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VIA E-FILING [title vi complaints@epa.gov](mailto:title_vi_complaints@epa.gov)

US Environmental Protection Agency
Office of External Civil Rights Compliance Office
Office of Environmental Justice and External Civil Rights
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: EPA Complaint No. 02R-21-R6; Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, by (b)(6) Privacy, (b)(7)(C) Enf. Privacy regarding the Texas Commission on Environmental Quality's Issuance of Federal Operating Permit No. 01493 to Oxbow Calcining LLC

Dear Sirs:

On behalf of Complainant (b)(6) Privacy, (b)(7)(C) Enf. Privacy Lone Star Legal Aid (LSLA) and the Environmental Clinic at the University of Texas School of Law request that the U.S. Environmental Protection Agency (EPA) reopen Civil Rights Complaint No. 02R-21-R6¹ regarding Texas Commission on Environmental Quality's (TCEQ) regulation of the Oxbow Calcining facility in Port Arthur, Texas. This "Supplemental Complaint" incorporates the Original Complaint by reference herein, and, for brevity, has avoided repeating any background information or allegations made in the Original Complaint. For reference, the Original Complaint is included as Exhibit 1 in the attached Appendix, which also incorporates the documents referenced in this Supplemental Complaint for reference.

¹ See Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, by (b)(6) Privacy, (b)(7)(C) regarding TCEQ's Issuance of Federal Operating Permit No. 01493 to Oxbow Calcining LLC (Aug 18, 2021) (Original Complaint) (Appx. Exh. 1).

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Specifically, EPA should reopen this Original Complaint to complete the follow-up actions promised in its December 26, 2023 administrative closure letter and to take additional actions to protect air quality and the health of residents in West Port Arthur. EPA's administrative closure of the Original Complaint because of the pending Title V Clean Air Act permit challenge was unnecessary as the Original Title VI Complaint touched on broader relief than could be provided through the Title V review, on which EPA ultimately took no further action. Further, the adverse impacts and civil rights violations created by Oxbow's emissions and TCEQ's failure to adequately implement and enforce the Clean Air Act continue and warrant immediate EPA action.

I. THE COMPLAINT SHOULD BE REOPENED AND THE INVESTIGATION CONTINUED

EPA has an obligation under the Civil Rights Act to assure that persons are not denied the benefits of, or subjected to discrimination under, any program that receives federal financial assistance. As documented in the attached Original Complaint, TCEQ and its air permitting program receive federal financial assistance and TCEQ's actions and inactions have denied (b)(6) Privacy, (b)(7)(C) E and the West Port Arthur community the benefits of TCEQ's air permitting program and subjected them to discrimination. EPA's 2021 Final Case Resolution Manual list factors that may support administrative closure.² Those factors did not fully support EPA's administrative closure of the attached Original Complaint. EPA asserted the issues in the Original Complaint were not ripe for review because there might be future related events, specifically the resolution of the then pending petition for objection to Oxbow's Clean Air Act Title V operating permit, which could have an impact on the issues under investigation.

In reality, EPA itself had failed to meet its deadline for responding to TCEQ's action related to the pending Title V petition and because the response to the Title V petition could not resolve or mitigate many of the issues raised in the Original Complaint. Regardless, now that EPA has denied the petition,³ the issues raised in the Original Complaint are clearly ripe for review and the Complaint should be reopened and EPA should investigate the civil rights violations in West Port Arthur.

In addition, when it closed the Title VI Complaint, EPA made clear that it intended to continue working on the issue of air pollution in West Port Arthur.⁴ Specifically, EPA wrote in its closure letter that, "ECRC will coordinate with EPA Region 6, and other programs in EPA as appropriate, to continue to gather the data necessary to assess the causes and factors contributing to potential harms experienced by this Community."⁵ Initial next steps expressly set forth by EPA include "(1) additional air monitoring in the Community; (2) obtaining stack testing data for the Oxbow facility; (3) exploring the availability of sensor-based air monitoring in the Community through EPA's established air sensor loan programs; and (4) investigating available

² EPA, Final Case Resolution Manual January 2021, 19 (January 5, 2021), https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

³ EPA, Order Denying Petition, Oxbow Calcining, LLC, Petition No. VI-2023-12 (Appx. Exh. 4).

⁴ EPA, December 26, 2023 Letter Re: Administrative Closure of EPA Complaint No. 02R-21-R6 (Appx. Exh. 2).

⁵ *Id.* at 5 (Appx. Exh. 2).

options to facilitate university and other community led air monitoring projects for this Community.”⁶

To date, we have received no information to indicate that EPA has actualized any of these next steps to address the harms experienced by West Port Arthur residents. Oxbow’s emissions continue to cause harm and are still monitored solely via a single TCEQ monitor located to the northeast of the facility. We have had no communication about EPA locating its own monitor to capture potential exceedances or about partnering with a community-led air monitoring project.

(b)(6) Privacy, (b)(7)(C) EPA asks that EPA take the following actions to address this ongoing complaint:

1. Reopen the Original Complaint and investigate its claims, including by issuing a Clean Air Act 114 information request to Oxbow for information related to any alert system based on wind direction that Oxbow may use to alter operating conditions.
2. Update (b)(6) Privacy, (b)(7)(C) EPA on the status of EPA’s next actions identified in its letter of December 26, 2023:
 - a. additional air monitoring in the Community;
 - b. obtaining stack testing data for the Oxbow facility;
 - c. exploring the availability of sensor-based air monitoring in the Community through EPA’s established air sensor loan programs; and
 - d. investigating available options to facilitate university and other community led air monitoring projects for this Community; and
 - e. considering any other actions to obtain additional information as appropriate and as resources allow.
3. Host an outreach event with the West Port Arthur community, explaining what the facility does, how the facility’s operations impact residents’ health, any steps the facility is taking to mitigate harm to the Port Arthur community, and any upcoming public comment or public meeting opportunities.
4. Install an additional regulatory SO₂ monitor in compliance with the 2015 DRR or relocate the existing regulatory SO₂ monitor to the area where emissions are the most likely to be highest according to our and TCEQ’s modeling, to ensure compliance with the SO₂ NAAQS.
5. Work with community members to create a community monitoring network in West Port Arthur.
6. Complete a cumulative impacts assessment of West Port Arthur.
7. Conduct an audit of Oxbow’s Port Arthur facility to chronicle any upgrades to the facility and for compliance with BACT and whether: (a) Oxbow must install SO₂ control technology in order to assure compliance with Oxbow’s emissions limits and the SO₂

⁶ *Id.* (Appx. Exh. 2).

NAAQS, including but not limited to scrubbers, and (b) TCEQ must require Oxbow to apply for a permit amendment to come into compliance with BACT, thus ensuring that the public has the opportunity to comment.

8. Conduct an audit of TCEQ's issuance of the Agreed Order in August 2019 to Oxbow for the SO₂ NAAQS exceedances, particularly TCEQ's review of Oxbow's compliance history and penalty assessment.
9. Re-examine the attainment status of Jefferson County to assess whether the previous statistical reviews of ambient quality data for SO₂ are consistent with actual air quality as reflected in the 2017-2020 ambient air quality data. For example, investigative actions could include further air dispersion modeling to assess the impact on Port Arthur residents based on 2019 and 2020 data.

II. WEST PORT ARTHUR'S RESIDENTS CONTINUE TO BE EXPOSED TO UNHEALTHY LEVELS OF POLLUTION STEMMING FROM THE EXPLICIT HISTORY OF HOUSING SEGREGATION IN PORT ARTHUR.

As documented in the Original Complaint, West Port Arthur was expressly segregated and the only neighborhood where Black persons could live in Port Arthur. At the same time, West Port Arthur was the area designated for heavy industry. Today, the area is home to not only Oxbow, but three refineries, multiple chemical plants, terminals and dock facilities, and two liquified natural gas facilities. Today, 91% of the neighborhood's residents are Black persons.⁷ The proportion of Black students at the closest schools ranges from 60.99%-92.16%.

As EPA noted in its closure letter, EPA's Environmental Justice Screening and Mapping Tool (EJScreen) shows West Port Arthur is in the 95th percentile for the Air Toxics Cancer Risk, Particulate Matter 2.5, and Risk Management Plan (RMP) Facility Proximity EJ Indices; in the 90th percentile for the Air Toxics Respiratory Hazard EJ Index; and in the 85th percentile for the Asthma EJ Index.⁸ West Port Arthur was also on TCEQ's Air Pollutant Watch List because of monitored benzene at levels of concern for over ten years.⁹

Residents in West Port Arthur have continued to suffer serious health impacts as a result of TCEQ's failure to protect public health as mandated by Texas' laws. Overall, Jefferson County, Texas had the 187th poorest overall health outcomes out of 244 ranked Texas counties in 2022.¹⁰ In regard to overall health factors, Jefferson County ranked 213th out of 244 counties in 2022.¹¹ These health impacts affect the disproportionately Black and low-income residents of the area near Oxbow.

⁷ Original Complaint at 5-9 (Appx. Exh. 1).

⁸ EPA, December 26, 2023 Letter Re: Administrative Closure of EPA Complaint No. 02R-21-R6 at 3-4 (Appx. Exh. 2).

⁹ See, <https://www.tceq.texas.gov/downloads/toxicology/air-pollutant-watch-list/proposed/1003-benzene.pdf>.

¹⁰ County Health Rankings, University of Wisconsin Population Health Institute, Texas 2022 Overview.

¹¹ *Id.*

III. DESPITE BEING WELL AWARE OF PORT ARTHUR'S HISTORY OF SEGREGATION AND THE ADVERSE IMPACTS OF AIR POLLUTION ON THE RESIDENTS OF WEST PORT ARTHUR, TCEQ HAS FAILED TO PROPERLY IMPLEMENT THE TEXAS CLEAN AIR ACT WITH RESPECT TO THE OXBOW FACILITY

TCEQ is well aware of the concentrated industry and air pollution in West Port Arthur, of the adverse health status of its population, and of the economic and racial demographics of the area. TCEQ has the authority and obligation to ensure that air pollution levels in West Port Arthur are protective of public health. Instead, TCEQ has been consciously indifferent to the impacts of its actions on air pollution levels and health and safety in West Port Arthur. The Texas Legislature stated that the Texas Clean Air Act's purpose is "to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility."¹² The term "air pollution" is defined as any air contaminant, or combination of contaminants, which is injurious and adversely affect human health or welfare, property, or interferes with the normal use and enjoyment of property.¹³

In Texas, air pollution sources such as Oxbow are prohibited from discharging air pollutants unless authorized to do so by TCEQ.¹⁴ The Texas Health & Safety Code and Texas State Implementation Plan (SIP) include substantive and procedural requirements for TCEQ's authorization of emissions. TCEQ is forbidden from granting a permit or permit amendment if there is any indication that the emissions to be authorized would contravene the intent of the Texas Clean Air Act, including protection of the public's health and physical property.¹⁵ Once issued a permit, permit holders, such as Oxbow, cannot vary from any representation or permit condition without obtaining a permit amendment if the change will cause: (A) a change in the method of control of emissions; (B) a change in the character of the emissions; or (C) an increase in the emission rate of any air contaminant.¹⁶

TCEQ also has a duty to enforce the Texas Clean Air Act vigorously and to expeditiously initiate enforcement action for violations of the Act or its regulations.¹⁷ The agency is statutorily required to give priority to monitoring and enforcement in areas, like West Port Arthur, "in which regulated facilities are concentrated."¹⁸ If a condition of air pollution exists, TCEQ "may order any action indicated by the circumstances to control the condition."¹⁹ Furthermore, TCEQ's rules and the Texas SIP state that, "[n]o person shall use any plan, activity, device or contrivance which the executive director determines will, without resulting in an actual reduction

¹² TEX. HEALTH & SAFETY CODE § 382.002.

¹³ TEX. HEALTH & SAFETY CODE § 382.003(3).

¹⁴ TEX. HEALTH & SAFETY CODE § 382.085. ("Except as authorized by a commission rule or order, a person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.")

¹⁵ TEX. HEALTH & SAFETY CODE § 382.0518(c) & (d).

¹⁶ 30 TEX. ADMIN. CODE § 116.116(b).

¹⁷ TEX. HEALTH & SAFETY CODE § 382.002(b).

¹⁸ TEX. WATER CODE § 5.130.

¹⁹ TEX. HEALTH & SAFETY CODE § 382.025.

of air contaminants, conceal or appear to minimize the effects of an emission which would otherwise constitute a violation of the Act or regulations. Air introduced for dilution purposes only is considered a circumvention of the regulations.”²⁰ The SIP additionally states:

In an area where an additive effect occurs from the accumulation of air contaminants from two or more sources on a single property or from two or more properties, such that the level of air contaminants exceeds the ambient air quality standards established by the Texas Natural Resource Conservation Commission (TNRCC or commission), and each source or each property is emitting no more than the allowed limit for an air contaminant for a single source or from a single property, further reduction of emissions from each source or property shall be made as determined by the commission.²¹

TCEQ’s failure to comply with the intent and plain language of the Texas Clean Air Act and its own permitting standards, and its failure to properly enforce the Act with respect to Oxbow, continue to violate the civil rights of West Port Arthur residents and amounts to deliberate indifference to the adverse impacts on residents of West Port Arthur.

A. TCEQ’s Failure to Adequately Enforce Clean Air Act Requirements Has Allowed Oxbow to Continue to Emit Pollution in Violation of Port Arthur Residents’ Civil Rights

There is no question that Oxbow’s emissions have caused exceedances of the NAAQS one-hour standard for SO₂, created a condition of air pollution, violated Oxbow’s air permit, and adversely impacted residents of West Port Arthur. TCEQ has acknowledged violations of its regulations and Oxbow’s permits and cited Oxbow for:

exceed[ing] the national primary one-hour annual ambient air quality standard for SO₂ of 75 ppb at the TCEQ Continuous Ambient Monitoring Station 1071 by an average of 16.16 ppb for two hours on January 10, 2017, one hour on February 11, 2017, one hour on March 7, 2017, one hour on April 2, 2017, two hours on May 3, 2017, and one hour on May 26, 2017.²²

TCEQ has also acknowledged that “[e]xposure to SO₂ can affect the respiratory system, especially for people with asthma. Studies show connections between short-term exposure and increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in populations at risk (including children, the elderly, and asthmatics). SO₂ can react with other compounds in the atmosphere to form small particles that cause or worsen respiratory disease or aggravate existing heart disease.”²³

²⁰ 30 TEX. ADMIN. CODE § 101.3.

²¹ 30 TEX. ADMIN. CODE § 101.2.

²² EPA, Order Granting Oxbow Calcining, LLC, Petition No. VI-2020-11 (Appx. Exh. 3).

²³ TCEQ, Air Pollution from Sulfur Dioxide (last visited Apr. 24, 2024), available at <https://www.tceq.texas.gov/airquality/sip/criteria-pollutants/sip-so2>.

TCEQ is charged with “vigorously” enforcing the Texas Clean Air Act and prioritizing enforcement in areas like Port Arthur where “regulated facilities are concentrated.”²⁴ Texas law and the SIP broadly prohibit circumvention.²⁵

1. TCEQ is allowing Oxbow to Circumvent the Clean Air Act (CAA).

The 2019 Agreed Order addressing Oxbow’s NAAQS violations was a failure on the part of TCEQ to protect the NAAQS and it allowed Oxbow to circumvent the requirements of the Texas Clean Air Act (TCAA). Oxbow claimed that its NAAQS exceedances only occurred when at least one cold stack was in use.²⁶ According to Michael de la Cruz, TCEQ’s Air Section Manager, TCEQ did not investigate Oxbow’s claims that the cold stacks were the cause of the SO₂ exceedances but simply relied on Oxbow’s representations.²⁷ Instead of ensuring that Oxbow reduced its emissions to levels sufficient to prevent it from causing or contributing to future NAAQS violations and the attendant health impacts of high ambient levels of SO₂, TCEQ’s enforcement action assessed a small penalty and required Oxbow to seek a permit alteration to remove authorization to operate its cold stacks. Oxbow was not required to reduce its SO₂ emissions.

There is evidence, however, that simply shutting down the cold stacks was not sufficient to resolve Oxbow’s noncompliance. (b)(6) Privacy, (b)(7)(C) Enf. Priv. modeling demonstrates that were Oxbow emitting at its permitted emission rates, Oxbow would still have caused exceedances of the 2010 One-Hour Primary SO₂ NAAQS in 2017 and 2018 even though it had ceased operating out of its cold stacks. U.S. EPA has yet to provide any response to this modeling.

Further, between the time of Oxbow’s documented NAAQS exceedances and TCEQ agreed order, TCEQ granted Oxbow a permit alteration to construct a new, taller, narrower, hot stack. The new stack was 20 feet higher than the existing stack and almost 3 feet narrower.²⁸ TCEQ stated “[t]he increase in stack height and decrease in diameter is expected to result in better dispersion of emissions and lower off-property impacts since the release height will be higher and the exit velocity resulting from the decreased diameter will be greater than the current stack.”²⁹ This alteration would thereby disperse Oxbow’s emissions without reducing them.

²⁴ TEX. HEALTH & SAFETY CODE § 382.002(b), TEX. WATER CODE § 5.130.

²⁵ 30 TEX. ADMIN. CODE § 101.3.

²⁶ Original Complaint, Attachment J-1 (Exh. 10-1, at 21 ¶ 43) (Appx. Exh. 5).

²⁷ Original Complaint, Attachment J-3 (PASE Litigation, Exh. 6, at 1531 (Appx Exh. 6) (excerpts of a deposition of Michael de la Cruz, Air Section Manager at TCEQ, read into the transcript, “It was my understanding that while the operations were coming from the cold stack they resulted in those eight exceedances that are identified in this enforcement action.”); *Id.* at 1532 (Appx. Exh. 6)(“I can’t recall if the investigator looked into [the cold stacks] but it was represented that during the operation of the cold stacks that was correlated to the operation or the exceedances of the NAAQS.”); *Id.* at 1533 (Appx. Exh. 6)(affirming that “the agency rel[ied] upon these representations that the cold stacks were the cause of the exceedances); see also Original Complaint, Attachment J-21 (PASE Litigation, Exhibit 55) (Appx. Exh. 7) (TCEQ Letter to Tony Botello, Plant Contact, Oxbow Calcining, LLC, Re: Follow-up from November Meeting, “From conversations with Oxbow representatives, TCEQ staff understand that cold stacks were used during those eight hours.”).

²⁸ Original Complaint, Attachment G (Letter from TCEQ to Michael Holtham, Plant Manager, Oxbow Calcining LLC, Re: Permit Alteration to NSR Permit No. 45622, Sept. 20, 2018 (Attachment to Oxbow, Air NSR Permit No. 45622, Permit Alteration, at 12 (Appx Exh. 8) (emphasis added) (“2018 NSR Permit No. 45622 Permit Alteration”) and Attachment J-10 (PASE Litigation, Exhibit 105) (Appx. Exh. 9).

²⁹ Original Complaint, Attachment G, at 4 (2018 NSR Permit No. 45622 Permit Alteration) (Appx. Exh. 8).

Oxbow acknowledged that it conducted modeling of various stack configurations to determine which would allow it to avoid NAAQS exceedances.³⁰ [REDACTED] modeling, however, indicates that given the magnitude of Oxbow's permitted SO₂ emissions, the currently approved stack is not sufficient to assure compliance with the NAAQS.

CAMS 1071 was positioned in order to capture SO₂ exceedances from the Oxbow facility with its modified operation scenario and higher stack.³¹ In August 2019, CAMS 1071 was moved to a new location, [REDACTED] Valero Port Arthur Gate 2.³² TCEQ said that it had done additional modeling based on Oxbow's current emissions, "accounting for . . . current operations, stack parameters, and recent meteorological data to assess potential monitor relocation to measure peak SO₂ concentration."³³ TCEQ noted that Oxbow was using 4 rotary kilns and 4 stacks and cited the height of Kiln 4 following Oxbow's construction of the new taller and narrower stack.³⁴

Oxbow, however, appears to be concealing its emissions by altering emissions from its stacks when the winds blow towards CAMS 1071. The single monitor located closest to Oxbow only captures emissions when the wind is blowing towards it. Oxbow appears to have done a comprehensive analysis of how wind conditions impact the CAMS 1071 monitor's ability to detect SO₂ exceedances, enabling Oxbow to seemingly manipulate its operations to avoid detection at the monitor site. For example, Oxbow did tests to determine "ideal dispersion at all times."³⁵ When Oxbow's alert system registers SO₂ levels above 25 ppb, Oxbow would adjust its dampers.³⁶

This practice clearly qualifies as a circumvention of 30 Tex. Admin. Code § 101.3 and the Texas State Implementation Plan. By dispersing emissions without actually reducing them, and curtailing emissions only when they are blowing in the direction of the monitor, Oxbow is effectively concealing emissions that would otherwise likely be a violation of the NAAQS, its permits, and TCEQ regulations. This scheme is aided by the failure of TCEQ to appropriately monitor emissions and the failure to ensure that Oxbow does not circumvent the single monitor's ability to detect violations caused by Oxbow's emissions.

Oxbow may attempt to paint this circumvention as a voluntary reduction in emissions. After all, Oxbow has been able to avoid violations at CAMS 1071. But given Oxbow's past NAAQS exceedances, its original request for an elevated stack beyond good engineering practice, its narrowing of its stack, the testimony that Oxbow was using monitor and wind data to conceal elevated emissions, together with the fact that TCEQ has received numerous complaints about

³⁰ Original Complaint, Attachment J-10 (PASE Litigation, Exhibit 105) (Appx. Exh. 9); 40 C.F.R. § 51.100 (1986).

³¹ Letter from Richard Chism, TCEQ to Jeffrey Robinson (Aug. 9, 2019) (Appx. Exh. 21).

³² Letter from Jeffrey Robinson, EPA, to Richard Chism (Aug. 23, 2019) (Appx. Exh. 22).

³³ TCEQ, Annual Monitoring Network Plan, N-18 (2019), available at https://www.tceq.texas.gov/airquality/monops/past_network_reviews.

³⁴ Letter from Richard Chism, TCEQ to Jeffrey Robinson (Aug. 9, 2019) (Appx. Exh. 21).

³⁵ Original Complaint, Attachment J-3 (PASE Litigation, Exh. 6, at 563 (quoting letter from Daniel Rosendale to PASE, dated Jan. 18, 2017))(Excerpt at Appx. Exh. 6).

³⁶ Original Complaint, Attachment J-3 (PASE Litigation, Exh. 6, at 922-25 (testimony of Douglas Landwehr)) (Excerpt at Appx. Exh. 6).

the facility, TCEQ should have done more to assure that Oxbow would not continue to cause or contribute to future NAAQS violations.

2. *TCEQ has failed to take enforcement action that could limit Oxbow's emissions, including its Hazardous Air Pollutant Emissions*

TCEQ has also failed to vigorously enforce the CAA by failing to take enforcement action for Oxbow's unpermitted emissions of pollutants including lead, carbon monoxide, particulate matter, and hydrofluoric acid. In 2007, Oxbow claimed to have newly discovered that it had been emitting 2.45 tons per year (tpy) of lead.³⁷ In 2011, Oxbow claimed to have newly discovered emissions of CO and hydrofluoric acid that had been ongoing for years.³⁸ And in 2013, Oxbow added to its permitted limits 690.31 tpy of "preexisting" PM_{2.5}.³⁹ Apart from the issue of whether or not these newly identified emissions were properly permitted, Oxbow admitted to years of significant unpermitted emissions. TCEQ failed to take any enforcement action for these violations. While TCEQ clearly had authority to take enforcement action for Oxbow's years of unauthorized emissions and to require emission reductions, it has chosen not to do so.

3. *TCEQ has departed from its own procedures in assessing inadequate penalties for Oxbow's NAAQS violations.*

The penalties assessed by TCEQ for Oxbow's SO₂ emissions that caused NAAQS exceedances were inadequate to deter future violations and were based on incorrect facts. The Penalty Calculation Worksheet from the 2019 Agreed Order describes the violations as being several exceedances of NAAQS for SO₂ throughout 2017.⁴⁰ The matrix notes that "the pollutants do not exceed levels that are protective of human health or environmental receptors" and therefore downgrades the severity of the violation and reduces the base penalty for the violation.⁴¹ TCEQ's determination that this violation of the NAAQS does not exceed levels that are protective of human health is untenable. The NAAQS are generated precisely to set a maximum permissible level of criteria pollutants in order to protect public health and welfare and provide an adequate margin of safety.⁴² By exceeding the level that EPA has deemed to be safe, Oxbow's violations by definition exceed levels that are protective of human health.

The determination that Oxbow's exceedances were moderate and not major was also a departure from TCEQ guidance at the time.⁴³ TCEQ guidance expressly states that actual emissions which exceed levels that are protective of human health constitute major violations, while moderate

³⁷ Permit Amendment Source Analysis & Technical Review, Project No. 126875 (June 2007) (Appx. Exh. 10).

³⁸ Permit Amendment Source Analysis & Technical Review, Project Nos. 161538 and 161527 (Nov. 2011) (addition to permit of 45.99 tpy HF (bringing total HAPs to 221.5 tpy) and of 244.13 tpy CO) (Appx. Exh. 11).

³⁹ Permit Renewal and Amendment Source Analysis & Technical Review, Projects 174988/174990 (June 2012) (Appx. Exh. 12); Permit Amendment Source Analysis & Technical Review, Project No. 195179 (June 2013) (Appx. Exh. 13); *see also* Permit Amendment Source Analysis & Technical Review, Project No. 115737 (Aug. 2015) (adding sulfur trioxide emissions) (Appx. Exh. 14).

⁴⁰ 2019 TCEQ Agreed Order Docket No. 2018-1687-AIR-E at 7 (Appx. Exh. 15).

⁴¹ *Id.*

⁴² EPA, Policy Assessment for the Review of the Primary National Ambient Air Quality Standard for Sulfur Oxides, 1-3 (May 2018).

⁴³ TCEQ, Penalty Policy (Apr. 1, 2014) at 10, available at <https://www.tceq.texas.gov/downloads/compliance/publications/rg/penalty-policy-2014-rg-253.pdf>.

violations are defined as significant exceedances which do not exceed protective levels.⁴⁴ Unless TCEQ is claiming that NAAQS levels are not levels set to protect human health, the determination to categorize this as a moderate violation was done in error.

TCEQ also departed from procedure by characterizing the exceedances as discrete events, rather than continuing events.⁴⁵ Discrete violations involve individual instances that are separate in time.⁴⁶ As an example of this type of violation, TCEQ's Penalty Policy lists "the failure to submit annual reports, the failure to collect or report monitoring data, the failure to perform a hazardous waste determination where required, and the failure to show a certificate of self-certification prior to accepting a fuel drop."⁴⁷ TCEQ then lists "the exceeding of permitted discharge or emission limits" as a continuing violation.⁴⁸ Oxbow committed this exact violation, and TCEQ erred by calculating penalties based on discrete events.

Furthermore, the Penalty Calculation Worksheet fails to require the penalty to be sufficient to capture Oxbow's economic benefit of its violations. The penalty did not recoup the costs that Oxbow had saved by not acting earlier to prevent NAAQS violations. The only saved costs entered into the penalty calculation worksheet are the costs to obtain the required permits for ceasing operations out of the cold stacks.⁴⁹ The worksheet fails to figure in the costs of building a new, taller, narrower, hot stack, which Oxbow has claimed is its solution for dispersing SO₂ emissions so as to avoid NAAQS exceedances. That cost should have, therefore, been factored into the penalty for the 2017 exceedances. The exclusion of these costs from the economic benefit analysis provides yet another example of TCEQ's failure to adequately enforce CAA requirements to the detriment of West Port Arthur residents.

B. TCEQ has exhibited a pattern of failing to follow permitting requirements that reflects a departure from standard legal procedure and has led to violations of civil rights.

Oxbow's continued operation of its grandfathered kilns PK 2, 3 and 4, constructed in 1938, 1952, and 1970 respectively, and PK 5 constructed in 1979, without installing readily available controls to limit its SO₂ emissions, has resulted in nuisance conditions, adverse health impacts, and NAAQS exceedances, as documented in the attached Original Complaint. These adverse impacts were made possible by TCEQ's repeated failure to comply with the Texas Clean Air Act and related regulations. Oxbow has had decades to rise to the standards that other facilities are held to and has continued to utilize decades-old equipment without adequate pollution controls.

Oxbow's initial permit for PK 2, 3, and 4 was Voluntary Emission Reduction Permit (VERP) 45622 issued in 2002. At the time, the Port Arthur area was nonattainment. The VERP rules prohibited TCEQ from issuing a VERP permit to Oxbow if emissions from Oxbow would contravene the technology standards of the rules or the intent of the Texas Clean Air Act,

⁴⁴ *Id.* at 11.

⁴⁵ *Id.* at 13.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 2019 TCEQ Agreed Order Docket No. 2018-1687-AIR-E at 9 (Appx. Exh. 15).

“including protection of the public’s health and physical property.”⁵⁰ The VERP permitting rules also required that Oxbow have controls meeting the more stringent of at least 10-year-old Best Available Control Technology or a technology demonstrated to be generally achievable for the same type of facility, considering the age and remaining useful life of the facility.⁵¹ TCEQ required no additional controls at the plant when the VERP was issued and noted that there would be no emissions reductions achieved through the permit.⁵² The agency stated that “considering the uniqueness of the petroleum coke calcining process, flue gas volume, and high stack exhaust temperature” the existing plant facilities would be considered 10-year-old BACT.⁵³ Despite the fact that the permit review notes that the facility is in a sensitive location with respect to nuisance, and the facility’s 8,550 tons per year of SO₂ emissions, no controls were required to prevent the facility from creating nuisance conditions or a condition of air pollution.⁵⁴

Since the issuance of VERP 45622, TCEQ has repeatedly allowed Oxbow to skirt permitting requirements and avoid impacts reviews of its emissions. Particularly concerning are the failures to assure that emissions authorized by TCEQ will be protective of public health, the repeated new identification of existing unauthorized pollutants (including hydrofluoric acid, sulfur trioxide, and lead), and the use of alterations to allow significant changes to Oxbow’s permits with no public participation. Some more recent examples of permitting actions that failed to adequately evaluate health and property impacts and of alterations that should have required permits amendments are detailed below.

1. Removal of /cyclones from K2 and K5 Cooler Dust Collecting Systems (7/27/2017):

In 2017, TCEQ approved through an alteration Oxbow’s removal of cyclones from the K2 and K5 Cooler Dust Collecting System.⁵⁵ TCEQ’s Source Analysis and Technical Review acknowledges that the cyclones were installed and represented to remove particulate matter from the emissions stream prior to the baghouses. Removing these controls clearly amounted to a change “in the method of control of emissions” at Oxbow and the change to Oxbow’s representations about facility operations was, therefore, required to be made through a permit amendment, as opposed to a permit alteration.⁵⁶ By using a permit alteration, there was no opportunity for the public to review or comment on the proposed changes.

2. Changes to address SO₂ NAAQS Exceedances:

TCEQ allowed Oxbow to use two permit alterations to attempt to address Oxbow’s SO₂ exceedances: (1) increasing the stack height and narrowing the stack diameter for Kiln 4 stack, and (2) shutting down its cold stacks and authorizing operations only out of hot stacks. These changes were changes “in the method of control of emissions” at Oxbow and were required to be

⁵⁰ TEX. HEALTH & SAFETY CODE § 382.0518(c).

⁵¹ TEX. HEALTH & SAFETY CODE § 382.0518(b)(2).

⁵² Original Complaint, Attachment H (Appx. Exh. 16).

⁵³ *Id.* (Appx. Exh. 16).

⁵⁴ *Id.* (Appx. Exh. 16).

⁵⁵ Permit Alteration Source Analysis & Technical Review, Project No. 270583 (July 2017) (Appx. Exh. 17).

⁵⁶ 30 TEX. ADMIN. CODE § 116.110(b).

made through permit amendments, as opposed to permit alterations.⁵⁷ By allowing Oxbow to use alterations, TCEQ departed from regulatory requirements and denied (b)(6) Privacy, (b)(7)(C) E and others the opportunity to participate in the permitting process and to raise objections to the adequacy of these changes and to the impacts of Oxbow's ongoing emissions to public health.

i. Building a new kiln stack 20 feet taller and with a 3-foot smaller diameter than the old stack (9/18/2018)

In September 2018, after TCEQ documented NAAQS exceedances, Oxbow sought a permit alteration to construct a new 170-foot hot stack to use in lieu of the existing 150-foot Kiln 4 stack. In addition to being significantly taller than the old stack, the new stack was narrower in diameter by almost three feet (from 13.5 feet to 10.58 feet).⁵⁸ Oxbow and TCEQ have indicated that the primary purpose of replacing the Kiln 4 stack was to increase the stack height and to narrow the stack diameter in order to control SO₂ emissions in response to Oxbow causing NAAQS exceedances. Oxbow's Environmental Manager Doug Landwehr testified that, prior to this time, Oxbow had modeled "different stack heights to see how the dispersion was."⁵⁹ Moreover, Oxbow has admitted that it relies largely—if not solely—on dispersion to control SO₂ emissions from its stacks.⁶⁰ Indeed, in the alteration request, Oxbow stated that the changes in height and diameter "will provide better dispersion from the Kiln 4 stack, which will lower off-property ambient concentrations of air contaminants."⁶¹ In other words, achieving dispersion was not an auxiliary benefit of rebuilding a taller, narrower, but the main goal of doing so. TCEQ, in its technical review of the alteration request, stated "[t]he increase in stack height and decrease in diameter is expected to result in better dispersion of emissions and lower off-property impacts since the release height will be higher and the exit velocity resulting from the decreased diameter will be greater than the current stack."⁶²

Despite this, TCEQ still approved Oxbow's request without a permit amendment. This approval is contrary to both previous TCEQ actions in analogous circumstances and EPA precedent concerning stack height, diameter, and permit amendment. As an example, in a separate enforcement action, TCEQ cited a violation for the failure to obtain a permit amendment for changes to the tapering of a stack because those changes amounted to a change to the method of control of emissions pursuant to 30 Tex. Admin. Code § 116.116(b)(1).⁶³ TCEQ reasoned that the change in stack diameter, would cause emissions to be released at a different velocity and influence "ground level concentrations at any given distance downwind of the emission point",

⁵⁷ *Id.*

⁵⁸ Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No. 290424 (Sept. 18, 2018) (Appx. Exh. 18).

⁵⁹ Original Complaint, Attachment J-3 (PASE Litigation, Exh. 6, at 903) (PASE cross-examination of Douglas Landwehr, Oxbow Environmental Manager)(Excerpt at Appx. Exh. 6).

⁶⁰ Original Complaint, Attachment J-12 (PASE Litigation, Exhibit 100, at 18) (Slide show notes titled "Oxbow Calcining Port Arthur," which states that "Cold Stacks provide suboptimal dispersion," whereas "Hot Stacks provide improved dispersion") (Excerpt at Appx. Exh. 19).

⁶¹ Original Complaint, Attachment G (2018 NSR Permit No. 45622 Permit Alteration, at 12) (Appx. Exh. 8).

⁶² Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No. 290424 (Sept. 18, 2018) (Appx. Exh. 20).

⁶³ Agreed Order, Docket No. 2008-1459-AIR-E, "In the matter of an enforcement action concerning Leading Edge Aviation Services Amarillo, Inc." (April 22, 2009).

triggering the need for a permit amendment.⁶⁴ For the same reasons, Oxbow's new taller and narrower stack should have been permitted through the amendment process, which would have allowed (b)(6) Privacy, (b)(7)(C) E and others to comment on whether increased dispersion was an adequate solution to Oxbow's NAAQS exceedances and permit violations.

ii. Removing Cold Stack Operating Scenario (10/28/2019)

Prior to 2018, Oxbow operated both cold and hot stacks to control emissions. Oxbow was permitted to send gases from its kilns into boilers that would condense and convert the heat into steam. The remaining emissions from the "cold stacks" was a relatively "cooler" 400 degrees, hence the name. The waste heat boilers were equipped with controls for particulate matter and utilized injection of magnesium hydroxide to control sulfur trioxide emissions emitted as PM. The hot stacks bypassed this boiler conversion process, emitting heat, gases, and SO₂ at roughly 2,000 degrees through "hot stacks".

After monitors documented that Oxbow was causing exceedances of the one-hour SO₂ standard, the company claimed that the violations occurred due to the use of the cold stacks. In response, TCEQ allowed Oxbow to use an alteration to modify its permit to remove the operating scenario whereby Oxbow used the waste heat boilers and cold stacks.⁶⁵ Again, this was plainly a change in Oxbow's method of control of emissions. The reason for the change was explicitly to control Oxbow's emissions so that they would no longer cause exceedances of the NAAQS. This change altered both the temperature and the height of stack emissions and eliminated controls that existed when using the cold stacks.

TCEQ's approval of a permit alteration instead of requiring Oxbow to go through the permit amendment process is contrary to 30 TAC § 116.116(b)(1) and the granting of a permit alteration where an amendment would be appropriate flouts the heightened review process necessary for amendments, particularly preventing an opportunity for public comment and input. TCEQ's permitting actions show a pattern of allowing Oxbow to skirt violations of the CAA. Moreover, TCEQ's lax regulation has allowed it to escape modern upgrades to bring the facility into compliance with the CAA and avoid public participation on any proposed amendments to the facility.

C. TCEQ Failed to Address Oxbow SO₂ NAAQS Violations in the Same Way it did with Pb NAAQS Violations by Exide in Frisco, Texas, which is a Whiter and Wealthier Neighborhood than West Port Arthur.

TCEQ's handling of Oxbow Calcining over the years contrasts with TCEQ's approach to, engagement with, and the ultimate outcome of air quality concerns caused by Exide Technologies' Frisco Battery Recycling Center in Frisco, Texas ("Exide"), a largely white (and wealthy) city in the north Dallas suburbs. (b)(6) Privacy, (b)(7)(C) E will gladly discuss Exide further and provide more details regarding the facility, but the basics are as follows.

⁶⁴ *Id.*

⁶⁵ Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No. 306928 (Oct. 28, 2019) (Appx. Exh. 18).

From 1964 until it closed in 2012, Exide operated a secondary lead smelter, in which Exide processed lead-acid batteries and other lead-bearing materials into other lead products.⁶⁶ Like Oxbow, Exide opened before most modern air pollution law was passed. Unlike Oxbow, Exide occasionally worked with TCEQ and the City of Frisco to agree to adopt some level of emissions controls.⁶⁷ Most to the point, in contrast to TCEQ's treatment of Oxbow, TCEQ effectively and more appropriately monitored lead air emissions from Exide and ultimately worked with the EPA to address violations of the NAAQS caused by Exide in 2009. TCEQ also performed meaningful inspections of the facility in 2010, which ultimately contributed to the facility first proposing an air permit amendment (which allowed for public participation, an opportunity denied residents of West Port Arthur regarding Oxbow) and the facility's 2012 closing and ongoing remediation efforts at the site.

In 2008, the "EPA [] revised the level of the primary (health-based) standard from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$ measured as total suspended particles (TSP). EPA [] revised the secondary (welfare-based) standard to be identical in all respects to the primary standard."⁶⁸ By this time, to effectively monitor lead emissions from Exide, TCEQ operated three (3) air monitors near Exide—one north of Exide, one west of Exide, and one south of Exide.⁶⁹ Today, in 2024, TCEQ still operates two lead monitors located south and west of the former Exide facility.⁷⁰ This monitoring placement in Frisco stands in direct contrast with TCEQ's problematic monitoring effort near Oxbow. TCEQ has only required the one sulfur dioxide monitor northwest of the facility, despite known concerns over Oxbow's efforts to circumvent detection of violations at that single monitor and despite TCEQ and (b)(6) Privacy, (b)(7)(C) Enf. P modeling showing possible NAAQS violations in other directions.

⁶⁶ Anthony Tosie, Frisco Enterprise, So Long Exide: Frisco Lead-Acid Battery Recycling Plant Closes After 48 Years (November 30, 2012), https://starlocalmedia.com/littleelmjournal/news/so-long-exide-lead-acid-battery-recycling-plant-closes-after-48-years/article_f27e3743-4457-57de-853c-3542d1b47568.html; TCEQ, Exide Frisco Battery Recycling Center, <https://www.tceq.texas.gov/remediation/sites/exide>.

⁶⁷ See e.g. Letter to Citizens of Frisco by Frisco City Manager George Purefuy (October 7, 2010), <https://www.friscotexas.gov/459/Exide-Technologies-Related-Information> (Appx. Exh. 23).

⁶⁸ EPA, Exide Lead Technical Support Document, at 2. (Appx. Exh. 24)

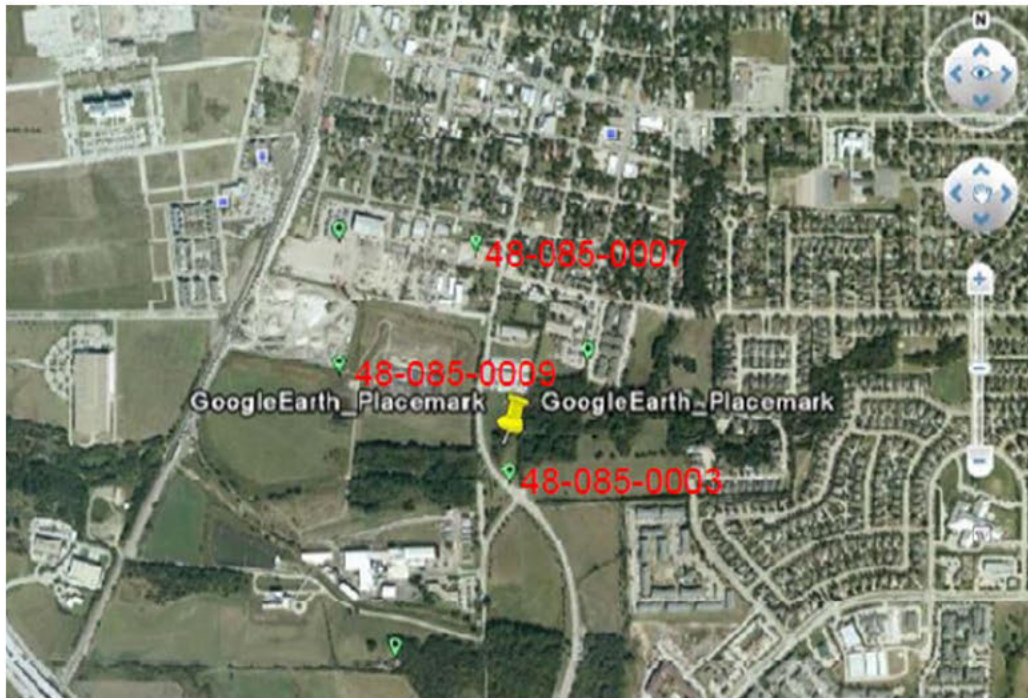
⁶⁹ EPA, Exide Lead Technical Support Document, at 4, 6 (Appx. Exh. 24). The three lead air monitors were:

- Monitor ID: 48-085-0003, (b)(6) Privacy, (b)(7)(C) Enf. Privacy
- Monitor ID: 48-085-0007, (b)(6) Privacy, (b)(7)(C) Enf. Privacy
- Monitor ID: 48-085-0009, (b)(6) Privacy, (b)(7)(C) Enf. Privacy

⁷⁰ TCEQ, Ambient Air Monitoring, <https://www.tceq.texas.gov/airquality/monops>. The two existing monitors are as follows:

- Monitor ID: 48-085-0009, (b)(6) Privacy, (b)(7)(C) Enf. Privacy
- Monitor ID: 48-085-0029, (b)(6) Privacy, (b)(7)(C) Enf. Privacy

Location of Exide and the Three Nearby Lead Monitors in 2008⁷¹



Based on 2006-2008 air quality data and 3-year calendar period lead design values from the three monitors, which all violated the new 2008 lead NAAQS, the State of Texas recommended in October, 2009, that EPA designate a portion of Collin County in nonattainment for the 2008 lead NAAQS.⁷² After Texas' recommendation, the EPA evaluated and assessed sources of lead and other data, including TCEQ air quality modeling, to designate a portion of the City of Frisco and Collin County around Exide as nonattainment for lead.⁷³ Around this time, TCEQ indicated in a letter to a Frisco resident that "The TCEQ has been working with Exide to ensure their authorized lead emissions will be at levels that ensure the area meets the federal NAAQS."⁷⁴

In contrast to Oxbow, where TCEQ failed to take adequate enforcement for NAAQS violations caused by a single facility, both TCEQ and EPA took action against Exide to address its lead emissions, which lead to the Collin County/Frisco lead nonattainment designation. In its analysis, the EPA noted that Collin County had only two non-airport sources of lead, Exide and a facility called Encore Wild Limited, located about 12 miles away in McKinney, Texas.⁷⁵ Encore

⁷¹ EPA, Exide Lead Technical Support Document, at 6. (Appx. Exh. 24)

⁷² Office of the Governor, The State of Texas, Letter concerning designations and boundaries under the 2008 NAAQS for lead to the U.S. Environmental Protection Agency's Region 6 office (October 14, 2009), available at <https://wayback.archive-it.org/414/20190908001420/https://www.tceq.texas.gov/assets/public/implementation/air/sip/lead/GovernorsLetter.pdf> (Appx. Exh. 25); TCEQ, Dallas-Fort Worth: Lead—Latest Planning Activities, <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-lead>; EPA, Exide Lead Technical Support Document, at 3-4 (Appx. Exh. 24).

⁷³ EPA, Exide Lead Technical Support Document. (Appx. Exh. 24)

⁷⁴ TCEQ, Response to Email from (b)(6) Privacy, (b)(7)(C) Enf. Privacy (October 20, 2009), available at (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Appx. Exh. 26).

⁷⁵ EPA, Exide Lead Technical Support Document, at 5 (Appx. Exh. 24).

Wild Limited's lead emissions were small and deemed to not contribute to any lead concentrations near Exide; the EPA noted that like Oxbow and its SO₂ emissions in Jefferson County, Exide accounted for well over 90% of stationary lead emissions in Collin County.⁷⁶ The EPA also determined airports using leaded gasoline in the area would not have contributed to NAAQS violations, either.⁷⁷

This designation set in motion the issuance of the Collin County Attainment Demonstration State Implementation Plan (SIP) Revision.⁷⁸ It also led to an Agreed Order between Exide and TCEQ implementing the SIP measures.⁷⁹ The SIP Revision, Agreed Order, and other supporting documentation are available on TCEQ's website dedicated to the Collin County lead nonattainment issue.⁸⁰

In addition to TCEQ's air monitoring, modeling, and recommending redesignation of the area as nonattainment for lead, TCEQ's Region 4 office thoroughly inspected Exide in May and June 2011, and found and cited numerous serious violations by Exide in a Notice of Enforcement.⁸¹ These deficiencies resulted in another Agreed Order between TCEQ and Exide approved by TCEQ in January 2013.⁸²

Soon thereafter, Exide announced its intentions to close its Frisco facility and worked with EPA, TCEQ, and City of Frisco to develop a plan for the facilities closure and remediate the site.⁸³ The City of Frisco operates a website which documents responses to the nonattainment designation and subsequent developments.⁸⁴ The website includes lots of information, including information regarding public participation in Exide's proposed permit amendment, lead blood testing offered in Frisco, soil testing results, TCEQ's public participation efforts in Frisco regarding the SIP revision and other public meetings, and a vast amount of other information detailing Exide's closure and remediation.

⁷⁶ EPA, Exide Lead Technical Support Document, at 5 (Appx. Exh. 24).

⁷⁷ EPA, Exide Lead Technical Support Document, at 5, 7 (Appx. Exh. 24).

⁷⁸ 75 Fed. Reg. 71003 (November 22, 2010), <https://www.govinfo.gov/app/details/FR-2010-11-22/2010-29405>; Exide Technical Support Document, at 19 (Appx. Exh. 24); TCEQ, Dallas-Fort Worth Lead History, <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-lead-history>.

⁷⁹ TCEQ, Interoffice Memorandum: Commission Approval for Adoption of Agreed Order for Exide Technologies Lead Acid Battery Recycling Plant in Collin County (July 20, 2012), https://www.tceq.texas.gov/downloads/air-quality/sip/lead/collin/110521mis_collinexide_agreedorder_adopted.pdf (App Exh 27); Full supporting attachments located at TCEQ, Dallas-Fort Worth: Lead—Latest Planning Activities, <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-lead>.

⁸⁰ TCEQ, Dallas-Fort Worth: Lead—Latest Planning Activities, <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-lead>.

⁸¹ TCEQ Notice of Enforcement for Compliance Evaluation Investigation (CEI) at: (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Collin County), Texas IHW Permit No. 50206; SWR No. 30516; Investigation Nos. 880260 (September 12, 2011), <https://www.tceq.texas.gov/downloads/remediation/tceq-managed/exide/noe.pdf> (Appx. Exh. 28).

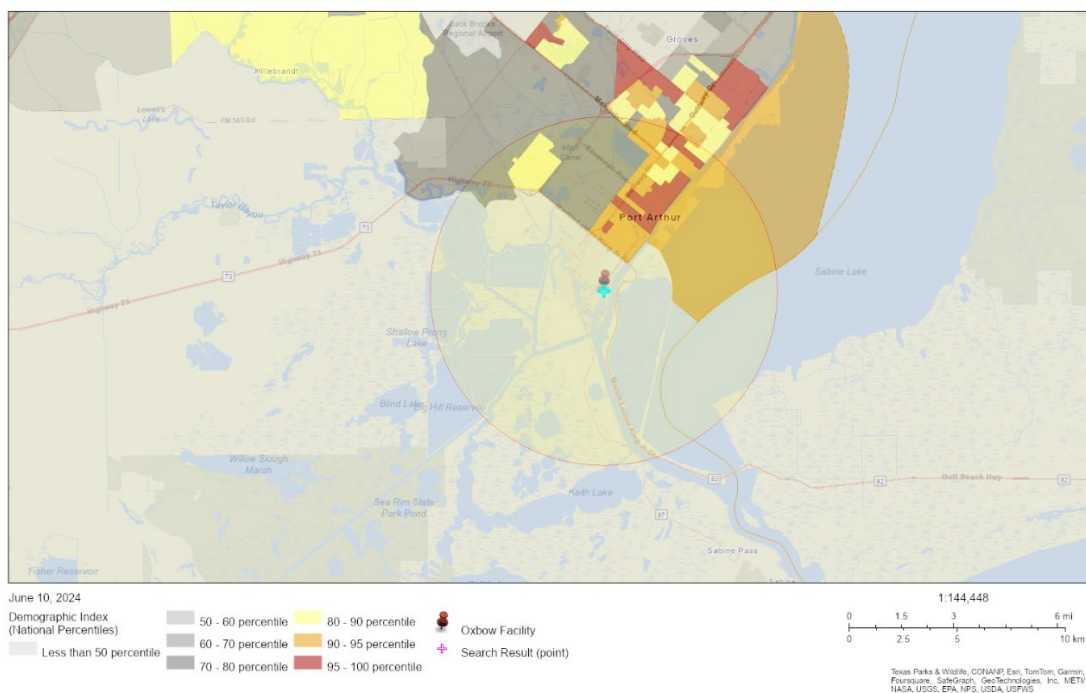
⁸² TCEQ Agreed Order, Docket No. 2011-1712-IHW-E (January 30, 2013), <https://www.tceq.texas.gov/downloads/remediation/tceq-managed/exide/exide-agreed-order-jan302013.pdf> (Appx. Exh. 29).

⁸³ TCEQ, Exide Frisco Battery Recycling Center, <https://www.tceq.texas.gov/remediation/sites/exide>. "In a letter to the TCEQ dated June 2012, Exide conveyed its intent to cease operations at the facility on November 30, 2012."

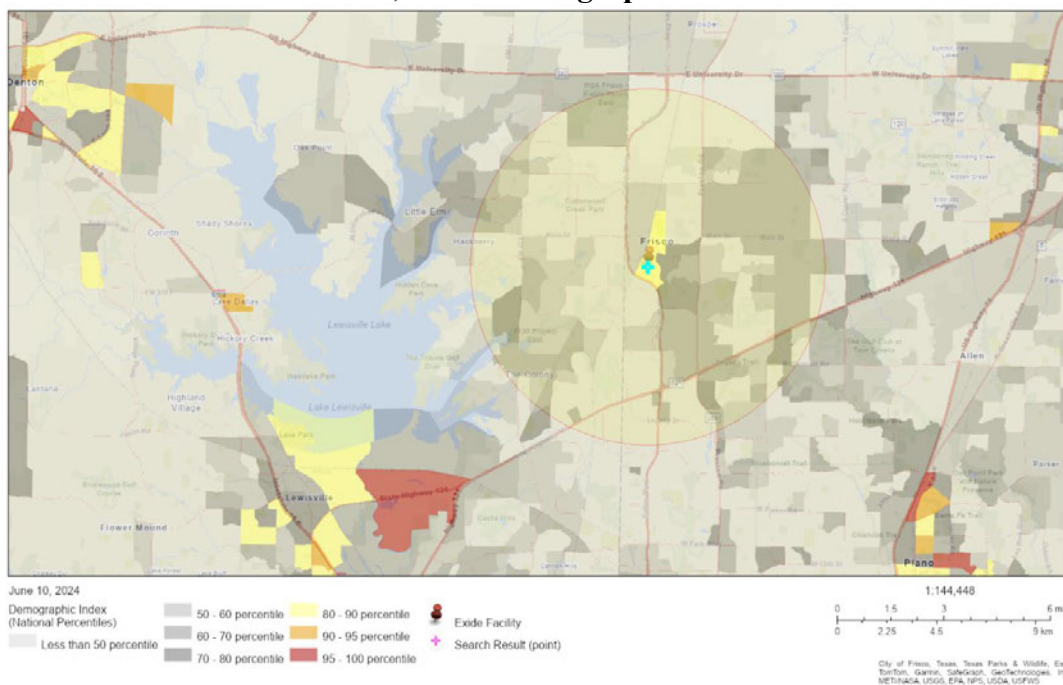
⁸⁴ <https://www.friscotexas.gov/459/Exide-Technologies-Related-Information>.

The following graphics illustrate the demographic contrast between the West Port Arthur area and Frisco, Texas. The Port Arthur maps included highlight the five-mile radius around the Oxbow Calcining Plant located (b)(6) Privacy, (b)(7)(C) Enf. Privacy Port Arthur, TX 77640. The Frisco-oriented maps mark the five-mile radius from the former Exide Battery Recycling Center, located (b)(6) Privacy, (b)(7)(C) Enf. Privacy in Frisco, Collin County, Texas, which was active from 1964 through November 2012.

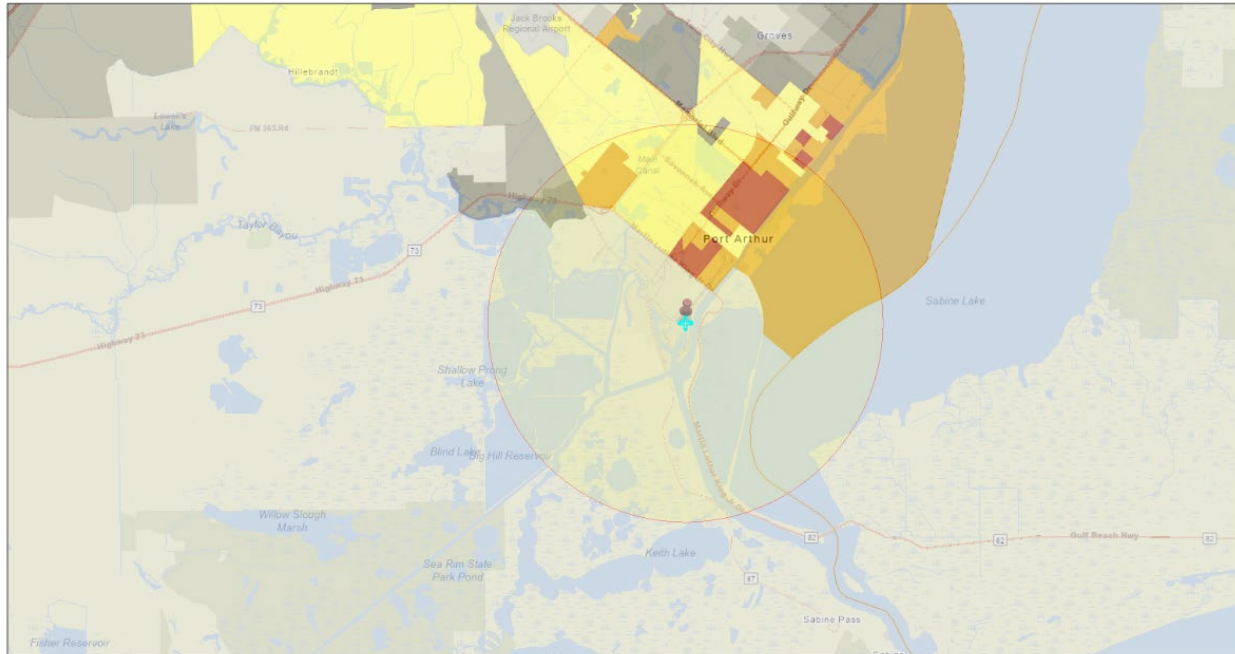
Port Arthur, Texas Demographic Index:



Frisco, Texas Demographic Index



People of Color in Port Arthur, Texas



June 10, 2024

People of Color
(National Percentiles)

Less than 50 percentile

50 - 60 percentile

60 - 70 percentile

70 - 80 percentile

80 - 90 percentile

90 - 95 percentile

95 - 100 percentile

Oxbow Facility

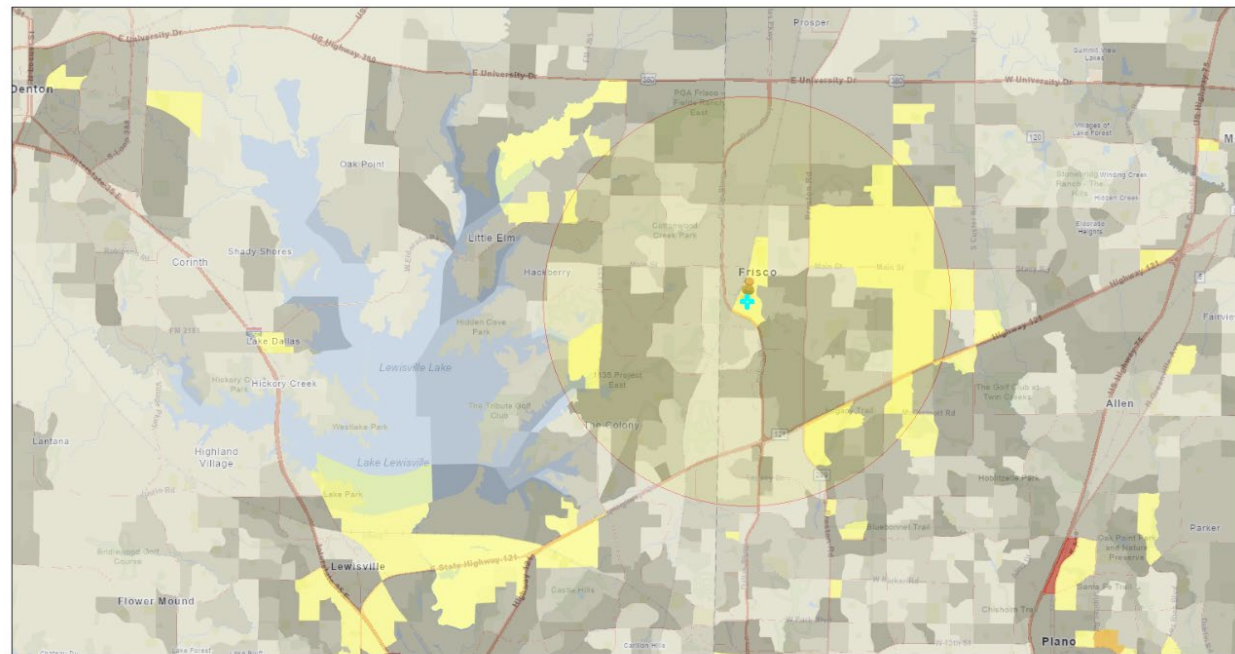
Search Result (point)

1:144,448

0 1.5 3 6 mi
0 2.5 5 10 km

Texas Parks & Wildlife, COMMAP, Esri, TomTom, Garmin, FourSquare, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS

People of Color in Frisco, Texas



June 10, 2024

People of Color
(National Percentiles)

Less than 50 percentile

50 - 60 percentile

60 - 70 percentile

70 - 80 percentile

80 - 90 percentile

90 - 95 percentile

95 - 100 percentile

Exide Facility

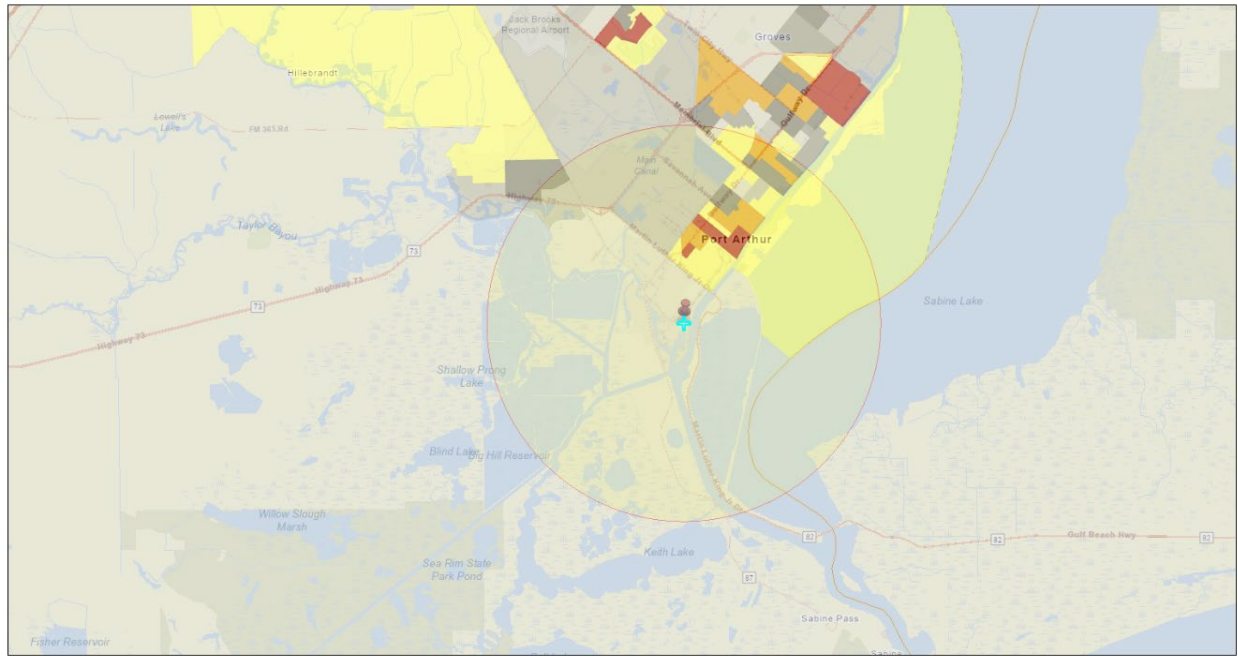
Search Result (point)

1:144,448

0 1.5 3 6 mi
0 2.25 4.5 9 km

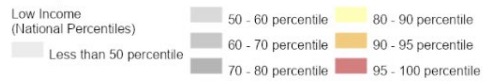
City of Frisco, Texas Parks & Wildlife, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS

Port Arthur Low Income Populations



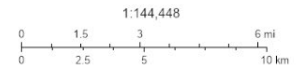
June 10, 2024

Low Income
(National Percentiles)



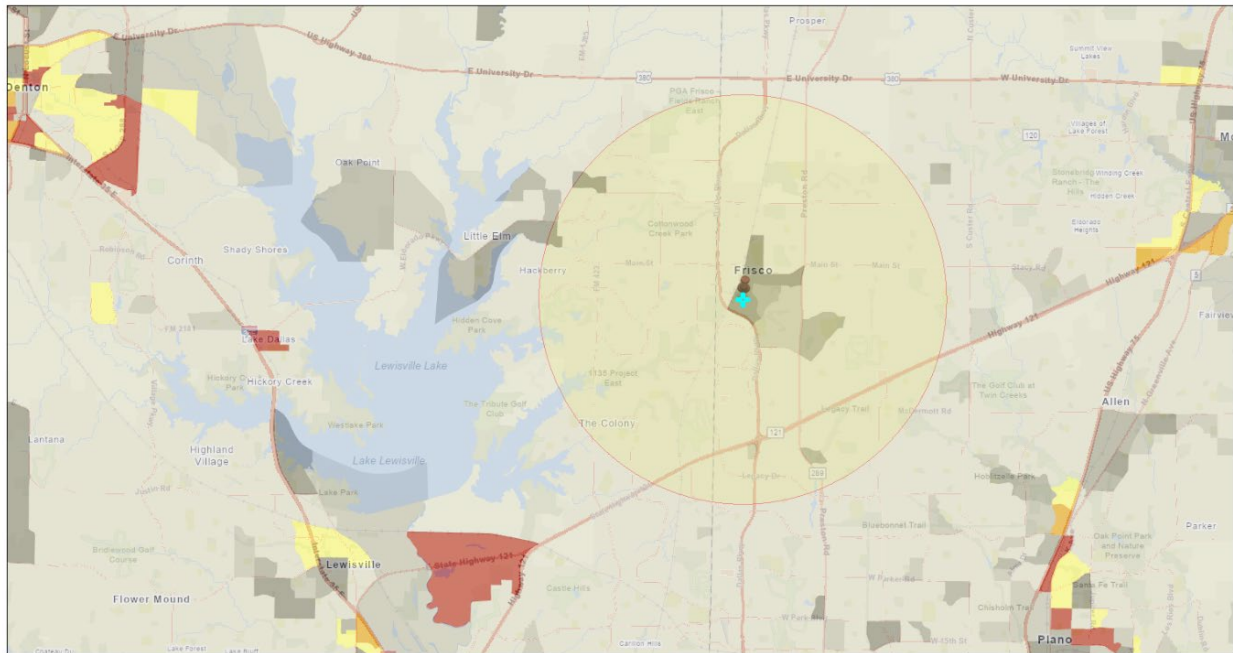
Oxbow Facility

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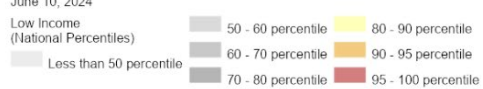
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Frisco Low Income Populations



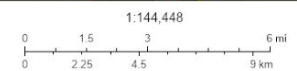
June 10, 2024

Low Income
(National Percentiles)



Exide Facility

Search Result (point)



City of Frisco, Texas, Texas Parks & Wildlife, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI, NASA, USGS, EPA, NPS, USDA, USFWS

In summary, as reflected in the EJScreen comparison tables below, the demographic differences between the communities bordering the Oxbow plant and the Exide plant are vast. People of color make up over 90% of the population within a 5-mile radius of Oxbow, compared to only 51% of the population near the former Exide plant. Over 50% of the population near Oxbow is low income, compared to only 11% of the population near Exide. While there are more EPA regulated facilities near Exide, Oxbow-bordering neighborhoods in Port Arthur experience on average more pollution. Most notably, the communities near Oxbow experience Toxic Releases to Air about ten times the state average.

Table Comparisons of Pollution and Socio-Economic Variables Within 5 Miles of Facilities
Oxbow Calcining: Exide Battery Recycling:

SELECTED VARIABLES	VALUE	STATE AVERAGE	SELECTED VARIABLES	VALUE	STATE AVERAGE
POLLUTION AND SOURCES			POLLUTION AND SOURCES		
Particulate Matter ($\mu\text{g}/\text{m}^3$)	8.57	9.11	Particulate Matter ($\mu\text{g}/\text{m}^3$)	9.42	9.11
Ozone (ppb)	65	64.6	Ozone (ppb)	70.4	64.6
Diesel Particulate Matter ($\mu\text{g}/\text{m}^3$)	0.2	0.218	Diesel Particulate Matter ($\mu\text{g}/\text{m}^3$)	0.266	0.218
Air Toxics Cancer Risk* (lifetime risk per million)	50	28	Air Toxics Cancer Risk* (lifetime risk per million)	30	28
Air Toxics Respiratory HI*	0.3	0.3	Air Toxics Respiratory HI*	0.3	0.3
Toxic Releases to Air	120,000	12,000	Toxic Releases to Air	200	12,000
Traffic Proximity (daily traffic count/distance to road)	110	150	Traffic Proximity (daily traffic count/distance to road)	120	150
Lead Paint (% Pre-1960 Housing)	0.28	0.17	Lead Paint (% Pre-1960 Housing)	0.012	0.17
Superfund Proximity (site count/km distance)	0.11	0.085	Superfund Proximity (site count/km distance)	0.025	0.085
RMP Facility Proximity (facility count/km distance)	3.5	0.63	RMP Facility Proximity (facility count/km distance)	0.13	0.63
Hazardous Waste Proximity (facility count/km distance)	2	0.75	Hazardous Waste Proximity (facility count/km distance)	0.34	0.75
Underground Storage Tanks (count/km ²)	3.7	2.3	Underground Storage Tanks (count/km ²)	1.1	2.3
Wastewater Discharge (toxicity-weighted concentration/m distance)	0.034	0.91	Wastewater Discharge (toxicity-weighted concentration/m distance)	34	0.91
SOCIOECONOMIC INDICATORS			SOCIOECONOMIC INDICATORS		
Demographic Index	72%	46%	Demographic Index	31%	46%
Supplemental Demographic Index	23%	17%	Supplemental Demographic Index	7%	17%
People of Color	92%	58%	People of Color	51%	58%
Low Income	51%	34%	Low Income	11%	34%
Unemployment Rate	10%	5%	Unemployment Rate	4%	5%
Limited English Speaking Households	7%	8%	Limited English Speaking Households	3%	8%
Less Than High School Education	21%	16%	Less Than High School Education	4%	16%
Under Age 5	6%	6%	Under Age 5	6%	6%
Over Age 64	15%	14%	Over Age 64	9%	14%
Low Life Expectancy	23%	20%	Low Life Expectancy	8%	20%

In the whiter, higher income area of Frisco, Texas, neither TCEQ nor EPA treated violations of the NAAQS caused by an individual facility (Exide) as unenforceable. Yet both agencies have failed to address the identified concerns at Oxbow for many years before and after (b)(6) Privacy, (b)(7)(C) E filed its Original Complaint in 2021. (b)(6) Privacy, (b)(7)(C) E is hopeful that the EPA will reopen this matter and reverse that situation promptly, starting with an update to (b)(6) Privacy, (b)(7)(C) E on the actions EPA already identified in its letter of December 2023.

IV. CONCLUSION: EPA SHOULD ACT TO ADDRESS THE LONGSTANDING HEALTH IMPACTS FROM AIR POLLUTION IN WEST PORT ARTHUR

Relief for the community of West Port Arthur from the SO₂ emissions from Oxbow's facility, which comprise over 90% of the annual SO₂ emissions for all of Jefferson County, is long overdue. EPA should take action to review TCEQ's regulation of the facility and bring the

facility into compliance with modern Clean Air Act standards. For these reasons, Complainant (b)(6) Privacy, (b)(7)(C) E respectfully requests that EPA take the following actions to address this complaint:

- (1) Reopen the Original Complaint and investigate its claims, including by issuing a Clean Air Act 114 information request to Oxbow for information related to any alert system based on wind direction that Oxbow may use to alter operating conditions.
- (2) Update (b)(6) Privacy, (b)(7)(C) E on the status of EPA's next actions identified in its letter of December 26, 2023:
 - a. additional air monitoring in the Community;
 - b. obtaining stack testing data for the Oxbow facility;
 - c. exploring the availability of sensor-based air monitoring in the Community through EPA's established air sensor loan programs; and
 - d. investigating available options to facilitate university and other community led air monitoring projects for this Community; and
 - e. considering any other actions to obtain additional information as appropriate and as resources allow.
- (3) Host an outreach event with the West Port Arthur community, explaining what the facility does, how the facility's operations impact residents' health, any steps the facility is taking to mitigate harm to the Port Arthur community, and any upcoming public comment or public meeting opportunities.
- (4) Install an additional regulatory SO₂ monitor in compliance with the 2015 DRR or relocate the existing regulatory SO₂ monitor to the area where emissions are the most likely to be highest according to our and TCEQ's modeling, to ensure compliance with the SO₂ NAAQS.
- (5) Work with community members to create a community monitoring network in West Port Arthur.
- (6) Complete a cumulative impacts assessment of West Port Arthur.
- (7) Conduct an audit of Oxbow's Port Arthur facility to chronicle any upgrades to the facility and for compliance with BACT and whether: (a) Oxbow must install SO₂ control technology in order to assure compliance with Oxbow's emissions limits and the SO₂ NAAQS, including but not limited to scrubbers, and (b) TCEQ must require Oxbow to apply for a permit amendment to come into compliance with BACT, thus ensuring that the public has the opportunity to comment.
- (8) Conduct an audit of TCEQ's issuance of the Agreed Order in August 2019 to Oxbow for the SO₂ NAAQS exceedances, particularly TCEQ's review of Oxbow's compliance history and penalty assessment.
- (9) Re-examine the attainment status of Jefferson County to assess whether the previous statistical reviews of ambient quality data for SO₂ are consistent with actual air quality as

reflected in the 2017-2020 ambient air quality data. For example, investigative actions could include further air dispersion modeling to assess the impact on Port Arthur residents based on 2019 and 2020 data.

Complainant Port Arthur Community Action Network would further request any such other and further relief that EPA feels [REDACTED] and the community of West Port Arthur, Texas are entitled to after (1) reopening the Original Complaint, and (2) continuing its investigation to remedy TCEQ's discriminatory actions. For more information, please contact the undersigned counsel for Complainant [REDACTED]

Respectfully submitted,

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Equitable Development Initiative

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cc: **VIA EMAIL TO EPA ADMINISTRATORS AND STAFF**

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Appendix, Attachments to Supplemental Complaint:

No.	Description	Date
1	Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, by (b)(6) Privacy, (b)(7)(C) regarding TCEQ's Issuance of Federal Operating Permit No. 01493 to Oxbow Calcining LLC (Aug 18, 2021) (Original Complaint)	08/18/2021
2	EPA Administrative Closure Letter to Complaint 02R-21-R6	12/23/2023
3	EPA, Order Granting Objection in Part, Oxbow Calcining, LLC, Petition No. VI-2020-11	06/14/2022
4	EPA, Order Denying Petition, Oxbow Calcining, LLC, Petition No. VI-2023-12	04/12/2024
5	Exhibit 10-1 to Oxbow Calcining LLC's Amended Answering Statement and Counterclaims in <i>PASE v. Oxbow Calcining LLC</i> , No. 01-19-0000-5680, Am. Arb. Ass'n (Attachment J-1 to Original Complaint)	07/10/2019
6	Excerpt from Exhibit 6, Testimony of (b)(6) Privacy, (b)(7)(C) Ent. P in Arbitration Proceedings in <i>PASE v. Oxbow Calcining LLC</i> , AAA No. 01-19-0000-5680, Am. Arb. Ass'n (Attachment J-3 to Original Complaint)	11/04/2019
7	Exhibit 55, TCEQ Letter to Tony Botello, Plant Contact, Oxbow Calcining, LLC, Re: Follow-up from November Meeting (Attachment J-21 to Original Complaint)	12/20/2017
8	TCEQ, NSR Permit 45622 File for New Source Review Permit	09/20/2018

No.	Description	Date
	on Oxbow Calcining LLC (Attachment G to Original Complaint)	
9	Exhibit 105, Email from Pam Giblin, Baker Botts, to David Brymer, TCEQ, Re: Port Arthur Data (Attachment J-10 to Original Complaint)	11/17/2017
10	Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No. 126875	06/2007
11	Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Projects Nos. 161538 and 161527	11/2011
12	Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No. 174988/ 174990	06/2012
13	Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No. 195179	06/2013
14	Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No. 115737	08/2015
15	TCEQ Agreed Order - 2018-1687-AIR-E (Attachment I to Original Complaint)	08/14/2019
16	TCEQ, File on Great Lakes Carbon Corporation Air Permits (Attachment H to Original Complaint)	06/28/2002- 06/23/2003
17	Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No 270583	07/2017
18	Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No 306928	10/28/2019
19	Exhibit 100, Documents Responsive to Open Records Request by PASE to Jefferson County, including Oxbow Calcining Port Arthur Presentation (Attachment J-12 to Original Complaint)	11/19/2018
20	Permit Alteration, Source Analysis & Technical Review, Oxbow Calcining LLC, Project No. 290424 (Sept. 18, 2018)	09/18/2018
21	Letter from Richard Chism, TCEQ to Jeffrey Robinson	08/09/2019
22	Letter from Jeffrey Robinson, EPA, to Richard Chism	08/23/2019
23	Letter to Citizens by Frisco City Manager George Purefoy	10/7/2010
24	Exide Lead Technical Support Document	
25	Texas Governor's Letter Recommending Nonattainment Designation	10/14/2009
26	TCEQ Response to Email from (b)(6) Privacy, (b)(7)(C) Ent. Privacy	10/20/2009
27	Interoffice Memorandum and Agreed Order Between TCEQ and Exide	7/20/2012
28	TCEQ Notice of Enforcement for Exide Technologies	9/12/2011
29	TCEQ Agreed Order, Docket No. 2001-1712-IHW-E	1/30/2013