

EARTHWORKS

December 11, 2019

From: Sharon Wilson, Senior Organizer
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To (via post & email): Toby Baker, Executive Director
Texas Commission on Environmental Quality (TCEQ)
12100 Park 35 Circle
Austin, Texas 78753

Re: TCEQ complaint protocols

Dear Executive Director Baker:

We write to express our concerns with the Texas Commission on Environmental Quality's (TCEQ) failure to regularly provide citizen complainants with TCEQ's investigation reports, despite agency policy. We also believe TCEQ too infrequently initiates enforcement actions using information provided by a private individual, as authorized by the Texas Water Code Sec. 7.0025 and 30 Tex. Admin. Code 70.4.

This letter therefore provides notice to the TCEQ of Earthworks' intention to change the manner in which we submit air pollution complaints from oil and natural gas related infrastructure. Going forward, we will begin submitting multiple complaints simultaneously, in the form of a list with supporting documentation, to the appropriate TCEQ regional management. As necessary, or upon request, we will continue to provide the appropriate technical information to our contacts inside and outside the TCEQ so they may conduct meaningful investigations and take necessary enforcement actions.

Background

Earthworks is a nonprofit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

Earthworks researches and documents air pollution impact based upon air monitoring data generated by state and federal regulatory agencies, field investigators, and various monitoring networks. Our employees are trained and certified on a variety of air monitoring instruments including, but not limited to, FLIR GF320 optical gas imaging (OGI) cameras. As a result of our technical expertise, we spend a significant amount of time conducting field documentation of emissions from a variety of sources in Texas and around the country.

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In Texas, we have conducted hundreds of OGI environmental assessments of oil and natural gas operations emission sources since 2015. We have submitted nearly 100 complaints to four different TCEQ regional offices: Dallas/Fort Worth, San Antonio, Waco, and Midland. We believe, in good faith, the manner and information provided in our formal complaints complies with agency policy and applicable Texas law. Further, our complaints, accompanying evidence, and supporting affidavits should compel a more active and transparent enforcement approach.

TCEQ is uncooperative with the public who engage in their complaint process.

Texas law requires agencies to treat complaints according to their established procedures.

30 TAC § 70.4 (e) If the ED determines not to initiate an enforcement action based on information received from a private individual in accordance with this section, the ED will process the information received from the individual as a complaint, subject to applicable complaint investigation procedures.

TCEQ describes their applicable complaint procedure on its Track Status of Complaints (WACI Tracker) website. In pertinent part, [it reads](#):¹

“we (TCEQ) will provide you with a report on the outcome of our investigation.”

According to our records, since 2015, Earthworks and our allies have submitted 99 complaints to TCEQ. Of those, we provided at least 48 affidavits authenticating the information and confirming we followed TCEQ protocols and procedures. This work requires a significant amount of time and effort.

Despite this clear policy, TCEQ typically does not share any information about our complaints unless we file a Public Information Request (PIR). TCEQ’s website is either incorrect or regional offices are not regularly complying with this policy. Earthworks has filed a total of 49 PIRs related to our complaints. In short, PIRs, not TCEQ’s complaint policy, provide the vast majority of information we receive related to our complaints.

For instance, we filed two complaints about the Energy Transfer Partners’ Hoban Gin Compressor Station in Reeves County in January and December 2017. While TCEQ did investigate this site in June 2018, six months following our second complaint, we had still not received any contact from the agency. It would have been easy for TCEQ to notify us, since we returned to this facility a month later, July 2018, and filed a third complaint. We only became aware that TCEQ visited the month before from two separate PIR requests.

Furthermore, in December 2017, we filed another complaint against the Rosetta Resources’ Man O’ War Lease in Reeves County, Texas. Again, we waited more than a year without a response from TCEQ, until we filed a PIR. Those records revealed

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that TCEQ delayed more than three months, until March 2018, before assigning our complaint to an investigator. The investigation itself did not occur until June 2018.

TCEQ should vigorously enforce more citizen complaints

As you are aware, state law empowers Texans to provide information to TCEQ upon which the agency may initiate enforcement action. In particular, we ask TCEQ to more vigorously use its authority under Texas Water Code 7.0025 and 30 Tex. Admin. Code 70.4 to initiate enforcement actions based upon information provided by a private individual. We believe this will help TCEQ fulfill its mandate under the Texas Clean Air Act to control air pollution and protect public health and welfare.

In September 2017, TCEQ's Dallas/Fort Worth region exercised these authorities to investigate at least one of our complaints against a Lake Arlington compressor station. However, we know of no other example from our complaints where TCEQ based an enforcement action pursuant to this statutory authority.

In fact, our records indicate that in nearly half our complaints, TCEQ took no action at all, much less an enforcement action. When TCEQ does investigate, our experience reveals high variability among TCEQ regional offices in complaint investigations. When inspections do occur, they are, too often, long after the filed complaint.

For instance, on April 12, 2018, TCEQ Region 7 received one of the multiple complaints Earthworks filed related to the Primexx Operating Armstrong Lease in Reeves County. TCEQ designated this complaint as Priority 4, requiring a 14- day response time. Yet, the site visit did not occur until more than two months later, on June 13, 2018.

The New Mexico example

New Mexico's Environment Department (NMED) has begun systematically using citizen complaints to aid enforcement. In December 2019, NMED issued three Clean Air Act Notices of Alleged Violations (NOAV) to oil and gas operators based, in part, upon Earthworks provided OGI footage. By comparison TCEQ, despite being significantly under-resourced to adequately oversee our state's 287,925 regular producing oil and gas wells, seems to regard citizen complaints as a nuisance rather than an enforcement resource.

Conclusion

Our approximately 132 OGI videos in the Texas Permian Basin alone reveal a widespread and systemic pattern of unlit flares, improperly combusting flares, leaking or open storage tank hatches, and faulty "Enardo" (or similar pressure relief) valves. The time, effort, expense, and care we devote to filing complaints with TCEQ deserve an adequate and timely response - both in terms of enforcement and transparency.

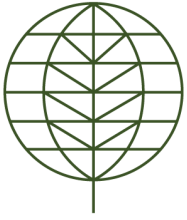
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TCEQ should more frequently initiate timely enforcement actions from properly provided citizen information. Texans living with oil and gas development are a resource TCEQ can and should take advantage of in carrying out its duty to protect the public by enforcing the law. In addition, the agency should follow its own policy on informing complainants of investigation outcomes, without Earthworks having to resort to filing PIRs. Until then, Earthworks will submit our complaints electronically in bulk to the appropriate TCEQ regional offices.

Sincerely,

Sharon Wilson

Sharon Wilson
Earthworks' Certified Optical Gas Imaging Thermographer

1: <https://www.tceq.texas.gov/compliance/complaints/waci.html>, accessed Dec 11, 2019

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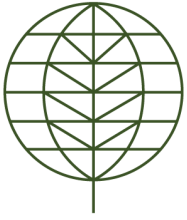
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