



ENR

**Environmental and
Natural Resources
Law Center**

CLIMATE LITIGATION in Oregon

Sarah J. Adams-Schoen

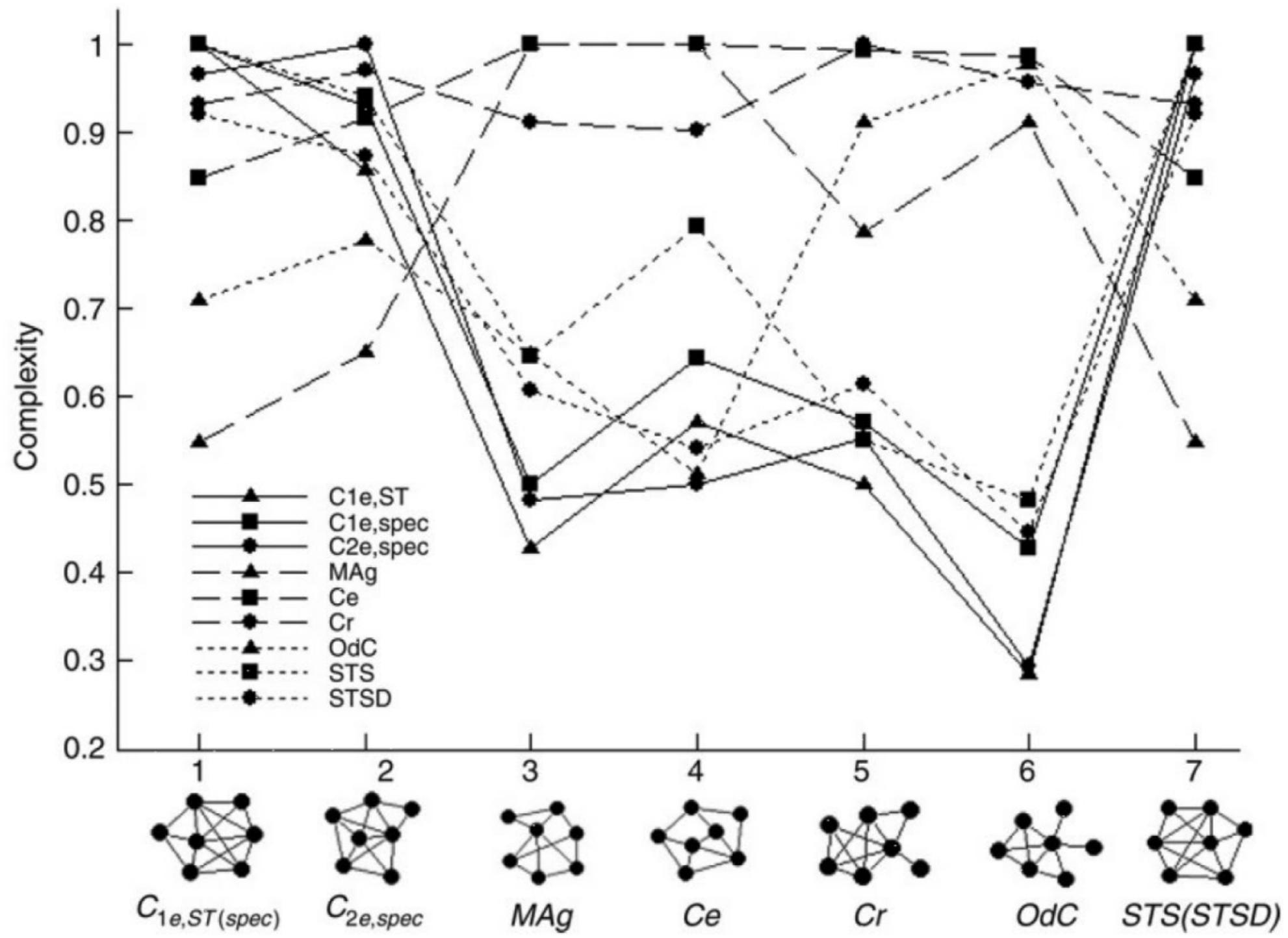
October 18, 2023

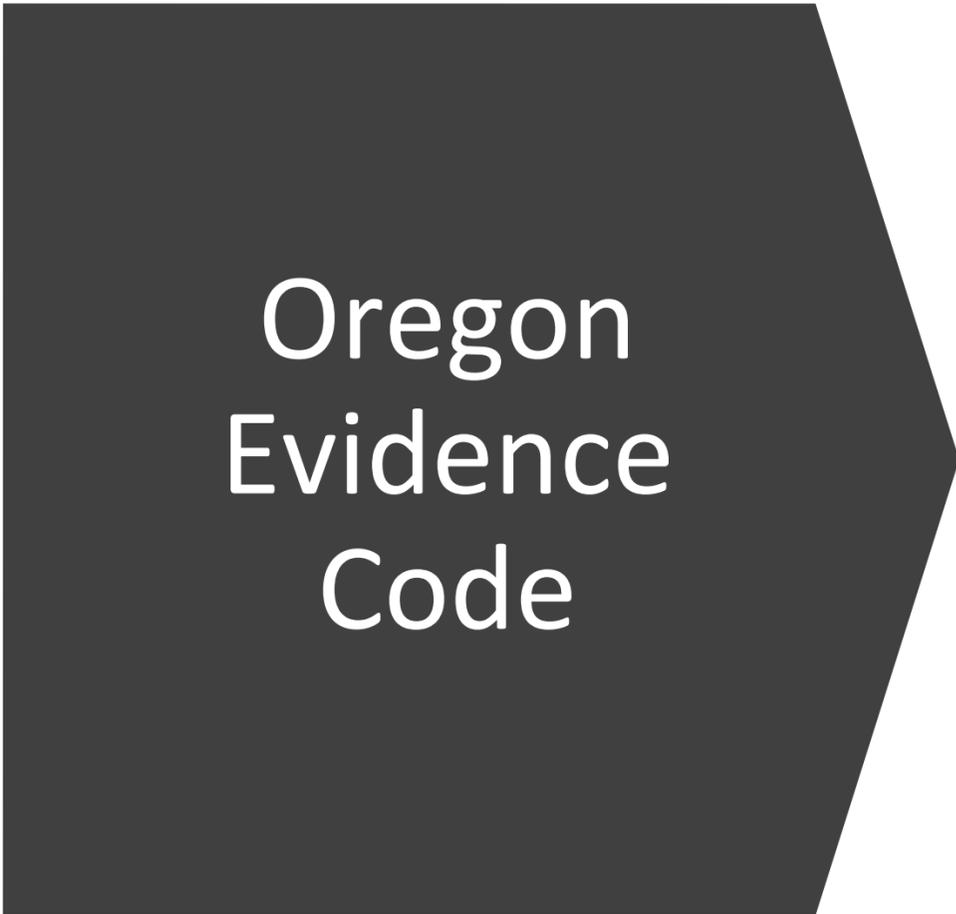
Suits against fossil fuel companies and **major emitters**

Suits against the state

Climate “across the curriculum”

***Scientific evidence**





Oregon
Evidence
Code

Rule 403. Relevance

Rule 702. Testimony by experts

Rule 403. Exclusion of relevant evidence
(prejudice, confusion, undue delay)

State v. Brown (Or 1984)

State v. O'Key (Or 1995)

Jennings v. Baxter Healthcare Corporation
(Or 2009)

“The function of the court is to ensure that the persuasive appeal [of scientific evidence] is legitimate. The value of proffered expert scientific testimony critically depends on the scientific validity of the general propositions utilized by the expert. . . . [S]cientific assertions . . . should be supported by the appropriate scientific validation. This approach ‘ensure[s] that expert testimony does not enjoy the persuasive appeal of science without subjecting its propositions to the verification processes of science.’”

Jennings v. Baxter Healthcare Corporation (Or 2009)
(quoting *State v. O’Key* (Or 1995)).



Gas refinery, Baytown, TX. Source: Chelsea Harvey, Lesley Clark, Benjamin Storrow, E&E News, January 13, 2023 (photo credit: Benjamin Lowy/Getty Images)

Suits against energy companies & major emitters

Torts

Nuisance, trespass, negligence, failure to warn, design defect

Δ caused climate disruption that harmed Πs

Caused wildfire

Caused wildfire to be larger, harder to control

Misrepresentation

False and misleading statements

Claims

Suits against energy companies
& major emitters

Federal
preemption /
Removal to
federal court

Claims require resolution of substantial question of fed'l law

Fed'l law is necessary element of claim

Pls acted under fed'l officer's directions

Claims preempted by foreign affairs doctrine

Claims displaced by CAA, OCSLA, fed'l common law

Defense assertions

Suits against energy companies
& major emitters

Federal
preemp
Remova
federal

(ORDER LIST: 598 U.S.)

MONDAY, APRIL 24, 2023

CERTIORARI DENIED

21-1550 SUNCOR ENERGY, INC., ET AL. V. BD. COMM'RS BOULDER CTY., ET AL.

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition. Justice Kavanaugh would grant the petition for a writ of certiorari.

22-361 BP P.L.C., ET AL. V. MAYOR AND CITY COUNCIL BALTIMORE

22-495 CHEVRON CORP., ET AL. V. SAN MATEO COUNTY, CA, ET AL.

22-523 SUNOCO LP, ET AL. V. HONOLULU, HI, ET AL.

22-524 SHELL OIL PRODUCTS CO., ET AL. V. RHODE ISLAND

The petitions for writs of certiorari are denied. Justice Alito took no part in the consideration or decision of these petitions.

of fed'l law

Defense

W

ES

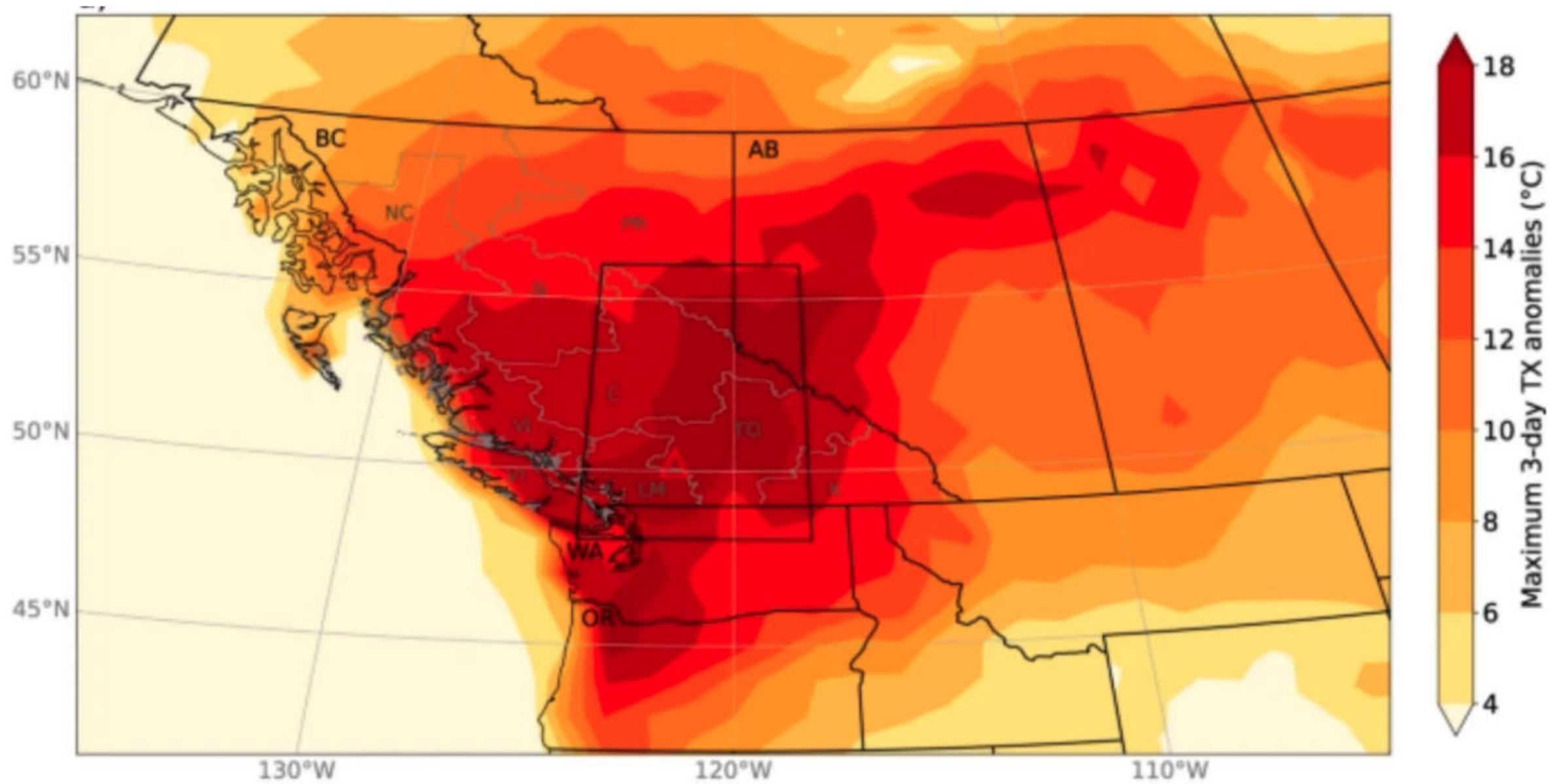


Phoenix, Oregon

Sept. 10, 2020

IMAGE SOURCE: David Ryder/Getty Images

Wildfire in the Mountain West

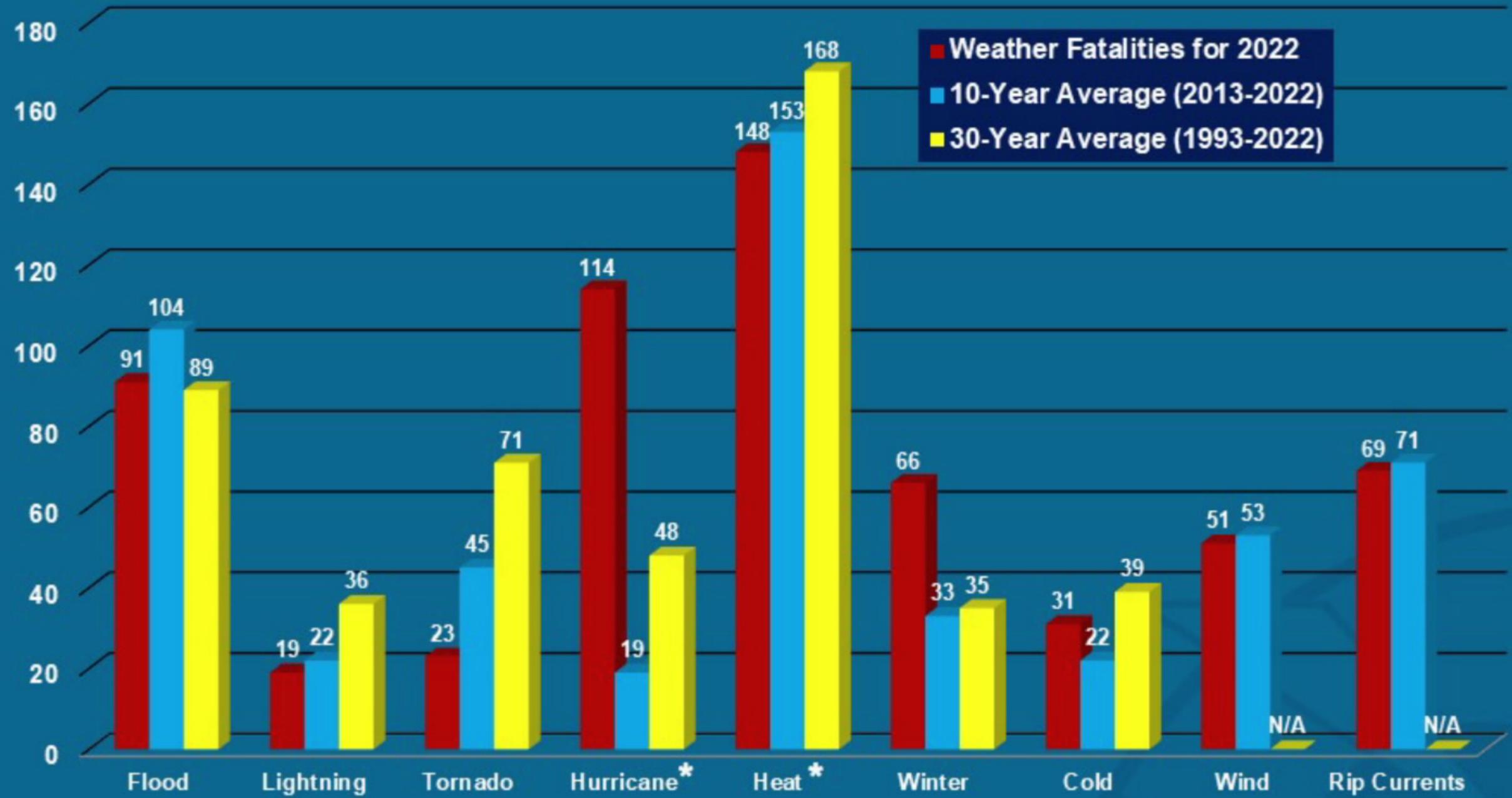


SOURCE: White, R.H., *et al.* The unprecedented Pacific Northwest heatwave of June 2021. *Nat Commun* 14, 727 (2023).

Heatwaves



Weather Fatalities 2022



*Due to an inherent delay in the reporting of official heat fatalities in some jurisdictions, this number will likely rise in subsequent updates.
*The fatalities, injuries, and damage estimates found under Hurricane/Tropical Cyclone events are attributed only to the wind.



Suits against the State

The Explosion of the Steamboat Mose

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Failure to adapt?



Photo: Georgia Forestry Commission

MITIGATION – Most often, “climate change mitigation scenarios involve **reductions in the concentrations of greenhouse gases**, either by reducing their sources or by increasing their sinks.” (IPCC AR4)

ADAPTATION – “Adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which **moderates harm** or exploits beneficial opportunities.” (IPCC AR4)

Right to a life-sustaining climate system

Express constitutional right to healthy environment (not in Oregon)

Implied constitutional right

Public trust doctrine

- *Held v. Montana* (Aug. 2023)
- *Utah Physicians for a Healthy Env't v. Utah Dep't of Nat. Res.* (complaint filed Sept. 2023)
- *Navahine F. v. Hawai'i Department of Transportation* (proceeding to trial 2023-24)
- *Nat'l. Audubon Soc'y. v. Superior Court*, 33 Cal 3d 419, 452 (1983)
- *But see Chernaik v. Brown*, 367 Or 143, 148 (2020)

Portland Wildfire Smoke by AQI Category

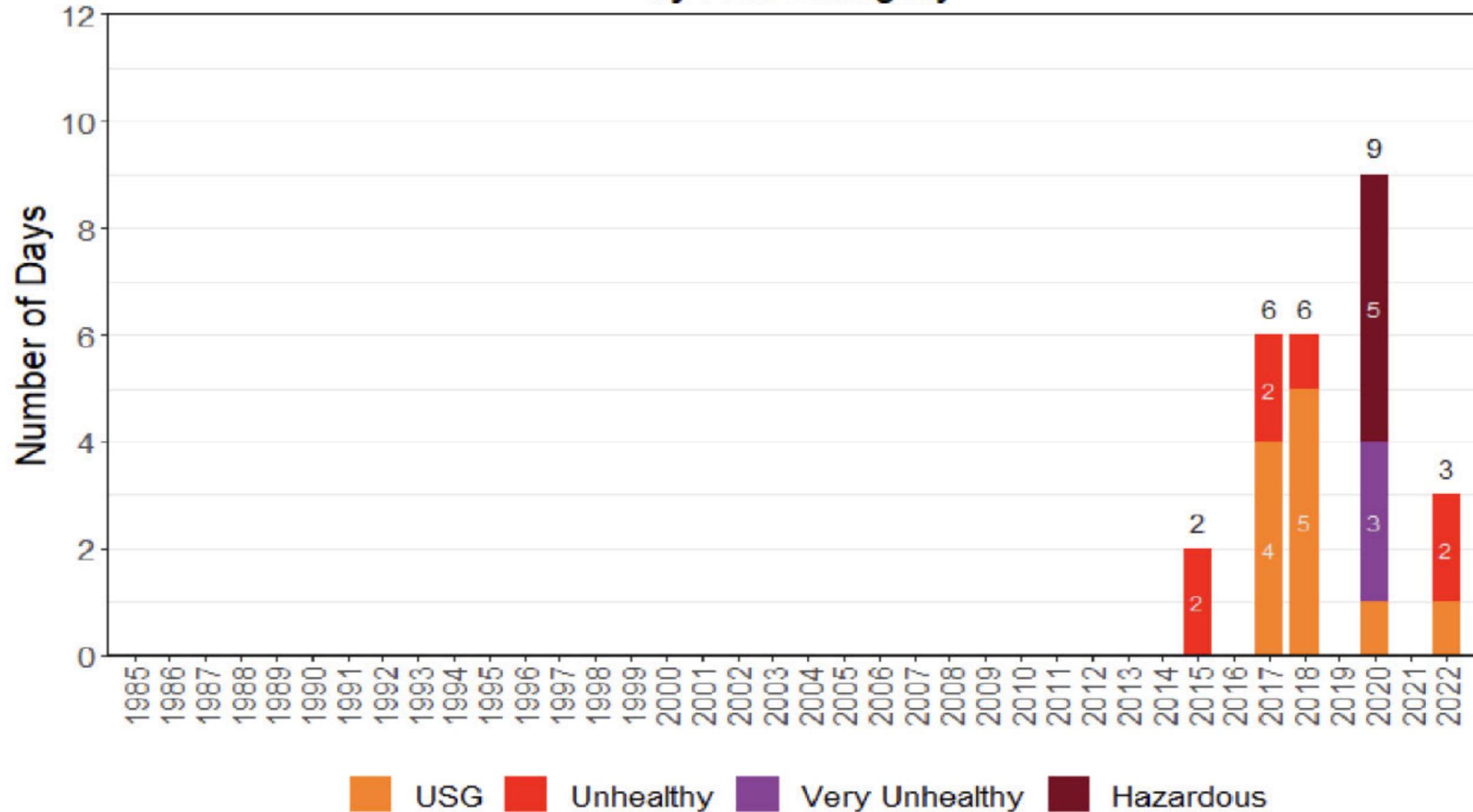


Figure 6. Portland \geq USG AQI wildfire smoke trends.

Note: USG days not included: two in 1985, one in 1987, and one in 1990. These were likely from field burning.

Oakridge Wildfire Smoke by AQI Category

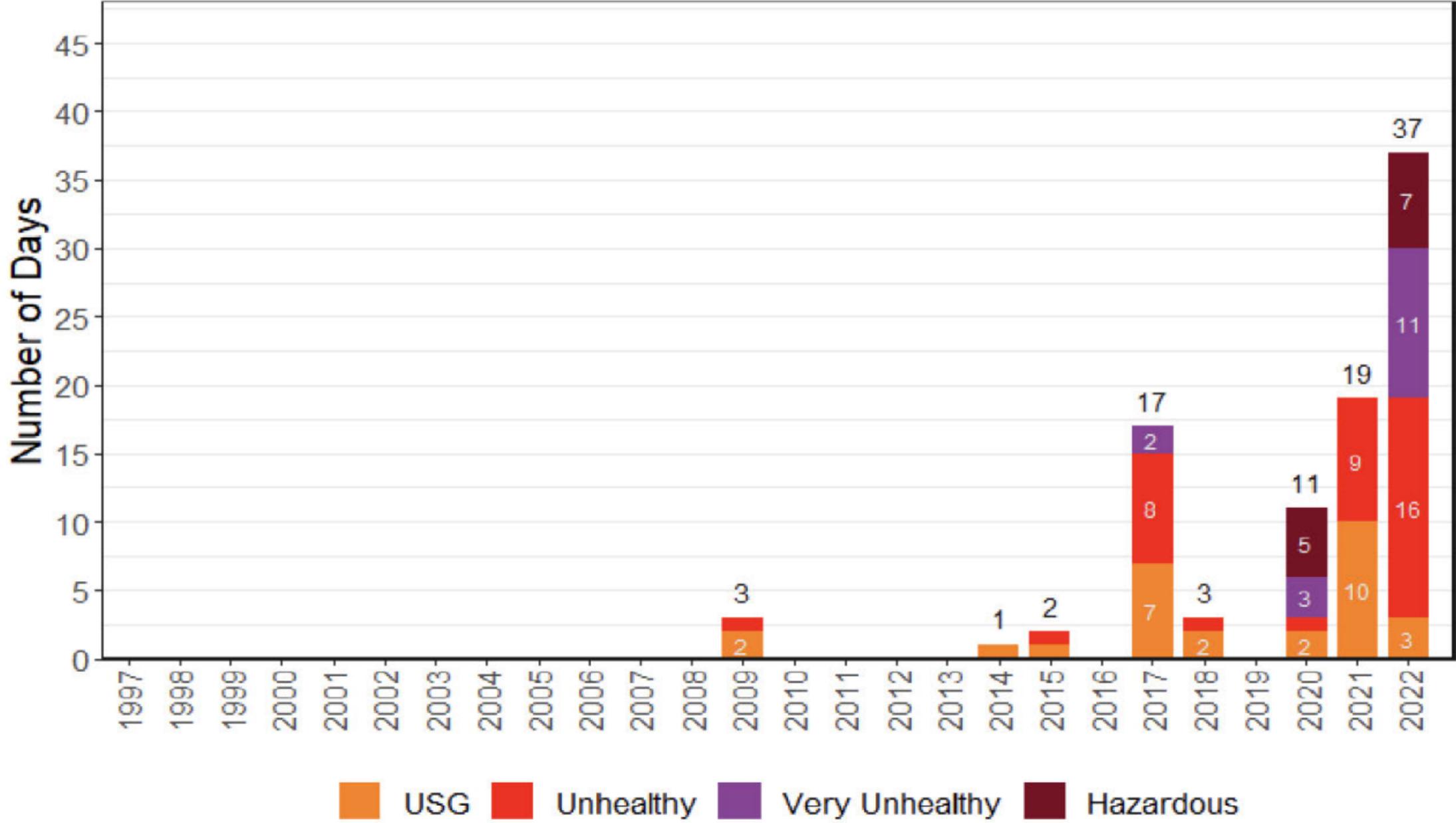


Figure 19. Oakridge wildfire ≥ USG AQI wildfire smoke trends.

Wildfire smoke

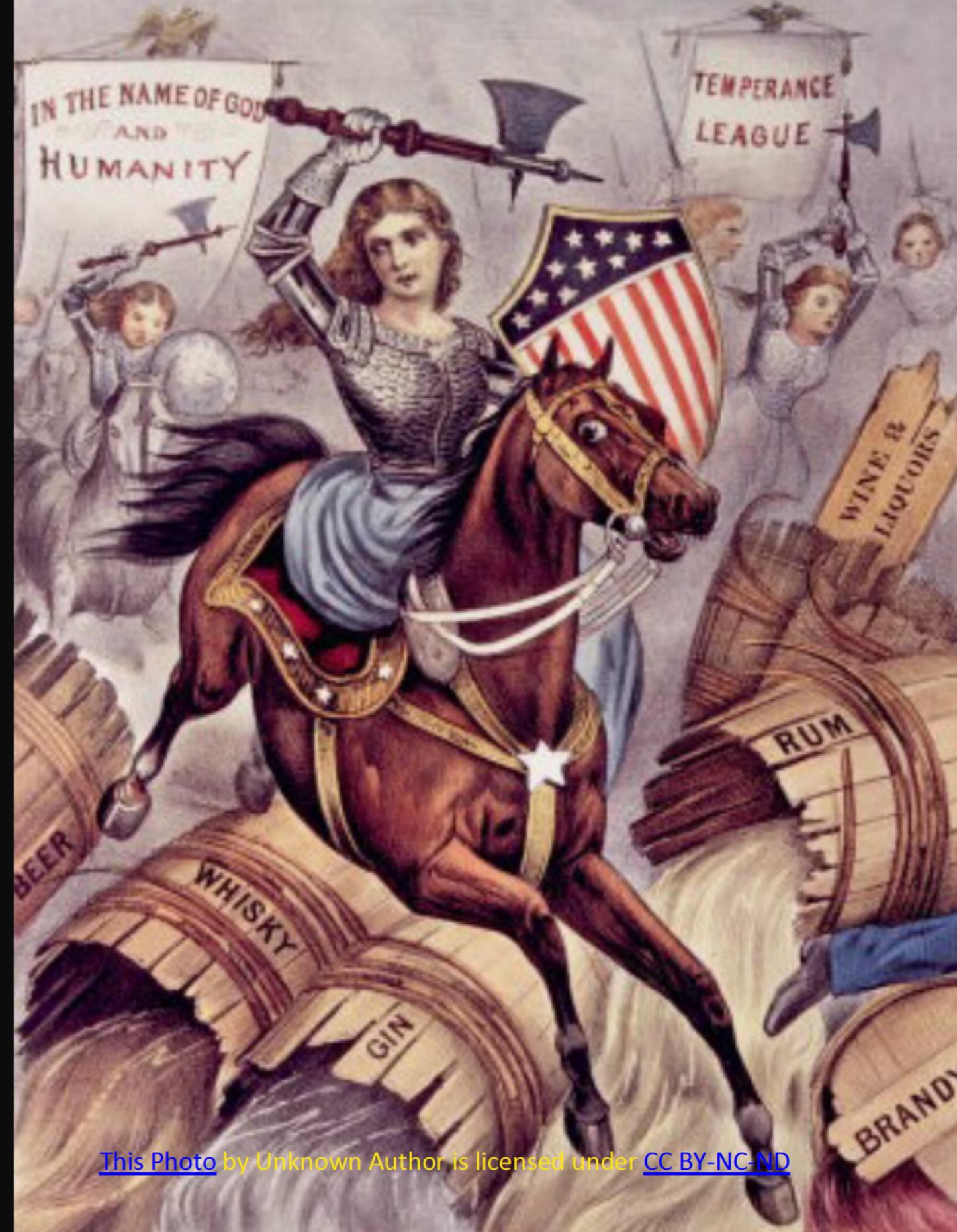
“A recent study estimates that every additional microgram per cubic meter of daily PM2.5 ... exposure causes 0.69 additional deaths per million people aged 65 or over. Based on this calculation, [one study estimates] poor air quality from [2020’s] wildfires will kill thousands of people, most of them elderly, in California alone.”

After the fire

United States, west-coast wildfires, at October 13th 2020

Estimated elderly excess deaths* per million people
Relative to 2015-19 average, 2020, by metropolitan area





Takings

Private property shall not be taken for public use...without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use.

Article I, Section 18, of the Oregon Constitution

EQUAL PROTECTION

Privileges & Immunities
Due Process



ENVIRONMENTAL JUSTICE IN WEST EUGENE: FAMILIES, HEALTH & AIR POLLUTION

Grant Report for the US EPA
Environmental Justice Small Grant Program
2011-2012

Year	% of total emissions in zip code 97402	% of total emissions all other zip codes
2005	99.9	0.1
2008	100	0.0
2011	99.9	0.1

**EXTREME
SUMMER HEAT
&
INCOME**

North Las Vegas, Nev.



Anchorage, Alaska



Las Vegas



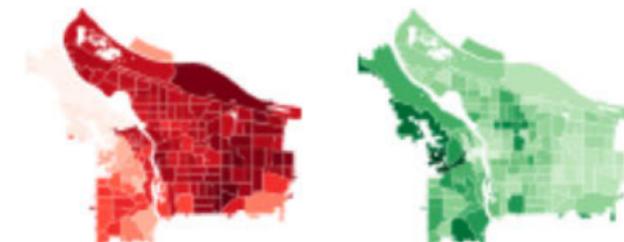
Lexington, Ky.



Los Angeles



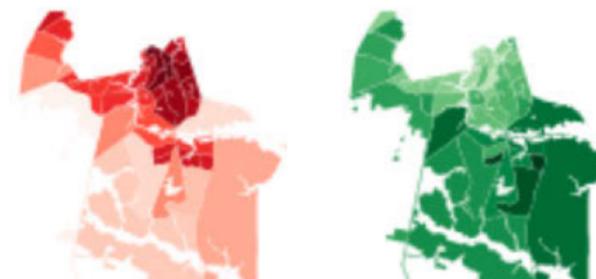
Portland, Ore.



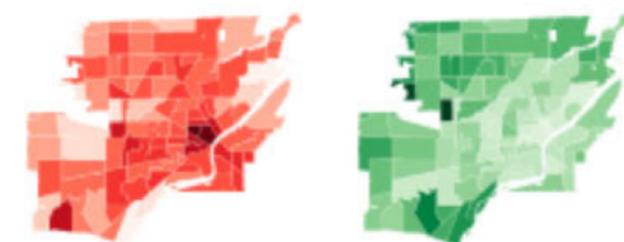
Minneapolis



Chesapeake, Va.



Toledo, Ohio



Source: Meg Anderson, Nora Eckert, Sean McMinn, *Trees Are Key To Fighting Urban Heat — But Cities Keep Losing Them*, NPR, ALL THINGS CONSIDERED, Sept. 4, 2019 5:12 AM ET, <https://www.npr.org/2019/09/04/755349748/trees-are-key-to-fighting-urban-heat-but-cities-keep-losing-them>

“[T]he average person of color lives in a census tract with higher summer daytime surface urban heat island (SUHI) intensity than non-Hispanic whites in all but 6 of the 175 largest urbanized areas in the continental United States.”

“In nearly half the urbanized areas, the average person of color faces a higher summer daytime SUHI intensity than the average person living below poverty, despite the fact that, on average, only 10% of people of color live below the poverty line.”

Hsu, A., Sheriff, G., Chakraborty, T. *et al.* Disproportionate exposure to urban heat island intensity across major US cities. *Nat Commun* **12**, 2721 (2021). <https://doi.org/10.1038/s41467-021-22799-5>

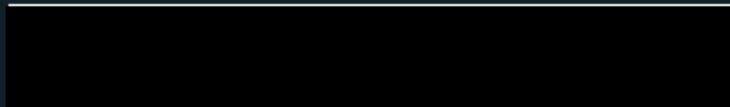
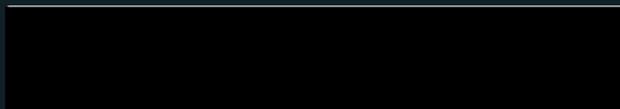
Climate “across the curriculum”

Accretion
Reliction
Erosion
Avulsion



I'm still working on this slide

Thank you



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