

ECO FORUM

NEWSLETTER OF THE SOUTH DAKOTA RESOURCES COALITION

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Hyperion Seeking Permits: Comments Due on Air Permit

The SD Department of Environment & Natural Resources issued a draft air quality permit for the Hyperion Energy Center on Sept. 11. Originally there was to be a 30-day public comment period but DENR extended the comment period for another 31 days.

The public now has until November 14 to submit comments on the air permit. As for the air permit extension, all questions, comments and concerns need to be filed with the DENR by Nov. 14, and not merely postmarked by that date. The DENR will consider all comments submitted by Nov. 14, DENR Secretary Pirner said. Also, anyone can request a contested case hearing in front of the state Board of Minerals and Environment. That request also must be made by Nov. 14. If no one asks for a contested case hearing, the DENR would issue a final air permit decision within 30 days of the end of the public comment period, Pirner said.

Fifty-four letters, both for and against the draft air permit, have been filed on the DENR's Hyperion Web site as of October 3.

The refinery also needs two permits from the U.S. Army Corps of Engineers. No permit applications have been filed, said Paul Johnston, a spokesman for the agency in Omaha.

Hyperion Seeking Water

Meanwhile, Hyperion has contacted Clay Rural Water System officials to see whether that system could supply the 9 million to 12 million gallons of water a day the refinery needs as part of its "local first" initiative to provide everything from water and power to concrete and employees, said water system manager Greg Merrigan.

"This would be more of an industrial use," he said of Hyperion's request, made via e-mail Sept. 18. "We're not able to do it with our current facilities." Merrigan said the system, which supplies water to 2,025 locations, mainly households and farms in five counties in southeast South Dakota, can deliver 1.3 million gallons of water a day. That production is split between two treatment plants near Wakonda and McCook Lake. (continued on page 2)

How to Comment on Hyperion

Submit written comments to: **Department of Environment and Natural Resources**, Division of Environmental Services, 523 East Capitol, Joe Foss Building, Pierre, SD 57501.

Copies of the draft permit are online at www.state.sd.us/denr/hyperion.htm. You can also obtain a copy by calling **Kyrik Rombough at 605-773-3151**. You can review the permit at the DENR's Geological Survey Program at the University of South Dakota, Akeley-Lawrence Science Center, 414 East Clark, in Vermillion.

Oil Refinery Will Degrade Air

Jerry W. Wilson, SDRC member,
Vermillion

South Dakota's Department of Environment and Natural Resources has approved an air pollution permit for the proposed Hyperion refinery, accepting the company's claim that it will "prevent significant deterioration" of our air quality. One only can wonder what the agency charged with protecting our environment would consider "significant."

DENR has authorized the planned giant refinery to degrade our air to a degree that we must not accept. Only six of the dozens of toxins the refinery would emit are even addressed in the air pollution permit. Among the many pollutants that state and federal laws do not regulate is carbon dioxide, although by Hyperion's own figures, its use of low-grade tar sands crude oil would more than double South Dakota's output of this global-warming gas. (continued on page 2)

Opinion: Refinery Bad for Air (continued from page 1)

Since Hyperion never has built a refinery and has no track record, the DENR relied upon Hyperion's computer modeling of how extensively it would pollute our region's air. According to the would-be refinery's own low-ball projections, each year it would spew more than 10 million pounds of carbon monoxide, fine particulate matter, sulfur dioxide, nitrogen oxides, volatile organic compounds, sulfuric acid and hydrogen sulfide into our air. According to the U.S. Environmental Protection Agency, these various pollutants and toxins aggravate heart conditions, trigger strokes and are known to produce or worsen asthma, bronchitis and other lung diseases. Cancer-causing benzene is not even regulated by the air pollution permit our state agency has issued.

So what can citizens do? Surely, even proponents would want the refinery to be minimally destructive to our health, environment and way of life. Only through aggressive scrutiny and questioning can we hope to force the government to lessen the refinery's pollution.

We have until November 14 to register our objections to DENR. In the interest of your health and that of your children and grandchildren, contact the DENR and make your voice heard.

—For DENR contact information see “How to Comment on Hyperion,” page 1.

Hyperion Seeks Water (continued from page 1)

It was unclear what Hyperion expected from the system, Merrigan said. To meet Hyperion's demand, another 12 wells would need to be drilled west of Elk Point, and a 36-inch delivery pipeline would have to be built. "Right now, that's all hypothetical," Merrigan said. "That's as far as we got into it. (The board) just didn't have enough information from Hyperion." Clay Rural Water System officials could consider the request at their next meeting, set for 7:30 p.m. Oct. 23.

source: *Sioux Falls Argus Leader*, October 3, 2008

McKeown Nominated for Spirit of Dakota Award



Spirit of Dakota
sculpture in Huron

Maxine McKeown of Elkton and one of SDRC's founding members was nominated for the 2008 Spirit of Dakota Award.

The Spirit of Dakota Award annually honors one woman, whose leadership qualities, courage, strength of character, and community commitment illustrate the best of South Dakota womanhood. The first award was given in October 1987, when the “Spirit of Dakota” sculpture was unveiled in Huron. The 9-foot sculpture was done by Dale Lamphere of Sturgis.

Maxine was one of 23 women nominated this year. All of the nominees were recognized at a banquet held in Huron on October 4. (This year's winner was 71-year old Elaine Doll-Dunn of Spearfish – a “Renaissance Woman” who has compiled over 39,000 miles, 113 marathons and three ultra marathons competing in 45 states and five continents.)

Since Maxine was unable to attend the recognition banquet due to frail health, she was represented by her daughter LaVia Merrick of Sioux Falls (an SDRC board member). SDRC secretary-treasurer, Lawrence Novotny, also attended the recognition banquet. Maxine was nominated by SDRC board member, Kaye Hunt of Wentworth.

Oil Refinery Has Major Environmental Costs

Jim Heisinger, chair, South Dakota Chapter of the Sierra Club.

In 2001 Dick Cheney chaired a cabinet committee that recommended Canada's tar sands "be a pillar of sustained North American energy and economic security" (William Marsden, *Stupid to the Last Drop*). At that time the Bush Administration believed that human activity did not contribute to climate change and they were doing their best to silence the scientific community (Union of Concerned Scientists).

This year 58% of Union County voters decided to change their zoning ordinances to allow construction of the Hyperion Energy Center (HEC) in their unpolluted, peaceful agricultural setting. The HEC will refine dirty crude from the tar sands. The voters knew their life styles would be forever changed, but lower taxes, high wages, and trust in the dream of a green refinery won the day. However, many barriers to refinery construction remain; the first is Canadian environmental destruction.

The Environmental Defense Fund calls the mining of tar sands "The Most Destructive Project on Earth." Mining generates toxic naphthenic acids, mercury, arsenic salts and polycyclic aromatic hydrocarbons which have accumulated in vast tailing ponds along the banks of the beautiful Athabasca River. Surface mining destroys the boreal forests which sequester carbon. It is energy intensive. Clean natural gas is burned to convert water to steam to remove the tar (bitumen) from the sands. It results in large quantities of greenhouse gasses and contaminated water. In August, 2008 aboriginal leaders from three provinces vowed to go to court to stop the destruction of their land and the poisoning of their water. They want an assessment of damages, mitigation plans and a moratorium on new tar-sands project approvals.

A second barrier is transporting the bitumen form Alberta to U.S. refineries. TransCanada's Keystone pipeline project is being challenged. The 30-inch diameter pipeline would run from Hardisty, Alberta, through Saskatchewan, Manitoba, North and South Dakota, and Nebraska

before turning east and ending in Illinois. Ultimately it would carry 590,000 barrels/day of crude. In July 2008 the Natural Resources Defense Council announced plans to sue the U.S. State Department contending that the State Department failed to fully consider the health and safety hazards of pumping this material under high pressure (over 1400 lbs/sq. inch). Dakota Resource Council and Dakota Rural Action have joined the NRDC in demanding an injunction to stop the construction. TransCanada already has proposed an XL 36-inch pipeline to follow the Keystone project. If either pipeline is stopped, Hyperion is unlikely to construct its refinery here.

The third barrier is the permitting process. Hyperion has submitted to the Department of Environment & Natural Resources their Prevention of Significant Deterioration air permit application (www.state.sd.us/denr/hyperion.htm). ...It is alarming that the DENR is not requiring an Environmental Impact Statement. In August Senate Minority Leader Scott Heidepriem requested an EIS for this massive project. His request was denied. The Secretary of DENR, Scott Pirner, said the agency is a "one-stop environmental permitting agency" and that the numerous permits required would be sufficient. He also said that while the energy center is projected to emit 17.2 million metric tons of carbon dioxide per year it will be carbon capture ready. Of course the long term sequestering of carbon dioxide is an unproven technology.

The DENR has issued a "draft permit." It will be up to opponents to muster the technical knowledge and legal expertise to challenge the permits. The challenge to private citizens is daunting. However, the nation, the state government and even the people who want the refinery will owe a debt of gratitude to honest opponents who demand the best technology from this massive pollution source, even if it means no refinery is built.

—Reprinted, with updates, from *Pines & Prairie*, newsletter of the SD Chapter of the Sierra Club, July-Aug-Sept 2008.

“Sure We’re Green...” Not!

A growing number of organizations adopt “green” sounding names and try to convince the public that they are working for a clean environment or a sustainable economy, but are in fact front groups for industries that are anything but green. Here are just a few to be aware of. Don’t let their carefully designed messages fool you.

Americans for Balanced Energy Choices represents coal producers, transporters, and power plants. Coal is one of the dirtiest fuels we have.

Clean and Safe Energy Coalition is funded by the Nuclear Energy Institute and is a front group for the nuclear power industry. There is still no safe method of storing spent nuclear fuel rods or the highly contaminated building materials that have to be removed from nuclear power plants after two or three decades of use.

Committee for a Constructive Tomorrow fought against U.S. participation in the Kyoto Protocol to reduce greenhouse gas emissions. ExxonMobil has given them over half a million dollars.

Consumer Alliance for Energy Security supports drilling for oil on the outer continental shelf. Its members are chemical, energy, and logging companies. Offshore drilling rigs cause common, sometimes catastrophic spills.

Environmental Literacy Council gets support from the American Petroleum Institute, ExxonMobil Foundation, General Electric Foundation, Georgia Pacific, International Paper Foundation, and Weyerhaeuser Foundation. All of these organizations represent major polluting industries or logging companies.

Heartland Institute claims expertise on climate issues while advocating for smokers’ rights. They are funded in part by ExxonMobil and Philip Morris.

Woodard Edits Essays on Community in SD

SDRC member Charles Woodard of Brookings is the editor of a new book *Peril and Promise: Essays on Community in South Dakota and Beyond*. The book is a collection of essays, poems and illustrations focusing on and proposing solutions for the alleged decline of South Dakota’s communities.

Written from a variety of disciplinary perspectives and coming at the problem through personal narratives, history, social analysis, educational

philosophy, fiction, poetry, and other perspectives, *Peril and Promise* is guaranteed to stimulate your interest in the subject and to invite discussion and speculation about how to maintain and resurrect social interaction and cooperation in your own communities.

The authors, mainly professors at South Dakota State University, take a broad perspective on the subject that will interest anyone concerned or curious about how community is constructed and maintained. The authors of this book look back in order to look ahead, and they express with clarity and persuasive emphasis numerous important perspectives on rural communities. Written both for the general public and for high school and college classroom use, this book is an informative text and a useful tool for change.

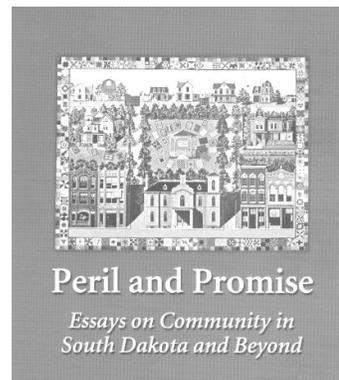
SDRC member Nels Granholm of Brookings contributed to the book. In his essay, Granholm discusses how land serves as a model for biological, ecological and global communities.

SDSU sociologist Meredith Redlin offers an essay on how the real wealth of rural communities is changed by the direction of rural development. Redlin illustrates her points with the example of confined animal feeding operations.

Peril and Promise is available for \$15 from the SD Agricultural Heritage Museum, Box 0601, Brookings, SD 57007.



Professor and SDRC member
Charles Woodard



Inconsistent Ruling Gives PUC Approval to Oil Pipeline

Frank James, Dakota Rural Action

In the past months many Dakota Rural Action members have worked on issues that deal in one way or another with eminent domain. This includes the unsuccessful attempt to refer Senate Bill 174—a bill giving railroads greater eminent domain powers, to being forced into condemnation by TransCanada in order to site an oil pipeline.

These projects raise questions about the legal teeter-totter with private property rights on one end and public use bolstered by the heavy-weight eminent domain on the other. Eminent domain and condemnation are important processes to landowners and people concerned about the environmental impacts of proposed projects using these rights.

Eminent domain is the power of government to take private property for public use without the owners' consent. Condemnation is the official act of taking the property and arriving at compensation. The measure of "Public Use or Public Good" represent the hurdle a project or type of project must clear in order to use eminent domain.

The South Dakota Legislature decides what types of projects are in the public interest, and the legal system interprets the legislative direction. South Dakota's Legislature has given eminent domain authority to projects like railroads, transmission lines, highways and pipelines. The power of the authority granted varies from type of project to type of project.

One recent eminent domain decision gave the authority to TransCanada to site the Keystone pipeline in eastern South Dakota. Some affected landowners filed suit challenging the company's access to the authority. The landowners made the argument that South Dakota law requires energy transmission projects like Keystone to gain approval from the Public Utilities Commission and the South Dakota Legislature. SDCL§ 49-41B-2.1 defines "transmission facility", and the statute clearly includes pipelines such as the

TransCanada pipeline. Part of the statute's definition that should apply to TransCanada says: "A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, or liquid hydrocarbon products..." This information was taken from "Defendant's Brief in Support of Motion to Dismiss or to Stay, TransCanada Keystone Pipeline, LP vs Raymond G. Anderson, Lillian Anderson and Farm Credit Services of America."

Later in the same law a definition spells out a trans-state transmission line as an electric transmission line and gives no mention of pipelines. The legal brief sighted above argues "TransCanada's contention that trans-state transmission facility does not include all transmission facilities but instead only includes electrical transmission facilities is nonsensical. In order to accept TransCanada's position, this Court would need to find that the legislature defined the term transmission facility to include electrical lines, gas lines, and oil pipelines, and then intended the term 'trans-state' to effectively delete gas lines and oil pipelines from the definition of transmission lines that traverse South Dakota. Ascribing such an unusual meaning to the term 'trans-state' is absurd."

However, the judge found this law only applies to electric transmission projects like the ill-fated Mandan project that was defeated by citizen opposition in the 1980s. The Mandan project was a \$700 million, 500,000-volt transmission line linking the Canadian province of Manitoba with the Dakotas and Nebraska.

So a Canadian electric transmission line crossing South Dakota would have to get the approval of both the PUC and the State Legislature, but a Canadian oil pipeline can move forward with just the approval of the PUC.

—reprinted, with updates, from *Action Review*, July-August 2008, newsletter of Dakota Rural Action.

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ECO FORUM is the monthly newsletter of the South Dakota Resources Coalition: a statewide coalition of organizations and individuals concerned with the enhancement of South Dakota's environment and the wise use of its resources. The opinions expressed are not necessarily the opinions of SDRC or its member organizations. Articles and letters may be submitted for publication to ECO FORUM Editor, 928 4th St. #4, Brookings, SD, 57006-0066. We reserve the right to edit submissions and to delay their publication until there is space for them, if necessary.

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