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Environmental and Energy Issues Heat Up in the Texas House

After a relatively slow start, the Texas House of Representatives heated up as the calendar hit March 1. New legislation was introduced, House committee hearings got underway, and discussion continued about the impact of the federal stimulus money on funding decisions for state agencies and programs.

Environmental Enforcement Debated

Chairman Byron Cook (R-Corsicana) opened his House Environmental Regulation Committee on March 4 by hearing **HB 826 by Rep. Dan Gattis** (R-Georgetown). The bill is a long-standing goal of many businesses, environmental organizations, and county district attorneys. **HB 826 would direct the Texas Commission on Environmental Quality (TCEQ) to set the monetary administrative penalty for violating an environmental law at a level at least as high as the economic benefit the particular company violating the law received by breaking the law.**

HB 826 would allow those penalties attributed to economic benefit to be delayed and forgiven for *public* entities and non-profits.

It would allow a process for businesses to review the information on which their penalty is based and submit any additional information to help the agency determine the appropriate fine. In all cases, the total payment could not surpass the statutory limits.

This bill has its roots in a 2003 State Auditor's Report. That report found in a review of TCEQ penalty policy that some 80 businesses that had violated the law received penalties of \$1.7 million but that they actually gained economically by avoiding and delaying pollution control and other equipment to the tune of \$8.6 million. That situation has led to a perverse incentive for certain companies to see violating the law as a cost of doing business and in some cases as something that might even offer them a financial gain.

Since the Auditor's Report, TCEQ has made improvements in its penalty policy, but the fundamental question of whether to recover the economic benefit of non-compliance has yet to be resolved. TCEQ currently enhances the penalty but does not set a penalty high enough

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to recover an amount equal to the economic benefit the company received from violating the law.

Among those testifying for HB 826 were Robin Schneider with Texas Campaign for the Environment, Snehal Patel, Senior Assistant County Attorney with the Harris County Attorney's Office, and Cyrus Reed, Conservation Director for the Lone Star Chapter of the Sierra Club.

The Texas Association of Business signed up against the bill, but did not testify, while former TCEQ Commissioner Ralph Marquez, now representing the Texas Chemical Council, stated TCC was neutral on the bill but very concerned about dictating penalty policy to the TCEQ and about the potential added cost of figuring out the economic benefit. The Sierra Club's Cyrus Reed noted in his testimony that the bill would have no fiscal impact because TCEQ already figures out economic benefit for every violation, they simply choose not to collect it.

Rep. Gattis said he would attempt to address some of the concerns of the few opponents of the bill, particularly those for small business, in order to get HB 826 out of committee.

More Renewable Energy Bills Filed

Legislators introduced a rash of bills on increasing **the state's goal for electric power**

generation from renewable energy in the last few days.

Among the bills with the most aggressive goal – one supported by the Sierra Club – are **SB 1419 by Sen. Eddie Lucio** (D-Brownsville), **HB 3145 by Rep. Yvonne Gonzalez Tourelles** (D-Alice) and **HB 3478 by Rep. Pete Gallego** (D-Alpine). **These bills would create a renewable energy generation goal of 4,000 MW by 2020 from sources other than high-capacity wind power.** The bill recognizes that Texas has already surpassed its goals for wind power, which will continue to grow with the build-out of the transmission lines recently approved by PUC, but that the state has yet to create significant markets for geothermal, renewable biomass, and solar power.

A slightly less aggressive goal of 3,000 MW by 2020 was introduced in several bills: **HB 2520 by Rep. David Swinford** (R-Dumas), **HB 2850 by Rep. David Farabee** (D-Wichita Falls), and **SB 1423 by Sen. Joan Huffman**. The Swinford bill includes cost containment provisions and an “emerging renewable energy” credit trading program.

There were also a number of bills introduced on the issue of “**net-metering**.” Net-metering refers to how much a customer putting solar or other on-site renewable energy sources on their homes or businesses would get paid if they generated more electricity than they consume. While all the bills are different, they

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Sierra Club files Environmental Lawsuit on Grand Parkway

Group says the Katy Prairie and Houston Air Quality Are at Stake

The Sierra Club on March 9 filed a lawsuit in federal district court in Houston against the Federal Highway Administration due to the failure of that federal agency to do an adequate assessment of the environmental impacts of the proposed Grand Parkway Segment E in western Harris County. **“The Grand Parkway is the poster child of bad transportation projects – an environmentally destructive project that’s not needed, not ready, and not cost-effective,”** noted Brandt Mannchen, Air Quality Chair for the state chapter and Houston group of the Sierra Club. **“In the rush to push Segment E of the Grand Parkway for the benefit of real estate developers, the Federal Highway Administration conducted a weak environmental review that ignores the project’s harm to the Katy Prairie, its potential impact on Houston air quality, and better transportation alternatives.”**

In remarks to the Harris County Commissioners Court today informing them of the lawsuit Mannchen noted:

“The Sierra Club, over the past 25 years, has worked to protect the Katy Prairie and implement transportation alternatives to the proposed Grand Parkway, Segment E. We are now at a point where we did not want to be. Filing a lawsuit is a serious undertaking which requires money, time,

and other resources. It is a strategy of last resort, not first resort. It is because the Sierra Club feels so strongly about protection of the Katy Prairie and the harmful effects the proposed Grand Parkway Segment E will have on the Katy Prairie, that we have filed this lawsuit.”

The Katy Prairie

The Katy Prairie is a home for hundreds of thousands of geese, ducks, herons, egrets, songbirds, and other wildlife. The Sierra Club notes that it is also a giant sponge that soaks up flood waters and detains and keeps those waters from flooding down Buffalo Bayou causing havoc downstream. According to the Sierra Club, the proposed Grand Parkway project itself will pave over about 700 acres of the Katy Prairie. The environmental group points out that by facilitating the Bridgelands real estate development in its efforts to construct subdivisions in the area, the Grand Parkway indirectly will destroy another 12,000 acres of the Katy Prairie.

Stimulus Money Allocated Last Week

Last week the Texas Department of Transportation (TxDOT) included the Grand Parkway Segment E in a list of projects to be

Sierra Club Releases Report on Desalination Primer Covers the Pros and Cons of Water Desalination

The Lone Star Chapter of the Sierra Club has released a report on brackish and seawater desalination to help decision-makers and the public evaluate the possible role of desalination in addressing future water demands in Texas and elsewhere. ***Desalination: Is It Worth Its Salt? A Primer on Brackish and Seawater Desalination*** describes desalination as “one tool in the toolbox for meeting water supply needs” but points out that the brine disposal, impingement and entrainment of aquatic and marine life, and increased electrical needs are issues of concern with desalination that need to be addressed in deciding whether to undertake a desalination project. In addition the Sierra Club notes that if desalination is pursued it should be “part of a comprehensive water supply program that also includes advanced water conservation and effective drought management measures.”

Desalination is discussed in the Sierra Club report in a series of questions and answers that highlights how the desalination process works, the environmental concerns about desalination, the dollar costs of desalination, and the status of desalination projects in Texas. The report also includes a number of sources and links for further information about desalination.

One of the major environmental concerns

about desalination that must be addressed, according to the Sierra Club report, is the disposal of brine and other concentrated material that is left over from the desalination process. The most common brine disposal method used for desalination facilities along the coast is direct discharge to coastal waters. **“Depending upon where the brine is discharged from a seawater desalination plant, the discharge could increase water salinities by as much as 100%,”** notes Ken Kramer, Director of the Lone Star Chapter. **“These increased salinities can have impacts on local marine populations, especially for non-migratory species such as oysters. It is certainly preferable to dispose of the brine into the open ocean than into a bay or estuary although there could be problems with ocean disposal of brine in localized situations.”**

“The large amounts of electricity required for desalination make the process vulnerable to changes in electrical rates,” notes Kramer. **“These high costs underscore the need for a water supplier to implement much more cost-effective water conservation and drought management strategies prior to pursuing desalination projects.”**

See page 7 to obtain your free copy.

Local Citizens Group, Sierra Club, and EDF Contest Goliad County Coal Plant Expansion

Citizens for a Clean Environment, the Lone Star Chapter of the Sierra Club, and Environmental Defense Fund (EDF) are contesting the expansion of a Goliad County coal plant. The three groups were granted “standing” on March 9 by Judges Richard Wilfong and Lilo D. Pomerleau of the State Office of Administrative Hearings (SOAH) in a preliminary hearing held at the Goliad County Courthouse. IPA Coletto Creek LLC is the company seeking to expand the existing Coletto Creek coal plant. The members of Citizens for a Clean Environment are concerned residents of Goliad and Victoria Counties.

The coal plant opponents are concerned about potential health and environmental impacts from the proposed increase in the area of coal emissions by the tons annually of sulfur dioxide, nitrogen oxide, particulate matter, mercury, and carbon dioxide, the primary greenhouse gas.

“We’re very pleased with what’s taken place so far and we hope we continue to proceed in the right direction,” said Charlie Faupel of Reeves Ranch with Citizens for a Clean Environment. “We have a lot of leg work to be done in the next few months in educating people about the health and environmental problems from burning coal. Since the other plant has been there, we’ve noticed the live oaks and pecan trees are having problems. They

don’t have as much foliage, they’re becoming diseased. Some are dying more slowly and some it almost seems overnight. The mercury is also way too high and that is a big concern if you eat fish out of Coletto Creek or the lake like I do. We don’t want more pollution on top of what we already have.”

“My husband and I are already suffering financial costs every time we have to hire someone to power wash black soot off of our home,” said Sierra Club member Barbara Chapman who lives less than a mile from the site. “I like to spend time outdoors in my flower garden and I’m deeply concerned about the air pollution this additional coal plant would cause and the mercury that would fall in the lake and in Coletto Creek. We have kayaks and my husband would like to swim but we have concerns about the quality of the water.”

The SOAH Judges scheduled the contested case hearing to be held on October 12-16. The March 9 hearing was a preliminary hearing to determine the parties in the case.

The attorneys for Coletto Creek had wanted the contested case hearing to start before October, but their request was denied.

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would all give more assurance that in the state's competitive electric utility areas, those investing in on-site renewable energy could receive payments from retail electric providers. Among those putting in legislation on net-metering include Rep. Gallego (D-Alpine) – **HB 1243**, Rep. Farabee – **HB 1643**, Rep. Anchia - **HB 1655**, Senator Lucio - **SB 1420**, and Sen. Eliot Shapleigh – **SB 618** (D-El Paso).

Green Jobs Training Bill Heard

In the House, Chairman Mark Strama (D-Austin) introduced **HB 516**, which would create **a green job skills training program** at the Texas Workforce Commission. A wide variety of business, labor, and environmental interests, including the Lone Star Chapter of the Sierra Club, voiced support for the bill at a hearing in the House Technology, Economic Development and Workforce Committee.

HB 516 seeks to begin to train Texas workers



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for the expected increase in demand for jobs in energy efficiency, renewable energy, battery technology, and other parts of the new “green collar” economy. Most testified that the creation of the program would also help Texas gain access to federal stimulus dollars that would flow into green job training.

Other Stimulus Monies

Both the Special House Select Committee on Federal Economic Stabilization Funding and an appropriation subcommittee on the economic stimulus funding began holding hearings on how Texas can best take advantage of billions of dollars available with the passage of the American Renewal and Reinvestment Act. Robust discussion on how Texas can gain access to both energy and environmental monies available from the stimulus package occurred throughout the hearings.

The Lone Star Chapter of the Sierra Club is advocating that in order to gain access to some \$210 million available for Texas in “State Energy Plan” dollars – which would flow to the State Energy Conservation Office – Texas needs to work toward implementation of the 2009 building codes known as the International Residential Code and the International Energy Conservation Code (IECC) for commercial buildings. The adoption of these building codes would mean new buildings would be some 12 to 15 percent more energy efficient. Senator Kip

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funded in part (\$181 million) out of federal economic stimulus funds. That decision has generated controversy, in part because the project has not secured all the necessary permits to proceed – including a U.S. Army Corps of Engineers environmental permit. Moreover, some groups question the use of federal stimulus money to construct a toll road, which is what the Grand Parkway is slated to be.

Alternatives

The Sierra Club says that there are proven transportation alternatives to the proposed Grand Parkway Segment E that will reduce traffic congestion where people live, work, and play. Some of these alternatives are: commuter rail along U.S. 290, widening of U.S. 290, Hempstead Highway toll road, widening of Katy-Hockley Road, and connection of Fry and Mason Roads to U.S. 290.

“We need to spend precious taxpayer and toll payer dollars where people live and traffic congestion exists now,” said Mannchen, **“not use our money to subsidize further traffic-generating growth that clogs our roads and destroys our area’s natural heritage.”**



Sign up for the *revamped* **Lone Star Action Network** for **Sierra Club Action Alerts** during the **Legislative Session** **“Take Action” at:**
<http://texas.sierraclub.org/>

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Averitt (R-Waco) has introduced **SB 16**, which would adopt the 2009 codes.

The bulk of the State Energy Plan dollars could be used to supplement the existing Texas LoanSTAR program, which lends out money to public entities to perform building retrofits, saving taxpayers money. Sierra Club is also calling on Texas to gain access to approximately \$260 million in low-income weatherization monies. The Club is recommending, however, that some strict reporting requirements be imposed on the Texas Department of Housing and Community Affairs to make sure the spending of money actually leads to savings in money and energy while helping avert pollution, and that up to 20 percent of that total be used to train workers to do weatherization right.



DESALINATION:
Is It Worth Its Salt?
A Primer on Brackish and Seawater Desalination
available from the Chapter website
<http://texas.sierraclub.org/press/Desalination.pdf>
Request single copies by writing to:
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or call 512-477-1729
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