



Climate Change Public Nuisance Tort Litigation

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University of Houston Law Center

Houston, Texas
Sept. 5, 2018



761 Total Emitters Displayed

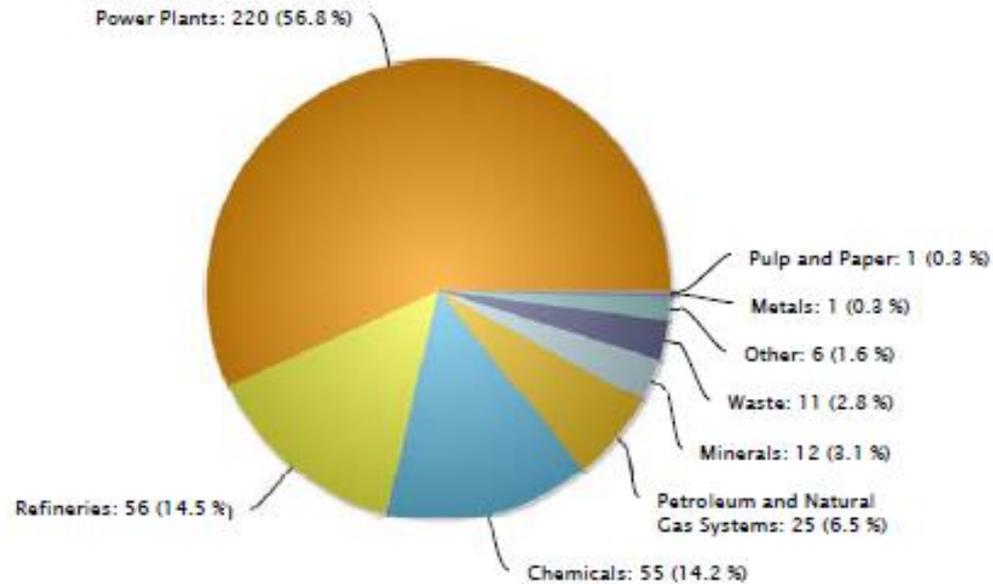
Facility Name/Location	2016 Emissions (metric tons CO ₂ e)
ABRAHAM COMPRESSOR STATION CANADIAN, TX, 79014	N/A
Ajax Plant Wheeler, TX, 79014	43,344
Alliance Compressor Station Justin, TX, 76247	42,742
Antelope Hills Gas Plant Clazier, TX, 79014	52,197
Area 51 CGP Facility Fairnes, TX, 75145	45,954
Atmos Energy Corporation - Mississippi Dallas, TX, 75240	40,996
Atmos Energy Corporation - Texas Dallas, TX, 75240	756,463
Beckville Beckville, TX, 75601	N/A

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Texas - Direct GHG Emissions of Selected Gases Reported by Sector in Million Metric Tons of CO₂e

Print or Download Chart



Data reported to EPA as of 08/05/2017

Sector	Power Plants	Petroleum and Natural Gas Systems	Refineries	Chemicals	Other	Minerals	Waste	Metals	Pulp and Paper	Total Reported Emissions
2016 GHG Emissions (Million Metric Tons CO ₂ e)	220	24	56	55	5.7	12	11	1.5	0.7	386
# of Reporting Facilities	129	270	31	103	73	38	111	15	5	761

2016 GHG Emissions (Million Metric Tons CO₂e)

of Reporting Facilities

What's this?



2016
Greenhouse
Gas Emissions
from Large
Facilities



Now you can visit ghgdata.epa.gov from your mobile device. [Click here](#) to learn how to create a bookmark to our page on your mobile device.

Data Year: 2016 | Data Type: All Emitters | Search Options: Find a Facility or Location

Browse to a State: Texas | Pick a County: Choose County | Emissions by Fuel Type: Choose Fuel Type | Filter By: Greenhouse Gas | Data View: Map, List, Filter By State, Chart, What's this?

Apply | All Facilities | Export Data

View by: [Geography](#) | [Facility](#) | [Selected Year](#) | [Changes](#) | [County](#) | [Metro Area](#)

2016 - Texas - Total Reported Emissions by Facility in Metric Tons of CO₂e

Facility	City	State	Total Reported Emissions	Sectors
W A Parish	THOMPSONS	TX	13,434,438	Power Plants
Martin Lake	Tatum	TX	12,205,754	Power Plants
Oak Grove	FRANKLIN	TX	12,047,247	Power Plants
Sam Seymour	LA GRANGE	TX	10,995,596	Power Plants
EXXONMOBIL Bt Site	BAYTOWN	TX	10,077,901	Refineries, Chemicals
Limestone	JEWETT	TX	8,914,572	Power Plants
Sandow Station	ROCKDALE	TX	8,604,097	Power Plants
Monticello	MOUNT PLEASANT	TX	8,364,408	Power Plants
Blanchard Refining Company LLC	TEXAS CITY	TX	7,195,194	Power Plants, Refineries
Big Brown	FAIRFIELD	TX	6,857,758	Power Plants
Exxonmobil Beaumont Refinery	BEAUMONT	TX	5,940,916	Power Plants, Refineries,...

129 Total Emitters Displayed

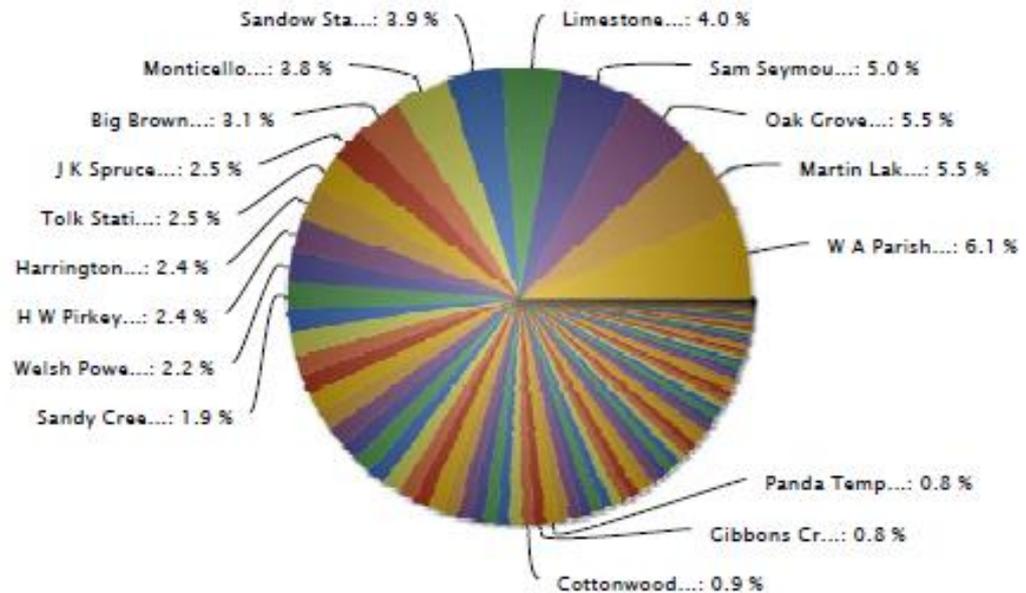
Facility Name/Location	2016 Emissions (metric tons CO ₂ e)
AES Deepwater, Inc. PASADENA, TX, 77506	N/A
AES Western Power, LLC PASADENA, TX, 77506	N/A
Air Products La Porte Facility La Porte, TX, 77571	97,517
Alex Ty Cooke Generating Station LUBBOCK, TX, 79404	16,931
Antelope Station ABERNATHY, TX, 79311	85,149
Baytown Energy Center BAYTOWN, TX, 77528	1,939,317
Blackhawk Station BORGER, TX, 79007	1,159,273
Bosque County Power Plant Laguna Park, TX, 75644	1,746,692
Brazos Valley Energy, LP	1,126,789

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Texas - Power Plants - Power Plants - Direct GHG Emissions of Selected Gases Reported by Facility in Metric Tons of CO₂e

Print or Download Chart



Data reported to EPA as of 08/05/2017

U.S. Climate Change Litigation

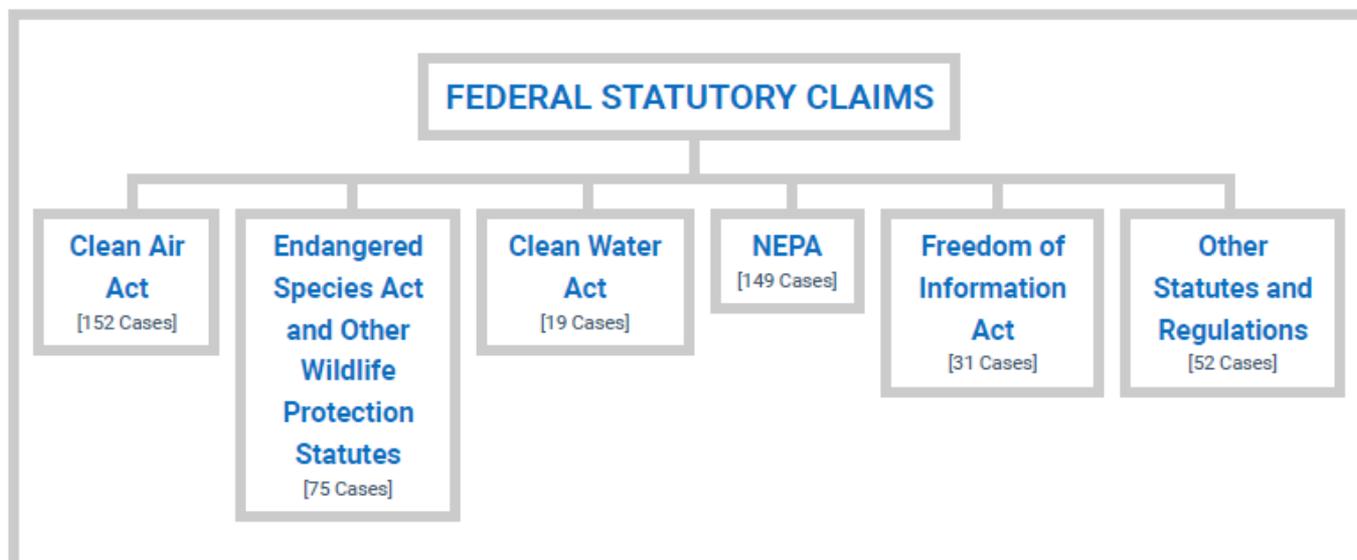


A collaboration of:

U.S. CLIMATE CHANGE LITIGATION
DATABASE

ARNOLD & PORTER
| KAYE SCHOLER

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](#).





Climate Change Nuisance Lawsuits: Many Causes, Many Claims

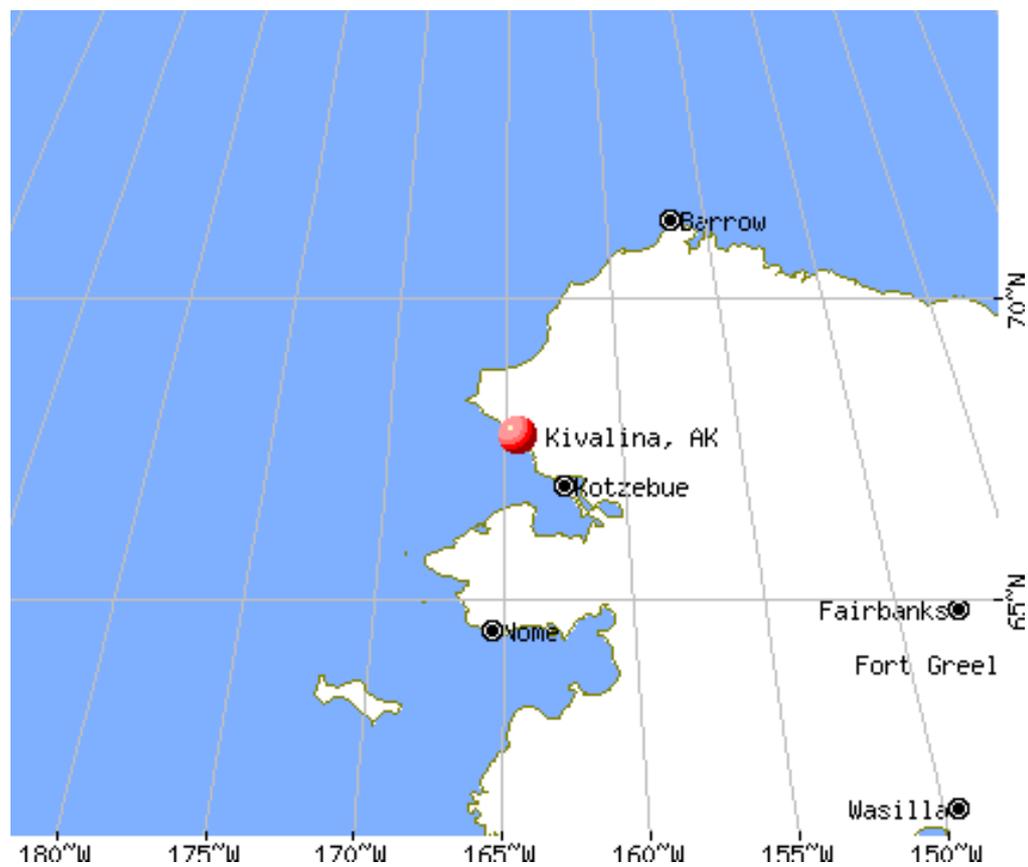
Courts as Battlefields in Climate Fights



Erosion of the shoreline in Kivalina, Alaska, has led to a closely watched climate-change lawsuit.

By [JOHN SCHWARTZ](#)

Published: January 26, 2010





AEP **AMERICAN
ELECTRIC
POWER**

VS.

CONNECTICUT



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

NED COMER, et al.
v.
MURPHY OIL USA, INC., et al.

CAUSE NO. 1:11-cv-00011

REJECTED

Ned Comer vs. **MURPHY OIL CORPORATION**

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

BEFORE THE COURT are the Motion [100] to Dismiss filed by the Plaintiff, the Motion [207] to Dismiss Amended Complaint filed by the Plaintiff, the Motion [208] to Dismiss Amended Complaint filed by the Plaintiff, the Motion [217] to Dismiss filed by Total Petrochemicals USA, Inc., et al. for North America, Inc. The plaintiffs have filed a Memorandum in Opposition [280] to these Motions, and the defendants have filed Replies [289]. Upon reviewing the submissions of the parties, the record in this matter, and the applicable law, the Court finds that the defendants' Motions to Dismiss are granted.

¹ This Motion was filed by sixty-two of the defendants to this lawsuit. (Certain Defs.' Mot. 1 n.1, ECF No. 207). The following defendants have also joined this Motion: BHP Minerals, Total Petrochemicals USA, Total Gas & Power NA, Edin Mission Fuel, and Edison Capital. Grinders, ECF Nos. 213, 268, and 277.

² The following defendants filed this Motion: Alpha Natural Resources, Inc., Arch Coal, Inc., CONSOL Energy Inc., International Coal Group, Inc., Massey Energy Corporation, The North American Coal Corporation, Ohio Valley Coal Company, Inc., Company, (Coal Defs.' Mot., ECF No. 289), and W. Va. Energy, Inc., et al.

A photograph of an offshore oil rig in the ocean. The rig is a complex of yellow and black structures on a platform. A small boat is visible in the water in the foreground.

The Big Three Federal Common Law Tort Actions



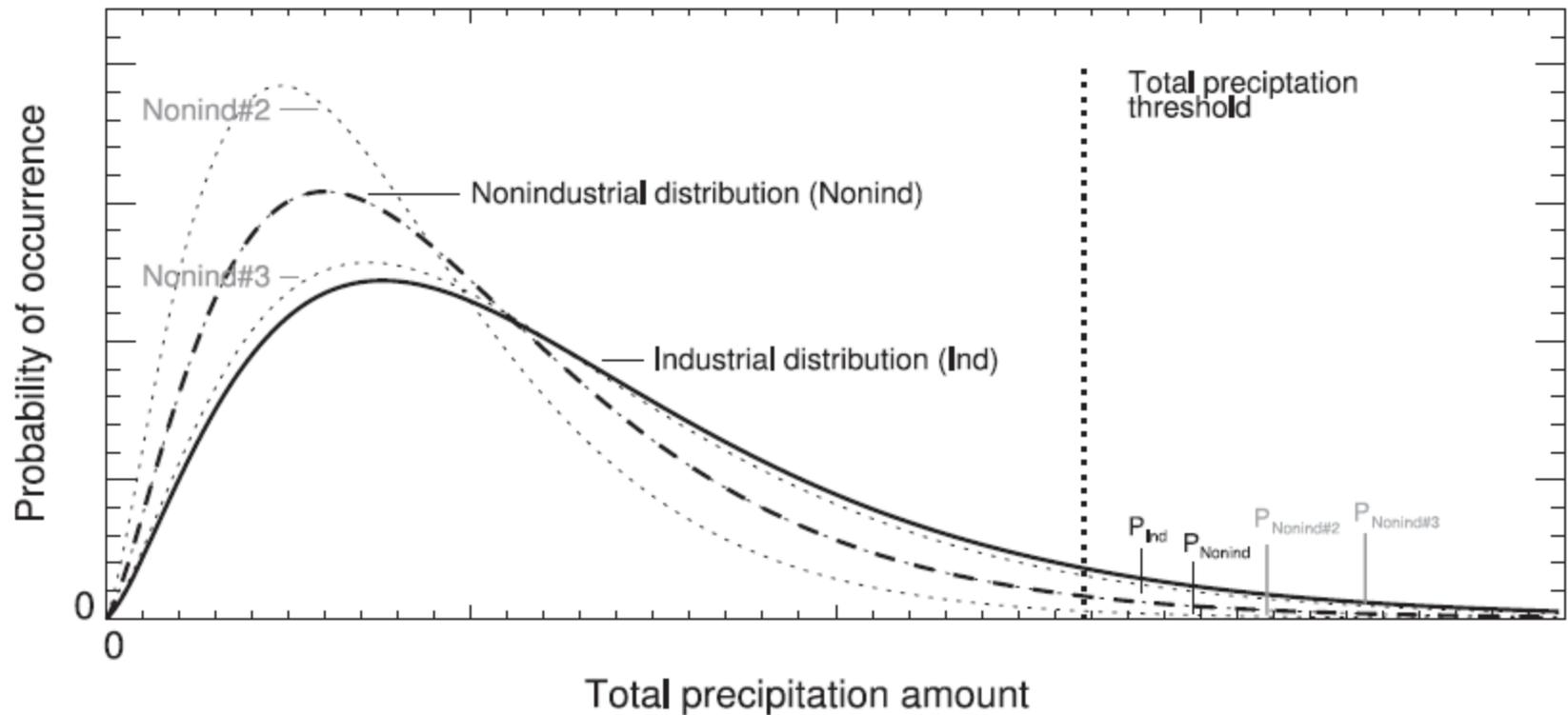
- **Connecticut v. AEP (2d Cir.)**
 - Eight AGs sued five power companies
 - U.S. Supreme Court ruled that federal common law nuisance claims were displaced by Clean Air Act
- **Comer v. Murphy Oil Co. (5th Cir.)**
 - Class action suit for Katrina property damages
 - Targets oil, coal, chemical and insurance 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

The Challenge of Causation – Proving the Link



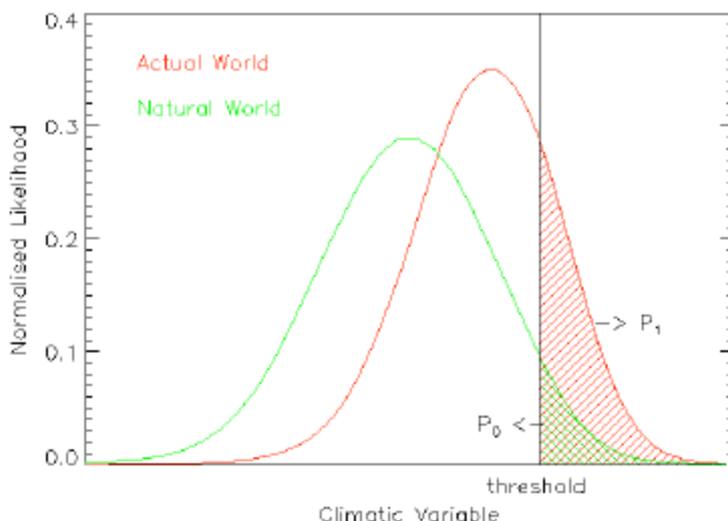


Met Office
Hadley Centre

Fraction of Attributable Risk

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

(Allen, Nature, 2003)



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.

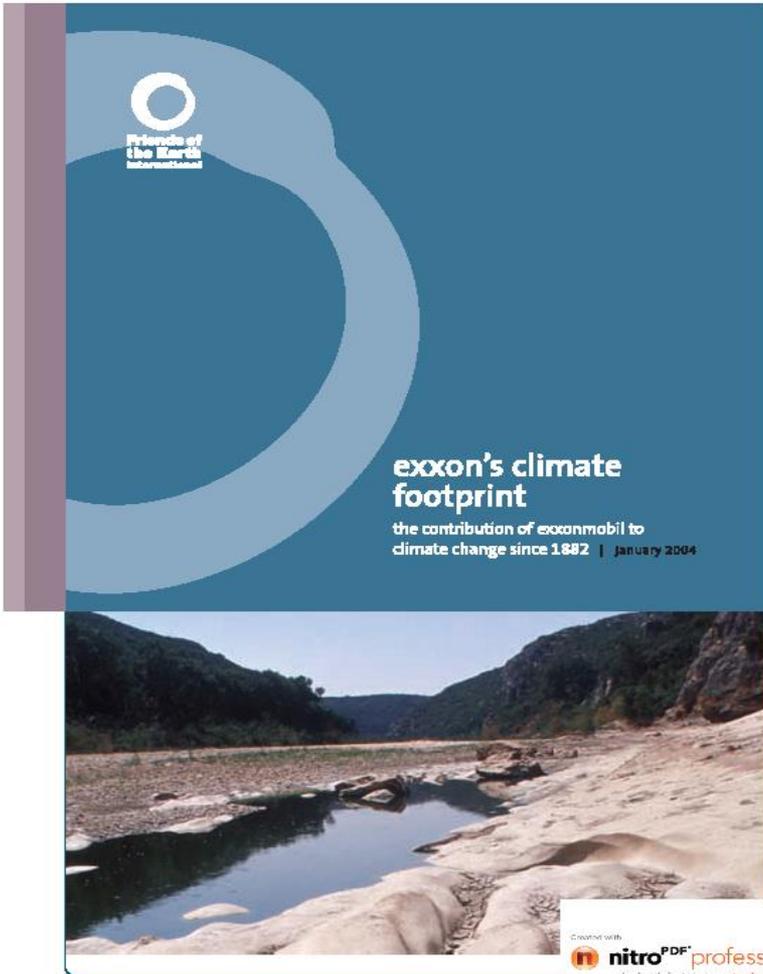
$$\text{FAR} = 1 - (P_0 / P_1)$$



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

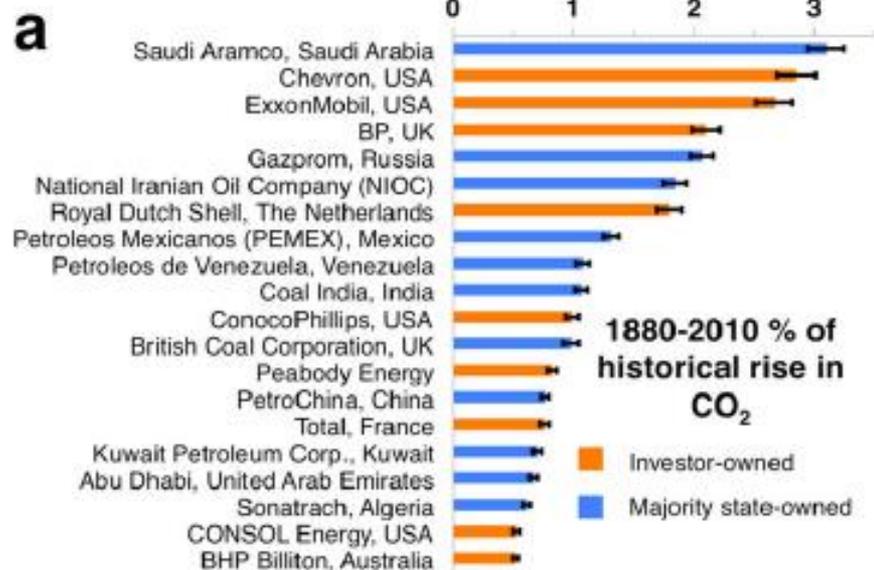
The Critical Translation Point – Attribution of Harm



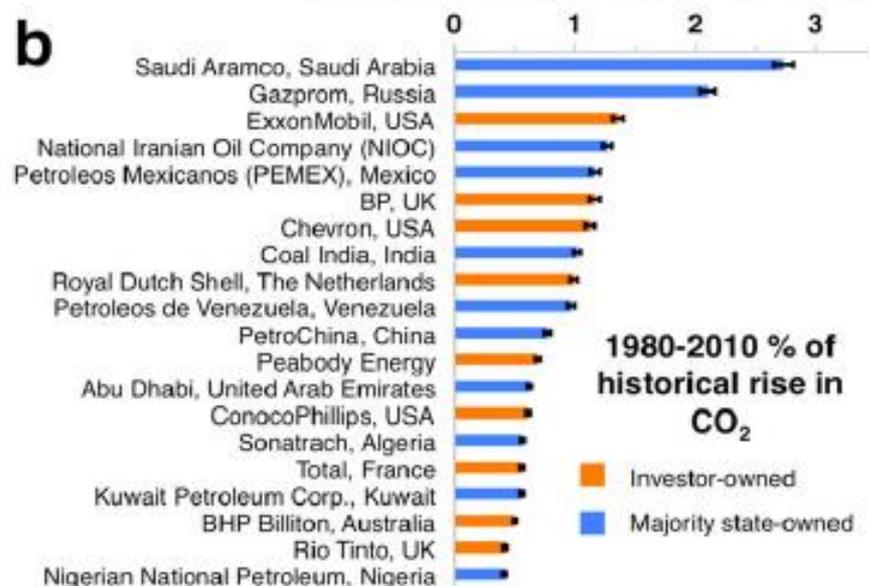
- Tallies emissions back to 1882
- Claims about 5 percent of historical global carbon emissions from Exxon
- Alleges most releases occurred after climate concerns first raised



Contribution of emissions traced to carbon producers to rise in atmospheric carbon dioxide, 1880-2010 (%)



Contribution of recent (1980-2010) emissions traced to carbon producers to rise in atmospheric carbon dioxide, 1880-2010 (%)



Current Directions and Next Steps in Climate Change Litigation

- State law claims and lawsuits
- Public trust doctrine lawsuits
- Transnational litigation claims





State law tort actions

- Currently have tort actions underway in California, New York, Colorado, Washington state, and Rhode Island
- Conflicting district court opinions in California
 - *City of Oakland v. BP*: claims governed by federal common law, but federal common law displaced
 - *County of San Mateo v. Chevron Corp.*: claims governed by state law because federal law
- *City of New York v. Exxon Corp.* – dismissed on grounds similar to *Oakland*.
- Appeals underway to Ninth Circuit and Second Circuits; U.S. Supreme Court review possible

Public Trust Litigation

- Public trust doctrine – government holds certain responsibilities in trust to the public that are inalienable
 - Deep roots in common law
 - Typically applied to water bodies, but extended to air in some states
- Our Children’s Trust project



Juliana v. United States (D. Ore. 2018) – discovery now underway after repeated mandamus motions by U.S. denied by Ninth Circuit and U.S. Supreme Court

Transnational Torts: The Chevron Ecuador Saga





Questions?

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