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Could Oil Firms be Forced to Pay for Climate Change? California Cities Hope So.

The Bay Area city of Richmond recently made an unlikely move that got the attention of its largest employer and taxpayer, Chevron.

It followed other municipalities and counties across California that have filed lawsuits against oil companies, alleging that the energy giants knowingly contributed to climate change and should begin paying for it. Literally.

Employing the legal strategy that brought states major payouts from tobacco companies decades ago, the plaintiffs are demanding that oil interests begin writing checks to protect Californians against rising seas, crippling drought and harmful air.

The legal viability of the lawsuits is unclear; the cases are in early stages. But if any succeed, the implications are profound: The state is already spending hundreds of millions of dollars to shore up coastlines, protect infrastructure and retrofit roads and bridges in response to rising seas. And if companies are persuaded to drill and refine less oil, California has a much better chance of reducing greenhouse-gas emissions on the schedule it has set.

Besides Richmond, plaintiffs include the cities of Imperial Beach, Oakland, Santa Cruz and San Francisco and the counties of Marin, San Mateo and Santa Cruz. The Los Angeles City Council is considering its own suit.

The state has not joined in, something environmental groups say is a failure of leadership.

"Accountability is critical," said Kassie Siegel, director of the Climate Law Institute at the Center for Biological Diversity. "The state of California can and should file a case seeking money damages and also an injunction against ongoing activities."

The California Department of Justice has sued the Trump administration two dozen times over policies that include several related to the environment. Asked whether the state would join the cities and counties or consider filing its own suit against the oil companies, the Justice Department declined to comment about potential future action.

The city-county suits began six months ago when Imperial Beach, in southern San Diego County, sued a handful of oil companies. Richmond, surrounded on three sides by water and imperiled by rising seas, joined the fight Jan. 22. Its city council voted unanimously to sue 29 oil producers, even if it meant taking on Chevron, whose tax payments—$45 million in 2016—account for 25 percent of the city's general fund.

"They are a pretty important corporate citizen," said Richmond Mayor Tom Butt.

However, "we are a waterfront city—Richmond has 32 miles of shoreline on the Bay. Part of our city is vulnerable to sea-level rise: our transportation systems, neighborhoods and commercial areas and thousands of acres of waterfront park."

Among those vulnerable venues is Chevron's refinery, which sits at the edge of San Francisco Bay. Completed in 1902, this refinery, the state's largest, was immediately dubbed "the colossus." The facility today employs more than 3,400 people.

Leah Casey, the spokeswoman for Chevron's Richmond refinery, said in a statement that lawsuits like the local ones "will do nothing to address the serious issue of climate change. Reducing greenhouse-gas emissions is a global issue that requires global engagement."

Butt said the city sued "out of frustration, because I know that these fossil fuel companies are aware of the long-term costs and damage of the widespread consumption of fossil fuel." He said Richmond was already planning for the sea's rise but had not yet calculated mitigation costs.

The suits are filed in state court under California's public-nuisance law, which allows legal actions against activities that are "injurious to health."

New York City filed a similar claim against five of the world's largest oil companies in federal court, asking that the cost of mitigating damage done by the companies as a result of their contribution to climate change be charged to them.

The legal challenges also assert that the oil industry has known for decades that burning fossil fuels accelerates climate change. The Richmond complaint states, "The industry has known for decades that business-as-usual combustion of their products could be 'severe' or even 'catastrophic.'

"Companies were so certain of the threat that some even took steps to protect their own assets from rising seas and more extreme storms," the complaint goes on, "and they developed new technologies to profit from drilling in a soon-to-be-ice-free Arctic. Yet instead of taking steps to reduce the threat to others, the industry actually increased production while spending billions on public relations, lobbying, and campaign contributions to hide the truth."

The slow unraveling of the decades-long industry cover-up of the medical harm from cigarettes turned the tide in the tobacco cases, according to Ann Carlson, an environmental law professor at the Emmett Institute on Climate Change and the Environment at the University of California, Los Angeles, School of Law.

Carlson, who is advising some of the plaintiffs' lawyers, said that courts will take into account the oil-industry-funded campaign to discredit climate science.

"That matters in California," she said. "If you can show evidence that a defendant engaged in a campaign to obfuscate, it's more than just a nice detail. Evidence helps."

With much at stake, oil companies are pushing back hard. ExxonMobil has responded with a demand to depose lawyers representing the California cities and counties.

The company says it is a victim of a conspiracy and cities and counties are being disingenuous: When they issue municipal bonds, they portray risk from climate change as unpredictable, not the fault of oil firms, as the lawsuits claim.

The companies have also filed motions to move the cases to federal courts, where they believe there are precedents more favorable to them.

The number of the legal claims intended to monetize the consequences of a warming planet is growing. Carlson said greater scientific certainty about attributing climate change impacts to specific industries and companies has created a legal opening.

“The courts were uncomfortable that they couldn’t trace the harm,” she said.

California is the epicenter of so-called climate-attribution science, said Peter Frumhoff, director of science and policy for the Union of Concerned Scientists.

“There’s really a quite robust ability to characterize the extent to which climate change impacts have worsened,” he said.

Further, by collating data taken from oil companies’ annual accounting and national and international energy agencies’ reports, “one can then connect the dots and assign a cost. That tees up the question, ‘Who is responsible and who should pay?’ ” Frumhoff said.

“This is where the science is taking us, with increasing specificity and confidence.”

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By Julie Cart | Feb. 5, 2018 | ENVIRONMENT