

FOR IMMEDIATE RELEASE

June 17, 2021

Contact: Courtney Naquin, courtney.naquin@sierraclub.org, 512-661-1285

TCEQ Continues Effort to Hide Information on Toxic Air Pollution From Public In Desperate Appeal After Court Order to Deliver Withheld Documents

Austin, TX - On June 4, the Texas Commission on Environmental Quality (TCEQ) [filed a notice of appeal](#) in a two-year long open records lawsuit on ethylene oxide, after Travis County's District Court [ordered the agency](#) in May to hand over thousands of pages of documents the agency withheld from the public. Ethylene oxide is a highly toxic chemical and carcinogen where no safe level of exposure exists, and is known to cause breast cancer and cancer in children, especially in communities near EtO emitting plants. Sierra Club will now be forced to continue to litigate to try to seek public disclosure, and plans to defend the lower court's order by filing a brief in the Texas Third Court of Appeals.

In June 2019, the TCEQ's Toxicology Division, headed by former petrochemical industry lobbyist Michael Honeycutt, sought to allow more emissions of EtO pollution by claiming EtO was 3,500x less dangerous than the federal Environmental Protection Agency has shown. Sierra Club asked TCEQ to publicly release the documents that TCEQ considered or relied on as the technical basis for its EtO risk value. But, the agency refused, claiming confidentiality and tried to hide several thousand pages of documents. After the Texas Attorney General ordered TCEQ to publicly release the documents under the State's Public Information Act, TCEQ sued the Attorney General to try to keep the documents secret.

To compel TCEQ to release these documents to the public, Sierra Club, represented by Earthjustice, the Environmental Integrity Project, and Graves, Dougherty, Heaton & Moody, joined the lawsuit as an intervenor. After briefing and a hearing in late 2020, Sierra Club won its open records claims against the agency in Travis County State District Court in early May 2021. The court ruled against TCEQ on all counts. Rather than comply with the order and release the information at issue, however, TCEQ decided to take their loss to the Third Court of Appeals on June 4, the deadline to file for an appeal. Meanwhile, TCEQ has succeeded in continuing to avoid public release of the documents through entry of a temporary protective order during the litigation that prevents the public, and even Sierra Club itself, from seeing the documents at issue.

TCEQ's final cancer risk value is 2,000x weaker than EPA's, and TCEQ is already using the weak factor in state permitting and regulatory actions – while continuing to fight public disclosure of the requested information. On top of this, TCEQ is attempting to weaken national protections from ethylene oxide. In a federal EPA Clean Air Act rulemaking for miscellaneous organic chemical manufacturing facilities, TCEQ and an industry group (the American Chemistry Council) has challenged the use of EPA's cancer risk value for ethylene oxide based on the TCEQ EtO cancer risk value, while TCEQ refuses to make public the information on which it

relied to create that EtO cancer risk value. In that federal rulemaking matter, EPA has not yet taken final action on TCEQ's petition, or on Sierra Club and its co-petitioners' petition contending that the same chemical plant standards should be strengthened based on the IRIS value, because they are insufficiently protective of public health. The federal case on the rule is currently being held in temporary abeyance by the U.S. Court of Appeals for the D.C. Circuit.

Regarding TCEQ's appeal, Neil Carman, Sierra Club's Lone Star Chapter's Clean Air Program Director, said:

"TCEQ's harmful decision on ethylene oxide was made to protect the petrochemical industry, not public health. Ethylene oxide is a hazardous chemical posing serious health threats for many and fence-line communities in Texas. TCEQ's appeal illustrates the agency's persistent evasion of transparency and accountability to the people of Texas, but Texans have a right-to-know about TCEQ's public health decisions. The agency should simply release the information requested instead of fighting the state's fundamentally important public information requirements"

Ilan Levin, the Associate Director at Environmental Integrity Project said:

"Our state environmental regulators are supposed to protect public health from the petro-chemical industry's pollution, not try to hide information from the public. This win serves as an important reminder that the public has a right to see what TCEQ would rather keep behind closed doors."

Kathleen Riley, an Associate Attorney with Earthjustice said:

"TCEQ should abandon this futile appeal and instead finally prioritize public health and transparency by sharing the requested information with the public, including the people of Texas, as the lower Court ordered. TCEQ's ongoing refusal to disclose the requested information only further illustrates that TCEQ's cancer risk value for ethylene oxide cannot withstand public scrutiny."

Ethylene oxide is a hazardous air pollutant (HAP) under Title III of the federal Clean Air Act. In addition to being a highly toxic carcinogen more potent than benzene, ethylene-oxide is also a neurotoxin that is known to cause birth defects and severe reproductive issues. In Texas, there are 60 petrochemical plants and four large medical sterilizing plants that produce or use ethylene-oxide and that neighbor and endanger 26 different communities. EPA's 2018 National Air Toxics Assessment found extraordinarily high cancer risk, in part due to ethylene oxide emissions, in Texas and other states, yet so far TCEQ has not taken any publicly known action to protect communities in Texas from this pollution, and instead has been fighting against national protection for public health.

###