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May 25, 2016

Honorable Arthur A. Elkins, Jr.
Inspector General
EPA Office of Inspector General
1200 Pennsylvania Avenue, NW (2410T)
Washington, DC 20460

Re: Upset Emissions and High Priority Violations

Dear Mr. Elkins,

We write to respectfully request your review of recent changes to EPA's enforcement policy defining high priority violations of the Clean Air Act. Under the revised policy announced on August 15, 2014, by the Office of Enforcement and Compliance Assurance, violations would have to persist for at least seven days to be considered a high priority for enforcement action.

This change would exclude very large emission spikes that result from malfunctions or other events and threaten air quality in neighborhoods, simply because they do not last more than a week. For example, on August 9 last year, the Shell Deer Park refinery in Houston released more than 300,000 pounds of 1,3-butadiene, a potent carcinogen, from a pressurized vessel in just 55 minutes. That is twice the combined total amount of butadiene emissions that all Texas refineries reported to the Toxics Release Inventory in 2014. Consistent with the new policy, this release has not been designated a high priority violation on EPA's "ECHO" website.

On October 6 and 16, 2015, over 80 national, state, and local environmental organizations signed the attached letter to Assistant Administrator Cynthia Giles asking that OECA reconsider its position and providing multiple examples of short term incidents releasing very large clouds of carcinogens like benzene, butadiene, and ethylene oxide, as well as sulfur dioxide, particulates, and catalyst fines. To date, we have received no response to our letter. While EPA's Office of Air and Radiation is currently requiring states like Texas to close loopholes for emissions caused by malfunctions, maintenance, startup, or shutdown, OECA's decision to simultaneously assign a low priority to these events requires some explanation.

We are particularly concerned about the impact that these "upset" emissions have on the health and well-being of neighborhoods downwind. The attached chart identifies the number of people living within three miles of each of 14 plants reporting large emission events in 2015 lasting less than a week. Although the affected population varies from one site to the next, nearly half the

combined total live below the poverty line, 57% are Latino, and 11.7% African American. Nearly one third are children, who are more sensitive to pollutants that cause cancer or trigger asthma or other lung diseases. Even brief exposures to many of the kinds of toxins in refinery emissions have been found to increase the risk of impaired fetal development, contributing to infant mortality and long term health consequences from premature birth or birth defects. The demographic data was obtained from EPA's "ECHO" website, while the emission episodes were identified through reports filed online with the Texas Commission on Environmental Quality at <http://www2.tceq.texas.gov/oce/eer/>.

OECA's website defines environmental justice as:

"...the fair treatment and *meaningful involvement* of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies...Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies."

To meet these goals, OECA promises that "community concerns will be considered in the decision-making process," and that, "decision-makers will seek out and facilitate the involvement of those potentially affected." We do not understand how those commitments were honored in OECA's recent decision to treat "short term" emission events as a lower priority for enforcement, no matter how much or how dangerous the pollution released.

Even more disturbing is the lack of any real enforcement response to plants that are designated high priority violators, either because their emission events persist for months or have violated some other provision of the Clean Air Act. For example, emission events at the Keystone Gas plant in Winkler County, Texas, released more than 27,000 tons of sulfur dioxide between 2009 and 2014. The state's response is limited to a \$9,118 fine, or about 34 cents for every ton of illegal emissions released by this facility. Yet each additional ton of sulfur dioxide from stationary sources in Winkler County adds nearly \$600 in public health costs, according to estimates from the Air Pollution Emission Experiments and Policy Analysis (APEEP). We have attached a chart with five year upset emissions from 10 gas plants in Texas, along with the number of enforcement orders issued and penalties paid, and the APEEP estimate of human health costs per ton of sulfur dioxide released.

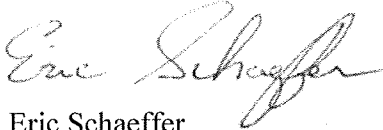
We respectfully ask that your review address the following questions:

- 1) What is OECA's basis for assigning a low priority to episodes that release large amounts of carcinogens or other dangerous pollutants in less than seven days? What impact will that have on the drafting and enforcement of new standards to eliminate loopholes for emissions caused by malfunctions, maintenance, startup, and shutdown?
- 2) Does OECA's decision to exclude emission events lasting less than a week comply with the environmental justice criteria posted on its website?

- 3) Has the enforcement response by EPA or TCEQ to these violations – however they are classified – adequately reflected their potential for harm or helped to deter repetition of these incidents?

Thank you for your considering our request. If you have questions or need more information, please feel free to contact me.

Sincerely,



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Phillip Brooks, Director, Air Enforcement Division
Matthew Tejada, Director, Office of Environmental Justice

Attachment 1: 2015 Emissions and Demographic Data from Select Facilities in Texas

Facility	County	Zip Code	Pollutant	Number of Emission Events	Total Emissions (lbs) from Events ¹	Population	Living in Poverty	Minors (<17 years old)	Demographic Data ²					
									White	African American	Hispanic Origin	Asian/Pacific Islander	American Indian	Other/Multiracial
Amerada Hes Seminole Gas Processing Plant	Gaines	79360	Sulfur Dioxide	17	1,614,422	2,249	30%	33%	88%	1%	31%	0.1%	0.4%	10%
Ascend Performance Materials Chocolate Bayou Plant	Brazoria	77512	Acrylonitrile	2	9,997	179	6%	11%	92%	1%	10%	0%	2%	6%
BASF Total Fina Nafta Region Olefins Complex	Jefferson	77642	Benzene	1	13,065	24,772	39%	26%	68%	14%	28%	4%	0.5%	14%
			Ethylbenzene	1	1,978									
Blanchard Refining Galveston Bay Refinery	Galveston	77590	Catalyst Fines	2	230,737	38,488	38%	27%	59%	25%	31%	1%	1%	14%
			Particulate Matter	4	514,700									
Borger Refinery	Hutchinson	79008	Sulfur Dioxide	1	33,000	6,145	49%	30%	73%	6%	39%	0.3%	2%	19%
			1,3-Butadiene	7	8,968									
Dow Texas Operations Freeport	Brazoria	77541	Benzene	7	18,149	13,936	47%	33%	67%	11%	60%	0.5%	1%	21%
			1,3-Butadiene	3	18,081									
Formosa Point Comfort Plant	Calhoun	77978	1,3-Butadiene	3	18,081	749	28%	27%	84%	1%	31%	7%	1%	7%
			Sulfur Dioxide	24	1,660,669									
Goldsmith Gas Plant	Ector	79741	Sulfur Dioxide	24	1,660,669	263	52%	21%	88%	1%	19%	0%	2%	10%
			1,3-Butadiene	2	15,279									
Houston Plant	Harris	77017	1,3-Butadiene	2	15,279	129,255	59%	32%	60%	7%	82%	3%	1%	30%
			Ethylene Oxide	3	29,260									
Huntsman Port Neches	Jefferson	77651	Ethylene Oxide	3	29,260	40,586	27%	24%	82%	8%	10%	4%	0.5%	5%
James Lake Gas Plant	Ector	79741	Sulfur Dioxide	12	1,279,678	264	52%	21%	88%	1%	19%	0%	2%	10%
Pasadena Refining System	Harris	77506	Particulate Matter	2	71,371	74,153	57%	34%	70%	3%	83%	0.4%	1%	26%
			Sulfur Dioxide	2	221,573									
Port Arthur Refinery	Jefferson	77640	Sulfur Dioxide	2	221,573	22,289	21%	27%	21%	60%	26%	4%	1%	15%
Shell Oil Deer Park	Harris	77536	1,3-Butadiene	2	311,640	12,571	16%	28%	85%	1%	27%	1%	1%	12%
			Sulfur Dioxide	2	111,017									
Total Population Exposed					365,899	177,967	110,143	234,604	43,388	210,582	7,741	2,662	77,505	

¹: Select emission events from 2015 lasting less than 7 days each. Includes events that release toxic pollutants, more than 10,000 pounds of particulates or catalyst fines, or more than 20,000 pounds of sulfur dioxide per event. See Attachment 2 for specific event information.

²: Demographic data from U.S. EPA ECHO database, and represents populations within a 3 mile radius of the facility. <https://echo.epa.gov/>

Attachment 2: Short-Term Emission Events: Examples from Texas

Name	County	RN	Report #	Event Began	Duration (hrs:min)	Pollutant	Amount Released (lbs)
Amerada Hess Seminole Gas Processing Plant	Gaines	103758470	225251	1/3/2016	72:00	Sulfur Dioxide	168,291
			224900	12/21/2015	47:00	Sulfur Dioxide	115,628
			221560	10/13/2015	13:02	Sulfur Dioxide	23,562
			221368	10/8/2015	18:00	Sulfur Dioxide	40,575
			220883	9/22/2015	12:18	Sulfur Dioxide	99,117
			217577	7/20/2015	32:45	Sulfur Dioxide	262,703
			217440	7/16/2015	4:11	Sulfur Dioxide	36,090
			216398	7/6/2015	81:54	Sulfur Dioxide	40,874
			215732	6/13/2015	3:30	Sulfur Dioxide	72,892
			215632	6/10/2015	69:38	Sulfur Dioxide	27,121
			215140	6/2/2015	56:45	Sulfur Dioxide	263,318
			214087	5/13/2015	108:05	Sulfur Dioxide	52,473
			213602	5/5/2015	15:10	Sulfur Dioxide	76,017
			213513	5/4/2015	79:54	Sulfur Dioxide	30,490
			211161	3/10/2015	62:17	Sulfur Dioxide	72,920
209589	2/1/2015	9:11	Sulfur Dioxide	43,769			
209312	1/26/2015	119:37	Sulfur Dioxide	329,809			
208820	1/15/2015	72:15	Sulfur Dioxide	27,064			
Ascend Performance Materials Chocolate Bayou Plant	Brazoria	100238682	220355	9/18/2015	36:00	Acrylonitrile	1,319
			218858	8/12/2015	47:55	Acrylonitrile	8,678
BASF Total Fina Nafta Region Olefins Complex	Jefferson	100216977	212758	4/15/2015	121:45	Benzene	13,065
						Ethylbenzene	1,978
						Other HAPs	7,313
Bilbo-Frodo Production Facility	McMullen	107811747	213697	5/6/2015	24:00	Sulfur Dioxide	372,473
Blanchard Refining Galveston Bay Refinery	Galveston	102535077	220348	9/17/2015	114:20	Catalyst Fines	14,257
			208455	1/13/2015	22:54	Catalyst Fines	216,480
Borger Refinery	Hutchinson	102495884	217030	7/12/2015	127:30	Particulate Matter	334,000
			215969	6/17/2015	8:35	Particulate Matter	25,200
			215727	6/13/2015	40:30	Particulate Matter	143,000
			215142	6/2/2015	36:59	Particulate Matter	12,500
			211623	3/21/2015	131:15	Sulfur Dioxide	33,000
Dow Texas Operations Freeport	Brazoria	100225945	219065	8/19/2015	26:00	1,3-Butadiene	319
						Benzene	542
						Other VOCs	34,192
			218061	8/8/2015	156:00	1,3-Butadiene	1,088
						Benzene	853
						Other VOCs	49,884
			217273	7/17/2015	59:00	1,3-Butadiene	1,484
						Benzene	8,912
						Other VOCs	60,454
			216997	7/8/2015	64:40	1,3-Butadiene	410
						Benzene	913
						Other VOCs	22,927
			210215	3/5/2015	65:00	1,3-Butadiene	1,922
						Benzene	2,961
						Other VOCs	103,544
209798	2/5/2015	13:42	1,3-Butadiene	1,003			
			Benzene	1,407			
			Other VOCs	25,791			
207797	1/8/2015	71:00	1,3-Butadiene	2,742			
			Benzene	2,561			
			Other VOCs	83,296			
Formosa Point Comfort Plant	Calhoun	100218973	219879	9/9/2015	18:15	Butadiene	4,076
						Other VOCs	35,482
			210551	2/23/2015	29:40	1,3-Butadiene	10,333
						Other VOCs	42,167
208841	1/20/2015	11:10	1,3-Butadiene	3,672			
			Other VOCs	15,287			
Fullerton Gas Plant	Andrews	100218684	224935	12/23/2015	33:06	Sulfur Dioxide	117,715
			224704	12/18/2015	14:55	Sulfur Dioxide	105,871
			224147	12/9/2015	18:55	Sulfur Dioxide	90,384
			224148	12/9/2015	18:55	Sulfur Dioxide	80,665
			221086	10/2/2015	13:00	Sulfur Dioxide	153,245
			221009	10/1/2015	7:04	Sulfur Dioxide	28,997
			220311	9/16/2015	46:00	Sulfur Dioxide	180,030
			217575	7/21/2015	58:03	Sulfur Dioxide	229,485
			215373	6/5/2015	4:37	Sulfur Dioxide	20,238
208006	1/2/2015	51:55	Sulfur Dioxide	273,171			

Goldsmith Gas Plant	Ector	100222330	224979	12/26/2015	22:00	Sulfur Dioxide	194,133
			222448	10/31/2015	7:23	Sulfur Dioxide	55,653
			222451	10/31/2015	7:13	Sulfur Dioxide	28,840
			225020	10/27/2015	16:00	Sulfur Dioxide	49,906
			221563	10/12/2015	3:11	Sulfur Dioxide	24,339
			218864	8/14/2015	6:29	Sulfur Dioxide	21,911
			218694	8/12/2015	9:30	Sulfur Dioxide	72,507
			216861	7/6/2015	2:45	Sulfur Dioxide	23,199
			216109	6/20/2015	6:30	Sulfur Dioxide	233,937
			216106	6/20/2015	7:40	Sulfur Dioxide	46,085
			215717	6/13/2015	7:15	Sulfur Dioxide	25,932
			215558	6/10/2015	3:54	Sulfur Dioxide	24,811
			214291	5/16/2015	17:30	Sulfur Dioxide	100,332
			212961	4/21/2015	8:54	Sulfur Dioxide	22,507
			210666	2/25/2015	8:59	Sulfur Dioxide	29,890
			210214	2/16/2015	15:30	Sulfur Dioxide	176,620
			209740	2/4/2015	2:16	Sulfur Dioxide	39,248
			209525	1/30/2015	10:00	Sulfur Dioxide	201,832
			209702	1/30/2015	80:00	Sulfur Dioxide	62,315
			209386	1/28/2015	46:59	Sulfur Dioxide	26,294
			209347	1/27/2015	2:52	Sulfur Dioxide	41,711
			208357	1/11/2015	43:56	Sulfur Dioxide	39,685
			208039	1/3/2015	24:00	Sulfur Dioxide	46,900
207954	12/31/2014	24:06	Sulfur Dioxide	72,110			
Houston Plant	Harris	100219526	218679	8/11/2015	6:03	1,3-Butadiene	11,784
						Other VOCs	79,656
			219097	8/10/2015	130:30	1,3-Butadiene	3,495
					Other VOCs	23,534	
Howard Glascock Sour Gas Injection Facility	Howard	107089328	216157	6/17/2015	49:00	Sulfur Dioxide	143,952
Huntsman Port Neches	Jefferson	100219252	222170	10/26/2015	72:00	Ethylene Oxide	12,627
			218781	8/13/2015	15:00	Ethylene Oxide	12,938
			210781	3/1/2015	0:33	Ethylene Oxide	3,695
James Lake Gas Plant	Ector	107088759	225328	12/14/2015	33:45	Sulfur Dioxide	76,725
			222257	10/21/2015	39:00	Sulfur Dioxide	105,499
			219592	8/29/2015	54:00	Sulfur Dioxide	136,125
			217499	7/17/2015	62:00	Sulfur Dioxide	366,832
			212258	4/1/2015	12:00	Sulfur Dioxide	36,546
			212259	3/27/2015	9:30	Sulfur Dioxide	22,566
			211456	3/11/2015	42:00	Sulfur Dioxide	130,899
			210714	2/26/2015	10:20	Sulfur Dioxide	22,331
			210655	2/24/2015	40:00	Sulfur Dioxide	123,329
			210552	2/22/2015	31:30	Sulfur Dioxide	65,268
			210072	2/8/2015	70:15	Sulfur Dioxide	148,530
			209869	2/5/2015	22:20	Sulfur Dioxide	45,028
Keystone Gas Plant	Winkler	100238633	224194	12/10/2015	81:00	Sulfur Dioxide	259,000
			218577	8/10/2015	17:00	Sulfur Dioxide	51,300
			218426	8/7/2015	89:35	Sulfur Dioxide	139,000
			216495	6/28/2015	82:00	Sulfur Dioxide	216,000
Pasadena Refining System	Harris	100716661	224725	12/19/2015	23:30	Particulate Matter	32,971
			215014	6/1/2015	66:52	Particulate Matter	38,400
Port Arthur Refinery	Jefferson	100209451	223480	11/28/2015	6:44	Sulfur Dioxide	135,823
			222911	11/11/2015	3:39	Sulfur Dioxide	85,750
Shell Oil Deer Park	Harris	100211879	219755	9/2/2015	4:49	Sulfur Dioxide	20,974
			209075	1/22/2015	6:00	Sulfur Dioxide	90,043
			218482	8/9/2015	0:56	1,3-Butadiene	309,213
			216835	7/6/2015	48:00	1,3-Butadiene	2,427
Note: Emission Events reported to Texas Commission on Environmental Quality's Air Emission Event Report Database (http://www2.tceq.texas.gov/oce/eer/). Examples limited to events lasting less than 7 days each. Events releasing sulfur dioxide, particulate matter, and catalyst fines limited to the following thresholds: 20,000 pounds sulfur dioxide; 10,000 pounds particulate matter/catalyst fines.							

Attachment 3: 2009-2014 Sulfur Dioxide Emission Events and Enforcement Response

Facility Name	County	County FIP	Emissions (tons) ¹	# Enf. Orders ²	Total Penalties	Penalty \$/ton	Health Cost \$/ton ³
Goldsmith Gas Plant	Ector	48135	4,896.61	6	\$416,284	85.01	\$654
Keystone Gas Plant	Winkler	48495	27,102.87	1	\$9,118	0.34	\$572
Seminole Gas Plant	Gaines	48165	1,432.40	1	\$7,620	5.32	\$608
WAHA Gas Plant	Reeves	48389	2,421.96	1	\$751	0.31	\$567
Fullerton Gas Plant	Andrews	48003	661.44	2	\$3,920	5.93	\$623
Tilden Gas Plant	McMullen	48311	2,144.63	1	\$3,000	1.40	\$842
Andrews Booster	Andrews	48003	240.38	0	\$0	0.00	\$623
Dollarhide Gas Plant	Andrews	48003	142.26	1	\$3,180	22.35	\$623
Mallet CO2 Recovery	Hockley	48219	4,187.15	0	\$0	0.00	\$599
South Fullerton Booster Station	Andrews	48003	96.39	0	\$0	0.00	\$623

¹ Emissions data from Texas Commission on Environmental Quality's Air Emission Event Database: <http://www2.tceq.texas.gov/oce/eeer>

² Enforcement data obtained from open records requests through the TCEQ

³ Health cost (\$) per ton of sulfur dioxide. Data obtained from the Air Pollution Emission Experiments and Policy Analysis (APEEP): <http://bit.ly/1so6meT>