

Jeff Civins in *The Advocate*: Risks to the Energy Sector Posted by Climate Change Litigation

January 11, 2019 Jeff Civins

PRACTICES Climate Change and Corporate Sustainability, Environmental Due Diligence, Environmental Litigation, Environmental

Fossil fuels are under attack in the legislative, regulatory, and judicial arenas, and in the market place—driven by environmental concerns, especially global warming and associated climate change. The Sierra Club, for example, has launched a “Beyond Dirty Fuels Initiative,” seeking to “push back against the construction of dirty fossil fuel infrastructure that would lock America into decades more of climate-polluting oil and gas production.” The Trump Administration’s disavowal of climate change has stimulated efforts to address anthropogenic climate change and its effects through creative litigation against both the federal government and the energy sector. Those efforts are the focus of this article.

This article provides scientific and regulatory context, and then examples of creative claims filed against energy companies based on: (1) failure to mitigate the effects of climate change, brought by state and local governments seeking to recover damages to infrastructure resulting from rising sea levels and flooding; and (2) failure to adapt to the effects of climate change, brought by non-governmental organizations (NGOs), seeking fines and/or injunctive relief for alleged violations of regulatory programs or for imminent and substantial endangerment. It then discusses litigation against federal agencies under the National Environmental Policy Act (NEPA) based on the agencies’ alleged failure to address upstream or downstream carbon, brought by NGOs seeking to regulate or block energy company projects.

Scientific and Regulatory Context

Greenhouse gases (GHGs) act like a blanket and trap energy in the atmosphere causing global warming, which is a good thing. The concern is with the enhanced global warming and climate change that anthropogenic contributions of GHGs produce, resulting in increases in sea levels, the frequency and severity of storms, and flooding. For the energy sector, the GHGs of particular concern are carbon dioxide (CO₂), a product of fossil fuel combustion, and methane (CH₄), the predominant component of natural gas. GHGs are often referred to as “carbon,” because they are described in terms of CO₂ equivalents. For example, methane is 28-36 times more potent than CO₂ in terms of its global warming potential over 100 years.

There is a significant factual difference between “carbon pollution” and pollution attributable to other air contaminants. The effects of carbon pollution are global and generally indirect, and differ from those associated with traditional air pollutants, which are direct—adversely affecting human health and the environment—and regional. This difference has legal and scientific implications. ...

Excerpted from *The Advocate*. To read the full article, click [here](#). (Subscription required)