

MICHAEL C. BURGESS, M.D.
26TH DISTRICT, TEXAS



ENERGY AND COMMERCE

SUBCOMMITTEES:
OVERSIGHT AND INVESTIGATIONS
RANKING MEMBER

HEALTH

ENERGY AND ENVIRONMENT

JOINT ECONOMIC COMMITTEE

CONGRESSIONAL HEALTH CARE CAUCUS,
CHAIRMAN

Congress of the United States
House of Representatives
Washington, DC 20515-4326

WASHINGTON, DC OFFICE:
229 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-7772

www.house.gov/burgess

DISTRICT OFFICES:
1660 SOUTH STEMMONS FREEWAY
SUITE 230
LEWISVILLE, TX 75067
(972) 434-9700

1100 CIRCLE DRIVE
SUITE 200
FORT WORTH, TX 76119
(817) 531-8454

June 9, 2010

Texas Sunset Advisory Commission Members
PO Box 13066
Austin, TX 78711

Dear Members:

Thank you for the opportunity to allow me to provide public comments to include in your review of the Texas Commission on Environmental Quality (TCEQ).

On May 28, 2010, the *Fort Worth Star-Telegram* reported that a TCEQ internal audit revealed discrepancies over the disclosure of data recovered during air quality testing in the Fort Worth area. This audit proved alarming to both me and the men and women living in the 26th Congressional District.

According to the audit, on December 15-17, 2009, TCEQ performed air monitoring activity in Fort Worth. The data was presented to the public on January 12, 2010 and showed that "no measured concentrations of the 22 target compounds exceeded TCEQ long-term or short-term screening values when the canisters were analyzed by gas chromatography." However, a complaint filed with TCEQ's chief auditor's office alleged that management overseeing the data collection was aware that information presented to the public was "inaccurate and misleading." While the audit found that the information was "technically accurate," it agreed with the initial allegation that data presented could be considered misleading because "certain compounds were not detected in the field study."

Sometime after the original round of testing, subsequent tests with more technologically advanced and sensitive equipment were performed. On January 22, 2010, updated results were published, indicating that "benzene was detected at levels greater than the long-term health based appropriate comparison level/ESL." This seems to conflict with public statements made on January 12, 2010 touting the original data from the first round of testing. However, according to the audit, "there was no indication that upper management, nor the public, had been contacted to correct the inaccuracy." Therefore, the audit reveals that officials at TCEQ failed to alert Fort Worth officials and the media of the updated data from the subsequent tests.

On April 30, 2010, I was briefed in my Lewisville office by TCEQ officials who oversaw the aforementioned testing. The briefing covered air quality issues relating to urban drilling in my

Congressional district, but information on the discrepancies with the air quality testing data was withheld from me, just as it was withheld from other local officials.

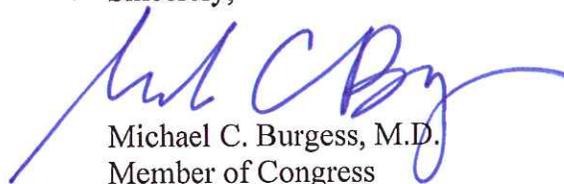
There are questions that TCEQ simply must answer, and the public is right to demand accountability. While the internal TCEQ audit found issues surrounding the data taken at sites in the DFW area, the larger issue is why TCEQ officials waited weeks after finding out this data was suspect to come forward and correct their earlier statements. An outside investigation is the most proper way to determine if the actions taken were proper.

TCEQ is currently up for review by the Texas Sunset Advisory Commission, and I have every confidence in the Commission to conduct a thorough review of TCEQ. I respectfully request that you consider my concerns outlined above during your review of this agency. TCEQ's response to discovering that its equipment was not able to properly detect certain levels of toxins calls into question the agency's credibility. Texans must be able to rely on their state agencies to fulfill their responsibilities, in this case, ensuring the safety and wellbeing of the state's residents.

The goal of your Commission's review is to make our state's agencies more effective and efficient, and I share this goal. I am confident in the Sunset Advisory Commission's ability to review the state's agencies, and I believe the State of Texas is in the best position to regulate its own agencies. As you review TCEQ overall, I request that you look into this matter specifically and address the issues outlined above.

I understand the Commission has scheduled a public hearing on TCEQ for December 15 and 16, 2010. I plan on attending this session to discuss my concerns about the agency with you in-person. If you have additional questions or need further information, please contact me or James Decker on my staff at (202) 225-7772.

Sincerely,



Michael C. Burgess, M.D.
Member of Congress

Attached: 5/28/2010 *Fort Worth Star-Telegram* article; TCEQ internal audit; Press statement by Congressman Michael Burgess

Star-Telegram

Texas agency gave inaccurate air pollution test results to Fort Worth

Posted Thursday, May. 27, 2010

BY MIKE LEE AND AMAN BATHEJA

mikelee@star-telegram.com, abatheja@star-telegram.com

The state agency in charge of testing for air pollution gave inaccurate test results to the city of Fort Worth about toxic emissions from gas wells in January, and when it realized what it had done, it failed to notify the city or the public for weeks, according to an audit made public this week.

A top official at the Texas Commission on Environmental Quality acknowledged Thursday that the tests were wrong but said the agency has learned from the mistake.

"The way we do our sampling has got to change, and it has," said John Sadlier, the agency's deputy director.

Elected officials in Tarrant County reacted strongly to the news, with some calling for investigations into what happened and legislation to make it a crime for public officials to withhold information that could affect public health.

Calvin Tillman, the mayor of the Denton County town of Dish, went so far as to call for a federal investigation into the environmental commission. Federal officials are already at odds with the agency over several other pollution issues.

At issue is a series of tests that the agency conducted in December in Fort Worth after activists raised questions about the amounts of benzene and other toxic compounds released from natural gas wells.

Sadlier presented the results to the Fort Worth City Council on Jan. 12, saying, "Based on this study, the air is safe."

Sadlier said the samples showed that none of the sites exceeded either the long-term or short-term screening levels for 22 airborne toxic compounds.

However, state officials later discovered that the tests had been done with equipment that wasn't sensitive enough to measure some of the compounds at the long-term levels.

When the samples were analyzed using more sensitive gear, three of them were found to be above the screening level for benzene for long-term exposure -- a year or more. The elevated samples were taken at a compressor station at Lake Arlington and at a location on Shelby Road near Race Street.

The state's long-term exposure limit for benzene is 1.4 parts per billion and its short-term exposure limit is 180 parts per billion. The highest benzene level found in the retest was 3.5 parts per billion, according to agency records.

The retests also found levels of p-diethylbenzene in a sample at the Glen Garden County Club golf course high enough to cause "odor-related health effects" like nausea and headaches in some people, according to an agency memo dated April 26.

The agency's internal auditor began a fraud investigation after an anonymous tipster reported that officials had knowingly presented inaccurate information about the Fort Worth air testing. The auditor's report said, "The initial information ... while technically accurate, could be considered to be misleading."

The auditor also criticized the agency's managers for not coming forward with the newer, more accurate results.

Sadlier and other agency officials knew about the second round of lab tests Jan. 22. They were concerned enough that they ordered a second round of field samples. But they didn't inform officials in Fort Worth, or make the information available to the public and news media.

However, by April 26, the agency had results from both the retesting of the December samples and the samples taken in February. But the agency didn't inform city officials until last week, and the revelation was not made public until it was reported Wednesday by WFAA/Channel 8 and the *Texas Observer*.

Sadlier said that when he released the original results, he tried to make it clear that they were heavily footnoted. But he said the agency should have acted faster in releasing the new results.

And, he said, the results of the February tests showed that the level of toxic fumes were "right back down to background levels."

Actions called 'unacceptable'

The three elevated testing sites appeared to all be in the district of state Rep. Marc Veasey, D-Fort Worth. In a letter to the environmental agency's leadership, Veasey said its handling of the issue was "unacceptable."

"If public safety had been the TCEQ's primary concern, it would have recognized that subsequent testing showing potential problems should have been immediately reported to the media, local officials, and the general public," Veasey wrote.

He also wrote that he plans to ask Fort Worth to consider ceasing all drilling activity "in the immediate areas of concern until further testing can be done to ensure that residents of my district and their families are safe."

In contrast, state Rep. Kelly Hancock, R-North Richland Hills, said he believes the criticism of the agency is overblown because it attempted to rectify the situation by doing the second round of tests.

"I think the key point to remember is, in February, the sites were retested, and they all came back significantly below the long-term exposure limits," Hancock said.

Hancock, a vice president at a chemical company, said he didn't understand why the agency bothered to retest the older samples in the air canisters.

"Actually the second tests were very unscientific," he said. "The canisters they used had been sitting on the shelves for a long time. ... If the tests had come back at lower levels, then everyone who's complaining now would want to throw those tests out."

Questions about testing

City, state and federal officials have been trying for more than a year to determine how much air pollution is released by natural gas drilling activity in the Barnett Shale, the giant gas field that lies under Fort Worth and 17 surrounding counties. There are 17,000 wells in the field, including more than 1,000 inside Fort Worth.

The environmental agency knew as far back as 2007 that fumes were being released from storage tanks and other equipment. But the agency didn't do any follow-up testing until 2009. And it didn't test inside Fort Worth until December.

Neighborhood groups and environmentalists have questioned Sadlier's contention that "the air is safe" since he made it Jan. 12. The tests were conducted in December, when volatile chemicals are less likely to be released. Also, the results came with a disclaimer saying that they might not be accurate.

Ten days later, Sadlier and other agency officials released another round of test results, from rural Denton and Wise counties. They showed elevated levels of benzene and other contaminants at 1 in 5 natural gas facilities:

Ramon Alvarez, senior scientist for the Environmental Defense Fund, said the results from the retests in Fort Worth should be looked at in the context of the other test results from around the field.

"It basically confirms what TCEQ has found in other parts of the Barnett Shale," he said.

The conflicting test results were one reason the Fort Worth City Council decided to pay for its own air quality tests at well sites in the city. A committee made up of neighborhood groups and gas industry representatives is designing the study and is searching for a contractor to do the tests by August.

Fort Worth reaction

The environmental agency sent a summary of the revised test results to Fort Worth officials Friday, city spokesman Jason Lamers said. But the agency didn't include any information about the internal investigation or explain the problems with the original results, he said.

"The public is obviously receiving mixed messages. From the city standpoint, we want to know the facts," Lamers said.

Moncrief said he is hopeful that the city's testing will help officials and residents alike determine whether Fort Worth has an air quality problem related to gas drilling.

"We want answers, the public wants answers, and we believe the city's independent study will help us find those answers," he said.

Elected officials in Fort Worth said the agency audit proves the need for more independent testing.

"Obviously, we cannot rely on any other entity," Councilwoman Kathleen Hicks said. "We must take the lead. There can be no more delays."

State Sen. Wendy Davis, D-Fort Worth, said she wants to introduce legislation that would make it a crime for public officials to withhold information that could affect public health. She met with high-level officials at the environmental agency from January to March to discuss air pollution problems, but no one mentioned the problems with the previous tests.

"It is only because of the fraud complaint filed by a concerned individual that these disturbing developments about dangerous benzene exposures have been revealed," Davis said in a statement.

Tillman, the mayor of Dish, called for an outside investigation by the U.S. Justice Department or Congress.

"It's obvious they're not going to hold themselves accountable," he said. "These guys are just straight up lying to the public."

The U.S. Environmental Protection Agency, which has been pushing the state agency on a wide variety of environmental topics, took a measured approach to the situation.

"I believe that the TCEQ is in the process of resolving the matter and explaining the discrepancy," EPA spokesman Dave Bary said.

Long-term testing

Since January, the state environmental agency has installed long-term monitors in Dish and at Eagle Mountain Lake in Fort Worth.

Both the agency and environmental groups say the long-term testing will provide the clearest picture of the amount of pollution from the gas industry.

Mark Vickery, the agency's executive director, said it has plans to install more long-term monitors. The new monitors haven't detected high levels of chemicals in the air during their first month in operation.

"We are committed to continuing our efforts to monitor air quality throughout the Barnett Shale and to respond to the residents of the area," Vickery said.

MIKE LEE, 817-390-7539

AMAN BATHEJA, 817-390-7695

[Looking for comments?](#)

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: John Sadlier, Deputy Director, OCE |

Date: March 25, 2010

From: Steve Goodson, Chief Auditor | 

Subject: Monitoring Operations Data Inquiry |

Background

On Wednesday, February 3, 2010, the Chief Auditor's Office (CAO) received a complaint via the email box fraud@tceq.state.tx.us. The complaint alleged that information given to upper management and subsequently presented to the public was inaccurate and misleading. The complaint further alleged that Monitoring Operation's management presented the information to upper management knowing that the information was inaccurate.

Specifically, the complaint referred to information resulting from the December 15-17, 2009 air monitoring activity in the Fort Worth, Texas. The complaint stated that the data presented showed that "no measured concentrations of the 22 target compounds exceeded TCEQ long-term or short-term screening values when the canisters were analyzed by gas chromatography." The complaint indicated that Monitoring Operation's management had been made aware that the technique used had a limitation and that the technique's limit of detection for 1, 3-butadiene, isoprene, and benzene were above TCEQ long-term health-based appropriate comparison values. The complaint further stated that the samples were analyzed by a more sensitive technique that indicated that benzene was detected at levels greater than the long-term health based appropriate comparison level/ESL. The complaint claimed that the laboratory report was published on January 22, 2010 and as of February 3, 2010 there was no indication that upper management, nor the public, had been contacted to correct the inaccuracy.

Objective

Our objective was to understand the facts and circumstances surrounding the reporting of the results from the December 15-17, 2009 air monitoring activity in Fort Worth, Texas in order to determine:

1. whether information given to upper management and subsequently presented to the public was inaccurate and misleading,
2. whether Monitoring Operation's management presented the information to upper management knowing that the information was inaccurate, and
3. whether samples analyzed by a more sensitive technique did indicate benzene at levels greater than the long-term ESL and whether that information was provided to upper management and the public.

RE: Monitoring Operations Data Inquiry

Conclusions

The initial information provided to the OCE Deputy, while technically accurate, could be considered to be misleading. The field *Near Real-Time Analytical Results* (field analysis) indicated that certain compounds were not detected in the field survey. Evidence shows that the near-real time analytical results, in most cases, showed no detectible levels of the various compounds being measured. However, evidence also shows that the techniques used in the field had a limit of detection above the ESL for long term health effects. The near-real time analytical technique was not designed to detect the presence of certain compounds at low levels. A disclaimer was placed on the field analysis reports indicating that the data was for screening purposes only and may not meet established quality control acceptance criteria. This information was presented to the public on January 12, 2010. A January 26, 2010 revision to the field analysis reports added additional disclaimers regarding the limits of detection.

We found no evidence to show that Monitoring Operation's management was aware that the information could be misleading at the time it was presented to the OCE Deputy. We did find evidence of the OCE Deputy questioning the analytical practices used in the field and the validity of the data and requiring that additional clarification, analysis and sampling be conducted. Specifically, evidence shows that the OCE Deputy, in communication with the Executive Director, directed that the canister samples from the Fort Worth monitoring trip be analyzed using a more sensitive laboratory technique.

Evidence shows that the results for the samples analyzed using a more sensitive laboratory analysis were released to Monitoring Operations Management and subsequently to the OCE Deputy on January 22, 2010. The laboratory analysis report shows that four samples measured benzene exceeding Long-Term ESL. The Executive Director confirmed that he was informed of the results of the laboratory analysis.

The OCE Deputy reported to us that he was not confident in accuracy of the results from the field and laboratory analysis. Evidence shows that the OCE Deputy, in communication with executive management, directed the Dallas-Fort Worth Regional Director to collect additional samples at sites where the laboratory analysis identified benzene. These additional samples were collected on February 5, 2010. Those results were not available when this project concluded on February 22, 2010. At that time, neither Fort Worth officials nor the media have been alerted. The OCE Deputy indicated that a comprehensive report from the Fort Worth Project will be produced once the final samples have been received and reviewed.

RE: Monitoring Operations Data Inquiry

Methodology

To answer the objectives, we took the following actions during the period of February 3-22, 2010:

- Obtained, reviewed, and analyzed the complaint, plus various agency documents, including monitoring data, Microsoft power point and video presentations, and email documentation,
- Interviewed the following agency personnel in person or by telephone:
 - Matt Baker P.E., Assistant Director, Field Operations Support Division
 - David Bower P.G., Director, Field Operations Support Division
 - Zak Covar, Deputy Executive Director
 - Tim Doty, Team Leader, Mobile Monitoring Team, Mobile Monitoring & Deployment Section
 - David Manis, Technical Specialist, Laboratory & Quality Assurance Section
 - Daphne McMurrer, Special Assistant, Field Operations Support Division
 - John Sadlier, OCE Deputy Director
 - Mark Vickery, Executive Director



Statement by Congressman Michael C. Burgess, M.D.

June 2, 2010

"Issues relating to urban gas drilling in the Barnett Shale have been present since I began my tenure as a United States Congressman in January of 2003, and my staff and I have been involved and monitoring the situation ever since. My staff have been present at every town hall event or local forum of which we have been aware, and engaged a senior energy advisor for the U.S. Environmental Protection Agency. At my request, I have been briefed by the Texas Commission on Environmental Quality several times, as well as the Texas Department of State Health Services, on the issue of air and water quality. Further, my staff and I have kept in constant contact with local and state officials on the issue.

"Since being named the Ranking Member on the Oversight and Investigations Subcommittee of the House Committee on Energy and Commerce Committee, Committee staff have looked into the issue to determine if federal involvement would be appropriate. The permitting and siting of gas production wells, as well as the oversight of air and water quality, are under the purview of local and state governments. Both of these entities are capable of carrying out their duties.

"When it was brought to my attention last Friday that an internal audit showed that the relevant state agency, TCEQ, failed to inform local officials in a timely manner of new air quality data collected at sites in Fort Worth, I took issue. There are questions that TCEQ needs to answer, and the public is right to demand accountability. TCEQ's response to discovering that its equipment was not able to properly detect certain levels of toxins calls into question the agency's credibility. TCEQ must focus its efforts on correcting these mistakes and reestablishing the public's trust.

"While the internal TCEQ audit found issues surrounding the data taken at sites in the DFW area, the larger issue is why TCEQ officials waited weeks after finding out this data was suspect to come forward and correct their earlier statements. An outside investigation is the most proper way to determine if the actions taken were proper."