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## Filling the gap

### When the state won't take on a dirty job

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City of Houston officials have wrestled for years with this dilemma: How do you prevent industrial facilities from violating clean air standards if the state agency entrusted with that responsibility doesn't do the job?

Environmental groups frustrated by that inaction are now taking polluters to court, with encouraging results. In the latest example, the Sierra Club and Environment Texas have filed a federal suit to force Chevron Phillips Chemical to reduce emissions of air toxics at its Cedar Bayou chemical plant in Baytown.

In court filings, the groups claim that since 2003 the plant has illegally released more than a million pounds of toxic, carcinogenic chemicals, including benzene and 1,3-butadiene. Most of the releases occurred during so-called "upsets," which occur during startups, shutdowns, and other non-routine activities.

The litigation is being brought under a provision of the Clean Air Act empowering private citizens affected by illegal pollution discharges to file federal suits if state and federal regulators do not take action.

This is the second time that the two groups have used the citizen suit provision against a Houston-area company. Last year the target was the Shell Oil Deer Park refinery and petrochemical complex. That resulted in a



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landmark settlement in which Shell agreed to reduce emissions and pay nearly \$6 million for past Clean Air Act violations.

Reacting to the latest suit, a Chevron Phillips spokesman claimed the company is complying with existing laws and has reduced emissions.

Neil Carman, a chemist and the Clean Air Program director for the Lone Star chapter of the Sierra Club, says a single discharge of emissions from the Cedar Bayou facility 10 years ago created the highest levels of ozone in Houston in the last 20 years.

The director of Environment Texas, Luke Metzger, says citizen suits are necessary "because the state of Texas has failed to stop such violations at Cedar Bayou and elsewhere and enforce the law themselves."

The support evidence filed in the Chevron Phillips suit is based on analysis of the company's own reports submitted to the Texas Commission on Environmental Quality. It's inexcusable that the state agency responsible for enforcing clean air laws apparently can't be bothered to look at what's right under its nose.

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