



Cutting refinery pollution: Is Sierra Club doing what Texas won't?

by Dave Fehling /11 News

khou.com

Posted on February 10, 2011 at 12:50 AM

Recommend

HOUSTON -- Some Texas officials are warning that Texas jobs will be lost if efforts by the Obama Administration to reduce pollution succeed in forcing industries to spend billions on environmental improvements.

But at the same time, environmental groups are showing the 11 News I-Team what they contend is proof the state of Texas has been going so easy on industry that big refineries are breaking existing pollution laws, often without consequence.

"This has taken months," said Neil Carman, with the Lone Star Chapter of the Sierra Club, as he showed pages of pollution reports he'd compiled from the biggest refinery in the United States: ExxonMobil's operation in Baytown.

Carman used to work for the Texas Commission on Environmental Quality (TCEQ.)

The reports he got a hold of show the ExxonMobil refinery has released potentially deadly hydrogen cyanide, cancer-causers like Butadiene and Benzene, and lung irritants like smelly sulfur dioxide. Some levels of the releases are allowed under pollution laws.

But Carman focused on "upsets," releases that happened when equipment broke down. He said they were found repeated times when flares that were supposed to burn off those vapors didn't work, so they drifted un-checked off the plant site, allegedly in violation of environmental laws.

In the neighborhoods in the shadow of the refinery, some of the families said they knew when those releases were the worst.

"My kids started getting sick, one of them started vomiting, everybody started getting headaches," said Stuart Halpryn, a resident who can see the refinery just a quarter of a mile or so behind his home in Baytown. "The odor was so bad, I came outside and almost passed out from it," he said of a particularly bad occurrence a couple years ago.

In all, the Sierra Club alleges it found that from 2005 to 2009, ExxonMobil had released 8 million pounds more pollution than it's legally allowed to. And they did their calculations from information they obtained right from the TCEQ's own website where polluting industries are required to file their reports.

Yet, the Sierra Club said the TCEQ, for the most part, failed to take significant action against ExxonMobil.

"TCEQ is not doing anything of the kind," alleged Josh Kratka, a lawyer with the National Environmental Law Center in Boston. He's now representing the Texas Sierra Club and another group, Environment Texas, in a Federal law suit against ExxonMobil.

"We're simply asking them, demanding of them, that they comply with federal law and state law," said Kratka.

The TCEQ denies that it's not doing its duty. In a statement emailed to 11 News, the TCEQ said:

"From April 2004 thru (sic) November 2009, the agency issued approximately 50 administrative enforcement orders for violations at the Baytown Complex which includes Exxon Mobil's chemical plant, olefins plant and refinery. Accordingly, the TCEQ takes issue with any assertion that the agency has failed to exercise its enforcement authority in accordance with state law for the protection of the citizens of Texas."

But the Sierra Club points to its record of past legal victories as evidence that an argument can be made against the TCEQ. In recent years, the Sierra Club has sued two other local refineries: Shell's operation in Deer Park and Chevron Phillips refinery in Baytown. Shell and Chevron both settled the lawsuits, agreeing to pay a total of almost \$8 million in penalties, plus pledging to spend millions more to upgrade equipment to reduce the risk of further releases.

Did the Sierra Club with a laptop and a few lawyers do what TCEQ with its 3,000 state employees and half-a-billion dollar budget did not?

"We don't have anywhere near the resources of the TCEQ or the U.S. EPA and yet, we've been able to achieve these results just over the past two or three years," said the Sierra

Club's lawyer, Josh Kratka.

The TCEQ would not provide anyone for 11 News to interview. So the I-Team contacted a former commissioner of the agency, Kathleen Hartnett White, now with a conservative advocacy group in Austin called the Texas Public Policy Foundation.

We asked why the TCEQ seems to allow refineries to break the law as alleged by the environmental groups.

"I think that's really a hard question to answer because you very quickly get into technical discussions," White said.

White said Texas has chosen to be less adversarial in dealing with refineries, but has nonetheless, got them to make big reductions in pollution.

"If your pursuit is really, if no risk is too low, and no cost is too high, you're being very, very impractical," said White.

She said the approach the TCEQ has tried by not levying big fines has, nonetheless, resulted in Houston refineries spending millions of dollars on better equipment that resulted, so far, in an 80 percent reduction in ozone, one by-product of emissions.

"I think there've been unbelievable improvements. It doesn't mean there's not need for more, or the possibility for more, but I think there's been unbelievable improvement that surprised all of us that tried to craft those rules because the petrochemical complex of the world is a pretty difficult place to reduce (emissions)," said White.

White said the danger is being too aggressive and fast in slapping industry with even tighter regulations, which is exactly what she said the Obama administration is doing.

The President this summer, during the BP blowout crisis, talked about "a cozy relationship between the oil companies" and the agencies which regulate them.

White said moving too fast and creating uncertainty could lead companies to not expand in or move to Texas, resulting in big losses of jobs.

"There are real economic consequences," said White.

For its part, ExxonMobil, the target of the latest Sierra Club lawsuit, told 11 News in an e-mail that, far from not complying with government regulation, it "has spent nearly \$1.3 billion at Baytown to improve environmental performance" and has reduced upset emissions by 89 percent since 2001. The company also said it would fight the lawsuit;

contending the refinery's "total annual emissions...are nearly 40% below the federal permit limits set by the EPA."

But the threat of even stricter regulation by the US Environmental Protection Agency now has the State of Texas going to court as well. In a recent filing in Federal Court against the U.S. EPA, Gov. Rick Perry and the Texas attorney general charge that Washington's efforts to reduce greenhouse gases are "unlawfully...imposing federal control" over Texas industry.

Environmental groups said what Texas is doing has more to do with politics than pollution.

"What's going on is political grandstanding. And you have a governor and an attorney general who said they won't follow federal law, and that's a real problem," said Jennifer Powis, with the Sierra Club's office in Houston.

[Add another comment](#)