

November 30, 2010

***Comments to the Sunset Commission on the Supplement
to the Sunset Staff Report on the Public Utility
Commission***

***Submitted by Lone Star Chapter, Sierra Club and Public
Citizen***

The Lone Star Chapter, Sierra Club and Public Citizen support, with some minor modifications, all of the recommendations found in the Supplement Report produced by Sunset Staff as explained below.

In addition to the recommendations found in the Sunset Staff report, we believe there are additional improvements in state governance and performance through some reorganization of agency functions among TCEQ, RCT and PUC. These additional recommendations for reorganization follow our comments on the Sunset Staff recommendations.

Sincerely,

Tom "Smitty" Smith, Public Citizen
Cyrus Reed, Lone Star Chapter, Sierra Club

***Water and Wastewater and
Utility Regulation Transfer
Supplement to the Sunset Staff Report
on the Public Utility Commission***

***The State Could Benefit From Combining Regulatory
Functions Related to Gas and Water Utilities in the
Public Utility Commission.***

Recommendations

Change in Statute

S 1.1 Continue the Public Utility Commission for 12 years.

The staff recommends that PUC be continued for 12 years, with additional functions as indicated in the recommendations below.

**Lone Star Chapter, Sierra Club and Public Citizen recommendation
Continue the PUC with additional functions but do a sunset review
after 6 years to assure the agency merger working well**

**S 1.2 Transfer gas utility regulation from the Railroad Commission to the Public
Utility Commission.**

This recommendation would transfer the responsibility that resides at the Railroad Commission for gas utilities to PUC. Under the recommendation, PUC would administer these regulations under the same original and appellate jurisdiction over rates as currently exists at the Railroad Commission. The transfer would include the Railroad Commission's existing efforts regarding utility rates and services, consumer complaints, reports, and audits. Generally, the same regulatory approaches that exist now in gas utilities statutes would continue to apply at PUC, including provisions for interim rate adjustments, cost-of-service adjustments, and cost-recovery surcharges. Collection of the Gas Utility Tax would also transfer to PUC.

Lone Star Chapter, Sierra Club and Public Citizen have argued for these changes for several sunset cycles as way to reduce costs, increase professionalism, and to begin the discussion about using gas more efficiently.

Lone Star Chapter, Sierra Club and Public Citizen support this recommendation

S 1.3 Require the use of the State Office of Administrative Hearings in contested gas utility cases.

This recommendation would remove the option in law to have contested gas utility cases heard at SOAH, and instead require them to be heard at SOAH, the same as all other utility cases. This recommendation would apply regardless of whether gas utility regulation is ultimately transferred to PUC. As with other agencies using SOAH, the responsible agency would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge.

Using commission staff as hearings officers has lead to many allegations of conflicts of interest at this and other agencies. SOAH was created in response to similar allegations at other agencies, and has served to professionalize and depoliticize hearings.

Lone Star Chapter, Sierra Club and Public Citizen support this recommendation

S 1.4 Transfer responsibility for regulating water and wastewater rates and services from TCEQ to PUC.

This recommendation would transfer TCEQ's existing authority for water and wastewater utilities regarding retail, wholesale, and sub-metering rates; Certificates of Convenience and Necessity; reporting requirements; and consumer assistance and complaints to PUC

Regarding rates, PUC would assume the same original and appellate jurisdiction as it currently exists at TCEQ to ensure that retail public utility rates, operations, and services are just and reasonable. To administer these regulations, PUC would have the same reporting requirements as TCEQ for these utilities, including annual service and financial reports and tariff filings, as well as information about affiliate interests. PUC would have responsibility for providing consumer assistance and resolving complaints regarding regulated water and wastewater services. Ongoing efforts would also be needed to coordinate responsibilities for service standards and the sharing of information and utility data between the two agencies.

Lone Star Chapter and Public Citizen have long argued for this recommendation as a way of reducing costs and professionalizing hearings. Water ratemaking was part of the PUC until the creation of the water commission.

Lone Star Chapter, Sierra Club and Public Citizen support this recommendation

S 1.5 Eliminate the existing water and wastewater utility application fees and adjust the Water Utility Regulatory Assessment Fee to pay for utility regulation at PUC

The Water Resource Management Account managed by TCEQ is composed of multiple fees that help support the agency's management of water resources, but the elimination of one type of fee and augmentation of another to pay for PUC regulation should help simplify bill collection and payments.

The Lone Star Chapter of Sierra Club and Public Citizen support this recommendation

S 1.6 Require OPUC to represent residential and small commercial interests relating to water and wastewater utilities, contingent on the transfer to PUC.

This recommendation would expand the role of OPUC to represent the interests of residential and small commercial consumers in water and wastewater utilities matters, but only if regulatory oversight is transferred to PUC, as specified in Recommendation S 1.4. Under this recommendation, OPIC would not be involved in water and wastewater utility matters at PUC. If the realignment of utility regulations at PUC does not occur, OPIC would retain its existing authority to represent the public interest in water and wastewater utility matters that remain at TCEQ.

The Lone Star Chapter, Sierra Club and Public Citizen support this recommendation but notes that additional funding will be required and suggests that that the recommendation be modified to provide for a fee be assessed on consumers of gas and water utilities similar to the fee collected to fund OPUC

S 1.7 Require PUC to make a comparative analysis of statutory ratemaking provisions under its authority, contingent on any transfers, to determine opportunities for standardization.

Lone Star Chapter, Sierra Club and Public Citizen Support these recommendations

Additional Recommendations:

While the Lone Star Chapter, Sierra Club and Public Citizen support the major recommendation to move gas utility rate issues from the RCT to PUC, and water and wastewater utility rate issues from TCEQ to PUC, we believe there are other areas where reorganization makes sense.

MOVE OPIC to OPUC

First of all, the Office of Public Interest Counsel at TCEQ should become part of the Office of Public Utility Counsel. Thus, OPUC would have both an environmental division and a utility division, covering gas, water and electric utility issues. As part of the Alliance for Clean Texas we have submitted extensive comments on this issue.

CREATE COORDINATING COUNCIL FOR ENERGY EFFICIENCY PROGRAMS

As highlighted in previous comments submitted separately by both the Sierra Club and Public Citizen, we believe that either a separate state agency or coordinating council composed of several state agencies would help deliver efficiencies into the state's myriad of energy efficiency and gas efficiency programs.

Thus, under a coordinating council model, the State Energy Conservation Office would convene quarterly meetings of PUC, TCEQ, RCT, TDHCA and ESL to help coordinate energy and gas efficiency programs. The major outcomes would be to also help quantify energy demand and energy savings from these programs to help ERCOT in their short and long-term forecasting for energy

needs, as well as help TCEQ document the pollution reduction benefits as part of the State Implementation Plan to meet federal standards for ambient concentrations of ozone. Again, we have submitted comments previously on this issue.

MOVE URANIUM EXPLORATORY MINING, COAL COMBUSTION WASTE REGULATION and REGULATION OF OIL AND GAS SURFACE AND GROUNDWATER from RCT to TCEQ

Considerable waste and inefficiency is created when two separate agencies regulate different aspects of the same activity. There are three real examples where two different agencies share responsibility for regulation, but often fail to properly regulate because of the confusion. In addition, the dual role creates confusion for the public.

First, in-situ uranium mining is currently regulated by both TCEQ and RCT. While RCT grants the permits needed for exploratory work in underground formations that may contain uranium, TCEQ grants the final permits. In practice, this has the effect of allowing some potential contamination of groundwater – used to create the baseline for restoration – before a final permit is given. To avoid this problem, and lessen confusion among the industry, public and regulators, **TCEQ should regulate both exploratory and final in-situ uranium mining.**

Like uranium mining, depending on the ultimate destination of coal combustion waste, both TCEQ and RCT play a role. However, because coal combustion waste is a waste product with substantial environmental impacts whether it is put back in the mine, in a landfill or a disposal pit, **TCEQ should have**

responsibility for regulation and monitoring of coal combustion wastes to TCEQ, not the RCT.

Finally, regulation of groundwater and surface water quantity and quality is split between TCEQ and RCT on oil and gas exploration, drilling and processing. Again, this splitting of regulation of water quality causes confusion among the public and industry. Because TCEQ is ultimately responsible for assuring the quality of drinking water and water for the environment, it makes sense to move any regulation and personnel related to water quality from the RCT to TCEQ.

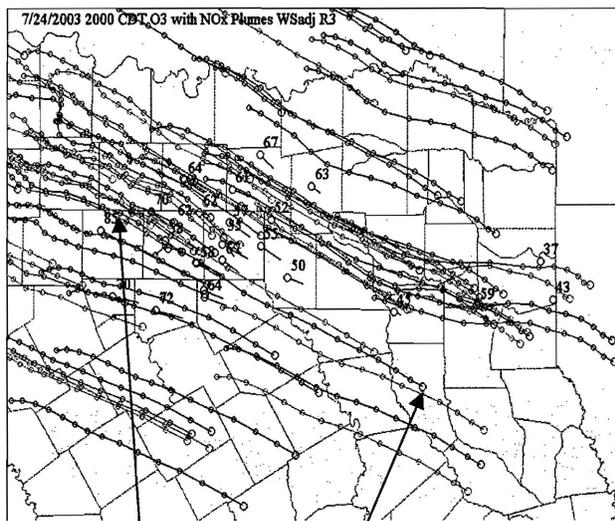
Texas Must Look At Cumulative Impacts



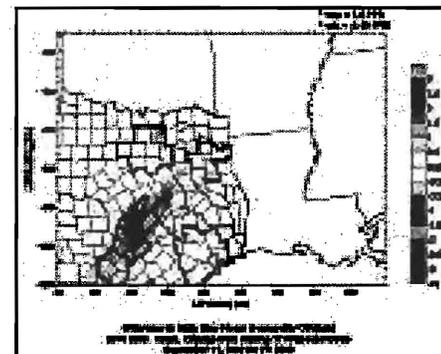
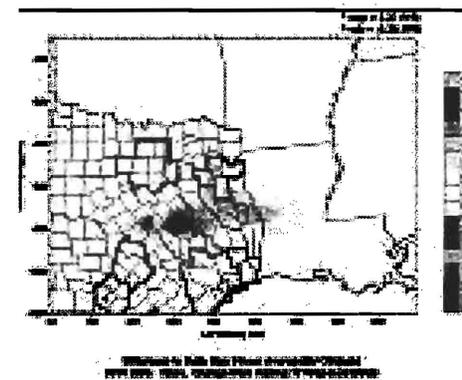
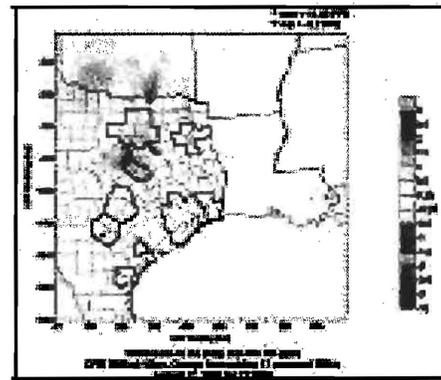
Testimony of Tom “Smitty” Smith, Director of Public Citizen’s Texas Office
before the Sunset Commission – December 15, 2010

Power Plants Emissions Effect Air Quality Across Texas

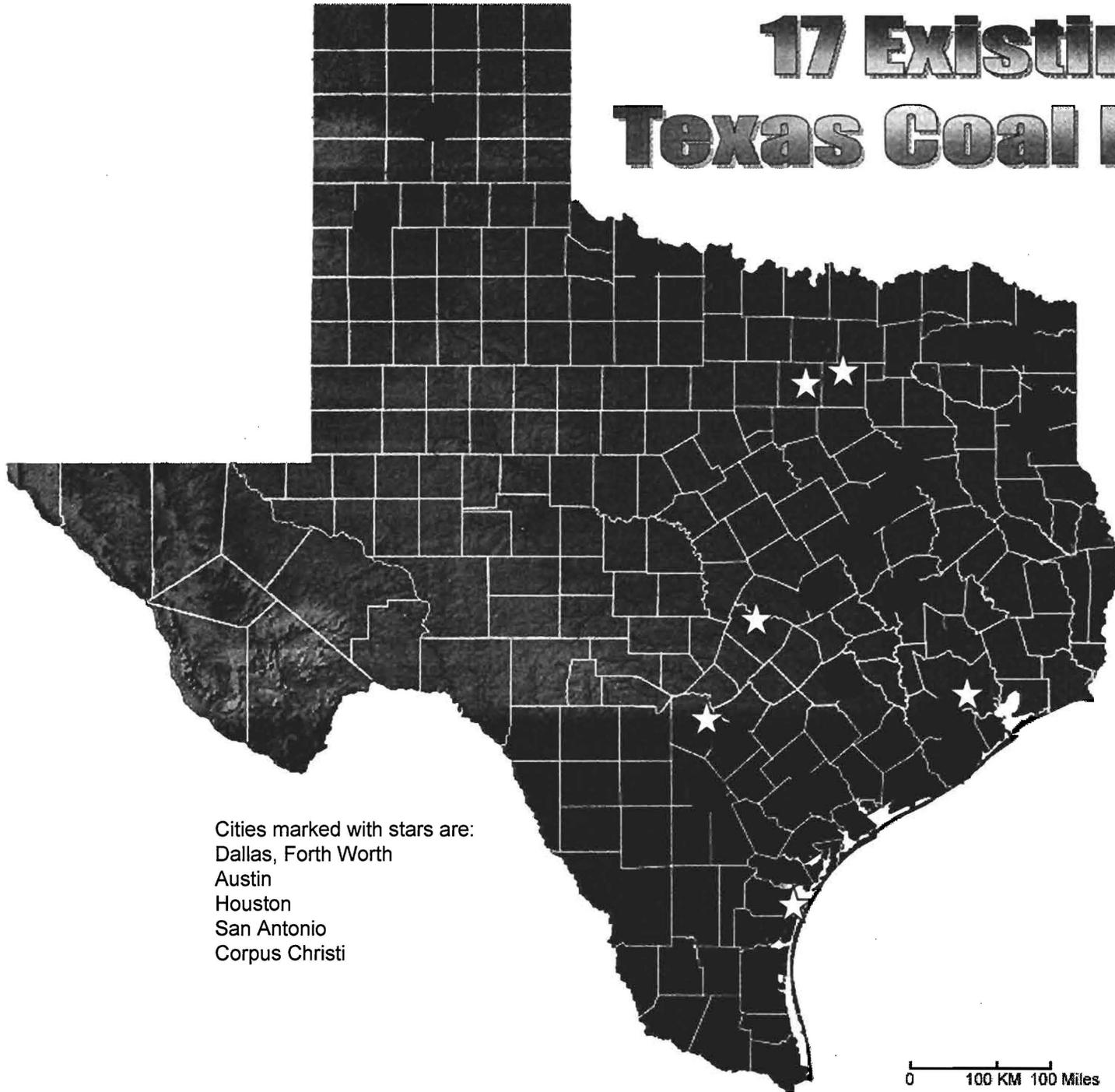
Existing and New Plants Affect DFW, Longview, Austin, San Antonio



Source of
Violation of 8hr standard



17 Existing Texas Coal Plants



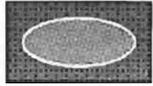
Cities marked with stars are:
Dallas, Forth Worth
Austin
Houston
San Antonio
Corpus Christi

1. Harrington
2. Tolk
3. Oklaunion
4. Monticello
5. Welsh
6. Pirkey
7. Martin Lake
8. Big Brown
9. Limestone
10. Twin Oaks
11. Gibbons Creek
12. Sandow
13. Fayetteville
14. Parish
15. Deely Spruce
16. San Miguel
17. Coletto Creek

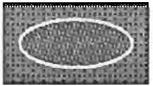
Recent Texas Coal Plants



- In Non-Attainment

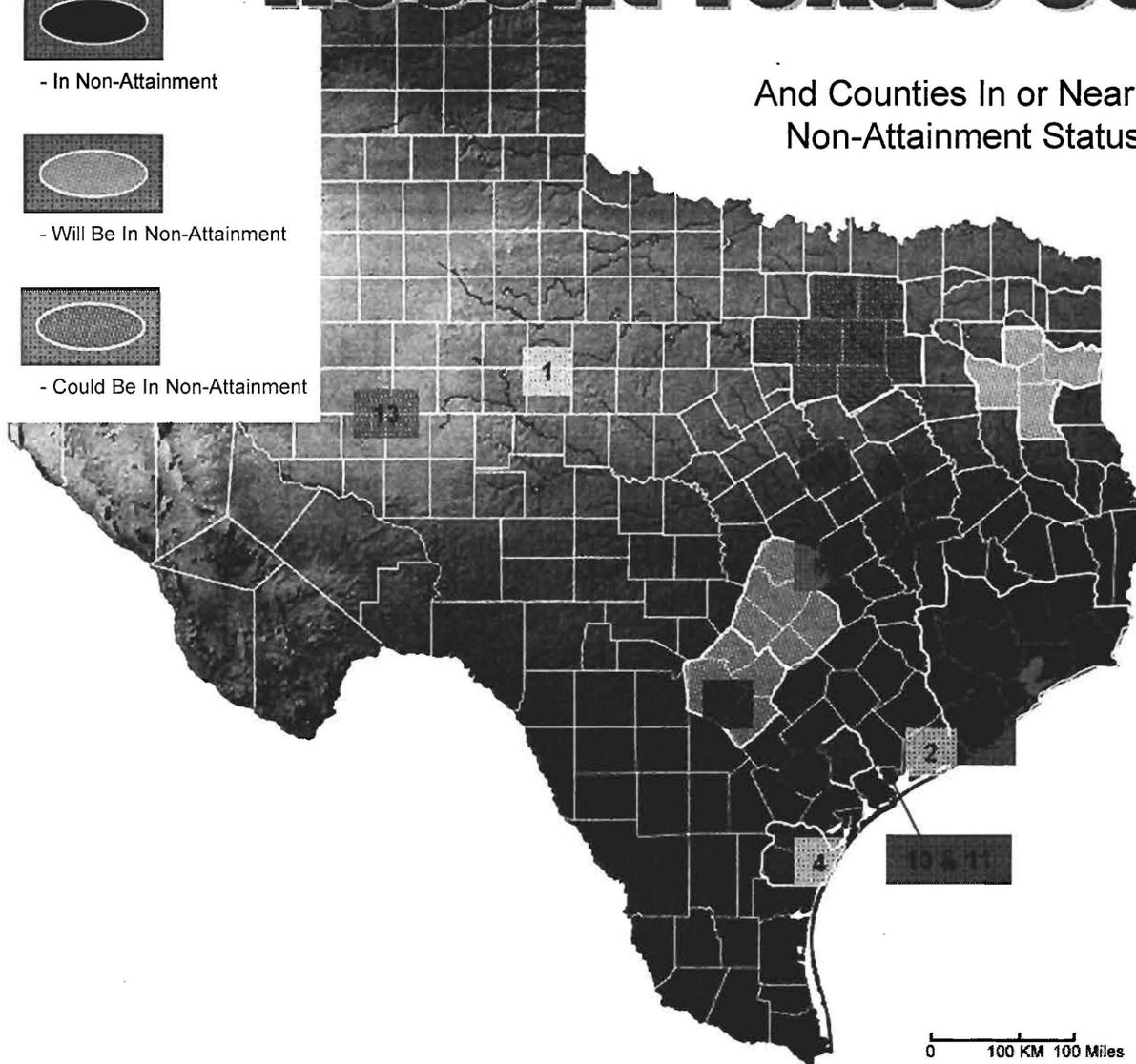


- Will Be In Non-Attainment



- Could Be In Non-Attainment

And Counties In or Near to
Non-Attainment Status



Coal

4. Las Brisas

- 1. Tenaska *
- 2. White Stallion
- 3. Coletto Creek
- 5. Limestone**
- 7. Sandy Creek

- 6. Oak Grove
- 8. Sandow
- 9. Spruce
- 10. Calhoun Co. **
- 11. Formosa
- 12. Lockwood Gasification*

* Carbon Separation

** Carbon Offsets

In Permitting

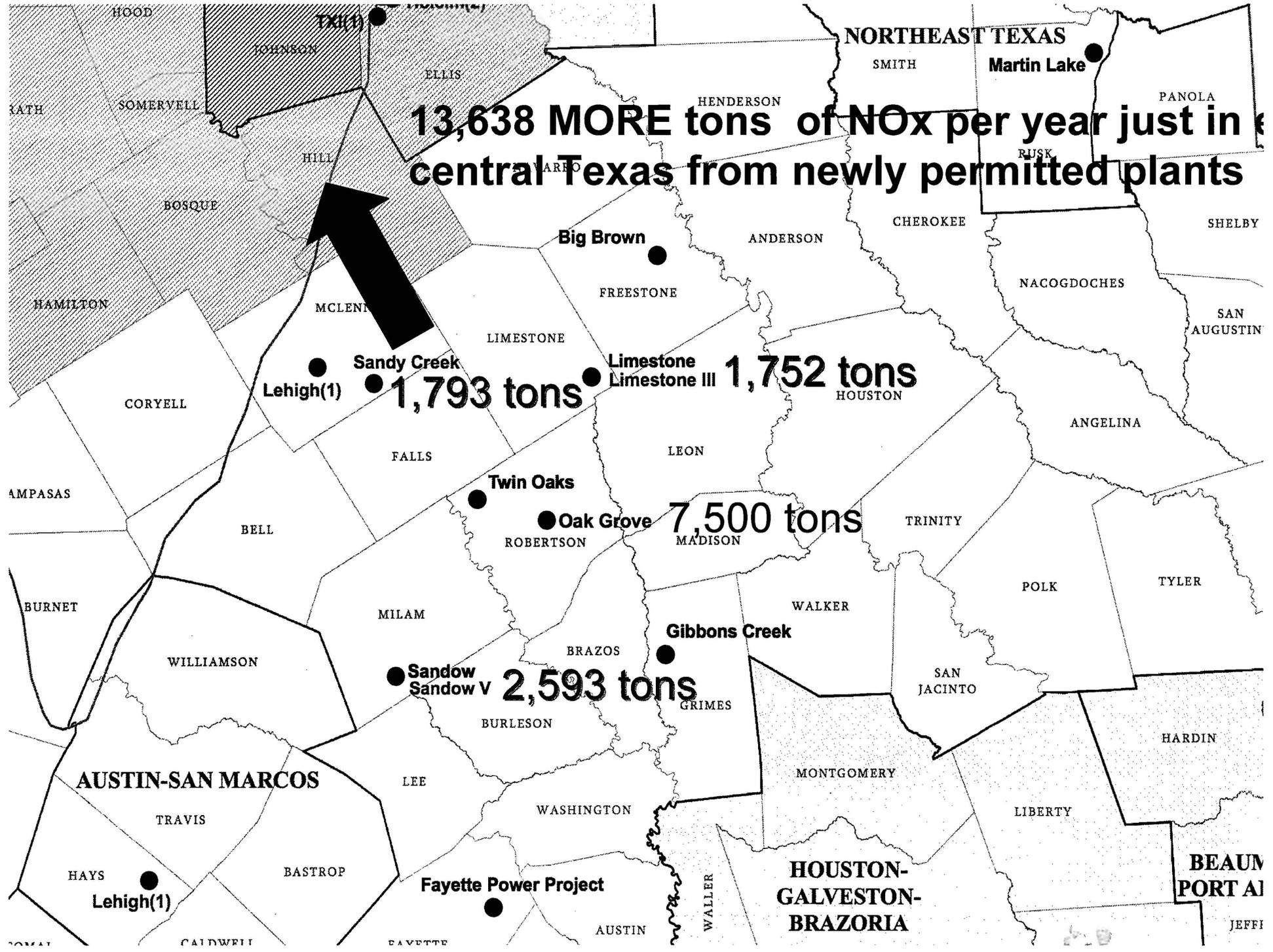


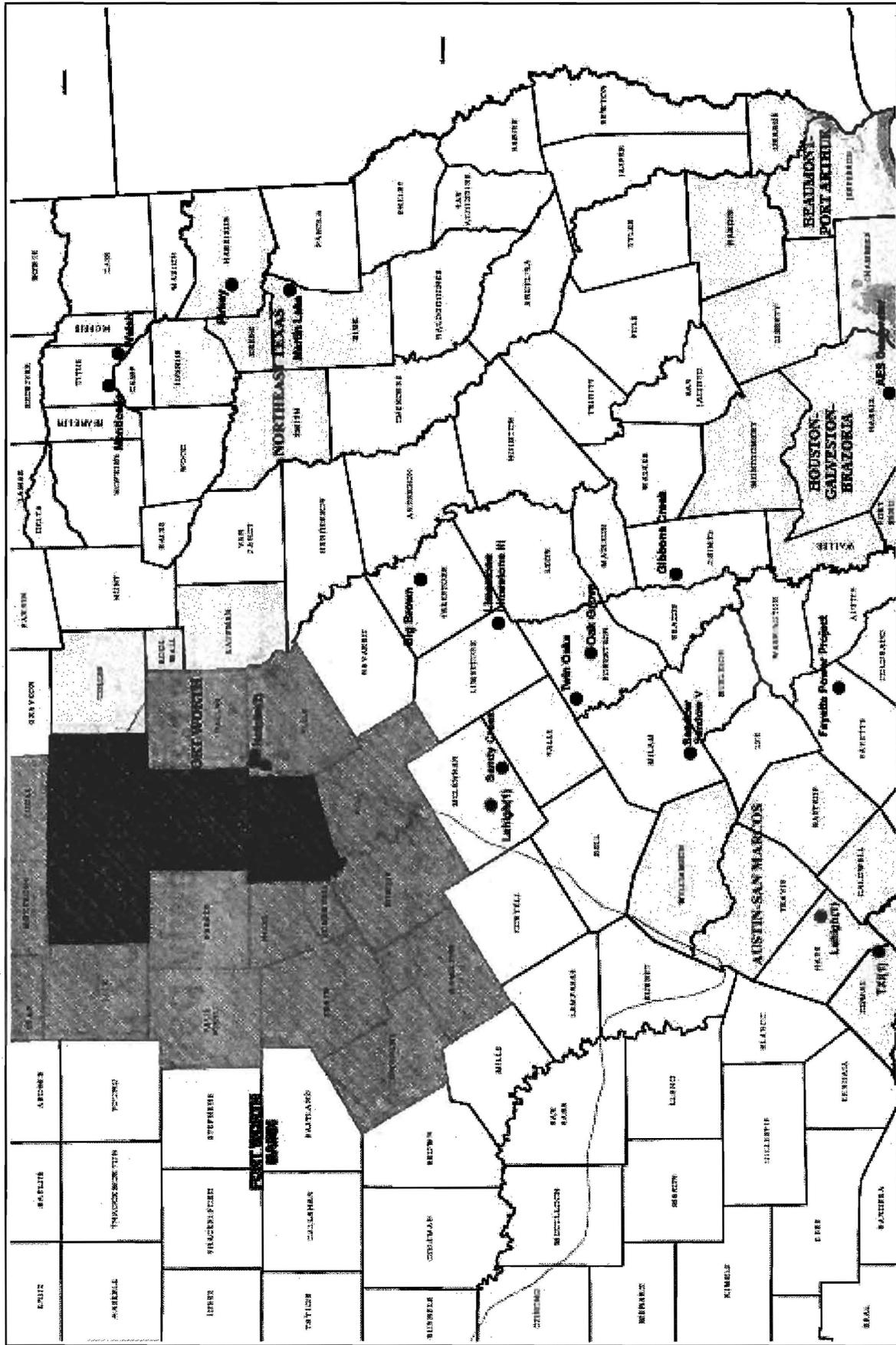
0 100 KM 100 Miles



Prevailing Gulf Winds

13,638 MORE tons of NOx per year just in central Texas from newly permitted plants





Major Industrial Contributors to DFW Smog

- Current City of Dallas
- Current City of Fort Worth
- Current City of Houston
- Current City of Austin
- Current City of San Antonio
- Current City of El Paso
- Current City of Dallas
- Current City of Fort Worth
- Current City of Houston
- Current City of Austin
- Current City of San Antonio
- Current City of El Paso

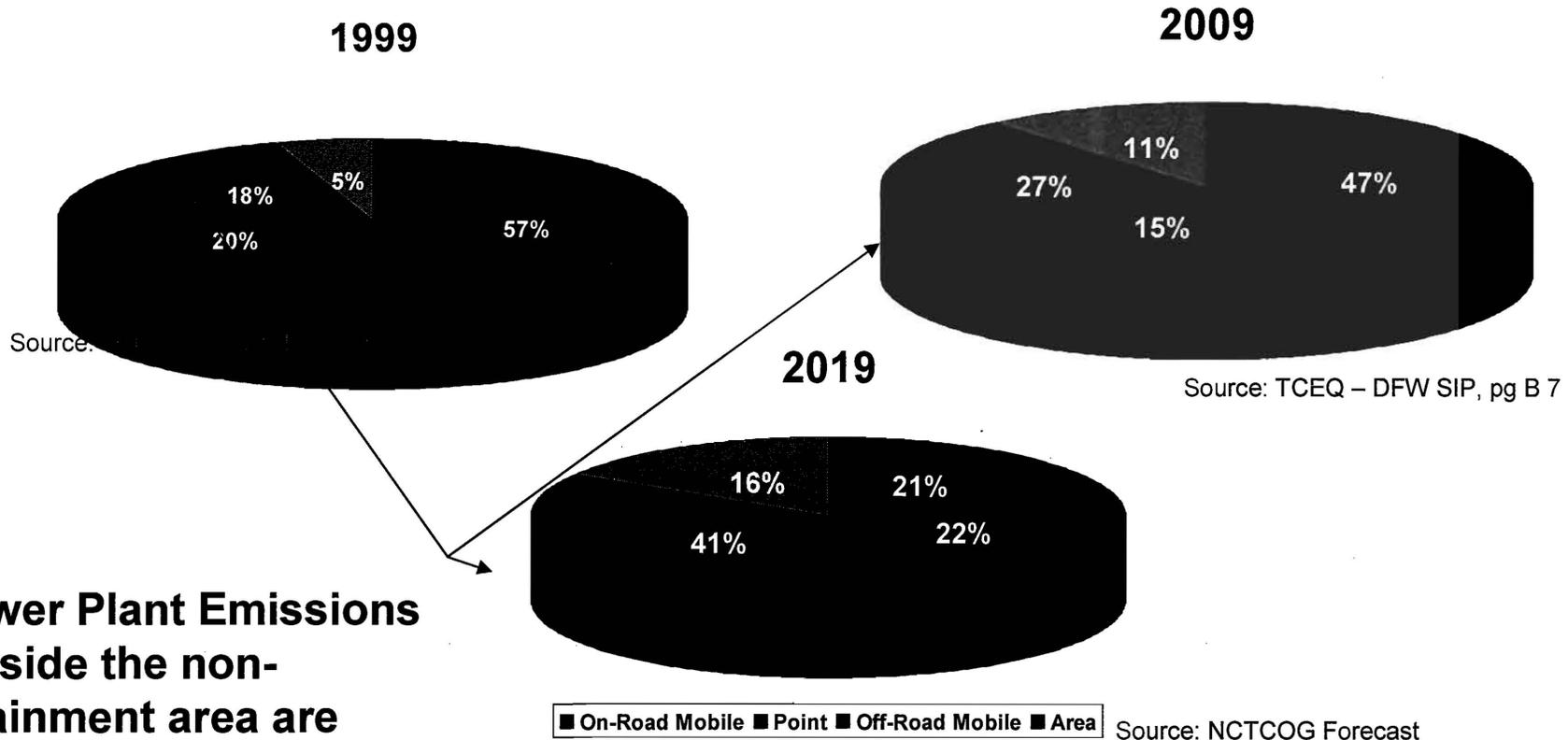


Texas Department of Transportation
 1100 West Loop West, Suite 1000
 Fort Worth, Texas 76104
 (817) 761-2000

Where does DFW's smog pollution come from?

AIR QUALITY: OZONE

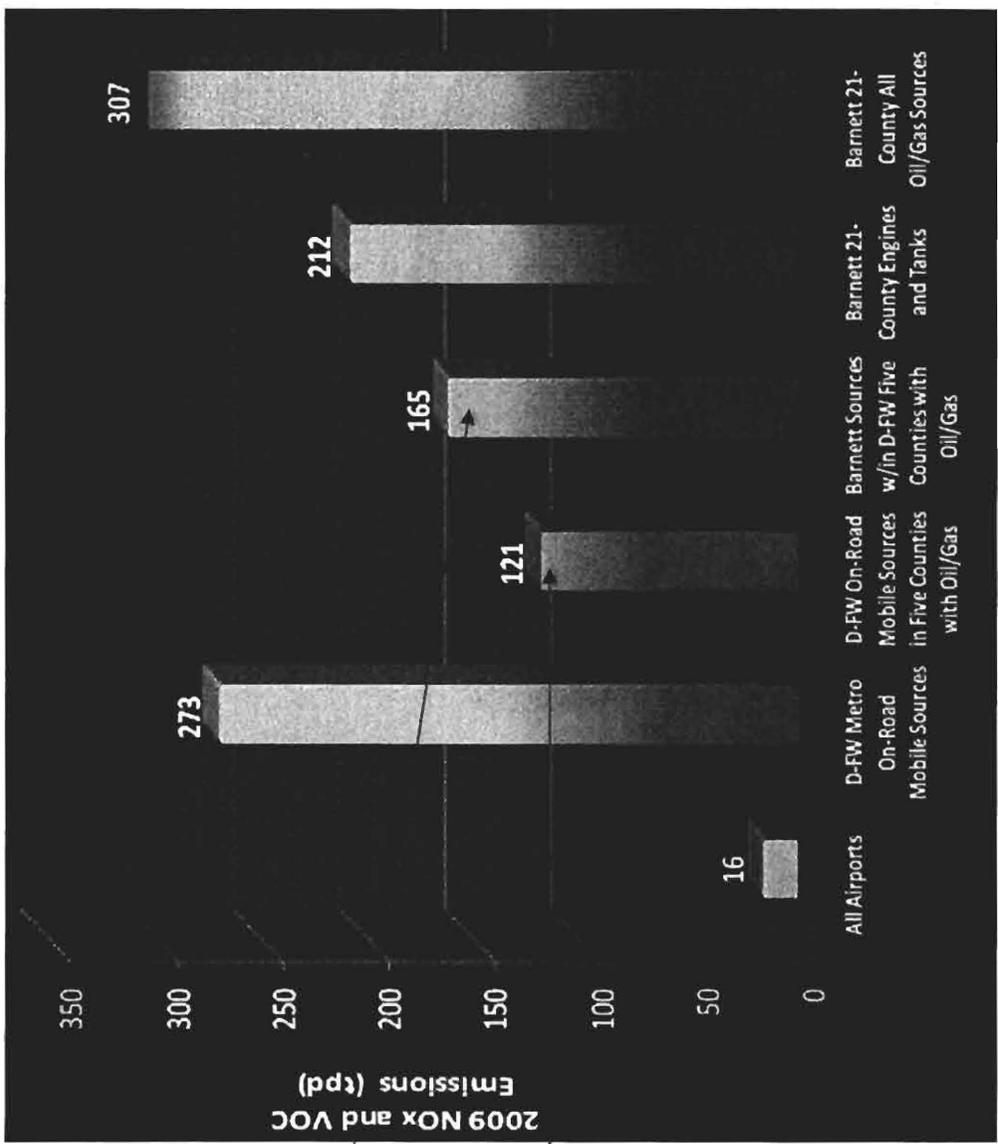
DFW Past, Present, Future NOx Projections

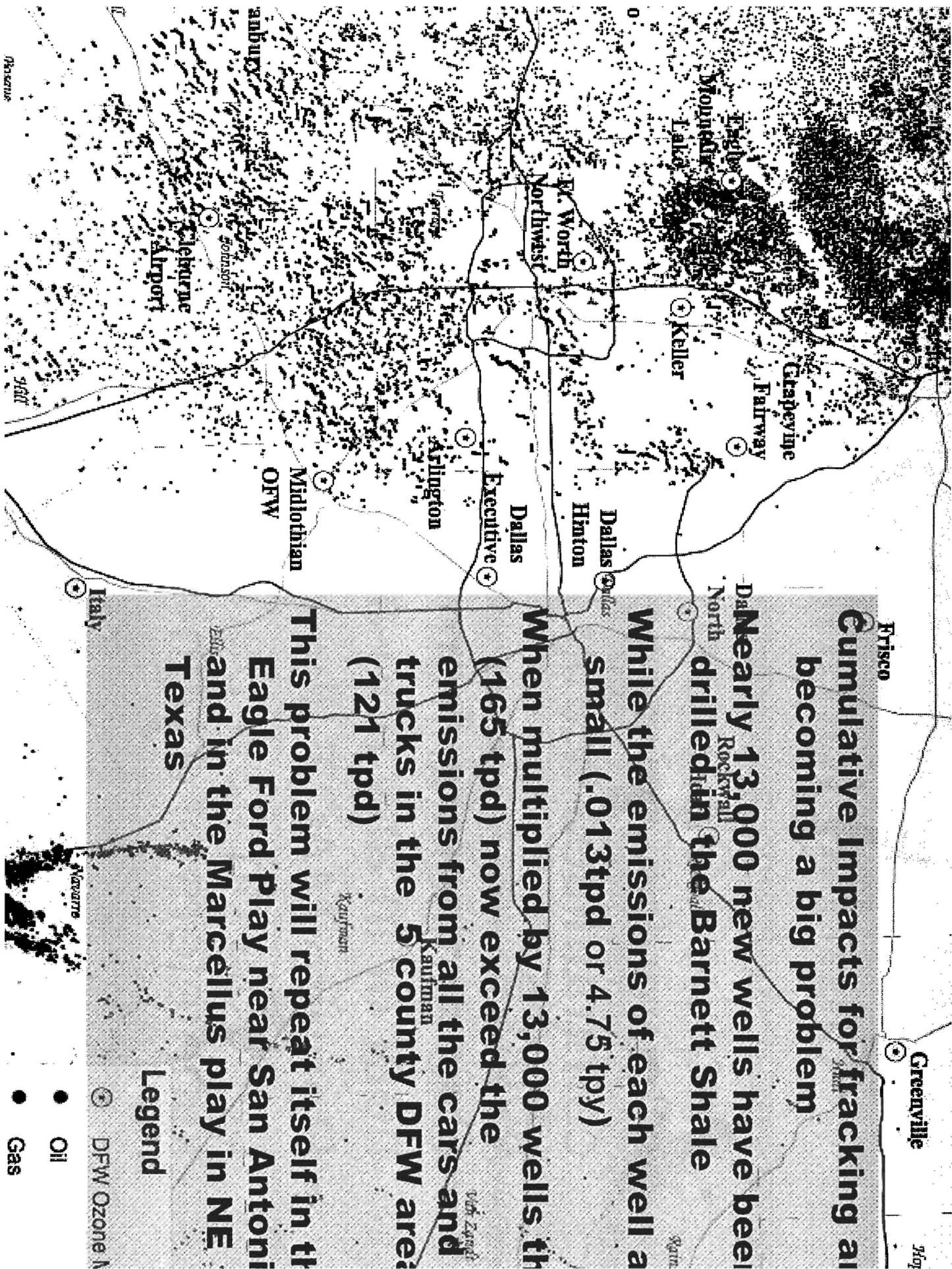


Power Plant Emissions outside the non-attainment area are within the area source category

Another example of why cumulative impacts need to be analyzed

Barnett Shale emissions exceed cars and trucks in the DFW area





Cumulative Impacts for Fracking are becoming a big problem

Nearly 13,000 new wells have been drilled in the Barnett Shale

While the emissions of each well are small (.013tpd or 4.75 tpy)

When multiplied by 13,000 wells the emissions now exceed the emissions from all the cars and trucks in the 5 county DFW area (121 tpd)

This problem will repeat itself in the Eagle Ford Play near San Antonio and in the Marcellus play in NE Texas

- Legend**
- Oil
 - Gas
 - ⊙ DFW Ozone N

Observed

9/11

Italy

Alacarte

Frisco

Greenville

May

Crapevine

Fairway

Rockfall

Eagle Ford

Mountain

Lake

Keller

Hinton

M. Worth

Northwest

Dallas

Executive

Arlington

Midlothian

DFW

Sanbury

Teleburg

and in the Marcellus play in NE Texas

Kaufman

Kaufman

0.05 2.0 4.0

Our Recommendations

- Require TCEQ and applicants to look at cumulative impacts on downwind communities within 200 kilometers of source
- Cap emissions from “permits by rule” near or in any non-attainment area.
- Require MACT like emissions controls on new permits within 200 kilometers of a non- attainment area

DallasNews, Editorial Time to fix TCEQ

The Dallas Morning News

In case after case, the Texas Commission on Environmental Quality has been appallingly reluctant to ask the tough questions and levy the tough fines needed to protect the public.

Now the Legislature has a chance to fix all of that. The Sunset Advisory Commission staff is wisely urging several changes to make TCEQ more effective, including increasing fines and penalties for violations and eliminating any doubt about its regulatory authority to deny permits. These essential reforms must be adopted.

Additionally, this newspaper hopes the process will lead to even more adjustments to correct a troubling mix of politics, internal timidity and poor guidance from lawmakers.

The first opportunity will come at a Sunset Advisory Commission public hearing in Austin on Wednesday. The full commission is set to finalize its recommendations to the Legislature on Jan. 12.

The additional changes should include beefing up rules against revolving-door lobbying practices, which TCEQ's critics say influence commission decisions. The Legislature also should write specific rules to require TCEQ to consider the cumulative impact of emissions for new plants and the compliance history of applicants in all decisions.

The new rules are especially important to keep chronic violators from continuing to flaunt regulators and to force TCEQ to set a higher bar in its permitting process.

While a single permit might not pose an emissions risk, the cumulative impact of several permits might. TCEQ should be aware of this information and use it before permits are issued, not after a problem has surfaced. Ironically, previous Sunset Advisory Commission reports have highlighted these deficiencies, but TCEQ still hasn't developed a system to effectively incorporate such information in permitting and enforcement decisions. Lawmakers need to fix this deficiency.

The increase in new oil and gas drilling in urban areas along the Barnett Shale is a prime example of why this matters. Regulatory responsibility is split between TCEQ, which monitors air emissions, and the Texas Railroad Commission, which monitors drilling activity. However, neither agency has adequately addressed the concerns of residents about the cumulative impact of urban drilling on air and water quality.

Also, lawmakers need to make sure TCEQ follows federal Environmental Protection Agency mandates, as other states have managed to do. Texas' ongoing legal battle to avoid implementing EPA's proposed greenhouse gas permitting requirements leaves unanswered how the state's permitting program will operate next year. The EPA is threatening to levy penalties on dozens of Texas refiners and chemical and plastic makers if the firms don't begin to bring their air pollution permits into compliance with federal law. This showdown could have been averted had the governor, state lawmaker and TCEQ simply followed federal law.

This newspaper urges Rep. Byron Cook, R-Corsicana, and Sens. John Carona, R-Dallas, and Kirk Watson, D-Austin, whose legislative committees deal with environmental and business rules, and House Speaker Joe Straus to take leadership and put teeth into the state's environmental watchdog.

Improving environmental regulation in Texas

- Develop strategies for lowering global warming emissions and requiring CO2 to be a regulated pollutant.
- Increase penalties to exceed economic benefits for permit violations.
- Toughen rules against revolving-door lobbying practices.
- Clarify the commission's authority to deny permits and to broadly consider the cumulative impact of emissions in proposed plants and the past compliance history of applicants in all agency decisions.
- Assure that emissions sources in rural areas that add to urban air pollution are counted in State Implementation Plans and are held to the lowest achievable emissions rates when new permits are issued.