

Calif. Refinery Fire Sparks Legal Onslaught Against Chevron

By **Erin Coe**

Law360, San Diego (August 10, 2012, 10:51 PM ET) -- Thousands of claims are already piling up against Chevron Corp. after a fire blazed at the oil giant's refinery in Richmond, Calif., signaling that the company could soon face massive litigation over personal injury, environmental and other allegations, attorneys say.

Chevron operations and fire department employees were responding to a reported leak at one of the refinery's crude oil units Monday when it went up in flames, injuring five workers and sending hundreds of people to the hospital. While the company has set up a claims process to compensate residents for medical and property expenses as a result of the fire — and said Friday that it had received about 3,750 claims so far — many residents alleging respiratory problems, sore throats and other ailments are contacting law firms, and attorneys say these claims against the company are likely to grow.

Adante Pointer, an attorney of Law Offices of John L. Burris in Oakland, Calif., said his firm had received hundreds of calls and was in the middle of processing more claims from residents complaining of difficulty breathing and irritated eyes, as well as from people who were allegedly hospitalized as a result of the fumes they inhaled.

"There is a potential for thousands of people to be pursuing the vindication of their rights," he said. "There are bodily injury claims being filed right now, but there could be property claims by people who have animals, livestock or crops. There's a range of claims people could assert."

Environmental claims may also be filed, though the environmental impact is still being evaluated by the company and regulatory agencies, according to attorneys.

If it is found that the volume of regulated chemicals discharged by the Chevron fire exceeds the applicable reportable quantity thresholds, the company would have reporting obligations, and if it didn't comply with them, it could face regulatory action for violating its reporting obligations, according to Robert Doty, an environmental litigator at Cox Castle & Nicholson LLP in San Francisco. However, it remains to be seen whether there were any exceedances and whether anyone would bring a claim on that basis.

"The environment can't show up in the courtroom and say, 'I got damaged,' rather someone would have to speak up on its behalf," he said. "In order to do that, someone would need to invoke one of a relatively short list of legal theories, and it's not clear whether there is an incentive to do that, unless there is a very significant amount of toxic material discharged into the atmosphere."

Although the Bay Area Air Quality Management District initially said air samples taken during the fire revealed toxic air contaminants were below levels considered unsafe by federal health authorities, it noted later that its original statement was incorrect. It said Thursday that one of the

eight samples taken throughout Richmond showed that levels of the compound acrolein, which is similar to ethanol, exceeded the federal standard.

In addition, the air district said that while air samples taken near the facility showed normal background levels of toxic air contaminants, the particulate matter from the smoke in the area was likely the source of health complaints by Richmond residents.

The big question is whether a significant level of chemicals was released as a result of the fire, according to Doty.

“If there is data showing a significant release of harmful chemicals, the likelihood of bodily injury or property damage claims goes up,” he said. “The results of the investigations by the regulatory agencies and Chevron will be significant for figuring out if Chevron has a big problem on its hands or a relatively small problem on its hands.”

While the air district, the U.S. Chemical Safety Board and the U.S. Environmental Protection Agency are some of the agencies reviewing the incident, Chevron said Thursday that it had initiated its own investigation to determine the cause of the fire and will issue a report within 30 days. In the meantime, the company has halted operations at the portion of the facility where the fire occurred.

If the investigations unearth that safety regulations or operating procedures weren't followed, Chevron could be subject to notices of violations by enforcement agencies and it may have to pay fines or change its operating procedures or equipment depending on the severity of any violation, according to Doty.

But although the fire is going to be vigorously investigated and Chevron could face suits and fines, the practical impact is likely to be minimal because the refinery is a critical part of the energy infrastructure for the West Coast, according to Jon Welner, an environmental partner at Jeffer Mangels Butler & Mitchell LLP in San Francisco.

“We rely heavily on the quarter of a million barrels of oil a day the refinery transforms into fuel,” he said. “For the foreseeable future, this is a facility we need. Regulators will be loath to do anything that in any way significantly prevents the facility from functioning.”

The Chevron refinery has had several run-ins with regulators in the past. In 2003, the company settled a case brought by the EPA by entering a consent decree requiring the company to spend \$275 million to install control technologies to cut emissions at several of its refineries, including the Richmond facility. It also agreed to pay a \$3.5 million civil fine and spend more than \$4 million on further emissions controls and other environmental projects in communities around its refineries.

The EPA in 2000 fined Chevron \$20,000 for failing to timely notify state officials of a 500-pound leak of sulfur dioxide at the company's Richmond refinery in June 1999. The company also paid \$540,000 to resolve another EPA case in 1998 alleging its facility violated federal environmental laws when it bypassed a water treatment system between 1991 and 1995.

In June 1996, the Chevron refinery and several other oil companies in California agreed to install pollution control equipment to cut emissions of pollutants at their facilities to settle EPA complaints.

The Richmond refinery also has been the subject of a suit by environmental groups challenging its plans to expand.

Communities for a Better Environment, the Asian Pacific Environmental Network and the West County Toxics Coalition filed suit in 2008 in the Superior Court for the State of California over the city of Richmond's approval of the expansion proposal, alleging it would increase greenhouse gas

emissions and disproportionately affect minority working class communities nearby.

In 2010, a California appeals court largely upheld a lower court ruling that blocked Chevron from expanding the refinery until it brought its environmental impact report into compliance with state law.

In light of these battles, Chevron is likely to be most concerned about improving its reputation in the community and showing how it will prevent a fire from happening again, as well as about how the unit that has been shut down following the fire could affect production, according to Welner.

“It’s a black eye for Chevron and comes on the heels of other problems that have happened in the past at the refinery, but I don’t think it will result in a dramatic change,” he said. “The issue will die down over time, and the refinery will continue to operate.”

--Editing by Elizabeth Bowen.

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