

# State and Local Regulation in Oil & Gas

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Environmental Law in Oil & Gas

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# Looking back – Environmental Liability and Self-Investigation



- Broader scope of potential criminal and civil liability
  - Strict liability under civil environmental statutes
  - Criminal: public health offenses; responsible corporate officer doctrine; key importance of exact statutory language (“knowing”)
- Managing investigations
  - Attorney-client communications
  - Attorney Work Product
- EPA Self-Disclosure Policy
- Statutory audit privileges and immunities (Texas)





So who will you really work with as an energy lawyer with an environmental issue?

- In the vast majority of cases, your primary contact will be with a state agency
- Exceptions:
  - CERCLA/Superfund
  - Title II of Clean Air Act (fuels)
  - Wetlands permits
  - Federal and (sometimes) tribal lands
  - Certain agencies: Homeland Security, Defense





# Texas Railroad Commission



*Ryan Sitton*

Ryan Sitton  
Commissioner



*Christi Craddick*

Christi Craddick  
Chairman



*Wayne Christian*

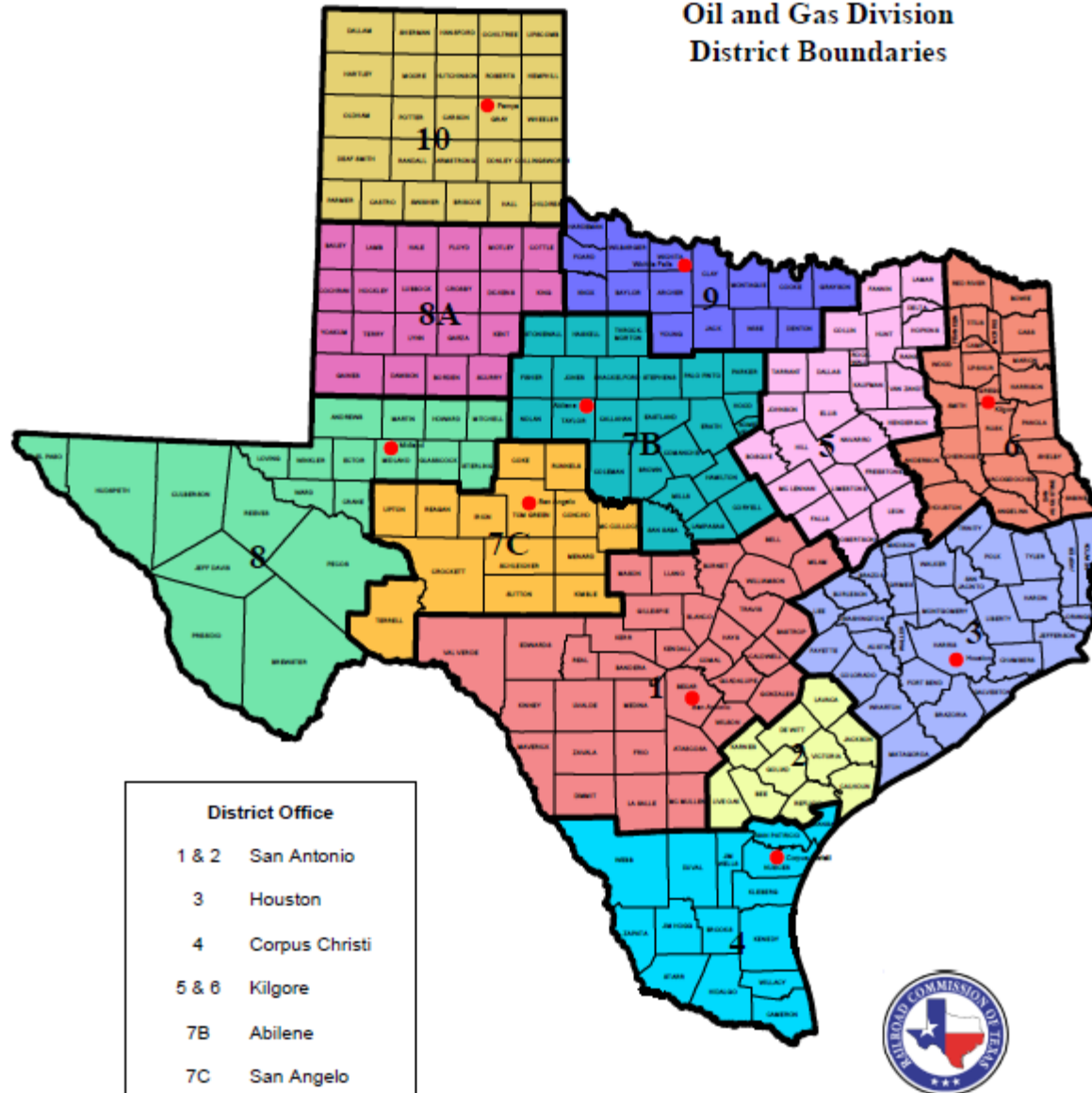
Wayne Christian  
Commissioner



# Texas Railroad Commission



## Oil and Gas Division District Boundaries







# Texas Railroad Commission

- Has primary jurisdiction over most environmental issues arising at E&P sites
- Shares power with TCEQ over certain wastes and emissions pursuant to Memorandum of Understanding
  - Air emissions
  - Processed materials
  - Hazardous wastes not directly within E&P exclusion
  - Some spills (trucks, tanks)
  - Water rights

**TITLE 16 ECONOMIC REGULATION  
PART 1 RAILROAD COMMISSION OF TEXAS  
CHAPTER 3 OIL AND GAS DIVISION**

RULE §3.30 Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)

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(a) Need for agreement. Several statutes cover persons and activities where the respective jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies implement the division of jurisdiction.





# Railroad Commission and Statewide Rules

- Regulation takes place via state-wide self-implemented standards, not comprehensive environmental permits
- Example: SWR 8(d)(1)





## Statewide Rule 8



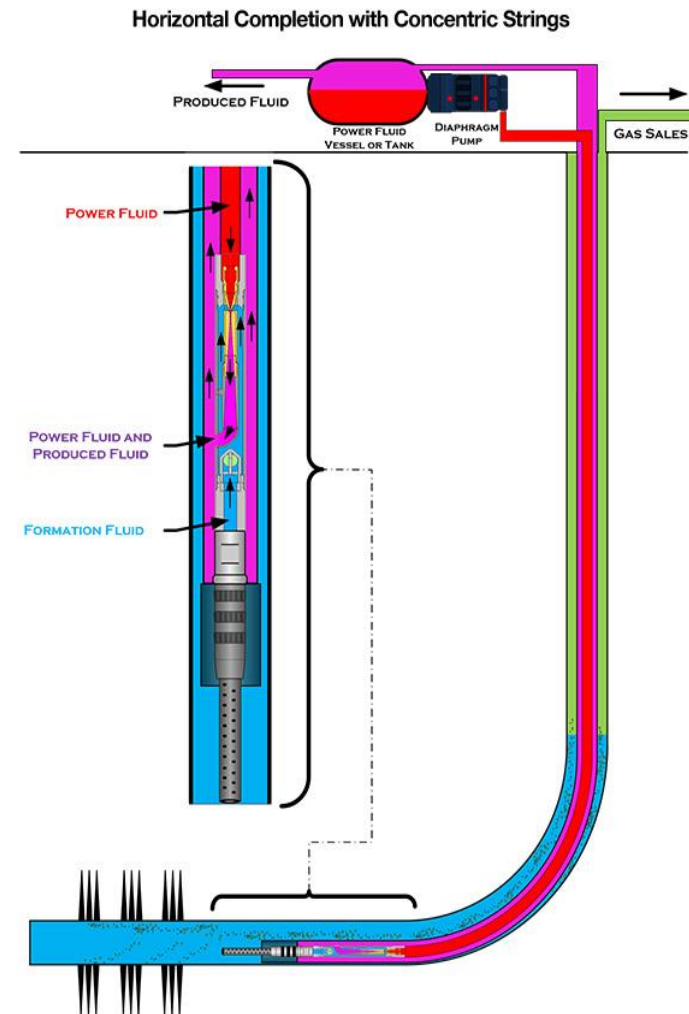
Prohibited disposal methods. **Except for those disposal methods authorized** for certain wastes by paragraph (3) of this subsection, subsection (e) of this section, or § 3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), or disposal methods required to be permitted pursuant to § 3.9 of this title (relating to Disposal Wells) (Rule 9) or § 3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (Rule 46), **no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes.** The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.



## Other SWRs



- SWR 9 – Disposal wells
- SWR 13 – Casing, Cementing, Completion
- SWR 14 – Plugging
- SWR 20 - Notification of Fires, Leaks, Blowouts
- SWR 29 – Hydraulic Fracture Chemical Disclosure
- SWR 36 - Hydrogen Sulfide Areas
- SWR 91 – Cleanup of Soil Contaminated by Crude Oil Spill
- SWR 98 – Management of Hazardous Oil & Gas Wastes
- SWR 107- Penalty Guidelines

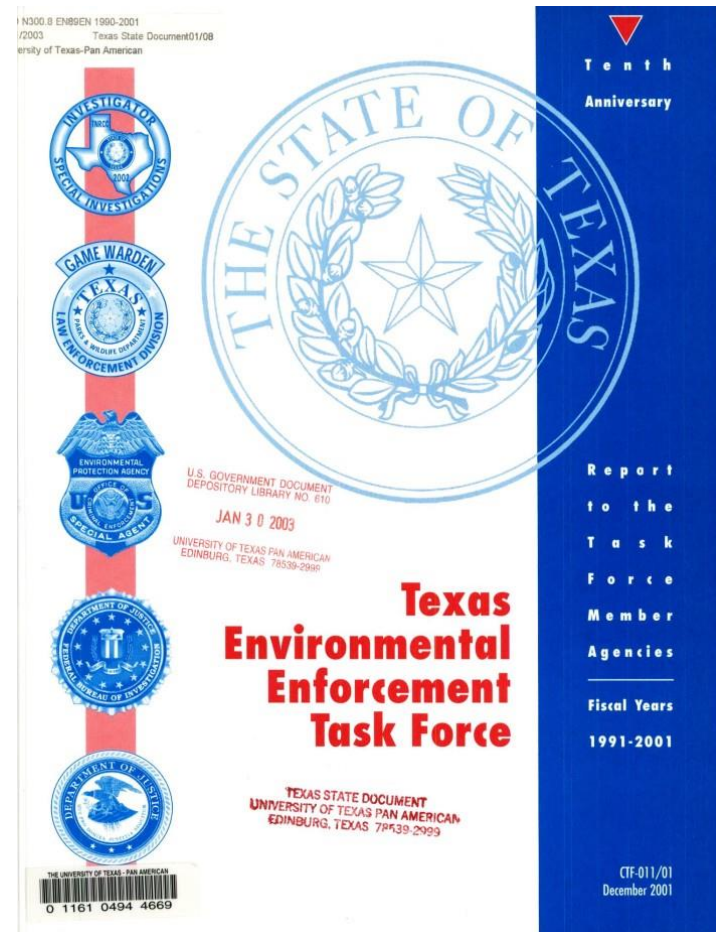






## Other State Agencies

- TCEQ (of course)
- General Land Office
  - State lands, oil spills, natural resources
  - Coastal waters
- Parks & Wildlife
  - Injuries to animals
  - Criminal enforcement
- Comptroller – Endangered Species
- Attorney General







## Local, of course, means more than state

- Harris County Attorney's office
  - Nuisance actions
  - Injunctions
  - Enforcement of state environmental standards
- City of Houston Attorney's office
  - Storm water
  - Water rights
  - Municipal code violations
- Harris County District Attorney







## Coordination of Responsibilities

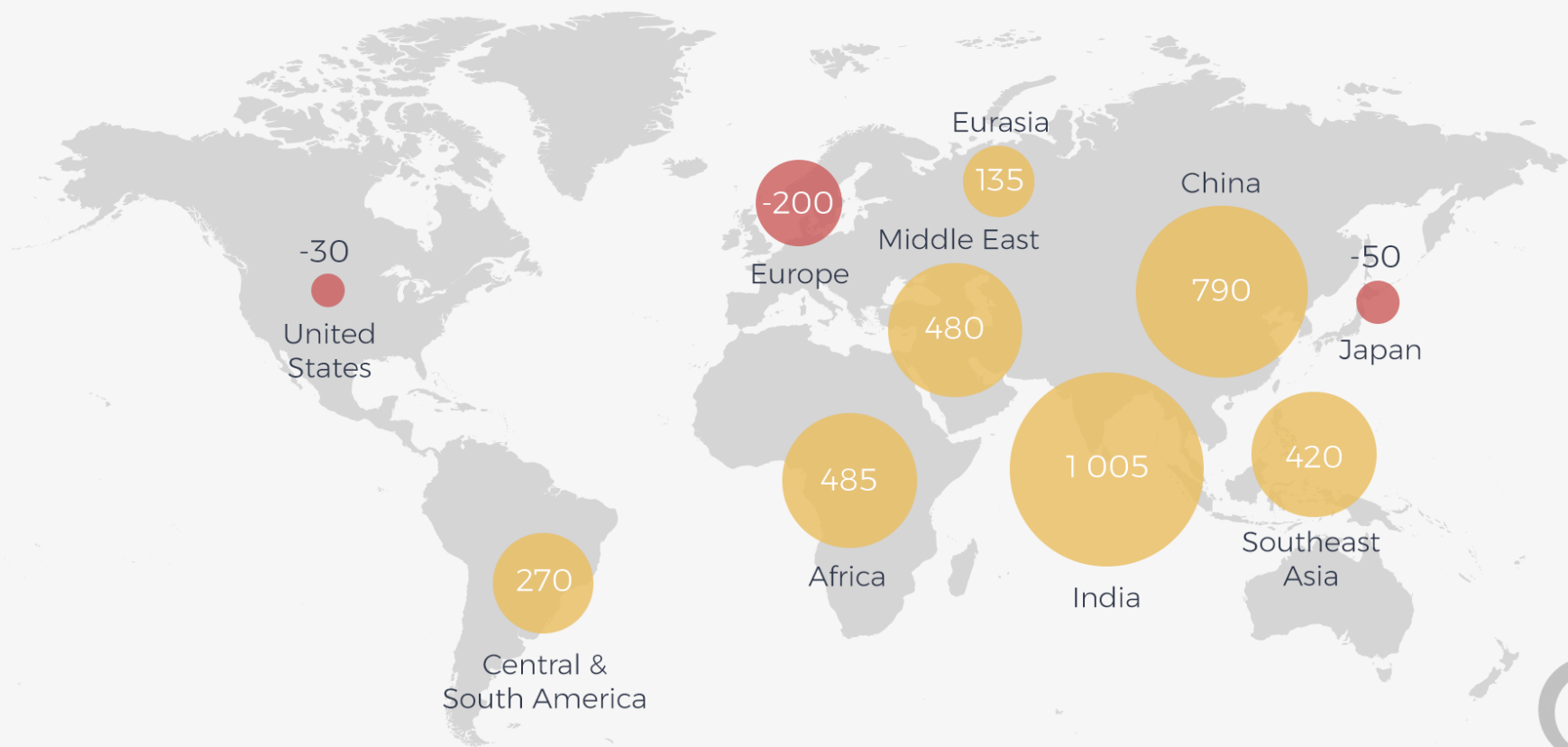
- Federal-state disagreements
  - Overfiling – *Harmon*
  - Revocation of delegation
- State-local disagreements
  - Preemption of city codes
  - Local enforcement agreements
  - Statutory preemption of local bans
    - Fracking – HB40
- New EPA Initiatives
  - Federalism 2.0
  - Strategic Partnership Compliance Plans (draft)





# Change in primary energy demand, 2016-40 (Mtoe)

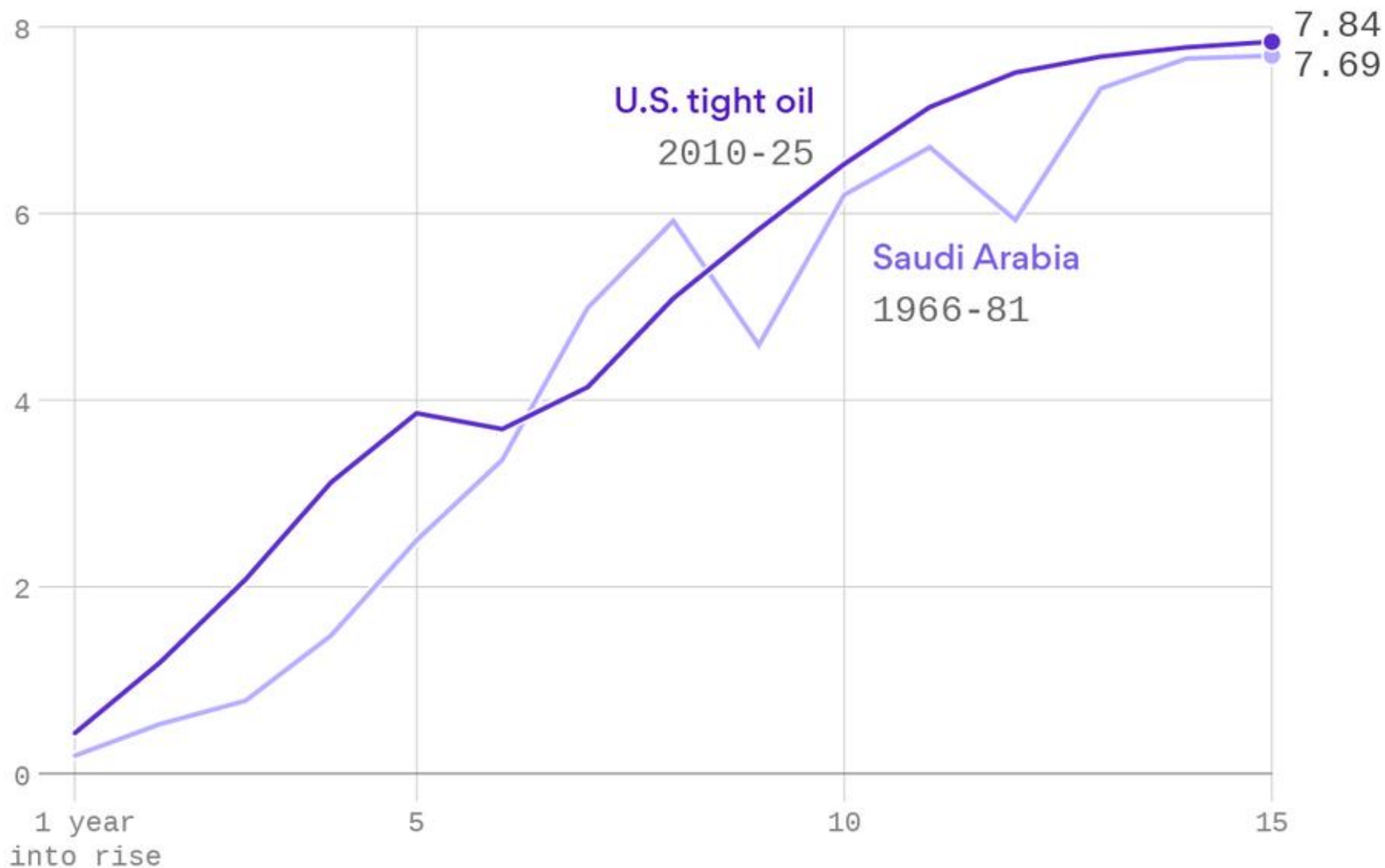
World Energy Outlook 2017





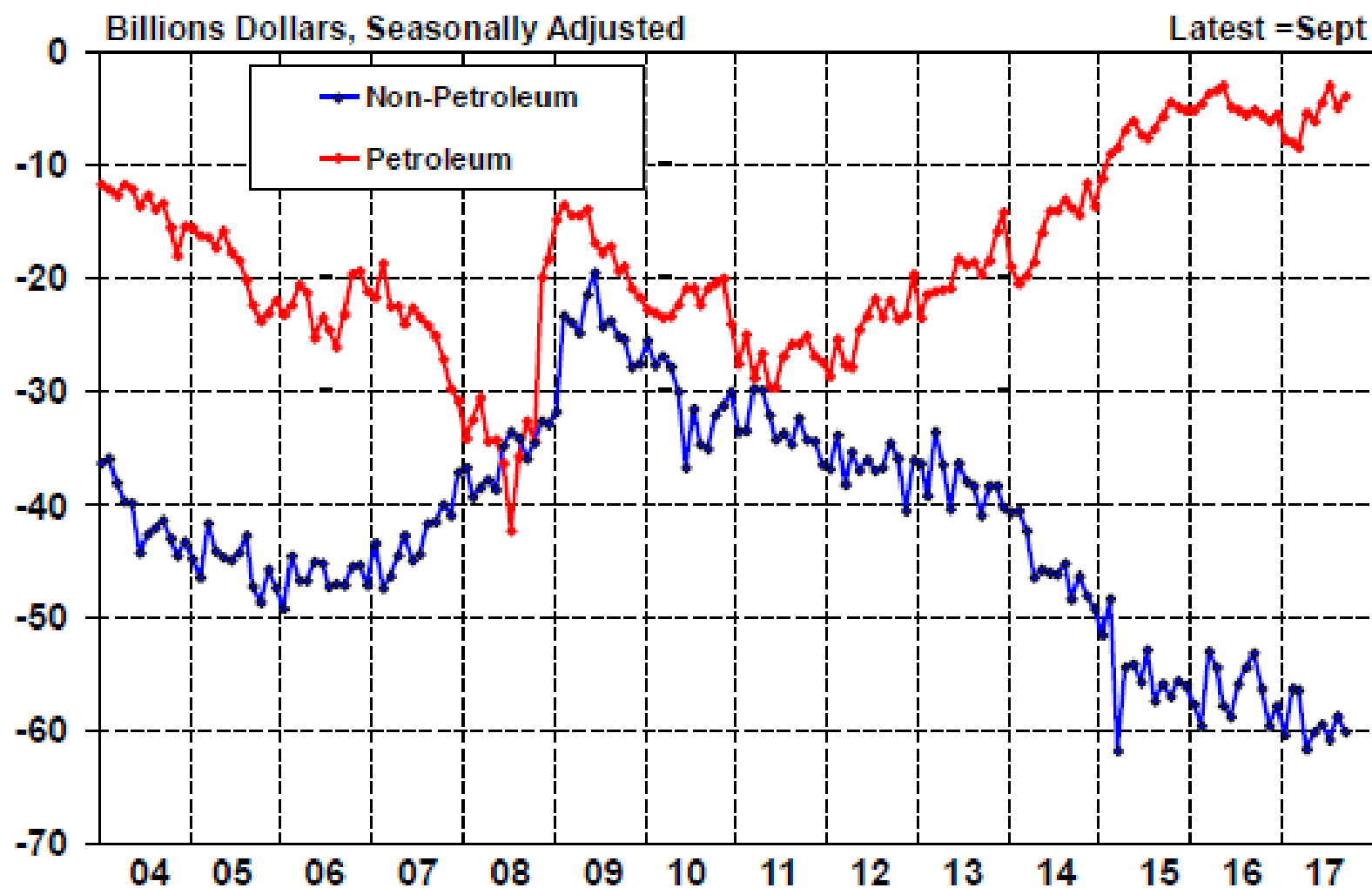
# Oil growth projections compared to industry's greatest increase

Millions of barrels per day





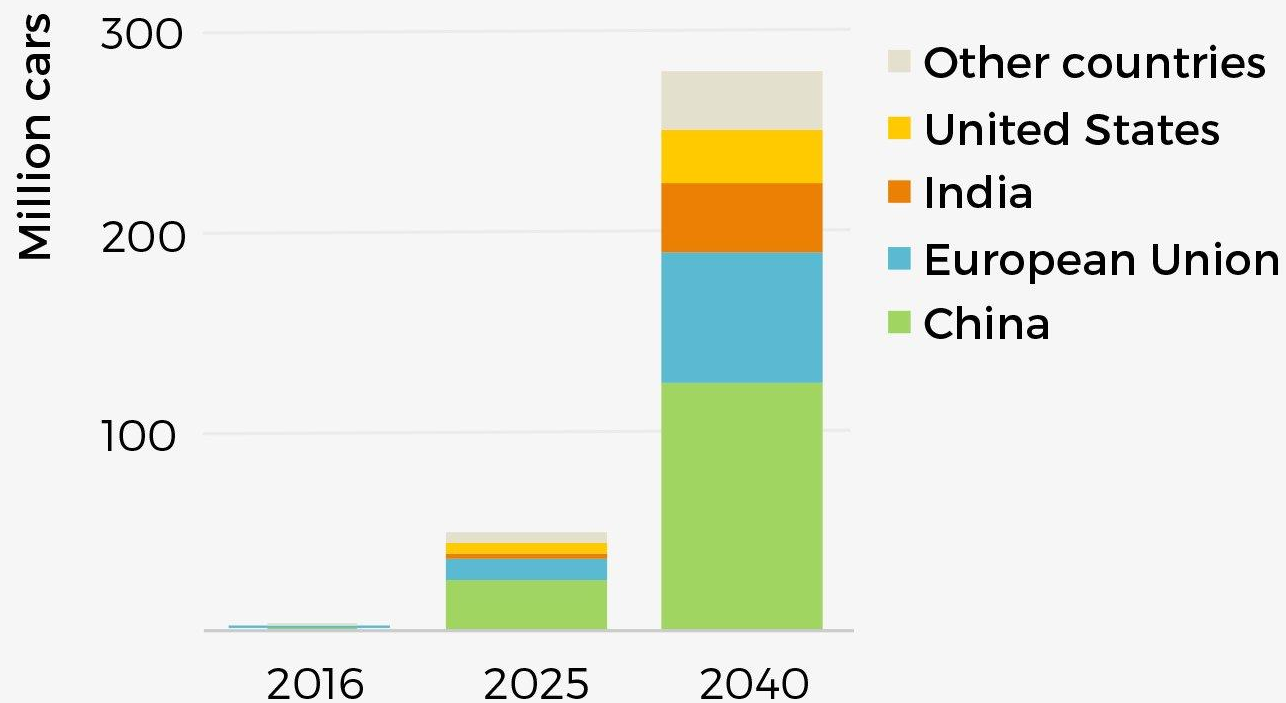
## Trade Balance Petroleum vs. Non-Petroleum





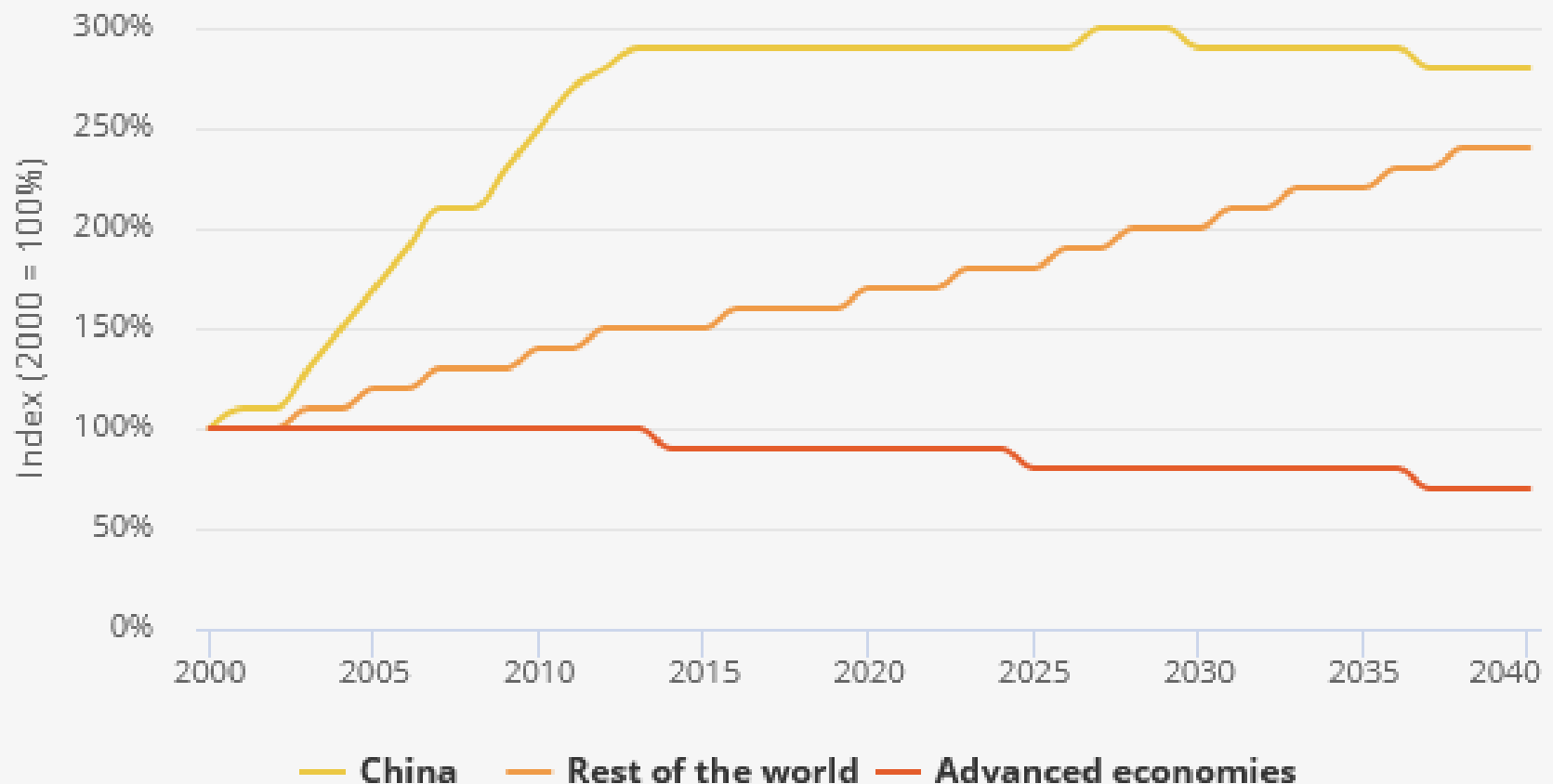
## Electric car fleet, 2016-2040

World Energy Outlook 2017





## Three speeds of CO2 emissions in the New Policies Scenario







## Questions?

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