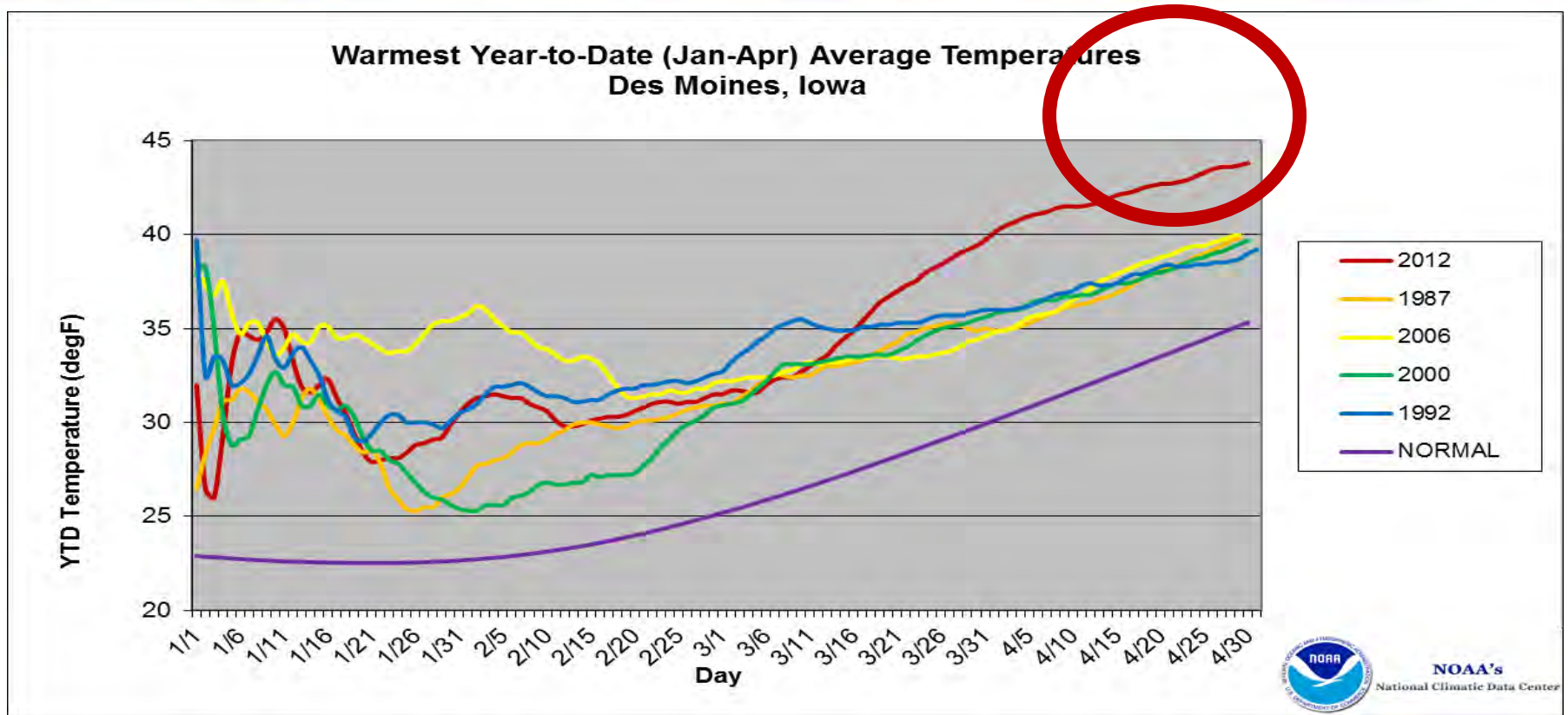


Getting Hot and Bothered About Climate Change

Erin L. Deady, Esq., AICP, LEED AP



Emissions & Climate Change



January-April 2012 was the **warmest** such period on record for the contiguous United States, with an average temperature of 45.4°F, 5.4°F above the long-term average.

State of the Climate-NOAA





“It’s getting hot in here,
so take off all your
clothes”
-Nelly



The Demand for Change



“He says he’ll only talk if you can assure him that those are energy efficient bulbs”

“...political resistance to climate change legislation may still be overwhelming. Yet the increasing number of self-regulatory actions by major multinational companies throw this conventional wisdom into question. Furthermore, they raise the ironic possibility that it will be corporate America that drags the U.S. government into the international system of greenhouse gas controls.


– Thomas P. Lyon



Part I

THE LAW ON SUSTAINABILITY, GHGS AND CLIMATE CHANGE

US\$18.95




**THE
COMPLETE
IDIOT'S
GUIDE TO**

Global Warming

- ★ The quick and easy way to make anyone feel guilty simply for being alive
- ★ Idiot-proof steps for destroying world's economy
- ★ Down-to-earth advice on suppressing dissent by pulling "scientific facts" out of your ass

ThePeoplesCube.com



GHGEs, Climate Change → Response



2funnypictures.blogspot.com

- United Nations Framework Convention on Climate Change (UNFCCC) (1992) voluntary goal of reducing GHGEs from developed countries to 1990 levels by 2000
- Kyoto Protocol (1997) binding targets to reduce GHGEs 5.2% below 1990 levels by 2012
- Copenhagen Accord
- U.S. Response
 - Attempts @ legislation
 - Supreme Court → EPA has authority to regulate CO₂, reporting for sources emitting over 25,000 MTCO_{2e}
 - No legally-binding cap on GHGEs
- Regional / State / Local Government Responses (Planning, preparing and analyzing.....)



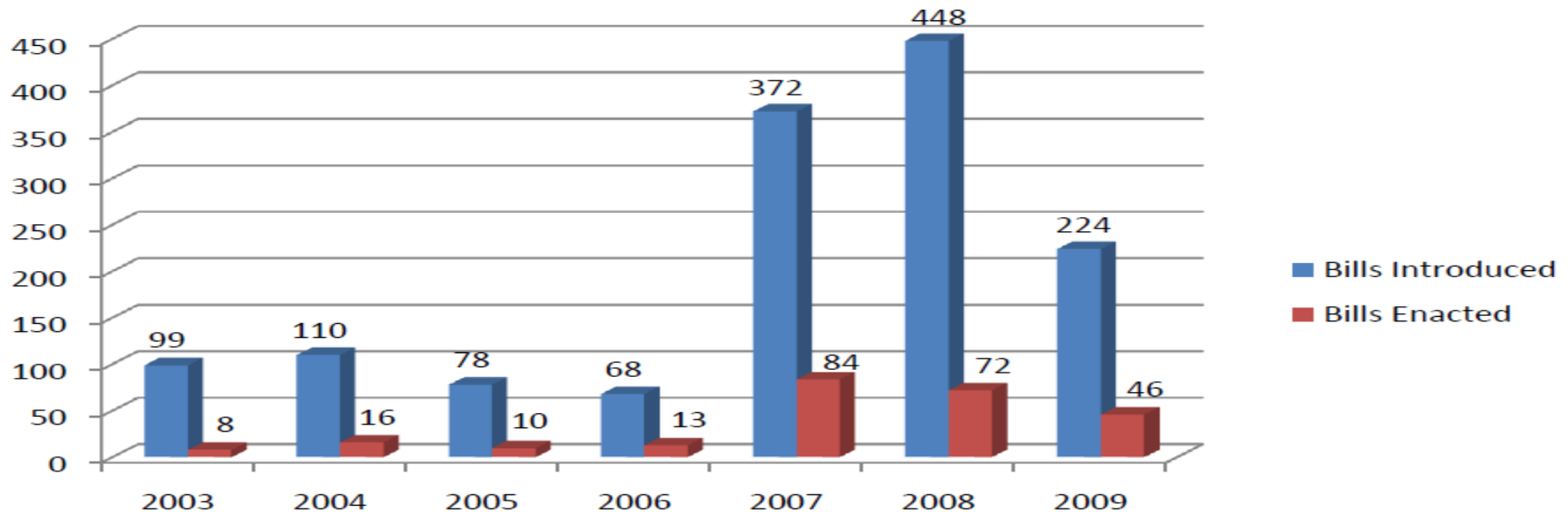
Where does Climate Change/Sustainability Show Up?

- ESA
- NEPA
- CAA
- CWA
- MMPA
- FOIA/1st Amendment
- Energy Policy Act
- Global Climate Change Research Act
- Corporate Reporting/Securities Disclosure
- FTC
- “Cap-and-trade”: regulation where GHGE’s are capped and allocated through the distribution of “allowances” representing a right to emit.
- Regulate vehicle standards
- Regulate activities (public and private) (New EPA Rules: Emit no more than 1,000 pounds of carbon dioxide per megawatt-hour of energy produced)
- Green & Energy Building/Codes (New Mexico case)
- As of October 2011 there were 461 active cases



State Efforts at GHG Policy

GHG Regulating Bills in the States



Source: American Legislative Exchange Council, *Greenhouse Gas Regulation in the States*. The 2009 data does not include subsidies for carbon capture and sequestration.

Thru 2012:

- CA, OR & WA = specific legislative actions to control GHGs
- AZ, FL, IL, MI, MO and NC have articulated actionable policies
- 27 States have general policy statements acknowledging the need to address the contribution of land use and buildings to GHG emissions.
- 15 States = No Action yet.



FL Legal Influences On Climate Change, Energy & Sustainability

- **State of Florida:**

- Reduction of emissions to 2000 levels by 2017, to 1990 levels by 2025, and by 80% of 1990 levels by 2050.
- Florida adopted the California motor vehicle emission standards (22% reduction in vehicle emissions by 2012 and a 30% reduction by 2016).
- Building Efficiencies/Code, Chapter 553, F.S. increasing standards
- HB 7123: Model Green Building Code (2007)
- HB 697 (GHG reduction strategies in local government's Comprehensive Plan. *Some* requirements recently eliminated.
- HB 7135 (State and Local Government Buildings "greener")
- HB 7179 (PACE)
- HB 7117 (New Energy Bill)



ADAM H. PUTNAM
COMMISSIONER



Florida's Law: How Far Does it Go?

- “Appropriate” and “professionally accepted” data (science on GHG emissions and climate change?)
- “Use ecological planning principles and assumptions in the determination of the suitability of permitted development.”
- Sprawl (VIII) plan or plan amendment allows for land use patterns or timing which disproportionately increase the cost in time, money, and energy of providing and maintaining facilities and services, including roads, potable water?
- ... discourage the proliferation of sprawl if it incorporates a development pattern or urban form that achieves four (4) or more of the following.... (IV) promotes conservation of water and energy.
- Conservation element must contain principles, guidelines and standards for conservation that provide long term goals to protect air quality ...
- CHHAs and AAAs?

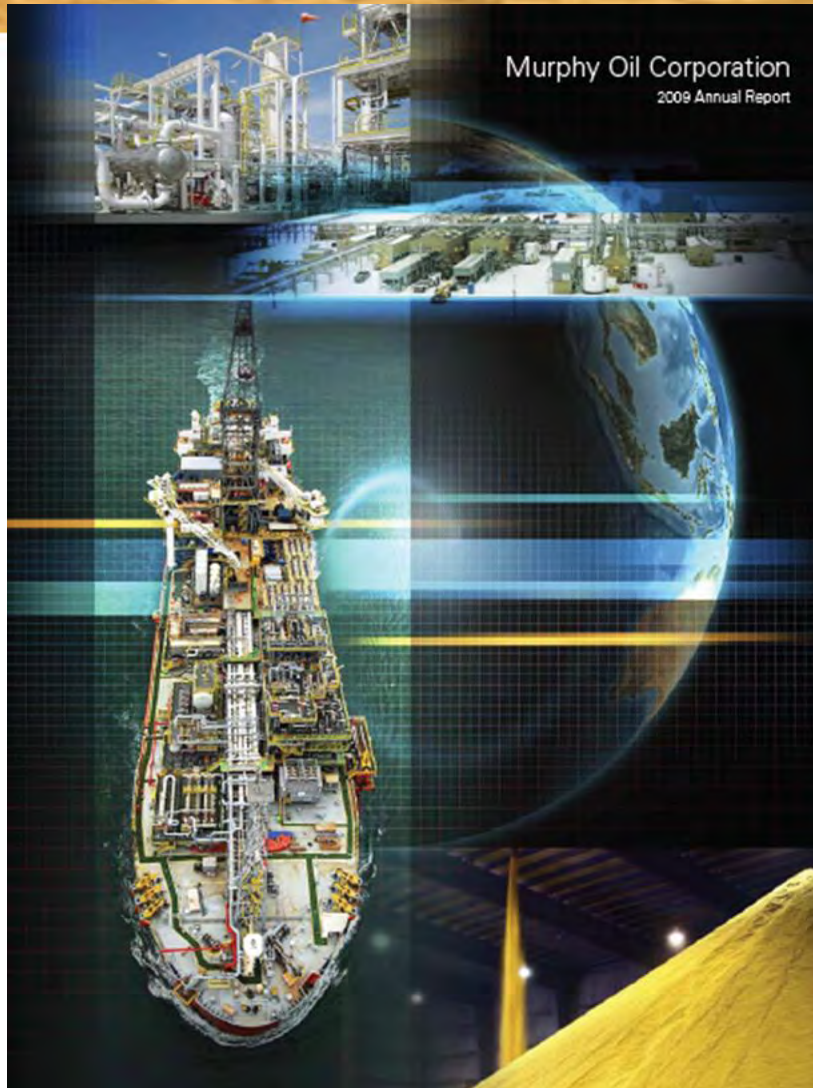


Part II

WHY SHOULD YOU CARE?



Comer v. Murphy Oil I & II



- March 20, 2012, *Comer v. Murphy Oil USA, Inc.*, a lawsuit by various Mississippi property owners against numerous oil, coal, and chemical companies seeking tort liability for climate change, was dismissed x2.
- Refiled lawsuit is barred by the doctrines of res judicata and collateral estoppel. Political question.
- Federal nuisance claims involving GHGEs are displaced by the CAA
- The court concluded that *Comer II* raises essentially the same claims as *Comer I*, and the plaintiffs are not entitled to another bite at the apple.
- Likely will be appealed to 5th Circuit



Kivalina & Steadfast- Who is going to move the native Alaskan Tribe and does the insurance carrier have to defend the claim?

- Nuisance claim for \$ from the energy industry for flooding damage caused by climate change.
- Case currently on appeal in 9th Circuit
- “...if an individual driving a car (and thus contributing to emissions) could also be a defendant, and if so, how a court could determine who was liable”? - CAUSATION
- Steadfast had no duty under the CGL policies issued by it to defend its insured, AES Corp., against climate change/global warming-based causes of action (Vacated, Rehearing and Reaffirmed 4/20/12)
- Steadfast: did the damage result from an “occurrence”? Answer: No (x2)
- “If an insured **knew or should have known** that certain results would follow from his acts or omissions, there is no 'occurrence' within the meaning of a CGL policy...”



Kivalina, Alaska



Pay Attention !

- *In re Katrina Canal Breaches Consolidated Litigation* (Robinson), 647 F. Supp.2d 644 (E.D. La. 2009).
- 400+ plaintiffs sued to recover for Katrina-related damages and the Corps' mismanagement of the Mississippi River Gulf Outlet or MRGO.
- 7 of these plaintiffs (the "Robinson plaintiffs") went to trial. Plaintiff's win, Corps appeals to 5th Circuit and loses. No sovereign immunity, data was there & Corps was negligent (grossly).
 - No defense under Flood Control Act (no safe haven)
 - No exception under Federal Tort Claims Act (Corps did nothing to protect against storm surge effect)
 - Should have updated EIS under NEPA ** Ongoing obligation under NEPA to consider adapting to a changing climate **
 - Negligence (this could attach to privately constructed structures too)
- Scientific data "foreseeable" ie; sea level rise?
- Just under \$720,000 awarded to 5 plaintiffs



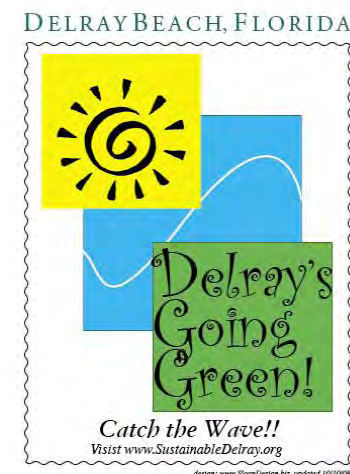
Local Government Liability

- Duty to maintain roads? (Jordan et al v. St. Johns County)
- Is an “energy sucking” desalination plant okay or should we conserve water (Surfrider Foundation v. California Coastal Commission)
- Should we keep renourishing beaches and what is obligation to property owner? (Stop the Beach Renourishment, Inc. v. FDEP-no taking when renourishment occurred)
- Panther litigation – ESA and habitat protection (Sierra v. USFWS)



Local Government Strategies on GHGs and Climate Planning

- Local governments are on the front lines
- Financial implications, nearest level to constituency who is beginning to accept the reality & control of the “purse”
- Develop data (GHG Inventory/Energy Audits)
- Create strategic approach: Reduce GHG emissions and energy use in government operations and community-wide
- Individual efforts: cities & counties
- Partnered approach: **Case Study: Municipal Energy Conservation Collaborative (Plan July 2012)**
- Fund Plan through better decisions in existing policy structures, energy savings, energy performance contracting, grants and other means
- Implement approach through Comprehensive Plan and Local Code



Energy/Greenhouse Gas Management Approaches

- **Energy** only (Buildings and fleet)
- **Sustainability** (Energy, waste management, transportation and other “sustainability” Focus Areas)
- **Climate Action Plan** (Climate Change impacts and adaptation strategies)
- No right or wrong approach: Any Plan can address elements of all approaches



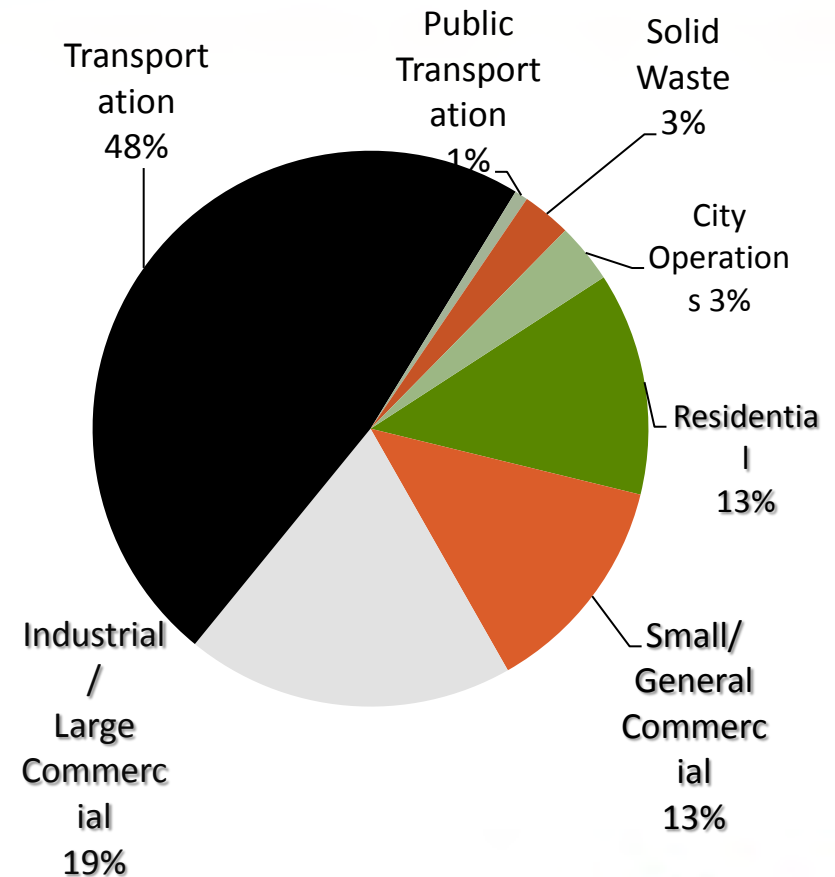
What is PACE?

Property Assessed
Clean Energy
(\$\$\$/Repayment
through assessment)

What/who started it?
Cisco

Where is it happening?
24+ states

Why should you care?
Buildings and “tekkie”



Florida's PACE law: Section 163.08, F.S.



- 2010 (most state laws passed 2009-present)
- SB 2322 / HB 7179 (approaches).
- Allows local governments to finance "qualifying improvements" on properties/structures.
- Energy efficiency, renewable energy installations or improvements to increase storm resistance.
- Linkage between retrofits on existing building stock and "compelling state interest" (critical).
- Republican led, unanimous support in FL Legislature.
- WATER CONSERVATION PROJECTS!



Have a Sense of Humor

**We Can't Hold On
Much Longer!**

Hurry!

**Energy Rebates Available
Now Through April 2012***

* Pre-approval required. Restrictions apply. Rebate availability
contingent upon availability of limited funding.



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1.888.283.7720

Hurry! Offer expires soon!

The
options
are
really
not
that
funny...





**What will move
you to
change,
act
and
do your part?**