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# Fuzzy Air

## Why Texas is the Smoggiest State

### Summary

In the final weeks of the election season, competing philosophies about pollution control have come to the fore in presidential politics. A new computer investigation by the Environmental Working Group indicates that Gov. George W. Bush’s approach to pollution control has been a major factor in making Houston the nation’s smoggiest city and Texas our smoggiest state. Because states play a decisive role in implementing federal pollution laws, the Texas experience will have profound implications for clean air nationally under a Bush administration.

Smog is the nasty blend of chemicals from factories, chemical plants, refineries and cars that fouls the air of hundreds of U.S. cities. Technically known and regulated as “ground-level ozone,” smog is considered a major contributing factor in the rapidly rising incidence of asthma, particularly among children. Smog also poses long term risks of cancer and respiratory diseases.

Smog problems extend far beyond the boundaries of the new “smog capital” of the nation, Houston, Texas (which overtook Los Angeles for the title last year). Nationwide, 90 million Americans live in metro areas that fail to meet basic clean air standards, known as “non-attainment areas” for smog under the Clean Air Act.

**Table 1. Nationwide Texas accounts for forty percent of all major law breaking smog polluters in smog non-attainment zones.**

Rank	State with ozone non-attainment areas	Number of major polluters currently violating VOC rules in non-attainment areas	Number of major VOC polluters in non-attainment areas
1	Texas	93	556
2	Illinois	38	367
3	Pennsylvania	19	340
4	New Jersey	15	169
5	New York	12	72
6	Delaware	10	39
7	Georgia	9	57
8	Wisconsin	8	68
9	Alabama	6	60
10	Connecticut	6	30
11	California	4	611
12	Indiana	4	59
13	Louisiana	2	43
14	Virginia	2	21
15	Kentucky	1	6
16	Maryland	1	87
17	Missouri	1	6

Source: Environmental Working Group. Compiled from U.S. EPA Data.

In the second presidential debate on October 11, 2000, Republican candidate George W. Bush claimed that during his administration as governor, polluters for the first time “must comply” with new air pollution rules he put in place in Texas in 1999. But the mandatory features of his program apply only to pollution from older power plants, and even at that, the standards to which the plants are held are less strict than those of virtually all other states. The remainder of Gov. Bush’s program applies to pollution at more than 700 previously uncontrolled factories, chemical plants and refineries in Texas. Now, under the Bush plan, these facilities will be eventually covered by voluntary pollution control permits drawn up by the polluters themselves. This analysis looks beyond these two groups of polluters to the enforcement of clean air rules at large industrial polluters that have permits, a third major group of polluters who have not been analyzed to date.

## Findings

As part of an ongoing investigation into enforcement of the nation’s environmental laws, EWG conducted a computer investigation of thousands of state Clean Air Act enforcement records, looking in all states for industrial facilities currently violating pollution standards for “volatile organic compounds” or VOCs, the major component of smog. We then refined our analysis to VOC violators in cities with bad smog problems, officially known as ozone non-attainment areas.

- Texas tops the nation in the number of large industrial polluters both currently violating VOC emission standards and located in cities with smog problems so serious they are out of compliance with the federal Clean Air Act (ozone non-attainment areas).
- Texas has 93 of these large law-breaking polluters in smog violation areas, more than twice as many as the next worst state, Illinois, with 38, followed by Pennsylvania with 19, and New Jersey with 15 (Table 1).
- Contrary to Gov. Bush’s explanation in the second presidential debate (Oct. 11), Texas does not have the worst pollution simply because it is “a large industrial state.” California has more large industrial VOC polluters in non-attainment areas, with 611, compared to Texas with 553. But in California, only 4 of these 611 facilities are in violation of clean air laws, a rate of enforcement at least 20 times better than in Texas.

Smog control is imperative to protect America’s children and others from asthma and other diseases. In contrast, under the Bush administration, Texas environmental officials chose not to enforce clean air rules against big industry, precisely in the communities where the air is most polluted. For 700 additional polluters in the state, Bush invited industry lobbyists to write the new Texas air pollution program, and so far the program has been a flop. A very generous estimate by Texas state officials puts pollution reduction to date from this program at a statistically meaningless three percent.

If applied at the national scale, the Texas approach would cripple ongoing efforts to control one of the nation’s most serious pollution problems. If campaign contributions are any indication, industry interests clearly support Texas-style regulation. Our review of political contributions shows that the chemical plants, refineries and factories violating VOC standards in Texas have given heavily to Gov. Bush’s campaigns for governor and the White House.

## The Breakdown in Environmental Enforcement as States Assume Control

Over the past year and a half the Environmental Working Group has produced a series of reports documenting a fundamental breakdown in enforcement of the nation's clean air and water laws as the states have assumed a far greater share of responsibility for the task. The pattern is unmistakable. With the state takeover of enforcement of the nation's environmental laws nearly complete, fines for major lawbreakers in many states are abysmally low or non-existent, and inspections have been largely replaced by compliance assistance, self-reporting of violations, and audit privilege policies (EWG 1999, EWG 2000, EWG 2000).

EWG is not the first organization to criticize the states' application of environmental law. Both the General Accounting Office (GAO 2000) and EPA's Office of Inspector General (EPA 1998, EPA 1999) have released several reports in the past few years documenting the states' failure to effectively enforce these statutes.

In 1998 EPA's OIG found a "fundamental weakness with state identification and reporting of significant violators of the Clean Air Act. This occurred because states either did not want to report violators or the inspections were inadequate to detect them." The same report went on to say that "despite performing more than 3,300 inspections during the fiscal year reviewed, the six states we audited reported a total of only 18 significant violators to EPA. In contrast, while reviewing only a small portion of these 3,300 inspections, we identified an additional 103 significant violators the states did not report." In other words, the states missed many significant violations entirely, and when violations were found, the states often failed to report them to the EPA, and by extension the public.

In June of this year the GAO found that states were inconsistent in their inspection coverage, the number and type of enforcement actions taken, and the penalty assessed. As the authors euphemistically put it, the number one reason for these inconsistencies across states is "differences in the philosophical approaches among enforcement staff about how to best achieve compliance with environmental requirements." In 1997 EPA's OIG reported that "the regions and delegated agencies implemented the [air] program inconsistently, resulting in varied penalty sizes and numbers of enforcement actions taken. These inconsistencies were caused by unfavorable political climates, resource limitations, limited legal support, and a lack of administrative enforcement authority."

Many states do not deny that they have significantly changed the philosophy of environmental law enforcement from one of deterrence through tough punitive measures, to one of cooperation with polluters. They assert that this change has not resulted in less compliance and more pollution, yet they offer no documentation to support their claim. Perhaps this is because in the states like Texas, Ohio, and Michigan that strongly advocate assistance as opposed to punishment for lawbreakers, the available evidence points towards little or no improvement in air and water quality over the past ten years

It is generally accepted that agencies need a variety of options to enforce compliance with the law, and that cooperative options must be available in addition to punitive ones to make enforcement most effective. EWG agrees. The problem is that while the states talk balance, many have veered sharply in the direction of hand holding, to the point where most large polluters have no fear of punishment when they break the law, even if they are repeat offenders.

## What About Texas Air Pollution Reforms?

Governor Bush often touts his recent reforms of Texas environmental laws as evidence of his commitment to reducing air pollution. To quote from the October 11 presidential debate:

“We need to make sure that if we de-control our plants, that there’s mandatory, that the plants are, must conform to clean air standards. *The grandfather plants, that’s what we did in Texas, no excuses, I mean, you must conform.*” [emphasis added]

Two programs have been passed in Texas during Governor Bush’s tenure. One, which deregulated the energy market in the state, applies pollution controls only to old “grandfathered” coal fired power plants. Most are operating with no emissions controls at all, using inefficient boilers that are 30 or 40 years old.

This power plant initiative is too little too late. It requires only a 50 percent reduction from the excessive pollution levels at these facilities, essentially bringing these plants up to pollution control levels of the mid 1970’s. In contrast, EPA mandated reductions in nitrogen oxide pollution at power plants in the Midwest would reduce current, already lower levels of pollution from the region’s plants by 85 percent.

The second Texas program is even weaker. There are about 700 large industrial polluters in Texas operating without any type of air pollution permit at all. Rather than institute a formal permitting process for these major polluters, Bush fought for and won a voluntary initiative where these big polluters write permits for themselves. This program has been completely ineffective: It has not significantly reduced pollution and it has not significantly increased the number of permits.

Since its passage in 1999, only about 50 facilities have written these permits, and two-thirds of these – all of which have been approved by the state – require no reductions in current levels of pollution. According to Texas state officials, to date the program has achieved at most a three percent pollution reduction. Other estimates range as low as 0.3 percent (three-tenths of one percent) reduction in air pollution as a result of these voluntary permits (Texas Air Crisis Campaign, October 2000).

Clearly, Gov. Bush’s approach is popular with industry, which wrote the governor’s program at his invitation and defends it today. The support is also evident in the political contributions Gov. Bush has received from industry. (Sidebar: Investing in Weak Pollution Policies)

## The Wholesale Failure to Enforce Industrial Emission Standards

Suburban sprawl, increasing reliance on the automobile (especially the sport utility vehicle), and a nationwide failure to control emissions from old coal-burning power plants have all contributed to the inability of many communities to reach clean air goals. Our analysis of state enforcement records, however, reveals another major cause of the problem – the states’ failure to deter environmental crime, specifically their failure to enforce VOC emission standards at hundred of major industrial polluters nationwide.

## Investing in Weak Pollution Policies

Our review of political contributions shows that the VOC emissions violators in Texas have given heavily to Gov. Bush's campaigns. In the 1998 governors race, VOC emissions violators analyzed in this report gave Bush \$229,111. In the race for the White House, employees from these companies have given \$218,944, and the companies' PACs have contributed \$43,820, for a total of \$262,764, more than seven times what these same polluters have given to Vice President Gore so far (\$31,950). If national contributions are any indication, chemical, oil and other industries support application of the Texas-style approach nationwide. According to the Center for Responsive Politics oil and gas interests have contributed more than \$1.6 million to the Bush Presidential campaign, compared to the \$107,000 they have contributed to Candidate Gore.

Our analysis focused on industrial VOC emissions because volatile organic compounds are a major source of smog, or ground level ozone pollution, the most pervasive air pollution facing the nation. Ozone pollution triggers asthma attacks in children, a condition reaching epidemic proportions in many major metropolitan areas. We then focused the analysis on the most polluted counties in the nation, the so-called ozone non-attainment areas, because this is presumably where industrial polluters would receive the most scrutiny or so one hopes.

EWG's review of state-submitted, EPA-compiled, enforcement records in the 21 states with ozone non-attainment areas found 231 major polluting factories located in smog polluted counties currently violating their Clean Air Act permit for volatile organic compounds (VOCs). Forty percent of these law breaking factories (93), are in Texas, followed by Illinois with 38, Pennsylvania with 19, New Jersey with 15, and New York with 12.

This problem is much larger than the 231 factories that are illegally polluting in non-attainment areas, however. An additional 406 factories are violating the terms of their Clean Air Act VOC permits just outside non-attainment areas and across the Eastern half of the United States in heavily industrialized states like Michigan and Ohio. There are also hundreds of smaller sources of VOCs in violation of CAA nationwide. These plants are contributing to the regional smog problem by operating in violation of the terms of their permits.

- Counting all VOC violations, and not just those in areas that fail to meet the old standard for smog, Texas still leads the country with 130 major factories in violation, followed by Illinois (45), New York (42), Arkansas (41), and Michigan (38).
- Texas still leads the nation when the largest minor sources (synthetic minor sources) of VOCs are included. Texas lists 191 major and minor factories as being in violation followed by Michigan (103), Wisconsin (96), Ohio (86), and New York (82). There are 1,200 major and minor sources nationally violating the VOC terms of their permit.

Texas is not leading the nation in violators of the CAA simply because it has the most plants. We found that California has the most major VOC point source polluters in the country.

- California leads the nation with 611 major VOC polluters in non-attainment areas followed by Texas (556), Illinois (367), Pennsylvania (340), and New Jersey (169).

Texas has the highest rate of VOC violators in non-attainment areas of all large industrial states, at 16.73 percent, followed by New York and Illinois at 16.67 and 10.35 percent respectively. Delaware tops the nation at 25 percent followed by Connecticut at 20 percent. In California the rate is less than one percent.

### **Implications of the Revised Ozone Standard**

In July 1997, the U.S. EPA established a new health-based air quality standard for ozone pollution that is much more protective of the public health. Under this new rule, many more counties and states would be required to reduce emissions at major polluting industries that are not currently affected by clean air rules. The new standard was immediately challenged by industry in the courts and is currently under review before the Supreme Court.

The 1997 EPA ozone rule requires EPA to make a determination of air quality in all counties and to formally designate these counties as in or out of attainment of the new standard by early 2001. Currently there is sufficient information available to predict which counties have air quality that will fail to meet the new air quality standards.

According to Smog Watch, a report that has analyzed official air quality data across the country between the years 1997 and 1999:

- Over half of the 996 ozone monitors across the country with complete data (523) have a three-year average that exceeds the new federal ozone standard over an eight-hour period.
- Over half of the 596 counties with complete monitoring data (333) are above the legal limit for ozone exposure.
- Thirty-three states have at least one county that would exceed that new standard. There are 12 states where more than 75 percent of the counties are violating the new smog standard. They are: Connecticut, Delaware, District of Columbia, Indiana, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. The District of Columbia also violates the smog standard.

These data make a compelling case that ozone pollution is far worse than indicated by the data used for the analysis presented in this report. When more protective health standards finally are adopted, reducing smog-forming emissions from industrial polluters will be even more important.

## Recommendations

Environmental law enforcement has taken environmental protection back a quarter century to a time when state-level politics determined the degree of environmental protection provided to communities across the country. Under pressure from powerful industries, too many governors and state agencies have let too many polluters off the hook. EPA will never regain the primary enforcement role it had ten years ago, nor should it necessarily seek to do so. But to make the current state-led system accountable to the public and to the goals of the law, several major changes in current policy are needed.

### **EPA must immediately issue regulations defining minimum performance standards for state agencies enforcing the nation's environmental laws.**

Currently there are no binding minimum requirements that state agencies must follow when enforcing the nation's environmental laws. EPA has developed guidance for many aspects of state enforcement, but guidance has no teeth when states choose to ignore it. Until enforcement regulations are in place, there is no hope that the law will be consistently and effectively enforced nationwide.

### **As a part of these standards, high priority violators must be inspected every year.**

At a minimum, state enforcement agencies must perform a full compliance evaluation every year at all facilities classified as high priority violators of the Clean Air Act and the Clean Water Act.

### **The U.S. EPA Inspector General must audit state enforcement programs to determine what full compliance with environmental laws means in each state.**

Clearly, states need to step up enforcement activity, particularly for the known violators of the law. But beyond that, EPA needs to investigate state enforcement programs for consistency, and to determine that a state's claim of full compliance with the law is legitimate.

## Methodology

This report uses state-reported EPA-compiled data from the Air Facility Subsystem (AFS) database. The AFS database is the only complete national source of information on compliance with the Clean Air Act. The states are required to provide this data to EPA. This requirement was originally written into the agreement between the states and EPA when the states were delegated authority to enforce the Clean Air Act and it is renewed every year in agreements between EPA and the states.

We analyzed the current compliance status of factories for each pollutant that is listed in the AFS database. The database provides the current compliance status for each pollutant. We compared the location (by county) for each of these factories to the county non-attainment information provided by U.S. EPA's Office of Air Quality Planning and Standards.

We separated factories into two categories – major and minor. The main section of the Findings focuses on major polluters (factories that emit or have the potential to emit more than 100 tons of volatile organic compounds). We have also listed the number of minor sources because they are potentially a large source of pollution. In many circumstances minor polluters are only classified as minor sources if they comply with the limits of their permits. This is not the case for the sources listed in our analysis.

After our initial review of the data we posted a list for review by EPA regional administrators and the states if the Region felt that was necessary. The Regions were asked to review the list and make changes prior to a new data pull on the 13th of October. The data extracted on the 13th of October is extremely important to EPA since it represents the end of the federal fiscal year, thus the data is likely to be the most accurate at this point as well.



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