



# Climate Change Litigation

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University of Houston Law Center

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Houston, Texas  
Oct. 8, 2013

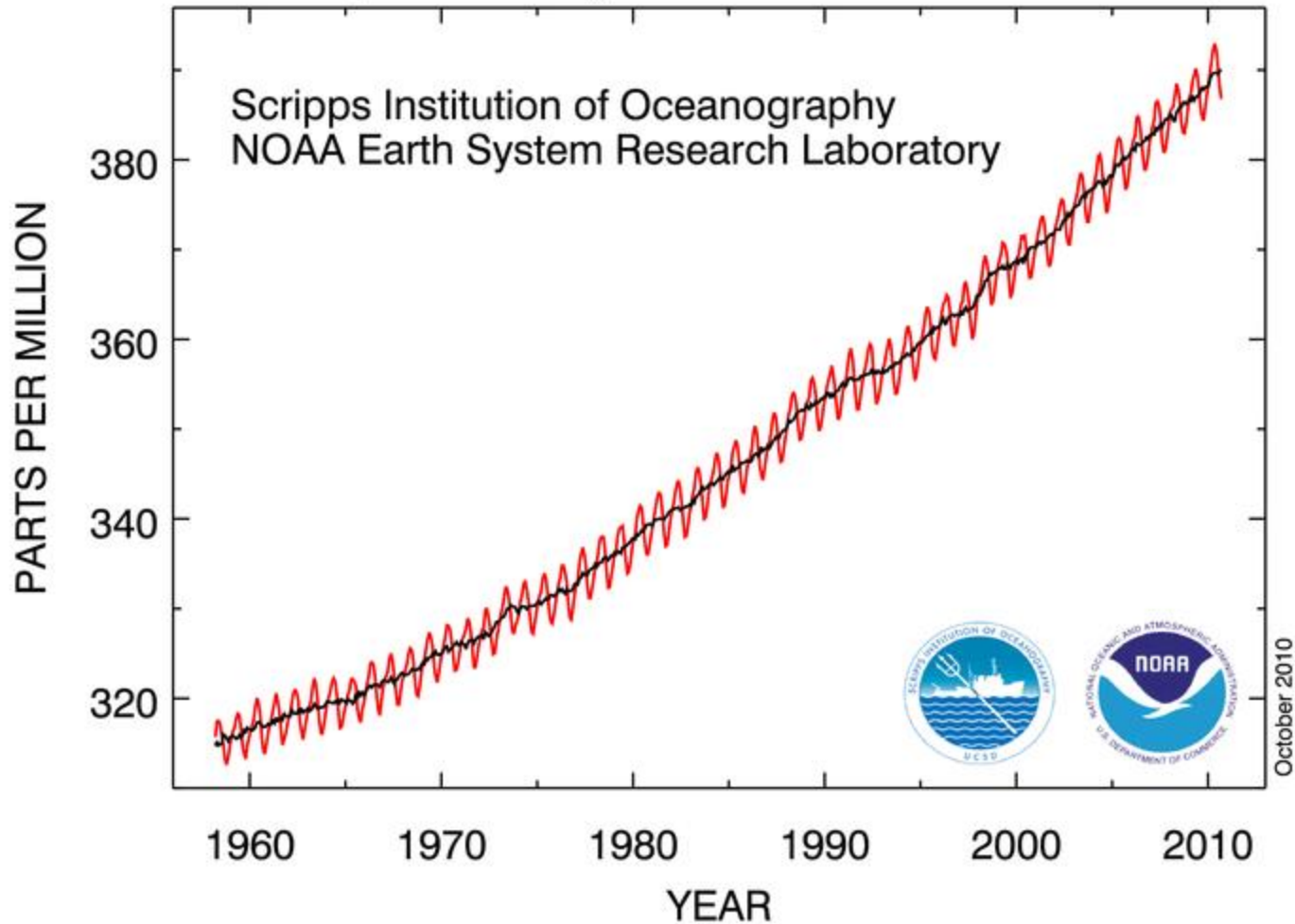
**Bloomberg  
Businessweek**

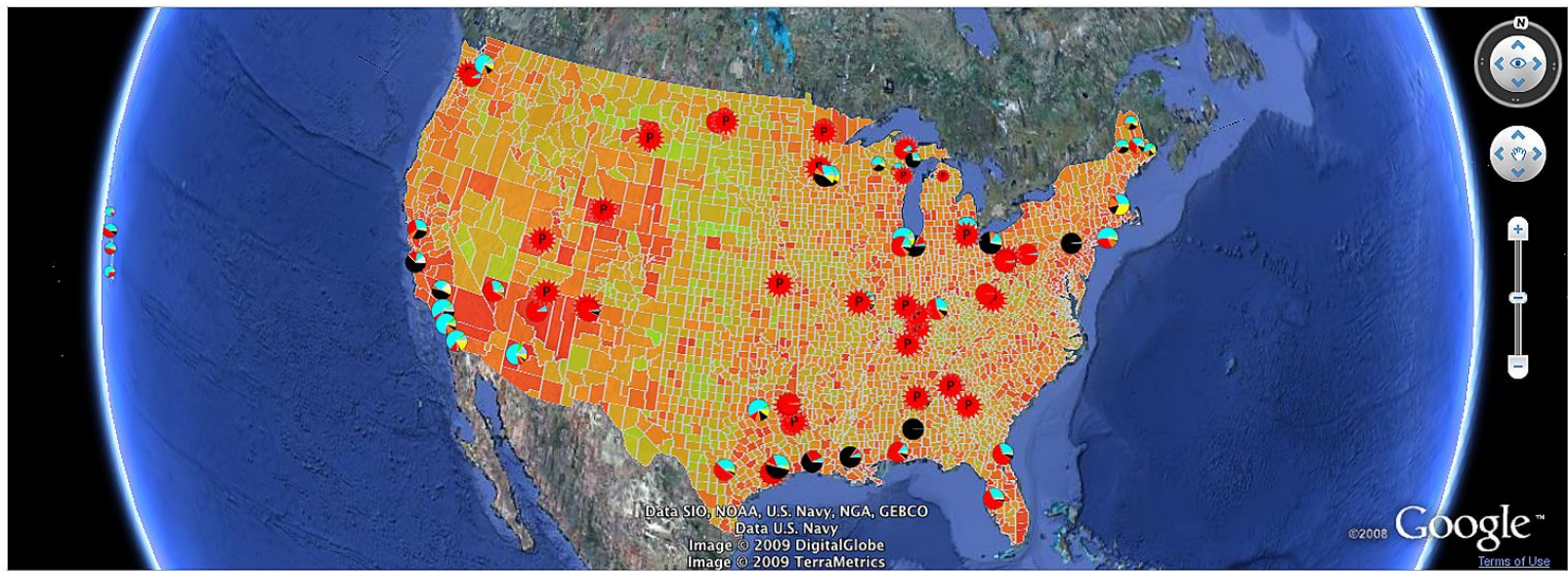
November 1 - November 5, 2002 | [bloomberg.com](http://bloomberg.com)

# **IT'S GLOBAL WARMING, STUPID**



# Atmospheric CO<sub>2</sub> at Mauna Loa Observatory





- All CO<sub>2</sub> sources**
- Aircraft**  
Airport taxi, takeoff and landing and flight
- Commercial**  
Heating, engines, and other emitting processes at business locations
- Electricity production**  
Coal, oil, and natural gas power plants
- Industrial**  
All industrial processes (including agriculture), no electricity production
- Nonroad**  
Trains, boats, lawnmowers, snowmobiles, etc
- Onroad**  
Cars, trucks, buses
- Residential**  
Heating, water heating, cooking at residences

- Power plants**  
Individual coal, oil, and natural gas power plants ([see note](#))
- Airports**  
Individual airports

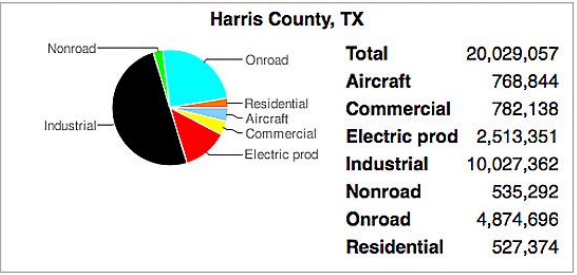
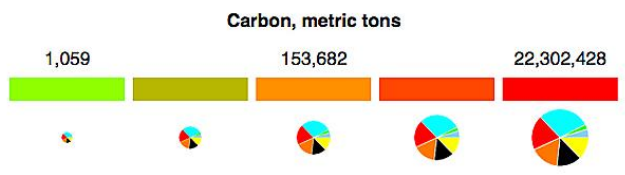
**Hide source icons**

**Total sources**

Stat:  Absolute  Per capita

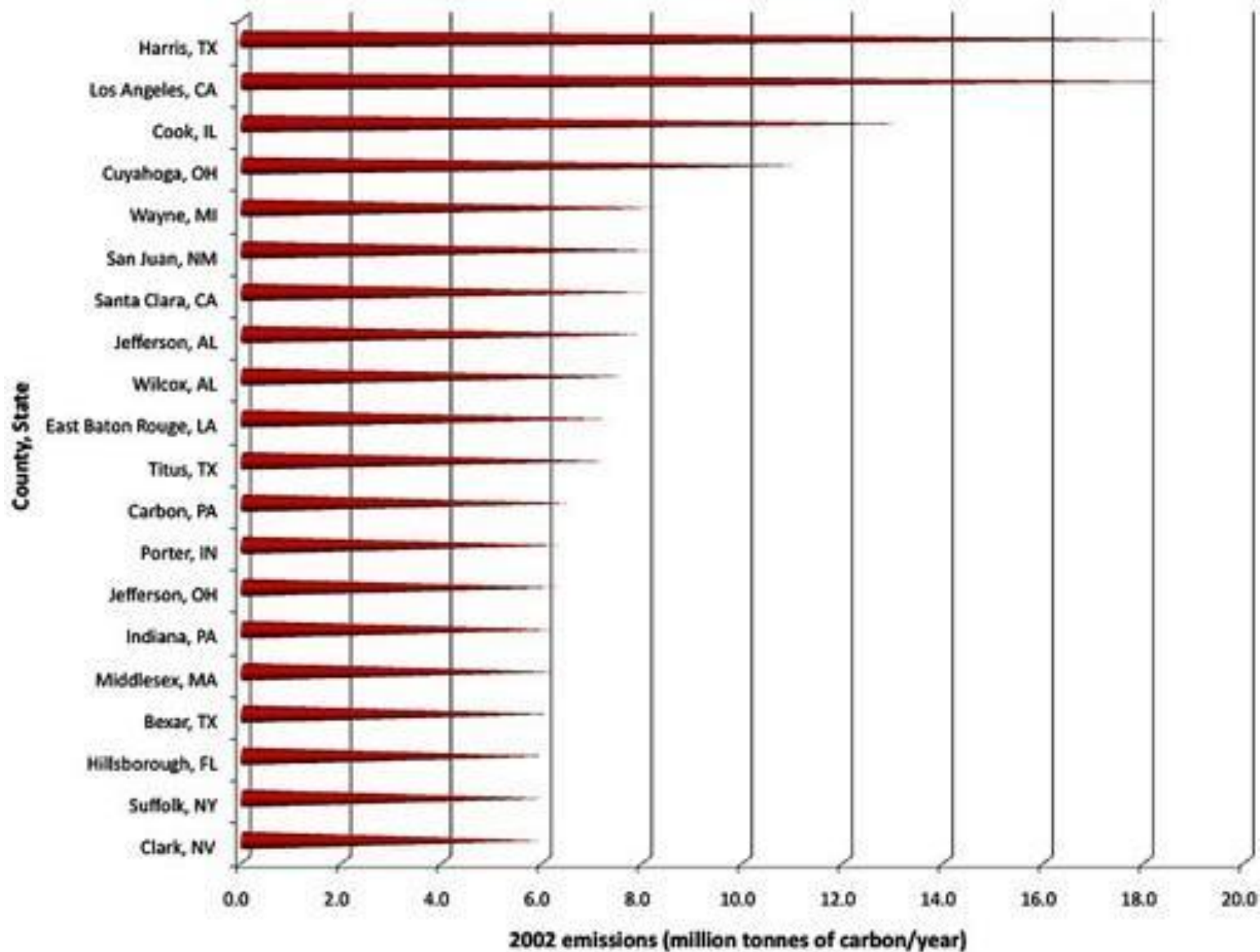
Layer:  States  Counties

Search:   Seattle, WA or 12345





### Top Twenty CO2 emitting counties



# **Top Emitters of Greenhouse Gases in California, 2008**

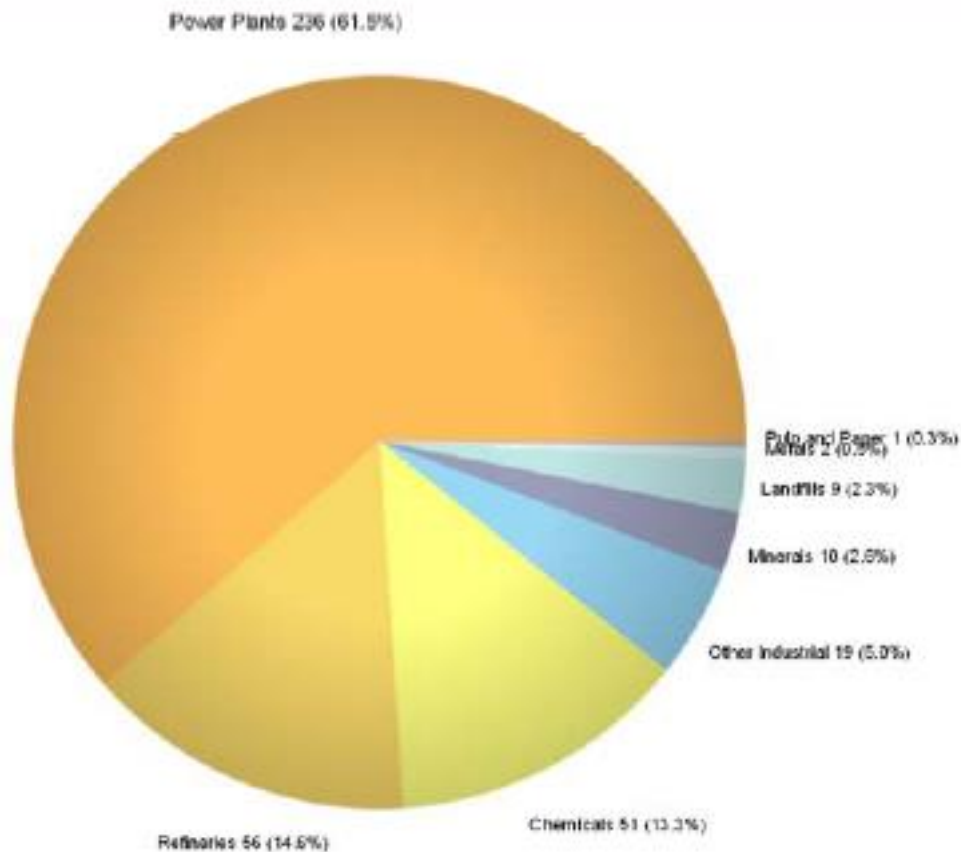
**(in metric tons)**

1. Chevron Refinery, Richmond: 4,792,052
  2. Shell Oil Refinery, Martinez: 4,570,475
  3. BP Refinery, Carson: 4,504,286
  4. Chevron Refinery, El Segundo: 3,603,446
  5. Dynegy Power Plant, Moss Landing: 2,962,149
  6. Exxon Refinery, Torrance: 2,852,374
  7. Valero Refinery, Benicia: 2,796,057
  8. Tesoro Refinery, Martinez: 2,703,145
  9. Southern Calif. Edison-Mountainview Power Plant, Redlands: 2,697,142
  10. La Paloma Power Plant, McKittrick: 2,544,398
- Source: California Air Resources Board

Identifying specific sources of GHGs – and  
potential defendants

<http://ghgdata.epa.gov/ghgp/main.do>

Texas - Direct GHG Emissions Reported by Sector in Million Metric Tons of CO<sub>2</sub>e



Sector	SELECT ALL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	DESELECT ALL	Power Plants	Refineries	Chemicals	Other Industrial	Landfills	Metals	Minerals	Pulp and Paper	Government and Commercial			
2010 GHG Emissions (million metric tons CO <sub>2</sub> e)	APPLY	236	56	51	19	9.3	1.9	10	0.7	0.3			
# of Reporting Facilities		128	29	119	252	96	13	35	5	6			

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.



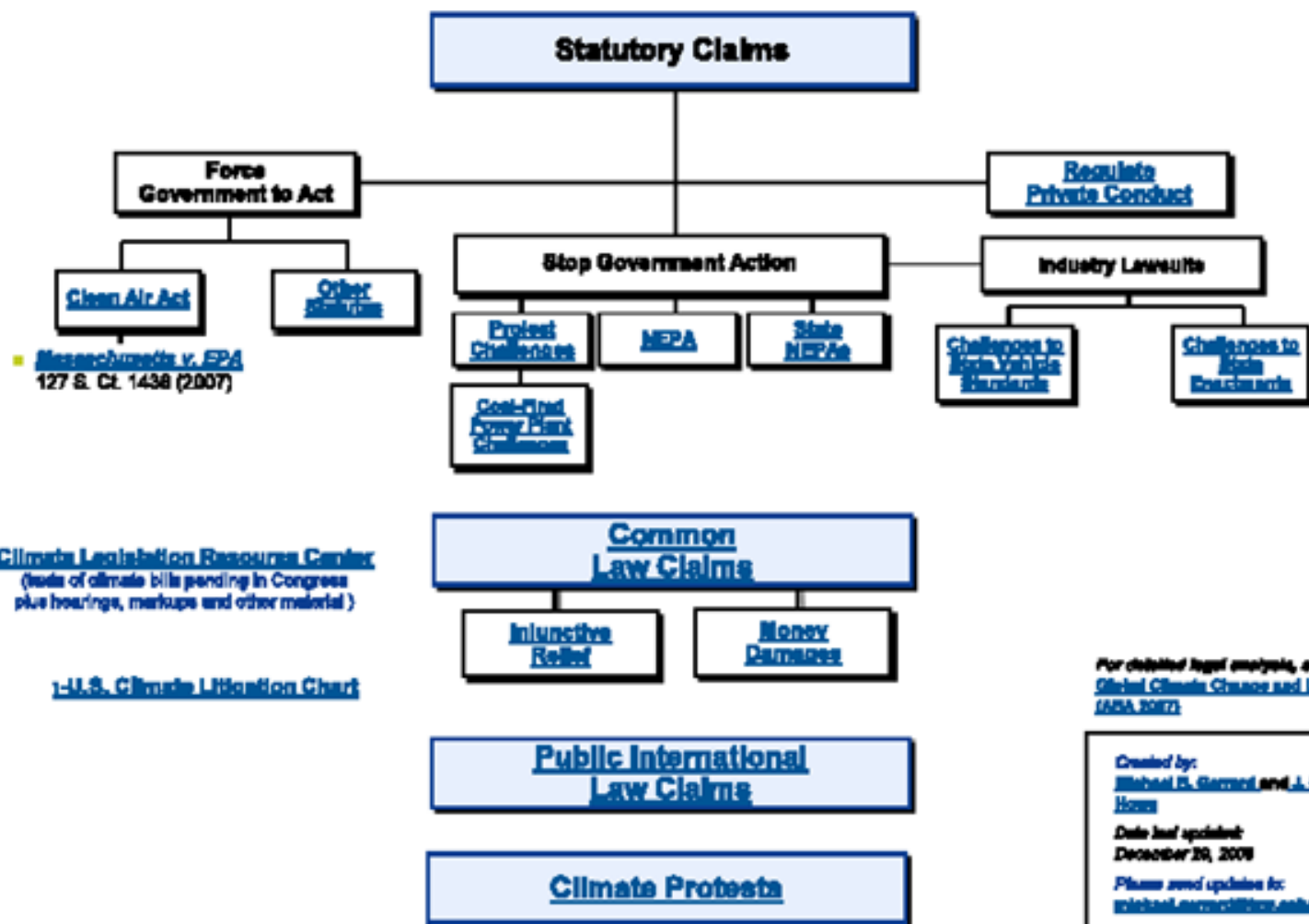
# Climate Change Litigation: It's already here

- Already active trial docket nationally
  - Over 200 active matters and prior decisions
  - Types: broader, more various than expected
    - NEPA, Endangered Species
    - Insurance coverage disputes
- Most notable actions: federal common law nuisance actions

RL: [www.climatecasechart.com](http://www.climatecasechart.com)

receive email updates to this chart,  
and a request to  
[leo.hovav@arnold.com](mailto:leo.hovav@arnold.com)

# CLIMATE CHANGE LITIGATION IN THE U.S.



[Climate Legislation Resources Center](#)  
(lists of climate bills pending in Congress plus hearings, markups and other material)

[U.S. Climate Litigation Chart](#)

For detailed legal analysis, see  
[Global Climate Change and U.S. Law \(ADA 2007\)](#)

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# Climate Change Nuisance Lawsuits: Many Causes, Many Claims

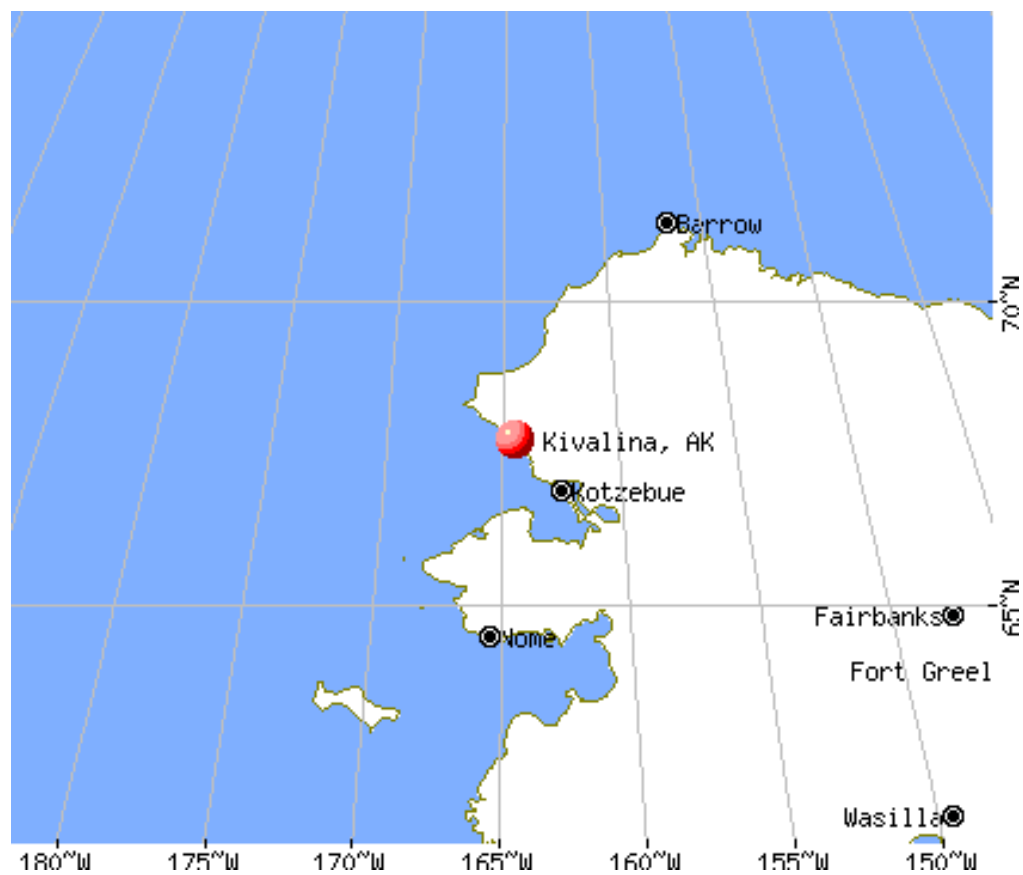
## Courts as Battlefields in Climate Fights



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

By [JOHN SCHWARTZ](#)

Published: January 26, 2010





# 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. (5<sup>th</sup> Cir.)**
  - Class action suit for Katrina property damages
  - Targets oil, coal, chemical and insurance companies
  - Fifth Circuit dismissed in very odd fashion; district court just dismissed re-filed complaint and Fifth Circuit has upheld the second dismissal
- **Native Village of Kivalina v. Exxon Mobil (9<sup>th</sup> Cir.)**
  - District court in California dismissed as political question
  - Ninth Circuit dismissed on displacement grounds as well



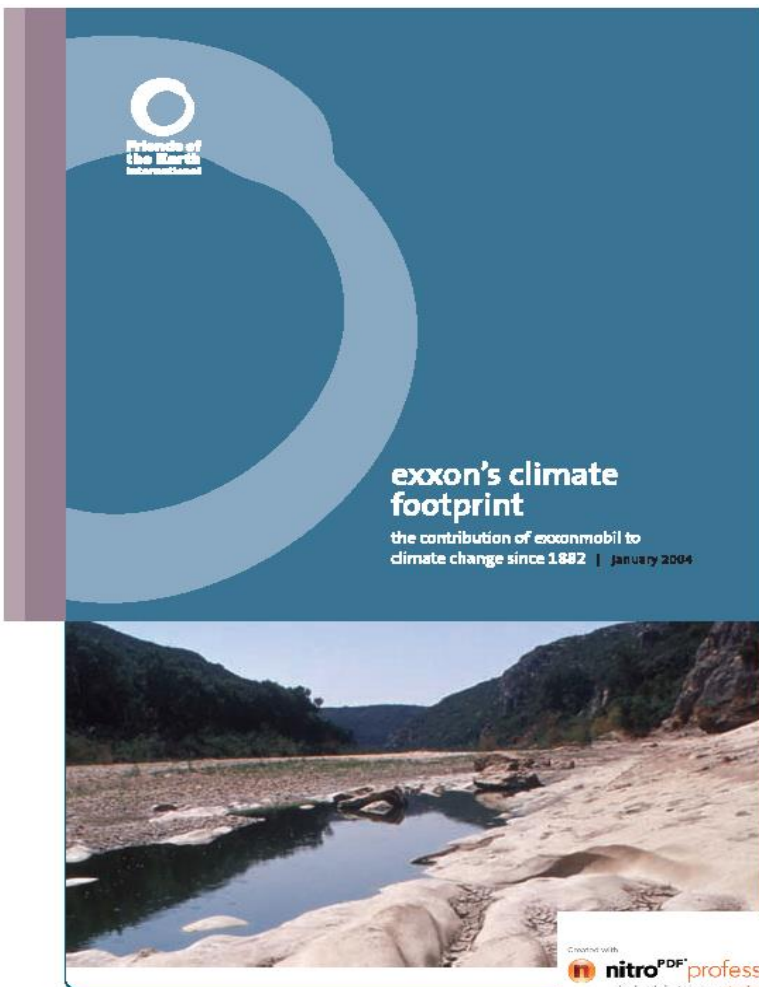
# Climate Change Liability -- Key Thoughts and Themes

- Massachusetts v. EPA will continue to bear fruit
- 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)
- Focus on legislative solution

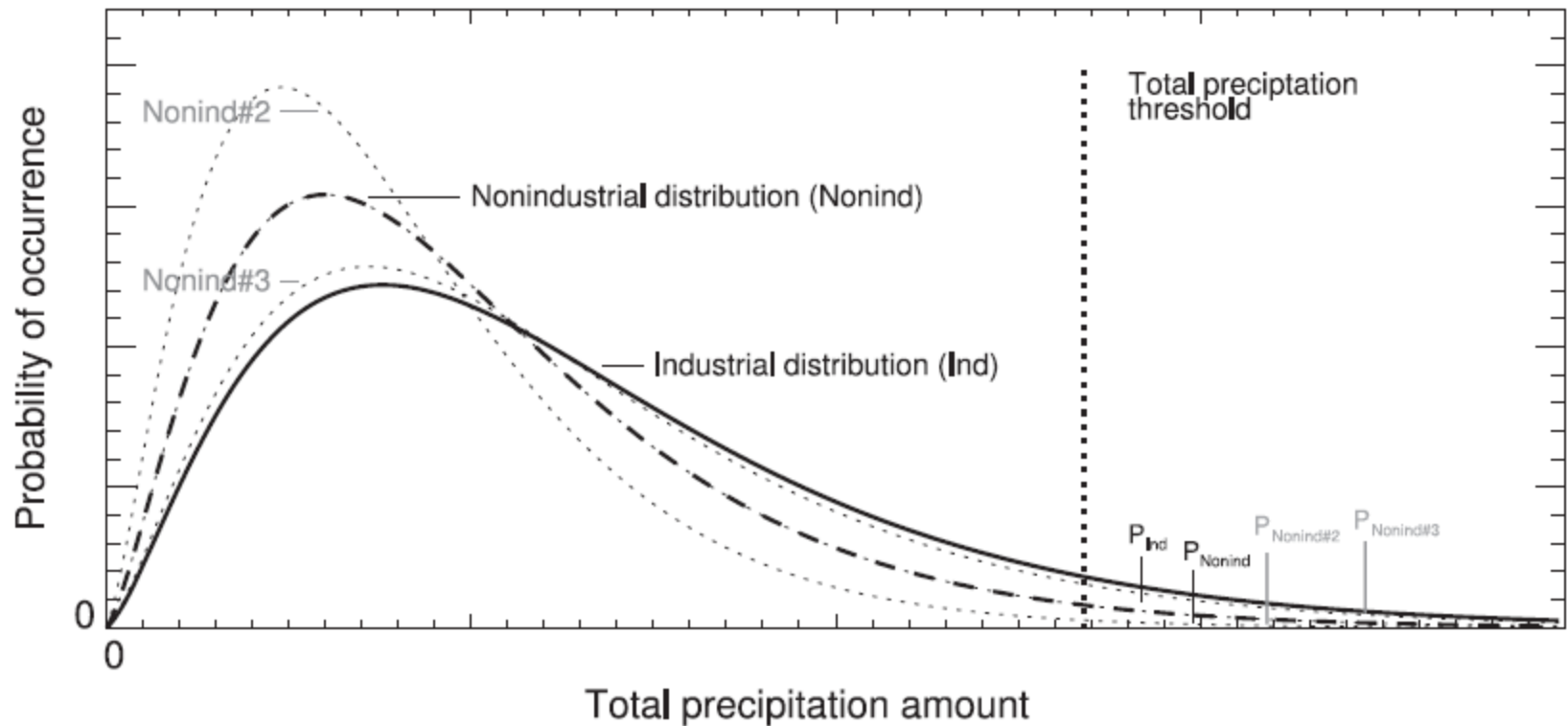


- Tallies emissions back to 1882
- Claims about 5 percent of historical global carbon emissions from Exxon
- Alleges most releases occurred after climate concerns first raised

# 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?



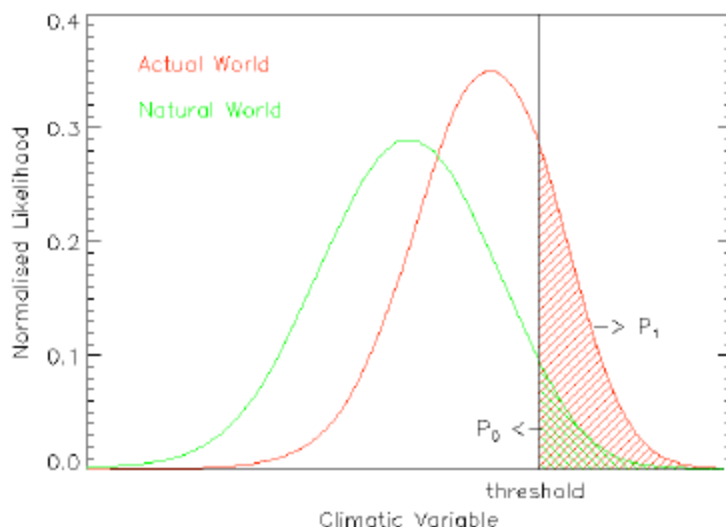


Met Office  
Hadley Centre

# 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.

$$FAR = 1 - (P_0 / P_1)$$

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



**Questions?**

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