

# ABOVE THE LAW

How The Government Lets Major Air Polluters Off The Hook

Texas

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## Executive Summary

An Environmental Working Group analysis of U.S. Environmental Protection Agency (EPA) Clean Air Act enforcement records reveals a persistent pattern of violations of state and federal clean air rules by big polluters in five major industries in Texas. The records, audited by industry and state regulators prior to their release, show that state officials in Texas are doing little to enforce the Clean Air Act, and federal officials with the U.S. EPA are allowing this poor performance to continue. Large industrial corporations are taking advantage of lax enforcement to avoid compliance with clean air rules that they had an active hand in developing through the public comment process.

This new analysis of 50 facilities (50 major facilities) in Texas, from January 1997 through December 1998, shows that:

- Twenty-eight (28) of the fifty major facilities analyzed were out of compliance with the Clean Air Act at least one quarter, and an average of three of the eight quarters in the two-year period analyzed. Nineteen of these facilities were fined by the state of Texas or the U.S. EPA during that time (Table 1). These facilities include all permitted polluters in the state in auto assembly, iron and steel, petroleum refining, pulp manufacturing, and metal smelting and refining industries.
- The parent corporations that owned these facilities reported total combined revenues of \$458 billion in 1998, compared with total fines of \$5,703,511 levied against nineteen of the twenty-eight companies that violated clean air safeguards in Texas (Table 1).
- Three companies, Exxon Corporation in Baytown, South Hampton Refining Co. in Silsbee and Valero Refining Company in Texas City have been out of compliance with the Clean Air Act every quarter for the past eight quarters. All three of these facilities were fined during that time (Table 1).
- Fifteen of the fifty facilities analyzed were listed as current “significant violators” of the Clean Air Act (Table 2). Nine of these facilities were fined.
- Eleven facilities violating clean air rules are located in communities that fail to meet state or federal health standards for that same pollutant emitted by the facility (Table 3). These include Exxon Corporation in Baytown, Mobil

Oil Corporation in Beaumont, and Valero Refining Company in Texas City.

It is clear from this analysis that there is no undue regulatory burden on air polluters in Texas, a finding that severely undermines the rationale for so-called regulatory reform legislation at the federal level. Industry argues that most regulatory actions brought against facilities are initiated by "overzealous big-government regulators" for minor paperwork violations that consume massive amounts of resources for little environmental gain. The facts are that few enforcement actions are brought in the first place and that almost none of the actions are for recordkeeping violations. In both 1997 and 1996, less than two percent of all enforcement actions were concluded with only recordkeeping changes. In contrast to the image of a crushing regulatory burden, this analysis clearly shows that there is barely any enforcement at all of existing clean air health protections and virtually no pressure for air polluters to comply with current pollution control laws.

This finding also brings into question the effectiveness of the Texas audit privilege law. Based on the current state of air pollution enforcement in Texas, it is safe to say that after four years on the books, the Texas audit privilege law has done nothing to reduce pollution or improve compliance with clean air standards. In spite of all the rhetoric to the contrary, there is little factual evidence that anything other than stepped-up enforcement, larger fines, and tougher federal government oversight will increase compliance with environmental laws

and reduce the serious levels of air pollution that continue to plague most metropolitan areas in the United States.

## Recommendations

Substantial evidence shows that thousands of large companies routinely violate their pollution permits. They discharge too much waste into waterways, emit excess pollutants into the air, and mismanage the hazardous waste they create or accept for treatment or disposal. These chronic violations of environmental laws add to pollution of air and water, contributing to health risks, and put law-abiding companies at an unfair economic disadvantage. Constrained by limited resources or a lack of political will, regulatory agencies take effective enforcement action against only a relatively small percentage of violators.

Major improvements in air quality in Texas could be achieved just by strict enforcement of current laws and regulations. To achieve this goal however, both state and federal environmental enforcement agencies need to vastly improve their enforcement activities. Industry, in turn, needs to operate without such opportunistic disregard for environmental rules it typically helped to write.

To improve compliance with the Clean Air Act:

- Texas should set strict limits on the discretion of its regulatory agencies. Facilities should not be allowed to be out of compliance with environmental laws for more than two quarters in any one-year

period without facing mandatory penalties. A good example of a more effective state enforcement policy is the New Jersey law that is based on the popular “three strikes and you’re out” model.

- The regional U.S. EPA office should exercise its authority and take over cases when Texas assesses insufficient fines or delays during the enforcement process.
- Texas’s audit privilege law should be repealed and replaced with U.S. EPA’s audit policy.
- U.S. EPA and Texas should help concerned citizens participate in the development and enforcement of air pollution permits issued under Title V of the CAA. U.S. EPA and Texas should monitor state implementation of Title V programs to ensure that the compliance-related information is readily understandable by – and available to – the public.



**Table 1: Many multi-billion corporations in Texas violated the Clean Air Act in the past two years and escaped with little or no fines.**

Facility	City	Number of Violations 1997 - 1998*	Penalty**	Revenue
Exxon Corporation	Baytown, TX	8	\$250,000	\$100,700,000,000
South Hampton Refining Co.	Silsbee, TX	8	\$50,000	\$25,000,000
Valero Refining Company	Texas City, TX	8	\$91,000	\$5,500,000,000
Coastal Refining & Marketing	Corpus Christi, TX	4	\$136,000	\$7,100,000,000
Crown Central Petroleum Corp.	Pasadena, TX	4	\$1,055,425	\$1,300,000,000
North Star Steel Co.	Beaumont, TX	4		
Aluminum Co. of America	Rockdale, TX	3		\$15,500,000,000
Amoco Oil Company	Texas City, TX	3	\$859,000	\$32,800,000,000
Asarco Incorporated	El Paso, TX	3		\$2,233,000,000
Border Steel Mills, Inc.	El Paso, TX	3	\$2,000,000	
Chaparral Steel Co.	Midlothian, TX	3	\$99,920	
Citgo Refining and Chemicals	Corpus Christi, TX	3		\$10,912,000,000
Fina Oil and Chemical Company	Port Arthur, TX	3	\$599,250	
La Gloria Oil & Gas Co.	Tyler, TX	3		
Shell Deer park Refinery	Deer Park, TX	3	\$5,000	\$128,100,000,000
Star Enterprise	Port Arthur/Neches, TX	3		\$31,700,000,000
Structural Metals, Inc.	Seguin, TX	3		
Clark Refining and Mark.	Port Arthur, TX	2	\$19,500	\$26,800,000,000
Fina Oil and Chemical Company	Big Spring, TX	2	\$45,000	
Howell Hydrocarbons & Chem. Inc.	Channelview, TX	2	\$66,000	\$48,500,000
Lyondell-Citgo Refining Co LLC	Houston, TX	2	\$158,516	
Mobil Oil Corporation	Beaumont, TX	2	\$167,600	\$47,700,000,000
Phelps Dodge Corp.	El Paso, TX	2		
Phillips Petroleum Company	Borger, TX	2	\$22,800	\$11,800,000,000
Simpson Pasadena Paper Co.	Pasadena, TX	2	\$13,500	
Southwestern Refining Co. Inc.	Corpus Christi, TX	2	\$15,000	
Valero Refining Company	Corpus Christi, TX	2	\$50,000	\$5,500,000,000
Koch Refining Company Inc.	Corpus Christi, TX	1		\$36,200,000,000

Source: Environmental Working Group. Compiled from U.S. EPA SFIP/AFS data, Company Annual Reports and Fortune 500 listings as of April 15, 1999.

\* Violations are reported quarterly.

\*\* The most recent data reports penalty amounts from 1997, 1998 and where available, 1999.



**Table 2: Industrial facilities currently listed by the Texas EPA as "significant violators" of the Clean Air Act.\***

Facility	City	Penalty**	Revenue
Citgo Refining and Chemicals	Corpus Christi, TX		\$10,912,000,000
Crown Central Petroleum Corp.	Pasadena, TX	\$1,055,425	\$1,300,000,000
Diamond Shamrock Ref Mktg Co.	Sunray (McKee), TX		
Diamond Shamrock Ref Mktg Co.	Three Rivers, TX		
Fina Oil and Chemical Company	Port Arthur, TX	\$599,250	
La Gloria Oil & Gas Co.	Tyler, TX		
Nucor Steel	Jewett, TX		\$4,200,000,000
Phillips Petroleum Company	Borger, TX	\$22,800	\$11,800,000,000
Refinery Holding Company, L.P.	El Paso, TX	\$69,500	
Shell Deer park Refinery	Deer Park, TX	\$5,000	128,100,000,000
Simpson Pasadena Paper Co.	Pasadena, TX	\$13,500	
South Hampton Refining Co.	Silsbee, TX	\$50,000	\$25,000,000
Star Enterprise	Port Arthur/Neches, TX		\$31,700,000,000
Valero Refining Company	Corpus Christi, TX	\$50,000	\$5,500,000,000
Valero Refining Company	Texas City, TX	\$91,000	\$5,500,000,000

Source: Environmental Working Group. Compiled from U.S. EPA SFIP/AFS data, Company Annual Reports and Fortune 500 listings as of April 15, 1999.

\* Listed by the state as a significant violator as of April 15 1999.

\*\* The most recent data reports penalty amounts from 1997, 1998 and where available, 1999.



**Table 3: Facilities in Texas emitting illegal amounts of a pollutant for which their community fails to meet clean air standards.**

Facility	City	Pollutant emitted for which the community fails to meet clean air goals	Penalty*
Asarco Incorporated	El Paso, TX	CO, PM10, VOC	\$0
Clark Refining and Mark.	Port Arthur, TX	VOC	\$19,500
Exxon Corporation	Baytown, TX	VOC	\$250,000
Fina Oil and Chemical Company	Port Arthur, TX	VOC	\$599,250
Howell Hydrocarbons & Chem. Inc.	Channelview, TX	VOC	\$66,000
Mobil Oil Corporation	Beaumont, TX	VOC	\$167,600
Shell Deer park Refinery	Deer Park, TX	VOC	\$5,000
Simpson Pasadena Paper Co.	Pasadena, TX	VOC	\$13,500
South Hampton Refining Co.	Silsbee, TX	VOC	\$50,000
Star Enterprise	Port Arthur/Neches, TX	VOC	\$0
Valero Refining Company	Texas City, TX	VOC	\$91,000

Source: Environmental Working Group. Compiled from U.S. EPA SFIP/AFS data, Company Annual Reports and Fortune 500 listings as of April 15, 1999.

\* The most recent data reports penalty amounts form 1997, 1998 and where available, 1999.