

# Trump Administration Targets State Climate Laws

Update

June 11, 2025 | 6 minute read

U.S. Attorney General Pamela Bondi is expected to release a report any day detailing the Justice Department's upcoming plans to combat "state overreach," which is seen as impeding the Trump administration's energy dominance agenda. What might be in that report? Read Bracewell's insights below.

## Executive Order Overview

On April 8, 2025, President Donald J. Trump issued an Executive Order entitled "Protecting American Energy from State Overreach" (E.O.). This E.O. expands the White House's focus on ensuring American energy dominance by directing the U.S. 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 or may be unconstitutional, preempted by Federal law, or otherwise unenforceable."

The E.O. highlights specific state actions as examples of 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;"<sup>[1]</sup>
- California's Cap-and-Trade program;
- State lawsuits (and threatened lawsuits) against fossil fuel companies for climate change-related damages.

The E.O. requires the U.S. Attorney General to submit a report to President Trump by June 7, 2025, detailing any actions taken and plans to carry out the

## Related People

### **Brittany M. Pemberton**

Partner

**WASHINGTON, DC**

+1.202.828.1708

[brittany.pemberton@bracewell.com](mailto:brittany.pemberton@bracewell.com)

### **Anouk Nouet**

Associate

**WASHINGTON, DC**

+1.202.828.5805

[anouk.nouet@bracewell.com](mailto:anouk.nouet@bracewell.com)

### **Alamdar S. Hamdani**

Partner

**HOUSTON**

+1.713.221.1303

[alamdar.hamdani@bracewell.com](mailto:alamdar.hamdani@bracewell.com)

### **Scott H. Segal**

Partner

**WASHINGTON, DC**

+1.202.828.5845

[scott.segal@bracewell.com](mailto:scott.segal@bracewell.com)

### **Joseph A. Brazauskas**

Senior Counsel

**WASHINGTON, DC**

+1.202.828.1706

[joseph.brazauskas@bracewell.com](mailto:joseph.brazauskas@bracewell.com)

E.O.'s directives. The report must also include recommendations for further Presidential or legislative action. This tight, 60-day deadline underscores the urgency and seriousness of the Administration's intent. However, as of today, there is no public information about the contents of this report.

## Related Industries

[Energy](#)

## Related Practices

[Environment, Lands and Resources](#)

---

## Potential Actions by the Federal Government: A Multi-Pronged Approach

While the E.O. 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 U.S. energy sector, regardless of their origin.

The E.O. suggests several avenues to curtail state climate-related actions:

### Litigation: Policy Set by the Courts

The E.O. positions the Justice Department as a key player in actively shaping energy policy, rather than simply enforcing existing laws. On May 1, 2025, the Justice Department filed lawsuits against the states of [Vermont](#) and [New York](#), challenging their climate superfund laws. These state laws impose strict liability on major fossil fuel emitters for their past emissions to recover funds for the states' climate adaptation expenses. The U.S. Attorney General also filed suit against [Hawaii](#) and [Michigan](#) to prevent these states from pursuing damages claims against fossil fuel companies in state courts for alleged climate change-related harms.<sup>[2]</sup> 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 (CAA) and the federal foreign affairs power.<sup>[3]</sup> They also argue that constitutional due process prohibits states from imposing extraterritorial liability for activities primarily conducted out of state.<sup>[4]</sup> Additionally, the Justice 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.<sup>[5]</sup>

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 shortly after the federal lawsuits were filed.

## Lawmaking: Steering the Course Through Legislation

The E.O. 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 use its funding powers. The Justice Department's forthcoming report may include recommendations on some of the following approaches:

- **Targeted Tax Incentives**—offer tax incentives to states that adopt policies promoting energy development or reducing regulatory burdens on the energy sector.
- **Conditional Grants**—require states to comply with federal energy and environmental policies to receive funding.
- **Redefining Funding Criteria**—revise the criteria for awarding grants to prioritize projects and initiatives that demonstrate alignment with federal energy priorities.
- **Regulatory Reviews and Penalties**—initiate 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 E.O. seemingly focuses on domestic policy, its language and directives suggest a broader potential scope that extends to future action against international regulations impacting the American energy sector.

Some European countries are beginning to hold energy companies accountable for the emissions their products generated in the past, setting a global precedent. For instance, a German court recently rejected a Peruvian farmer's plea for compensation from RWE, 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 the use of attribution science as evidence, which seeks to assess how much climate

change has intensified extreme events like 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.[6]

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 E.O.'s scope into international trade and related areas.

---

## Navigating the Shifting Sands

This E.O. represents a paradigm shift in the relationship between the federal government and state energy regulation. Energy companies should closely monitor 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 E.O. Moreover, companies should consider engaging with federal and state policymakers to advocate for policies that support American energy dominance 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, 2025, eight Washington state trade organizations sent a letter to the U.S. 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 U.S. companies.

Bracewell has a robust practice focusing on the interconnection between federal and state regulation of the energy sector and is closely monitoring developments related to this E.O. and its potential impact on the energy industry. We are available to assist you in evaluating your risks, developing strategies to address potential challenges, and engaging with policymakers.

---

[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, D.C." mean that the state must reconsider any bills requiring resource-intensive studies.

[2] Despite the Justice Department's lawsuit, the state of Hawaii proceeded to sue seven groups of affiliated fossil fuel companies—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 P.L.C., et al.*, No. 1CCV-25-0000717 (1st Cir.). Michigan has not filed a lawsuit to date, but Michigan's Attorney General retained law firms to represent its climate change-related litigation last year.

[3] See, e.g., *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007) (concluding that greenhouse gases are within the CAA's definition of "air pollutant"); *Am. Electric Power Co., Inc. v. Connecticut*, 564 U.S. 410, 424-29 (2011) (finding that the CAA delegates to 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).

[4] 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 U.S. 481, 488 (1987) ("interstate ... pollution is a matter of federal, not state, law.").

[5] See, e.g., *Pike v. Bruce Church, Inc.*, 397 U.S. 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.").

[6] The development of international climate law is continuously advancing. In 2015, a court in The Hague ordered the Dutch government to cut emissions by at least 25% by the end of 2020 from benchmark 1990 levels. The Dutch Supreme Court upheld that ruling in 2019. In May 2024, the United Nations (UN) International Tribunal for the Law of the Sea declared that carbon emissions constitute marine pollution, requiring countries to mitigate and adapt to their harmful effects. Later, in December 2024, the UN International Court of Justice held two weeks of hearings to determine what legal obligations countries have to combat climate change and support vulnerable nations in its impacts. Any ruling would be non-binding advice and would not directly compel nations to act, but it could lay the groundwork for future legal actions, including domestic lawsuits.