



FOR IMMEDIATE RELEASE:
July 29, 2017

FOR MORE INFORMATION:

Luke Metzger, Environment Texas 512-743-8257

Neil Carman, Sierra Club 512-663-9594

Josh Kratka, NELC, 617-599-6979

David Nicholas, 617-694-2218

**APPEALS COURT AGAIN DEALS MAJOR BLOW TO EXXON'S ATTEMPT
TO AVOID RESPONSIBILITY FOR RECORD-SETTING
CLEAN AIR ACT VIOLATIONS**

NEW ORLEANS – In another stinging setback for ExxonMobil Corporation in a long-running environmental enforcement case, the federal Fifth Circuit Court of Appeals rejected nearly every argument Exxon raised in its appeal of the \$19.95 million penalty imposed by a federal trial court judge to punish the company for committing 16,386 days of violation of the federal Clean Air Act at its Baytown, Texas, refinery and chemical plant.

The “crux of the dispute,” wrote Circuit Judge Gregg Costa for the three-judge panel, is whether the environment groups showed that every one of the thousands of proven violations was of a type or magnitude that was “capable of causing” the kinds of proven harms suffered by the groups’ members who live near the sprawling facility.

Judge Costa stated that, while the trial court’s findings established such “traceability” for a large number of violations – those involving flaring, smoke and haze, for example – the case is being sent back to the trial judge for the “limited purpose” of determining which of the remaining violations were also capable of causing the Plaintiffs’ injuries and whether there should be any adjustment of the penalty amount.

“We are extremely pleased that the appeals court flatly rejected most of the claims Exxon raised in this appeal, and look forward to showing that the record penalty assessed by the district court fairly reflects the number and seriousness of the violations that clearly caused injuries in the Baytown community and beyond,” said National Environmental Law Center senior attorney Josh Kratka, part of the legal team representing Environment Texas and Sierra Club.

In rejecting other grounds for Exxon’s appeal, the appeals court found Plaintiffs had sufficiently proved they suffered injuries from Exxon’s violations that are redressable by

a favorable decision, and that Exxon failed to prove its violations were excusable by the “affirmative defense” set up under Texas law.

The appeals court did, however, also direct the trial court to reconsider whether an “act of God” defense is applicable to a relatively small number of violations occurring before and after Hurricane Ike in 2008.

This case follows successful cases the groups brought against Shell Oil Company for violations at its Deer Park refinery, Chevron Phillips Chemical Company for violations at its Cedar Bayou chemical plant, and Pasadena Refining Systems, Inc. for violations at the Pasadena refinery.

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 groups are represented by the National Environmental Law Center; attorney David Nicholas of Newton, Massachusetts; and Houston attorneys Philip Hilder and Will Graham.

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.

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