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Preparing for Trump Pushback Against State Climate Laws

Article

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US Attorney General Pamela Bondi faced a June 7 deadline to submit a report to President Donald Trump detailing the US Department of Justice's strategy to counter so-called state overreach in climate policy.

This directive, stemming from an executive order issued by Trump on April 8, aims to dismantle state-level actions perceived as obstacles to the administration's "energy dominance" agenda.

But thus far, no report has been made public, leaving industry observers speculating about its contents and potential impact. What actions might the federal government take to challenge state climate initiatives, cap-and-trade programs and lawsuits against fossil fuel companies?

Our analysis below explores how the administration's approach could be multipronged, including litigation, legislation and funding strategies that could reshape the landscape for energy companies operating in the US.

Key takeaways for the regulated community include the need to monitor state-level initiatives, assess exposure to targeted regulations, engage with policymakers and prepare for the possible international implications of this new policy direction.

Executive Order Overview

Trump's April 8 executive order expanded the White House's energy policy by directing the US attorney general to take "all appropriate action to stop the enforcement" of state laws and civil actions "burdening the identification, development, siting, production, or use of domestic energy resources that are

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or may be unconstitutional, preempted by Federal law, or otherwise unenforceable."

The order highlights specific state actions as examples of what it describes as concerning overreach:

- So-called climate superfund laws enacted by New York and Vermont that seek to impose retroactive financial liabilities on fossil fuel companies for their historical greenhouse gas emissions, not just in those states but "anywhere in the United States or the globe;"[1]
- California's cap-and-trade program; and
- State lawsuits, and threatened lawsuits, against fossil fuel companies for climate change-related damages.

The executive order required the attorney general to submit a report to Trump by June 7, detailing any actions taken and plans made to carry out the order's directives. It specified that the report should include recommendations for further presidential or legislative action.

This tight, 60-day deadline underscored the urgency and seriousness of the administration's intent. However, to date, there is no public information about the contents of this report.[2]

Potential Actions by the Federal Government: A Multipronged Approach

While the executive order directly targets state-level actions, the underlying rationale — protecting American energy dominance — suggests a willingness to challenge policies that are seen as unfairly penalizing the US energy sector, regardless of their origin.

The order suggests several avenues to curtail state climate-related actions.

Litigation: Policy Set by the Courts

The executive order positions the Justice Department as a key player in actively shaping energy policy, rather than simply enforcing existing laws.

On May 1, the department filed two lawsuits — *US v. Vermont, in the US District Court for the District of Vermont*, and *US v. New York, in the US District Court for the Southern District of New York* — challenging those states' climate superfund laws. The laws impose strict liability on major fossil fuel emitters for their past emissions, in order to recover funds for the states' climate adaptation expenses.

A day earlier, the department filed two other suits — *US v. Hawaii, in the US District Court for the District of Hawaii*, and *US v. Michigan*, in the US District Court for the Western District of Michigan — to prevent these states from

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pursuing damages claims against fossil fuel companies in state courts for alleged climate change-related harms.[3]

Notably, however, the Justice Department has not yet filed any lawsuits addressing California's cap-and-trade program or other state-led climate-related actions.

Unpacking the arguments behind these actions reveals a deliberate strategy to restrict state-led climate initiatives and reinforce federal authority. For instance, the complaints contend that the states' climate superfund laws and any state-based claims for climate-related damages are preempted by the federal Clean Air Act and the federal foreign affairs power.[4]

They also argue that constitutional due process prohibits states from imposing extraterritorial liability for activities primarily conducted out of state.[5]

Additionally, the department asserts that the laws and lawsuits facially discriminate against interstate commerce, place an undue burden on the national fossil fuel market and impose liabilities that are not fairly related to the services provided within the states.[6]

While it remains too early to assess the success of the Justice Department's lawsuits, these actions may serve as a deterrent to other states and municipalities contemplating similar climate initiatives — a possibility evidenced by Puerto Rico's decision to quietly drop its case against fossil fuel companies in early May, shortly after the federal lawsuits were filed.[7]

Lawmaking: Steering the Course Through Legislation

The executive order also lays the groundwork for federal legislative initiatives to curtail or override state climate regulations that conflict with national energy policies.

Examples of legislative acts may include amendments to existing environmental statutes, such as the CAA, to explicitly limit states' abilities to enact regulations stricter than federal standards.

Such action could clarify the scope of federal authority regarding energy production, transmission and distribution, potentially preempting state regulations in these areas.

Funding: The Power of the Purse

Beyond litigation and lawmaking, the federal government can influence state climate-related actions through the use of its funding powers. The Justice Department's forthcoming report may include recommendations on some of the following approaches:

- Targeted tax incentives: Offering tax incentives to states that adopt policies promoting energy development or reducing regulatory burdens on the energy sector;

- Conditional grants: Requiring states to comply with federal energy and environmental policies to receive funding;
- Redefining funding criteria: Revising the criteria for awarding grants to prioritize projects and initiatives that demonstrate alignment with federal energy priorities; and
- Regulatory reviews and penalties: Initiating reviews of federally funded programs to ensure that state actions do not contradict federal priorities, and introduce penalties or reduce funding allocations for states found in violation.

A Broader Scope: The European Union Angle

While the executive order appears to focus on domestic policy, its language and directives suggest a broader potential scope that extends to future action against international regulations affecting the American energy sector.

Some European countries are beginning to hold energy companies accountable for the emissions their products generated in the past, potentially setting a global precedent.

For instance, on May 28, in *Saúl Ananías Luciano Lliuya v. RWE AG*, the Hamm Higher Regional Court in Germany rejected a Peruvian farmer's plea for compensation from a major German energy company for its historical greenhouse gas emissions that allegedly contributed to the melting glaciers threatening his city.

The court stated that while the farmer might have a claim under German civil law, his case was dismissed because "the evidence showed that there was no concrete danger to his property" from the glaciers.

Climate advocates claimed victory when the court allowed as evidence the use of attribution science, which seeks to assess how much climate change has intensified extreme events, such as droughts and wildfires. Although RWE can claim a win by avoiding financial penalties, the plaintiff's case has pushed the limits of climate law forward.[8]

The Justice Department's anticipated report may recommend executive branch measures, such as trade embargoes or interventions in European lawsuits, to mitigate perceived discriminatory international fines and policies. Such recommendations would signal an expansion of the executive order's scope into international trade and related areas.

Navigating the Shifting Sands

This executive order represents a paradigm shift in the relationship between the federal government and state energy regulation.

Energy companies should closely monitor the status of state-level initiatives related to climate change, environmental regulations and energy production. They should also assess their potential exposure to state regulations that could be targeted under the executive order.

Moreover, companies should consider engaging with federal and state policymakers to advocate for policies that support Trump's American energy dominance agenda, and prevent discriminatory regulations. This includes advocating for policies that promote regulatory certainty and prevent undue burdens on the energy sector.

For example, on May 27, eight Washington state trade organizations sent a letter to the US attorney general asking the Justice Department to block a number of Washington state energy policies, including natural gas bans and restrictions on natural gas appliance use, that they believe "threaten energy security and drive up costs for American families struggling just to own a home."

Lastly, given the potential for an expanded focus, energy companies with international operations should assess their exposure to regulations that could be viewed as unfairly targeting US companies.

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[1] This year, 11 states, from California to Maine, have introduced their own climate superfund bills. Maryland Governor Wes Moore recently vetoed a measure requiring a study on the cumulative costs of climate change in Maryland, explaining that Maryland's "budget situation" and "chaos from Washington, DC" mean that the state must reconsider any bills requiring resource-intensive studies.

[2] See Adam Aton, "Trump Team Mum on Report Targeting State Climate Action," *E&E News: Climatewire* (June 10, 2025).

[3] Despite the Justice Department's lawsuit, the state of Hawaii proceeded to sue seven groups of affiliated fossil fuel companies, including BP, Chevron, ExxonMobil and Shell, as well as the American Petroleum Institute, alleging deceptive conduct and failure to warn of the harmful effects of their products on the environment. See *Hawaii v. BP PLC et al.*, No. 1CCV-25-0000717 (1st Cir.). Michigan has not filed a lawsuit to date; however, the state's attorney general retained law firms to represent its interests in climate change-related litigation last year.

[4] See, e.g., *Massachusetts v. US Environmental Protection Agency*, 549 US 497, 532 (2007) (concluding that greenhouse gases are within the CAA's definition of "air pollutant"); *Am. Electric Power Co. Inc. v. Connecticut*, 564 US 410, 424-29 (2011) (finding that the CAA delegates to the EPA authority to set nationwide standards for greenhouse gases, and that the CAA preempts federal common law causes of action related to greenhouse gas emissions).

[5] See, e.g., *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) (holding that the regulation of global greenhouse gas emissions "is simply beyond the limits of state law"); *Int'l Paper Co. v. Ouellette*, 479 US 481, 488 (1987) ("interstate … pollution is a matter of federal, not state, law").

[6] See, e.g., *Pike v. Bruce Church Inc.*, 397 US 137, 142 (1970) (state law that regulates evenhandedly and has only incidental effects on interstate commerce is unconstitutional if the burden imposed on interstate commerce is "clearly excessive in relation to the putative local benefits").

[7] See *Commw. of Puerto Rico v. Exxon Mobil Corporation et al.*, No. 24-1393 (D.P.R.) (filed July 15, 2024; notice of voluntary dismissal filed May 2, 2025).

[8] The development of international climate law is continuously advancing. In 2015, a court in The Hague ordered the Dutch government to reduce emissions by at least 25 percent by the end of 2020 compared to 1990 levels. The Dutch Supreme Court upheld that ruling in 2019. In May 2024, the United Nations International Tribunal for the Law of the Sea ruled that carbon emissions constitute marine pollution, obligating countries to mitigate and adapt to their adverse effects. Later, in December 2024, the UN International Court of Justice held two weeks of hearings to determine the legal obligations of countries to combat climate change and support vulnerable nations in the face of its impacts. Any ruling would be nonbinding advice and would not directly compel nations to act, but it could lay the groundwork for future legal actions, including domestic lawsuits.

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