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Sierra Club Members Raise Concerns about Proposed Radioactive Waste Dump in Andrews County

Sierra Club Will Seek Contested Case on Draft License

Sierra Club members from Eunice, New Mexico and Midland, Texas raised concerns about a proposed radioactive waste dump in Andrews County during a public meeting in Andrews on September 8. The Texas Commission on Environmental Quality (TCEQ) has prepared a draft license for the massive radioactive waste facility. If granted, the license would allow the applicant, politically-connected Waste Control Specialists (WCS), to import up to 28 million cubic feet of so-called “low-level” radioactive waste to be dumped at the WCS site in Andrews County. Eventually, the site could become the largest commercial radioactive waste dump in the country.

While the majority of attendees at the public meeting expressed support for WCS, Eunice resident and Sierra Club member Rose Gardner asked about the number of vehicles (and what routes they would be traveling) that would bring radioactive waste to the site – which is only four to five miles from her home, flower shop, and alfalfa fields. She also submitted

a letter with signatures from several of her neighbors asking TCEQ to grant a contested case proceeding on the draft license.

Midland Sierra Club member Terry Burns asked whether press reports were true that TCEQ staff had actually recommended denying the license, only to be overruled by the agency’s Executive Director. TCEQ officials at the meeting deflected that question and simply responded that the site would be safe.

A Premature Draft License

Speaking at the hearing, Lone Star Chapter Conservation Director Cyrus Reed expressed concern that TCEQ had prepared a draft license full of dozens of preconstruction conditions asking for basic information, including a radiation safety program, a study of fractures, a study of saturation zones, and a study of whether salt dissolution could cause massive subsidence issues – all issues that should have

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been addressed before the draft license was released.

Reed said the Sierra Club believes the license should not be granted to WCS until after all of these basic studies have been completed and a firm determination has been made that the site can be trusted to keep radioactive waste in isolation for tens of thousands of years. Reed also asked WCS whether they had resolved their worker safety issues, since a 2005 incident had revealed that dozens of workers were exposed to high levels of toxins and radiation due to improper management and a faulty ventilation system. Company representatives admitted the mistakes but said that, through an amendment to their existing mixed waste permit, the safety program and ventilation system had been redesigned. The company claims that the present license would not allow the kind of radioactive dust that was present in 2005 in the mixed waste to which workers were exposed.

Background to the License

WCS is a subsidiary of Valhi Inc., owned by Harold Simmons, a large political donor to Texas and national politicians and campaigns. In 2003, the Texas Legislature – heavily lobbied by WCS – passed the legislation that would allow the company to have a 15 year-license to dispose of radioactive waste. The license can be extended, but once the license ends, the State of Texas inherits the Texas “compact” waste for

hundreds of thousands of years. In other words, WCS gets the profits, and Texas gets the ... uh, nuclear liabilities.

In addition to being able to take radioactive waste from Texas and Vermont nuclear plants and other sources (a result of the “compact” or agreement between the two states), the proposed license would allow a much greater volume of waste to be imported from federal Department of Energy (DOE) facilities around the country. WCS officials at the public meeting referred to the DOE wastes as “low-level weapons waste.”

TCEQ staff who reviewed the application for the license pointed to inconsistencies and a lack of detailed information in the application. Rather than deny the license, or insist on additional information, however, the agency officials recommended approval with certain conditions for additional information before construction occurs.

Specific Concerns about the Proposed License

Concerns about the dump being raised by area residents and the Sierra Club include:

- The fact that the water table is only 14 feet from the bottom of the proposed waste dump and that there are significant inconsistencies and uncertainties about the depth of the water table near the facility boundaries;

Solar-Powered and Energy-Efficient Homes for Low-Income Families: Upcoming TDHCA Hearings Provide Support Opportunity

An informal coalition of Green Builders, the Lone Star Chapter of the Sierra Club, and even the Governor's Competitiveness Council is asking the Texas Department of Housing and Community Affairs (TDHCA) to include incentives for builders to build low-income housing with on-site solar power and energy efficient features in proposed new agency rules. The proposed rules will govern how the agency allots federal and state tax credits and financing for affordable single- and multi-family housing. TDHCA will be holding hearings in six cities on the proposed rules for builders gaining federal or state tax breaks and incentives to build low-income affordable housing for on-site solar and more energy efficient buildings.

Sierra Club Perspective

At a recent TDHCA Board meeting authorizing publication of the proposed rules, Chapter Conservation Director Cyrus Reed pointed out that the Governor's Competitiveness Council, as part of its 2008 Energy Plan, had recommended that the Board provide extra "points" as part of its Housing Tax Credit (HTC) Qualified Allocation Plan and Rule (QAP) for federal tax credit if the housing developer included solar panels or solar water heating as part of its project to serve low-income Texans. In addition, through last year's passage of HB 3693, a major bill on energy efficiency, the Texas Legislature required that the Board

establish minimum energy efficiency standards for both new housing and the rehabilitation of existing housing.

Reed said the proposed rules had taken some positive steps in this direction – such as providing up to six additional "points" for solar, energy efficiency and other green building measures – in its proposed QAP rules, but that more refinement and incentives were needed, including finding a way to increase the allotment for projects that were producing their own electricity. He also said that even if some of these ideas do not make it into the 2009 rules, it was important for TDHCA to put together a stakeholder process that could advise the agency on what additional steps could be taken to make the program work.

Public Comment Process

As part of the process of adopting new rules for Fiscal Year 2009, the TDHCA will be holding six hearings between September 24 and October 3 in Austin, Houston, Fort Worth, Brownsville, Lubbock and El Paso. The comment period for all items is September 19 through October 20. A link to the Department's proposed rules and details on the upcoming hearings can be found at <http://www.tdhca.state.tx.us/housing-center/docs/08-HearingNoticeFall08-AllRules.pdf>.

Senate Natural Resources Committee Holds Interim Hearing in Arlington: Hearing Focused on Air Pollution from Coal Plants, Cement Kilns, Barnett Shale Gas Operations, and Mobile Sources

At an interim hearing at the University of Texas-Arlington last week the Senate Natural Resources Committee, led by Chairman Kip Averitt (R-Waco), heard testimony from a variety of local officials, the Texas Commission on Environmental Quality (TCEQ), U. S. EPA, industry representatives, environmental organizations (including the Lone Star Chapter of the Sierra Club), and the general public on ways to reduce emissions of nitrogen oxides and volatile organic compounds in the Dallas-Fort Worth area. The major sources of those emissions are cement plants, coal-fired burning plants, cars and trucks, and operations associated with the recent outbreak of natural gas drilling in the area near Fort Worth known as the Barnett Shale.

While the EPA has recently accepted the State Implementation Plan for the Dallas-Fort Worth area that was submitted by the TCEQ to meet the 8-hour standard of 85 parts per billion of ozone pollution, the recent decision to lower the health-based standard to 75 parts per billion means that additional controls will be needed in the coming years.

Different Views

Not surprisingly, very different views on what to do were presented. After a welcome by

Arlington Mayor Robert Cluck (R) – a medical doctor who has called for stricter enforcement of environmental laws and was an active opponent of the proposed new coal plants – members of the Natural Resources Committee heard a more technical presentation from TCEQ Chief Engineer David Schanbacher and Air Permit Division Director Richard Hyde. The TCEQ officials claimed that their agency was careful only to allow the cleanest “Best Available [pollution] Control Technology” (BACT) to be placed on area coal and cement plants, a claim disputed by many of the other speakers.

Former Dallas County Judge Margaret Keliher – now representing the group Texas Business for Clean Air, Ellis County Judge Chad Adams, and Jim Crites, Executive Vice President of the DFW Airport, emphasized the gains that had been made in cutting emissions from mobile sources through local enforcement, incentives for cleaner vehicles the Texas Emissions Reduction Program (TERP) and Low-Income Vehicle Replacement and Repair Program (LIRAP), and more energy-efficient buildings.

All three emphasized, however, the need for continued funding and a renewed focus on clean fleets for taxis and other private vehicles.

Keliher also called for a much more aggressive program to go after fraudulent inspections that allowed cars that don't meet basic emission standards to operate. She said that 30 percent of taxis and perhaps 10 percent of private vehicles in the Dallas-Fort Worth metropolitan area are operating with fraudulent stickers or tests. That would mean, even with conservative assumptions, there might be "half-a-ton a day of NO_x emissions" as a result of illegal activities. Keliher also said her group was developing recommendations on an overall plan for energy for the state that would emphasize clean renewable energy and energy efficiency to meet electricity demands, leading to much cleaner air.

Sierra Club Comments

Sierra Club Conservation Director Cyrus Reed emphasized the need to continue to cut NO_x emissions from mobile vehicles through promotion of technologies like plug-in hybrids, clean fleets, and adoption of clean car standards like those adopted in California and 14 other states. He also reported on the petition by Sierra Club and Environmental Defense Fund to the EPA earlier this year to take away the air permitting program from TCEQ because of basic flaws in the program.

Reed told the committee that TCEQ does not follow the federal definition of BACT, does not consider the cumulative impacts of all air pollution sources when evaluating an

application for a new air pollution permit, and does not properly enforce existing permits to make sure they meet their emissions limits. When asked for examples by Senator Craig Estes of where the agency had failed, Reed pointed to the notice of intent (to sue) against Luminant's Martin Lake plant for continual violations of heat input standards – leading to real violations of NO_x standards. Another example cited by Reed was TCEQ's continued reliance on so-called "flexible permits" – including the Sandy Creek coal-fired power plant – even though the EPA had not approved the use of flexible permits.

Reed said all of this could be fixed legislatively to give clearer direction to the agency to follow the federal Clean Air Act and require true BACT, while also emphasizing the need to clean up existing electric generating plants like Martin Lake and Big Brown. Reed also said more energy efficiency and renewable energy would help clean up the air.

Other Testimony

Public Citizen's Rachel McClure called on the committee to authorize full funding of TERP and to expand the program to take on diesel emissions, taking a multi-pollutant approach to cut particulate matter and nitrogen oxide emissions, while also calling for clean contract provisions when using public dollars to reduce emissions from construction crews. Environmental Defense Funds's Ramon

Hearing, *continued from page 5*

Alvarez announced that his organization had hired a consultant to review the emissions and wells from the explosion of drilling for natural gas in the area known as the Barnett Shale.

Alvarez noted that the SIP did not adequately take into account these recent emissions. He said that while TCEQ had imposed some limited controls, the controls were focused on the narrow part of the production process – the compressor engines and NOx burners – and not on the whole process. In fact, Alvarez said the amount of emissions might be twice that from mobile sources. Alvarez called for a total review of the operations and for regulations that would make sure the very cleanest operations were put in place now, so that we wouldn't be forced to clean up after the damage has been done, whether in the Barnett Shale or other natural gas formations.

Jim Schermbeck, Field Organizer for Downwinders at Risk, said that one industry alone – the three companies operating cement

kilns in Midlothian in Ellis County, accounted for eight or nine percent of all NOx emissions, 30 percent of particulate matter, and 80 percent of sulfur dioxide in the region, and yet they had managed to escape from major controls for the development of the last two State Implementation Plans. Schermbeck said it was outrageous that TCEQ had yet to require the imposition of basic controls on the oldest wet kilns operated by the cement industry, even though countries in Europe had long ago determined that basic SCR units could be imposed with amazing results. Schermbeck said that the TCEQ was essentially arguing that BACT had not changed in 40 years since most wet kilns were built when no basic controls – scrubbers, baghouses, electric precipitators – were required.

“Just as we ended the grandfather provisions for coal plants,” Schermbeck said the Legislature should stop the 40-year-old grandfather provisions on cement plants. Schermbeck noted that in other states – like California and Arkansas – the same companies operating these plants had shut down older wet kilns and built modern clean plants even though the plants were located in rural areas, not in nonattainment areas.

Not surprisingly, representatives from the cement industry and Mike Stewart from the Texas Aggregate and Concrete Association gave a very different perspective on their efforts to reduce NOx and other pollutants,

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Radioactive Wastes, *continued from page 2*

- General disagreements and inconsistencies within the application about the precise nature of the saturated zones of the geologic formations underlying the site;
- Failure to look at all potential accidents, particularly as four different kinds of waste will be coming to the proposed site;
- Uncertainty about the actual location of the “dryline” of the Ogallala-Antlers-Gatuña geological formation near the site;
- Concern about the impact of high winds and occasional high rain events, particularly at times of waste loading and unloading;
- Security concerns about a very dangerous waste stream;
- Potential impacts on workers, given recent reports that the company has failed to have an adequate radiation safety program.

“With such uncertainties, this license has Hearing, *continued from page 6*

while Gilbert Horton, with Devon Energy – one of the leading natural gas drillers in the area – emphasized the newer NOx control technologies and water saving efforts being used to drill in the Barnett Shale.

A number of members of the public made presentations as well, many of which faulted the TCEQ for its failures to adequately enforce the law and adopt tougher measures when permitting coal-fired power plants, natural gas drillers and the cement plants.



no business being granted,” Reed noted. **“The TCEQ and WCS should not play with the health and welfare of a community desperate for jobs and economic development.”**

The Sierra Club will request a contested case hearing on the proposed license on behalf of Club members in the area in its written comments to TCEQ this week. That request will be considered at a future time by the three TCEQ Commissioners who govern the agency. If the request is granted, the matter will be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing on the license before an administrative law judge. A contested case proceeding would allow a more thorough vetting of the concerns expressed about the proposed burial of radioactive waste at the WCS dump site.



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State Legislative Workshop
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