Manufacturers push back against environmentalists' climate court strategy

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Manufacturers are pushing back against a growing array of climate change and other lawsuits brought by environmentalists and state attorneys general, saying that the activists are blaming business for activities that could go back as long as a century.

The effort is the first by the National Association of Manufacturers, the large national trade group representing manufacturers, or any large industry trade group for that matter, said spokesman Michael Short. "No effort like this," said Short. "We are the first group out there."

It quietly announced the new legal initiative last month.

"We’ve launched what we’ve called the Manufacturers’ Accountability Project and the intention is to push back on the use of lawsuits funded by activists to target manufacturers for a variety of problems, including we’re looking at the climate lawsuits," said Linda Kelly, the trade group’s senior vice president and general counsel, in an interview with the Washington Examiner.

One of the actions they intend to push back against is an investigation by Democratic state attorneys general, led by New York’s Eric Schneiderman, into claims that Exxon Mobil suppressed information about climate change after its own scientists warned it would harm their business.

Other actions go beyond climate change, such as last month’s decision in California state appeals court that used a nuisance ruling to get paint manufacturers to increase their payments to the state’s lead paint abatement program to include homes built before 1951, when the companies said they no longer were advertising lead in their paint.

Experts see the ruling as a potential precedent for a case making its way through the state’s court system in which states are trying to hold oil companies accountable for harmful climate pollution causing sea-level rise.

Kelly said the "trend has been to push this notion of various manufacturing activities and products as a public nuisance." She sees that as increasingly problematic if activists start building a record with lawsuits that the industry sees as shaped by an activist agenda, rather than real evidence of harm.

“We’re trying to raise awareness of the tactics that are behind these lawsuits and some of the groups that are funding them and how different interest groups are teaming up with state officials, because these lawsuits are being brought by states and by cities and counties, and show this isn’t an organic effort of different states and cities to try to recover damages," Kelly said.

The industry wants to educate lawyers and state attorneys general that the suits are “really something being shopped around by the plaintiff’s bar,” she said.

“It’s really diverting resources for manufacturers; even when they win these cases, it is very costly to defend them," Kelly said. “And manufacturers would rather spend that money investing in their companies and creating jobs and innovating to try to address the problems the lawsuits purport to address."

Kelly pointed out that one of the lawsuits made it all the way to the Supreme Court in 2011, American Electric Power v. Connecticut, where it was struck down in a unanimous 8-0 decision. The justices ruled that fossil fuel companies could not be sued for greenhouse gas emissions because federal law dictates that the Environmental Protection Agency regulates carbon dioxide under the Clean Air Act.

The climate change lawsuit was the first based on a public nuisance claim.
The manufacturers' pushback is in the beginning stages, but it is expected to become as prominent as the trade group's nationwide campaign against the Obama administration's strict ozone standards for smog, which would have placed pristine national parks out of compliance with nation air quality standards. The campaign released almost weekly reports on the detrimental effects of the pollution rules on specific cities and regions.

The Obama EPA eventually softened the ozone smog, but critics say the rules still are out of step with the ability of many regions to comply. Most states have not complied with the 2008 smog rules. The Trump administration is looking to delay the rules while EPA Administrator Scott Pruitt figures out a workable fix. Congress also is looking to pass legislation that changes how EPA regulates smog, allowing states to meet previous regulations before new rules are implemented.