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SUPERIOR COURT

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12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SAN FRANCISCO

15 COMMUNITIES FOR A BETTER  
16 ENVIRONMENT, A Non-Profit Corporation,

17  
18 Petitioner and Plaintiff,

19  
20 v.

21  
22 BAY AREA AIR QUALITY MANAGEMENT  
23 DISTRICT,

24  
25 Respondent and Defendant.

26  
27  
28 CHEVRON PRODUCTS COMPANY, a  
California Corporation, and CHEVRON  
CORPORATION, a Delaware Corporation.

Real Parties in Interest and Defendants.

Case No. CPF - 14 - 513704

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF (CEQA CASE)**

[California Code of Civil Procedure §§ 1085  
and 1094.5; California Public Resources Code  
§ 21168.5]

1 Petitioner and Plaintiff Communities for a Better Environment (“CBE”) brings this action  
2 challenging the Bay Area Air Quality Management District’s (“Air District”) flagrant disregard of  
3 the provisions and protections of the California Environmental Quality Act (“CEQA”). CBE brings  
4 this action on its own behalf, on behalf of its members, the general public, and in the public interest.

5 **INTRODUCTION**

6 1. The Air District has acted prematurely and essentially put the cart before the horse.  
7 The Air District granted Chevron an air permit for the Chevron Modernization Project, prior to even  
8 the release of the draft EIR for the Project.

9 2. In 2005, Real Parties in Interest Chevron Products Company and Chevron  
10 Corporation (collectively, “Chevron”) sought approvals for a project at its Richmond Refinery that  
11 never happened. Among these approvals was a land use permit from the City of Richmond that the  
12 Court ordered vacated, along with the project’s environmental impact report (“EIR”). The Court  
13 concluded that the project was never properly described, focusing especially on the project’s air  
14 emissions. Chevron’s 2005 project also included an air permit from the Air District, called an  
15 Authority to Construct (“ATC”), which the Air District issued in reliance on the project’s  
16 environmental analysis.

17 3. Chevron has again applied to the City of Richmond for approval of a project. The  
18 new project, called the Chevron Modernization Project, has many differences from Chevron’s last  
19 proposal, including reliance on analyses of air emissions impacts that differ from those considered in  
20 the previous proposal.

21 4. Chevron has not applied to the Air District for a new ATC for the Modernization  
22 Project. Instead, in 2010 and again in 2012, the Air District extended the 2008 ATC based on  
23 Chevron’s old project analysis, which was vacated.

24 5. The Air District’s extension of the ATC deprives CBE of the protections a full  
25 environmental analysis and mitigation will provide. This is a real problem for the community; the  
26 outdated EIR fails to include an adequate project description, air emissions analysis, or mitigation.  
27 Moreover, it renders impossible any analysis under current, applicable greenhouse gas (“GHG”)  
28

1 regulations of the Modernization Project’s almost one million tons of additional carbon dioxide  
2 emitted each year.

3 6. The United States Environmental Protection Agency (“EPA”) has emphasized the  
4 importance of applying its current GHG regulations to new and renewed permits. The Air District  
5 has failed to correctly apply those regulations, or even review in its permitting action, the additional  
6 and massive GHG emissions expected from the Modernization Project. Even before its  
7 Modernization Project, Chevron is already one of the largest GHG emitters in the state.

8 7. The Air District’s failure to act as required under California law, and specifically as a  
9 responsible agency pursuant to CEQA, is particularly troubling in light of the Project’s  
10 surroundings—in and near working class communities of color, where residents suffer the impacts of  
11 a wide array of environmental harms, and experience greatly elevated risk of cancer, asthma, heart  
12 attacks, and other serious health problems caused by higher exposures to toxic air contaminants and  
13 other pollutants emitted from the refinery’s diesel rail and truck corridors, port facilities, and other  
14 industrial facilities in the area.

15 8. The Air District’s failure to hold its evaluation and approval of this expansion project  
16 until after the public has an opportunity to ascertain the extent of the project betrays the local  
17 community and violates the basic open government obligations of a properly functioning democracy.  
18 With no other recourse, Petitioners file this action.

19 **PARTIES**

20 9. Petitioner and Plaintiff COMMUNITIES FOR A BETTER ENVIRONMENT is a  
21 California non-profit environmental health and justice organization with offices in Oakland and  
22 Huntington Park. CBE is primarily concerned with protecting and enhancing the environment and  
23 public health by reducing air and water pollution and toxics, and equipping residents of California’s  
24 urban areas who are impacted by industrial pollution with the tools to monitor and transform their  
25 immediate environment. CBE has worked to reduce the environmental and health risks to the  
26 Richmond community for more than twenty years.

27 10. CBE has thousands of members in California, many of whom live, work, recreate,  
28 and breathe the air in Richmond, California. CBE’s members have an interest in their health and

1 safety, as well as conservation, environmental, aesthetic, and economic interests in the Bay Area  
2 environment. CBE's members who live and work in the Bay Area have a right to, and a beneficial  
3 interest in, the Air District's performance of its duties under CEQA. These interests have been, and  
4 continue to be, threatened by the Air District's failure to comply with its own regulations designed to  
5 properly implement CEQA.

6 11. By this action, CBE seeks to protect the health, welfare, and economic interests of its  
7 members and the general public, and to enforce a public duty owed to them by the Air District.

8 12. Respondent and Defendant BAY AREA AIR QUALITY MANAGEMENT  
9 DISTRICT is the local agency that issued, re-issued, re-approved, renewed or otherwise granted<sup>1</sup> the  
10 ATC that is the subject of this litigation.

11 13. Real Party in Interest and Defendant CHEVRON PRODUCTS COMPANY is an oil  
12 refiner based in California. Chevron is the applicant and developer of the property upon which the  
13 Modernization Project is planned to be constructed and operated and is the recipient of the  
14 approvals<sup>2</sup> that are the subject of this litigation. The Chevron facility at issue here is located at 841  
15 Chevron Way, Richmond, California.

16 14. Real Party in Interest and Defendant CHEVRON CORPORATION is a Delaware  
17 Corporation based in San Ramon, California, and the parent corporation for Chevron Products  
18 Company.

### 19 JURISDICTION AND VENUE

20 15. This Court has jurisdiction over this action pursuant to California Code of Civil  
21 Procedure ("CCP") §§ 1085 and 1094.5.

22 16. This Court has jurisdiction over the Air District because it is an agency, established  
23 by the legislature of the State of California under the supervision of the California Air Resources  
24 Board and the Environmental Protection Agency, with its principal place of business located in the  
25 City of San Francisco.

26  
27  
28 <sup>1</sup> To the best of its knowledge, Petitioner uses this phrase in regards to the Air District's renewal(s) of the Chevron HRP  
ATC under any applicable provision of the District's regulations.

<sup>2</sup> See also *supra*, fn. 1.

1 17. Venue is proper in this court pursuant to CCP §§ 393 and 394 because the Air District  
2 is located and operates in the City and County of San Francisco.

3 18. This action was timely filed within 180 days of Petitioner's discovery of the Air  
4 District's illegal September 19, 2012 issuance, re-issuance, renewal or granting of the ATC to  
5 Chevron (Air District Application No. 12842). (Cal. Pub. Res. Code § 21167(a); CEQA Guidelines  
6 § 15112(c)(5).)

7 19. Petitioner has provided written notice of its intention to file this petition to the Air  
8 District and includes the notice and proof of service as Exhibit A pursuant to the requirements of  
9 Public Resources Code § 21167.5.

10 20. Petitioner has served the Attorney General with a copy of this Petition along with a  
11 notice of its filing, in compliance with Cal. Pub. Res. Code § 21167.7, and includes the notice and  
12 proof of service as Exhibit B.

13 21. Petitioner does not have a plain, speedy, or adequate remedy at law given the Air  
14 District's violations of CEQA. Further, Petitioner and its members will be irreparably harmed by the  
15 ensuing environmental and socioeconomic damage caused by the Air District's illegal permitting,  
16 and therefore imminent construction and operation, of the Chevron Modernization Project under an  
17 incorrect and insufficiently protective standard.

## 18 STATEMENT OF FACTS

### 19 CEQA Requires the Air District to Review the Final EIR

20 22. An EIR is the heart of CEQA. (*Laurel Heights Improvement Assn. v. Regents of*  
21 *University of California* (1988) 47 Cal. 3d 376, 392.) "The purpose of an environmental impact  
22 report is to provide public agencies and the public in general with detailed information about the  
23 effect which a proposed project is likely to have on the environment; to list ways in which the  
24 significant effects of such a project might be minimized; and to indicate alternatives to such a  
25 project." (Pub. Res. Code § 21061.) In enacting CEQA, the Legislature declared it to be the policy  
26 of California to "take all action necessary to provide the people of this state with clean air and  
27 water." (*Id.* § 21001(b); see *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4th 1215.) CEQA  
28 requires all agencies to give major consideration to preventing environmental damage while

1 providing a decent home and satisfying living environment for every Californian. (Pub. Res. Code §  
2 21000 (g).)

3 23. The environmental review process created by CEQA carries out this mandate by  
4 bringing communities' environmental concerns about a proposed project to the attention of public  
5 agencies. CEQA requires public agencies to determine whether a project may have a significant  
6 impact on the environment. (*Id.* §21151.) The environmental review must be completed prior to  
7 approval of a permit, so that environmental damage can be minimized. (*Id.* § 21002.1.) When the  
8 Air District is not the lead agency under CEQA, its regulations as well as statewide CEQA  
9 guidelines also require the Air District to issue its permit only after the lead agency has issued its  
10 final approval. (*City of Morgan Hill v. BAAQMD* (2004) 118 Cal.App.4th 861, 875 (*citing* Dist.  
11 Reg. 2, Rules 2-2-401, 2-1-426.2).)

12 24. Courts have consistently held that the guiding principle of CEQA is that it must be  
13 "interpreted in such a manner as to afford the fullest possible protection to the environment within  
14 the reasonable scope of the statutory language." (*Citizens of Goleta Valley* (1990) 52 Cal.3d 553,  
15 563-64 (*quoting Friends of Mammoth v. Bd. of Supervisors* (1972) 8 Cal.3d 247, 259).) Courts  
16 further held that "[i]t is, of course, too late for a grudging, miserly reading of CEQA." (*Laurel*  
17 *Heights*, 47 Cal.3d at 390 (*citing Bozung v. Local Agency Formation Commn.* (1975) 13 Cal.3d 263,  
18 274).) An agency's action violates CEQA if it "thwarts the statutory goals" of "informed  
19 decisionmaking" and "informed public participation." (*Kings Cnty. Farm Bureau v. City of Hanford*  
20 (1990) 221 Cal.App.3d 692, 712.)

21 **The Community and Environmental Setting**

22 25. Chevron's Refinery is located in the City of Richmond, a community that already  
23 bears a disproportionate share of environmental hazards from the Refinery and other industrial  
24 activities. The Refinery shares a fence line with low-income neighborhoods of color in central and  
25 north Richmond. In the fourteen neighborhoods surrounding the industrial corridors generally in  
26 Richmond, populations range from 72 to 94 percent people of color. The Refinery is located within  
27 1.1 miles of two elementary schools.

1           26.     Asthma and other respiratory illness rates are already at dangerously high levels in  
2 these neighborhoods. People living downwind from the Refinery frequently experience severe  
3 asthma attacks, dizziness, headaches, and rashes during or immediately following flaring events.  
4 Flaring is the combustion of excess gases and entrained liquids in an open flame using oxygen from  
5 the ambient air; the equipment used for this method of disposal is a safety device intended for use in  
6 unforeseen emergencies that require dumping gases to relieve over-pressured process vessels.  
7 Evidence indicates that Chevron also uses flaring in non-emergency situations. In addition to  
8 flaring, residents frequently report that odors and smoke are emitted from the Refinery. The Air  
9 District's threshold of significance for odor is five complaints per year averaged over three years.  
10 Chevron exceeded that threshold in 2010, 2011, and 2012. Three complaints have already been  
11 confirmed for 2014. In addition, from 2008 to 2010, Chevron received 51 Notices of Violation at its  
12 Richmond Refinery; these included violations of inspection and monitoring provisions and also for  
13 operating without a permit.

14           27.     Even now, without construction of the Project, the Refinery emits nitrogen oxides,  
15 sulfur compounds, carbon monoxide, and reactive organic gases that combine with nitrogen oxides  
16 and particulate matter. The Refinery also emits fine and ultra-fine particulate matter in excess of its  
17 permit limits, pollutants that the Air District has identified as a cause of death in the Bay Area.  
18 Indeed, experts have confirmed high levels of indoor pollutants, including metals closely associated  
19 with oil refineries, such as vanadium, inside the households near the Chevron refinery. This "toxic  
20 soup" has forced Richmond residents to live with high levels of air pollution and the resulting health  
21 risks.

### 22                           **The District's Crucial Authority to Regulate Greenhouse Gases**

23           28.     The Prevention of Significant Deterioration ("PSD") program applies to new major  
24 sources or major modifications at existing sources for pollutants and imposes four requirements on  
25 these sources: installation of Best Available Control technology; an air quality analysis; an  
26 additional impacts analysis; and public participation.

27           29.     The PSD program is designed to protect public health and welfare; preserve, protect,  
28 and enhance air quality; to ensure that economic growth will occur in a manner consistent with the

1 preservation of existing clean air resources; and to assure that pertinent decisions to permit increased  
2 air pollution are made only after careful evaluation of all the consequences of such a decision and  
3 after adequate procedural opportunities for informed public participation in the decision making  
4 process.

5 30. On March 8, 2011, EPA clarified its delegation of PSD permitting authority to the Air  
6 District. This new agreement highlighted that the Air District's pre-2011 regulations did not meet  
7 current EPA PSD requirements under the federal Clean Air Act. The agreement imposed stricter  
8 standards for the Air District to implement with its primary authority to issue all new and modified  
9 PSD permits and extensions of PSD permits.

10 31. On January 31, 2014, EPA published a document entitled *Guidance on Extension of*  
11 *PSD Permits Under 40 CFR 52.21(r)(2)*. This guidance emphasized the need to require review of  
12 PSD and BACT in lieu of PSD permit extension requests. The District emphasizes the same need to  
13 maintain consistency with up to date regulations, and its regulations provide that the decision to  
14 grant an ATC must be based on the regulations or standards in force on the date the application is  
15 declared by the Air Pollution Control Officer ("APCO") to be complete. (Dist. Reg. 2-1-409.)

16 32. The Modernization Project is expected to increase annual GHG emissions by almost  
17 1,000,000 metric tonnes. Currently, the Air District has not conducted a PSD review of the  
18 Modernization Project under current regulations following the above 2011 delegated authority.

### 19 **The Hydrogen Renewal Project**

20 33. On June 22, 2005, Chevron submitted its application for an ATC for the Hydrogen  
21 Renewal Project ("HRP") to Air District. Concurrently in 2005, Chevron also submitted its land use  
22 application to the lead agency charged with certifying a final EIR for the HRP, the City of  
23 Richmond.

24 34. Despite intense community concern, on July 17, 2008, the City of Richmond  
25 approved the HRP and certified the HRP EIR.

26 35. On September 4, 2008, CBE challenged the validity of the EIR for the HRP,  
27 primarily due to the EIR's failure to disclose the project's true purpose of allowing the refinery to  
28 process a lower quality oil feedstock.



1           36.     On September 19, 2008, the Air District issued the ATC for the HRP, basing its  
2 determination and evaluation of emissions on information contained in the HRP EIR.

3           37.     On July 1, 2009, the Superior Court upheld CBE's lawsuit challenging the HRP EIR.  
4 Although the City of Richmond and Chevron appealed, on April 26, 2010, the Court of Appeal  
5 affirmed the Superior Court, holding: first, that the HRP EIR did obscure the project's objective of  
6 refining a heavier oil feedstock, and second, that the HRP EIR included an inadequate analysis of  
7 greenhouse gas (GHG) emissions. (*Communities for a Better Environment v. City of Richmond*  
8 (2010) 184 Cal. App. 4<sup>th</sup> 70, 83.)

9           38.     On July 1, 2009, the Superior Court ordered the City of Richmond to set aside any  
10 adopted findings, mitigation and monitoring programs, or other determinations made as a result of  
11 the HRP EIR, and any additional permits, authorizations or any other approvals related to the HRP.  
12 The Air District observed that because of the judgment, the validity of the ATC was in doubt. This  
13 Court also ordered the City of Richmond to suspend all Project-related permitting and to take no  
14 other action in reliance on the EIR, until the City of Richmond brought that HRP EIR into  
15 compliance with CEQA. This Court also enjoined Chevron from engaging in any Project-related  
16 activity until the City of Richmond compiled a revised EIR that complies with CEQA and this  
17 Court's order.

#### 18                                   **The Modernization Project – A Different Project**

19           39.     Nevertheless, Chevron continued to advocate for a "reduced version" of the HRP, to  
20 be named the Modernization Project. The Modernization Project still includes processing heavier  
21 crude oil feedstock as a primary goal of the Project.

22           40.     On September 17, 2010, pursuant to District Regulation 2-1-407, Chevron applied for  
23 a renewal of the HRP ATC. On November 15, 2010, Chevron made a payment to the Air District  
24 for the first renewal of the HRP ATC.

25           41.     On February 3, 2012 the Air District notified Chevron that although Chevron had  
26 made "substantial use" of the HRP ATC, the Air District would not re-issue the ATC prior to the  
27 certification of a final EIR for the Modernization Project.

1           42.     On July 18, 2012, pursuant to District Regulation 2-1-407.3, Chevron applied for  
2 another renewal of the HRP ATC, this time based on “substantial use” of the permit.

3           43.     In August 2012, the same month as the catastrophic fire at the refinery that sent  
4 15,000 residents to nearby hospitals, the Air District accepted Chevron’s permit application fees for  
5 a renewal of the HRP ATC based on “substantial use” of the permit.

6           44.     On information, belief and to the best of Petitioner’s knowledge, on or around  
7 September 19, 2012, the Air District granted a second renewal of the HRP ATC for a subsequent  
8 two years, to expire on September 17, 2014, and the Air District now considers this the  
9 Modernization Project ATC.

10          45.     In March 2014, the City of Richmond released a Revised Draft EIR (“RDEIR”) for  
11 the Modernization Project. The two environmental documents show important substantive  
12 differences. For example, the RDEIR includes a different air emissions analysis from that included  
13 in the HRP EIR. In particular, the RDEIR shows an increase in emissions of particulate matter from  
14 the Fluid Catalytic Cracking Unit related to a denser oil feed. The Air District’s 2008 analysis does  
15 not consider this. In addition, the two documents rely upon two different baselines for GHGs.  
16 These differences are either due to corrections to cure the inadequacies of the prior HRP EIR, or due  
17 to emissions from wholly new project components, absent from the HRP. In any event, the Air  
18 District has yet to consider a final EIR that includes those factors.

19          46.     The environmental review to finalize and certify the Modernization Project RDEIR is  
20 currently underway. There is not yet a final EIR for the Modernization Project. Certainly, the  
21 Modernization Project, which has changed since Chevron’s original proposal, could still be modified  
22 further. Nevertheless, Air District granted its approval for the Project ATC almost two years ago.

23          47.     Despite the community’s clear interest in the outcome of this project, and despite the  
24 Air District’s own staff concerns regarding the lack of review of the project under a PSD program,  
25 the District made a “ministerial” finding that Chevron had made “substantial use” of the 2008 ATC.

26          48.     As a result of the Air District’s “ministerial” designation, the ATC was re-approved  
27 without any public notification, comment period, process, PSD or CEQA review. The twice-  
28 renewed HRP ATC is still predicated on an EIR ultimately found too flawed to stand. At the same

1 time, this unnecessary haste foreclosed any opportunity for the Air District to conduct an adequate  
2 review of the Project's GHG emissions for two reasons: first, the Air District did not comply with its  
3 current, more stringent GHG emission regulations; and second, the Air District relied upon an EIR  
4 determined by this Court to include an inadequate GHG analysis.<sup>3</sup>

5  
6 **FIRST CAUSE OF ACTION**  
7 **(Violation of CEQA—Failure to Act as Responsible Agency; CCP §1085 and 1094.5, Cal. Pub.**  
8 **Res. Code §21168.5)**

9 49. Petitioners incorporate herein by reference the allegations contained in the foregoing  
10 paragraphs.

11 50. The primary goal of CEQA is to “[e]nsure that the long-term protection of the  
12 environment shall be the guiding criterion in public decisions.” (Pub. Res. Code § 21001(d).)

13 Further, District Regulation 2-1-408.1 states that as a responsible agency, the Air District  
14 shall not take final action for any project for which an Environmental Impact  
15 Report...has been prepared until a final EIR for that project has been certified...and  
16 the APCO has considered the information in that Final EIR.

17 District Regulation 2-1-310.3 also states:

18 The APCO shall not authorize, on an interim basis or otherwise, the installation or  
19 operation of any proposed new or modified source, the permitting of which is subject  
20 to the requirements of CEQA, until all of the requirements of CEQA have been  
21 satisfied.

22 Further, a responsible agency cannot act until it has considered a project's environmental  
23 effects as described in the certified final EIR. (CEQA Guidelines § 15096(f).)

24 51. The Air District relied on the old and vacated EIR for a different project, and  
25 undertook a final action in approving the Modernization Project ATC *before* the Modernization  
26 Project draft EIR was even released. The Air District effectively approved the ATC for this Project

27 <sup>3</sup> The issue of crude oil quality is also relevant to this proceeding. The Air District has itself identified that the refining  
28 of a heavier crude oil feedstock could result in higher emissions of pollutants and co-pollutants. The HRP EIR's failure  
to identify emission changes due to crude oil feedstock changes consequently also poisons any analysis of emissions  
predicated on that faulty document.

1 *before* the City of Richmond has had an opportunity to properly consider the scope, impacts or  
2 mitigation of the Project, *before* the APCO or District staff have had an opportunity to consider the  
3 City of Richmond's implementation of the Project or the contents of a properly revised and final  
4 EIR, and *before* the public has had an opportunity to comment on the scope, impacts or mitigation of  
5 the Project. This is premature and violates the environmental and public notice protections noted  
6 immediately above.

7 52. On December 9, 2013, Petitioners discovered the illegal renewals of the HRP ATC.  
8 This was the first time that CBE staff or its members knew or should have known of the non-  
9 conformity between the project as is currently being deliberated, and the permit, which has already  
10 been issued.

11 53. The Air District's renewals of the HRP ATC, which imposes operational conditions  
12 designed to control air pollution, based on the independent judgment of a qualified engineer,  
13 implicate significant and cumulative impacts on the environment and were "discretionary" and  
14 constituted a "project" that was subject to CEQA. (Cal. Pub. Res. Code § 21065; CEQA Guidelines  
15 §15378.) The regulatory framework of the issuance of the original permit and any subsequent  
16 renewals on whatever basis must still be guided by a final, certified EIR.

17 54. The Air District's failure to act as a responsible agency and wait for an opportunity to  
18 analyze the conclusions and findings of a final EIR, prior to approval of the Modernization Project  
19 ATC, violates its own regulations designed to properly implement CEQA review. This constitutes a  
20 prejudicial abuse of discretion for failure to proceed in a manner required by law. (Cal. Pub. Res.  
21 Code §21168.5.)

22 **SECOND CAUSE OF ACTION**  
23 **(Violation of CEQA - Failure to Provide Adequate Mitigation; CCP 1085 and 1094.5, Cal. Pub.**  
24 **Res. Code §§ 21002.1 and 21168.5)**

25 55. Petitioners incorporate herein by reference the allegations contained in the foregoing  
26 paragraphs.

27 56. Identification and discussion of proposed and alternative mitigation measures is a  
28 core requirement of CEQA. A basic purpose of CEQA is to "[p]revent significant, avoidable

1 damage to the environment by requiring changes in projects through the use of alternatives or  
2 mitigation measures.” (CEQA Guidelines, § 15002(a)(3); *see also*, CEQA Guidelines, §  
3 15021(a)(1).) Government agencies “shall mitigate or avoid the significant effects on the  
4 environment.” (Pub. Res. Code § 21002.1(b) and (d).) Thus, a responsible agency cannot act until it  
5 has considered a project’s environmental effects as described in the certified final EIR. (CEQA  
6 Guidelines § 15096(f).)

7         57. Rather than analyzing the Modernization Project’s emissions under current and  
8 applicable regulations, informed by a final EIR that discloses and details those emissions, the Air  
9 District improperly made a determination of substantial use of the HRP ATC. The HRP ATC pre-  
10 dated those more stringent regulations, and was based on an invalid environmental review document.  
11 The Air District’s determination of substantial use occurred *after* the Court of Appeal’s holding  
12 regarding the illegality of the HRP EIR and *after* EPA’s delegation and clarification of PSD  
13 permitting authority in 2011, but failed to take either changed circumstance into account.

14         58. Moreover, by showing such hasty disregard for CEQA, the Air District has abnegated  
15 its air quality regulation duties, leaving only the City of Richmond to determine quantity of  
16 emissions from this specialized pollution source as well as to dictate alternatives, gauge effects and  
17 set out mitigation for air emissions. The City of Richmond, which does not have the Air District’s  
18 expertise, engineers, or resources, now remains the only government agency with authority to  
19 properly mitigate the Project’s emissions under CEQA.

20         59. The Air District’s failure to mitigate air quality impacts based on its review of a final  
21 EIR for the Modernization Project violates its own regulations and CEQA, and constituted a  
22 prejudicial abuse of discretion for failure to proceed in a manner required by law. (Pub. Res. Code  
23 §21168.5.)

1 **PRAYER FOR RELIEF**

2 WHEREFORE, CBE prays for judgment as set forth below:

3 A. For a writ of mandate or peremptory writ issued under the seal of this Court and  
4 directing the Bay Area Air Quality Management District to:

5 1. Set aside and withdraw its approval of the Authority to Construct for the Chevron  
6 Hydrogen Renewal or Modernization Project (Air District Application No. 12842);

7 2. Refrain from granting any further approvals of any Authority to Construct the  
8 Modernization Project unless and until Chevron submits a complete application for an Authority to  
9 Construct the Modernization Project that relies upon or includes the certified final EIR for the  
10 Project;  
11 Project;

12 3. Refrain from granting any further approvals of any Authority to Construct the  
13 Modernization Project until the final Environmental Impact Report is certified and the Air District  
14 has considered it, including all necessary mitigation; and  
15

16 4. Refrain from granting any further approvals of any Authority to Construct the  
17 Modernization Project until it has complied with the 2011 delegation agreement with EPA, and  
18 implemented current Prevention of Significant Deterioration regulations to evaluate the  
19 Modernization Project and brought its Title V permit into compliance with all applicable state and  
20 federal regulations.  
21

22 B. For a declaratory judgment stating that the Air District violated CEQA by approving,  
23 re-approving or renewing the Authority to Construct for the Chevron Modernization Project without  
24 first complying with CEQA.

25 C. For a declaratory judgment stating that the Air District's approval of Chevron's  
26 Authority to Construct (Air District Application No. 12842) prior to considering the contents of the  
27 Project's final EIR is void *ab initio* or otherwise invalid and of no legal effect.  
28

1 D. For entry of preliminary and/or permanent injunctive relief prohibiting the Air  
2 District and Chevron from further constructing its Project in Richmond, California until a lawful  
3 approval has been obtained from the Air District after the requirements of CEQA have been fulfilled.

4 E. For Petitioner's fees and costs, including reasonable attorneys' fees and expert  
5 witness costs, as authorized by CCP § 1021.5, and any other applicable provisions of law on its  
6 claims regarding the unlawful issuance of the Modernization Project Authority to Construct (Air  
7 District Application No. 12842).

8 F. For such other legal and equitable relief as this Court deems appropriate and just.

9  
10  
11 DATED: June 5, 2014

Respectfully submitted,

12  
13 COMMUNITIES FOR A BETTER ENVIRONMENT

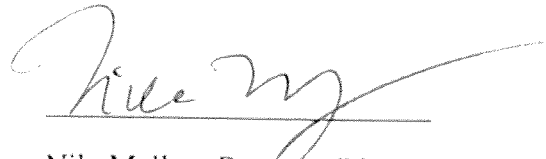
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15 \_\_\_\_\_  
16 ROGER LIN, State Bar No. 248144  
17 YANA GARCIA, State Bar No. 282959  
18 COMMUNITIES FOR A BETTER ENVIRONMENT  
19 1904 Franklin Street, Suite 600  
20 Oakland, CA 94612  
21 T: (510) 302-0430  
22 F: (510) 302-0437  
23 roger@cbeal.org; ygarcia@cbeal.org  
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**VERIFICATION**

I, NILE MALLOY, hereby declare:

I am the Northern California Program Director of Communities for a Better Environment, a non-profit corporation with offices in Oakland, California and elsewhere in the State. The facts alleged in the above Petition and Complaint for Writ of Mandate and Declaratory Relief are true to my personal knowledge and belief. I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is executed on this 5th day of June at Oakland, California.



Nile Malloy, Program Director

Communities for a Better Environment



## Exhibit A

Via U.S Mail

Sean Gallagher  
Clerk of the Boards  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

June 5, 2014

**Re: NOTICE OF INTENT TO FILE CEQA PETITION**

To the Bay Area Air Quality Management District,

Please take notice that under California Public Resources Code section 21168.5, Communities for a Better Environment will file a verified petition for writ of mandate under the provisions of the California Environmental Quality Act, California Public Resources Code section 2100, et seq. ("CEQA") against the Bay Area Air Quality Management District, Chevron Products Company, and Chevron Corporation in San Francisco County Superior Court.

The petition challenges the Air District's actions in approving and issuing the Authority to Construct for the Chevron Modernization Project, prior to the certification or even release of the final Environmental Impact Report for the Project, and alleges that the Air District violated CEQA and abused its discretion.

The petition seeks a writ of mandate to compel the Air District to comply with CEQA and a writ of mandate directing the Air District and Real Parties in Interest, Chevron Products Company and Chevron Corporation, to take no action in furtherance of the Chevron Modernization Project until the Revised Draft Environmental Impact Report is final, certified, and CEQA review is complete. The petition also seeks declaratory relief stating that the Air District failed to fulfill its obligation and duty to comply with all applicable statutes and regulations, including those designed to implement CEQA, and that, as a result, the Authority to Construct the Chevron Modernization Project (Air District Application No: 12842), and all actions taken in connection with approval of the permit, are invalid and unlawful.

Sincerely,

/s/

Greg Karras  
Roger Lin  
Nile Malloy  
Andrés Soto

**PROOF OF SERVICE**

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action; my business address is 1904 Franklin Street, Suite 600, Oakland, California 94612.

On June 5, 2014, I served the document entitled:

**NOTICE OF INTENT TO FILE CEQA PETITION**

By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m

~~XX~~ By placing a true and correct copy(ies) thereof in a sealed envelope with postage affixed hereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.

~~XX~~ By personally delivering the document(s) listed above at the addresses set forth below.

Sean Gallagher  
Clerk of the Boards  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

I declare under penalty of perjury, pursuant to the laws of the State of California, that the above is true and correct.

Executed on June 5, 2014 at Oakland, California.

  
\_\_\_\_\_  
Roger Lin

## **EXHIBIT B**

1 ROGER LIN, State Bar No. 248144  
2 YANA GARCIA, State Bar No. 282959  
3 COMMUNITIES FOR A BETTER ENVIRONMENT  
4 1904 Franklin Street, Suite 600  
5 Oakland, CA 94612  
6 T: (510) 302-0430  
7 F: (510) 302-0437  
8 roger@cbeval.org; ygarcia@cbeval.org

9 *Attorneys for Petitioner and Plaintiff*

10 COMMUNITIES FOR A BETTER ENVIRONMENT

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO COUNTY

13 COMMUNITIES FOR A BETTER  
14 ENVIRONMENT, a Non-Profit Corporation,

15 Petitioner and Plaintiff,

16 v.

17 BAY AREA AIR QUALITY MANAGEMENT  
18 DISTRICT,

19 Respondent and Defendant.

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CHEVRON PRODUCTS COMPANY, a  
California Corporation, CHEVRON  
CORPORATION, a Delaware Corporation,

Real Parties in Interest and Defendants.

Case No.

**NOTICE TO ATTORNEY GENERAL OF  
THE STATE OF CALIFORNIA OF  
VERIFIED CEQA PETITION FOR WRIT  
OF MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**[California Code of Civil Procedure §§ 1085  
and 1094.5; California Public Resources Code  
§ 21168.5]**

1 To the Attorney General of the State of California:


2 PLEASE TAKE NOTICE that Petitioner and Plaintiff COMMUNITIES FOR A BETTER  
3 ENVIRONMENT will file the attached verified petition for writ of mandate under the provisions of  
4 the California Environmental Quality Act, California Public Resources Code section 2100, et seq.  
5 ("CEQA") against Respondent and Defendant BAY AREA AIR QUALITY MANAGEMENT  
6 DISTRICT and Real Parties in Interest CHEVRON PRODUCTS COMPANY and CHEVRON  
7 CORPORATION in San Francisco County Superior Court.

8 The petition challenges Respondent's actions in approving and issuing the Authority to  
9 Construct for the Chevron Modernization Project, prior to the certification or even release of the  
10 final Environmental Impact Report for the Project, and alleges that Respondent violated CEQA and  
11 abused its discretion. This notice is provided pursuant to California Public Resources Code section  
12 21167.7 and California Code of Civil Procedure section 388.

13  
14  
15 DATED: June 5, 2014

Respectfully submitted,

16  
17 COMMUNITIES FOR A BETTER ENVIRONMENT



18  
19 \_\_\_\_\_  
20 ROGER LIN, State Bar No. 248144  
21 YANA GARCIA, State Bar No. 282959  
22 COMMUNITIES FOR A BETTER ENVIRONMENT  
23 1904 Franklin Street, Suite 600  
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**PROOF OF SERVICE**

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action; my business address is 1904 Franklin Street, Suite 600, Oakland, California 94612.

On June 5, 2014, I served the document entitled:

**NOTICE TO ATTORNEY GENERAL OF THE STATE OF CALIFORNIA  
and  
VERIFIED CEQA PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m

By placing a true and correct copy(ies) thereof in a sealed envelope with postage affixed hereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.

XX By personally delivering the document(s) listed above at the addresses set forth below.

Office of the Attorney General  
1515 Clay Street  
Oakland, CA 94612

I declare under penalty of perjury, pursuant to the laws of the State of California, that the above is true and correct.

Executed on June 5, 2014 at Oakland, California.

  
\_\_\_\_\_  
Francisco Martinez