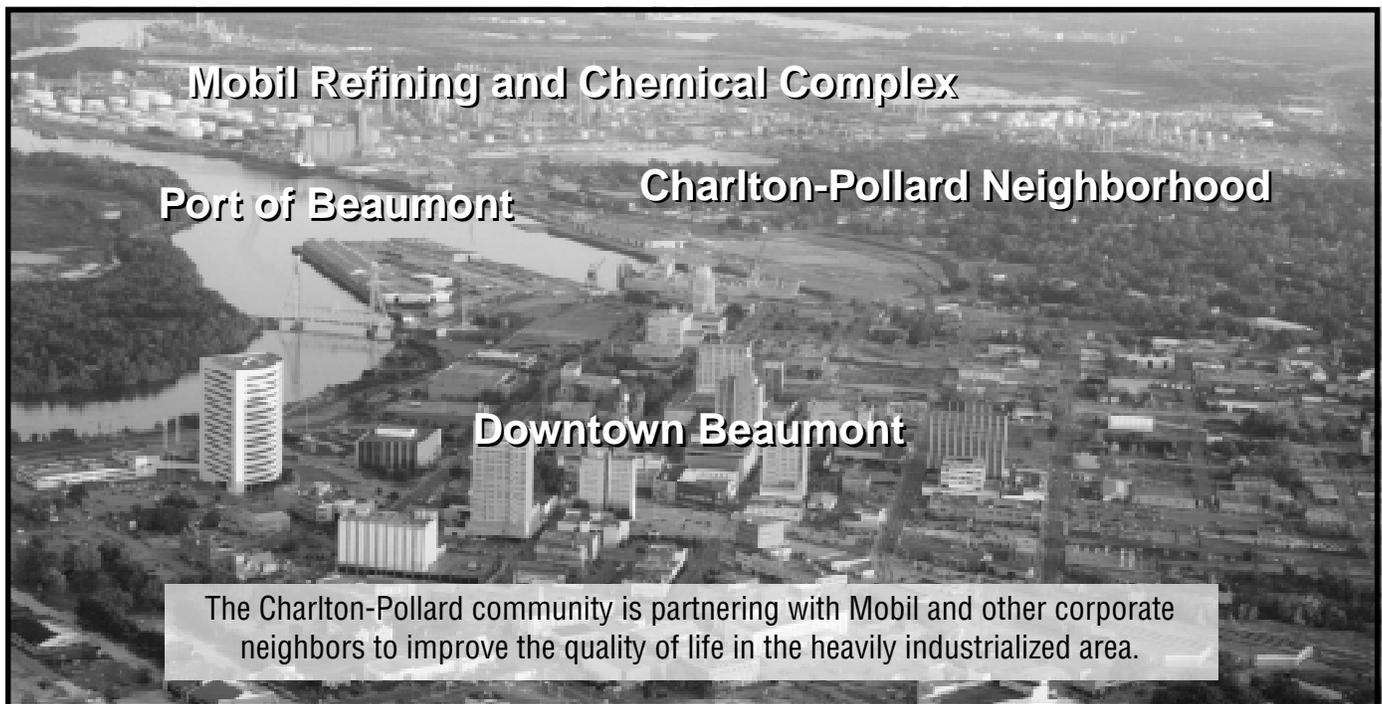


# Natural OUTLOOK

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

## Texas Partners for Environmental Justice



**T**he Charlton-Pollard community, a predominantly African-American neighborhood, is bordered by the Mobil Refining and Chemical Complex and other industrial facilities and the Port of Beaumont.

It might easily have become another community embroiled in a highly publicized environmental justice case and interminable political and legal wrangling with powerful corporate neighbors.

Instead, residents and industry, led by Mobil, have become partners in improving the quality of life and educational opportunities in Charlton-Pollard.

"Historically, the relationship hasn't been as good as it is now," said Ron Goodman, president of the 10-year-old Charlton-Pollard Neighborhood Association. "There were poor communications. We put up with traffic and noise, and we didn't know what was going on behind the gates of the neighboring factories.

"But once communications started up, attitudes changed," he said. "Once we met, Mobil got a human face with us, and the community got a human face with the company."

Mobil recently revealed an innovative initiative, the Mobil-Charlton-Pollard

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**CLEANING OUR AIR  
ONE SIP AT A TIME**

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Penalty Policy**

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## Texas Partners for Environmental Justice

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Partnership plan, that could become a national model for achieving environmental justice (please see *A Partnership Based on Open Communication*, page 5).

"The Charlton-Pollard neighborhood was declining," said Tom Moeller, manager of the Mobil Beaumont Refinery. "That concerned us because it is important to Mobil's success that our neighbors and the entire city of Beaumont be successful. It's important that there be good schools where kids graduate and that the neighborhoods are healthy, safe places to live.

"We don't hide behind our gate," Moeller said. "We want people to understand our business and understand why it is important to the community for Mobil to be successful as well."

### Communities call for environmental justice

The Charlton-Pollard story illustrates the situation in which many industries that operate near residential neighborhoods find themselves. In a number of cases across the country, environmental justice advocates have called for companies to address issues involving local communities.

Environmental justice (EJ), or environmental equity, is a movement promoting the fair treatment of people of all races and cultures with respect to environmental laws, regulations, and policies. Fair treatment implies that no person or group of people should shoulder a disproportionate share of the negative environmental impacts resulting from economic activities and development.

EJ advocates, who combine environmental activism with social-justice and civil-rights concerns, protest what they say is a long list of minority and poor areas made to bear an unfair share of factories, incinerators, landfills, and other facilities that have an impact on the environment.

Both the White House and the EPA have called environmental justice a high priority. In 1994, President Clinton issued an executive order, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," which requires that federal agencies make achieving environmental justice part of their mission.

The EPA created an Office of Environmental Justice in 1992 and commissioned a task force to deal with environmental justice issues. The EPA also established and oversees a federal advisory committee, the National Environmental Justice Advisory Council (NEJAC).

In February, the EPA issued a draft policy identifying the way the federal agency wants to implement Title VI of the Civil Rights Act, a U.S. law that prohibits federal grant recipients from discriminating on the basis of race, sex, national origin, or age. The policy will have an impact on environmental justice cases, which commonly use Title VI as a legal basis. By issuing a clearly defined approach and policy, the EPA intends to enable faster resolution of EJ cases.

Carol Marshall, manager of the TNRCC Environmental Equity Office, believes that the EPA guidelines will also have an impact on TNRCC operations because of a requirement to identify community demographics.

"The policy will require that a permit be reviewed on more than its technical or scientific merits," Marshall said. "Permitting agencies may have to consider looking at neighboring

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industries and their cumulative impact on the community.”

### **Texas’ environmental justice response**

In Texas, perceptions by minority communities that they are saddled with a greater share of environmental risks are, in many instances, well founded. Yet the local perspective can create a hostile environment in which good-faith efforts to resolve disputes, address concerns, and seek solutions are nearly certain to fail.

“Environmental justice touches on issues of discrimination and civil rights,” Marshall said. “Emotionalism and frustration sometimes lead to ambivalence about how it should be pursued. Finding a happy medium for different parties is difficult, especially when the agency is caught in the middle.”

The Environmental Equity Office was created to provide opportunities for productive communications among the agency, local communities, and neighboring industries, Marshall said. The agency’s other goals for environmental equity are to help citizens and neighborhood groups participate in regulatory processes; address allegations of environmental injustice; and ensure that TNRCC programs operate without discrimination.

The Environmental Equity Office seeks first to understand environmental issues raised by the community, industry, or other interested parties, and attempts to address them in an environmentally sensitive manner that is consistent with sustainable economic development.

“The TNRCC has a good grasp of what the environmental justice issues are and what its proper role is in addressing them,” Marshall said. “There is a clear sense of the need to involve stakeholders in finding solutions” (please see “St. Mary’s Colony: A Peaceful Settlement”, page 8).

TNRCC Chairman Barry McBee, who emphasized that environmental justice is a

major priority for the commission, has observed that in general the TNRCC is moving toward agency-wide integration of environmental justice.

“We are looking at ways it would be incorporated into our decision making,” he said. “For example, environmental justice considerations could become a more integral part of permitting.

“We are committed to being one of the participants—although not the sole problem solver—in ongoing local dialogue addressing these questions,” McBee continued. “The answers to environmental justice issues won’t be found in federal or state directives. The role of state government is to participate with local government, citizens, and businesses in finding an amicable, acceptable resolution. Ultimately, these are neighbor-to-neighbor solutions.”

Specific efforts underway at the TNRCC may prove beneficial in helping address EJ concerns. One of these is the Community Right-to-Know program, which makes information about environmental releases available to the public. The primary source of this information is the federal Toxics Release Inventory (TRI). Using the TRI, residents can retrieve environmental information by zip code. These data give communities and industry information and common ground for discussion. Another TNRCC effort to improve public access to environmental information is the Consolidated Reporting Project (formerly called the CURE Project). Through this initiative, the TNRCC hopes to design a system that makes it easier for industry to report and for the public to gain access to environmental information.

### **Shintech and other milestone cases**

One of the best known environmental justice cases in the country involves a company called Shintech, which proposes to build a

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***“The role of state government is to participate with local government, citizens, and businesses in finding an amicable, acceptable resolution. Ultimately, these are neighbor-to-neighbor solutions.”***

***Barry McBee  
TNRCC Chairman***

## Texas Partners for Environmental Justice

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***“Area residents can be assured that our efforts to ensure environmental protection in the Refinery Row area will continue.”***

***Dan Pearson  
TNRCC  
Executive Director***

\$700 million plastics plant in the predominantly African-American southern Louisiana town of Convent.

Louisiana’s Department of Environmental Quality (LDEQ) found in May 1997 that Shintech’s plans satisfied the state’s emissions standards. Greenpeace and other environmental action groups, however, invoked President Clinton’s 1994 executive order on environmental justice. The opponents’ strategy regarding the plant has been to throw up so many bureaucratic roadblocks that the corporation would eventually give up.

The EPA has delayed approval of the plant. “It is essential that minority and low-income communities not be disproportionately subjected to environmental hazards,” EPA Administrator Carol Browner wrote in her decision obstructing Shintech’s plans.

As often happens with EJ cases, the situation is complicated by diverse environmental and economic goals and divided public opinion. The plant would bring 165 jobs and \$5.6 million in school tax revenue. The company operates a similar plant in Freeport, Texas, a prosperous, mostly white Gulf Coast city south of Houston. A poll by the local NAACP chapter found that 73 percent of the people in the African-American communities near the proposed Shintech plant favor it.

The Shintech case is in limbo, according to Jim Friloux, ombudsman for Louisiana DEQ.

Why is the nation watching Shintech? “This case may set the tone for environmental justice and industrial development around the country,” Friloux said. “Shintech may choose not to locate in Convent because of the delays in permitting, which have already taken years. Or an air permit may not be issued because of environmental justice issues. Either situation will send a message to industry that it will be increasingly difficult to locate facilities close to

populated areas. Almost anyone can claim that they have a disparate burden because they are close to a facility.”

In Texas there have been a number of cases that have environmental justice aspects: the low-level radioactive waste site in Sierra Blanca, the Alamodome in San Antonio, and Refinery Row in Corpus Christi.

Refinery Row, probably the highest profile EJ site in Texas, continues to be a focus of attention for the TNRCC and other state agencies.

The magnitude of the efforts was highlighted in January, when the TNRCC reached a \$2 million settlement with a Corpus Christi refining company in connection with alleged environmental law violations. The settlement has been approved by the Texas Attorney General’s Office. The order, pending judicial approval in April, will require Coastal Refining and Marketing Inc. to set aside \$1.48 million for the acquisition of property for use as a buffer zone.

As a next step, the TNRCC will address contamination underneath the Oak Park neighborhood. The agency will be contacting the operators of all facilities that may have contributed to its contamination, and will require preparation of a joint cleanup plan.

“Area residents can be assured that our efforts to ensure environmental protection in the Refinery Row area will continue,” promised TNRCC Executive Director Dan Pearson.

### **Mutually Beneficial Coexistence**

In Beaumont, Mobil and residents clearly have good reason to collaborate. The global energy corporation operates oil-refining and chemical-products divisions that employ 2,800 local people and contribute \$250 million annually to the area’s economy.

At a community meeting, Mobil refinery manager Moeller told the Charlton-Pollard neighborhood that his company needed to know how to help.

“That meant the community had to make some decisions,” Moeller said. “Did they want the neighborhood to grow, to modernize, and to improve the school system? The neighborhood did some soul searching. They decided they wanted a safe neighborhood for children, where there were educational and work opportunities. Once the needs were defined, it was easier for us to help.”

Charlton-Pollard and Mobil already have a number of ongoing joint programs that include house-painting projects, scholarships to local Lamar University, summer jobs for high school students, and grants for reading and other educational initiatives in the public schools.

“The way to develop the industry-community relationship is to get a lot of people involved,” Moeller said. “Mobil has many people with skills and dollars who can help make positive things happen. We hope

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## A PARTNERSHIP BASED ON OPEN COMMUNICATION

Mobil has launched an initiative to increase trust and cooperation with its nearest residential neighbors. The company worked closely with local residents, the EPA, and the TNRCC Environmental Equity Office in the development of the Mobil-Charlton-Pollard Partnership.

TNRCC Chairman Barry McBee, who reviewed an early draft of the plan, informed Mobil that he is pleased that the document “reflects a willingness to not only partner with the local residential community, but local leaders and industrial neighbors as well. The stakeholder process reflects a great deal of deliberation and effort to identify and implement methods that are community inclusive. This process should greatly enhance efforts to address the concerns raised by residents.”

Mobil built the plan on three key objectives:

- ▼ Forge a partnership with the leaders and residents of Charlton-Pollard through ongoing and open communications on the basis of trust and mutual respect.
- ▼ Support and participate in the revitalization and community-improvement efforts that are under way in order to stabilize the neighborhood and improve the quality of life.
- ▼ Demonstrate the company’s commitment to environmental compliance programs by sharing information with the Charlton-Pollard stakeholder group and residents and by using its best efforts to adjust environmental programs to reflect community concerns.

Mobil readily acknowledges that there are significant challenges that need to be addressed to ensure the mutually beneficial coexistence between the company and the community.

In the Partnership plan, program strategies were outlined in which Mobil will:

- ▼ Convene a stakeholder group representative of the neighborhood.
- ▼ Assume a leadership role in improving educational opportunities of residents.
- ▼ Work in partnership with local leaders to reduce the volume of hazardous material and industrial traffic moving through the neighborhood.
- ▼ Work with the Jefferson County Local Emergency Preparedness Council to assess the existing emergency response plan for the area, based on concerns of the neighborhood.
- ▼ Revise its odor response program to include input and participation from Charlton-Pollard residents.
- ▼ Augment its extensive air quality monitoring network with two fence line sulfur dioxide monitors.
- ▼ Demonstrate to local residents that groundwater contamination from its plant does not underlie the neighborhood.
- ▼ Encourage nearby industrial facilities to participate in the initiative.

## Texas Partners for Environmental Justice

***“We hope that everyone in the neighborhood will look at Mobil as a neighbor they can trust, so when there is an opportunity to make an improvement, they will consider coming to us for help.”***

**Tom Moeller  
Mobil Beaumont  
Refinery**

that everyone in the neighborhood will look at Mobil as a neighbor they can trust, so when there is an opportunity to make an improvement, they will consider coming to us for help.”

The efforts of Beaumont and industry allies such as Mobil to revitalize the Charlton-Pollard community, however, have received some criticism, namely from a group called People Against Contaminated Environments (PACE). The organization’s goal is to engender discussion on how to move residents away from industrial operations.

PACE contends the city’s use of U.S. Department of Housing and Urban Development block grant money in the affordable housing program is a violation of President Clinton’s 1994 environmental justice executive order.

Yet the revitalization effort has attracted many local supporters. An editorial in a Beaumont newspaper captured the general mood: “Officials have poured a lot of money into the Charlton-Pollard neighborhood, building affordable housing and keeping the families that are its lifeblood. In turn, the residents have done their part by refusing to leave and committing themselves to rebuilding the fine homes and thriving businesses that were once common there.”

Ron Goodman of Charlton-Pollard praises Mobil’s community partnership plan and calls it “a great step in the right direction. We hope Mobil will continue to use its influence to help other companies be equally good neighbors. Some of the other companies have already formed citizen advisory panels, following the lead of Mobil.”

### **The EPA and environmental justice**

Mirroring the trend in Texas, environmental justice at the EPA has evolved into a more

integrated, commonsense approach over the last few years.

Barbara Greenfield, EPA Region 6 deputy division director for the Compliance Assurance and Enforcement Division, notes that the agency uses six criteria when selecting a facility for inspection. A key criterion is the proximity of the facility to a community that might have environmental justice concerns.

“Environmental justice has developed from a general principle into practical, useful methods for evaluations,” Greenfield said. “The agency gives special consideration to communities that may be, by virtue of their demographics and economic status, more vulnerable to the environmental effects of regulated facilities.”

Shirley Augurson, Region 6 environmental justice coordinator, believes the region leads the nation in finding constructive ways to deal with EJ issues. She pointed out that it was one of the first regions to develop a methodology for EJ evaluations.

“In the future we can expect to see a continuing demand from the public for more involvement from an EJ standpoint for the simple reasons that racial and ethnic populations are growing and are becoming more vocal,” Augurson said. “They are also getting more involved in the political process.”

Augurson, who has worked closely with the TNRCC on several environmental justice cases, believes the state is putting forth a good effort in terms of responding to citizens’ complaints. She was pleased with public meetings the EPA co-hosted with the TNRCC to address concerns in the Charlton-Pollard neighborhood.

“I think the state did a good job of assembling the right people to be at those meetings,” Augurson said. “Texas showed that it is willing to commit resources to these efforts.”

### Environmental justice and the states

Friloux of the Louisiana DEQ believes that Texas and Louisiana are the two southern states with the most active, best managed environmental justice programs.

"The more industrialized the state, the greater the need for an environmental justice program," he said. "We promote the idea with industry that EJ should be part of the planning process for new facilities. For the pre-permitting phase, we make a presentation to the company so they immediately begin communicating with affected communities. It's important that the company get the message out about who they are and what they are going to do. And they need to talk about jobs created and what kind of contribution they will make to the community."

Another Texas neighbor, Oklahoma, takes a different approach.

Bob Kellogg, general counsel of the Oklahoma Department of Environmental Quality (ODEQ), notes that his state does not have staff dedicated to EJ issues.

"If you make environmental justice part of your everyday life in tech assistance, permitting, and enforcement, then you don't need special attention to it," Kellogg said.

Oklahoma has adopted a one-page policy that can be summarized in one line: "Everyone, regardless of race or ethnicity, should get equal environmental protection" from the ODEQ.

"It must be working," Kellogg said. "We have not had any ridiculous lawsuits filed against us in Oklahoma. Our protections need to be simple and understandable, and when our systems are too complex environmental protection suffers because no one understands what they have to do."

Kellogg believes Texas has more potential problems than his state because it is more industrialized.

"I can see why Texas needs staff to deal with minorities and industries, and to make sure that communications take place, especially with the Spanish-speaking population," he said.

### The challenges ahead

Maria Limón, head of People Organized in Defense of the Earth and Her Resources (PODER), an Austin-based nonprofit organization concerned with issues of environmental and economic justice, believes that consistent political pressure and coalition building are the primary ways community groups have been able to demand that industry and government leaders maintain an ethical standard with minority communities.

"I ask that the TNRCC stick to its mandate and be very clear when dealing with communities that are affected," Limón said.

"People get so frustrated dealing with the bureaucracy," she continued. "The agency needs to make sure that communities get the opportunity to provide public input in substantive ways. The residents deserve to get their questions answered."

Limón acknowledged that she has heard good reports about "the TNRCC staff in the regions who are doing their best to help people. Our hope lies with those people on the front lines," she said.

Questions or comments may be directed to the Office of Environmental Equity, 1-800-687-4040.

***"In the future we can expect to see a continuing demand from the public for more involvement from an EJ standpoint for the simple reasons that racial and ethnic populations are growing and are becoming more vocal. They are also getting more involved in the political process."***

**Shirley Augurson**  
EPA  
Environmental Justice  
Coordinator



# CLEANING OUR AIR

## *State Implementation Plan tackles tough air*

**T**he acronym SIP, which suggests a tiny taste, is ironic, for it actually stands for a process that seems as vast and ever-changing as the sea.

Required by the Federal Clean Air Act, State Implementation Plans (SIPs) are extensive blueprints for how states maintain air quality.

In Texas, a number of high-profile SIPs are imminent. In February 1998, the TNRCC proposed a new plan for the Houston-Galveston area, and work has commenced on a Dallas-Fort Worth area plan, which is expected to be proposed in late 1998.

"We have worked hard to communicate what will be happening with SIPs in the areas of Texas that will be most affected by the new national air quality standards," said TNRCC Commissioner Ralph Marquez.

To facilitate the development of these individual revisions to the SIP, the TNRCC announced in January a new initiative incorporating a more regional approach. Based on this new strategy, the new SIPs for the Dallas-Fort Worth and Houston-Galveston metro areas are likely to include elements such as:

- Regional controls on oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs), which combine in sunlight to form ground-level ozone.
- Widespread use of cleaner-burning gas, such as RFG, throughout eastern Texas.
- Coordination with the Clean Air Responsibility Enterprise program, an effort that is drawing "grandfathered" facilities into the agency's full permitting process.

"What Texans have devised for Texas is a reasonable, aggressive, and commonsense approach," said TNRCC Chairman Barry McBee. "We are confident it will work."

### ***Getting the Act together***

The Clean Air Act lists pollutants the states must monitor to keep air clean: ozone, particulate matter, carbon monoxide, nitrogen dioxide, sulfur dioxide, and lead. The Act requires that SIPs be developed for the identification and monitoring of pollutants and their sources and the reduction of emissions.

The EPA sets SIP standards and guidelines. In some years guidelines for developing SIPs are more prescriptive than in others. Each state is responsible for designing and implementing its own SIP.

EPA approval hinges on a plan's demonstrable compliance with Clean Air Act standards. That is of particular importance to industry, businesses, and local governments that don't wish to see the stricter requirements noncompliance can bring. Once approved, a SIP provides the plan of action with controls and regulations local governments and industry must follow to curb air emissions.

### ***A SIP primer: Clarifying the process***

There are essentially four phases to a SIP:

- Preparation of a comprehensive emissions inventory (12-18 months)
- Modeling (12-18 months)
- Development and adoption of control strategies and submittal of the SIP (12 months)
- Implementation and enforcement of the final plan.

### ***Inventorizing emissions***

Every time a car starts, a refinery produces a barrel of motor oil, or an aircraft lifts off, potentially harmful emissions enter the air.

***"What  
Texans have  
devised for  
Texas is a  
reasonable,  
aggressive,  
and  
commonsense  
approach.  
We are  
confident it  
will work."***

***TNRCC Chairman  
Barry McBee***

# ONE SIP AT A TIME

## *quality issues in booming Texas economy*

While we cannot shut down essential functions, we can keep track of the sources and levels of pollution in order to keep emissions at a safe level. That's why the SIP process begins with an emissions inventory of VOCs, NO<sub>x</sub>, and carbon monoxide (CO) for an area.

An emissions inventory includes five categories of emissions sources:

**Stationary point sources.** These include industrial, commercial, or institutional facilities or operations that generate VOC emissions of 10 or more tons per year, 100 or more tons per year of NO<sub>x</sub> or CO emissions, or both.

**On-road mobile sources.** Cars and other internal combustion engine-powered vehicles are inventoried for both engine exhaust and evaporative emissions from fuel tanks. Estimated emissions are multiplied by the level of vehicle activity, such as vehicle miles of travel.

**Nonroad mobile sources.** This category encompasses military, commercial, and general aircraft, marine vessels, recreational boats, railroad locomotives, construction and farm equipment, and lawn and garden power tools.

**Minor and area sources.** These include the many commercial, small-scale industrial, and residential sources that generate emissions at a rate below point source reporting levels.

**Biogenic (plant life) sources.** Forests, crops, lawns, and other vegetation are all sources of VOCs.

### **Monitoring of pollutants**

A critical part of SIP development and evaluation is the collection of air quality data through monitors.

Scientists place monitors around the state's urban areas to identify the kinds of pollutants in the air and measure their quantity. Monitoring sites are selected based on EPA requirements and a consultation between the TNRCC, local agencies, and the public.

For a SIP to be effective over time, it must consider projected trends such as growth in population and vehicular traffic and economic development. To factor in such trends and predict their effect on air quality, the TNRCC and EPA rely on modeling.

### **Computer Models: Forecasting future air quality**

With modeling, scientists use a computer to simulate the emissions and meteorology that cause ozone conditions and apply the results to estimate the extent to which ozone would increase as population increases. The computer processes information such as the number of factories, cars, and residences—factors that can have an impact on emission levels.

Modeling data are used to develop realistic air regulations by helping determine what will be needed in the future to control air pollution and maintain air quality. Specifically, modeling identifies control strategies that need to be imposed on stationary point and mobile sources.

Once modeling and other data collection are complete, TNRCC staff proceed to the next step of the SIP process: developing rules to enable local governments and industries to reduce emissions.

### **Control strategies for clean air**

The development of strategies to control emissions attracts widespread interest because the strategies can significantly affect business operations and daily life around the state.

"We encourage industry and businesses to stay plugged into the development of control

*continued on page 12*

*While we cannot shut down essential functions, we can keep track of the sources and levels of pollution in order to keep emissions at a safe level.*

## **CLEANING OUR AIR ONE SIP AT A TIME**

*continued from page 11*

***“We encourage industry and businesses to stay plugged into the development of control strategies in the SIP process. The TNRCC welcomes suggestions on how reductions can be made in the most economical fashion.”***

***TNRCC Commissioner  
Ralph Marquez***

strategies in the SIP process,” said Marquez. “The TNRCC welcomes suggestions on how reductions can be made in the most economical fashion.”

The commissioner added that the corporations that have voluntarily agreed to bring “grandfathered” facilities into compliance with current regulations will help take the pressure off all regulated facilities in those areas where more stringent reductions will be required.

Marquez believes that the revised SIPs will include the toughest control strategies for air quality yet seen in the state. These will likely have a significant economic impact on certain areas, as the focus shifts from controls limited to VOCs to controls on a combination of VOCs and NO<sub>x</sub>.

### ***Seeking public comment***

The TNRCC strives to involve citizens and constituents in the SIP development and subsequent rulemaking process, providing opportunities to share comments about the rules. Monthly input from communities often comes through councils of government (COGs), which form air quality advisory committees.

The rules process must be completed in six months. Once written, rules are published in the *Texas Register* inviting public comment.

### ***Hearings: Airing viewpoints***

Rules are announced at public hearings where the TNRCC learns from citizens, local government, businesses, and industry about concerns regarding compliance with the new rules.

When possible, the agency seeks to find common ground that leads to rules that are based on good science and that satisfy the standards of the Clean Air Act. Once public input has been processed, the final versions of the rules become an integral part of the SIP.

### ***Giving the SIP to the EPA***

With the SIP process complete, TNRCC Air Policy staff write a SIP narrative that follows EPA guidelines. The document contains the findings of data collected, emission limitations, rules and control measures, enforcement procedures, and an implementation schedule. The governor forwards the SIP with a cover letter to the EPA administrator, which is the state’s official filing for SIP approval.

By law, the EPA has 18 months to review and respond to a state’s SIP submission. In practice, the approval process usually takes longer. The EPA applies two types of review. The completeness review (6 months) compares the SIP against a checklist of EPA requirements. If that proves successful, the second review (12 months) assesses the validity and effectiveness of the rules. If approved, the SIP takes effect and is enforced by the state.

### ***The problems with SIPs***

Rule approval and implementation can be lengthy processes, particularly when the rules call for programs that require enabling legislation by the state legislature. Whenever a rule or policy in a SIP changes, the SIP must be revised and resubmitted.

The SIP process can be further complicated by factors such as amendments to the Clean Air Act and new approaches to reduce emissions.

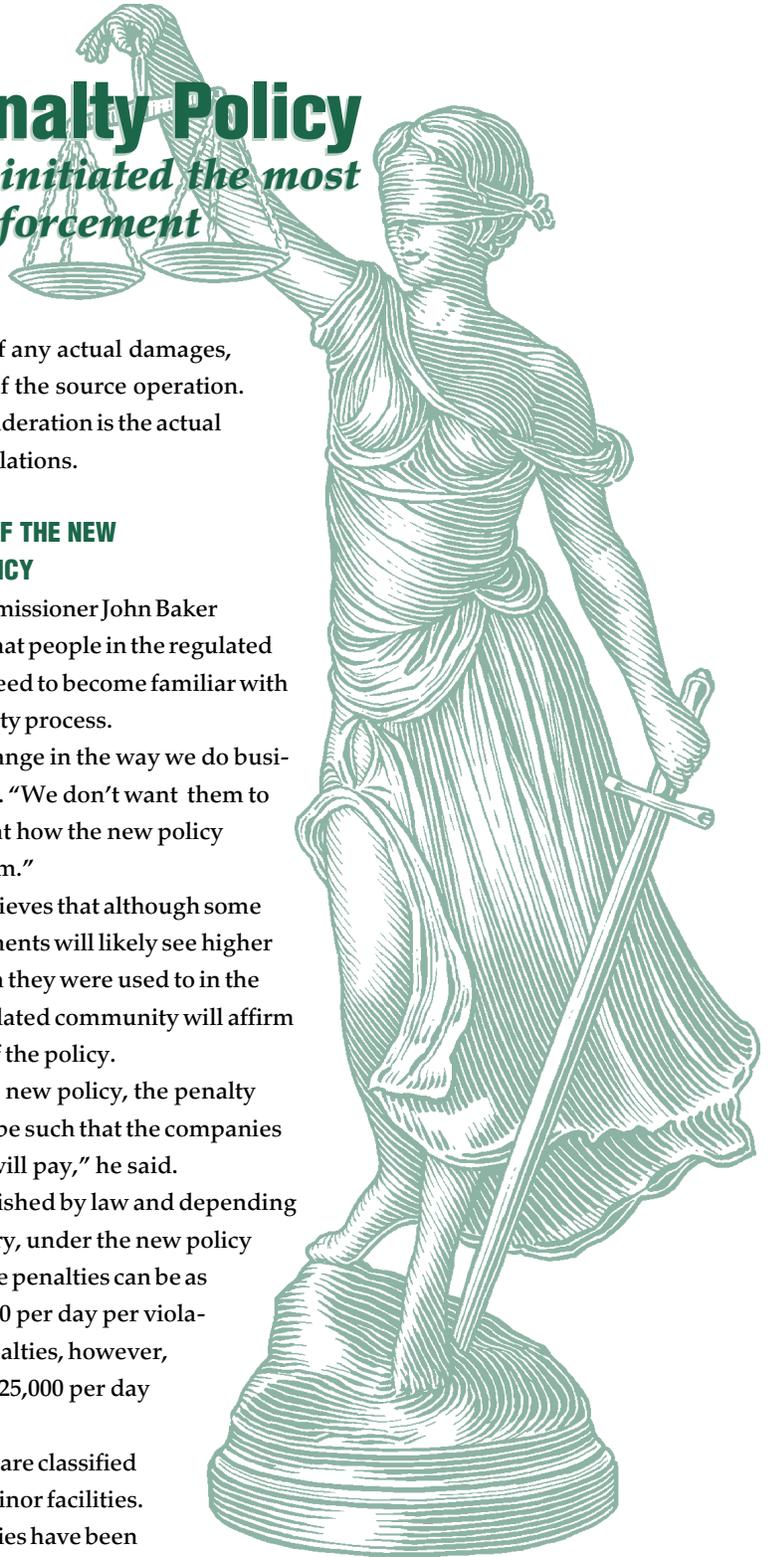
“SIP submittals often seem to be in limbo, which puts Texas in the position of having to implement control strategies without knowing whether or not the EPA will approve them,” Marquez said. “The system works, but we need to look at a more efficient process for federal approval of state plans.”



## ***Fair, Firm, Just:***

# **The TNRCC's New Penalty Policy**

***On October 1, 1997, the TNRCC initiated the most comprehensive environmental enforcement penalty policy in state history.***



**T**he policy is among the first of its kind in the United States because it is (1) risk-based, which means it prioritizes, assesses, and addresses levels of risk to health and the environment, and is (2) comprehensive in scope, covering air, water, and waste programs in an integrated, commonsense fashion.

Reflecting on the reasons for the policy change, TNRCC Chairman Barry McBee explained that the agency “seeks to be fair instead of excessive, firm instead of arbitrary, and to work in a spirit of cooperation rather than mistrust.

“The idea is not to establish a penalty quota, but to develop a system that is most protective of the Texas environment,” McBee said. “The policy reflects the goal of the TNRCC enforcement process: to ensure that Texans comply with the state’s environmental laws to prevent pollution.”

### **EQUITABLE, CONSISTENT OVERSIGHT**

The agency monitors thousands of Texas businesses and local governments in order to protect public health and natural resources in the state. This oversight calls for a fair and consistent enforcement program authorized by state law that provides for penalties and corrective action when appropriate.

The TNRCC is authorized to levy penalties in 24 environmental categories ranging from public water supplies to air quality.

When determining the penalty amount, the TNRCC verifies if there is actual or potential environmental damage,

the severity of any actual damages, and the size of the source operation. Another consideration is the actual number of violations.

### **STRUCTURE OF THE NEW PENALTY POLICY**

TNRCC Commissioner John Baker emphasizes that people in the regulated community need to become familiar with the new penalty process.

“It’s a change in the way we do business,” he said. “We don’t want them to be surprised at how the new policy will affect them.”

Baker believes that although some industry segments will likely see higher penalties than they were used to in the past, the regulated community will affirm the fairness of the policy.

“With the new policy, the penalty amounts will be such that the companies that can pay will pay,” he said.

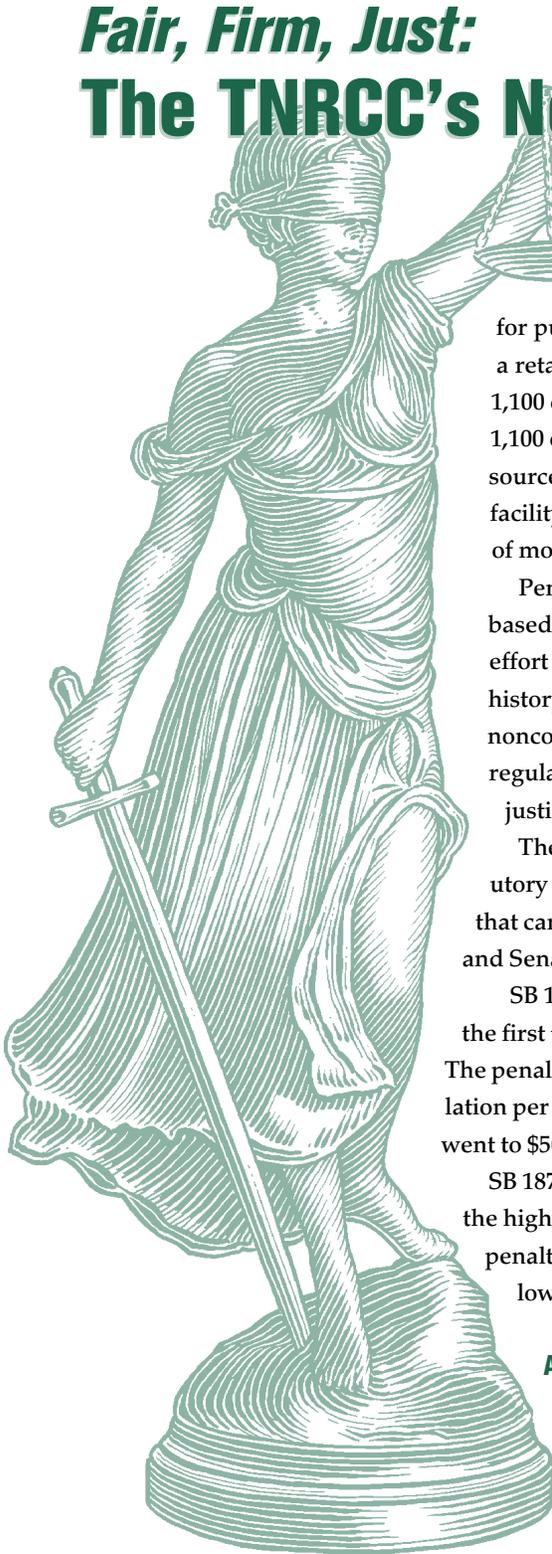
As established by law and depending on the category, under the new policy administrative penalties can be as high as \$10,000 per day per violation. Civil penalties, however, can climb to \$25,000 per day per violation.

Penalties are classified by major or minor facilities. These categories have been established for all the media, including hazardous waste, drinking water, and every other program. A major facility

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## Fair, Firm, Just: The TNRCC's New Penalty Policy

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for public water supply, for example, is a retail public utility serving more than 1,100 connections. A minor facility is 1,100 or fewer connections. A major source for petroleum storage tanks is a facility that has a monthly throughput of more than 50,000 gallons.

Penalty adjustments may be made based on criteria such as a good-faith effort to comply, culpability, compliance history, economic benefit gained by noncompliance with environmental regulations, and other factors that justice may allow.

The penalty policy incorporates statutory changes effective Sept. 1, 1997, that came about because of Senate Bill 1 and Senate Bill 1876.

SB 1 gave administrative authority for the first time for a water rights program. The penalty amounts are \$0-\$5,000 per violation per day. Public water supply penalties went to \$50-\$1,000.

SB 1876 set two tiers of penalty amounts: the higher tier providing for up to \$10,000 penalty per violation per day; and the lower tier providing for up to \$2,500.

### A POLICY BASED ON RISK ASSESSMENT

The new penalty policy represents a milestone in enforcement because it places all violations on the same scale in terms of assessing their severity.

The highest penalties will be assessed on those actions that have had an actual impact

on human health and the environment. The next highest penalties will address those violations that present a potential risk to health and the environment.

A groundwater problem in the municipal solid waste area, for example, falls under the same rule as a groundwater problem in hazardous waste.

This approach is unusual. "In most other states, as well as in the EPA, each program—air, water, or waste—has a separate penalty policy developed without consideration of other policies," said Ann McGinley, TNRCC director of enforcement. "Historically there has not been much focus on a uniform, risk-based approach in terms of evaluating environmental penalties."

The change in TNRCC penalty policy will make responding to a multimedia evaluation of a facility easier when there are violations. Compliance schedules can address highest risk issues first and then go on to lesser significant items. Penalties will be developed consistently, independent of program area, so that facility operators will be able to understand the enforcement action more easily—saving time and money.

### REACTION TO THE POLICY

In September 1996, the TNRCC published a notice in the *Texas Register* which let people know the text of the policy was available in hard copy and on the Internet. The agency held meetings with interested individuals and groups in response to requests.

There was widespread acceptance of the policy in meetings conducted by the TNRCC with the business community and industry associations, according to McGinley.

"The public response was that the policy makes sense," she said, adding that people

seemed to appreciate the clear language of the policy, which makes it easy to see how a penalty is developed in a particular case.

Mary Miksa, vice president for governmental affairs with the Texas Association of Business and Chambers of Commerce, monitored the development of the new policy and was pleased with the final product.

"In drafting the new penalty policy, the TNRCC has come up with an approach that is fair and consistent," she said. "The agency did this with a lot of input from citizens, environmental groups, and the regulated community. The new policy clearly outlines how administrative penalties are calculated and assessed. For the business community, it will provide more certainty—something that is always desirable when facing an enforcement action by the TNRCC.

"No businessperson likes to get a call from someone in enforcement," Miksa said. "Yet it's a fact of life that violations, unintentional ones, occur. A policy that is clear, and an agency that evenhandedly enforces that policy, make for a better outcome for business and the environment."

Although generally supportive, some industry groups have expressed concern that the goal of consistency in the enforcement policy might become overly restrictive.

"We applaud the agency's efforts to bring a measure of consistency into the enforcement process across all environmental regulatory programs," said Jim Woodrick, president of the Texas Chemical Council. "This is certainly welcome and will make everyone more aware of what is to be expected. The challenge lies in implementation. Consistency is desirable but not at the expense of common sense."

### THE EPA WEIGHS IN

Nelly Rocha, a senior enforcement counsel in the EPA Region 6 Office, was part of a panel that reviewed the TNRCC's new penalty policy.

The policy, she said, is "comprehensive and fairly easy to implement." Although the states are not obligated to have such a policy, Rocha commended the TNRCC for putting it in writing.

The policy provides "consistency and predictability for industry, so companies know what to expect," she said.

Nonetheless, Rocha expressed concerns about the policy. She believes that the way the document is written, a company could violate the law yet retain some economic benefit from the time it spent in noncompliance.

"Federal environmental statutes require that the EPA collect economic benefit when assessing penalties," Rocha said. "The EPA strongly advocates that states also collect economic benefit to ensure a level playing field.

"The EPA always reserves the right to collect economic benefit of noncompliance from a violator," she continued. "We use a mathematical model to calculate such economic benefit. The TNRCC's new penalty policy has no similar model for calculating such benefit."

According to Joe Vogel, deputy director of the TNRCC Office of Compliance and Enforcement, the agency does calculate economic benefit in every penalty enforcement case, albeit using a different method than does the EPA. He added that the TNRCC does not enhance the penalty amount where the economic benefit is below \$25,000.

"It is rarely an issue because the penalty we assess is almost always equal to or in excess of the calculated economic benefit," Vogel said.

"We are proud that the TNRCC has adopted a consistent, multimedia policy that enables us to calculate penalties that appropriately match the risks and the nature of the violations," Vogel continued. "It will effectively create penalties of sufficient size to deter future noncompliance."

## Paying the Price for Environmental Violations

The TNRCC promotes voluntary compliance with environmental regulations and pollution prevention as the most effective and inexpensive approaches to environmental protection.

Those who do not comply with environmental requirements should be aware of the agency's record, which demonstrates a commitment to strict, sure, and just enforcement of the law. In FY 1997, the TNRCC issued 257 administrative enforcement orders in the air program, 236 in the water program, and 173 in the waste program, for a total of 666 orders. That number represents a significant increase over earlier years, such as 1992, when the total number of orders was 291; and 1994, when the total was 346.

The amount of administrative penalties required to be paid in final administrative orders issued exceeded \$4 million in FY 1997.

Sometimes those in noncompliance were required by the administrative orders to pay for supplemental environmental projects (SEPs), which allow funds that would otherwise have been paid as a penalty to be used to help remedy environmental problems in a community where the violations have occurred. In FY 1997, administrative orders required that \$1.9 million be paid for SEPs.

In terms of criminal enforcement, TNRCC leadership of the Texas Environmental Enforcement Task Force during FY 1997 resulted in nine felony convictions against 21 individuals and four corporations. Also, two Dallas men were the first ever indicted on state organized crime charges in relation to an environmental crime, operation of the state's largest illegal landfill. One man pleaded guilty in November 1997 and was sentenced to 10 years in state prison, the longest prison term ever handed down in any Texas court connected to an environmental crime.

More information is provided on the Internet at the agency's World Wide Web site: <http://www.tnrcc.state.tx.us>. Look under "What's New at the TNRCC" for the *Annual Enforcement Report: Fiscal Year 1997*.





# COMPOST: RECLAIMING A PRECIOUS RESOURCE FOR TEXAS FARMERS

**R**esults are in on a demonstration project that measured the benefits of applying composted yard trimmings to highly erodible land in Big Spring and Pampa. The project—a cooperative effort among the TNRCC, the EPA, the Texas State Soil and Water Conservation Board, the USDA Natural Resources Conservation Service, and other agencies and organizations—provided further proof that compost and wood chips not only increase the water-holding capacity of soil, but also increase water infiltration and crop yields.

Every Texas county has highly erodible land with powdery soil that holds little water and is easily carried off by wind and rain. Soil erosion robs the U.S. of more than 3 billion tons of top soil every year. Runoff from depleted soils can increase siltation and nonpoint source pollution and can carry chemicals and top soil into drinking water supplies.

Increased use of compostable materials would benefit the \$40 billion Texas agriculture business. Yet much of the state's compostable material is thrown away—last year, Texans landfilled about 11 million tons of it. Diversion of the compostable materials would save landfill costs and space, retard erosion, and decrease siltation and runoff.

## Water Infiltration Using Rain Simulators after Application of Compost and Wood Chips from Yard Trimmings Big Spring, Texas

- No compost or wood chips: 10.7% water infiltration (water soaked into soil)
- Compost applied at 10 tons per acre: 11.3% water infiltration
- Compost applied at 20 tons per acre: 12.1% water infiltration
- Wood chips applied at 10 tons per acre: 16.1% water infiltration
- Wood chips applied at 20 tons per acre: 21% water infiltration

## Cotton Yields after Application of Compost and Wood Chips from Yard Trimmings Big Spring, Texas

- No compost or wood chips: Yielded 110.4 pounds of lint per acre
- Compost applied at 40 tons per acre: Yielded 163.3 pounds of lint per acre
- Wood chips applied at 20 tons per acre: Yielded 152 pounds of lint per acre

## Grain Yields after Application of Compost from Yard Trimmings Pampa, Texas

- No compost: Yielded 24 bushels per acre
- Compost applied at 30 tons per acre: Yielded 37 bushels per acre



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