

Oil Companies That Flout the Law Don't Deserve Exemptions From The Law

Chevron Should Not Be Rewarded with a Legislative California Environmental Quality Act (CEQA) Exemption for its Richmond Refinery

Should the Legislature send the following message to the oil industry:

You can flout California's flagship environmental law by telling Main Street Californians one story about a proposed polluting refinery project and Wall Street investors another, and then the Legislature will reward you with a legislative exemption to California's most important environmental law, potentially allowing unmitigated pollution that will harm nearby residents, including elementary school children of color?

Phrased differently, will the Legislature incentivize Big Oil to tell one story to California residents and another to its investors, where projects that potentially imperil the public health are concerned?

Background

Chevron's effort to expand the type of crude oil processed at its Richmond, California oil refinery was rejected by three appellate judges – *all Republican-appointed* – for misleading the Richmond community about the “central purpose” of the refinery expansion project. Chevron's refusal to disclose to the residents of Richmond the same information about its refinery project that it disclosed to Wall Street investors was one of the reasons the judges unanimously ruled against the oil giant. Worse, its decision selectively to disclose the central intent of the project potentially put the local community's health at risk and has needlessly jeopardized hundreds of jobs promised by the project.

Chevron's oil refinery is less than one mile from five neighborhoods in Richmond and within 1.1 miles of a *park, a public pool, and two elementary schools*. Richmond residents – overwhelmingly working class people of color -- already live with far more than their fair share of environmental problems.

What Project Did Chevron Propose?

In April 2005, Chevron applied to the City of Richmond for permits to expand the company's oil refining capabilities. In July, 2008, the Richmond City Council approved the project on a 5-4 vote.

Wasn't This Matter Already Settled by the Courts?

Yes, the case is final. After losing in both the trial and appellate courts (unanimous decision in the appellate court, all the judges to hear the case were appointed by Republican Governors), Chevron didn't even try to get the California Supreme Court to overturn the decision. This is

why any legislative exemption from CEQA sends the wrong message to the oil industry.

Three respected environmental justice organizations (Communities for a Better Environment, the Asian Pacific Environmental Network, and the West County Toxics Coalition) petitioned the courts for a review of the Richmond City Council decision approving the oil refinery project. They argued that the environmental review of the project was deeply flawed because the Environmental Impact Report failed to disclose, analyze, and mitigate significant environmental impacts from heavier, dirtier crude that would be refined.

Chevron countered that its project would allow for refining only the same type of crude it already processed.

The appellate judges ruled that “...the EIR was deficient because it was —unclear and inconsistent as to whether [the] project will or will not enable Chevron to process a heavier crude slate than it is currently processing.”

Moreover, the appellate judges specifically highlighted that Chevron told the citizens of Richmond one story about whether their refinery would be able to refine heavier, dirtier crude but Wall Street investors another. The Court ruled:

“Furthermore, the Project that Chevron described in a filing with the United States Security and Exchange Commission (SEC), which was made under oath, differs considerably from the EIR’s project description.

Chevron’s SEC Form 10-K for the fiscal year ending December 31, 2007, identifies the central purpose of the Project as enabling the processing of heavier (lower gravity) crude. Chevron’s 10-K filing included the following statement about the Refinery: —Design and engineering for a project to increase the flexibility to process lower API-gravity crude oils at the company’s Richmond, California refinery continued in 2007.

Mayor McLaughlin immediately grasped the significance of Chevron’s SEC disclosure: —So, we know that ‘lower API gravity’ means heavier crude oil. Chevron did not [tell their investors] that they would be increasing the flexibility to process higher sulfur content crude oil. They said lower API gravity crude oil.”

What Else Specifically Did the Courts Say?

- The Environmental Impact Report for Chevron’s project failed to inform nearby communities on whether Chevron planned on refining a different, more polluting kind of crude oil at its Richmond refinery – oil that, when refined, would release unhealthful chemicals into the air. The appellate court explained that rather than being informative the “**EIR’s conclusions call for blind faith in vague subjective characterizations.**”
- When neighbors pressed City officials to enact a permit that would simply have held the oil company to its promise not to refine dirtier kinds of oil at their Richmond facility, *the oil company defeated the requested permit.*

- The Chevron Richmond refinery is the single largest source of greenhouse gas pollution in the state of California, according to data released by the California Air Resources Board in 2009. The court found fault with the EIR’s treatment of greenhouse gases.

Could The Lawsuit Have Been Avoided?

Chevron could have avoided this whole mess simply by informing Richmond residents of the “central purpose” of their refinery project.

Thus, fault for the delay in Chevron’s refinery project does not lie with CEQA, a statute designed to protect the public. The problem also isn’t the nearby communities of color who rationally fear for their health and rightly expect California’s environmental laws to be obeyed in their neighborhoods just as they are in wealthier neighborhoods. Nor is this a case of overzealous lawyers bringing fringe lawsuits: every judge to review the case has validated the merits of the lawsuit.

Chevron could have told Richmond’s Main Street the same thing it told Wall Street.

Was Chevron Offered An Alternative?

Yes. There was a simple proposal offered during the City Council debate. The proposal was to impose a limit on the permit that would prevent Chevron from changing the kind of crude oil it refined at its Richmond facility. This would have only required the oil company to abide by its promises that no heavier oil would be refined. This “crude cap” proposal was opposed by Chevron and was defeated.

How Would The Project Impact the Local Community?

Chevron’s oil refinery is located less than one mile from five neighborhoods in the City of Richmond. These communities are already impacted by other sources of pollution. Thus, a quarter of Richmond’s residents live within a polluting business or industry’s area of impact or within 500 feet of roadways averaging 100,000 or more vehicles daily.

The residents of Richmond are right to be deeply concerned about their health and the health of their children. According to Communities for a Better Environment’s 2009 Health Survey, children in Richmond already have asthma rates at twice the national average.

The consequences of processing dirtier and heavier crude oil are:

- Greater releases of selenium, mercury, sulfur flare gas, greenhouse gases, particulate matter into the air
- Greater risk catastrophic accidents and oil spills
- Greater likelihood of upsets, which lead to spills, fires and flaring

Can There Be A Resolution?

Yes. CEQA is a disclosure law. It does not forbid Chevron or anyone else from building or expanding any development, including an oil refinery. At bottom, what CEQA does require is candor about what the project is and what its environmental impacts might be so that there can be a rational and merit-based discussion in a community about whether to approve a project or approve it with conditions or reject it.

By not being candid about the “central purpose” of the project from Richmond residents, the Environmental Impact Report was never able to analyze what the health impacts of the project might be for the refinery’s neighbors. This, in turn, thwarted fair, transparent, and accountable deliberations about the merits or demerits of the project.

Chevron – like any good corporate citizen – simply needs to be candid with its neighbors about what it intends to build at its Richmond refinery and be candid about what the best estimates about the health consequences of such a project might be. The sooner it begins that process – ideally, in collaboration with the plaintiffs and city leadership -- the sooner the controversy can be resolved, to the benefit of the oil company, its neighbors in Richmond, and jobs.