

June 23, 2007, 2:44AM

Citgo trial on dirty air tests federal law

Jury will decide whether plant in Corpus Christi knew of its illegal waste emissions

By **BRETT CLANTON**

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CORPUS CHRISTI — A jury will resume deliberations Monday in a criminal air pollution case that accuses Citgo Petroleum Corp. of knowingly breaking federal air quality laws at its Corpus Christi refinery.

Lawyers presented final arguments on Friday after a grueling and technical trial that began May 18. Jurors deliberated Friday afternoon, then went home for the weekend.

The case specifically involves allegations that open-air storage tanks at Citgo's East Plant refinery emitted illegal amounts of benzene, which research has linked to cancer. More broadly, however, the case tests criminal enforcement of the Clean Air Act.

Although other criminal indictments under the act have resulted in guilty pleas, the Citgo case is the first to go to trial alleging emissions violations, prosecutors said.

"The question is whether companies like Citgo, who blatantly violate the law over a period of time, will be held accountable," said Justice Department lawyer Howard Stewart, lead prosecutor in the case.

Citgo — the Houston-based subsidiary of Venezuela's state-owned oil company PDVSA — was indicted last August on 10 counts of environmental violations at its East Plant refinery.

The trial addressed four of those counts. The rest will be taken up separately.

If found guilty, Citgo could face \$500,000 fines per count and additional penalties, prosecutors said.

But Dick DeGuerin, the Houston lawyer for Citgo, said more than fines are at stake in the case.

A conviction not only could damage Citgo's reputation, it could set a dangerous precedent, he said, expanding the role of the Environmental Protection Agency as a "gotcha" team that punishes refiners for missteps rather than as a guide to help companies follow complex regulations.

"I think the refining industry is watching this case very closely," DeGuerin said.

John Felmy, chief economist at the American Petroleum Institute, a Washington-based trade association, said it's too soon to tell if the case will have a broader impact on the U.S. refining industry. Even so, "the industry takes all of these things very seriously," he said.

Citgo has been on the defensive politically because of its association with Venezuela and that country's socialist President Hugo Chavez, who called President Bush the "devil" in a speech at the United Nations in October.

A conviction in the Corpus Christi case could draw further unwelcome attention.

This is not the first time the government has gone after refiners or companies accused of criminal violations of the Clean Air Act, which was passed in 1970 and updated in 1990.

In another Corpus Christi case, for example, Koch Petroleum Group — now known as Flint Hills Resources — pleaded guilty in 2001 to a charge of submitting incorrect information about how it monitored benzene in wastewater in 1995 at its Corpus Christi refinery.

The company, which self-reported the violation, paid \$10 million in fines.

The government contends Citgo broke the law by using two 12-million-gallon tanks as oil-water separators without controls to prevent benzene release.

It said Citgo knew for more than a decade that its waste stream processing equipment was allowing "environmentally unacceptable" quantities of oil to accumulate atop the tanks. Yet it tried to cover up the problem rather than correcting it, the indictment alleges.

In 2002, during an unannounced inspection, state inspectors found 4.5 million gallons of oil in the tanks, according to the indictment.

It also alleges Citgo's Corpus Christi refinery released more than 57 megagrams (metric tons) of benzene in waste streams exposed to the air in 2000, although federal rules allowed six megagrams a year. The next year, the facility released seven megagrams, the indictment charges.

DeGuerin argued that, at worst, Citgo misinterpreted complex and vaguely written regulations on how to handle waste streams but is not guilty of knowingly breaking the law.

The company's Fernando Garay said in an e-mail earlier this month that Citgo is innocent of the charges and "proud of its environmental record."

Citgo has begun installing roofs on the two tanks, but that should not be seen as an admission of guilt, DeGuerin said. He characterized it as an attempt to get regulators "off their backs."

Residents who live in a neighborhood adjacent to the Citgo refinery are watching the case closely, hoping a guilty verdict could open the door to more legal action against a facility they believe is responsible for health problems in the area.

"Over here, you don't have to smoke, and you don't have to drink," said Horace Smith, 61, who lives two blocks from the Citgo plant and breathes with help from an oxygen tank. "You're still going to get something."

Residents said they routinely smell plant emissions and have gotten used to Citgo and other area refiners downplaying the incidents. And they wonder about the emissions' connection to neighbors' illnesses.

"Cancer, cancer, cancer," said Kimberly Curiel, 29, pointing to a string of houses on her old street where neighbors have fallen ill. "That just doesn't happen very often."

DeGuerin said no evidence links residents' illnesses to emissions from the refinery.

brett.clanton@chron.com

Citgo didn't do wrong knowingly, lawyer says

By Fanny S. Chirinos
Saturday, June 23, 2007

CORPUS CHRISTI — Following four hours of closing arguments and after about an hour of deliberations, jurors in the USA v. Citgo air pollution trial recessed Friday afternoon.

The trial resumes at 9 a.m. Monday in federal court.

Fourteen jurors and more than 60 people heard a combined four hours of closing arguments from lead prosecutor Howard P. Stewart and lead defense attorney Dick DeGuerin. More than 400 documents have been introduced since the trial began four weeks ago.

Citgo was indicted in August on two counts of violating the national emissions standards for benzene, a carcinogen compound involved in processing crude oil, and two counts of operating oil/water separators without roofs, as required by federal regulations, between 1993 and 2004. The indictment against Citgo also contends that its environmental manager Philip Vrazel failed to identify all the points in the refinery wastewater system where benzene was generated in 2000.

Citgo's subsidiary, Citgo Refining and Chemicals Co., and Vrazel also face five counts of violating the Migratory Bird Treaty Act in connection with accusations that officials illegally took protected birds that were found coated with oil as a result of landing in the open-top tanks.

Stewart said Citgo operated the open tanks, Tanks 116 and 117 in Citgo's East Plant, knowing they needed emissions controls. He added that the company knew before December 1994, when the tanks became operational, that the tanks would take in oil and would require roofs to meet federal regulations.

"There were good employees at Citgo who tried to tell Citgo how to comply with environmental laws. And then there were others," Stewart said. "Citgo knew the CPI (corrugated plate interceptor) wasn't working and oil would get into Tanks 116 and 117. They knew. And they did nothing. We don't have to prove they did anything intentionally, only that they did the act knowingly."

DeGuerin said the company listened to Vrazel, who insisted operations were meeting federal and state regulations. He added that Citgo didn't discover the benzene count was being done incorrectly until April 2001 when it hired an outside firm to assess its operations.

"Citgo listened to Vrazel, who had been a loyal employee," DeGuerin said. "Citgo didn't knowingly do something wrong. This should be a regulatory case, not a criminal case. The government hasn't proved that anyone at Citgo deliberately, knowingly, intentionally broke the law."

Before deliberating, two juror alternates were released by Judge John Rainey, leaving 12 jurors to deliberate the outcome of the case. If found guilty, Citgo faces a \$500,000 fine.

Contact Fanny S. Chirinos at 886-3759 or chirinosf@caller.com

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