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COURT AGAIN REJECTS EXXON BID TO DISMISS CITIZEN ENFORCEMENT SUIT

HOUSTON – A federal court has rejected, for the second time, an attempt by ExxonMobil Corporation and two subsidiaries to get rid of a lawsuit filed against them by Sierra Club and Environment Texas. The lawsuit alleges thousands of violations of the Clean Air Act at the nation’s largest oil refinery and chemical plant complex, located in Baytown, Texas.

In a one-page order dated May 2, 2013, U.S. District Judge David Hittner of the Southern District of Texas formally adopted the recommended ruling on Exxon’s motion for summary judgment issued by Magistrate Judge Stephen Smith on April 3, 2013.

“The Court’s ruling vindicates the rights of citizens affected by air pollution to bring polluters to justice when state and federal agencies simply are not getting the job done,” said Luke Metzger, Executive Director of Environment Texas.

Exxon argued that citizens cannot sue when state and federal agencies have already addressed – or even when they have decided *not* to address – the problem, calling the lawsuit a case of “second-guessing.” But according to Dr. Neil Carman, a former air inspector for the Texas Commission on Environmental Quality (TCEQ) and now the Clean Air Program Director for the Lone Star Chapter of Sierra Club, the TCEQ’s weak enforcement efforts are a big part of the problem.

“Exxon has illegally released millions of pounds of pollutants, including carcinogens, hazardous air pollutants and respiratory irritants, from the Baytown Complex since 2005,” explained Dr. Carman. “TCEQ’s lax oversight and slap-on-the-wrist penalties have left the residents of Baytown to suffer from ongoing illegal pollution.”

The Court’s ruling flatly rejects Exxon’s primary argument, stating that “citizen suits were *intended* to be a mechanism for the public to second-guess the adequacy of an agency’s response to Clean Air Act violations.”

The Court also ruled that, contrary to another of Exxon’s arguments, the Sierra Club and Environment Texas have come forth with evidence of repeated, ongoing violations, as is required of citizen plaintiffs. Most of this evidence consists of Exxon’s own self-reports of violations to government regulators.

A third significant aspect of the Court’s ruling is the finding that Environment Texas and Sierra Club have legal standing to sue over permit violations that do not directly involve illegal emissions. The Court reasoned that “poor operation and maintenance practices may lead to future emissions or other dangerous events such as explosion.”

In a chilling confirmation of the Court’s opinion, a fire that broke out just two weeks ago at Exxon’s nearby refinery in Beaumont, Texas, was responsible for severe burns to several plant workers, one of whom has since died.

In June 2011, Judge Hittner rejected Exxon’s previous motion to dismiss the case, in which many of the same defenses were raised. No trial date has yet been set.

This is the groups’ third federal lawsuit since 2008 targeting illegal air emissions in the Houston area caused by so-called “upset” events and other violations of Clean Air Act operating permits at Gulf Coast refineries and chemical plants. It follows earlier successful cases against Shell Oil Company for violations at its Deer Park refinery and Chevron Phillips Chemical Company for violations at its Cedar Bayou chemical plant.

Exxon’s 3,400-acre complex in Baytown, Texas, is located about 25 miles east of downtown Houston. Tens of thousands of people live within three miles of the complex.

The lawsuit seeks a court order requiring Exxon to end its Clean Air Act violations. In addition, Exxon faces civil penalties of up to \$37,500 per day for each violation of the Clean Air Act.

Sierra Club has approximately 21,000 members in Texas 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. The lawsuit was filed by the National Environmental Law Center, attorney David Nicholas of Newton, Massachusetts, and Houston attorney Philip Hilder.