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Investigation on climate change fraud intensifies, with 15 states joining coalition

By **James Osborne** | March 29, 2016 | Updated: March 29, 2016 10:35pm



Photo: Mayra Beltran, Houston Chronicle

Exxon Mobil's has a complex in Baytown.

WASHINGTON - Multiple state probes into whether Exxon Mobil misled its investors and the public on climate change could expand to other fossil fuel companies.

A coalition of law enforcement officials from 15 states said Tuesday they were exploring new investigations of the oil and coal industries to determine whether past attempts to undermine climate change research might constitute fraud.

"They're drilling places in the Arctic they couldn't drill 20 years ago because the ice sheets are melting. Yet they told the public for years there were no competent models, a phrase used by an Exxon executive," New York Attorney General Eric Schneiderman said at a news conference. "The First Amendment does not give you the right to commit fraud."

After years of questioning climate change research, U.S. oil and coal companies are being forced to explain whether those positions matched with their own internal discussions on the subject. The possibility of further investigation adds to what is becoming an increasingly tough U.S. regulatory environment, with greater restrictions on carbon emissions and a growing body of science shows climate change is intensifying.

In November, Schneiderman said his office was investigating Irving-based Exxon over a campaign in the 1990s that questioned scientific research showing climate change was intensifying. Tuesday he said that investigation was ongoing and would be "aggressive" but "careful and meticulous."

California launched its own state probe in January. And top law enforcement officials from Massachusetts and the U.S. Virgin Islands said Tuesday they would also open investigations into Exxon.

Exxon shot back Tuesday, calling the investigations "politically motivated" and saying it was exploring its legal options.

"The allegations repeated today are an attempt to limit free speech and are the antithesis of scientific inquiry. Left unchallenged, they could stifle the search for solutions to the real risks



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from climate change," read a statement from Suzanne McCarron, Exxon vice president for public and government affairs.

Evolving battle

In recent years U.S. oil companies have largely backed off earlier efforts to question climate change, shifting to a position that fossil fuels are essential to maintaining the world's economy.

Even as companies like BP, Shell and Total have adopted a friendlier tone with European regulators, the strategy here on climate change regulation remains decidedly oppositionist, said Peter Huang, a business law professor at the University of Colorado.

"They're doing the same thing the cigarette companies did in the 1960s," he said.

"They know they're going to lose, so their only strategy is to delay as long as possible."

Last year the New York attorney general announced that Peabody Energy, one of the world's largest coal producers, had violated state law in its stance on climate change, forcing the company to rewrite statements to shareholders. The revision stated: "Concerns about the environmental impacts of coal combustion ... could significantly affect demand for our

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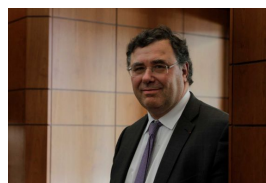
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products or our securities."

The expansion of the New York investigation could now mean oil companies' research, data and internal correspondence will be now be opened to law enforcement.

That probe drew criticism from some industry groups, which questioned the government's ability to pursue climate change regulation following a recent decision by the U.S. Supreme Court to stay President Obama's plan to cut carbon emissions from power plants.

"These Attorneys General are off on a quixotic journey to solve a problem that barely cracks the list of priorities for the average American," Laura Sheehan, a spokeswoman for the American Coalition for Clean Coal Electricity, said in a statement.

Interstate collaboration

Exxon's position on climate change came under renewed scrutiny last year after articles by Inside Climate News and the Los Angeles Times chronicled how, in the 1980s, company scientists had warned of the risks to the oil business from climate change - a decade before Exxon funded research questioning whether it was actually happening.

James Tierney, former attorney general of Maine and now director of the National State Attorneys General program at Columbia Law School, said he expected the fossil fuel investigation to follow a similar track to state attorneys' efforts to bring fraud cases against the tobacco industry in the 1990s and credit ratings agencies following the financial crisis in 2008. Tierney consulted with states during suits against tobacco companies.

"It's a fact determination. You can't say whatever you want and just say its free speech," he said. "If you get an email from the CEO at Exxon saying, 'I don't give a damn about the climate,' that would hurt."

With Democratic attorneys general from California to Virginia, along with the District of Columbia and the U.S. Virgin Islands, joining forces, the manpower devoted to such

investigations is likely to grow.

On Tuesday, those officials gathered in Albany, N.Y., and indicated they would consider any and all means to bring cases against those misleading the public not only on climate change but on the ability of wind and solar energy to replace oil and coal.

Texas Attorney General Ken Paxton was not among them and did not respond to a request for comment.

Oil executives have consistently questioned society's ability to shift significantly away from fossil fuels, which now supply about 80 percent of the world's energy.

'They set themselves back'

Former Vice President Al Gore, whose documentary "An Inconvenient Truth" helped incite the climate change movement a decade ago, appeared at the news conference. He said fossil fuel companies were now funding a lobbying effort to enact laws that slowed the growth of renewable energy and urged officials to stop them.

"It took 40 years for (the tobacco industry) to be held to account under the law. We do not have 40 years," Gore said. "Every night on the news now, it's like a nature hike through the Book of Revelation."

Some oil companies are already taking steps to adapt, increasing investments in clean energy and incorporating into their business models a decline in the demand for oil in the decades ahead.

But at the same time, some of those same companies are now being forced to confront statements made decades ago, said Amy Jaffe, executive director of energy and sustainability at the Institute of Transportation Studies at the University of California-Davis.

"I think there are people that wish when Exxon took a leadership position on climate change,

if they could roll the clock back, they'd have stood up more visibly against that stance," she said.

"They diverted themselves from understanding what that future might have been by taking the position only fanatics believe in climate change. They set themselves back."

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