Climate Change Public Nuisance Tort Litigation

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Houston, Texas
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Texas - Direct GHG Emissions Reported by Sector in Million Metric Tons of CO₂e

Power Plants 236 (61.9%)

Refineries 56 (14.6%)

Chemicals 51 (13.3%)

Cement 2 (0.5%)

Pulp and Paper 1 (0.3%)

Landfills 9 (2.3%)

Minerals 10 (2.5%)

Other Industrial 19 (5.0%)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Power Plants</th>
<th>Refineries</th>
<th>Chemicals</th>
<th>Other Industrial</th>
<th>Landfills</th>
<th>Metals</th>
<th>Minerals</th>
<th>Pulp and Paper</th>
<th>Government and Commercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010 GHG Emissions (million metric tons CO₂e)</td>
<td>236</td>
<td>56</td>
<td>51</td>
<td>19</td>
<td>9.3</td>
<td>1.9</td>
<td>10</td>
<td>0.7</td>
<td>0.3</td>
</tr>
<tr>
<td># of Reporting Facilities</td>
<td>128</td>
<td>29</td>
<td>119</td>
<td>252</td>
<td>96</td>
<td>13</td>
<td>35</td>
<td>5</td>
<td>6</td>
</tr>
</tbody>
</table>

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 08/15/2012.
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
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

- State law claims and 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
Public Trust Litigation

• Public trust doctrine
  – Limits on state’s ability to alienate resources
  – Analogous to fiduciary duty
  – Used in water, submerged property cases

• Is the atmosphere a public trust?

• *Bonser-Lain v. TCEQ*, 201st Dist. Ct., Travis Co., filed July 22, 2011
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


\[ P_0: \text{Probability of exceeding a threshold in the "world that might have been" (without that causal factor).} \]

\[ P_1: \text{Probability of exceeding a threshold in the actual world.} \]

\[ \text{FAR} = 1 - \left( \frac{P_0}{P_1} \right) \]
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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