

Enforcement Report

RRC

TEXAS RAILROAD COMMISSION

**Inadequate enforcement means
irresponsible oil and gas
development**

SEPTEMBER 2012



Failure to adequately enforce
RRC oil and gas rules is harming
public health, safety, and the
environment



EARTHWORKS™

OIL & GAS ACCOUNTABILITY PROJECT

Texas' Oil & Gas Enforcement

RRC — IT IS TIME FOR SERIOUS INSPECTIONS AND ENFORCEMENT

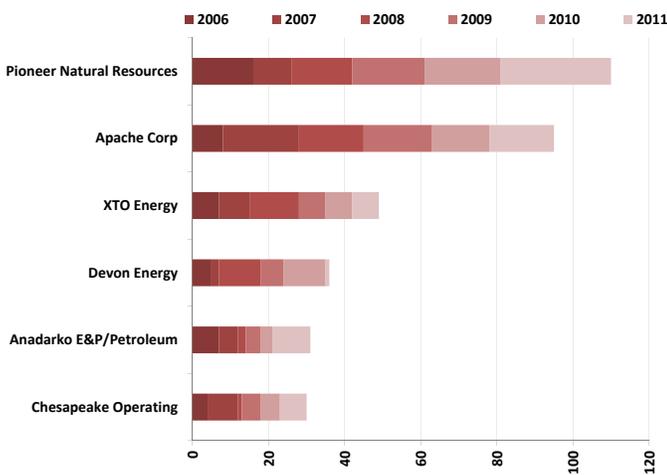
The Railroad Commission of Texas (RRC) – the state agency responsible for oil and gas industry oversight – has the dual role of maximizing development of oil and gas while also protecting public safety and the environment.¹

This fact sheet examines how well the RRC is overseeing oil and gas activity in Texas through its enforcement efforts.

The Railroad Commission's records show that the agency is not keeping companies from damaging the environment. As seen in the chart below, operators repeatedly have crude oil and natural gas spills from tank batteries due to "equipment failures," resulting in dozens of cases of polluted water.²

A review of publicly available RRC information shows that Texas' capacity to regulate the oil and gas industry has been, and remains, limited:

- Inspections are decreasing despite additional staff
- Fines for oil and gas violations are inadequate
- Enforcement tools are not deterring repeat offenders
- RRC should do more to enable citizen participation in enforcement



Spills Caused by Equipment Failures at Tank Batteries

These types of spills often contaminate soils, create wastes that require remediation for proper disposal, and some contaminate water resources. Between 2006 and 2011 six operators each had more than 30 incidents leading to crude oil and product spills at tank batteries.

Pioneer Natural Resources had 29 spills in 2011 alone, and over the six-year period had 110 of this type of spill.

This pattern strongly indicates that the RRC has not done enough to encourage or require companies to prevent pollution.

Inspections – TEXAS SETTING A LOW BAR

Between 1993 and 2011 the number of wells producing oil and gas in Texas increased by 24,000, but the number of RRC inspectors fell by 20.³

As a result, in 2011 each inspector was responsible for inspecting close to 2,700 wells, versus 2,000 in 1993. In 2011, inspectors visited fewer than 1,200 wells each.⁴

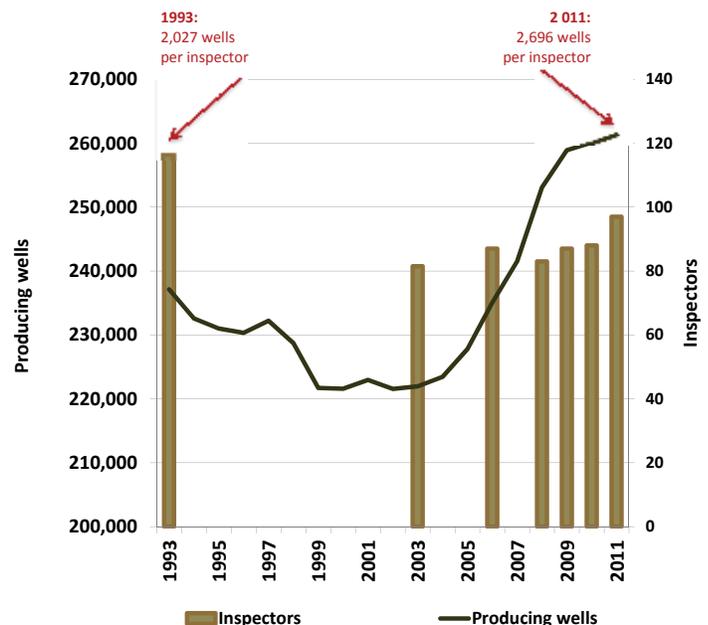
In 2010, RRC acknowledged that increased industry activity and a lack of staff required a reactive rather than proactive approach to inspections, and that they could do "more with increased funding and staffing levels."⁵ But the addition of inspectors in 2011 did not result in increased inspection activity.

In 2009, with 87 inspectors, the RRC conducted more than 128,000 oil and gas inspections. In 2011, despite additional inspectors, the agency performed fewer than 115,000 inspections – a drop of 13,000 inspections from 2009.⁶ RRC has set an even lower goal of 113,400 inspections for 2012, even though 2012 has seen significant increase in oil and gas drilling.⁷

Fewer inspections means that more oil and gas facilities operate with little or no oversight. Assuming each inspection occurred at a different facility, in 2009 RRC failed to inspect approximately 270,000 oil and gas facilities, while in 2011 the agency was unable to inspect 296,000 wells and related facilities.⁸



In 2009 Texas failed to inspect 130,600 wells — 56 percent of the producing wells in the state.



Number of Inspectors Not Keeping Pace with Number of Wells

Between 1993 and 2011 the number of wells producing oil and gas increased by 24,000, but the number of inspectors fell by 20.

As a result, in 2011 each inspector was responsible for inspecting close to 2,700 wells, versus 2,000 in 1993. In 2011, inspectors visited fewer than 1,200 wells each.

Violations – COMPLIANCE A SERIOUS PROBLEM

Between 2006 and 2010, the RRC documented between 70,000 and 90,000 oil and gas violations per year.⁹ With numbers this high, it is clear that a very serious problem with compliance exists in Texas oil and gas fields.

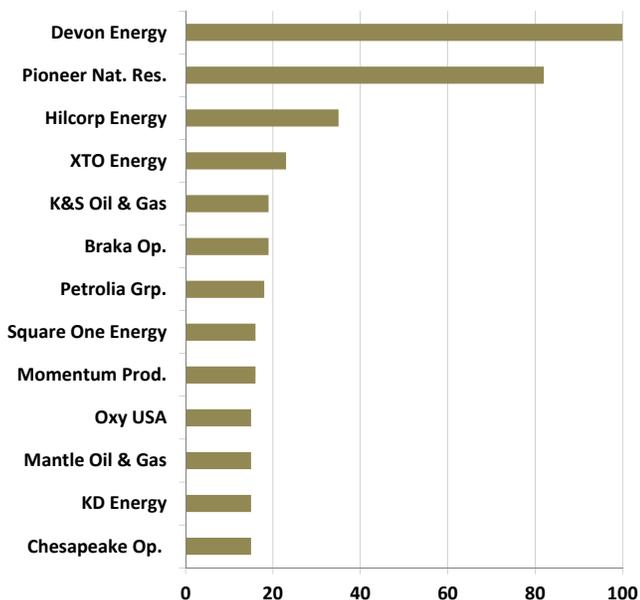
In 2010 RRC inspectors found more violations per inspection than their counterparts in other states: they found 0.6 violations per inspection, while oil and gas inspectors in Pennsylvania and Ohio found 0.2 and 0.1 violations per inspection.¹⁰

According to the Texas Sunset Commission, which reviewed the RRC enforcement program in 2011, “part of the reason for the large number of violations is that the Commission’s enforcement process is not structured to deter repeat violations.”¹¹

In 2012, RRC began publishing the number of companies who violated a rule that they had violated in the previous seven years. In the first three quarters of 2012, there were 90 repeat violators.¹²

In Texas, operators with inactive wells are required to conduct an H-15 (e.g., mechanical integrity) test “to establish that an inactive well over 25 years old does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.”¹³ As seen in the chart below, over a two-year period numerous companies violated this rule multiple times.

Companies also violate the same rule on many well sites. Companies also repeatedly violate the same rule at the same facility: For example, in 1995, 1997, 1999, 2002, 2004, and 2006 Chesapeake was sent certified letters for failing to file H-15 forms for the Detijerina, H.C. lease. Similarly, Devon Energy was issued certified letters because of delinquent H-15 filings on its Fagan H.F. lease in 1994, 1995, 1996, 1999, 2001, 2002, 2003, 2004, and 2009.¹⁴



Delinquent H-15 (Mechanical Integrity) Reports are Common

Over a two-year period (2010 and 2011) there were 1,713 delinquent H-15 reports for natural gas leases.

This chart shows companies with 15 or more delinquent H-15 reports for gas leases during this period. Devon Energy and Pioneer Natural Resources were the worst offenders, failing to file 100 and 82 H-15 reports, respectively.

Enforcement Actions – NOT ENOUGH TO DETER VIOLATORS

When oil and gas violations occur, the RRC relies on the discretion of each district office to determine whether or not to forward the case to the agency’s central office for enforcement action.¹⁵ Very few enforcement referrals are made compared to the number of violations identified by RRC field staff. Between 2006 and 2010 less than one percent of oil and gas violations found by inspectors were referred to RRC enforcement staff. During the first three quarters of 2012, the referral rate has increased slightly, to just over two percent.¹⁶ Compared to other states, however, RRC’s enforcement rate is low. For example, in 2010 RRC district offices made one enforcement “referral” per 160 oil and gas violations.

Meanwhile, that same year Pennsylvania took one enforcement action for every 3.3 violations.¹⁷

As the Sunset Commission found in its 2011 review: “...the Commission takes relatively few enforcement actions, resulting in a lack of deterrence for future noncompliance. While there is no standard for how many violations should result in a monetary sanction, action should be frequent enough to deter future violations.”¹⁸

One enforcement action per 160 violations is highly unlikely to motivate oil and gas companies to comply with the Texas oil and gas rules. Perhaps the recent increase in enforcement actions will provide an increased incentive to operators, but this remains to be seen.

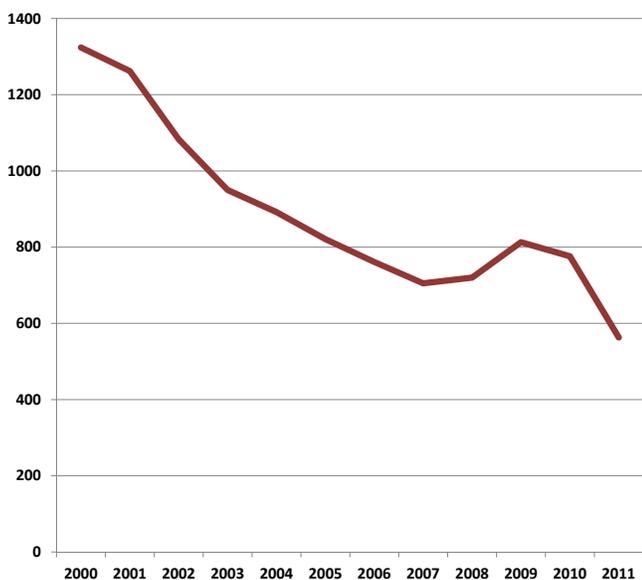


Yearly the Railroad Commission of Texas issues 70,000 to 90,000 violations with only a few hundred cases referred for enforcement.

SEVERANCES AND SEALS: According to Michael Williams, previous Railroad Commissioner, the RRC's alternative to full-blown enforcement actions is the use of lease severances to enforce rules, deter future violations and bring operators into quick compliance – without the delay and expense of an enforcement hearing.¹⁹ The RRC may shut in and seal a well if it appears that the operator has violated or is violating any statute, rule, permit, or order of the Commission.²¹

The power of the severance or seal is that it requires operators to stop production of oil or gas at a facility that is in violation of an RRC rule. As a result, operators lose revenue until they bring the wells back into compliance and are allowed to resume production.

One reason some operators may not resolve violations is that they don't actually stop producing oil or gas when they receive a severance letter, and therefore, they don't feel the economic pain of the enforcement action. For example, in 2002 there were 1,214 operators who continued producing and/or selling product from wells after being ordered to cease production.²¹ The reason operators can get away with continued production is that the issuance of a severance does not always involve an inspector going to the site and physically sealing the well to prevent production.²²



Severances for Field Rule Violations

In the past five years, the RRC issued between 6,000 and 8,500 severances/seals per year.²³ According to one report, this enforcement tool is more often used to punish operators for failing to file paperwork than for breaking health, environmental or safety (field) rules.²⁴

As seen in the chart, our research shows that the number of severances and seals used by the RRC for field rule violations hit an 11-year low in 2011.²⁵

This suggests that RRC is not taking full advantage of this valuable enforcement tool.

Penalties – TOO LOW TO BE EFFECTIVE

When enforcement actions are taken against an oil or gas operator, the operator may receive a monetary penalty. Penalties not only provide a source of revenue to the RRC, they can be an important tool to motivate operators to comply with RRC rules. According to the Sunset Commission, “the efficient and fair use of penalties plays a key role in deterring and punishing violators, and thus increases compliance.”²⁶

In 2009, RRC collected \$2 million in penalties. There were 549 enforcement referrals that year.²⁷ Assuming every referral resulted in a penalty, the average penalty in 2009 was less than \$3,700. In 2012, the average penalty dropped to just over \$1,000.²⁸

A penalty of a few thousand dollars is unlikely to have any effect on the behavior of many oil and gas operators. To demonstrate that it is serious about oil and gas enforcement, RRC needs to increase the maximum penalties for oil and gas rule violations. These penalties have not changed since they were established in 1983 – three decades ago.²⁹ At the present time, the largest penalty is \$10,000 per day, and this only pertains to safety and pollution violations. If that maximum had been adjusted for inflation, a penalty of \$10,000 per day in 1983 dollars would amount to \$22,850 per day in 2012 dollars.³⁰

“Part of the reason for the large number of violations is that the Commission’s enforcement process is not structured to deter repeat violations.”

— Texas Sunset Commission, reviewing the RRC enforcement program in 2011

Other states have recognized and acted on the need to increase administrative penalties for oil and gas violations. In 2012, Pennsylvania increased the maximum penalty for unconventional oil and gas wells from \$25,000 (plus \$1,000 per day of continuing violation) to \$75,000 (plus \$5,000 per day).³¹

RRC should also increase the deterrent effect of penalties by strengthening requirements to penalize repeat violators, and by adding a provision that removes the economic benefit that operators enjoy through non-compliance.

In 2012, the RRC amended its rules to provide guidance (not requirements) to enforcement staff on enhancing penalties for repeat violators.³² The enhancements, although a step in the right direction, appear to be far too small to provide much of a deterrent effect. For example, if an operator has a record of five or more violations in the previous seven years, the potential enhancement amount is \$5,000. A \$5,000 fine for operators who have a habit of non-compliance sends a weak deterrence message.

The RRC, unlike many other states and even sister agencies such as the Texas Commission on Environmental Quality (TCEQ), does not consider the “economic benefits of non-compliance” when calculating its penalties. Thus, an oil and gas operator might violate the law, get slapped with a minimum penalty, but do so with the knowledge that the money saved by not following the law was significantly greater than the fine they had to pay. TCEQ, on the other hand, currently has a policy that if a violator gains at least \$15,000 in economic gain by not following the law, then the TCEQ will increase the penalty by 50%.³³

Public Participation – CITIZENS HELP FIND VIOLATIONS; PUBLIC DATA ACCESS NEEDS IMPROVEMENT

Citizen complaints can provide a crucial early warning of problems at oil and gas sites. In 2009, the RRC received 681 complaints related to oil and gas and found 1,997 violations based on these complaints.³⁴

The RRC itself has said it views citizens as “extra eyes to help the RRC identify problems.”³⁵ Yet the RRC does not consistently respond to violations identified from citizen complaints. In 2009, RRC took enforcement action for just 4 percent (91) of the 1,997 violations found as a result of complaints.³⁶

The Sunset Commission stated that this lack of consistency “can contribute to a public perception that the Commission is not willing to take strong enforcement action.”³⁷ A 2012 *Star-Telegram* editorial stated that “Too many people in Texas see the commission as a servant of and beholden to the oil and gas industry, not as a regulator on behalf of the people of the state.”³⁸



Citizens do have the potential to be “extra eyes” for RRC, but to be more effective participants in oil and gas enforcement citizens need to know that their input is valued, and they need better access to information.

As a result of Rider 17 of the 2012-2013 General Appropriations Act, the RRC is

now required to publish enforcement information on its web site, including violations, the amount of final enforcement penalties assessed to the operator, and a quarterly report that includes a section on enforcement trends.³⁹ However, this general information does not help citizens to monitor specific operations or operators.

There is currently no way for Texas citizens to easily track and find detailed information on violations, enforcement actions and penalties related to oil and gas facilities in their neighborhood or state. States such as Pennsylvania and Colorado provide this information to the public.⁴⁰

The Path Forward

No matter how strong the statutory or regulatory standards for oil and gas development, inadequate enforcement of those standards guarantees irresponsible development. To make oil and gas enforcement more than an afterthought, the RRC needs new enforcement rules and practices. **They should include:**

INSPECTIONS

- Develop comprehensive and binding inspection protocols.
- Establish minimum inspector-to-well and annual-inspections-to-well ratios. New wells must not be allowed until the state can effectively manage existing operations.
- Pay inspectors competitive salaries in order to retain high quality personnel and ensure competent inspections.



In 2010, the RRC acknowledged that the lack of staff resulted in a reactive approach, and they could do “more with increased funding and staffing levels.”

ENFORCEMENT ACTIONS

- Establish binding criteria for taking enforcement actions and levying penalties.
- Increase the use of enforcement actions to deter would-be violators.
- Assess higher minimum and maximum penalties and utilize penalty enhancements for repeat violators to the maximum extent possible.
- Increase the use of severances and seals to encourage compliance with field rule violations. To enhance their effectiveness, add more enforcement staff to ensure that wells are physically sealed to stop production.
- Establish and enforce a penalty policy to enable RRC to collect penalties equivalent to the value of the economic benefit that oil and gas operators gain from noncompliance with oil and gas laws.

ACCOUNTABILITY AND THE PUBLIC’S ROLE

- Collect comprehensive data regarding citizen complaints – including facilities of concern, nature of complaint, and resolution. Ensure that violations found as a result of citizen complaints are consistently enforced.
- Publish comprehensive oil and gas enforcement data (complaints, inspections, violations, enforcement actions taken, and penalties levied/collected) online, in a publicly accessible, searchable format. Make data available by operator and on a well-by-well basis and by bulk download.

For a more detailed analysis of oil and gas enforcement in Texas, visit Earthworks’ Texas Enforcement web page: <http://enforcement-tx.earthworksaction.org>

ENDNOTES

- 1 Railroad Commission of Texas (RRC). June 18, 2010. Strategic Plan for the Fiscal Years 2011 to 2015. p. 16. <http://www.rrc.state.tx.us/about/statplan10/statplan2011-2015.pdf>
- 2 Between 2006 and 2011 equipment failure caused a total of 2,631 spills at tank batteries – 45 of which polluted water. (Source: Railroad Commission of Texas web site: "Crude Oil, Gas Well Liquids or Associated Products (H-8) Loss Reports." <http://www.rrc.state.tx.us/environmental/spills/h8s/index.php>)
See Earthworks table: "Operators with Crude Oil/Gas Product Spills from Equipment Failures at Tank Batteries" to find data for the spills chart: http://www.earthworksaction.org/images/uploads/Texas_tank_battery_spills_table_footnotes.gif
- 3 See Earthworks table: "Texas Railroad Commission Inspection Data" for data and references: http://www.earthworksaction.org/images/uploads/Texas_inspection_data_footnotes.gif
- 4 *ibid.*
- 5 "In light of increased responsibility and industry activity, demands on the districts have increased significantly over the last several years. . . Until staffing levels are increased to reflect the magnitude of our vast responsibilities our function in the field will continue to be governed by "reactive" activities as opposed to proactive activities." (Source: Ross, Charles C. Deputy Director, Field Operations, Railroad Commission of Texas. February 1, 2010. "Field Operations: Job Priorities." Obtained from TX RRC Open Records Coordinator, Debra Ravel, via email. Sept. 29, 2011.)
- 6 See endnote 3.
- 7 Inspection goal from: RRC Operating Budget for the Fiscal Year 2012. Strategy III.A., page 15 of 29. <http://www.rrc.state.tx.us/about/divisions/opBudget.pdf>
Oil and gas activity data: There were 4,043 more wells drilled and completed in Texas between January and July of 2012 than during the same period in 2011. (Source: RRC web site. "Monthly Drilling, Completion, and Plugging Summaries." July 2012. <http://www.rrc.state.tx.us/data/drilling/drillingsummary/index.php>)
- 8 2009 data on inspections and oil and gas facilities from: RRC. August 2010. Legislative Appropriations Request for Fiscal Years 2012-2013. 3.A. Strategy Request, page 19 of 28. <http://www.rrc.state.tx.us/about/divisions/RRC2012-13LAR.pdf>
2011 data from: RRC. August 2012. Legislative Appropriations Request for Fiscal Years 2014-2015. 3.A. Strategy Request, page 25 of 51. <http://www.rrc.state.tx.us/about/divisions/2014-15LAR.pdf>
- 9 See Earthworks table: "Texas inspections and Violations Data (2006-2010) for data sources: http://www.earthworksaction.org/images/uploads/Texas_inspections_violations_data_footnotes.gif
- 10 See Earthworks' table "Oil and Gas Violations and Inspections by State (2010)" for data sources: http://www.earthworksaction.org/images/uploads/Texas_violations_per_inspection_footnotes.gif
- 11 Sunset Advisory Commission. July 2011. Final Report - Railroad Commission of Texas. p. 2. http://www.sunset.state.tx.us/82ndReports/RCT/RCT_FR.pdf
- 12 RRC Quarterly Report on Oil & Gas Enforcement Data - Third Quarter 2012. http://www.rrc.state.tx.us/compliance/complaints/Rider17_3rdQTR_FY12.pdf
- 13 The actual test is generally either a static well fluid level test (FL) or a mechanical integrity test (MIT). (Source: RRC of Texas web site: "H-15 Program - Testing of Older Inactive Wells Over 25 Years Old Frequently Asked Questions (FAQs)." <http://www.rrc.state.tx.us/about/faqs/h15faqs.php>) According to the severance database, failure to file the H-15 test report is a violation of Statewide Rule 14(B) (2). For an example, see <http://preview.tinyurl.com/ckbt5dx>.
- 14 Severance Query. Oil Lease No./Gas Well ID No. = 01193. View results at: <http://tinyurl.com/3lajh5s>
- 15 See endnote 11., pp. 33, 34.
- 16 In the first three quarters of 2012, the RRC documented 40,575 violations and referred 820 (2.02%) for enforcement. RRC Quarterly Report on Oil & Gas Enforcement Data - Third Quarter 2012. http://www.rrc.state.tx.us/compliance/complaints/Rider17_3rdQTR_FY12.pdf See Earthworks' table "RRC Enforcement Statistics" for data on years 2006-2011. http://www.earthworksaction.org/images/uploads/Texas_enforcement_data_footnotes.gif
- 17 See Earthworks' table "Comparison of state enforcement rates (2010)" for data sources: http://www.earthworksaction.org/images/uploads/Texas_comparison_of_enforcement_data_footnotes.gif
- 18 See endnote 11., p. 33.
- 19 Williams, Michael. Dec. 21, 2010. Testimony before the Texas Sunset Advisory Commission. <http://www.sunset.state.tx.us/82ndreports/rct/responses/135.pdf>
- 20 Texas Administrative Code. Title 16, Part 1, Chapter 3, Rule §3.73. Pipeline Connection; Cancellation of Certificate of Compliance; Severance. [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=16&pt=1&ch=3&rl=73](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=16&pt=1&ch=3&rl=73)
- 21 March 2003. "RRC Bags Bad Operator – Begins Era of Strong Enforcement," News from Railroad Commission Chairman Michael L. Williams. <http://www.rrc.state.tx.us/pressreleases/2003/030312.php>
- 22 Earthworks was told by RRC compliance and field operations staff that because the agency is understaffed it could be a month or more before inspectors physically get to wells that have been severed—if they make it there at all. Pers. Comm. Lisa Sumi and RRC staff. September, 2011.
- 23 See Earthworks' table "Texas Outstanding and Resolved Severances and Seals" for data sources: http://www.earthworksaction.org/images/uploads/Texas_table_resolved_severances_footnotes.gif
- 24 Soraghan, M. April 4, 2012. "Enforcement: Texas inspectors use their strongest punishment against paper violations," *EnergyWire*. <http://www.eenews.net/public/energywire/2012/04/04/1>
- 25 See Earthworks' table "Severances/Seals Issued for Field Rule Violations" for data sources: http://www.earthworksaction.org/images/uploads/Texas_field_rule_severances_table.gif
- 26 See endnote 11., p. 33.
- 27 For penalty data see source in endnote 11, p. 33. For referral data see "Buried secrets – gas drilling's environmental impact," *ProPublica*. <http://projects.propublica.org/gas-drilling-regulatory-states/TX>
- 28 Data for first three quarters of fiscal year 2012. (Source: RRC. Rider 17 3rd quarter report. http://www.rrc.state.tx.us/compliance/complaints/Rider17_3rdQTR_FY12.pdf)
- 29 In 1983 the Texas Legislature authorized the Commission to assess administrative penalties of up to \$10,000 per day for a violation of its environmental or safety rules. (Source: RRC. "Surface Waste Management Manual." <http://www.rrc.state.tx.us/forms/publications/SurfaceWasteManagementManual/chapter1.php>) This is still the maximum. (Source: Texas Natural Resources Code. Section 81.0531. <http://www.statutes.legis.state.tx.us/Docs/NR/htm/NR.81.htm#81.0531>)
- 30 U.S. Bureau of Labor Statistics. "CPI Inflation Calculator." http://www.bls.gov/data/inflation_calculator.htm
- 31 House Bill 1950, became Pennsylvania Act 13, Feb. 14, 2012. See § 3256. Civil Penalties. <http://www.legis.state.pa.us/WU01/LI/LI/US/HTML/2012/0/0013..HTM>
- 32 RRC of Texas. Rule 3.107: Penalty Guidelines for Oil and Gas Violations. Adopted August 7, 2012. <http://www.sos.state.tx.us/texreg/archive/August242012/adopted/16.ECONOMIC%20REGULATION.html#221>
- 33 Texas Commission on Environmental Quality. Oct. 2011. "Penalty Policy." Office of Compliance and Enforcement / Enforcement Division. p. 18. http://www.tceq.texas.gov/assets/public/comm_exec/pubs/rg/rq253/penaltypolicy2011.pdf
- 34 See endnote 11., p. 35.
- 35 Railroad Commission of Texas. Sept. 2009. Self Evaluation Report. Submitted to the Sunset Advisory Commission. p. 102. <http://www.sunset.state.tx.us/82ndreports/rct/ser.pdf>
- 36 See endnote 11., p. 35.
- 37 See endnote 11., p. 35.
- 38 May 22, 2012. "At the Texas Railroad Commission, the public comes last." Editorial. *Star-Telegram*. <http://www.star-telegram.com/2012/05/22/3979334/at-the-texas-railroad-commission.html#storylink=cpy>
- 39 General Appropriations Act for the 2012-13 Biennium. 82nd Texas Legislature Regular Session, 2011. Sept. 12, 2011. p. VI-60. http://www.lbb.state.tx.us/Bill_82/GAA.pdf
- 40 Find out more by visiting Earthworks' Texas Enforcement – Public Participation web page: http://www.earthworksaction.org/issues/detail/texas_oil_gas_enforcement_the_publics_role

Endorsing Organizations

Environment Texas
Westchester Association of Homeowners
Texas Drought Project

Downwinders At Risk
Air Alliance Houston
Gardendale Accountability Project, Inc.

Mountain Creek Neighborhood Alliance
Clean Water Action
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North Central Texas Communities Alliance, NCTCA
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