

## Response to EIP Study: The Legislature Has Increased TCEQ’s Oversight Funding

A recent study by the Environmental Integrity Project (EIP),<sup>1</sup> along with the news coverage and commentary it has generated, portray slashing and crippling cuts to TCEQ’s oversight funding.<sup>2</sup> That portrayal is incorrect.

Over the past decade,<sup>3</sup> TCEQ funding for its oversight activities<sup>4</sup> has, in fact, *increased*. For example, as shown in [Table 1](#), the largest line item expenditure for an agency oversight function—funding for Field Inspections Complaints—*increased* by 15%. Overall funding for TCEQ’s oversight activities *increased* by 5%. These figures account for inflation.

**Table 1 – TCEQ Expenditures for Oversight Activities\***

Line Items/Programs	FY 2008		FY 2018	% Change
	FY 2008	(adjusted)†		
Air Quality Permitting	13,302,733	15,564,198	15,035,805	-3%
Water Resource Permitting	12,282,118	14,370,078	14,998,211	4%
Waste Mgt And Permitting	8,987,824	10,515,754	9,156,844	-13%
Low Level Radioactive Waste	1,188,413	1,390,443	0	
Radioactive Materials Mgt	0	0	2,684,983	93%‡
Safe Drinking Water	9,966,911	11,661,286	16,134,232	
Water Utilities Oversight	4,168,010	4,876,571	0	-2%‡
<b>Field Inspections Complaints</b>	<b>33,186,532</b>	<b>38,828,243</b>	<b>44,573,422</b>	<b>15%</b>
Enforcement and Compliance	10,913,525	12,768,825	12,561,915	-2%
<b>TOTAL</b>	<b>\$93,996,066</b>	<b>\$109,975,397</b>	<b>\$115,145,413</b>	<b>5%</b>

\* Source: The FY 2008 and FY 2018 expenditure data are from EIP, as shown on [Attachment 1](#).

† These are FY 2008 expenditures expressed in 2018 dollars, using EIP’s 10-year inflation factor of 1.17.

‡These line items are coupled to address changes in how expenses were posted.

### Oversight Funding is a Subset of Total Funding and Excludes Grant and Remediation Expenses

The incorrect news coverage and commentary misread EIP’s study and mistake total agency expenditures for oversight expenditures.<sup>5</sup> The EIP study has flaws of its own, such as not addressing the significant impact of grants on agency expenses and misstating the number of authorized agency staff positions.

If the question is about policing industry, as the commentary indicates, the answer is that TCEQ’s resources have grown over the past decade—despite the legislature’s statewide cuts in response to the Great Recession of 2008.

Fundamental to understanding TCEQ’s budget are: (1) that it is heavily influenced by pass-through grant programs and, to a lesser extent, remediation projects—which are distinct from the agency’s oversight activities; and (2) that these elements are highly

variable. As shown in [Table 2](#), these elements combined range from one-fifth of the agency’s expenditures (FY 2013) to more than half (FY 2008 & FY 2009).

**Table 2 – TCEQ Grant and Remediation Expenditures (in \$ millions)\***

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
<b>Total Expenditures</b>	493.7	552.5	480.9	389.5	333.3	309.6	340.2	347.6	418.1	410.4	374.5
<b>Grants</b>											
TERP	142.5	195.1	98.6	29.3	39.5	27.3	54.7	51.0	81.9	75.6	95.0
LIRAP	47.3	55.3	47.2	49.4	5.7	9.6	7.4	7.4	46.0	47.1	2.5
MSW	11.0	10.2	11.7	8.4	8.1	5.5	5.5	5.5	5.5	5.5	5.5
Tires	2.0	0.1	0.7	0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Subtotal</b>	202.8	260.7	158.1	87.5	53.4	42.4	67.7	63.9	133.4	128.2	102.9
<b>Remediation</b>											
Superfund	9.5	7.8	20.8	10.3	12.9	10.8	10.8	15.4	10.6	12.1	9.4
Dry Cleaning	2.2	3.3	7.1	6.4	5.3	3.2	3.5	3.4	3.3	3.3	3.1
PST Clean up	35.1	32.7	25.3	18.3	16.9	6.2	9.8	11.9	11.3	9.3	10.2
<b>Subtotal</b>	46.8	43.9	53.2	35.0	35.1	20.2	24.0	30.6	25.2	24.7	22.8
<b>Total Grants &amp; Remediation</b>	249.7	304.6	211.3	122.5	88.4	62.7	91.7	94.6	158.6	152.9	125.7
<b>Grants &amp; Remediation Portion of Total Expenditures</b>	<b>51%</b>	<b>55%</b>	44%	31%	27%	<b>20%</b>	27%	27%	38%	37%	34%

\* Source: Account extract data from the Texas Comptroller of Public Accounts.

The largest and most variable of these elements has been the Texas Emission Reduction Plan (TERP) grant program. TERP is a voluntary incentive program that provides funds, through pass-through grants, to replace older mobile sources of emissions<sup>6</sup> with lower-emission vehicles and equipment. The program has been a critical component of Texas’s efforts to achieve national ambient air quality standards for ozone, more commonly known as smog.<sup>7</sup>

Annual TERP expenditures over the past decade have been as high as \$195 million (FY 2009) to as low as \$29 million (FY 2011). In FY 2018, they were \$95 million. They are projected to be \$268 million in FY 2020 and to triple in FY 2023 (\$285 million). In short, the numbers are large and tend to swing dramatically. Yet EIP’s study does not address TERP nor its outsized impact on TCEQ’s expenditures<sup>8</sup>

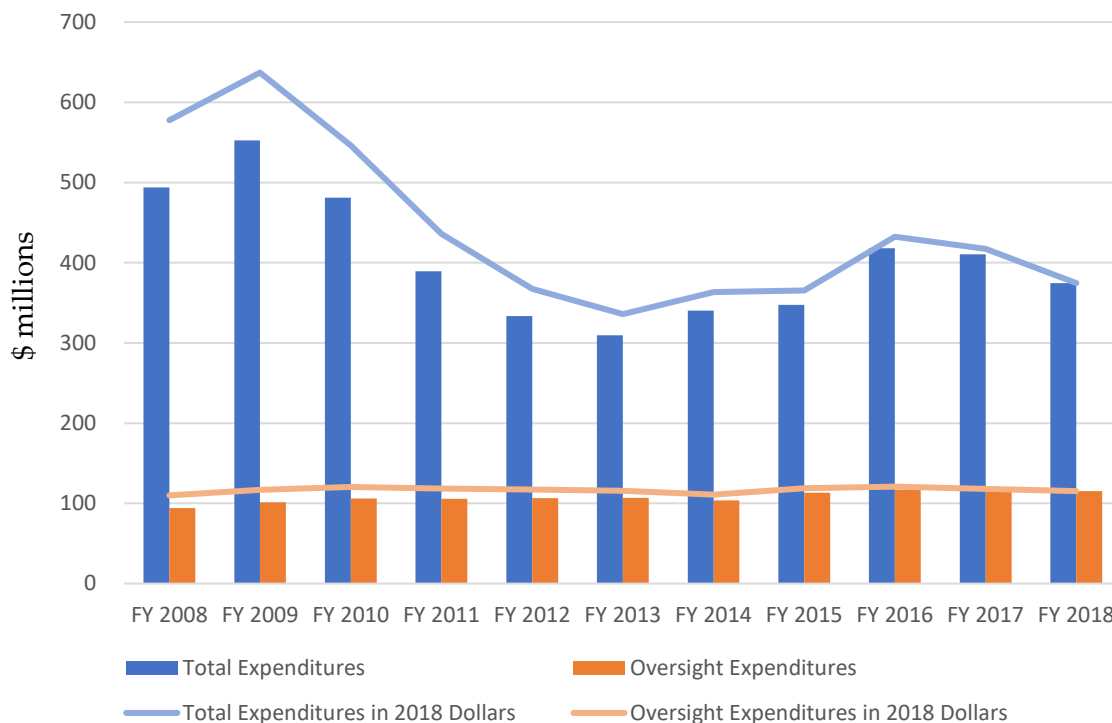
Grant program and remediation project spending occurs when a prioritized need coincides with available funding. While such spending has meaningful environmental benefit—for example, by retiring older polluting diesel trucks, sponsoring household

hazardous waste collection events, or cleaning up contaminated properties—it does not support TCEQ’s oversight of regulated entities.

Consider the following hypothetical: If projected TERP expenditures for FY 2023 (\$285 million) are realized and all other spending were to remain at 2018 levels, TCEQ’s total spending will have grown by more than 50% over the decade between 2013 and 2023. At the same time, TCEQ’s oversight spending, although nominally flat, will have effectively fallen at the rate of inflation. We should not then conclude that there has been an increase in oversight funding, since the opposite would be true. Similarly, we should not mistake the FY 2018 dip in total spending for a decrease in oversight funding.

The point is that conclusions about TCEQ’s oversight activities cannot be drawn by looking at total expenditures. While TCEQ’s overall expenditures have fluctuated significantly over the last decade, funding for its oversight activities has been relatively stable, with a modest growth trend. This has remained true even through the Great Recession, as shown in Chart 1.

**Chart 1 - Total Expenditures vs. Oversight Expenditures**



In response to EIP’s observations about reduced spending in TCEQ’s pollution prevention program and its waste assessment and planning program,<sup>9</sup> these programs do not impact the agency’s core permitting, inspection, and enforcement functions. The reduction in the pollution prevention program has reduced some of the agency’s

compliance assistance resources, while the reduction in the waste assessment and planning program reflects a reduction in pass-through grants to local governments (which represents the bulk of these reductions). In any event, these reductions combined amount to less than 1½ percent of the total FY 2008 expenses, as adjusted for inflation.

#### *Year-to-Year Comparisons of Both Spending and Staffing Defy Precision*

In addition to grants and remediation expenses, there are numerous other moving parts in TCEQ's budget such that it frustrates a true apples-to-apples comparison from one year to another.

For example, in 2013, the legislature transferred certain water utility functions from TCEQ to the Texas Public Utility Commission (PUC),<sup>10</sup> along with a budget of \$1.6 million and 20 full-time equivalent positions (FTEs). That appears as a cut to TCEQ's oversight funding and authorized FTEs when it was instead a transfer of resources—*along with the commensurate oversight responsibility*—outside the agency.<sup>11</sup>

Further, the agency has sought and received additional authorized FTEs to address changing programmatic needs. For example, the legislature authorized an additional 11 FTEs in 2017 for implementation of EPA's Revised Total Coliform Rule promulgated under the federal Safe Drinking Water Act.<sup>12</sup>

#### *Staffing Levels Reflect Economic Trends*

The first thing to know about TCEQ's staff is that they are committed to serving their fellow Texans. That is part of what makes TCEQ a great place to work. In fact, *Forbes Magazine* has repeatedly identified the agency as one of the nation's best employers.<sup>13</sup>

Even so, the agency is not immune to broad economic trends. In response to the Great Recession, the legislature significantly reduced the number of authorized FTEs across state government, including at TCEQ.<sup>14</sup> Some of those positions have been restored.<sup>15</sup>

In the current low-unemployment environment, hiring and retention have become more challenging. Now it is vacant positions, more than eliminated positions, that account for the agency's reduced numbers, despite TCEQ's efforts at recruiting and retention.

When we look at agency staffing levels, we are looking at two sets of numbers: (1) the number of FTEs for which the legislature has appropriated funding (authorized FTEs) and (2) the number of authorized FTEs that are also filled, that is the actual number of staff TCEQ employs at a given time (filled FTEs).

Table 3 shows the number of Authorized FTEs and Average (*i.e.*, filled) FTEs, and their difference, that is the number of vacant positions. It reflects the impact of both the Great Recession and the strong economic recovery that has followed.

**Table 3 – TCEQ’s Authorized and Average (Filled) FTEs\***

Fiscal Years	Authorized FTEs	Average FTE Count	Difference
2008	2,942.3	2,884.3	58.0
2009	2,935.3	2,915.6	19.7
2010	2,980.3	2,941.2	39.1
2011	3,001.3	2,834.8	166.5†
2012	2,761.2	2,644.3	116.9
2013	2,761.2	2,613.6	147.6
2014	2,767.2	2,654.6	112.6
2015	2,756.2	2,689.2	67.0
2016	2,780.2	2,697.0	83.2
2017	2,780.2	2,675.8	104.4†
2018	2,794.8	2,615.7	179.1
2019	2,794.8	2,629.4	165.4

\* Source: State Auditor’s Office, <https://www.sao.texas.gov/Appss/FTESystem/Query/>.

† In FY 2011, TCEQ imposed a hiring freeze in anticipation of FTE reductions in the 82nd legislative session. In FY 2017, the Governor imposed a hiring freeze through the end of the FY.

EIP’s claim that TCEQ “eliminated 296 positions since 2008”<sup>16</sup> is an error. The difference between the 2008 Authorized FTEs (2,942.3) and the 2018 Authorized FTEs (2,794.8) is 147.5.<sup>17</sup> That difference includes 20 FTEs transferred to the PUC, as noted above. Regardless, EIP overstates the difference in authorized positions by more than double.

*TCEQ Continues to Have the Resources to Fulfill its Mission*

EIP is not incorrect in identifying a strong economy, rapid development in the Permian Basin, and an unprecedented series of industrial explosions and fires<sup>18</sup> as presenting demands on our staff. A few years ago, Hurricane Harvey did the same. There have been and will be other staffing challenges.

A key aspect of managing this agency is matching the demands of our mission, within our jurisdiction, to the resources to meet those demands. That is an ever-continuing exercise.

As always, the agency is focused on ensuring appropriate levels of staffing to meet its current workload. If needed, TCEQ will seek appropriate increases to funding and staffing levels to support its oversight functions in the next legislative session.

In the meantime, TCEQ has adequate resources to meet its federal and state statutory responsibilities and to substantially meet and often outperform its Legislative Budget Board Performance Measures.<sup>19</sup>

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<sup>1</sup> EIP, *The Thin Green Line: Cuts in State Pollution Control Agencies Threaten Public Health* (Dec. 5, 2019) <https://www.environmentalintegrity.org/wp-content/uploads/2019/12/The-Thin-Green-Line-report-12.5.19.pdf>.

<sup>2</sup> See Perla Trevizo, *State's cuts cripple TCEQ oversight: Study shows Texas among 30 states to trim pollution control, even as chemical cases rise*, Houston Chronicle (Dec. 5, 2019) (print and online versions) (“Texas slashed funding to its environmental enforcement agency by more than a third over the last decade . . . raising concerns about how closely the oil and gas industry is being policed . . .”). The headline for the online version of this article has been changed, without notation or comment, to [Texas among top states in country to cut funds to environmental agencies](#). See also, Kiah Collier, [Report: Texas ranks second in budget cuts for environmental protection](#), Texas Tribune, (Dec. 5, 2019); Ilan Levin and Adrian Shelley, Op-Ed., *Industry oversight shrinks as profits and disasters grow: Instead of cutting funds to TCEQ, Texas should take lead in protecting residents*, Houston Chronicle (Dec. 8, 2019) (The headline for the online version of the opinion has changed, without notation or comment, to [New report: Budgets for industry oversight are shrinking as industry profits, and disasters, grow.](#)); and Editorial: *Ever-present peril State oversight of petrochemical plants is essential*, Houston Chronicle (Dec. 10, 2019) (The headline for the online version of the opinion has changed, without notation or comment, to [Texas isn't policing petrochemical plants \[Editorial\]](#)).

<sup>3</sup> We refer to the past decade as EIP defines it, *i.e.*, fiscal year (FY) 2008 through FY 2018.

<sup>4</sup> Because the coverage and commentary has focused on TCEQ’s ability to police regulated entities, TCEQ has interpreted oversight activities to include permitting, inspection, and enforcement activities, including programs for safe drinking water and radioactive material oversight.

<sup>5</sup> Compare oversight line items in [Table 1](#) with the full set of line items in [Attachment 1](#). Oversight funding excludes grant and remediation expenditures, among numerous others. See n. 4, *supra*.

<sup>6</sup> Older heavy-duty construction equipment, large trucks, and buses are all examples of mobile sources that may be eligible for TERP grants.

<sup>7</sup> While air quality challenges persist, TERP has been enormously successful. Since its inception in 2001, through 2019, Texas has awarded more than \$1.2 billion in TERP grants resulting in the elimination of more than 187,000 tons of nitrogen oxides (NOx), an ozone precursor. TERP has helped reduce ozone statewide by more than 30 percent from 2000 through 2018. By comparison, the rest of the nation averaged reductions of just 17 percent over the same period. TCEQ, *Air Quality Successes—Texas Compared to Other States*, <https://www.tceq.texas.gov/airquality/airsuccess/airsuccessstxcompared> (last visited, Jan. 7, 2020).

<sup>8</sup> EIP acknowledges the potential for large and highly variable expenditures—and specifically grants for capital expenditures—to distort its analysis. And so EIP endeavored to exclude such expenses. See n. 1, *supra*, at 7. EIP explains: “The data presented reflects each agency’s annual operating expenditures, and does not include capital spending. \* \* \* We excluded these capital costs because they can vary widely from one year to the next, and do not measure a state’s capacity to implement federal requirements that limit pollution from a wide range of private and public sources.” *Id.* To be clear, TERP expenses are for the purchase of capital assets and they vary widely from year to year. Further, TERP expenses have no bearing on Texas’s “capacity to implement federal requirements that limit pollution from . . . sources.” Indeed Texas, like most states, is preempted from regulating mobile sources of emissions. Thus, by comingling TERP expenses with TCEQ’s operating expenses, EIP appears to have misapplied its stated methodology and created a flawed assessment of Texas’s spending.

<sup>9</sup> See n.1, *supra*, at 16.

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<sup>10</sup> House Bill 1600, 83<sup>rd</sup> Leg., R.S.

<sup>11</sup> EIP's analysis treats this transfer as a cut. Although that is incorrect and reflects a flawed methodology, we have not endeavored to correct it in our presentation of oversight expenses. Accordingly, we understate the increase in TCEQ's spending on oversight activities.

<sup>12</sup> General Appropriations Act, Senate Bill 1, 85<sup>th</sup> Leg., R.S.

<sup>13</sup> *Forbes Magazine* identified TCEQ as one of America's Best Midsize Employers for 2018 and 2019. See Vicky Valet, America's Best Midsize Employers 2018, *Forbes*, May 1, 2018, <https://www.forbes.com/sites/vickyvalet/2018/05/01/americas-best-midsize-employers-2018/#1a0581b65cf6>; Vicky Valet, America's Best Midsize Employers 2019, *Forbes*, April 17, 2019, <https://www.forbes.com/sites/vickyvalet/2019/04/17/americas-best-midsize-employers-2019/#722c010c4273>.

<sup>14</sup> In fact, TCEQ imposed a temporary hiring freeze in FY 2011 to avoid layoffs in anticipation of legislative cuts given the projections of significantly reduced state revenue. Because the legislature meets only in odd-numbered years, the legislative response was not on pace with the rapid economic downturn.

<sup>15</sup> In addition to the gains shown in Table 3, the legislature has authorized 2820.3 FTEs for the FY 2020-21 biennium.

<sup>16</sup> See n.1, *supra* at 9. The legislature, rather than TCEQ, determines the number of authorized FTEs.

<sup>17</sup> The difference in the number of filled FTEs over the same time period is 268.6. By focusing on filled FTEs, as opposed to authorized FTEs, EIP has comingled vacant positions and eliminated positions and deemed them all to be eliminated positions. EIP then transposed its number (269) to reach 296.

<sup>18</sup> For example, on March 27, 2019, a massive, multi-day fire began at Intercontinental Terminals Company's Deer Park tank farm. On April 2, 2019, a fatal fire occurred at KMCO's chemicals plant in Crosby. ExxonMobil's Baytown facility experienced a fire on March 16, 2019, and another explosion and fire on July 31, 2019. Most recently, TPC's Port Neches chemical plant exploded and caught fire on November 27, 2019 and resulted in extensive area evacuations.

<sup>19</sup> See, e.g., TCEQ, Annual Report on Performance Measures, Fiscal Year 2019 (Nov. 2019), [https://www.tceq.texas.gov/assets/public/comm\\_exec/pubs/sfr/055-19.pdf](https://www.tceq.texas.gov/assets/public/comm_exec/pubs/sfr/055-19.pdf).

# TCEQ Expenses as Presented by EIP\*†

# Attachment 1

Line Items/Programs	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Total [FTEs]	2,855.30	2,884.30	2,915.60	2,941.20	2,834.70	2,644.30	2,613.70	2,654.70	2,689.20	2,697.00	2,675.90	2,615.70
Air Quality Permitting	11,123,587	13,302,733	13,751,469	13,958,684	13,448,798	14,088,837	13,874,919	13,668,335	14,262,532	15,023,673	14,555,916	15,035,805
Water Resource Permitting	11,046,064	12,282,118	12,534,122	13,114,694	13,545,132	12,814,531	12,608,770	12,589,328	14,025,062	15,454,224	15,295,375	14,998,211
Waste Mgt And Permitting	7,937,833	8,987,824	9,278,849	9,651,527	9,560,693	9,686,973	9,262,983	9,414,644	9,406,949	9,522,202	9,681,034	9,156,844
Air Quality Assessment Planning	89,778,786	226,691,848	285,978,500	192,013,727	124,382,034	80,721,775	74,022,167	102,087,234	97,750,563	164,934,716	161,029,061	132,988,056
Water Assessment Planning	17,491,316	30,445,286	28,755,450	32,189,380	30,514,599	28,692,754	31,824,368	32,771,875	29,080,711	30,289,993	30,981,114	26,976,528
Waste Assessment Planning	11,708,720	14,050,879	12,114,504	13,772,306	10,441,480	9,900,593	7,300,241	6,893,606	6,841,543	6,517,921	6,636,407	6,395,900
Pollution Prevention	4,520,176	5,158,863	4,089,347	5,139,330	4,044,169	1,396,908	1,059,309	1,286,084	1,506,193	1,651,488	1,905,970	1,808,399
Low Level Radioactive Waste	778,571	1,188,413	1,145,267	2,454,351	3,193,956	3,078,035	2,843,462	2,672,389	2,890,194	319,696	866	
Radioactive Materials Mgt										2,488,727	2,769,826	2,684,983
Safe Drinking Water	8,999,013	9,966,911	10,315,622	11,423,693	10,273,872	9,603,981	11,028,263	11,521,386	13,273,416	15,659,964	15,853,481	16,134,232
Water Utilities Oversight	2,199,729	4,168,010	5,025,730	4,059,735	4,165,745	5,081,109	3,202,327	3,081,147	1,427,703	92,131		
Field Inspections Complaints	30,165,464	33,186,532	38,578,504	39,619,393	39,885,805	41,423,140	43,067,172	39,992,816	45,954,688	45,310,986	44,684,975	44,573,422
Enforcement And Compliance	9,587,640	10,913,525	10,789,350	11,652,258	11,737,431	10,565,344	10,812,675	10,786,485	11,986,335	13,005,822	13,113,826	12,561,915
Storage Tank Admin	41,762,013	46,869,669	44,760,163	37,672,829	28,768,204	26,497,149	13,799,928	17,893,920	19,421,190	7,874,425		
Storage Tank Admin Cleanup										11,551,762	17,310,374	17,916,980
Hazardous Materials Cleanup	15,802,840	25,715,370	24,056,004	39,125,875	28,611,886	28,436,311	24,673,242	25,357,550	29,807,022	23,270,037	24,834,326	21,521,248
Central Administration	16,021,670	18,254,272	18,441,802	18,983,668	18,505,047	17,273,720	16,809,516	17,797,718	18,537,343	19,373,494	19,865,912	18,887,792
Information Resources	9,881,796	8,336,271	9,809,293	9,326,903	9,042,445	8,864,974	8,166,647	8,753,398	8,497,970	9,273,530	9,327,951	10,235,461
Other Support Services	9,715,917	10,042,113	10,315,054	10,575,867	10,508,418	9,800,864	9,758,068	9,833,303	9,743,349	9,211,442	7,879,188	8,383,825
Tech Replacement	957,669	1,115,033	647,832	1,143,542	1,932,785	314,488		514,991	727,048	43,014	1,318,711	1,344,913
Software	94,605	656,272	31,311	16,657	365,218							
TX Air Monitoring Info		156,868	169,510									
WUD Data			297,222	222								
Data Network & Security		690,190	344,127	1,199,251	826,609	458,463				540,575	549,214	417,269
Vehicle	86,268	1,057,495	989,332	1,318,661	1,513,328	149,697		266,636	885,948	784,877	1,872,295	1,499,010
Air Monitoring	1,008,954	1,750,386	992,007	1,886,913	1,722,225	1,214,094	894,462	848,683	415,992	349,247		
Water Monitoring	351,058	881,064	450,599	684,183	722,889	697,569	360,420	231,638	181,316	414,731		
Data Consolidation		6,304,216	8,617,396	8,010,086	7,986,719	10,024,907	11,342,346	10,841,157	9,553,945	11,974,160	10,979,321	10,634,545
TERP Database				4,566	815,049	298,513	130,930					
Permitting and Registration Info				1,188,611	1,783,248	1,814,618	2,752,242	154,383				
Photochemical Modeling				301,046	18,940							
Air Permits Database				93,200	705,114	386,165						
Eight Hour Ozone				325,674	385,088	5,606						
Monitoring Equipment - misc					124,735							166,378
Tech - Misc	2,981,952	898,023	223,695					199,357	984,512	132,821		
SIP		599,974						145,706	104,294			145,348
TCEQ Records Mgt								571,974	249,693			
Phone Replacement									129,977			
Total	304,001,640	493,670,159	552,502,061	480,906,832	389,531,659	333,291,118	309,594,456	340,175,741	347,645,487	415,065,658	410,445,141	374,467,064

\* Source: EIP data linked to interactive map at <https://www.environmentalintegrity.org/reports/the-thin-green-line/> (last accessed Jan. 7, 2020). EIP identifies the Texas Comptroller as its source for the data, specifically at <https://comptroller.texas.gov/transparency/budget/tools.php>.

† There are discrepancies between EIP's presentation of the data and the Comptroller's presentation. For example, EIP reports \$164,934,716 for 2016 Air Quality Assessment and Planning, while the Comptroller reports \$167,934,716; and EIP reports \$12,589,328 for 2014 Water Resource Permitting, while the Comptroller reports \$12,599,329. In addition, EIP has omitted certain line items for expenditures that were authorized by rider. For example, EIP omitted \$144,565 spent in FY 2018 for the expedited processing of air permits. We have not determined the full scope, magnitude, or reason(s) for the discrepancies, nor attempted to correct them.