Climate Change Public Nuisance Tort Litigation

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Houston, Texas
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Texas – Direct GHG Emissions of Selected Gases Reported by Sector in Million Metric Tons of CO2eq

- Power Plants: 220 (50.6 %)
- Petroleum and Natural Gas Systems: 73 (16.8 %)
- Refineries: 56 (12.9 %)
- Pulp and Paper: 1 (0.2 %)
- Metals: 1 (0.2 %)
- Other: 6 (1.4 %)
- Waste: 11 (2.5 %)
- Minerals: 12 (2.8 %)
- Chemicals: 55 (12.6 %)
### 2016 – Texas – Total Reported Emissions by Facility in Metric Tons of CO₂e

<table>
<thead>
<tr>
<th>Facility</th>
<th>City</th>
<th>State</th>
<th>Total Reported Emissions</th>
<th>Sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>W A Parish</td>
<td>THOMPSONS</td>
<td>TX</td>
<td>13,424,438</td>
<td>Power Plants</td>
</tr>
<tr>
<td>Martin Lake</td>
<td>Tatum</td>
<td>TX</td>
<td>12,205,754</td>
<td>Power Plants</td>
</tr>
<tr>
<td>Oak Grove</td>
<td>FRANKLIN</td>
<td>TX</td>
<td>12,047,247</td>
<td>Power Plants</td>
</tr>
<tr>
<td>Sam Seymour</td>
<td>LA CRANGE</td>
<td>TX</td>
<td>10,995,596</td>
<td>Power Plants</td>
</tr>
<tr>
<td>EXXONMOBIL Bt Site</td>
<td>BAYTOWN</td>
<td>TX</td>
<td>10,077,901</td>
<td>Refineries, Chemicals</td>
</tr>
<tr>
<td>Limestone</td>
<td>JEWETT</td>
<td>TX</td>
<td>8,914,572</td>
<td>Power Plants</td>
</tr>
<tr>
<td>Sandow Station</td>
<td>ROCKDALE</td>
<td>TX</td>
<td>8,604,097</td>
<td>Power Plants</td>
</tr>
<tr>
<td>Monticello</td>
<td>MOUNT PLEASANT</td>
<td>TX</td>
<td>8,364,408</td>
<td>Power Plants</td>
</tr>
<tr>
<td>Blanchard Refining Company LLC</td>
<td>TEXAS CITY</td>
<td>TX</td>
<td>7,195,194</td>
<td>Power Plants, Refineries</td>
</tr>
<tr>
<td>Big Brown</td>
<td>FAIRFIELD</td>
<td>TX</td>
<td>6,857,758</td>
<td>Power Plants</td>
</tr>
<tr>
<td>Exxonmobil Beaumont Refinery</td>
<td>BEAUMONT</td>
<td>TX</td>
<td>5,940,916</td>
<td>Power Plants, Refineries, Chemicals</td>
</tr>
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</tr>
<tr>
<td>Sector</td>
<td>Power Plants</td>
<td>Petroleum and Natural Gas Systems</td>
<td>Refineries</td>
<td>Chemicals</td>
</tr>
<tr>
<td>------------------------------</td>
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</tr>
<tr>
<td>2016 GHG Emissions (Million Metric Tons CO₂e)</td>
<td>220</td>
<td>73</td>
<td>56</td>
<td>55</td>
</tr>
<tr>
<td># of Reporting Facilities</td>
<td>129</td>
<td>449</td>
<td>31</td>
<td>103</td>
</tr>
</tbody>
</table>

- Emissions totals displayed at the state level exclude Onshore Oil and Gas Production and Use of Electrical Equipment.
- This data set does not reflect total U.S. GHG emissions. Learn more about related EPA GHG data sources. Data reported to EPA as of 08/05/2017.
U.S. Climate Change Litigation

A collaboration of:

Cases in the U.S. database are organized by type of claim and may be filtered by the principal laws they address, their filing years, and their jurisdictions. The database is also searchable by keyword. In many cases, the database includes links to decisions, complaints, motions, and other administrative and litigation documents. To browse by claim type, click on categories below. To filter cases or search by keyword, click here.

FEDERAL STATUTORY CLAIMS

- Clean Air Act [152 Cases]
- Endangered Species Act and Other Wildlife Protection Statutes [75 Cases]
- Clean Water Act [19 Cases]
- NEPA [149 Cases]
- Freedom of Information Act [31 Cases]
- Other Statutes and Regulations [52 Cases]
Erosion of the shoreline in Kivalina, Alaska, has led to a closely watched climate-change lawsuit.

By JOHN SCHWARTZ
Published: January 26, 2010
The Big Three

• **Connecticut v. AEP (2d Cir.)**
  – Eight AGs sued five power companies
  – U.S. Supreme Court ruled that federal common law nuisance claims were displaced by Clean Air Act

• **Comer v. Murphy Oil Co. (5th Cir.)**
  – Class action suit for Katrina property damages
  – Targets oil, coal, chemical and insurance companies
  – Fifth Circuit dismissed in very odd fashion; district court dismissed re-filed complaint and Fifth Circuit has upheld the second dismissal

• **Native Village of Kivalina v. Exxon Mobil (9th Cir.)**
  – District court in California dismissed as political question
  – Ninth Circuit dismissed on displacement grounds as well
Climate Change Liability -- Key Thoughts and Themes

• Should fate of nuisance suits differ?
  – Relief sought (injunctions vs. damages)?
  – Claims and harms alleged?
  – Types of plaintiffs bringing claims?

• The battle to get into court is different than the battle within the court
  – Causation
  – Effectiveness of remedy
Future Directions in Climate Change Litigation (discuss in next class)

- State law claims and lawsuits
- Public trust doctrine lawsuits
- Adaptation of tactics and strategy from tobacco and asbestos litigation
  - Collateral effects of certain claims (conspiracy)
• Tallies emissions back to 1882

• Claims about 5 percent of historical global carbon emissions from Exxon

• Alleges most releases occurred after climate concerns first raised
Climate Attribution Science and Litigation?
Fraction of Attributable Risk

Fractional change in the likelihood of exceeding a temperature threshold attributable to a particular causal factor


$P_0$: Probability of exceeding a threshold in the “world that might have been” (without that causal factor).

$P_1$: Probability of exceeding a threshold in the actual world.

\[ \text{FAR} = 1 - \frac{P_0}{P_1} \]
Extreme weather events that arose partially from anthropogenic climate change:

- European heat wave of 2003
- The cold US of 2008
- Moscow heatwave of 2010
- Cold European winter 2009/2010
- UK flooding in 2000
Questions?

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