactive, page 4*

Volume (Thousand Cubic Feet) and Radioactivity (Thousand Curies) of Proposed Disposal Sites, WCS



**Radioactive**, *continued from page 3*

to say, the requests for a contested case are opposed by WCS, a company which has shown tremendous arrogance in pursuing licenses for its waste facility.

The Sierra Club request for a contested case on behalf of Club members in Eunice and similar requests from several individual Eunice, New Mexico residents are being opposed also by the outgoing TCEQ Executive Director Glenn Shankle on the dubious grounds that since these people live more than three miles from the site they would not be affected by the facility any more than the general public would be and thus are not entitled under Texas law to a contested case. A more logical stance, however, has been taken on the issue by the Office of Public Interest Counsel at TCEQ, recommending the requests for a contested case hearing on the proposed radioactive byproducts disposal license be granted.

The reply to the objections to a contested case that was filed by Austin lawyer David Frederick on behalf of the Sierra Club concludes:

“You should reject the rushed conclusions of the... staff and the self-interested arguments of WCS regarding Sierra Club’s lack of ‘party’ credentials. The Legislature has mandated a ‘rocket’ schedule for the hearing in this docket, in any event, so there is precious little delay that will be associated with the hearing; and, of course, we are talking, here, about a decision that will burden

Texans, West Texans in particular, for thousands of years.”

**Steamrolling a License**

On October 26, 2007, TCEQ released a *draft* license to WCS to import from outside the state of Texas up to 1,169,000 cubic yards (about 32 million cubic feet) and up to 24,350 radioactive curies of so-called “byproduct material” for disposal – actually just burial in the ground. (A curie is unit of radioactivity equal to the amount of a radioactive isotope that decays at the rate of 37,000,000,000 disintegrations per second.) The license would allow WCS to dispose of highly radioactive waste from Fernald, Ohio from an old weapons processing facility which was reclassified as “11(e)(2)” byproduct material waste by an act of Congress to facilitate its importation to Texas. On March 14, 2008, after hearing from the applicant, its supporters and opponents, TCEQ released an amended draft license.

Although the release of the draft license might make it appear that the company had fulfilled the rules and regulations governing disposal of radioactive materials, the initial and amended draft licenses added many conditions requiring additional basic studies in terms of monitoring and characterizing the hydrogeology of the site.

Indeed, on November 27, 2007 – in comments on the original draft license – the Lone Star Chapter of the Sierra Club argued that

the license could not and should not be granted since basic hydrology and geology studies were not complete as required by law and there were significant inconsistencies in the application materials about the location and presence of a zone of saturation as well as a failure to assess fissures and other geologic features. Indeed the Sierra Club and 11 residents of Eunice, New Mexico said the granting of the license would potentially impact the health, welfare and economic well-being of their lives, and asked for both a public meeting and contested case hearing on the application.

### **Criticism of the Draft License by Former TCEQ Employees**

The Sierra Club was joined in its criticism of the draft license by a surprising number of former TCEQ employees, including the geologist that had worked on reviewing the hydrogeology section of the WCS application. Indeed, three former TCEQ employees have gone on the public record saying they believe that either the byproduct materials license and/or the much larger low-level radioactive waste license still working its way through the TCEQ process contained significant flaws and should not be granted without further study.

(WCS is also seeking a license to permanently dispose of state and federal *low-level* radioactive waste whose radioactivity would dwarf the radioactivity of the *byproduct material* waste – see accompanying figure, page 3.)

Nevertheless, on March 14, 2008, TCEQ responded to comments by WCS and the public and denied the request to have a public meeting on the license *because no one from Andrews County had requested a meeting*, even though both Sierra Club and multiple residents of Eunice has asked for a meeting. Apparently, the residents of New Mexico were not important to the TCEQ even though their homes were between three and six miles from the WCS site.

### **Making the Case**

In making its case, Sierra Club pointed out the potential pathways of exposure through traffic and other accidents, wind blown radioactive materials and particularly, through groundwater encroachment. The concerns raised by former TCEQ employees validate the issues raised by the Sierra Club as – at the least – arguing for a thorough outside scrutiny of the issues in a contested case process.

Thus, the Sierra Club is hopeful that on May 21, the three TCEQ Commissioners will at least give neighboring citizens and the Sierra Club the opportunity to show an administrative law judge – in an expedited process – that the license should not be granted because the site is not appropriate for burial of highly radioactive waste. The decision on May 21 will be a real test of the commitment of the TCEQ Commissioners in protecting the rights of the public to have

# Citizens Rally against Coal Plants at Dynegy Shareholder Meeting in Houston

## Investments in New Coal Could Go Up in Smoke

More than a hundred people from across the country, including all six states where Dynegy is proposing a new coal plant, came together outside the Dynegy shareholder meeting in Houston on Wednesday of this week to oppose Dynegy's plans to become the worst new coal polluter in the country. Inside the meeting representatives of Co-op America and the Sierra Club delivered 10,000 letters and emails to Dynegy CEO Bruce Williamson asking him to stop plans to build six new coal plants and shift investments to clean energy like wind and solar power. Such a shift would create thousands of jobs for hard-working Americans, decrease global warming pollution, and protect shareholder value.

"Companies around the world are realizing that going green can benefit both the environment

and their bottom line," said Bruce Nilles, Director of the Sierra Club's National Coal Campaign. "It's time these companies open their eyes and help move America beyond coal toward a clean energy economy."

Shareholders heard from Yochi Zakai, Fair Trade and Climate Change coordinator for Co-op America: "Coal-burning power plants are not a viable long-term means of providing safe, secure, and affordable energy," he told them. "Why does Dynegy continue to make investments in coal when its competitors are abandoning their plans for new coal plants? It is high time for Dynegy to stop investing in last century's technology and start making significant investments in a renewable energy future."

### Doubts about Coal

The action comes as the regulatory, financial and public relations risks of investing in new coal continue to rise. A growing number of companies have announced they will no longer pursue investments in coal, and states across the country are beginning to reject new coal in favor of clean energy development. Innovest Strategic Value Advisors also released a report today (available at [www.innovestgroup.com](http://www.innovestgroup.com)) outlining the risk Dynegy's shareholders face



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by pursuing plans to spew an estimated 41 million tons of global warming pollution, as well as toxic mercury and air pollution.

“Due to the size of Dynegy’s proposed expansion and its role as a provider of merchant power without guaranteed long term customers, I think their shareholders face one of the highest risks, if not the highest in the US utilities industry,” said Eric Kane, senior analyst with Innovest. “Dynegy seeks to provide low-cost power but is not accounting for future carbon costs, which could make coal generation more costly than other forms of power generation, and could subsequently cause their wholesale customers to look elsewhere for cheaper, cleaner power.”

Dynegy has proposed six coal burning power plants in Texas, Arkansas, Georgia, Michigan, Iowa and Nevada. In Texas they are building a 900 MW plant near Riesel.

“We hope the Dynegy shareholders will realize that investing in dirty coal is not worth it to them personally nor to the health of our planet,” said Houston resident Ron Hayden. “There are cleaner, more responsible energy options that are better for their bottom line and for our environment.”

For more information on the Sierra Club’s National Coal Campaign, please go to <http://www.sierraclub.org/coal>.

### **Radioactive**, *continued from page 5*

a thorough vetting of all of the concerns that accompany the disposal of radioactive materials which could have consequences for Texans and our neighbors in New Mexico for literally thousands of years.

*A copy of Sierra Club’s reply to TCEQ, as well as additional information on the potential waste streams that WCS wants to import to West Texas, can be found on the Lone Star Chapter website, [texas.sierraclub.org](http://texas.sierraclub.org).*



### **Energy Star**, *continued from page 2*

effective way to meet those demands is through energy efficiency, including more efficient buildings, homes, appliances and utilities. A recent report by Optimal Energy showed that Texas can meet 80% of load growth in electricity by 2021 through energy efficiency, demand response, and on-site renewable power. We can meet our energy demand and save money at the same time.”

Senator Ellis noted at the press conference that he plans to work with groups like Sierra Club and the Texas Retailers Association to try and expand the sales tax holiday to other products such as consumer electronics that will save people and the state energy.



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LONE STAR CHAPTER

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**INSIDE:**

Sales Tax Holiday	Page 1
Radioactive Waste	Page 3
Coal Investors	Page 6



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