

## DEUELL: COAL/POWER LOBBIES KILLED MERCURY IN FISH BILL

### Legislative staffer hints at less obvious coal versus gas market-share battle

When Republican Sen. **Bob Deuell**, a certified family physician from Greenville, began seeking more stringent public warnings of fish mercury levels in Texas lakes, it wasn't because he was "anti-coal," he said. It was because he was worried about the health of pregnant women and young children, including the unborn.

Deuell, after all, immediately established himself as a friend of "pro-life" groups after joining the *Texas Senate* eight years ago. Notably the *Texas Alliance for Life* credits Deuell's 2003 *Women's Right to Know Act* as the foundation for a new law by Sen. **Dan Patrick** (R-Houston) and Rep. Sid Miller (R-Stephenville) requiring pregnant women to view sonograms.

But, for the second session in a row, Deuell's efforts to alert pregnant women that mercury exposure from Texas-caught fish can cause neurological damage to unborn and young children – including impairment of memory, language and motor skills – passed the Senate this year only to die in the *House*.

"Look at who opposed it – the power and the coal companies," Deuell said last week of *Senate Bill 506*, which would have lowered the fish mercury threshold for public advisories from 0.7 parts per million to 0.3 parts per million. "All it does is change the standard and put the signs up. It doesn't put limits on what they do. Young children and pregnant women are more vulnerable. We just want to let them know."

Deuell is not the first lawmaker to run into intense resistance when seeking to protect the lives of those most vulnerable to mercury exposure, notes **Tom "Smitty" Smith** of *Public Citizen-Texas*.

"This is actually the fifth go round on the mercury bill where the coal guys come in and kill it, typically in the House because they don't want people to realize how much mercury is in Texas fish," he said. "The coal guys have actively tried to kill this for years and done an effective job."

Indeed, when the *Senate Health and Human Services Committee* heard the bill last April, the only testimony against it came from a toxicology consultant to the *American Coalition for Clean Coal Electricity*. Among those registering but not testifying against the bill were the *Texas Association of Manufacturers*, *Texas Mining and Reclamation Association*, *American Electric Power*, *Association of Electric Companies of Texas*, *North American Coal Corp.*, and *Texas Chemical Council*.

Facing such formidable opponents frustrates **Richard Lowerre**, president of the *Caddo Lake Institute*, founded by musician **Don Henley**, also a founding member of the *Eagles*. Lowerre says the warning signs are part of an education effort needed to protect families who depend on fish caught in Texas lakes as the primary source of protein in their diets.

“These are people who go out and catch fish every day whether they’re pregnant or not, whether they’re women or men, and they feed it to their children. That’s who we want to warn. Not the bass fishers. Not the people who buy commercial fish,” he said. “All of these things are based on epidemiological studies. You look at the population. You look at the risk.”

Lowerre said the fight is not about coal companies versus environmental “tree huggers.” It’s about educating vulnerable populations to health risks akin to placing information labels about the dangers of smoking on cigarette packs or drinking alcohol on wine bottles. Dangerous amounts of mercury can pass through the placenta to unborn children and accumulate much more quickly in those who fish daily for food, he said.

While groups such as *Environmental Defense Fund*, *Public Citizen Texas* and the *Texas League of Conservation Voters* supported SB 506, backers also included the *Texas Catholic Conference* and a host of health-related groups: *Texas Medical Association*, *Texas Pediatric Society*, *Texas Public Health Coalition*, *March of Dimes*, *Texans Care for Children*, and *Central Texas Healthy Mothers, Healthy Babies Coalition*.

“We respect life from the womb to the tomb. All we’re saying is the public has a right to know,” **Jennifer Carr Allmon**, associate director of the Texas Catholic Conference said, noting the Catholic faith teaches protecting the lives of the vulnerable.

About 30 other states issue fish consumption advisories at a fish-mercury value of 0.3 or lower and 37 states issue advisories at levels lower than Texas’ 0.7 trigger, according to a 2009 state-by-state list compiled by the law firm of *Lowerre, Frederick, Perales, Allmon & Rockwell*. The Caddo Lake Institute’s Lowerre and Jennifer Allmon’s husband are among the firm’s lawyers.

However, **Kirby Tyndall**, the toxicologist who testified for the American Coalition for Clean Coal Electricity, insists that the *U.S. Food and Drug Administration*’s mercury cutoff point for commercially sold fish is higher at 1 part per million. Women of childbearing age and young children are advised not to eat as much fish, she said, and avoid larger fish, which have higher concentrations of mercury.

Yet, she insisted in testimony this year that “currently there is no risk” to the general population, pregnant women or children from eating fish from Texas lakes and “no additional health benefit” would result from changing the mercury level for health advisories. She also said testing showed children whose mothers ate fish, “a superior source of low-fat protein,” had better social skills and fine motor development.

“There’s not a problem here. I don’t see the need to change it,” she testified. “What’s going to happen is we’re gong to stigmatize our lakes and people are going to think they are dirty if we ratchet down that number.”

Deuell dismissed Tyndall’s argument that pregnant women need the omega fatty acids found in fish as “ridiculous,” given the context. Meanwhile, **Dr. G. Sealy Massingill**, associate professor for obstetrics and gynecology at the *University of North Texas Health Science Center*, told

senators that *TMA* is concerned about the effects of mercury on pregnant women and children specifically, adding that “unfortunately” Texas has some of the highest industrial mercury emission in the nation.

“Mercury exposure can . . . affect the highly sensitive developing brain of a fetus,” he said. “Children who are exposed to even low levels of mercury can have physical and other impairments. This includes low birth weight, delayed speech, or even having difficulties walking.”

Members of the Association of Electric Companies of Texas opposed lowering the mercury warning level because the “advisory system currently set up by the *Department of State Health Services* works pretty well,” said **Walt Baum**, the association’s executive vice president. He added that the main push against the bill was not the coal-burning power companies but rather the mining and reclamation association.

*House Public Health Committee* Chairman **Lois Kolkhorst** (R-Brenham) said the bill died in her committee because it arrived late and was mired in controversy.

“The membership of the committee couldn’t get comfortable with it,” she said, adding this was true of both Republicans and Democrats. “Deuell was pushing me pretty hard on it. We could not build a consensus. They were just very hesitant.”

Beneath the public surface of the debate, the bill was also “weirdly lobbied,” contends one legislative staffer. When an oil and gas lobbyist casually remarked that the natural gas industry wouldn’t mind the bill passing, the staffer began to wonder if the real battle was over market share between coal and gas.

“I never saw any indication of that, but it wouldn’t surprise me at all,” said **Andy Wilson**, an energy analyst at *Public Citizen*, the group founded by **Ralph Nader**. “The quickest and easiest way to retire some of these (coal-fired plants) would be to move them over to natural gas.”

There’s just one problem, he added. One recent study shows that while gas burns cleaner, producing it through hydraulic fracking might create air emissions just as troubling as pollution from coal.

The state-by-state fish mercury levels that trigger public warnings can be read [here](#). They were compiled in 2009 for the Caddo Lake Institute.