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## STATE CAPITOL REPORT

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### **EPA Proposes to Disapprove Texas Changes to Air Permitting Program**

#### **Sierra Club and Others Groups in Texas Welcome EPA Action**

The U. S. Environmental Protection Agency (EPA) has proposed disapproval of key aspects of the Texas clean-air permitting program that do not meet federal Clean Air Act requirements followed by other states. The Texas clean-air permitting program is operated by the state Texas Commission on Environmental Quality (TCEQ), which has been heavily criticized by state environmental leaders and community groups in areas impacted by air pollution sources permitted by TCEQ.

“Final decisions about changing the program will be made under an expedited schedule agreed to under a recent settlement with Texas businesses,” according to a press release issued by the EPA Region 6 Office in Dallas on September 8. “During that time EPA intends to work with the state and interested parties to quickly identify and adopt changes that will better protect air quality for all Texans.”

#### **Praise for the EPA Action**

Sierra Club, Public Citizen, and the Galveston/Houston Association for Smog Prevention (GHASP) welcomed the EPA proposal to disapprove key aspects of the Texas air program. Ken Kramer, Director of the Lone Star Chapter of the Sierra Club, said that “The Sierra Club welcomes today’s action by EPA to disapprove portions of the State of Texas air pollution control program. Our concerns have fallen on deaf ears for years, but the new Administration at EPA is taking action once again to enforce the nation’s environmental protection laws. We now need EPA to take swift action to ensure that every permit issued in Texas complies with the Clean Air Act’s health based protections.”

“It’s refreshing to see an agency that actually believes in enforcing our clean air laws. We’ve gotten too comfortable with allowing substandard permits through TCEQ, and our

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air quality and our quality of life have suffered the consequences,” said Tom ‘Smitty’ Smith, Director of the Texas office of Public Citizen “We must put the public’s interest above the special interests of the polluters if we are to pass on a better Texas than we found to our children and grandchildren.””

“We’re thrilled that the new EPA has taken a stand on this issue to protect human health,” said Suzie Canales, Executive Director of [Citizens for Environmental Justice](#), based in Corpus Christi, Texas. “For too long the TCEQ has issues these illegal flexible air permits to refineries that enable a tremendous amount of additional pollutants on the EJ communities surrounding the facilities, these communities are tremendously overburden and suffering from health problems.”

The EPA announcement was not a surprise to environmentalists such as Neil Carman, Clean Air Director for the Lone Star Chapter of the Sierra Club, who was among a group of environmental leaders who met with Region 6 EPA officials and EPA Administrator Jackson in Dallas in June to discuss problems with the Texas air pollution control program and other issues. Carman came away from that meeting very impressed by the new EPA administrator and her resolve to make sure the nation’s environmental laws are enforced.

**Clean Air Act Requirements**

In its announcement on September 8, Region 6 EPA said that “The Clean Air Act ensures that businesses across the country operate efficiently and cleanly. States have flexibility in carrying out the Act’s requirements, but states must still adhere to standards of public process, transparency, and public health protection. The Act does not allow an undue advantage for one state over another, ensuring a level playing field among industry.”

“Under the Clean Air Act, all states must develop plans approved by EPA for meeting federal requirements to protect public health,” the federal agency noted. “Since EPA approved Texas’ major clean-air permitting plan in 1992, the state has submitted over 30 regulatory changes to the EPA approved plan. The proposals being made by EPA represent some of the agency’s main concerns with the state’s air-permitting program and the need to more effectively work toward improved air quality as required by law.”

**Time Frames**

The EPA announcement noted that “...in November 2008, EPA issued a Federal Register Notice proposing to disapprove some of the state’s public participation program. The state’s proposed program provided inadequate opportunities for the public to review permit decisions in Texas, as compared with public

# Texas Receives Lackluster “C-” for Water Quality Protections

## Gulf Restoration Network Report Card Reveals Poor Water Quality Policies in Gulf of Mexico States

The Gulf Restoration Network (GRN) released its “**Clean Up Your Act!**” report card in early September, grading each Gulf of Mexico state on their water quality policies. The results are disappointing, with a Gulf-wide average grade of “D+.” Florida, Alabama, Mississippi, Louisiana, and Texas have received unsatisfactory grades for their failure to fully incorporate the Clean Water Act into their state regulations. The report grades the Gulf of Mexico states on issues including water quality standards, policies to prevent Dead Zone-causing pollution, public health protection, and facilitating public participation in the policy-making process.

### Need for Improvement in Texas

In the areas assessed by the report card, Texas received a “C-.” “Texas’s below average performance is due to the fact that the Texas Council on Environmental Quality (TCEQ) isn’t doing enough to protect the State’s bayous, lakes and rivers,” stated **Matt Rota of the Gulf Restoration Network**. “It is critically important that Texas steps up its game and fully protect humans and wildlife from water pollution.”

GRN said that although Texas performed well in some areas, TCEQ has much room for

improvement. Among other failings the report indicates that Texas has failed to implement policies that set specific criteria for nitrogen and phosphorous pollution. This pollution is responsible for harmful algal blooms that cause dead zones off the Texas coast and create hazards for human health, as well as aquatic wildlife.

“Texas has to do more to head off nutrient pollution,” said **Ellis Pickett, the Texas Organizer for the Gulf Restoration Network**. “All citizens have a right to swim and surf in clean water, and getting these protective measures on the books is a vital step to cleaning up Texas’s water.”

Other areas where Texas earned low grades included not protecting all of its waters for fishing and swimming, as well not making public documents accessible enough to interested citizens. The report indicated that Texas could improve its grade by establishing specific, numeric limits on nitrogen and phosphorous pollution. Texas is also nine years late in holding a federally mandated review of its water policy, a deficiency that earned the state a “D” in the area of public participation. TCEQ is currently working on that review, and

## **A Tale of Two Utilities: Austin and San Antonio Take Different Approaches to Electricity Plans**

It is rare that two cities so close together consider their electricity plans for the next 10 to 15 years at roughly the same time. It is more interesting that the two largest municipal utilities in Texas take such different approaches.

Both Austin and San Antonio have well established municipal utilities – Austin Energy and City Public Services (CPS) -- noted for their commitments to renewable energy, efficiency and low-cost electricity for their citizens and local businesses.

Austin City Council told Austin Energy to obtain 30 percent of its electricity demand by 2020 from renewable sources. Austin Energy made a commitment to obtain at least 700 MWs from renewables by 2020. Austin Energy began a year-long public process to develop a Resource Generation Plan, tentatively set for City Council consideration October 15<sup>th</sup>.

Similarly, facing growing demand, and older power plants nearing retirement, CPS Energy has increased its commitment to energy efficiency, to meet 20 percent of energy demand from renewables and to keep rates low.

The difference? The process and the conclusions of the two municipal giants.

The Austin Energy proposed plan emerged on August 18<sup>th</sup> after public and stakeholder meetings, an on-line survey and an energy consultant had examined a dozen scenarios – many suggested by stakeholders -- on how Austin could meet its renewable energy, energy efficiency and energy demand commitments. All the cost information, conclusions and assumptions were open to the public. Not surprisingly, the proposal is a mix of scenarios modeled by consultant Pace, and calls for 800 MWs of energy efficiency, 1,100 MWs of new renewable solar and wind, and 300 MWs of new natural gas plants, while burning 40 % less coal at the Fayette Coal Plant Austin owns with LCRA.

In addition to these 12 scenarios – or 13 if you include the melded approach preferred by Austin Energy – the nine-member Austin Generation Resource Planning Task Force has access to a less-detailed energy model developed by UT-Austin and to two models being run by Pace. One evaluates ending Austin's reliance on 600 MW of old-style coal burning and increasing reliance on solar, geothermal energy and energy efficiency.

CPS, publicly committed to renewable energy and energy efficiency, asks ratepayers for a 1,350 MW share of two new nuclear power

plants to be built at the South Texas Plant. In fact, on two occasions, CPS Energy has already asked for approval from City Council to spend money on the upfront costs of preparing an application to the Nuclear Regulatory Commission.

Rather than offering a variety of scenarios and an open process to determine which path forward makes sense – including investing in the nuclear plant -- CPS Energy has announced there are only two choices: A. invest in 40 percent of the nuke plants or B. don't, instead run expensive natural gas plants a lot more.

While the new San Antonio Mayor has indicated that there might be a middle ground position, there are no models for either the “invest-less” in nukes or a variety of choices that CPS Energy could pursue, and no independent advisory group looking at CPS Energy's overall energy plan.

Instead, CPS Energy says there are only two options and the nuclear option is better long-term. Or actually, it will be more expensive over the next ten years, but less so in 25. Bills would rise from \$100 to \$140 a month for an average resident between 2010 and 2020, while Austin Energy estimates bills would rise from \$86 to \$104 over the same period for their plan.

Beyond the process, cost assumptions differ widely in the two plans. CPS Energy is assuming less risk and lower costs for the new nuclear plant than is Austin Energy. In fact, the

Austin Energy consultant recently performed a Risk Analysis and found the nuclear option – purchasing 300 MW of new nuclear power– was by far the riskiest of the options modeled, the opposite of what CPS Energy is telling San Antonio.

CPS Energy assumes a higher cost for solar power, for future natural gas prices and for the cost of implementing energy efficiency programs. Austin Energy reports that currently it costs the utility \$350 per kilowatt to reduce energy demand, and to increase energy efficiency programs beyond their current programs might increase costs to \$500 per kilowatt. In contrast, CPS estimates energy efficiency will cost \$1,102 per kilowatt, or roughly three times what Austin currently pays for energy efficiency. They are in essence telling San Antonio it is more expensive to be energy efficient than to run a nuclear power plant.

Neither the Austin Energy nor CPS Energy future generation plans are final, both require City Council action, and both may be delayed as citizens and businesses question cost assumptions and energy choices. It is clear that while far from perfect, Austin Energy has been more transparent, more willing to listen and less wedded to a particular outcome.

San Antonio would be wise to slow down, question assumptions and call for a full, open and independent investigation of future energy choices.

**Gulf**, *continued from page 3*

proposed revisions to the state's surface water quality standards resulting from that review may be proposed this fall.

**For More Information**

**The full report can be reviewed at the Gulf Restoration Network's website, [www.healthygulf.org](http://www.healthygulf.org).** For more information, contact Ellis Pickett, Texas Campaign Organizer, GRN, at 713-906-3940 or [ellis@healthygulf.org](mailto:ellis@healthygulf.org).

**Gulf Restoration Network**

The Gulf Restoration Network is a diverse network of individuals and local, regional, and national groups committed to uniting and empowering people to protect and restore the natural resources of the Gulf region for future generations. Founded in 1994, the GRN has members in each of the five Gulf of Mexico states, including Sierra Club chapters in some of the states.



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**EPA**, *continued from page 2*

participation opportunities provided by other states. EPA will issue its final decision on this proposal by November 30, 2009."

According to the EPA press release, "EPA has less than one year to issue its final decisions on the three remaining proposals outlined above, finalizing the Qualified Facilities revision, Flexible Permit revision, and New Source Reform revision no later than March 2010, June 2010, and August 2010 respectively. EPA is required to complete action on all 30 of the state's proposed regulatory changes by December 31, 2013."

**Public Comment Opportunity**

The public may submit comments on each of the three new EPA proposals within 60 days after they are published in the *Federal Register*, which should be within ten days of the announcement on September 8. Once they are published, Quick Links will be available for the public to comment directly to EPA on each of the proposals.

For more information about the proposals, go to the EPA Region 6 website for the press release and accompanying text of the proposals. The link to that information is <http://www.epa.gov/region6/6xa/sippresrelease.html>. The Lone Star Chapter of the Sierra Club will post comments on the proposals by November 1 on the Chapter website at [texas.sierraclub.org](http://texas.sierraclub.org).



## Texas Roll Beyond Coal Campaign

Sierra Club has been actively campaigning on a statewide level to stop new coal plants, improve and phase out old coal plants, and we've been promoting clean energy solutions.

Sierra Club is currently involved in three contested case hearings to stop new coal and pet coke plants proposed in Texas: Coletto Creek expansion near Goliad, White Stallion near Bay City, and Las Brisas on the ship channel in Corpus Christi.

Two new national Sierra Club staff members are contributing additional energy to Sierra Club's Beyond Coal campaign in Texas.

Ian Davis organized the hugely successful Texans for Obama, the Democratic party's coordinated campaign in Travis County, and Council Member Bill Spellman's campaign before beginning his new role as Regional Organizing Manager with responsibilities for Texas, Missouri, Kansas, and the Dakotas.

Our new Texas Coal Campaign Organizer, Eva Hernandez comes to us loaded with skills to share from her experience at MoveOn.org and the Dogwood Alliance.

Ian and Eva are working with staff of Sierra Club's Lone Star Chapter, with Austin Sierra Club outings leaders, and a team of volunteers organizing the Roll Beyond Coal clean energy rallies and bicycle rides and

hikes on Saturday, Oct. 31 in Alpine, Austin, Beaumont, Corpus Christi, and Dallas.



### The Sierra Club and our environmental and bicycle community partners announce...

**Roll Beyond Coal, Clear Energy Rallies, Bike Rides, & Hikes in towns across Texas on Saturday, October 31, Halloween Day, 2009.**

The public is invited to bring your family, friends, and neighbors to come out and ride your bicycle or stroll beyond coal with Sierra Club in Alpine, Austin, Beaumont, Corpus Christi, and Dallas on Saturday, October 31.

Site details are firming up as we go to press. For more information and to register for Roll Beyond Coal, go to

<http://tinyurl.com/lqs4og>



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**Saturday, October 31**  
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**or Dallas, Texas**  
<http://texas.sierraclub.org/Conservation/coal.asp>