



TEXAS OIL & GAS FLARING:  
A Report on Flaring, Permitting, and the Complaint Process in the Texas Oil & Gas  
Industry

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## INTRODUCTION

Natural gas is often produced as a side effect of drilling for oil. “Flaring” is the process of burning natural gas to dispose of the gas while releasing emissions into the atmosphere. A gas flare is a mechanical device used to combust and thereby destroy volatile organic compounds, toxic compounds, and other pollutants at oil and gas refineries and other industrial sites.<sup>1</sup> The EPA estimates there are about five hundred flares at more than 100 U.S. refineries, but there are many more at chemical plants and at drilling sites.<sup>2</sup> Federal requirements for flares require, at a minimum, that flares be: designed and operated with no visible emissions; operated with a flame present at all times; used only when the net heating value of the gas to be combusted is 300 BTU per standard cubic foot or greater (if the flare is steam- or air-assisted), or 200 BTU/scf or greater (if the flare is nonassisted); and designed for and operated with an exit velocity less than 60 feet per second.<sup>3</sup>

Several observers have reported that the popularity of flaring is driven by low natural gas prices and high oil prices that provide significant incentives to drill for oil and little incentive to capture the gas.<sup>4</sup> As a result, oil is being produced at a significant cost in associated natural gas that is simply burned off into the atmosphere during flaring, needlessly increasing greenhouse gas emissions and creating a potential health hazard for

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<sup>1</sup> ENVTL. PROT. AGENCY, EPA ENFORCEMENT TARGETS FLARING EFFICIENCY VIOLATIONS 1 (2012), *available at* <http://www.epa.gov/compliance/resources/newsletters/civil/enfalert/index.html>.

<sup>2</sup> ENVTL. INTEGRITY PROJECT, FACT SHEET ON POLLUTION FROM FLARES (Apr. 2015), *available at* <http://environmentalintegrity.org/archives/7263>.

<sup>3</sup> ENVTL. PROT. AGENCY, EPA ENFORCEMENT TARGETS FLARING EFFICIENCY VIOLATIONS at 1.

<sup>4</sup> Dusty Horwitt, *Up in Flames: U.S. Shale Boom Comes at Expense of Wasted Natural Gas, Increased CO<sub>2</sub>*, EARTHWORKS 11 (2014).

nearby residents.<sup>5</sup> Flaring can produce air pollution with negative impacts locally due to volatile organic compounds such as benzene.<sup>6</sup> An additional problem with flaring is that carbon dioxide is emitted when natural gas is flared, thus contributing to climate change.<sup>7</sup> Flaring also deprives states of tax revenue and royalty owners of proceeds while ensuring that gas that could have been put to productive use is gone forever.<sup>8</sup>

Flaring of natural gas in Texas, particularly at oil wells, is becoming increasingly more prevalent as oil production booms. For example, a 2014 Earthworks report notes that the number of flaring permits in Texas increased from 107 in 2008 to over 3,000 in 2013.<sup>9</sup> The oil and gas wells in the Eagle Ford Shale, which comprise only 3.2% of Texas's total wells, flared 34 billion cubic feet of gas in 2013, 54% of gas flared from all wells in the state.<sup>10</sup> Almost 90% of the flaring came from oil wells in the formation, as opposed to natural gas wells.<sup>11</sup> In that same year, the flaring from just the Eagle Ford Shale oil wells totaled about 3.5 billion pounds of carbon dioxide, equal to a year's worth of carbon emissions from about 350,000 cars and light trucks.<sup>12</sup> Researchers from the *San Antonio Express-News* found that from 2009 through the first seven months of 2014 oil and gas operators in the Eagle Ford region wasted about 94 billion cubic feet of natural gas – roughly enough gas to serve the heating and cooking needs of all the homes in San

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<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Antonio over four years.<sup>13</sup> The same researchers found that flaring in Texas' Eagle Ford Shale alone has increased 400 percent since 2009, and that residents filed several complaints with state officials about poor air quality associated with flaring to no avail.<sup>14</sup>

Flaring, from either oil or natural gas wells, is subject to a host of regulations. State and federal agencies regulate everything from which facilities may flare to how much output they may flare at one time. In the state of Texas, flaring is regulated by two state agencies and the federal Environmental Protection Agency.

### **SECTION 1: FLARING PERMITTING IN TEXAS AGENCIES**

Flaring and venting of natural gas from oil and gas operations in Texas are regulated by the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).<sup>15</sup> The RRC regulations strive to maximize production and minimize waste. The TCEQ, which has jurisdiction over odor and air contaminants, focuses on limiting air pollution.<sup>16</sup> Regulations from these two agencies include permitting and emergency reporting requirements.<sup>17</sup> The RRC, which has primary regulatory jurisdiction over the Texas oil and gas industry, enforces state laws and grants

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<sup>13</sup> Virginia Palacios, *A Neighborly Approach to Cleaning the Air in South Texas*, ENVTL. DEFENSE FUND (2015), available at <http://blogs.edf.org/texascleanairmatters/2015/06/22/a-neighborly-approach-to-cleaning-the-air-in-south-texas/>.

<sup>14</sup> Elena Craft, *Money to Burn? EDF Questions Public Health Priorities at TCEQ*, ENVTL. DEFENSE FUND (2014), available at [http://blogs.edf.org/texascleanairmatters/2014/10/24/money-to-burn-questioning-public-health-priorities-at-the-tceq/?\\_ga=1.26822904.472927105.1437398373](http://blogs.edf.org/texascleanairmatters/2014/10/24/money-to-burn-questioning-public-health-priorities-at-the-tceq/?_ga=1.26822904.472927105.1437398373).

<sup>15</sup> HY-BON, *Texas Well Natural Gas Venting and Flaring* (2015), available at <http://blog.hy-bon.com/texas-venting-and-flaring-of-natural-gas-permitting>.

<sup>16</sup> R.R. COMM'N OF TEX., RAILROAD COMMISSION AUTHORITY AND JURISDICTION, <http://www.rrc.state.tx.us/about-us/resource-center/faqs/railroad-commission-authority-and-jurisdiction-faq/> (last visited Aug. 3, 2015).

<sup>17</sup> HY-BON, *Texas Well Natural Gas Venting and Flaring* (2015).

flaring permits to well operators.<sup>18</sup> The TCEQ administers Federal Operating Permits to certain “major” air pollution sources and enforces EPA air quality regulations.<sup>19</sup> A major source has actual or potential emissions that meet or exceed the major source threshold for their location.<sup>20</sup> The major source threshold for any “air pollutant” is 100 tons/year (this is the “default value”).<sup>21</sup> EPA generally has not required non-major sources to get permits.<sup>22</sup>

## SECTION 2: ACTIVITIES COVERED BY PERMITS

Under the RRC, an air permit is required for all routine venting and flaring of natural gas at oil and gas facilities. Under the RRC rules, an operator can vent to the atmosphere natural gas from regulated activities for up to 24 hours.<sup>23</sup> After 24 hours, the natural gas must be flared if can be accomplished in a safe manner.<sup>24</sup> Every facility must qualify for and obtain an air permit prior to beginning construction.<sup>25</sup> An operator may flare gas while drilling a well and for up to ten days after a well’s completion for operators to conduct well potential testing.<sup>26</sup> Permits are obtained administratively,

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<sup>18</sup> R.R. COMM’N OF TEX., FLARING REGULATION, <http://www.rrc.state.tx.us/about-us/resource-center/faqs/oil-gas-faqs/faq-flaring-regulation/> (last visited Aug. 3, 2015).

<sup>19</sup> TEX. COMM’N ON ENVTL. QUALITY, WHO REGULATES OIL AND GAS ACTIVITIES IN TEXAS?, [https://www.tceq.texas.gov/assets/public/assistance/sblga/oil-gas/statewide\\_oilgas\\_prog\\_info.pdf](https://www.tceq.texas.gov/assets/public/assistance/sblga/oil-gas/statewide_oilgas_prog_info.pdf) (last modified Feb. 25, 2015).

<sup>20</sup> U.S. ENVTL. PROTECTION AGENCY, WHO HAS TO OBTAIN A TITLE V PERMIT, <http://www.epa.gov/oaqps001/permits/obtain.html> (last modified Oct. 28, 2014).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> HY-BON, *Texas Well Natural Gas Venting and Flaring* (2015).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> 16 Tex. Admin. Code § 3.32

meaning the operator does not need permission from the Railroad Commissioners, just the RRC staff.<sup>27</sup>

Flaring of casinghead gas for extended periods of time may be necessary if the well is drilled in areas new to exploration.<sup>28</sup> In new areas of exploration, pipeline connections are not typically constructed until after a well is completed and a determination is made about the well's productive capability.<sup>29</sup> Other reasons for flaring include: gas plant shutdowns; repairing a compressor or gas line or well; or other maintenance.<sup>30</sup> In existing production areas, flaring also may be necessary because existing pipelines may have no more capacity.<sup>31</sup> RRC staff issue flare permits for 45 days at a time, for a maximum limit of 180 days.<sup>32</sup> If operators want to pursue an additional 45 days past the initial 45-day flare permit time period, they must provide documentation that progress has been made toward establishing the necessary infrastructure to produce gas rather than flare it.<sup>33</sup> If operators want to flare beyond the 180-day period, they must get permission (in the form of a final order) from the RRC.<sup>34</sup> Extended venting or flaring of natural gas (e.g., casinghead gas) may be allowed for wells in new exploration areas where pipeline connections are not available.<sup>35</sup> The most common reason for granting an extension to an initial flaring permit is the operator is waiting for pipeline construction

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<sup>27</sup> *Up in Flames* at 32.

<sup>28</sup> R.R. COMM'N OF TEX., FLARING REGULATION, <http://www.rrc.state.tx.us/about-us/resource-center/faqs/oil-gas-faqs/faq-flaring-regulation/> (last visited Aug. 3, 2015).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> HY-BON, *Texas Well Natural Gas Venting and Flaring* (2015).

scheduled to be completed by a specified date.<sup>36</sup> Other reasons for granting an extension include operators needing additional time for well cleanup and pending negotiations with landowners.<sup>37</sup> Rare exceptions for long-term flaring may be made in cases where the well or compressor are in need of repair.<sup>38</sup> From January 2012 through May 2014, the RRC granted 158 extended flaring exceptions.<sup>39</sup>

The TCEQ enforces the EPA and its state air quality regulations.<sup>40</sup> The TCEQ regulates flaring by issuing standard air permits, known as Title V Air Permits, on behalf of the federal Environmental Protection Agency (EPA).<sup>41</sup> The TCEQ permits require air pollution controls and process designs to limit venting and flaring of gas from production facilities.<sup>42</sup> When an operator applies for a Title V Air Permit, the EPA, or the state agency in charge of issuing EPA permits (the TCEQ in Texas), has 45 days to review the permit proposal and submit any changes to the standard Title V conditions that it sees fit based on the facility's location, potential to emit, types of processes, and other environmental aspects which could impact the operator's ability to comply with the overall requirements of the Clean Air Act.<sup>43</sup> In addition, the Title V Air Permit enters the public domain and is available for public and governmental scrutiny.<sup>44</sup> Comments from the public and other local governing bodies are gathered for 30 days and are later used

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Up in Flames* at 32.

<sup>40</sup> HY-BON, *Texas Well Natural Gas Venting and Flaring* (2015).

<sup>41</sup> TEX. COMM'N ON ENVTL. QUALITY, OVERVIEW OF FEDERAL OPERATING PERMITS, <http://www.tceq.state.tx.us/permitting/air/titlev/overview.html> (last modified Oct. 23, 2014).

<sup>42</sup> HY-BON, *Texas Well Natural Gas Venting and Flaring* (2015).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*



during the TCEQ's evaluation of the Title V Air Permit application.<sup>45</sup> This is the opportunity for community groups to raise any concerns they might have about the impact the processes of a new oil well might have.<sup>46</sup>

If the TCEQ rejects the Title V Air Permit application, the operator has 90 days to revise his permit proposal to comply with the EPA's recommendations that are designed to keep his business compliant with the Clean Air Act.<sup>47</sup> If the Title V permit application is accepted, the public is given 60 days to submit any complaints they might have, as long as the complaint is based on comments gathered during the public review period.<sup>48</sup> If the public did not raise any issues previously, they cannot block the permit after it is accepted.<sup>49</sup> However, the public can issue a complaint based on a situation that occurred (for example, an equipment failure or leak) within the last 30 days, as this would have happened outside the public commentary period.<sup>50</sup> Once the operator has been issued his Title V Air Permit, he will need to renew it every 5 years.<sup>51</sup> During this time the operator will need to demonstrate his compliance with the permit conditions by reporting air emissions from the facility every year to the TCEQ.<sup>52</sup>

Oil and gas well operators are required to self-report to the RRC volumes of gas flared on their monthly Production Report form (PR form).<sup>53</sup> The PR forms include actual, metered volumes of both gas well gas and casinghead gas reported by operators at

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Alex Chamberlain, *Title V Air Permits 101*, ERA ENVTL. MGMT. SOLUTIONS (2013), available at <http://info.era-environmental.com/blog/bid/41532/Title-V-Air-Permits-101>.

<sup>53</sup> R.R. COMM'N OF TEX., FLARING REGULATION.

the lease level.<sup>54</sup> In order to complete compliance reporting, an operator must monitor all air emissions by keeping daily or weekly records ensuring that emissions fall within regulated emission limits.<sup>55</sup> Any deviations in operations or air emissions must be accurately accounted for and reported to the RRC, including the time it occurred, why it occurred, how long it lasted, and what corrective actions were taken.<sup>56</sup> RRC District Offices have inspectors available to witness operations, conduct inspections, provide information about permitting requirements, and ensure compliance with permits issued by the Commission.<sup>57</sup>

Observers have noted that, practically speaking, flare gas emissions are almost never monitored, but are instead estimated based on assumptions about the volume of gas sent to the flare, its chemical composition, and how well combustion destroys pollutants.<sup>58</sup> Furthermore, because flaring can be subject to penalties in Texas, companies have an incentive to underreport how much gas they flare.<sup>59</sup> In fact, it is highly likely that more natural gas is flared annually in the Eagle Ford Shale but is not reported by drilling companies.<sup>60</sup> Texas allows reporting exemptions for gas “not readily measured in the operation of oil wells” including “gas released at a well site during drilling operations and prior to the completion date of the well.”<sup>61</sup> Releases exempt from reporting also include “gas released at a well site during initial completion, recompletion in another field, or workover operations in the same field, including but not limited to perforating,

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Alex Chamberlain, *Title V Air Permits 101*.

<sup>57</sup> R.R. COMM’N OF TEX., FLARING REGULATION.

<sup>58</sup> ENVTL. INTEGRITY PROJECT, FACT SHEET ON POLLUTION FROM FLARES.

<sup>59</sup> *Up in Flames* at 7.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

stimulating, deepening, cleanout, well maintenance or repair operations.”<sup>62</sup> Remote sensing studies performed at several refineries (including BP Texas City and Shell Deer Park in Houston) showed that these sources release a lot more pollution than the industry reports to state and federal regulators using EPA approved emission factors or similar methods for estimating emissions.<sup>63</sup>

If a citizen believes that an oil well near him is flaring more than its share of emissions, he can file a complaint with the appropriate agency. In Texas, while the RRC has jurisdiction over oil and gas operations, it does not manage complaints regarding emissions. Instead, a concerned citizen should file a complaint with the TCEQ.

### **SECTION 3: THE CITIZEN COMPLAINT PROCESS**

The Texas RRC does not have regulatory enforcement authority over odors or air contaminants. Rather, the TCEQ handles air quality complaints in Texas, with some exceptions. Local agencies are available to assist with air quality complaints in Dallas<sup>64</sup>, El Paso<sup>65</sup>, Fort Worth<sup>66</sup>, Galveston County<sup>67</sup>, Houston<sup>68</sup>, and Harris County.<sup>69</sup> In addition, the RRC handles water and land pollution around an oil well, although the TCEQ has authority over air pollution, even near an oil well.<sup>70</sup>

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<sup>62</sup> *Up in Flames* at 14.

<sup>63</sup> ENVTL. INTEGRITY PROJECT, FACT SHEET ON POLLUTION FROM FLARES.

<sup>64</sup> Air Pollution Control Program at 214-948-4435

<sup>65</sup> City/County Air Quality Program at 915-771-5812

<sup>66</sup> Air Quality Program at 817-871-5450

<sup>67</sup> Pollution Control Division at 409-938-2251

<sup>68</sup> Bureau of Air Quality Control at 713-640-4200

<sup>69</sup> Harris County Pollution Control Services Department at 713-920-2831

<sup>70</sup> TEX. COMM’N ON ENVTL. QUALITY, DO YOU WANT TO MAKE AN ENVIRONMENTAL COMPLAINT? 6 (2007), available at <https://www.tceq.texas.gov/publications/gi/gi-278.html>.

## **BASIC COMPLAINT SUBMISSION PROCESS**

Information relating to air pollution can be filed with the TCEQ as a “complaint only,” which may be submitted anonymously, or as a “complaint with information or evidence,” which requires the submitter to disclose his/her identity.<sup>71</sup> For either a “complaint only” or a “complaint with information or evidence”, the first step is to file with the TCEQ, at which point a TCEQ employee will discuss the submitter’s concerns and any available information.<sup>72</sup> Either version of a complaint may be filed with the TCEQ 24 hours a day via: the toll free number, 1-888-777-3186; the website, [www.tceq.state.tx.us/goto/report-problem](http://www.tceq.state.tx.us/goto/report-problem); or the email address [cmplaint@tceq.state.tx.us](mailto:cmplaint@tceq.state.tx.us).<sup>73</sup> The submitter must be prepared with details regarding the nature of the problem, the location of the problem, the date and time that the problem occurred, who or what is the source of the problem, and any applicable information or evidence.<sup>74</sup>

After the TCEQ receives an air quality complaint, a TCEQ investigator will usually respond to the submitter within twenty-four hours.<sup>75</sup> “In most cases, an on-site investigation will be done to see if any environmental regulations have been violated.”<sup>76</sup> If the investigation reveals a violation, the TCEQ will take “appropriate enforcement action” to ensure that the violation is corrected.<sup>77</sup> The TCEQ will then notify the

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<sup>71</sup> *Id.* at 3.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 2.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 5.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

submitter of the complaint in writing about the results of the TCEQ investigation.<sup>78</sup> In addition, the TCEQ will provide the submitter with periodic follow-up reports on any enforcement action taken, as well as the opportunity to comment on the resolution decided upon by the TCEQ.<sup>79</sup> Complaints can also be tracked online at [www.tceq.state.tx.us/goto/report\\_problem](http://www.tceq.state.tx.us/goto/report_problem).<sup>80</sup>

If the submitter of the complaint is not satisfied with how the TCEQ handles the air quality issue, he/she can call the TCEQ complaint hotline again, or he/she can call the TCEQ customer service representative at 1-800-687-4040.<sup>81</sup>

## **SUBMITTING A COMPLAINT WITH EVIDENCE**

The best form of a complaint to file with the TCEQ is one that contains detailed information and evidence showing an air quality violation. In order to file such a complaint with TCEQ, the submitter must give his/her name and must sign a notarized affidavit.<sup>82</sup> In addition, any information or evidence submitted to the TCEQ must have been collected and handled following agency procedures.<sup>83</sup> If air samples are being submitted, they must have been collected using EPA procedures under the Clean Air Act, detailed on the EPA website <http://www.epa.gov/ttn/emc/index.html>.<sup>84</sup> TCEQ rules do

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<sup>78</sup> *Id.* at 6.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> TEX. COMM'N ON ENVTL. QUALITY, GATHERING AND PRESERVING INFORMATION AND EVIDENCE SHOWING A VIOLATION, [https://www.tceq.texas.gov/complaints/protocols/evi\\_proto.html](https://www.tceq.texas.gov/complaints/protocols/evi_proto.html) (last modified Feb. 04, 2015).

<sup>83</sup> *Id.*

<sup>84</sup> U.S. ENVTL. PROT. AGENCY, EMISSIONS MEASUREMENT CENTER, <http://www.epa.gov/ttn/emc/index.html> (last updated Mar. 18, 2015).

not authorize anyone to enter the property of another person for purposes of gathering information to document an air quality violation.<sup>85</sup>

Any sample submitted to the TCEQ must be accompanied by a chain of custody document.<sup>86</sup> In general, the chain of custody document is a form that details the history of the sample from the time it is collected to the time that the sample is analyzed in the laboratory.<sup>87</sup> This information is needed to prove that the sample is handled and transported in a manner that preserves its integrity.<sup>88</sup> The chain of custody form should indicate: the name of the person who collected the samples and their signature; the date and time the samples were collected; where the samples were collected; sample identification numbers and codes; sample collection locations and depths; how the samples are preserved; and what the samples are to be analyzed for, and the specific analytical methods that are to be used (if known).<sup>89</sup> At the laboratory, the technician should sign the chain of custody form, and note the date and time the sample was received and the condition of the sample at the time of its arrival.<sup>90</sup> A sample without the proper chain of custody documentation will not be acceptable to the TCEQ.<sup>91</sup>

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<sup>85</sup> TEX. COMM’N ON ENVTL. QUALITY, GATHERING AND PRESERVING INFORMATION AND EVIDENCE SHOWING A VIOLATION, [https://www.tceq.texas.gov/complaints/protocols/evi\\_proto.html](https://www.tceq.texas.gov/complaints/protocols/evi_proto.html) (last modified Feb. 04, 2015).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

## SUBMITTING AN ODOR COMPLAINT

An odor complaint can be submitted to the TCEQ by calling the TCEQ or by filling out the TCEQ Odor Log.<sup>92</sup> The TCEQ will then send an investigator to inspect the source of the odor.<sup>93</sup> In the event nuisance conditions are confirmed by the investigator, a signed written statement or notarized affidavit is required to proceed with citing a nuisance odor violation.<sup>94</sup> The individual submitting the odor complaint will need to provide his/her name and contact information, including address, to the agency.<sup>95</sup> If that individual does not wish to provide his/her name and contact information, the TCEQ may still investigate the odor complaint but may be unable to issue a nuisance violation.<sup>96</sup>

Documentation provided by the complaining party on the TCEQ Odor Log is used to determine how often an outdoor odor occurs and how long it lasts.<sup>97</sup> Information required on the log includes: the date and time the odor was smelled; how long the odor lasted, and whether it was intermittent; the strength of the odor; weather conditions such as temperature, wind direction, and wind speed; and the nature/smell of the odor.<sup>98</sup>

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<sup>92</sup> TEX. COMM'N ON ENVTL. QUALITY, EVALUATING ODOR COMPLAINTS, (2015)  
<https://www.tceq.texas.gov/assets/public/compliance/odor-log-public.pdf>.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

## SUBMITTING PHOTOGRAPHIC EVIDENCE

Photographic evidence, which includes digital and film prints, as well as videotapes, of an air quality violation can be submitted to the TCEQ.<sup>99</sup> When photographs are taken to document an investigation, the original photograph should be included with the investigation report.<sup>100</sup> An original is the negative or any print therefrom.<sup>101</sup> If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.<sup>102</sup> When possible, a color copy of the photograph or videotape should be submitted.<sup>103</sup> The photograph or videotape should be labeled with: the date the photo was taken; the location (including site name, registration/permit/account/regulated entity number, if applicable); the name of the person taking the photograph; the investigation and/or complaint number filed with the TCEQ (if applicable); number sequence (if more than one photo is submitted); and a brief description of the photograph.<sup>104</sup>

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<sup>99</sup> TEX. COMM'N ON ENVTL. QUALITY, PHOTOGRAPHIC DOCUMENTATION PROCEDURES, [https://www.tceq.texas.gov/complaints/protocols/photo\\_protobuf.html/at\\_download/file](https://www.tceq.texas.gov/complaints/protocols/photo_protobuf.html/at_download/file) (last visited Jul. 10, 2015).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*



## **SUBMITTING MICROSCOPY EVIDENCE**

Microscopy tapelift samples of particles which have been deposited from the air can be submitted to the TCEQ as evidence. Submit the sample as detailed on the TCEQ webpage.<sup>105</sup>

## **WHAT HAPPENS NEXT?**

After a complaint is received, the TCEQ may initiate an enforcement case based on the submitted information.<sup>106</sup> The executive director may initiate an enforcement case based on the value and credibility of the information submitted.<sup>107</sup> The case may be pursued either through an administrative enforcement action by the Commission, or through a civil or criminal court.<sup>108</sup> Information submitted may be supplemented by information gathered by agency investigators.<sup>109</sup> The individual who submitted the complaint will be required to sign affidavits authenticating the information he/she provided, and confirming that TCEQ protocols and procedures were followed.<sup>110</sup> If the case proceeds to a formal hearing or trial, the submitted will be required to testify in that proceeding.<sup>111</sup> The submitted may be asked to explain the information he/she provided,

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<sup>105</sup> TEX. COMM’N ON ENVTL. QUALITY, MICROSCOPY TAPELIFT SAMPLING PROCEDURE, [https://www.tceq.texas.gov/complaints/protocols/tapesamp\\_protopdf.html/at\\_download/file](https://www.tceq.texas.gov/complaints/protocols/tapesamp_protopdf.html/at_download/file) (last visited Jul. 10, 2015).

<sup>106</sup> TEX. COMM’N ON ENVTL. QUALITY, GATHERING AND PRESERVING INFORMATION AND EVIDENCE SHOWING A VIOLATION, [https://www.tceq.texas.gov/complaints/protocols/evi\\_proto.html](https://www.tceq.texas.gov/complaints/protocols/evi_proto.html) (last modified Feb. 04, 2015).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

and he/she may be cross-examined by the defendant's attorney.<sup>112</sup> This could include questions regarding his/her testimony and motives.<sup>113</sup>

The TCEQ may also choose not to initiate an enforcement case after receiving a complaint, in which case the submitter may choose to call the TCEQ again, or he/she may call the TCEQ customer service representative. There do not appear to be any instances where the TCEQ *must* initiate enforcement proceedings after receiving an air quality complaint. There does not appear to be an appeals process for citizens if they do not like the solution that the TCEQ has chosen, although there is a process in place for an operator who is penalized to contest an enforcement action.<sup>114</sup> Furthermore, while there is no process in place within the RRC to address citizen complaints, there is a process to mediate informal complaints between operators regarding natural gas purchasing, selling, shipping, transportation, and gathering.<sup>115</sup>

## CONCLUSION

The flaring permitting and enforcement procedures in Texas are a convoluted process, not least because there are around 150,000 producing oil and gas leases in Texas during any given year.<sup>116</sup> It is unclear how many or what kinds of facilities in the state hold Title V air permits. The TCEQ will only release that information if it is requested

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> TEX. COMM'N ON ENVTL. QUALITY, THE ENFORCEMENT PROCESS: FROM VIOLATIONS TO ACTION, <http://www.tceq.state.tx.us/enforcement/process.html/#contesting> (last modified Dec. 17, 2014).

<sup>115</sup> R.R. COMM'N OF TEX., COMPLAINT FILING, <http://www.rrc.state.tx.us/gas-services/complaint-filing/> (last visited Aug. 3, 2015). Also found at Tex. Nat. Res. Code Ann. § 81.059 (Vernon 2007).

<sup>116</sup> <http://www.texas-drilling.com>

through a Public Information Request (PIR).<sup>117</sup> There is a charge associated with a PIR request; the report would show permit numbers, permit type, Standard Industrial Classification (SIC) code and a short description of the SIC, without details.<sup>118</sup> Instructions for filing a PIR can be found on the TCEQ website, [tceq.texas.gov](http://tceq.texas.gov).

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<sup>117</sup> TEX. COMM’N ON ENVTL. QUALITY, TCEQ RECORDS SERVICES: REQUEST RECORDS FROM OUR CENTRAL FILE ROOM, <https://www.tceq.texas.gov/agency/data/records-services/> (last modified May 19, 2015).

<sup>118</sup> According to Lisa D’Amato, TCEQ program specialist, [lisa.mason@tceq.texas.gov](mailto:lisa.mason@tceq.texas.gov).