

New Executive Order Targets State and Local Climate and Sustainability Laws

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On April 8, 2025, President Trump signed an Executive Order “Protecting American Energy from State Overreach” ([here](#)), directing the U.S. Attorney General, in consultation with relevant executive department and agency heads, to identify all state and local laws, regulations, causes of action, policies and practices that “burden[] the identification, development, siting, production, or use of domestic energy resources” and are, or potentially could be, “unconstitutional, preempted by Federal law, or otherwise unenforceable.” The Attorney General is required to prioritize for review state and local laws that address climate change, environmental justice, carbon or greenhouse gas (“GHG”) emissions, or carbon penalties/taxes, and laws “involving ‘environmental, social and governance.’”¹ The Attorney General is then directed to take all appropriate action to stop the enforcement of such laws or actions that are deemed to be illegal. A report outlining actions taken, and any recommendations for additional executive or legislative action required to stop the enforcement of illegal laws, is due within 60 days following the Order.

In describing the purpose of the move, the Order describes laws that “seek to regulate energy beyond their constitutional and statutory authorities” as posing a threat to American energy dominance and economic and national security.² Three state measures specifically identified in the Order are: California’s greenhouse gas emissions cap-and-trade program;³ and two recently adopted state-level “Climate Superfund” laws in New York and Vermont, described as “extort[ing]” energy producers.⁴ The Order also identifies a negative impact on energy companies from lengthy state permitting processes for energy projects, and lawsuits filed by state

¹ Notably, this appears to be the first time the term “ESG” has been referenced in an Executive Order issued by the Trump Administration. We note a reference in a signing statement by President Trump addressing other Executive Orders and actions on Feb. 18 ([here](#)).

² Additionally, the Order follows a vote by the U.S. Securities and Exchange Commission to withdraw its defense of the agency’s final rules requiring disclosure of climate-related risks and GHG emissions last month; exodus of the Federal Reserve, Federal Deposit Insurance Corporation and Treasury Department from international climate groups; and withdrawal of the Office of the Comptroller of the Currency’s from participation in interagency principles related to climate-related financial risk.

³ California’s program, a key part of the state’s climate transition strategy and one of several GHG cap-and-trade programs nationwide, seeks to reduce GHG emissions through a market-based system that establishes a declining aggregate cap on total emissions for entities responsible for the majority of state GHG emissions, allowing entities to trade emissions allowances or purchase offsets.

⁴ New York’s Climate Change Superfund Act, signed into law in December, requires large fossil fuel companies to pay into a fund to cover costs associated with state climate change adaptation infrastructure. It is currently subject to litigation in two New York district courts: (i) an action filed on Feb. 6 by a coalition of 22 states and industry associations asserting constitutional and preemption grounds and seeking declaratory and injunctive relief ([here](#)) and (ii) an action filed on Feb. 28 by the U.S. Chamber of Commerce, American Petroleum Institute, National Mining Association and Business Council of New York State, Inc. asserting federal and state claims and seeking declaratory and injunctive relief ([here](#)). Vermont’s Climate Superfund Act is subject to similar litigation by the U.S. Chamber of Commerce and American Petroleum Institute in the District Court for the District of Vermont ([here](#)). Both laws were modeled on the federal program imposing liability for the cleanup of contaminated properties established by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as Superfund).

governments against energy companies alleging “climate change” harm on public nuisance and tort law theories.

The Order does not explicitly prohibit, restrict, claim to supersede or legally prevent the enforcement of any state or local law. It is presently unclear what lawful actions the Attorney General could take to block the enforcement of relevant state or local laws, or impede litigation, or what form future actions by the President or Congress recommended by the Attorney General could take—though potential litigation⁵ on constitutional and/or preemption grounds and/or withholding of federal funds seems likely. A Fact Sheet issued by the White House accompanying the Order ([here](#)) references a separate executive Order threatening to cut off federal funding to sanctuary states and cities that refuse to comply with federal immigration law and other actions by the Trump Administration.⁶

Though the Order focuses on laws, regulations and actions specifically applicable to energy companies, the types of laws the Attorney General is ordered to prioritize would seem to include those that are focused on other industries or are broadly applicable, including climate reporting laws and vehicle emissions laws. For example, the Order appears to capture California SB 253 requiring emissions reporting from in-scope entities beginning in 2026, and California SB 261 requiring climate-based financial disclosure reporting as of January 1, 2026. Those laws are currently subject to ongoing litigation by the U.S. Chamber of Commerce on First Amendment grounds.⁷ Similarly, the Order appears to capture certain California vehicle emissions rules, such as those relating to zero emission vehicles (which are a focus of another Executive Order “Unleashing American Energy” ([here](#))).

As of the time of writing, Governors and attorney generals of two states specifically identified in the Order have issued statements on the Order;⁸ no legal challenges have been filed.

⁵ During the first Trump administration, the United States sued California for entering into a cap-and-trade agreement with the Canadian province of Quebec on constitutional grounds. The United States’ appeal was voluntarily dismissed by the Ninth Circuit, following a stipulation filed by both parties. Last month, the Supreme Court rejected a request by 19 Republican attorneys to block climate lawsuits filed by five Democratic attorneys general against oil and gas majors ([here](#)).

⁶ The same Fact Sheet references Administration actions overriding California water policies in response to the state’s January wildfires, and efforts to block California’s efforts to set stringent vehicle emissions standards to help transition the state to 100% zero-emission vehicle sales by 2035.

⁷ The U.S. District Court for the Central District of California dismissed the U.S. Chamber of Commerce’s other challenges to the laws (based on the Supremacy Clause and limitations on extraterritorial regulation) on February 3, 2025 ([here](#)).

⁸ See statement from California Governor Gavin Newsom ([here](#)); joint statement from New York Governor Kathy Hochul and New Mexico Governor Michelle Lujan Grisham, co-chairs of the U.S. Climate Alliance (24 states and territories including California, New York and Vermont are members) ([here](#)); and statement from New York Attorney General Letitia James ([here](#)).

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