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14 PHILLIPS 66 COMPANY

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

<p>17 PHILLIPS 66 COMPANY,</p> <p>18 Plaintiff,</p> <p>19 v.</p> <p>20 CITY OF RICHMOND; CITY COUNCIL OF THE CITY OF RICHMOND,</p> <p>21 Defendants.</p>	<p>Case No.</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p> <p>[VIOLATION OF THE COMMERCE CLAUSE; UNCONSTITUTIONAL IMPAIRMENT OF CONTRACTS]</p>
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23 Plaintiff, Phillips 66 Company (“Phillips 66”), complains against Defendants, the
24 City of Richmond (“City”) and the City Council of the City of Richmond (“City Council”)
25 (collectively, “Defendants”), and for its complaint alleges as follows:

26 **NATURE OF THE ACTION**

27 1. Phillips 66 brings this action to invalidate a municipal ordinance adopted by
28 Defendants that prohibits marine access to ship petroleum coke (“petcoke”) and coal to

1 foreign markets from the Levin-Richmond Terminal (the “Terminal”) located in Richmond,
2 California. Phillips 66 produces petcoke at its petroleum refinery in Rodeo, California, and
3 exports it through the Terminal to overseas customers. Despite decades of petcoke
4 exportation through the Terminal, Defendants enacted an ordinance on February 4, 2020,
5 (the “Ordinance”) that completely prohibits the transloading of petcoke from trucks to ships
6 by banning any storage and handling of petcoke at the Terminal. The Terminal is the sole
7 marine terminal available in Richmond and the immediate area for transshipment of
8 petcoke to interstate and overseas customers.

9 2. Phillips 66 has produced petcoke at its Rodeo Refinery and shipped petcoke
10 to overseas customers from the Terminal for more than twenty years. Petcoke is a valuable
11 product of the petroleum refining process and a critical component in numerous industrial
12 applications, both domestically and abroad. Petcoke shipped through the Terminal is
13 exported for use in the manufacture of a wide variety of products, including medical
14 devices, aluminum, and titanium dioxide, which is used as a pigment for paint, plastics,
15 sunscreen, cosmetics, and food coloring. As part of a political agenda to ban coal exports
16 through the Terminal (which began approximately six years ago to meet increasing
17 worldwide demand for cleaner-burning coal mined in the United States), Defendants
18 enacted the Ordinance to terminate all coal transshipments, and included within it a ban on
19 storage and handling of petcoke at the Terminal as well.

20 3. For the reasons alleged herein, the Ordinance imposes an unreasonable
21 burden on interstate and foreign commerce that is unjustified and excessive in relation to
22 putative local benefits. Among other things, Defendants banned petcoke “storage” and
23 “handling” in Richmond without any credible scientific evidence (i) that the Terminal or
24 petcoke are a source of harmful fugitive dust emissions in Richmond or (ii) that petcoke
25 presents any public health hazard. To the contrary, overwhelming evidence before the City
26 Council demonstrated that petcoke handling and storage at the Terminal are not a source of
27 fugitive dust emissions and do not present any health risks. While the Ordinance ostensibly
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1 affords the Terminal a 3-year phase-out period to cease transshipment operations, in effect,
2 the Ordinance poses an immediate and direct threat to continued operation for
3 transshipment of petcoke. Phillips 66 therefore seeks declaratory and injunctive relief
4 holding that the Ordinance is invalid and unenforceable under the Commerce Clause of the
5 U.S. Constitution, Article I, § 8, cl. 3 (“Commerce Clause”).

6 4. Respondents’ action also violated the federal constitutional prohibition
7 against laws impairing the obligation of contracts. U.S. Const., Art. 1, § 10 (“Impairments
8 Clause”). Among other things, the Ordinance substantially impairs Phillips 66’s contracts
9 for petcoke transloading at the Terminal, as well as its contracts with purchasers of petcoke,
10 without sufficient justification or consideration of less restrictive means to achieve the
11 stated purposes of the Ordinance.

12 **PARTIES**

13 5. Plaintiff Phillips 66 is a Delaware corporation and owns and operates the
14 Rodeo Refinery. Petcoke produced at the Refinery is delivered by truck to the Terminal,
15 located at 402 Wright Avenue in Richmond, for transloading to ships for export to Phillips
16 66 customers.

17 6. Defendant City of Richmond is a charter city in Contra Costa County
18 organized under the constitution and laws of the State of California. The City, acting by
19 and through the City Council, is the municipal entity responsible for the Ordinance adopted
20 on February 4, 2020, amending the Richmond Municipal Code (“RMC”) by adding Article
21 15.04.615 (Prohibition of the Storage and Handling of Coal and Petcoke) and amending
22 § 15.04.104.010 (Warehousing, Storage, and Distribution Definition). Pursuant to the City
23 Charter, the City may be sued “in all courts and places, and in all actions and proceedings
24 whatsoever.” Richmond Charter art. II, § 1(3).

25 7. Defendant City Council is the duly-elected legislative and decision-making
26 body within the City responsible for approving the Ordinance on behalf of the City.

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JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331 (federal question) and 42 U.S.C. § 1983, as the claims herein seek to interpret and apply the Commerce Clause and the Impairments Clause of the United States Constitution.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2) because Defendants are located within the District, a substantial part of the events giving rise to the Claims occurred in the District, and a substantial part of the property affected by the Ordinance is located in the District.

10. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory judgment), 28 U.S.C. § 1651(a) (injunctive relief), and 42 U.S.C. § 1983 (declaratory and injunctive relief available for Commerce Clause violations).

INTRADISTRICT ASSIGNMENT

11. Pursuant to Civil L.R. 3-2(c) and (d) and Civil L.R. 3-5(b), there is a basis for assigning this action to the San Francisco Division or the Oakland Division, as the action arose in Contra Costa County.

FACTUAL BACKGROUND

A. Phillips 66 Production and Shipment of Petcoke.

12. Phillips 66 transports petcoke from its Rodeo Refinery by means of covered trucks that travel approximately 10 miles to the Terminal in Richmond. The covers are not removed during transport or unloading, and the product is transferred at the Terminal by removing pins to release the bottom of the truck bed, thereby preventing spilling or dispersal. In addition to utilizing covered trucks, Phillips 66 personnel apply dust suppressant to the petcoke to minimize or eliminate release of dust during transfer. At the Terminal, the petcoke is transferred to ocean-going freighters for shipment to customers in

1 Europe, Australia, Asia, and other locations, with some temporary, indoor storage and
2 handling of petcoke incidental to transfer of the product from trucks to marine vessels.

3 13. The Terminal is the only petcoke bulk handling facility and transfer point for
4 marine shipment in Richmond. The Ordinance would deny Phillips 66 port access in that
5 area to transload and export petcoke to foreign markets. Further, there are no marine
6 facilities other than the Terminal with suitable equipment, such as deep-water berths,
7 conveyors, ship loaders and temporary storage, in the immediate area from which Phillips
8 66 can ship petcoke. As Phillips 66 advised Defendants, it would be forced to try to
9 transport petcoke by truck or rail from Rodeo to more distant marine terminal locations,
10 assuming locations with suitable capacity and equipment could be found.

11 **B. Bay Area Air Quality Management District Air Quality Monitoring.**

12 14. In 2015, the City Council adopted a resolution requesting that the Bay Area
13 Air Quality Management District (“BAAQMD”) “regulate the storage and handling of coal
14 and petroleum coke.” *See* City Council Agenda Item #G-10 (February 4, 2020). Phillips
15 66 is informed and believes that BAAQMD nominated the City for a community
16 monitoring project under the statewide Community Air Protection program established by
17 Assembly Bill 617 (C. Garcia, Chapter 136, Stat. 2017) (“AB 617”). Pursuant to AB 617,
18 the California Air Resources Control Board, BAAQMD, and community representatives are
19 partnering to study air quality to determine areas of concern and sources of air pollution in
20 the City, including potential pollutants in and around the Terminal, and to prepare an
21 emission reduction plan based on that information.

22 15. In or about July 2018, the City submitted a proposal to BAAQMD for
23 review of a parallel coal dust monitoring study around the Terminal. BAAQMD, through
24 its Executive Officer/Air Pollution Control Officer, submitted a letter to Defendants, dated
25 July 5, 2018, stating that “the Air District believes that the upcoming community
26 monitoring plan for Richmond is the appropriate way to address concerns about coal dust
27 impacts,” rather than a separate study. City Council Agenda Item #I-2 (December 3, 2019).

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1 16. BAAQMD also explained that an emission reduction plan for the City would
2 include regulatory, incentive, and other programs based on scientific data:

3 “Any regulations that are developed as part of the community
4 emission reduction program *will need a solid technical
5 foundation* as the Air District is required to demonstrate that
6 all regulations are reasonable, necessary and within our
7 statutory authority.” BAAQMD Letter p. 2 (emphasis
8 added).

9 17. BAAQMD also advised that there are many types and sources of particulate
10 matter (“PM”) in the City, including from other areas in the region. Elemental carbon
11 (“EC”) is one category of particulate matter that includes diesel and other sources, in
12 addition to coal dust:

13 “Since coal dust is a subset of [elemental carbon] EC, which
14 includes other species such as diesel PM, further speciation
15 techniques would need to be applied to differentiate coal dust
16 from EC. Simply determining if EC is present would not
17 provide enough information to determine if coal dust is
18 present. In addition, in order to determine if coal dust is an
19 historical artifact or being deposited by current sources,
20 measurements would have to be taken for a long period of
21 time so that meteorological and other impacts can be ‘teased
22 out.’ Simply determining if components of coal dust are
23 present will not provide information on when the dust may
24 have been deposited. As a result, *any study to determine
25 whether coal dust is present and increased due to current
26 activities, would require a long-term study employing
27 techniques not usually used to speciate typical PM . . . a
28 study . . . would need to evaluate physical and chemical
characteristics of the airborne particulate matter—likely in
multiple ways . . . it’s not enough to simply determine if there
is coal dust in the area.”* BAAQMD Letter pp. 2-3 (emphasis
added).

18 18. According to BAAQMD, the parameters for a valid long-term study would
19 need to include specific use information and a “typical PM signature of regional urban
20 background” to design “measurements of physical and chemical characteristics of PM” for
21 at least one year that, along with sampling locations, frequency, and duration, “could
22 provide data to attribute the observed PM concentrations to various sources.” BAAQMD
23 Letter p. 3. The same parameters also would apply to a study concerning petcoke.
24 BAAQMD made clear that

1 “any monitoring plan that does not provide this level of effort would not
2 provide the answer to the question of ‘are current activities at the Port of
3 Richmond leading to an increase in health impacts to local residents.’”
4 *Id.* p. 4 (emphasis added.)

5 19. As alleged herein, in enacting the Ordinance, Defendants ignored
6 BAAQMD’s advice and failed to conduct any technically-sound long-term study that
7 employed appropriate scientific techniques to identify fugitive petcoke or coal dust near the
8 Terminal or any risk associated therewith.

9 **C. Planning Commission Unanimous Vote to Obtain More Evidence.**

10 20. Defendants ignored not only the BAAQMD guidance, but also the findings
11 of their own Planning Commission that a valid scientific study was needed to support any
12 such ordinance, and continued pursuing the Ordinance nonetheless as part of a political
13 agenda.

14 21. On May 19, 2015, the City Council had adopted Resolution No. 48-15,
15 opposing the mining, export and burning of coal in general, and the “*transportation*” of coal
16 and petcoke “along California waterways,” through “densely populated areas,” and through
17 the City on existing rail lines and roadways. (Emphasis added.) The Resolution approved a
18 City policy to prohibit the use of City-owned property for coal or petcoke “storage or
19 *export*” and to “alert” other cities “along the transportation route” to support their
20 opposition to coal and petcoke “transport.” *Id.* (emphasis added).

21 22. A December 18, 2018 Agenda Request requested that the Planning
22 Commission be directed to study an ordinance affecting private property, and asserted that
23 “climate change” and the need to protect “the health of our planet” were the basis for
24 prohibiting transshipment of coal and petcoke at the Terminal, in addition to purported local
25 health risks from fugitive coal and petcoke dust.

26 23. In April 2019, the City Council then directed City staff to prepare an
27 ordinance to amend the Richmond Zoning Ordinance to “*prohibit new land uses and phase*
28 *out existing land uses* related to the storage and handling of coal and petroleum coke; and to
29 modify the zoning ordinance to *remove the storage and handling of coal and petroleum*

1 *coke from the list of uses conditionally allowed in certain industrial zones.”* City Council
2 Agenda Item #G-10 (February 4, 2020) (emphasis added). Thereafter, City staff prepared a
3 modified ordinance for the Planning Commission’s consideration that addressed the items
4 as identified by the City Council. *Id.*

5 24. On July 18, 2019, the Richmond Planning Commission held a public hearing
6 to consider a recommendation to the City Council on the proposed municipal code
7 amendments at issue herein. No scientific long-term study had been prepared as
8 recommended by BAAQMD. Phillips 66 and others submitted written comments and/or
9 public testimony to the Planning Commission opposing the proposed Ordinance on
10 numerous grounds. During the public comment period, many speakers raised concerns over
11 the loss of union jobs at the Terminal should the Ordinance be adopted, as well as the lack
12 of scientific evidence of adverse air quality impacts. Several speakers commented that the
13 City should wait until AB 617 air monitoring is completed and gather scientific data before
14 taking “drastic action.”

15 25. The owners and operator of the Terminal (Levin Enterprises, Inc., Levin
16 Richmond Terminal Corporation (“LRTC”) and Richmond Pacific Railroad Corporation
17 (collectively, “Levin”)), testified to the Planning Commission that the Ordinance would
18 effectively put the Terminal, which is designed for bulk exports, out of business, and that
19 there were no other viable businesses to replace current activities. Levin also submitted
20 testimony that petcoke is stored in an enclosed building with controls or is transloaded from
21 trucks directly to ships; and only a limited amount of petcoke is temporarily stored on the
22 ground with proper safeguards awaiting loading into a marine vessel. Levin also testified
23 that controls used at the Terminal include wind buffers and high-pressure watering. Phillips
24 66 is informed and believes that additional measures are also in place at the Terminal to
25 address potential dust emissions including covered conveyors, water misters, and
26 regenerative sweeping equipment.

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1 26. Levin also submitted a scientific study prepared by Sonoma Technology,
2 Inc. (“STI”), which demonstrated that existing data did not support a conclusion that the
3 Terminal “is a source of” fugitive petcoke emissions that “pose health risks or other
4 impacts” in Richmond. *See* Initial STI Assessment (July 12, 2019) p. 23.

5 27. Following nearly four hours of public testimony, Commissioner Tucker
6 stated the Planning Commission had been tasked with making a decision based on
7 insufficient information, including the lack of information regarding economic impact to
8 the City and data concerning air quality impacts. The Planning Commission voted
9 unanimously against recommending adoption of the Ordinance, and instead adopted
10 Resolution 19-29 (July 18, 2019) recommending that the City Council defer consideration
11 of the proposed ordinance until completion of an air monitoring study to determine if the
12 Terminal is a source of fugitive coal and petcoke dust that poses health risks, and until an
13 economic impact report is prepared concerning the effect of the ordinance on jobs and the
14 community. Resolution 19-29 stated in part:

15 “[T]he Richmond Planning Commission does *not* find that the
16 storage and handling of coal and petroleum coke is an
17 undesirable land use; and . . . recommends that the City
18 Council *not* adopt an ordinance . . . prohibiting the storage
19 and handling of coal and petroleum coke, . . . *cannot find* that
20 the proposed ordinance is necessary for public health, safety
and welfare, and expressed its position that *additional study
is needed* to better understand the air quality impacts of
operations at existing sites . . . [and] the potential economic
impacts to the City of Richmond . . .” (Emphasis added.)

21 **D. City Council Adoption of the Ordinance.**

22 28. On December 3, 2019, the City Council held a public hearing to consider the
23 Ordinance. Prior to that hearing, and in line with the Planning Commission’s
24 recommendations, Levin submitted an actual air monitoring study and economic impact
25 analysis to the City. STI completed a preliminary screening study of air quality monitoring
26 data (correlated to wind speed and direction) at the Terminal from April 19, 2019 through
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