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## STATE CAPITOL REPORT

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### Are They Still National Parks If You Can't See Them?

#### TCEQ Claims It Can't Achieve Natural Visibility at Guadalupe Mountains until 2081, at Big Bend until 2155!!!

Express Your Opinion to TCEQ by February 22!

Over the past several years Texans have had many opportunities to question the dedication of the Texas Commission on Environmental Quality (TCEQ) and its predecessor state agencies to cleaning up air quality in Texas. The residents of our state's major cities have continued to suffer from dirty air and missed deadlines for clean-up for decades.

Now Texans can add another example of lack of commitment on the part of the state's air pollution control regulators: TCEQ has failed to meet a deadline for proposing a "regional haze" State Implementation Plan (air quality clean-up plan or SIP) to the U. S. Environmental Protection Agency (EPA) to achieve natural visibility at national parks such as Guadalupe Mountains and Big Bend in far west Texas.

Under the federal Clean Air Act and EPA regulations the states were required to submit by December 17, 2007 regional haze SIPs that

would demonstrate "reasonable progress" in reducing visibility impairment at "Class I Federal areas" that result from man-made sources of air pollution. Class I Federal areas are national parks over 6,000 acres and wilderness areas over 5,000 acres that the U. S. Congress has recognized as significant sites.

**To add insult to injury TCEQ is saying that the regional haze SIP the agency proposes to submit – sometime in July of this year (a half-year behind schedule) - will not meet the national goal of achieving natural visibility at our national parks by 2064. TCEQ claims that it cannot achieve natural visibility at Guadalupe Mountains National Park until 2081 – 17 years after the target. TCEQ says that it cannot achieve natural visibility at Big Bend National Park until 2155!**

The Sierra Club has certainly seen government agencies drag their feet in meeting goals and deadlines, but this has to be considered a new

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record – or low point.

### **What Can Citizens Do?**

If you've been to Big Bend National Park at various times of the year you know how badly the view and the vistas are obscured as a result of regional haze resulting from air transport of pollutants from other parts of Texas and the nation and indeed at times from Mexico and parts of Central America. If you haven't been to Big Bend when the haze obliterates the sky, you can get a good understanding of the problem by going to TCEQ's own website at [http://www.tceq.state.tx.us/implementation/air/sip/bart/haze\\_overview.html](http://www.tceq.state.tx.us/implementation/air/sip/bart/haze_overview.html). There you will see side-by-side photos of Big Bend on a hazy day and Big Bend on a "clear day." On a clear day visitors to the park can see details of large objects over 100 miles away but that visibility is reduced to 30 miles on hazy days.

The photos have not seemed to spark TCEQ to take action to "clear up" the problem within an already lengthy but "reasonable" period. Citizens have an opportunity, however, to make their views clear to TCEQ. The agency is holding a public hearing on the proposed regional haze SIP on Tuesday afternoon, 2 p.m. at TCEQ's Austin headquarters, 12100 Park 35 Circle, in Room 201-S, Building E.


Most people will not be able to attend the public hearing (but the Lone Star Chapter of the Sierra Club will be represented there, and other air quality advocates are expected to attend).

However, **there is an opportunity for written public comments on the regional haze SIP submitted to TCEQ by Friday, February 22.**

**Comments may be submitted to Margaret Earnest, MC 206, Air Quality Division, Chief Engineer's Office, TCEQ, P. O. Box 13087, Austin, TX 78711-3087, or faxed to 512-239-5687. Electronic comments may be submitted at [www5.tceq.state.tx.us/rules/ecomments/](http://www5.tceq.state.tx.us/rules/ecomments/). File size restrictions may apply to comments being submitted via the eComments system.**

**All comments pertaining to the proposed Regional Haze SIP revision should reference Project Number 2007-016-SP-NR. Copies of the proposed revision may be viewed at the commission's web site at the link noted previously in this article. For further information, contact Margaret Earnest, Air Quality Planning Section, at 512-239-4581.**

### **Sierra Club Comments**

The Lone Star Chapter of the Sierra Club will post its comments and sample comments for the public to the Chapter website after the public hearing at TCEQ on February 19. The Club's comments will stress that actions can be taken in regulating Texas sources of the air pollution that affect Big Bend and the Guadalupe Mountains even though other sources are national or even international. Citizens may view comments on the TCEQ regional haze SIP from the U. S. Forest Service, National Park Service, and U. S. Fish and Wildlife Service on the TCEQ website for further information about the issue. 

## NRC Suspends Intervention Deadline for Nuclear Plant Licensing

### Environmental Groups Welcome Decision on South Texas Project

The SEED Coalition, Sierra Club, Public Citizen and other environmental groups welcomed the decision by the Nuclear Regulatory Commission (NRC) this week to indefinitely suspend the deadline for intervention in the license application process for two proposed new nuclear reactor units at the South Texas (Nuclear) Project (STP). [See the Lone Star Chapter website at [www.texas.sierraclub.org](http://www.texas.sierraclub.org) for a copy of the order.]

“This is a welcome decision by the NRC. NRG’s application was so full of holes, that the NRC said they were planning on suspending their own internal review of the application. Opponents would have been required to develop our lists of contentions or problems with the plant and designate our expert witnesses by February 25,” said **Karen Hadden, Director of SEED (Sustainable Energy and Economic Development) Coalition**. “That was an impossible and illogical burden. And that is why we filed a petition asking the NRC to suspend the deadline last Friday.”

Sierra Club, Public Citizen, the Nuclear Information Resource Service, and Beyond Nuclear joined the SEED Coalition February 8 in filing a petition and the San Antonio-based Southwest Public Workers Union filed a petition February 11 to the NRC arguing that the application by NRG Energy Company/South

Texas Nuclear Operating Company (STNOC) contained wide gaps and that it would be unfair to require protestants to respond on so short a deadline. [Read the petition online at <http://www.nukefreetexas.org>]

### The NRG Application

NRG’s application to expand the STP in Matagorda County was the first permit application declared “administratively complete” by the NRC in the United States in the past thirty years. The NRC’s new Combined Operating License Application (COLA) process collapses into one combined license a process which formerly required separate permits for nuclear power companies to construct and to operate.

“The NRC confirms what we’ve been saying all along. It’s unrealistic for the public to be able to assess an application that is not complete,” said **Cyrus Reed, Conservation Director for the Lone Star Chapter of the Sierra Club**. “The exorbitant costs of nuclear power would be a huge distraction from the transition to a truly clean energy economy with more efficient homes and workplaces and renewable energy resources such as wind and solar power. We’re glad that the process has been delayed today so that we can further

## Border Battle to Continue

# TCEQ Renews ASARCO Smelter Permit

On February 13 the three-member Texas Commission on Environmental Quality voted to approve renewal of a state air pollution permit for the ASARCO metal smelter in El Paso, which would allow the smelter to reopen. **Sierra Club will work with the City of El Paso and community members to evaluate next steps, but the community has made it clear that they want to keep the smelter closed forever and get ASARCO to clean up the area.**

The Sierra Club, the City of El Paso and community members insist that ASARCO has done enough damage to the health and livelihood of El Paso and Ciudad Juárez and does not deserve this additional chance to pollute. **For the 112 years that it operated, the ASARCO smelter emitted hundreds of tons of lead, arsenic, and cadmium into the sky and onto the homes of El Paso and Ciudad Juarez residents.** Children living in the area, ranging from 2-6 years of age, showed blood lead levels high enough to warrant immediate medical intervention.

### Commission Action

**More than 200 people attended the hearing,** most traveling from El Paso, Mexico and New Mexico to oppose the permit renewal. While they did not get the decision

they wanted, opponents were pleased that the commissioners required ASARCO to increase monitoring of lead emissions in Texas, New Mexico and across the border in Mexico. This is an important step, but this 19<sup>th</sup> century facility still should remain closed.

The commissioners argued that current Texas law does not let them deny a state air emissions permit renewal. ASARCO continues therefore to abuse the state's permitting process, since a permit application that cannot be denied is not much of a permit at all.

### Looking Ahead

**Sierra Club believes that it is critical for public health, for air quality, for promoting compliance with environmental law, and for Texas-Mexico border relations for the ASARCO smelter to remain closed.** The City of El Paso hopes to transition to a cleaner, 21<sup>st</sup> century economy with "green-collar" jobs and healthy residents. **ASARCO represents the past, and the Sierra Club will continue to support community efforts to keep the smelter closed.**

**OPINION PIECE****Wind and Wildlife – Trying to Find the Balance**

By Donna Hoffman, Communications Coordinator, Lone Star Chapter, Sierra Club

Texas needs smart energy solutions. We must transition our economy toward increased efficiency and greater reliance on renewable energy sources - wind, solar, and geothermal in order to address climate change, air pollution, and high fuel cost.

The wind industry is leading this transition. Nationwide, wind power grew by 45% in 2007.<sup>1</sup> For the past two years, Texas has ranked number one in wind power with 4,356 megawatts at wind farms in West Texas and the Panhandle. Wind projects under construction will add another 1,238 megawatts.<sup>2</sup>

The State of Texas should encourage and promote this growth in wind power, and it should also take measures to assure that the wind industry avoids negative impacts to wildlife populations and habitat.

Any industrial activity, even a wind power project, presents the potential for negative environmental impacts, but appropriate regulations or guidelines and technological advances may eliminate or reduce those impacts.

Wind turbine technology has improved greatly since the days when turbine designs were deadly to bird populations. The National Wind Coordinating Committee has mediated

national discussions between the wind industry and wildlife biologists that have produced best practices for siting and operating wind projects. Nineteen states have voluntary wind project guidelines. Several states refer to the thorough U.S. Fish and Wildlife Service Guidelines that are presently undergoing industry challenge. One state, Hawaii, requires permits for wind projects.<sup>3</sup>

In Texas, the Lone Star Chapter of the Sierra Club has been in negotiations between wind industry representatives and conservation groups to create voluntary siting guidelines. Texas Parks and Wildlife Department (TPWD) has been coordinating negotiations. In order to satisfy investors and attorneys, wind companies would consult with TPWD and adhere to the guidelines.

The Sierra Club recommends the guidelines include: pre-construction research linked to habitat sensitivity criteria, data sharing for wildlife studies, pre-construction mitigation, post-construction research, and operational mitigation.

Unfortunately, the negotiation process is currently at a stalemate.

Conservation groups believe that

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guidelines are necessary to address concerns about: large, diverse migratory and residential bird populations and sensitive habitats along the Gulf Coast; bat habitat in the Texas Hill Country; and unique wilderness viewsheds like Enchanted Rock.

The lack of guidelines became an issue in September, 2005 when the General Land Office announced its first offshore wind lease – 11,355-acres, seven miles off Galveston Island. This first offshore wind farm in Texas, was set to be built in the most populated migratory bird corridor of North America.<sup>4</sup> The developer Wind Energy Systems Technologies (WEST) has placed a meteorological tower on the site and are said to be collecting wind data. The company contracted a bird study design from a well-respected bird scientist for this project, but has not begun the study. WEST has since leased four more offshore sites in the Gulf from offshore of the southern tip of the state to offshore of the upper coast.

Last year, wildlife groups (including American Bird Conservancy, which has been

highly supportive of wind energy) joined the King Ranch to form the Coastal Habitat Alliance (CHA). CHA is concerned about two wind farms -- Babcock & Brown and PPM's projects in the sensitive wetlands of northern Kenedy County. The CHA has filed suit in federal court to force the State of Texas to abide by its agreement with the federal government not to build energy generation facilities in the Coastal Management Zone without a permitting process.

Guidelines based on site sensitivity could steer the wind industry away from problematic sites early in the scoping process and save wind developers time and money.

The Sierra Club has developed a Wind Siting Advisory and will continue to work for voluntary guidelines at TPWD.<sup>5</sup> If that process does not succeed, then prospects for an enforceable permitting process will increase.

The wind industry in Texas needs to make a choice: Do they reject reasonable guidelines for project siting and operation and risk continued controversy and perhaps restrictive regulations? Or do they make a good faith effort to negotiate guidelines that will allow the industry to progress while addressing valid concerns?

We hope the wind industry will choose to remove the albatross by accepting and adhering to meaningful siting and operations guidelines in Texas.

### (Endnotes)

1 American Wind Energy Association  
[http://www.awea.org/newsroom/releases/AWEA\\_](http://www.awea.org/newsroom/releases/AWEA_)



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Market\_Release\_Q4\_011708.html

2 For a list and information about existing wind power projects and projects under construction in Texas, view the State Energy Conservation Office website -- [http://www.seco.cpa.state.tx.us/re\\_wind.htm](http://www.seco.cpa.state.tx.us/re_wind.htm)

3 Association of Fish and Wildlife Agencies and U. S. Fish and Wildlife Service, April 2007 [http://www.fws.gov/Midwest/eco\\_serv/wind/guidance/AFWASitingSummaries.pdf](http://www.fws.gov/Midwest/eco_serv/wind/guidance/AFWASitingSummaries.pdf)

4 Gathreaux, Belser, Welch, "Atmospheric Trajectories and Spring Bird Migration across the Gulf of Mexico" *Journal of Ornithology*, 2006

5 [http://www.sierraclub.org/policy/conservation/wind\\_siting.asp](http://www.sierraclub.org/policy/conservation/wind_siting.asp)

**CRCS**

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**Nuclear**, *continued from page 3*

scrutinize the NRG license."

This decision comes on the heels of a decision by Austin Energy on Friday that they would recommend to the City Council against buying into the plant. The City of Austin-owned utility commissioned a study that found that the plant would cost at least a \$1 billion more than expected and could be two years late. Potential permitting delays were one of the causes that they cited as a potential reason for the delay and cost overruns. [See Austin Energy memo online at <http://www.texas.sierraclub.org/>]

**"We are delighted with this victory. This is only a temporary pause in the battle against the license for this unneeded, unhealthy, budget-breaking, radioactive waste-producing, water-guzzling nuclear plant,"** said Hadden.

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## *Mark Your Calendars!!* **From Policy to Reality: Advanced Urban Water Conservation in Texas**

### **Annual State Water Conference April 18, 2008 - Austin**

Please save the date of **Friday, April 18 for the 8th Annual State-wide Water Conference** conducted as part of the Texas Living Waters Project. This year the whole day is dedicated to discussions on **Urban Water Conservation**.

The conference will feature experts from around the country to talk about what kinds of water conservation opportunities are available to cities and water user groups now and what technological advances lay ahead. We'll hear about what the future may hold for conservation policy in Texas grounded in real life examples from **cities, industrial, and commercial leaders who are making it happen now**.

Come join the discussions!

*Conference Agenda coming soon*  
*For more information and updates:*  
[www.texaswatermatters.org](http://www.texaswatermatters.org)

The Texas Living Waters Project is a joint project of the National Wildlife Federation, Environmental Defense, and the Lone Star Chapter of the Sierra Club, funded by several generous supporters in Texas.



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