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Environmental Groups Sue Air Quality Management, Energy Company over Crude-by-Rail Project

By Laura Dixon (BCN)

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Environmental justice groups have filed a federal lawsuit against the Bay Area Air Quality Management District and energy company Kinder Morgan after learning that the company has quietly been receiving crude oil by rail at its Richmond facility with the district's approval.

Earthjustice filed the suit in San Francisco Thursday on behalf of Communities for a Better Environment, the Asian Pacific Environmental Network, the Sierra Club and the Natural Resources Defense Council in a bid to stop the transport of crude oil by rail into Richmond.

"Kinder Morgan's operation brings highly volatile and explosive North Dakoten Bakken crude oil to Bay Area refineries in the same unit trains that derailed last July and exploded, killing nearly 50 people and decimating the downtown area of Lac-Mégantic, Quebec," the suit reads.

According to the complaint, the highly flammable oil is being sent by rail to the Richmond facility of Kinder Morgan, which operates or owns an interest in 80,000 miles of oil and gas pipelines and 180 terminals. The lawsuit also alleges that the Bay Area Air Quality Management District, or BAAQMD, used a permitting loophole to approve the project without issuing an environmental impact report or notifying the public.

Representatives for Kinder Morgan did not return requests for comment this afternoon and a BAAQMD spokeswoman said the district doesn't comment on pending litigation.

According to the complaint, the project includes the transportation of fracked crude oil from North Dakota by 100-car unit trains, and the transfer of the oil to tank trucks at the Richmond facility.

Kinder Morgan, which for the past few years has received ethanol at its Richmond facility, applied for a permit to unload crude oil instead, according to the lawsuit.

The complaint alleges that the BAAQMD approved the permit modification in February, bypassing the standard environmental impact report and public notification process mandated by the California Environmental Quality Act. The district did this by designating the crude-by-rail project "ministerial," a type of government action typically

limited to mundane approvals such as car registration or marriage licenses, according to the suit.

"They incorrectly designated it as ministerial, and then they claimed no increases in air pollution, which is also incorrect," said Suma Peesapati, the Earthjustice attorney handling the case.

Andres Soto, an organizer with Communities for a Better Environment, said the air district's move creates "a very scary precedent."

"They're supposed to be guardians of the area's air quality and they should have a healthy degree of skepticism about any project proposal that comes forward, and something that's dealing with Bakken crude this close to neighborhoods certainly warrants an EIR where the whole community can weigh in," Soto said.

According to the complaint, Kinder Morgan's crude-by-rail operation is located alongside densely populated, mostly low income, neighborhoods and within half a mile of Washington Elementary School.

Soto said the hush-hush project is yet another slap in the face to the community, which has already suffered decades of air pollution from Chevron's Richmond refinery, where a massive fire broke out in 2012, sickening some 15,000 people.

"Richmond residents are already over-burdened when it comes to pollution in our community and toxins in our bodies," said Sandy Saeteurn, an APEN Richmond organizer. "The idea of trains carrying explosive Bakken crude oil in and out of our neighborhoods is outrageous. It's like BAAQMD just pulled the pin off of a bomb, allowing it to roll all around town, knowing it's only a matter of time before it stops ticking, and explodes on all of us."

The project comes as more Bay Area cities and community groups are voicing their opposition to allowing crude-by-rail in their backyards.

Earlier this week, both Richmond and Berkeley's city councils approved resolutions opposing the transport of crude oil in their communities.

In nearby Pittsburg, a growing group of residents has been protesting a plan that would create a crude oil storage and transfer facility in their city.