

Press Release – March 21, 2012

Advocates outraged at polluter pardoning program

TCEQ is proposing new rules that will pardon nearly 1,700 polluters, promotes almost 250,000 to “high performers” but fails to reduce one ounce of pollution

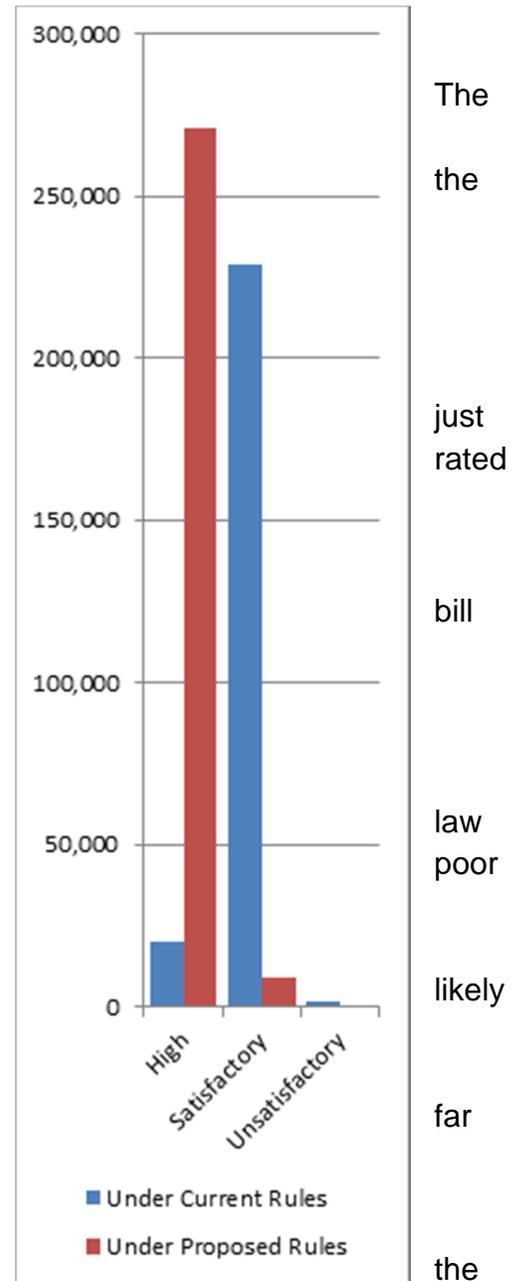
Citizens need to comment by Friday

On Tuesday the Texas Commission on Environmental Quality released the likely compliance history scores, reflecting the impact of currently proposed rules on polluters across the state. The release comes three weeks after public interest groups requested the information and just four days before the close of comment period.

“The new formulas are shockingly biased toward protecting the polluters rather than the people” said Tom “Smitty” Smith of Public Citizen “The proposed rules test data revealed that unsatisfactory performing entities would decrease from 1,867 to 692 or 0.24% of total entities but 96% of the polluters will now be high performers, increasing from 19,877 to 271,039.”

As a part of the sunset review process for the TCEQ, state lawmakers passed a bill renewing the commission last year. The bill also called for revisions that allow the TCEQ to take into account differences in size and industry type among entities in determining what compliance history ranking to give each polluter. The TCEQ was required to devise a ranking to help account for the complexity of a plant, but went far beyond the required and increased the number of points needed to be classified as a high or satisfactory performer. The TCEQ designates each of the 280,000 sites under its jurisdiction with either a high, satisfactory, or unsatisfactory classification. The TCEQ is more likely to enforce penalties and conduct an unannounced site investigation for facilities that have an unsatisfactory classification. Issuance and renewal of permits are scrutinized more heavily if a facility has an unsatisfactory rating, and participation in innovative programs may be restricted.

“These new numbers are worse than we thought when we read the proposed rules,” said Dr. Cyrus Reed, Conservation Director of the Lone Star Chapter of the Sierra Club. “They effectively mean it is virtually impossible for any industry—and especially those large refineries or even public utilities with many “complexity” points—to ever have an “unsatisfactory” compliance history, and relatively easy for an entity complying with the law as they should to be



considered above average. Unless this is changed, what it means is that Sierra Club will have to continue to sue industry directly to get good compliance with the law."

This current problem is made worse because the Texas Legislature saw fit to drastically limit the compliance information that state staff can use to generate Compliance History scores. The law now bars the TCEQ from looking at more than one year's worth of notices of violation, one of the most common types of compliance information.

"This is a near debilitating limitation," said Dr. Matthew Tejada of the Air Alliance of Houston. "However, it could still be possible for the agency to craft a program which effectively separates the good from the average from the poor performers. Unfortunately, in its rulemaking, the TCEQ has introduced even more limitations which will only further serve to keep every facility above average. These changes include lowering the score by which a performer falls into the poor category, giving the TCEQ Executive Director extraordinary authority to change a facility's classification, and handing out bonus points for ill-defined and unregulated voluntary measures that a facility can implement. These new rules will significantly reduce the amount of oversight given to the worst polluters, but won't result in a single ton of pollution being reduced."

Comments on the proposed rule are due by 5 pm on Friday, March 23rd and may be sent via TCEQ's eComments page – <http://www5.tceq.state.tx.us/rules/ecomments/> or by fax to 512-239-4808

"This deal smells like a cover up to us" said Kristen Parker, researcher for Public Citizen's Texas Office. "We've tried to get this data for month to analyze its impact on the people living nearest to the plants, but TCEQ first told us we couldn't see it, they then sent it to us an unsearchable data base, and final, after media inquiries, gave us the data just four days prior to the close of the comment period. These delays make it impossible to do the kind of responsible analysis of the proposed rule needed to do comment. We call on the TCEQ to extend the comment period for an additional 30 days from the release of that searchable data base to allow citizens who live on the fence lines to have time to assess the impact of these rules"

Chris Young of the Texas Organizing Project said, "If the Compliance History program reforms go forward as currently written, things will get worse, which is a shame. Compliance History is a good idea that has never been executed effectively. We are missing out on major opportunities to reduce pollution by continuing to pretend that all facilities in this state are above average."

"For those of us living along the fence line of the polluters, it doesn't improve our air, our water or our health to have TCEQ grade these industries on the curve," said from Patricia Gonzalez, a member of the Texas organizing Project and Pasadena, TX resident, a highly polluted part of the state. "TCEQ needs to postpone the deadline for comment and hold local hearings in affected communities before making it easier to polluters "

TCEQ is set to adopt the new compliance history rules at their regularly scheduled meeting on June 27, 2012. The Sunset recommendations that were passed during the 82nd legislative session for the TCEQ were a priority of the Alliance for Clean Texas, an alliance of more than 20 environmental, public interest, consumer rights and religious organizations dedicated to improving public health, quality of life and the environment in Texas by working for change at the regulatory and legislative levels. This issue will be a major thrust of many of these organizations around their Earth Day activities.
