

SUMMARY OF CLIMATE CHANGE CASES WORLDWIDE

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1 CLIMATE LITIGATION & INDUSTRY

1.1 State Attorneys General in U.S. Sue Private Utilities

Eight states (California, Connecticut, Iowa, New Jersey, New York, Rhode Island, Vermont, and Wisconsin) and the City of New York, and three NGO land trusts, sued the five largest power companies in the United States in July 2004. These companies own or operate 174 fossil fuel burning power plants in 20 states that emit approximately 650 million tons of carbon dioxide each year. This is nearly 25% of the U.S. utility industry's annual carbon dioxide emissions and about 10% of the nation's total. The action calls on the companies to reduce their pollution and does not seek monetary damages. Plaintiffs claim that the power companies' CO₂ emissions contribute to global warming, a nuisance under the federal common law of public nuisance, or alternatively, under the state common law of public nuisance. The defendants have moved to dismiss the case for lack of personal jurisdiction and argue that federal statutes and treaties regarding climate change pre-empt common law in the area. The case is still pending.

More information:

http://www.oag.state.ny.us/press/2004/jul/jul21a_04.html

<http://www.pawalaw.com/html/cases.htm>

1.2 NGO Sues U.S. Government for Failing to Consider CO₂ Emissions from Federal Project

NGO sued the U.S. Department of Energy and the Bureau of Land Management for violating the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA) in granting applications for permits to construct and operate power lines to connect power plants in Mexico to California's electric grid. NEPA requires that all major federal actions significantly impacting the human environment undergo an environmental assessment to determine the extent of the action's impact. In 2003, the court held that the Environmental Assessment and the Finding of No Significant Impact were inadequate under NEPA for failing to consider carbon dioxide emissions from the power plants.

More information:

<http://www.earthjustice.org/urgent/display.html?ID=106>

<http://www.earthjustice.org/news/documents/5-03/borderdecision.pdf>

1.3 U.S. Municipalities Sue Export Credit Agencies for Funding Fossil Fuel Industry

The city of Boulder in Colorado, the cities of Oakland and Arcata in California, and several NGOs brought suit in August 2002 under NEPA against U.S. export cred-

it agencies for funding fossil fuel projects. The Export-Import Bank (ExIm) and the Overseas Private Investment Corporation (OPIC) provided over \$32 billion in financing and insurance for oil fields, pipelines, and coal-fired power plants over the past 10 years without assessing their contribution to global warming or their impact on the U.S. environment as required under NEPA. The U.S. Government has filed motions to dismiss the case, arguing that the plaintiffs lack standing, that ExIm and OPIC have not taken any action subjecting them to judicial review, and that OPIC is exempt from NEPA. The case is still pending.

More information:

<http://www.climatelawsuit.org>

1.4 German NGOs Sue Government for Export Credit Support of Fossil Fuel Projects

NGOs began legal action against the German government in June 2004 for its secret export credit support for fossil fuel projects since 1997, when the Kyoto Protocol was agreed to. Germanwatch and Friends of the Earth Germany (BUND) have taken action against the German Federal Ministry of Economics and Labour in the Administrative Court in Berlin to force the German government, under the freedom of environmental information law, to disclose the contribution to climate change made by projects supported by the German taxpayer through its export credit agency Euler Hermes AG. The case is still pending.

More information:

http://www.climatelaw.org/media/german_suit

<http://www.foei.org/publications/link/rights/32case.html>

1.5 U.S. State Sets Carbon "Shadow Price"

Minnesota approves the siting of new power plants based on analysis of the plants' social costs and benefits. In order to account for a proposed plant's carbon dioxide emissions, Minnesota's Public Utilities Commission determined that assessment

of a plant's cost must include a charge of US\$0.30 – \$3.10 per ton of CO₂ emitted, depending on geographic location. The power industry challenged that assessment process. The court upheld the analysis in 1998.

More information:

<http://www.globelaw.com/Climate/MinnCase.htm>

1.6 U.S. States and NGOs Sue Department of Energy for Weakening Efficiency Standards

Seven U.S. states and NGOs sued the U.S. Department of Energy (DOE) under the Energy Policy and Conservation Act (EPCA) and the Administrative Procedure Act (APA). EPCA requires DOE to get energy efficiency standards for appliances at the maximum level that is technologically and economically feasible. DOE set standards for air conditioners (now used in 85% of U.S. homes and accounting for over one-third of U.S. peak electricity demand). In early 2001, the new U.S. presidential administration sought to replace the standards with much weaker ones. The states and NGOs sued, basing their interest on the global warming impact of the increased emissions. The court held in 2003 that the weakening of the standards violated EPCA and the APA and reinstated the standards.

More information:

<http://www.commondreams.org/headlines04/0114-04.htm>

1.7 Industry Sues U.S. State for Setting Vehicle Greenhouse Gas Emissions Standards

California is the only U.S. state with the authority to set vehicle emission standards (because it did so before the federal Clean Air Act was enacted). California set greenhouse gas emission standards to take effect in 2009. In December 2004, industry sued California and has submitted papers challenging the scientific link between CO₂ emissions and global warming. California has moved to dismiss on procedural grounds. The case is pending.

More information:

<http://www.enn.com/today.html?id=550>
<http://www.autoalliance.org/archives/000163.html>

2 LITIGATION AS A CONSEQUENCE OF GOVERNMENT ACTION & INACTION

2.1 States and NGOs Sue U.S. EPA to Force Regulation of Greenhouse Gases

Twelve U.S. states, several cities, and several NGOs sued the U.S. EPA in 2003 for its failure to regulate greenhouse gas emissions from vehicles. Plaintiffs claim that the EPA erred in deciding that carbon dioxide was not a "pollutant" under the Clean Air Act. The EPA asserts that the broad, inclusive language of the Act should not be read to authorize as major a program as one increasing the fuel efficiency of cars. This case is still pending; oral arguments in the U.S. Court of Appeals for the D.C. Circuit were just heard this past Friday.

More information:

<http://www.nytimes.com/2005/04/09/politics/09emissions.html>.
<http://www.climatelaw.org/media/states.challenge.bush>.

2.2 NGOs Challenges Australian Minister's Power to Preclude Consideration of Greenhouse Gases

Australian NGOs challenged a minister's power to prevent a planning body from considering greenhouse gas emissions before deciding to approve a coal mine expansion. In November 2004, the judge agreed with the NGOs and said that these emissions must be taken into account.

More information:

<http://www.climatelaw.org/media/CANA.Australia>
<http://www.austlii.edu.au/au/cases/vic/VCA>

T/2004/2029.html.

2.3 Argentine Citizens Sue for Access to Information on Climate Change Actions

As the result of severe flooding in 2003, Argentine citizens brought legal action against their government under Argentina's Acción Informativa mechanism and Article 6 of the UN Framework Convention on Climate Change to force the government to admit to its official failure to adapt to climate change. The case revealed that changes to infrastructure to prevent flooding had been developed by governmental authorities but not implemented.

More information:

<http://www.climatenetwork.org/eco/cops/cop10/en/ECOCOP1010.pdf>

3 INTERNATIONAL LAW & CLIMATE LITIGATION

3.1 Arctic Peoples to Frame U.S. Inaction on Climate Change as Human Rights Violation

The Inuit Circumpolar Conference (ICC) intends to bring a petition in the near future against the United States in the Inter-American Human Rights Commission. The ICC case will highlight the link between human rights and environmental degradation, especially considering that climate change is projected to impact the Arctic regions sooner and more substantially than other parts of the Earth.

More information:

<http://www.inuit.org/index.asp?lang=eng&num=244>
<http://www.climatelaw.org/media/inuit>.

3.2 NGOs Submit Climate Change Petitions Under World Heritage Convention

NGOs and others submitted a petition to the World Heritage Committee in November 2004 to place the Sagarmatha National Park (Everest) on the World

Heritage Danger List as a result of glacial degradation caused by climate change. Sagarmatha National Park is a focal point of Nepal's tourism-based economy and is rich in biodiversity, which is imperiled by melting glaciers that could potentially destroy the park's natural and cultural value and place thousands of lives at risk. The petition was handed in along with petitions calling for coral reefs off Belize and glaciers in Peru to be added to the Danger List as a result of climate change.

More information:

<http://www.climatelaw.org/media/UNESCO>