



Cap-and-Trade Showdown: Will Big Oil Have the Last Word?

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Sprawling across nearly 3,000 acres of coastal tidelands in Richmond, California, the Chevron oil refinery sends more than 4.4 million metric tons of carbon dioxide into the atmosphere each year. The 250,000 barrels of crude it turns into usable fuels every day make it consistently one of the biggest greenhouse gas polluters of any stand-alone facility in the state. It also puts more traditional pollutants into the air, such as smog-forming nitrogen oxides and fine particulate matter, tiny bits of soot that lodge in human lungs.

While the carbon dioxide poses no direct threat to any individual human's health — its effects are long-term and global — the other pollutants kill more quickly and locally. The mostly low-income residents who breathe the air around the refinery suffer from [higher rates of cancer and heart disease](#) than do people who live elsewhere in Contra Costa County. Asthma among children is rampant. The smog and soot are in large part to blame.

To environmental justice advocates, the Richmond refinery symbolizes all that's wrong with California's climate regulation. Cap-and-trade, the state's carbon trading scheme and the primary tool in its climate fight, has allowed Chevron to meet its emissions cap even as it pollutes as usual, by purchasing unused pollution credits from other entities covered under the same law. As a consequence, Chevron's greenhouse gas emissions [have hardly budged](#) in the last five years. Nor has local air quality improved much. In some ways, it's even [worse](#).

Local community groups, however, have managed to exert leverage over Chevron to clean up its operations. This past spring, the Bay Area Air Quality Management District agreed to cap greenhouse gas emissions at the refinery at a level that would make it difficult, if not impossible, for Chevron to process hyper-polluting tar-sands oil in Richmond. The agreement was the culmination of five years of successful activism by the Asian Pacific Environmental Network (APEN), Communities for a Better Environment and other environmental justice organizations. The groups have been working toward a similar win on particulate matter and other air contaminants.

But some activists worry those efforts could stall if a proposal floated by Governor Jerry Brown and legislative leaders to extend cap-and-trade clears the legislature. One of the two measures in the package, [Assembly Bill 398](#), contains what environmental justice advocates refer to as a “preemption provision,” a clause prohibiting local air districts from regulating carbon dioxide emissions at state-regulated facilities.

The bill’s language lacks clarity, said Amy Vanderwarker, co-director of the California Environmental Justice Alliance in a Tuesday-morning conference call with reporters. “If the air district is regulating specific emissions and that [regulation] has an ancillary benefit of reducing carbon dioxide, it could be subject to legal action,” she says. She argues that the clause is a legal loophole that industry could exploit.

Whether that loophole would stand up in court is an open question. “The language was crafted carefully to preserve local air district’s ability to regulate traditional air pollutants,” says Cara Horowitz, co-executive director of the Emmett Institute on Climate Change and the Environment at UCLA. But APEN executive director Miya Yoshitani worries the provision “could have a dampening effect” on already litigation-averse local air regulators. “It opens up a whole area of potential lawsuits that the district would vociferously want to avoid,” she says.

Environmental justice groups have several other objections to the bill, which would authorize the state air board to write new rules extending cap-and-trade from 2021 to 2030. Vanderwarker wonders if the program is even stringent enough to meet the state-mandated goal of reducing greenhouse gases to 40 percent below 1990 levels by 2030. It allows for “an overabundance of offsets,” she said, enabling industries to fund green projects in other states to compensate for their own climate pollution. “We feel as a coalition that Big Oil is dictating climate policy right now,” she said.

The preemption language, which didn’t exist in California’s original 2006 climate law, seems to have been added at the behest of the oil industry. Governor Brown has been engaged in controversial negotiations with the industry to craft the cap-and-trade package. The language granting the state air board sole authority over carbon dioxide regulation comes directly from a [power point](#) circulated by the Western States Petroleum Association, a powerful industry lobbying group which includes Chevron.

On Sunday, Brown reportedly spent three and a half hours in a conference call with environmental justice leaders, hoping to persuade them that their concerns had been addressed in a companion bill, [AB 617](#), that specifically targets local air issues. The bill directs local regulators to aggressively monitor local air pollution from stationary sources and requires facilities to upgrade their pollution controls with state-of-the art technology. Vanderwarker said she appreciated the effort. But to Yoshitani and her allies, that one nod is not enough to compensate for what they fear they’ll lose to the preemption clause.

“We have spent literally the last five years working directly with our Bay Area Management District to create groundbreaking refinery rules around greenhouse gas emissions and local pollutants,” says Yoshitani. “We have come very, very close to succeeding.” But if AB 398 passes, “our ability to make decisions about our own local air quality will now be preempted by the state. Our community is incredibly upset.”

The Assembly is scheduled to vote on the bills Monday.