



Letters

Spring 2020

Corporate Green 'Disclosures' Are Often Mere Marketing

by Steve Milloy, Senior Policy Fellow
As appearing in the *Wall Street Journal*



Climate-change partisans on both sides often accuse one another of dishonesty. Here's a suggestion for resolving that dispute in at least one important corner of the world—publicly owned companies.

Securities laws are built on disclosure and antifraud measures. Although climate isn't a special circumstance that requires unique disclosure rules, during the Obama years the Securities and Exchange Commission issued guidance to companies for making climate-related disclosures. The guidance focused mainly on disclosing risks to business operations and profitability either from extreme weather or climate regulation.

As a result of the guidance, corporate SEC filings now routinely

make banal reference to future risks from climate change. But in recent years companies have also turned climate change from a disclosed risk into a marketing opportunity.

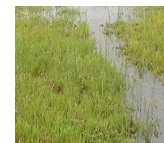
Companies often tout what they are doing to “save the planet” or “combat climate change.” None of these claims are tethered to reality, much less securities laws. Here are some examples, not intended to pick on any one company. Apple claims it is “significantly reducing emissions to address climate change.” But Apple's claimed CO₂ emissions amount to a mere 0.04% of the global total of 53.5 billion tons.

Exxon Mobil pats itself on the back for playing an “essential role in addressing the risks of climate change” by cutting its operational emissions by 20 million tons last year. What the company doesn't mention is that during the same period, Exxon Mobil sold products that when burned let out close to 600 million tons of emissions.

Electric utility Xcel claims its climate actions (i.e., shutting down coal plants) are “grounded in climate

In This Issue

The beginning of the end



E&E Legal's Greg Walcher discusses the Administration's changes to the WOTUS rule.

Page 2

Greenwashing Shareholder Proposal



E&E Legal's Steve Milloy submitted a shareholder proposal for Exxon-Mobil's annual meeting

blasting the company's greenwashing.

Page 3

The Cure is worse than the ailment



E&E Legal's Greg Walcher discusses skyrocketing electric bills associated with renewable energy requirements.

Page 4

Two Tales of One City



E&E Legal's Katy Grimes describes how CA and NV are handling the same city very differently.

Page 5

R.I. Climate Lawsuit Was About the Money

E&E Legal's Craig Richardson writes that the climate change shake-down suit in R.I. isn't about the environment, it's about money.

Page 6

Continued on Page 5

The beginning of the end

by Greg Walcher, Senior Policy Fellow
As appearing in *The Daily Sentinel*



This week the Trump administration released its “final” version of the new regulation defining exactly what waters are regulated by the federal Clean Water Act, under the section known as Waters of the United States (WOTUS). But is anything in government ever really “final?”

Officially, this is the final legal step in ending a lengthy argument started by the Obama EPA in 2015, when it issued a “new interpretation” of WOTUS. Officials at the time said the new rule gave EPA and the Army Corps of Engineers “broader authority over the nation’s waterways.” But it wasn’t just the nation’s waterways — it was virtually all water, including waters explicitly exempted by the Clean Water Act itself. Last September the Trump EPA officially withdrew the Obama rule, which had already been blocked in 26 states by several federal courts, which found that it illegally reached beyond the government’s authority. The preliminary version of this new replacement rule was published in January.

Repealing a regulation, though, is roughly the same process as creating a new one. That requires advance publication, time for public comments, agency responses, and lots of meetings. That process “ends” with publication of the final decision, so many observers are calling this week’s announcement “the beginning of the end” of the contro-

versy. They know it isn’t the absolute end, because it will unquestionably be the subject of protracted environmental industry lawsuits, which will drag on through numerous courts for several years.

The Obama EPA said it wanted to stop “the wanton destruction of wetlands,” especially to increase farmland. That meant an end to the levees and dikes that permit agriculture throughout much of the Mississippi and Missouri basins, the breadbasket of the world. So the EPA asserted its authority over every stock watering pond, ditch, puddle, and parking lot drain in the U.S., a vast expansion, considering the law specifically applies to America’s “navigable” rivers, bays, and oceans. The law clearly says that inland waters belong to the states, as was always understood.

Because the new rule returns the original congressional interpretation, it necessarily reduces the scope of federal authority, since the Obama attempt was a vast broadening of that scope. Nevertheless, environmental activists were quick to level the predictable accusation. “It would remove protections from a majority of the country’s wetlands and at least 18 percent of streams,” according to a “Greenwire” reporter. Translation: more than half of the wetlands and 18 percent of all the streams Obama’s EPA sought to regulate were outside the scope of its legal authority.

For me, the most gratifying aspect of the newly finalized rule is its terminology. That’s because I have been harping for several years that they ought to stop calling it WOTUS and start calling it NWOTUS – navigable waters of the U.S. Now, the new rule officially uses that term.

Words matter. The Clean Water Act of 1972, from which

EPA gets this authority, contains the phrase “waters of the U.S.” in 12 places. Of those, nine use the phrase “navigable waters of the U.S.,” and the other three refer specifically to barges and the Gulf Inter-coastal Waterway. In the definitions section of the law, “navigable waters” is defined as “waters of the U.S.,” meaning the terms are synonymous. There are no “waters of the U.S.” that are not navigable. Not in the law.

No wonder Obama officials and their allies in the environmental industry always used the acronym WOTUS — they did not want to use the acronym NWOTUS — what the Clean Water Act actually says — because it would be too obvious that their agenda goes beyond the law. That landmark anti-pollution law has been amended at least four times since 1972, yet Congress has never changed the plain and unambiguous language of “navigable waters of the U.S.” It intended to stop pollution of navigable waterways, which involve interstate commerce, and asserted no federal authority over smaller bodies of non-navigable state waters.

The new “Navigable Waters Protection Rule” finally returns legal enforcement to the precise areas Congress mandated, “while adhering to Congress’ policy directive to preserve States’ primary authority over land and water resources.” As the announcement said, “This final definition increases the predictability and consistency of Clean Water Act programs.” That’s because it is finally clear what is federal, and what is not.

That does not mean the process ends now, because of the coming lawsuits. So it might more accurately be described as “the end of the beginning” than the other way around. But it is, finally, the right beginning. □

Milloy's ExxonMobil Greenwashing Shareholder Proposal

by Steve Milloy, Senior Policy Fellow
As appearing on Junkscience.com



Below is my 3-minute presentation of my shareholder proposal at today's ExxonMobil annual meeting. Although I lost the shareholder vote — both management and institutional shareholders are climate bedwetters or activists — I got enough votes to have my proposal automatically qualify for next's annual meeting. I'll be back.

Good morning, my fellow shareholders. My name is Steve Milloy.

Our share price was rocked this year by an oil production war and the coronavirus lockdown.

You may think these events were unforeseeable and management is simply doing the best it can.

Or, you can realize ExxonMobil operates in a dangerous and unpredictable world where management must be prepared for all sorts of catastrophic events.

I filed my shareholder proposal because I take the latter view and management is letting us down.

Our world runs on fossil fuels.

Nothing in our world happens without them.

Nothing.

And now to recover from the coronavirus lockdown, we will need cheap, reliable fossil fuels more than ever.

But what is management

doing?

Management is helping radical left-wing groups scare the public about fossil fuel emissions.

Management is lobbying for a CO2 tax so consumers use less of the product Exxon sells.

Management wants America to rejoin the Paris Climate Agreement — a hoax of a treaty that would limit fossil fuel use in the US while allowing Communist China to do whatever it wants.

Is management incompetent? Or just irresponsible?

One thing is for sure.

When management talks about climate, it is spewing nonsense.

You can read about some of management's baloney in my shareholder proposal or in my op-ed in today's Wall Street Journal, but here's the bottom line:

ExxonMobil could stop selling oil and gas today and forever, and it would make no difference to weather or climate.

In fact, the entire US could stop emitting today and forever, and it would make no difference to weather or climate.

The math is simple.

Management says it is simply preparing for the inevitable low-carbon world.

But remember nothing in the real world happens or will happen anytime soon without oil and gas.

Even left-wing filmmaker Michael Moore was compelled to expose the fraud of renewable energy and the low-carbon world in his documentary "Planet of the Humans."

The reality of a low-carbon world would be poorer and dirtier, and with a much lower standard of living.

The death and deprivation

of a low carbon world would make the tragedy of COVID19 look like a sneeze.

Preparing to knuckle under to a low-carbon world is tantamount to getting used to the idea of a Communist China-dominated world.

Management should be fighting the low-carbon world, not facilitating this global suicide.

Climate radicals want to go from the economic and societal devastation of the coronavirus lockdown straight into to the economic and societal devastation of a climate lockdown. They say this all the time. And they are serious.

Many of you may be thinking, "Oh, that'll never happen."

But did you ever imagine the price of oil could go below zero, as it did in April?

We need management to dial into reality.

Yes, there is a real climate risk out there, but it's got nothing to do with the weather.

Climate and the low-carbon world are not about controlling the weather.

They're about controlling us.

Just ask Michael Moore, who just had his film yanked down off YouTube because it exposed the ugly truth about renewable energy and the green fraud behind it.

The real threat we face is climate communism a strong, but realistic term.

And management wants to surrender ExxonMobil, our investments, our standard of living and our liberties to it.

No thank you.

I'm not worried about the weather in the year 2050.

I'm worried about the totalitarianism of the year 1984.

And you should be, too.

Thank you. □

Cure is worse than the ailment

by Greg Walcher, Senior Policy Fellow
As appearing in *The Daily Sentinel*



It is fashionable for pundits to quote the old adage, “the cure is worse than the ailment,” referring to the imposition of martial law, under the guise of public health. Many Americans now think even coronavirus may hurt the country less profoundly than lockdowns, quarantines, mandatory business closures, decreeing who is essential and who is not, dictating the number of customers a business may serve, or unconstitutionally banning church services.

Policies that cause worse problems than they were meant to solve are not new, of course, nor unique to public health issues. I often ponder the unintended consequences of environmental policies, especially those involving renewable energy. Though prompted by an almost-universal desire to end pollution and improve the environment, sometimes the result is also higher electric bills, for example.

Many states have now passed renewable energy mandates, requiring a certain percentage of electric power to come from renewables, especially wind and solar. Some governors and legislatures, including Colorado’s, have set ambitious goals to completely banish fossil fuels within a few years. It is a popular position, as recent elections show, but we don’t always ask how it will be achieved.

In some states, the plan is developed enough that people

are beginning to see what it really means. The most recent example, comparable to what it would require in Colorado, is Virginia’s new “Clean Economy Act,” adopted last month. That state’s utility monopoly, Dominion Energy, has published its plan to reach “net zero” greenhouse gas emissions by 2050, as now required by law. The first step is to raise electric rates for families, businesses, hospitals, and schools by 3% per year for the next 10 years. On average, families will pay an additional \$500 per year for electricity.

In theory, that’s enough money to build a mix of wind and solar facilities large enough to replace the entire power supply of a state with 8.5 million people. That will include over 31,000 megawatts of solar capacity, which the report says will require a land area 25 percent larger than Fairfax County, roughly 313,000 acres, or nearly 500 square miles. It will also include at least 430 colossal wind turbines off-shore, and thousands of half-ton battery packs to store energy for use when the sun doesn’t shine and the wind doesn’t blow.

The higher rates may not be affordable for many families. But aside from economics, there are two specific environmental problems with such an ambitious plan. First, as my friend Paul Driessen of CFACT points out in an excellent column, there is no discussion about the impacts of manufacturing all that equipment – no estimate of the steel, aluminum, concrete, copper, lithium, cobalt, silica, rare earth metals and countless other materials needed to manufacture miles of solar panels and hundreds of wind turbines, nor of the mining impacts or the oil and gas required. We have a clue, though. Science writer and journalist Matt Ridley says wind turbine manufac-

turing requires 200 times more raw materials per megawatt of power than modern combined-cycle gas turbines. Solar panels are made of silicon, aluminum, copper, boron, phosphorous, rare earths and other minerals that must be mined, and the manufacturing process leaves highly toxic waste behind. In recent years, that manufacturing has moved from Europe, Japan, and the U.S. to China, Malaysia, Taiwan, and the Philippines— countries far less concerned about protecting the environment or their workers.

Second, now that people can see what it takes to make a state completely “green,” they are considering how the plan will impact local environments, and predictably, environmental organizations are unhappy. That’s because Virginia has no area of 500 square miles where there are no people, farms, plants, or wildlife. That is the equivalent of 237,000 football fields, an area twice the size of the entire Grand Valley.

Here is a little secret — it will never happen. There is no chance such a huge area of Virginia countryside will be denuded of vegetation, covered with aluminum, steel, and plastic, and peppered with access roads and power lines. The environmental impact statements would take years, followed by decades of appeals, lawsuits, and court orders sending it back to the drawing boards.

Dominion Power will not be required to refund the money, though. They’ll keep the 30% increase whether they build any of this or not (in case anyone wonders why the utility would support such a pie-in-the-sky scheme). Other states, like Colorado, should be watching closely before adopting similar schemes, “cures” that might be worse than the ailment. □

Two Tales of One City: South Lake Tahoe

by Katie Grimes, Senior Media Fellow
As Appearing in the *California Globe*



South Lake Tahoe Mayor threatening no Memorial Day, no July 4th fireworks, and maybe no Labor Day

Despite that El Dorado County has reopened, the Mayor of South Lake Tahoe is telling tourists to stay away or pay a \$1,000 fine. The Tahoe Basin draws millions of visitors each year.

With no deaths due to COVID-19 in El Dorado County, the Board of Supervisors recently met and agreed it is time to reopen, *California Globe* recently reported.

South Lake Tahoe is unique:

the city straddles the California-Nevada border. Part of the city is in California, and the rest of it is in Nevada, and the contrasts are stark.

Across the state line, the Nevada side is open for business: dine-in restaurants and eateries, boutiques, barbers and salons, brew pubs, ski shops and watercraft rentals, for rent to use on the lake as it opens.

KCRA reported on the little tyrant mayor of South Lake Tahoe, threatening no Memorial Day opening, no fireworks on July 4th, and maybe no Labor Day weekend.

It's curious that Mayor Jason Collin doesn't realize that his city is a tourist town, and cannot survive without... tourists.

Collin said he could not estimate when the city might reopen to tourists. "I can almost guarantee we won't be open by Memorial Day."

Memorial Day weekend is the traditional kickoff to the summer sea-

son and a gauge for how business will be in the months that follow.

Memorial Day weekend is also when most cabin owners open up after the long winter.

South Lake Tahoe's much anticipated annual Fourth of July Fireworks show has officially been canceled, according to Mayor Collin.

When asked if a Labor Day fireworks show is a certainty, Collin said, "we're not exactly sure. This will definitely not be a normal summer in Tahoe."

No it won't be a normal Lake Tahoe summer as visitors drive right past all of the shuttered California side shops, restaurants, motels, and businesses on Lake Tahoe Blvd., across the border to the Nevada side where casinos, hotels and fun await them.

With Mayor Jason Collin's term up in November 2020, perhaps he will have a challenger. □

Green "Disclosures' (Cont.)

science," namely the 2 degree Celsius limit on global temperature increase prescribed by the United Nations. But as revealed in the 2009 Climategate emails, the 2-degree target is arbitrary.

Nuclear utility Exelon sounds like an unhinged environmental group on its website: "We need the Earth. Today, it needs us." Toward that self-exalted purpose, Exelon boasts of closing the few coal plants it had. Meanwhile, China built more coal power capacity in 2019 (45 gigawatts) than all U.S. utilities plan to close through 2025 (17 gigawatts).

Amazon boasts about its "commitment to meet the Paris Agreement 10 years early." But the only entities that can meet the Paris climate accord are the nations that signed it. The goal of the Paris Agreement, to hold average global temperature within 1.5 degrees of the

historic mean, couldn't be achieved by Amazon under any circumstances.

I petitioned the SEC in 2019 to update its climate guidance and require companies that choose to talk about climate to do so honestly, just as companies are required to issue honest standard financial disclosures.

If a company wants to tout emissions cuts, for example, it should mention that man-made emissions of greenhouse gases are 55.3 billion tons a year and are going up, according to the U.N. Or if a utility wants to boast about closing a few coal plants, it must also describe how there are hundreds, perhaps more than 1,000, new coal plants being built around the world. Shareholders should know that in a global context, corporate actions on climate are a lot smaller than advertised—closer to zero than hero.

While SEC commissioners haven't responded to my petition,

SEC staff have agreed with me two years in a row. This year EM asked SEC staff for permission to exclude my proposal from its annual shareholder meeting materials on the basis that it disclosed to shareholders the benefits and costs of its climate related activities. In response, I pointed out the many (we'll generously call them) "errors" in Exxon Mobil's claims. SEC staff agreed with me, and I will be presenting my proposal at the Exxon Mobil shareholder meeting on May 27.

If CEOs want to embrace the hypothesis that climate catastrophe looms and surf the benefits of touting their actions on climate, that's fine. But they must be honest in discussing what they are accomplishing, if anything. The now standard practice of greenwashing misleads investors and the public, and is inconsistent with securities law. □

Rhode Island Climate Lawsuit Was Always About the Money

by Craig Richardson, President
As appearing in the *RealClear Energy*

Revealing the clandestine interactions between environmental activists and left-leaning state officials who are promoting climate change lawsuits is a challenge, but a clear, disturbing picture has emerged regarding climate litigation filed in Rhode Island. Make no mistake; leftist politicians in Rhode Island who are suing energy companies are only in it for the money.

As way of background, Rhode Island Attorney General Peter F. Kilmartin initiated a lawsuit using the legally dubious “public nuisance” statute against just 14 energy producers in 2018, holding them alone financially responsible for “climate change” and for related damages not only alleged to have occurred, but for damages that may or may not be sustained at some point in the future. Never mind that the state itself is a major direct emitter of greenhouse gases through its state buildings, fleet of vehicles, and public works projects.

Using a Narragansett sea wall as a backdrop for his photo-op announcement of the lawsuit, Kilmartin spared no rhetoric vilifying “Big Oil” for supposedly “concealing the dangers” of global warming to promote their “ever-increasing revenues in their pockets.” But thanks to some astonishingly candid remarks made by a high-ranking state official, we now know this had little to do with sea walls, ocean levels or climate, and

everything to do with revenue – lots of it – for the small state with an enormous budget deficit.

Director of Rhode Island’s Department of Environmental Management Janet Coit bluntly admitted that her state was “looking for (as) sustainable funding stream.” This startling confession was made at a July conference sponsored by The Rockefeller Brothers Fund, backers of the “climate change” shakedown effort from the beginning, according to notes from two different sources attending.

The damning notes were obtained by the watchdog group Energy Policy Advocates and submitted within a memo in March accompanying an Amicus brief filed before the U.S. Court of Appeals for the First Circuit. The organization supports the argument that federal court is the proper venue for hearing the case rather than an activist state court and argues that the suit should be dismissed.

Coit conceded that efforts to get the publicly elected General Assembly of the cash-strapped state to fund global warming-related projects had failed, according to the typed and handwritten notes obtained under a state open records law.

The apparent answer was to circumvent the appropriate legislative channels and seek “jackpot justice” through lawsuit abuse. In suing oil and gas companies, Rhode Island hopes to score a windfall of multiple billions of dollars – a “sustainable funding stream” indeed. The trial lawyers who shopped this lawsuit to Rhode Island and a number of financially troubled states and cities across the country on a contingency basis stand to cash in on millions, if not billions.

Ultimately, lawsuits employing the public nuisance tactic typically fall apart up in appeals process. And for all practical purposes, the Rhode Island lawsuit was rendered moot even before it start because of the U.S. Supreme Court’s 8-0 ruling in the 2011 American Electric Power v. Connecticut case. The Court found that the Environmental Protection Agency and Congress alone retain the rightful regulatory authority on matters concerning greenhouse gas emissions under the Clean Air Act. That determination precludes entities such as Rhode Island from usurping executive and legislative prerogative in suing private corporations for purported global warming impacts.

Cookie-cutter lawsuits by New York City and San Francisco/Oakland ran into that same jurisdictional brick wall when federal judges dismissed their cash-grab attempts in 2018. There can be little doubt as to the outcome of Rhode Island’s bid to shakedown oil and gas companies. The only question is how much the companies will have to spend defending themselves, and how much of Rhode Island citizens’ resources will be wasted. □

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