



October 27, 2025

Ms. Gwen Ricco  
Office of Legal Services,  
MC 205, P.O. Box 13087  
Austin, Texas 78711-3087  
BY USPS and electronically submitted at: <https://tceq.commentinput.com>

**Re: Non-Rule Project Number 2024-044-OTH-NR—General Operating Permit  
for Incinerators (Permit Number 518)**

Dear Ms. Ricco, and air quality division staff:

On behalf of Air Alliance Houston and the Coalition for Environment, Equity and Resilience, and with support from the undersigned organizations, Earthjustice submits these comments on the Texas Commission on Environmental Quality's (TCEQ) proposed amendment for the General Operating Permit (GOP) 518 for Air Curtain Incinerators (Incinerators). This amendment to the GOP comes as the federal Environmental Protection Agency has sought to erode public health protections for communities after disasters by authorizing greater use of incineration as a way to deal with mixed disaster waste.<sup>1</sup> We urge TCEQ not to make that same mistake, and instead focus greater attention on disaster recovery that works to aid communities after the storm, as opposed to deepening the environmental harms after natural disasters.

**1. TCEQ Should Exclude Disaster Debris from Incineration by a GOP**

Texas routinely ranks number 1 or 2 in named disasters over a five-year period, whether it be floods, hurricanes, or wildfires. These types of natural storms inflict huge losses on property and people and often come with real environmental harm. For example, during Hurricane Harvey and its aftermath, major environmental accidents like the chemical fires that erupted at the Arkema chemical plant in Crosby, Texas, attracted national attention. But there were countless other environmental catastrophes arising out of that same storm, from sanitary sewer overflows, to industrial holding tanks leaking or spilling.<sup>2</sup> These environmental releases are on top of the very real waste issues that are created when housing debris and vegetation are mixed into piles along the side of the road for post-storm pick up.

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<sup>1</sup> The undersigned organizations, along with others, have also opposed these federal changes that would arguably allow the burning of disaster debris, attached as Attachment 1.

<sup>2</sup> One report by the Environmental Integrity Project attempted to catalogue the environmental harm publicly stated, finding enormous air, water, and toxic exposure throughout the region, attached as Attachment 2.

According to the proposed GOP, Section (a)(5) states that “[an incinerator] may only combust materials authorized under 30 [Texas Administrative Code] §106.496.” Under that section, however, Incinerators may be used for emergency clean up as well as at municipal solid waste sites. 30 Tex. Admin. Code §106.496(b)(3) and (5). Thus, this provision would allow a fundamental change in how this GOP for Incinerators would be utilized in Texas, in part because previously, the federal operating limitations for Incinerators restrained the use of these often open burn units to the following:

- 100 percent wood waste,
- 100 percent clean lumber, or
- 100 percent mixture of only wood waste and/or clean lumber.

This limitation is expressly recognized on TCEQ’s own site.<sup>3</sup>

Allowing Incinerators to burn demolition disaster debris instead of just vegetative waste causes the emissions of metals, dioxins/furans, polycyclic aromatic hydrocarbons (PAH) and other highly toxic pollutants to increase dramatically—in some instances by orders of magnitude—over other ways of disposing of the waste, such as landfilling (or reuse in some cases).<sup>4</sup> EPA conducted an experiment after Hurricane Katrina in Louisiana to examine whether Incineration was a viable option to deal with disaster waste. As evidenced by Attachment 3, that experiment documents the huge increase in air toxics for communities in part because disaster debris cannot be sorted well and mixed debris after a disaster often contains known toxics (electronics, batteries, plastics etc). Burning plastic, food waste, housing materials, construction materials, and vegetation all together creates significant impacts. Texas experiences multiple disasters each year; those disasters’ impacts will be magnified if each event is followed by mass incineration of dangerous debris.

We urge TCEQ to make clear that this new GOP would not apply during a disaster by striking from the proposed GOP Section (a)(5) in its entirety.

## **2. Texas Already Struggles with Significant Air Pollution; Incineration Will Make It Worse**

According to the Environmental Protection Agency’s AirToxScreen, the southeastern portion of Texas houses the greatest number of industrial facilities, with many clustered along the Houston ship channel. AirToxScreen is “a screening tool to provide communities with information about health risks from air toxics.”<sup>5</sup> In addition to the mapping feature, AirToxScreen includes data files that can be downloaded to assess modeled ambient air concentrations and risks from hazardous air pollutants. A review of the 2019 AirToxScreen assessment results showed that Texas had nine of the twenty census tracts with the **highest** cancer risk from air pollution in the entire country – with risks between 200-400 per million – over 20-40x the presumptive “acceptable” risk level under TCEQ’s

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<sup>3</sup> TCEQ, *Air GOP No. 518: Air Curtain Incinerator General Operating Permit*, [https://www.tceq.texas.gov/permitting/air/titlev/generalpermits/gop\\_no\\_518.html](https://www.tceq.texas.gov/permitting/air/titlev/generalpermits/gop_no_518.html) (last visited Oct. 27, 2025).

<sup>4</sup> See EPA, *Managing Debris after a Natural Disaster: Evaluation of the Combustion of Storm-Generated Vegetative and C&D 5 Debris in an Air Curtain Burner: Source Emissions Measurement Results* (2016) (“EPA Air Curtain Incinerator Study”), Attachment 3 at Chapter 5.

<sup>5</sup> Air Toxics Screening Assessment, EPA, <https://www.epa.gov/AirToxScreen> (last visited Oct. 3, 2023).

guidance.<sup>6</sup> Importantly, this is an **existing risk** and the current proposal to burn disaster debris does not account for the legacy pollution that has resulted in elevated cancer risks across this great state.

This is why, at the very least, TCEQ should also consider amending proposed Section (a)(8) which further limits air pollution in known nonattainment areas. The proposed limitations for various counties currently in nonattainment for ozone, among other things, highlights the need for TCEQ to provide air quality modeling data in support of specific limitations for Incinerators within certain counties. Yet, TCEQ has not supported this amendment with any additional science, or description for why these types of Incinerators could still be utilized in known nonattainment areas. And importantly, does not provide modeling to support what looks like arbitrarily assigned limits for existing nonattainment counties.

The permit currently proposes the following limitations:

Nitrogen oxide (NOX) emissions under this GOP are limited to 25 tons per year (tpy) for both the Houston-Galveston-Brazoria and the Dallas-Fort Worth nonattainment areas, 50 tpy for the Bexar County nonattainment area, and 100 tpy for all other counties.

Proposed GOP Section (a)(8). But there is no rationale to limit Bexar County differently from the Houston or Dallas regions, and the 100 tons per year (tpy) limit for all other counties ignores that many of Texas's counties surrounding urban areas are already deeply polluted, as the map highlighting which counties can gain access to Texas's Emissions Reduction Grant program indicates.<sup>7</sup>

Further, many of Texas's counties likely fail to meet the new National Ambient Air Quality Standards (NAAQS) for particulate matter. As TCEQ knows, prior to October 2024, TCEQ's Air Modeling and Data Analysis Section conducted multiple town halls across the state, articulating that initial design values for compliance with the proposed new federal standard meant that a possible twelve (12) counties could be in nonattainment.<sup>8</sup> Particulate matter (PM) is a major pollutant released during any open burn. Combustion is often referenced as the leading cause of particulate matter pollution, and TCEQ acknowledges that combustion is one of the leading causes of particulate matter pollution across the state.<sup>9</sup> With at least 12 counties close to or in nonattainment for particulate matter, allowing greater debris incinerations across the state is a pathway toward increasing the number of counties in nonattainment for PM. Regardless of which counties will ultimately be in nonattainment for particulate matter, TCEQ should amend Section (a)(8) to limit combustion to a tons per day emission factor, rather than per year for mobil units such as these.

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<sup>6</sup> EPA, *2019 AirToxScreen National Cancer Risk by Pollutant (xlsx)*, [https://www.epa.gov/system/files/documents/2022-12/2019\\_National\\_CancerRisk\\_by\\_tract\\_poll.xlsx](https://www.epa.gov/system/files/documents/2022-12/2019_National_CancerRisk_by_tract_poll.xlsx) (last visited Oct. 27, 2025).

<sup>7</sup> TCEQ, *TERP Nonattainment and Affected Counties*, Attachment 4.

<sup>8</sup> Attachment 5; see also, ACS Environmental, *Plastic Burning Impacts on Atmospheric Fine Particulate Matter at Urban and Rural Sites in the USA and Bangladesh*, Attachment 6.

<sup>9</sup> See TCEQ, *Airborne Particulates*, [https://www.tceq.texas.gov/cgi-bin/compliance/monops/particulates.pl?region\\_crit=4](https://www.tceq.texas.gov/cgi-bin/compliance/monops/particulates.pl?region_crit=4) (last visited Oct. 24, 2025).

Alternatively, if a tons per day emission factor is not accepted for current nonattainment areas, Section (a)(8) could be amended to exclude any use of this GOP in those counties that currently fail to meet the NAAQS for any pollutant. This would ensure that this type of open burning does not exacerbate already heavily polluted counties. But regardless of how TCEQ decides to move forward, the lack of support to support the rulemaking puts local jurisdictions—and people—at risk for more pollution after disasters.

### **3. If Disaster Relief is Not Excluded in Total from the GOP, TCEQ Should Reduce Opacity and Add Operational Controls During Disasters, Especially for Ash Disposal**

TCEQ should also amend Section (b)(3)(C)(i-ii) referencing monitoring and deviation reports since the Governor will often release an operator from any reporting requirements during disasters.<sup>10</sup> Currently, these provisions provide for routine monitoring and reporting to the executive director and local air pollution control jurisdiction, when applicable, on a 30-day and 6-month schedule. These types of blanket reports, however, would not provide the public with information in a timely fashion should these units be moved en masse to a local area after a disaster. At the very least, if TCEQ intends to allow incineration after a disaster, it should include specific conditions that further protect the public and provide more immediate information to local jurisdictions and the executive director during disaster declarations. This could be done, for example, by adding a section under (b)(3)(C) entitled “Reporting After Disaster Declarations.” TCEQ could then provide for more robust opacity limitations, detailed accounting of opacity and materials that are burned, as well as provide for better monitoring of air pollution.

Similarly, TCEQ should consider further restricting operational conditions for this GOP so that a unit could only run consistently for a set amount of time, instead of leaving it open ended. It is possible to envision disaster recovery taking months to compete and allowing open burning 24 hours a day places a community in harm’s way. While the tons per year limitation is one way to approach this control, as argued above, providing for additional operational controls during disaster recovery would ensure that multiple units are not moved en masse into communities already struggling to rebuild, creating further environmental harm after a disaster.

Under Section (b)(9)(A), opacity limits for particulate matter is permitted to reach 30% opacity over a 6 minute period. Yet, generally, for the incineration of 100% wood waste, the lower opacity limit of 10% over a 6 minute period would apply—and this is actually spelled out in this GOP at, for just one example, Section (b)(15)(A)(i)(1). While each of the sections outlining lower opacity limits reflect back to specific types of incinerators and federal rules, it is inconsistent to permit the higher 30% opacity for a known NAAQS pollutant when contemplating this GOP being utilized more after a disaster. Instead, TCEQ should normalize the lower 10% limit across the board in all applications. This provides for greater certainty to the regulated community—and protects public health more.

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<sup>10</sup> Corbin Hiar, *Among Storm Casualties: Texas Environmental Regulations*, Greenwire (Nov. 21, 2017, 1:26 PM), <https://www.eenews.net/articles/among-storm-casualties-texas-environmental-regulations/>.

Likewise, by referencing 30 Texas Administrative Code §106.496, this GOP may inadvertently provide for the disposal of toxic ash (from disaster debris burns) at general municipal solid waste facilities. Yet, unequivocally, disaster debris burns are likely to be much more toxic, and contain more heavy metals, making the ash more like a hazardous waste which should be subject to more stringent disposal procedures. *See* 30 Tex. Admin. Code §106.496(f) or (g)(4)(B). This unintended consequence from using Incinerators for disaster debris should be mitigated against within this permit, or again, be called out expressly to require proper disposal and avoid exceptions and ambiguity in disposal requirements.

#### **4. Special Condition Regarding Distance Requirements to Any Residential Homes Should Be Added**

Because this GOP allows for free movement of the Incinerators with limited notice, TCEQ should include additional special conditions to better protect communities after disasters. In particular, a special condition should be added to ensure that any Incinerator placed outside existing municipal landfills during a disaster declaration must not be within a certain radius of existing residential properties, and particularly farther from critical infrastructure like hospitals or sites like schools. Based on this comment, we ask that TCEQ again model air emissions from these proposed Incinerators to better understand how best to protect communities after a disaster. By engaging in this scientific approach now, TCEQ can better adopt special conditions for emergency management before the disaster hits.

#### **5. Continuous Emissions Monitoring**

In addition, we urge TCEQ to add a section requiring continuous emissions monitoring for any incinerator that utilizes a GOP throughout the state. By requiring continuous monitoring for toxics, opacity, particulate matter and other pollutants, TCEQ would be better able to identify long term whether incineration is a viable option for disaster debris as well as general municipal waste. Without measuring the impact from these units, it will be harder for TCEQ to protect people's health and meet its obligation to reduce overall pollution in our communities. By measuring more now, TCEQ will have more information for the next renewal.

#### **6. Permit Tables Are Missing**

Finally, we note that Section (c) entitled "Permit Tables" at the end of the proposed GOP on the website is blank. We ask that TCEQ provide the table for comment. We also suggest that this table highlight the applicable limit by referencing both state and federal law, and if applicable, the section of the GOP where each limit is explained. We believe this may help with understanding how the permit table relates to the limitations provided in the GOP.


#### **7. TCEQ Should Protect People where the Federal Government Fails**

We urge TCEQ to adopt stricter standards for incinerating waste, especially disaster debris or municipal waste as identified above. There are multiple options, and by investing in further modeling and/or adding additional restrictions as opined above, TCEQ can better protect people.

Texas can, and should, lead in science, industry, and public health. One way to do that is to disincentivize open burning in communities, especially after disasters.

Respectfully submitted by,

EARTHJUSTICE

A handwritten signature in dark ink, appearing to read "Jen AP", is written over a light gray rectangular background.

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