

# **CLEAN AIR ADVOCATES TAKE EXXON TO COURT**

## **By Matthew Tresaugue**

Environmentalists are heading to federal court in Houston to force Exxon Mobil Corp. to reduce air pollution at the nation's largest petroleum and petrochemical complex — something they say the government hasn't done.

Frustrated with the regulatory response to Clean Air Act violations at the Baytown complex, Environment Texas and the Sierra Club will urge the court to intervene by ordering the Irving-based oil giant to comply with its permits and issuing stiff penalties.

U.S. District Court Judge David Hittner's decision, following a trial set to begin Monday, could push industry and regulators in Texas to do more to cut emissions or send environmental groups scrambling for a new tactic in their fight for clean air.

The environmental groups took the unusual step of filing suit against Exxon Mobil under a provision of the Clean Air Act that allows citizens to go to court to enforce the law in the absence of government action. The groups claim the company over an eight-year period illegally released about 5,000 tons of toxic pollutants into the air from its Baytown site — “a model of non-enforcement,” as they describe it.

Exxon Mobil, in legal filings and pretrial hearings, argues that its Baytown operations are tightly controlled, adding that “there is no room for private attorney general action in light of the exhaustive regulatory and enforcement actions” of the state and federal government.

The stakes are high: The oil giant faces civil penalties of up to \$37,500 per day for each violation alleged in the lawsuit. That places the maximum penalty at \$634 million, the environmental groups estimate.

The groups said the penalty is based in part on the amount of money Exxon Mobil saved by avoiding or delaying the implementation of reforms needed to comply with its permits.

“The evidence at trial will show that Exxon could have complied with its permits but simply did not spend the money required to do so,” Philip Hilder, a Houston-based attorney representing the environmental groups, wrote in a brief.

### Seeking special master

The groups also want Hittner to appoint a special master, at Exxon Mobil's expense, to ensure that the company complies with its permits.

The key issue is the accidental release of harmful pollutants during startup and shutdown, equipment malfunctions and maintenance and other unforeseen events.

The environmental groups contend that most of these incidents, also known as upsets, are avoidable and generally ignored by regulators.

Before taking on Exxon Mobil, the groups sued Shell Oil Co. and Chevron Phillips Chemical Co. over their upsets in Harris County. Both companies agreed to hard emissions caps regardless of cause and to spend millions of dollars on equipment upgrades.

Exxon Mobil decided to go to trial, arguing that the groups' claims are unsubstantiated. The company said there have been several upsets at the Baytown complex, but they were reported, as required, to the Texas Commission on Environmental Quality.

The state agency, in turn, has assessed Exxon Mobil about \$3 million for the violations. Also, the company said that since 2000 it has spent \$1.3 billion on equipment upgrades to reduce air pollution and increase energy efficiency at the complex, some 30 miles east of Houston.

### Defending company

“We operate under an aggressive state and federal regulatory system that has been effective,” said Todd Spitler, an Exxon Mobil spokesman. “We work on a routine, consistent, open and transparent basis with the regulators, and they do a good job.”

Exxon Mobil argues that while the Clean Air Act allows citizen suits, they cannot supplant enforcement activities by regulators.

The court, however, disagreed with Exxon Mobil’s position during pretrial hearings, ruling that “citizen suits were intended (by Congress) to be a mechanism for the public to second-guess the adequacy of an agency’s response to Clean Air Act violations.”

Joshua Kratka, an attorney for the groups, said the state regulators’ actions have not done enough to fix the problem.

“If Exxon is found liable, that would force them to address it,” he said.

If the environmental groups win, it likely will lead more companies to follow Shell and Chevron Phillips into agreements to reduce emissions.

“Which is exactly why Exxon Mobil is the type of company to put up this fight,” said Victor Flatt, a University of North Carolina professor of environmental law.