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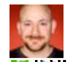

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May 31, 2007

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CO2 spewer? See you in court!

Filed under: Carbon emissions

A new study finds companies bracing for costly liability lawsuits for contributing to global warming

Carbon monoxide has proven one costly little emission for tobacco companies, as they've had to fork over billions of dollars in liability lawsuits over bodily harm caused by wares. The paint industry also has felt the pain of being held legally liable for the harmful effects of the lead in its products.

Well, now companies, including those in the tech industry, had best beware: Carbon dioxide and other greenhouse gas (GHG) emissions are increasingly being linked to global warming. As noted in the recent Intergovernmental Panel on Climate Change (IPCC) report, climate change, in turn, is being more conclusively linked to health problems, such as respiratory and coronary disease and heat stress, as well as adverse weather conditions, windstorms, droughts, heat waves, and increased lightning, which can affect an organization's business, either directly or by knocking out a utility or a supplier's operations.

According to a study titled "Limiting Liability in the Greenhouse," the growing awareness of global warming's effects and the threats they pose are a recipe for a new rash of lawsuits against companies that don't take steps to reduce CO2 emissions.

Crazy? Bloody unlikely? The tobacco industry probably felt the same way once upon a time. Some utility companies have already been slapped with lawsuits for contributing to global warming. The recent Supreme Court ruling that GHGs are pollutants that the EPA has the power to regulate just opens the door even wider.

One of the key points made up front in the report is that the authors aren't advocating liability lawsuits as a positive catalyst for positive change. Rather, "litigation reflects a market failure that can be avoided, at least in part, by adequate regulation, proactive reductions of greenhouse gas emissions, and adaptive strategies to prevent damages from climate change."

The report, by the way, was written by an independent trio of experts: Christina Ross, manager of technical services at LaCroix Davis, Evan Mills, staff scientist at Lawrence Berkeley National Laboratory, and Sean B. Hecht, executive director of The Environmental Law Center at UCLA School of Law. Available now, it also will appear in a forthcoming joint issue of the *Stanford Environmental Law Journal* and the *Stanford Journal of International Law*. It's a well-written, well-researched piece, too, and it makes for some interesting, if not troubling, reading.

Notably, the paper focuses on the insurance industry, but it mentions various industries. The info is undoubtedly relevant to just about any organization.

So let's examine some of the legal risks associated with global climate changes outlined in the study: One potential scenario is that you're a service provider -- maybe a hosted application company, an Internet provider, or an outsourced datacenter. Your local utility loses power due to climate-change-related weather conditions, such as a major hurricane. You can't maintain SLAs for your customers, and you've suddenly got costly legal troubles on your hands.

"Uptime is everything for these companies, and there's going to be more power outages, more stress on the electrical grid, " Mills says. "If IT operators aren't prepared, they may cause financial injuries to third parties."

The authors do offer some mitigation for this scenario. Among them: developing a business continuity plan; searching for alternative energy carriers other than electric, which is "particularly vulnerable,"; and investing in demand-side energy management and on-site power.

Or think Enron, but instead of the CEOs and other higher-ups fudging the financial numbers, they're fudging the data about the company's environmental impact. "Directors and officers' actions (or lack thereof) in managing climate change risks may depress shareholder value, and their disclosures about climate change risks are governed by specific federal laws that may subject them to personal liability," the report notes.

This type of scandal also could leak out to the public, tarnish a company's reputation, and result in a drop in stock prices. Next stop: court.

Another potential legal threat: A company could find itself sued because its products (for the IT industry, a server, perhaps) are less energy efficient than those of its competitors, thus producing more GHGs. A plaintiff could argue that he or she was harmed by climate change due the product's design defects. The report notes that this would be difficult to demonstrate in court, but the company would still incur legal fees (and bad press).

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The mitigation here should be pretty obvious, though perhaps easier said than done: Work to stay ahead of the curve in terms of product development. Fortunately, we're seeing plenty of innovation from hardware makers in their server and chip designs.

Alternatively, a company could also find itself being sued for bringing harm to individual or a class, or to a city through pollution, due to its general GHG emissions. This, too, would be difficult to prove in court, but there would be pesky legal fees, increased insurance rates, bad PR, and the like.

One of the mitigations is repeated time and again in the report to address just about every potential legal threat: reduce greenhouse-gas emissions and participate in emissions-offset activities.

Hardly anyone (exceptions might include certain types of lawyers and litigants) wants to see any of the litigation scenarios enumerated in the study (of which I've just scratched the surface). They're all-around bad: bad for business, bad for our health, bad for the environment.

The good news is, there are plenty of ways for companies to reduce the threats and the associated costs. At the same time, cutting your carbon emissions means you're cutting your power consumption, which translates into not just reduced risks but reduced bills.

"Limiting Liability in the Greenhouse" is available here [PDF]. Again, I highly recommend you read it if you're all at concerned about the legal implications of global warming, the impact it might have on your insurance, the future of your business, or global warming.

Posted by Ted Samson on May 31, 2007 12:03 AM

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CO2 Does NOT cause cliamte change
http://www.inteliorg.com/co2_climate_change.html

Posted by: Dr Coles at May 31, 2007 07:31 AM

That interview with NASA's administrator is pretty interesting, and certainly demonstrative that not everyone is convinced of the potential dangers of global warming. Here's a more direct link to the interview: http://www.spaceref.com/news/viewpr.html?pid=22729

The fact remains, though, that it's becoming increasingly recognized as a problem by many scientists, political leaders, business leaders, and individuals across the globe. Companies certainly have the choice of ignoring the noise and not making changes to their business practices, but doing so leaves them exposed to litigation, not to mention potential fines from the government as more legislation comes down the pike.

Posted by: Ted Samson at May 31, 2007 08:30 AM

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