



PRESS RELEASE

City Successfully Resolves Five Lawsuits Challenging Ordinance Prohibiting Coal and Petcoke Storage and Handling

RICHMOND, California. November 12, 2021

The City of Richmond is pleased to announce the settlement of five lawsuits challenging the City's ordinance prohibiting and phasing out coal and petroleum coke ("petcoke") storage and handling. The settlement would provide for prompt implementation of additional dust control measures at the one facility affected by the ordinance and an extension of the period for this facility to cease handling coal and petcoke while it transitions to cleaner commodities. The agreement will also eliminate the litigation risk to the ordinance, which is the first of its kind in the country.

Under the settlement, the City will conduct public hearings on a proposed amendment to the ordinance that would allow existing facilities to continue handling coal and petcoke until December 31, 2026. If the City Council adopts the amendment, the agreement requires the three companies that have challenged the original ordinance—Levin-Richmond Terminal Corporation, Phillips 66 Company, and Wolverine Fuels, LLC—to promptly implement more than a dozen additional dust control measures to reduce particulate matter emissions from their operations. The agreement also requires these companies, as well as the State of Utah, to dismiss with prejudice all five lawsuits against the City.

Reducing these particulate matter emissions and ensuring that coal and petcoke leave Richmond forever will protect the health of our residents and is a significant benefit for the Richmond community.

The City adopted the ordinance in February 2020. The ordinance gave existing facilities a three-year amortization period to transition to less-polluting commodities. The ordinance also provided for that period to be extended if a facility could show an extension was needed to avoid an unconstitutional taking. The Levin-Richmond Terminal, the only known existing facility in Richmond affected by the ordinance, currently receives coal from Wolverine Fuels in Utah and petcoke from Phillips 66 in Rodeo.

In March 2020, Levin, Phillips 66, and Wolverine Fuels filed a total of five lawsuits—



three in federal court and two in Contra Costa County Superior Court—challenging the ordinance. The City successfully defended the two cases in superior court, and Levin’s appeal of that court’s ruling is currently pending. The City also moved to dismiss the three federal lawsuits, which the federal judge granted only in part. All three federal lawsuits thus remain pending, and the State of Utah recently intervened in the federal suits on the side of the companies.

Under the settlement, the City Council will hold a public hearing to consider the proposed amendment. If, after the hearing, the Council chooses to adopt the amendment, the agreement will take full effect. By ending the litigation, the agreement would guarantee that coal and petcoke storage and handling will end in the City in 2026. Absent the agreement, the City faced the risk that a court could invalidate the ordinance, allowing coal and petcoke operations to continue in Richmond indefinitely. The agreement also requires Levin to waive its right under the current ordinance to seek an extension of the three-year amortization period, further solidifying 2026 as the end of its coal and petcoke operations.

Importantly, the settlement agreement secures significant additional protections for City residents during the amortization period. For example, Levin would build new structures to shield its operations from the wind and add additional water misters to reduce dust from coal piles and unloading facilities. Levin would also suspend its operations when wind speeds reach 18 miles per hour—half the speed of the current trigger for suspending operations under a consent decree Levin reached with San Francisco Baykeeper. Each of these measures would prevent harmful dust from leaving the facility and affecting adjacent neighborhoods.

Wolverine Fuels would also apply additional dust suppressants to coal on railcars transporting coal through Richmond to the City. This measure would benefit neighborhoods across the City in addition to those near the Levin Terminal.

Lastly, by extending the amortization period, the settlement agreement would provide the Levin Terminal with additional time to transition to less polluting commodities. By facilitating this transition, the agreement would retain quality jobs at the Terminal.

The City reached the settlement after months of negotiations. In early 2021, the City’s legal team and Councilmembers Bates, Jimenez, and Martinez, participated in a full-



day mediation before retired U.S. Magistrate Judge Elizabeth Laporte. As part of the subsequent settlement discussions, Councilmembers Jimenez and Martinez conducted site visits to the Terminal to observe operations and help identify additional dust control measures.

The settlement agreement has now been approved and signed by representatives from the City, the Levin-Richmond Terminal Corporation, Phillips 66 Company, Wolverine Fuels, LLC, and the State of Utah.

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