

OPINION // OUTLOOK

Enforce environmental laws before there's a fire [Opinion]

By Victor B. Flatt

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After-the-fact lawsuits alone are not enough to spur action that would prevent harms like the March petrochemical fire in Deer Park from happening in the first place.

Photo: Marie D. De Jesús, Houston Chronicle / Staff photographer

After two serious industrial accidents in the last two weeks in the Houston area, it is heartening that the State of Texas is quickly filing suit for alleged failures at both industrial sites to take precautions and appropriately respond to the accidents.

Attorney General Ken Paxton and the Texas Commission on Environmental Quality are seeking a citation and civil penalties against Intercontinental Terminals Company, whose Deer Park tank farm repeatedly caught fire last month, spewing black smoke and benzene

into the Houston's air. Paxton and the TCEQ have also filed court papers against KMCO, where chemical plant in Crosby was the site of a deadly explosion and fire on Tuesday.

Investigations and time will tell if the owners of these sites are at fault, either civilly or criminally.

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Unfortunately, while after-the-fact penalties are important in any good enforcement system, they are not sufficient by themselves to alter behavior to prevent such harms in the first place. And that should be the ultimate goal of state enforcement.

While tort law recognizes that after-the-fact damages are meant to compensate those hurt by another's fault, monetary penalties can never compensate for a life lost or serious injuries. Environmental damages are similarly difficult to ameliorate. It also highly unlikely that the state, county or Port of Houston will be able to fully recover the estimated billion-dollar economic hit from the closure of the Ship Channel that the ITC fire caused.

To avoid (or at least lessen) similar harm in the future, the state needs to practice effective enforcement, and that requires money and time spent *before* a disaster occurs. Both the plants at issue were regulated under multiple laws, such as the Clean Air Act, the Clean Water Act, RCRA and most importantly, the Emergency Planning and Community Right to Know Act.

To protect the public, each of these laws requires effective enforcement, and that requires the state (or the EPA) to conduct a sufficient number of and effective routine inspections, levy serious fines and increase oversight when there is a pattern of violations.

Unfortunately, Texas has not made *before-the-fact* enforcement a strong goal, often doing the bare minimum allowed under federal law. That's even though parts of the state, including the Houston area, are heavily industrialized and face a large number of risks. Both Texas and Louisiana (another highly industrialized state) make a point of being business-friendly and try to make regulation as easy and seamless as possible.

As long as a regulation is effective, there is nothing wrong with its being designed to be as easy as possible for the regulated community. Texas touts that it likes cooperative-based enforcement (instead of deterrence-based). That is fine — as long as the state *actually* requires that violators hew to environmental and safety regulatory matters. If Texas does not want business to pay for enforcement, it will have to take money from somewhere else.

The bottom line is that Texas needs to hire more personnel and spend more money on monitors to ensure that companies are doing what they say they are doing. Ineffective regulation may help some companies' bottom line, but the costs of accidents are many times the cost of charging them for effective enforcement, and these costs fall on individual people and the public at large.

With industrial accidents, after-the-fact penalties also are ineffective at deterring future behavior. No regulated industry expects a disaster. Nor do they think that another party's disaster means that they will be responsible for one.

What industry needs instead is a constant, regular, predictable, before-the-fact enforcement of regulations. The state must demand good answers to important questions: Do you have a safety plan in place? Is the plan adequate? What happens if personnel need to evacuate in a different direction? What is the risk of fire and explosion of keeping volatile flammable chemicals in a specific configuration?

If there are histories or patterns of violating health and safety laws, inspections and penalties should rise, both to ensure safety and give the more careless in the regulated community an incentive to make corrections before lives are lost. That will help in actual prevention and level the playing field for those companies that are playing by the rules and taking their obligations seriously.

Accidents do happen. But effective state enforcement can make them exceedingly rare. There is wisdom in the saying: An ounce of prevention is worth it. Spending on prevention now would not only protect our lives, our air and our health, it would save the state billions later.

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