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Short arm of the law

Who gets tough against companies polluting Texas? Hint: It's not the state

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Who's the toughest enforcer of clean-air laws in Texas? Oddly, the answer appears to be "nonprofit groups."

On April 22, to settle a suit filed by Environment Texas and the Sierra Club, Shell Oil Co. agreed to reduce emissions at its Deer Park refinery. In the suit, the environmental groups noted that over five years, the refinery recorded more than 1,000 "upset" emissions, accidents that released an estimated 5 million pounds of gunk into Houston's air. Most of those accidents, the suit notes, were preventable. And the nastiness they unleashed included benzene, sulfur dioxide and 1,3-butadiene — scary, health-threatening stuff.

Under the agreement, Shell agrees that over the next three years the refinery will cut those "upset" emissions by a whopping 80 percent. The company will begin monitoring the most toxic stuff more closely.

And for its violations of the Clean Air Act, it will pay a \$6 million penalty to the environmental groups, which plan to use the money to clean Houston's air.

Where, you might wonder, was the state's official enviro-cop unit, the Texas Commission on Environmental Quality? It turns out that the TCEQ knew good and well about Shell's illegal releases. (Environment Texas director Luke Metzger says that the environmental groups found out about them by combing the agency's own database.) But the TCEQ leveled only light fines, and it didn't force Shell to mend its ways.

That's a pattern. Critics include the Texas State Auditor's office, which in a 2003 report noted that the TCEQ's penalties are so light that it makes financial sense for companies to pay the fines and continue their illegal polluting.

But the Texas Legislature could demand more. One piece of legislation — H.B. 826, by Rep. Dan Gattis, R-Georgetown — would goose the agency, requiring it to set any penalty at least as high as the economic benefit the company gained from breaking the law. The bill is now pending in the environmental regulations committee, and Gattis' staff is hopeful it'll pass.

We hope so too. If it does, we can all breathe easier.

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