

A Turning Point in Combating Climate Change May Be Here

Investigations against oil and coal companies raise optimism for a cleaner future

- By [Shannon Hall](#) on December 14, 2015



Darryl Peroni @iStock.com

The world is shifting. At least that's what Bill McKibben, a leading environmental activist, [tweeted](#) on November 6. He was referring to the recent wave of push-back against fossil fuel companies. On November 5 New York State Attorney General Eric Schneiderman opened an investigation against ExxonMobil for [potentially lying](#) to the public and investors about the risks of climate change. The next day, the Keystone XL pipeline, which would have transported 830,000 barrels of crude oil per day from the Canadian tar sands to refineries near Houston, was [rejected by Pres. Barack Obama](#) and effectively killed. Then only two days later, Peabody Energy announced that a two-year investigation by Schneiderman had come to a close, forcing the company to [disclose any financial risks](#) it faces from future government policies and regulations related to climate change.

It is tempting to take the rush of recent events optimistically, especially if you have been waiting to see more concerted action against human causes of climate change. In addition to McKibben, several activists, scientists and environmental lawyers agree the world is shifting from one doused in denial to one that might take big steps in the right direction. Such news, however, begs the question: What's behind this change of heart? "The science is strong and getting stronger," says Richard Alley, a geoscientist at The Pennsylvania State University. "And despite great efforts by clever people over decades, no one has succeeded in finding any real problems with the science or in generating any serious competing ideas." But what's more likely to change public opinion, many climate scientists point out, is the extreme weather prevalent today. Whether it is California's record-breaking drought or the fact that 2015, like the year before it, will set yet another first for [the hottest year on record](#), people are now seeing the impacts that likely arise from climate change in their own backyards. It is no longer a threat relegated to the future and faraway places.

Not only is the public beginning to accept climate change as a real danger, they're realizing that fighting it is a viable option. Penn State climate scientist Michael Mann points to "the remarkable growth of renewable energy" as adding to the sense that public perception is at a tipping point. Cleaner energy sources are surging so much that 2014 marked the first time in 40 years that global carbon dioxide emissions [stalled](#), and even dropped during a time of economic growth. With the tie between economic growth and lower carbon emissions severed, the public has begun to see renewable energy as a viable alternative. Indeed, a recent Pew Research Center survey showed [a clear global consensus](#) on a need to tackle climate change. Across all 40 nations polled, roughly 78 percent of residents supported the idea that their countries should limit greenhouse gas emissions.

The perceived turning point from climate denialism to action does not appear to be a scientist's pipe dream, either. Lawyers who work at the forefront of climate policy agree that strong science and the ability to tackle climate change are changing people's minds. But several legal turns have also taken place. "I actually think there is a trend in public conversations and even in private conversations toward thinking about liability for major energy companies for climate harm in a way we haven't seen in many years," says Cara Horowitz, co-executive director of the Emmett Institute on Climate Change and the Environment at the University of California, Los Angeles, School of Law. And proving companies liable might just be the next step toward a renewable future.

Horowitz says a legal angle into challenging big, man-made sources of carbon emissions began in court cases in the mid-2000s, particularly three lawsuits that were brought against fossil fuel companies under the federal common law of nuisance. Villagers in the Alaska coastal town [Kivalina filed suit](#) against several oil and gas companies in an attempt to be compensated for their relocation costs after flooding caused by the changing Arctic climate destroyed their homes. [Residents along the Gulf of Mexico coast sued dozens](#) of the nation's largest carbon polluters when they suffered losses from Hurricane Katrina. And several states [brought a lawsuit](#) against some of the nation's largest electricity generators to cut their greenhouse gas emissions.

All three cases failed after they reached the U.S. Supreme Court but they laid the groundwork for the legal thinking that Horowitz says is resurging now. Several changes have taken place in the years since. A crucial event occurred in 2013 when researcher and author Richard Heede at the Climate Accountability Institute calculated that [only 90 companies](#), including Chevron, ExxonMobil and BP, were largely responsible for the climate crisis. "So relatively few companies really are proportionally responsible for a pretty large share of the climate change problem in a way that allows lawyers and others to start thinking about causality in a legal sense," Horowitz says.

Fuel was added to the fire earlier this year when an [InsideClimate News investigation](#) revealed that Exxon was aware of climate change as early as 1977 (before the oil giant merged with Mobil). The news group claimed that despite the information, the company spent decades refusing to publicly acknowledge climate change, arguing the science was still highly uncertain. It even promoted climate misinformation—in 1989 the company helped create the Global Climate Coalition to question the scientific basis of climate change concerns and dissuade the U.S. from signing the Kyoto Protocol to control greenhouse gas emissions. Had Exxon been immediately transparent about its own research, the world might have begun developing clean energy decades earlier. As such, many experts have likened these actions to the deceit spread by the

tobacco industry regarding the health risks of smoking.

The key word, “deceit,” has opened up a new legal pathway to investigate these companies—New York State’s 1921 Martin Act. Because of the state’s rich history of publicly traded financial markets, the law confers on its attorney general broad powers to investigate financial fraud. “There’s no law quite like the Martin Act,” says Patrick Parenteau, former director of Vermont Law School’s Environmental Law Center and the Environmental and Natural Resources Law Clinic, “[It’s] the strongest law in the country.”

Although the law is nearly a century old, it has never been used in the fight against climate change. Using it against ExxonMobil will not be based on claims of injuries wrought by global warming (like the cases in the mid-2000s) but rather on failure to disclose information that investors need to know. If more companies have to accurately disclose any risks to their bottom line, like Peabody Energy now has to do, they might no longer stand on firm financial ground. They may lose investors and customers, helping shift investment from fossil fuel companies and toward those promoting clean energy. “It’s kind of a back door to influencing the behavior of some of the largest oil and gas companies for the sake of climate change,” Horowitz says.

And it is likely that the investigation will spur legal inquiries into other oil companies. ExxonMobil is not the only oil and gas company whose public stance on climate change did not match what we—and almost certainly they—knew about the risks of global warming at the time, Horowitz says. She and Parenteau agree that other companies likely listened to Exxon’s experts and did some of their own research as well. If other investigations can prove that these companies also deceived the public, they too could lose investors. “It wouldn’t surprise me,” Horowitz says, “if this is the beginning of a storm.”