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Houston Chronicle: What's the real reason Texas AG is suing polluters?

A day after a July 31 explosion and fire at an ExxonMobil plant in Baytown injured 37 people — the fourth such incident at a Houston-area chemical facility in as many months — Harris County sued the company for violating the Texas Clean Air Act. On Aug. 5, the state of Texas also filed suit. Some might see the dual filings as a positive development. After all, holding industry accountable in the courts can safeguard public safety through deterrence.

And maybe the state, belying its industry-friendly reputation, was now willing to more aggressively take polluters to task. Perhaps state officials, who rarely miss a chance to lambaste local governments, had suddenly become amenable to collaboration. If you believe that, all those toxic fumes may be getting to you. At a hearing scheduled for next week, the state will argue that Harris County's lawsuit against Exxon violates the Texas Water Code, which covers environmental lawsuits. The attorney general claims that the county attorney can't sue using a standing preauthorization by Harris County Commissioners, alleging that he must seek a new authorization before suing. The claim seems petty and counterproductive seeing as how the county's lawsuit, on its face, follows statute.

This latest salvo is part of an ongoing dispute between the county and the state that has both entities racing to the courthouse to sue polluters. Along with Exxon, the state and Harris County filed suit against Intercontinental Terminals Co. and KMCO, last year. "Harris County has been aggressive about filing these prayers for injunctive relief very quickly. Seeing Attorney General Paxton regularly filing suit on that same quick timeline is somewhat of a new development," Adrian Shelley, director of the Texas office of Public Citizen, told the Chronicle. The attorney general's office has declined to comment about its legal strategy or any future litigation, but environmentalists and some local officials fear the state is trying to limit the impact of any court rulings on major corporations — a valid concern given a push by state officials to take jurisdiction from local governments on a wide range of issues, including environmental lawsuits. Over the last few sessions, lawmakers have succeeded in capping how much local governments can recover via civil penalties. Lawmakers have forced locals to notify the state if they are going to sue for such penalties and allow the state to take over. And lawmakers have limited the hiring of outside council on a contingency basis, hurting smaller counties' ability to sue. Legislators argue that these changes bring uniformity to environmental enforcement and protect the Texas economy, but some of their examples of what they've called "abusive" lawsuits, including \$29 million awarded over pollution in the San Jacinto Waste Pits, point to confused priorities.