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Federal Appeals Court Rules For Environmental Groups in Major Clean Air Act Case Against Exxon

*Environment Texas and Sierra Club Can Seek Civil Penalties for Thousands of Violations at
Baytown, Texas Refinery Complex*

*Unanimous Decision Reverses Trial Judge's Errors of Law
and Abuses of Discretion*

HOUSTON – At a press conference in front of the federal district courthouse today, environmental groups cheered a federal Fifth Circuit Court of Appeals ruling that has reinstated their Clean Air Act enforcement suit against ExxonMobil Corporation concerning thousands of air pollution violations at the company's Baytown, Texas, oil refinery and chemical plant complex.

Last Friday, in a [40-page decision](#), a unanimous three-judge appellate panel held that U.S. District Court Judge David Hittner “erred in [his] analysis of Exxon’s liability” and “abused [his] discretion” by refusing to assess a civil penalty for Exxon’s thousands of admitted violations of the law.

“After six years of litigation against one of the state’s biggest polluters, justice has finally been served,” said Luke Metzger, Director of Environment Texas, one of the two groups that sued Exxon. “The appeals court ruling confirms that even the world’s most powerful corporations must be held accountable when they violate our environmental and public health laws.”

“This is welcome news for the tens of thousands of people who live downwind of Exxon’s Baytown complex, the largest manufacturing facility in the country,” added Dr. Neil Carman, the Clean Air Program Director for Sierra Club’s Lone Star Chapter (a co-plaintiff in the lawsuit) and a former inspector at the Texas Commission on Environmental Quality. “We cannot get clean air

in Houston if one of the region's most persistent polluters can violate the Clean Air Act with impunity.”

After a three-week trial held in February 2014, Judge Hittner ruled that Exxon's many thousands of admitted violations of its Clean Air Act permits were not “actionable” in a citizen enforcement suit. Moreover, he wrote that even if every violation were actionable, he would not penalize Exxon even one dollar.

In vacating Judge Hittner's decision, the appeals court made a number of significant rulings, including the following:

- The appeals court rejected Exxon's claim that unauthorized emissions of pollutants resulting from “upset” events are somehow not violations of its state-issued permits. The Baytown complex experienced nearly 4,000 illegal upset events during the eight-year period covered by the lawsuit, an average of more than one a day.
- The appeals court reversed Judge Hittner and found that Exxon had repeatedly violated emission limits on a large number of air pollutants, making Exxon's thousands of such violations “actionable” in a citizen enforcement suit.
- The appeals court held that Exxon's Johnnie-come-lately efforts to address its illegal emissions do not shield the company from punishment. Rather, the “economic benefit” Exxon gained by delaying these compliance efforts can establish the size of the civil penalty Exxon must pay.
- The appeals court held that Judge Hittner abused his discretion by using the existence of thousands of smaller violations to offset any penalty for Exxon's more serious violations. If anything, the Fifth Circuit reasoned, those additional violations increase Exxon's culpability.

The case has now been “remanded” back to Judge Hittner “for assessment of penalties based on the violations that are properly considered ‘actionable’ in light of” the Fifth Circuit opinion.

The groups are represented by the non-profit National Environmental Law Center; attorney David Nicholas of Newton, MA; and attorney Philip H. Hilder of Hilder & Associates in Houston, TX. Josh Kratka, a senior attorney at NELC, argued the appeal before the Fifth Circuit in New Orleans this past February. The City of Houston, the Harris County Attorney's office, and Air Alliance Houston jointly submitted a friend of the court brief to the Fifth Circuit in support of the groups' appeal, filed by University of Texas School of Law's Environmental Clinic and Earthjustice, as counsel for Air Alliance Houston.

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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