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## **Circuit Court rules against ExxonMobil a third time, upholds record Clean Air Act penalty**

### **Environmental groups demand Exxon finally accept responsibility for violations after 13 years of litigation**

**NEW ORLEANS** – One of the largest and longest-running citizen enforcement suits ever brought under the federal Clean Air Act may finally be nearing a conclusion. The federal Fifth Circuit Court of Appeals ruled Tuesday against ExxonMobil Corporation for the third time and upheld a record \$14.25 million civil penalty. The trial judge levied this unprecedented fine to punish the company for 3,651 instances of illegal flaring and other unauthorized releases of pollutants over a period of eight years at its Baytown, Texas, oil refinery and chemical plant complex.

“After 13 years of litigation – including a three-week trial, two appeals, two remands of the case to the trial court for additional findings, and three appellate decisions against them – it is long past time for Exxon to accept responsibility and finally pay what it owes to the public for years of illegal, toxic pollution,” said Executive Director Luke Metzger of Environment Texas, one of the plaintiffs in the case.

The case centers on thousands of so-called “upset” events at Exxon’s Baytown complex, the largest manufacturing facility in the country. From 2005 through 2013, Exxon illegally released millions of pounds of sulfur dioxide, ozone-forming chemicals and toxic and carcinogenic pollutants into surrounding neighborhoods, where members of plaintiffs Sierra Club and Environment Texas live.

Tuesday’s decision clearly rejected Exxon’s arguments that the two environmental groups lacked legal “standing” to seek civil penalties against Exxon for each of the 3,651 days of violation that U.S. District Court [Judge David Hittner expressly determined](#) were “fairly traceable” to the undisputed injuries suffered by the groups’ members.

Exxon contended that the standard for determining “traceability” set out by the Fifth Circuit panel at an earlier stage of this appeal, and then painstakingly applied by Judge Hittner, was invalid. At a June 28 hearing, however, when asked by a judge on the panel what standard *should* be applied, Exxon’s attorney had no clear answer.

“Exxon's Baytown complex is the largest polluter on the Houston Ship Channel, and it is gratifying that the Fifth Circuit expressly recognizes that Exxon’s pollution affects the air quality and the quality of life of the people who live downwind,” stated Clean Air Program Director Neil Carman of Sierra Club's Lone Star Chapter. “Of course, Exxon still needs to do more to create cleaner air in the Houston area.”

Environment Texas and Sierra Club are represented by the nonprofit National Environmental Law Center; attorney David Nicholas of Newton, Massachusetts; and Houston attorney Philip Hilder.

“Exxon has essentially been seeking a ‘get out of jail free’ card, trying to convince the courts that – even though it indisputably committed many thousands of violations of federal law – the very citizens who have the greatest interest in Exxon’s compliance should not have the legal standing to enforce the Clean Air Act as Congress intended them to do,” explained Senior Attorney Josh Kratka of the National Environmental Law Center, who argued the latest appeal on behalf of the citizen groups. “We hope the Fifth Circuit panel’s clear and firm rejection of this untenable defense brings an end to this case.”

“The Court of Appeals decision thoroughly discredits Exxon’s attempts to worm out of responsibility for thousands of Clean Air Act violations,” added Nicholas. “The decision affirms that citizens can hold even the biggest, deepest-pocketed polluters to account for violating environmental laws.”

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*Sierra Club has approximately 24,000 members in Texas who are protecting parks and wildlands and building a clean energy future to protect human health and natural resources.*

*Environment Texas advocates for clean air, clean water, and preservation of Texas’ natural areas on behalf of approximately 5,000 members statewide.*