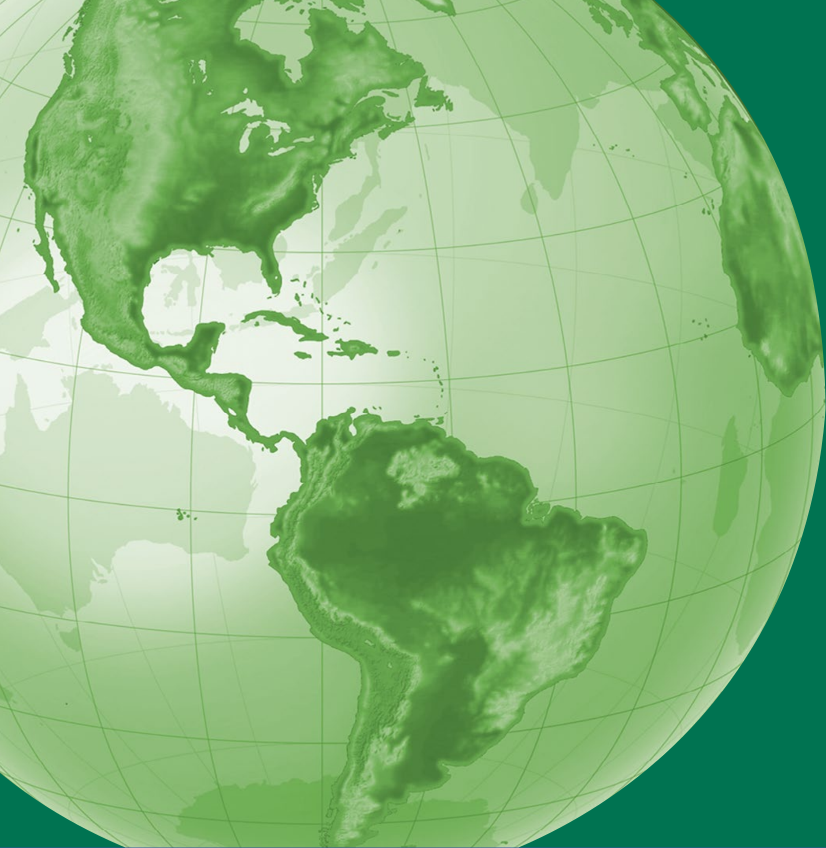

Environment, Energy, and Resources Law

The Year in Review 2025

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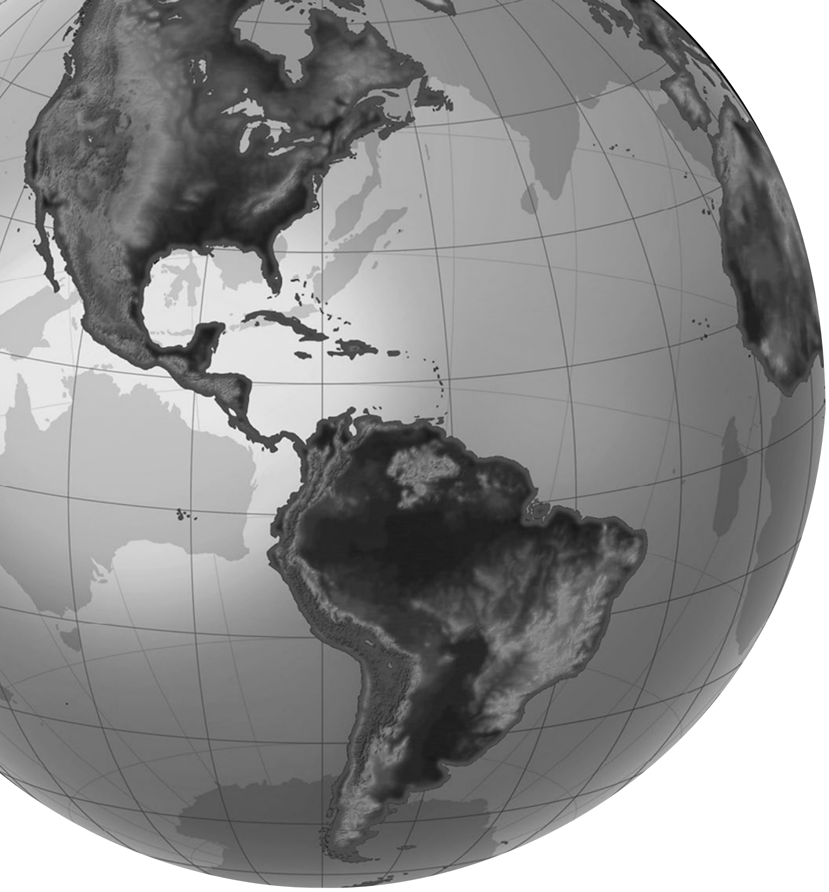

Environment, Energy, and Resources Law

The Year in Review 2025

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2025-2026

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SUMMARY OF CONTENTS

INTRODUCTION

The Year in Review: 2025 is the forty-second annual summary of environmental, energy, and resources law developments. It is once again being made available without charge as a benefit to members of the Section of Environment, Energy, and Resources of the American Bar Association.

The publication of *The Year in Review* is the result of a collaborative effort involving numerous authors, editors, and student volunteers. Section committee members prepare analyses within their respective areas of expertise, and each manuscript is reviewed by the committee's *Year in Review* Vice Chair or designated primary author before being transmitted to The University of Tulsa College of Law for editing and publication.

Among the students deserving special recognition are Executive Editors Madeleine Stout, Razann Ghazal, and Lauren Womack for their leadership and contributions throughout the editorial process. We also extend our gratitude to the students on *The Year in Review* staff for their dedication and hard work. The commitment demonstrated during a compressed publication schedule reflects the professionalism and diligence that have long characterized this project.

A final thank you is extended to Sean Skaggs, Chair on *The Year in Review*; Erin Potter Sullenger, Vice Chair; Samantha Beil, Editorial Associate for the American Bar Association Section of Environment, Energy, and Resources; and Dana Jonusaitis, Section Director. Their guidance, support, and coordination were instrumental in bringing this publication to completion.

Through the combined efforts of the Section, its authors, and the student editorial staff, *The Year in Review* provides a concise, comprehensive, and timely survey of significant developments in environmental, energy, and resources law. All of us associated with *The Year in Review* are proud to continue this longstanding tradition and pleased to contribute a resource that serves the legal profession.

Dana Gillentine
Student Editor-in-Chief
Bufford Pollett
Faculty Advisor

Tulsa, Oklahoma
June 18, 2026

HIGHLIGHTS OF *THE YEAR IN REVIEW* 2025[1]

I. INTRODUCTION

Welcome to *The Year in Review* 2025! If you read last year's Highlights, you may remember we promised that this edition would have a great deal to say about the change in administrations and the wave of regulatory and judicial developments it set in motion. This year delivers on that promise. *The Year in Review* remains a time-honored SEER tradition and valued publication – each chapter an annual report written by one of our substantive committees, each staying close to the developments in its own subject area. What follows in this Highlights section is not a comprehensive summary, and it does not pretend to capture everything our committees covered. Think of it instead as a curated set of starting points: a handful of issues that surfaced again and again across committees, and a map of which committees to turn to when you want the fuller picture. Let's get started.

II. HIGHLIGHTS

If a single thread ties 2025 together, it is the deregulatory turn. A second Trump Administration arrived with a clear intention to accelerate energy production, streamline regulations it viewed as burdensome, and reset the conversation in Washington on environmental policy, and you will see that current running through nearly every committee's report. From U.S. EPA to the FERC to BLM, 2025 brought a wave of proposed and final rulemakings and an "open for business" mentality toward the regulated community. The topics below are where it surfaced most visibly — and where the cross-committee perspective is most worth your time.

A. PFAS – the issue you can no longer outrun

Per- and polyfluoroalkyl substances stopped being a niche toxics concern in 2025 and became the connective tissue running through nearly half this volume. For any of us advising clients who manufacture, dispose, occupy land, or simply draw water, PFAS is now everyone's problem — and reading it in one committee's report gives you only a sliver of the exposure. For example, the Science and Technology committee walks through EPA's rollout of enforceable PFAS drinking water standards — putting real compliance timelines and treatment decisions in front of utilities — while the Superfund and Natural Resource Damages Litigation committee tracks the downstream consequences of CERCLA designation, where PFAS is now rewriting liability exposure at contaminated sites. To see the full sweep, follow it across **Science and Technology, Enforcement and Litigation, Pesticides & Chemicals, Waste & Resource Recovery, Superfund and Natural Resource Damages Litigation, Food & Agriculture, Water Resources, Water Quality & Wetlands, and Oil & Gas**.

[1]The Highlights of *The Year in Review 2025* chapter was prepared by Sean Skaggs, Chair of the ABA SEER Special Committee for *The Year in Review* and Erin Potter Sullenger, Vice Chair of the Special Committee for *The Year in Review*. The statements provided in this Section are those of the authors and may not reflect the opinions of their employers.

B. A narrower NEPA

Between the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County* — which we previewed last year — and the rescission of the longstanding CEQ regulations, the reach of environmental review contracted in ways that touch almost every project needing a federal permit. If your practice lives or dies by permitting timelines and litigation risk, this is the development to understand from several angles at once. Several committees examine how *Seven County Infrastructure Coalition v. Eagle County* contracts the scope of NEPA effects analysis, particularly narrowing the range of indirect and cumulative impacts agencies must evaluate, while the Constitutional Law and Enforcement and Litigation committees assess how the rescission of CEQ regulations is likely to reshape the next wave of NEPA litigation. Turn to **Project Development, Public Lands, Mining, Nuclear Law, Forest Resources, Energy, Constitutional Law, and Ethics and the Profession**.

C. One Big Beautiful Bill – adjusting the course midstream

The One Big Beautiful Bill Act and the partial repeal of Inflation Reduction Act incentives changed the economics of clean energy, public-lands leasing, and agricultural programs faster than most compliance frameworks could adjust. In practical terms, the bill reshuffled or eliminated key incentives, changing project economics midstream and forcing developers to revisit assumptions about cost, return, and timing. For companies planning and investing in these projects and counsel advising on credits, grants, or project finance, the question is no longer what the law encourages, but what survived. To understand the full impact of the changes, be sure to review the chapters from the **Enforcement and Litigation, Public Lands, Project Development, Energy, Mining, Food & Agriculture, Indigenous Law, and Forest Resources** committees.

D. Coordinated Wave of Executive Orders

The early-2025 executive orders mattered less for any single mandate than for the posture they signaled across the federal enterprise: produce more energy, regulate less. Two signed the same day show how deliberately the pieces fit. *Unleashing American Energy* (EO 14154) ordered every agency to find and roll back regulations burdening oil, gas, coal, and mineral development, and revoked the Biden-era orders that had pointed the government the other way. Its companion, *Declaring a National Energy Emergency* (EO 14156), invoked emergency powers to fast-track the leasing, siting, and permitting of those same resources — clearing the rules with one order and accelerating approvals with the next. Read in isolation they look like scattered directives; read together across committees, the strategy comes into focus. Follow it through **Energy, Oil & Gas, Public Lands, Project Development, Mining, Air Quality, and Enforcement and Litigation.**

E. Corporate climate duties that no longer wait for Washington

California's SB 253 and SB 261, sharpening scrutiny of greenwashing claims, and an expanding patchwork of extended-producer-responsibility laws converged into a set of mandatory disclosure and accountability obligations that bind companies directly – no federal rulemaking required. Under these regimes, a large company must measure and publicly disclose its emissions, report its climate-related financial risk, substantiate its environmental marketing claims, and shoulder the cost of disposing of what it sells — obligations that, until recently, most treated as voluntary. In-house and outside counsel alike now face affirmative disclosure and substantiation duties that reach clients you might not expect. The **Environmental, Social, Governance and Sustainability, In-House Counsel, Food & Agriculture, Waste & Resource Recovery, and Ethics and the Profession** committees each take this up.

F. AI becomes an environmental story

The growth of artificial intelligence turned into a resource-allocation fight the moment data centers began competing for power, water, and land at industrial scale. The demand is enormous: global data centers are projected to consume 945 TWh by 2030, more than the combined electricity use of Germany and France, with AI alone accounting for as much as 20% of the growth in electricity demand. In much of the United States, that load is arriving faster than utilities can build the generation and transmission to meet it, and the resulting interconnection requests, large-load tariffs, and ratepayer-cost fights are reshaping utility planning. The strain doesn't stop at the meter: the same facilities draw water for cooling, require a range of environmental permits and reviews, spark local land-use and zoning fights, and have prompted new limits on data-center noise. The legal questions stack quickly: who pays for the new capacity, whose water and land get used, and where these projects can be sited and permitted? See **Project Development, Energy, Water Quality & Wetlands, Enforcement and Litigation, and Ethics and the Profession** for more insight into this rapidly growing area of legal practice.

G. The "Grab Bag" of Learning

A few topics didn't dominate the volume but caught our attention all the same. These are important, and in some cases genuinely fascinating:

- **The Endangerment Finding, reopened.** EPA moved to revisit the 2009 finding that greenhouse gases endanger public health, the keystone finding holding up a generation of federal climate authority. **Science and Technology, Climate Change, Air Quality, and Environmental Justice** track what's at stake.
- **Environmental justice undone.** After 32 years, environmental justice as a policy of the federal government has come to an end. Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing, terminated "to the maximum extent allowed by law, . . . all 'environmental justice' offices and positions" and all equity-related actions, initiatives, programs, grants, and contracts." In response, the Department of Justice closed the Office of Environmental Justice and the Environmental Protection Agency terminated the Environmental Justice and Diversity, Equity, and Inclusion arms of the agency, including the Environmental Justice Divisions within all EPA regional offices. EPA also abolished the National Environmental Justice Advisory Council, established in 1993, and the Council on Environmental Quality issued guidance to federal agencies omitting environmental justice considerations from NEPA. **Environmental Justice** chronicles the dismantling of the program.
- **Climate-tort suits stay alive.** In *Boulder / Suncor v. Exxon*, the court held the Clean Air Act does *not* preempt state-law climate-damages claims, keeping the courthouse doors open for municipalities pursuing fossil-fuel corporate defendants. Whether that opening holds matters to everyone in the energy chain; see **Climate Change, Oil & Gas, Constitutional Law, and Enforcement and Litigation**.
- **The race for critical minerals.** A secure domestic supply of critical minerals matters to both the energy transition and national security — but extracting them at

home is costly and contested, a tension our **Energy, Mining, Project Development, and Public Lands** committees trace through permitting and public-lands policy.

- **Oak Flat, again.** Picking up the *Apache Stronghold* story we flagged last year, the dispute over a copper deposit sitting beneath a sacred site forced the law to weigh religious-freedom and tribal-rights claims against resource development. **Public Lands, Mining, and Indigenous Law** carry the discussion.
- **Tribal water rights on the move.** Landmark settlements, the Navajo-Hopi agreement among them, and Alaska subsistence disputes are quietly redrawing who holds the water across the arid West. **Water Resources, Indigenous Law, and Public Lands** show how long-deferred claims are finally shifting the allocation map.
- **Sackett, two years on.** The aftermath of *Sackett v. EPA* continued to redefine federal authority over wetlands and waters, with "waters of the United States" still the threshold question for anyone permitting near water. **Water Quality & Wetlands and Indigenous Law** trace where the line now falls.

Happy *Year in Review* reading!

Chapter A: AIR QUALITY
2025 Annual Report[1]

I. JUDICIAL DEVELOPMENTS

A. Title I: National Ambient Air Quality Standards (NAAQS), Federal Implementation Plans (FIPs) & State Implementation Plans (SIPs)

In *Center for Biological Diversity v. EPA*,[2] the United States Court of Appeals for the Tenth Circuit denied environmental organizations' petition for review of EPA's partial approval[3] of Colorado's SIP for meeting the 2008 8-hour ozone NAAQS in the Denver-North Front Range serious nonattainment area. The SIP was submitted to EPA after Colorado had failed to meet its 2021 attainment deadline under the CAA. The EPA approved the enhanced monitoring portion of Colorado's SIP, but disapproved of other portions. The court concluded:

> EPA acted lawfully when it approved the reasonable-further-progress and motor-vehicle-emissions-budget components of Colorado's plan to lower ozone levels after the state missed its deadline for meeting national ozone standards. Those approvals did not impermissibly depend on emissions reductions from state-only control measures. Nor did they contravene the anti-backsliding provision [in 42 U.S.C. 7410(l)].[4]

In *Texas v. EPA*,[5] the United States Court of Appeals for the Fifth Circuit granted a petition for rehearing filed by Texas and Luminant Generation Company, L.L.C., withdrew the court's prior opinion[6] and issued a substitute opinion granting the original petition for review of EPA's 2016 designation[7] of Rusk and Panola Counties, Texas as nonattainment under the 2010 primary sulfur dioxide NAAQS. The court concluded, *inter alia*, that EPA

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[1]The Air Quality Committee prepared this report. This report lists significant judicial decisions and nationally applicable (i.e., not project- or area-specific) regulations. Cases and regulations are listed chronologically within each section. Stanley Kaminsky, Christopher Joseph, and Jampa Lhasawa, Arnold & Porter Kaye Scholer LLP, New York and Washington, D.C., edited the report. Contributing authors were Vidhya V. Iyer, Iyer Law Group LLC, Rockville, Maryland; H. Michael Keller, Fabian Vancott, Salt Lake City, Utah; Jaqueline Rosen, Fabian Vancott, Salt Lake City, Utah; Todd E. Palmer, Michael Best & Friedrich LLP, Milwaukee, Wisconsin; Brandon A. Prince, Nelson Mullins Riley & Scarborough LLP, Torrance, California; Thomas A. Utzinger; Douglas R. Williams, Saint Louis University School of Law, Saint Louis, Missouri; and Cameron Catanzano, Praedium Law Group, PLLC, Vancouver, Washington.
[2]129 F.4th 1266 (10th Cir. 2025).
[3]Air Plan Approval and Disapproval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 88 Fed. Reg. 76676, 76677 (Nov. 7, 2023) (codified at C.F.R. pt 502).
[4]129 F.4th at 1274.
[5]137 F.4th 353 (5th Cir. 2025).
[6] 91 F.4th 280 (5th Cir. 2024).
[7]Air Quality Designations for the 2010 Sulfur Dioxide (SO2) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, 89 Fed. Reg. 89,870 (Dec. 16, 2016) (codified at C.F.R. pt. 81).

acted arbitrarily and capriciously in relying "solely on Sierra Club's modeling which had conceded limitations and…was called into question by conflicting monitoring data" and that EPA "should have designated the areas as unclassifiable or rationally explained why an alternative designation was clear and not debatable…[rather than]…forced a result on sparse and suspect evidence."[8] The court held that EPA violated the Administrative Procedure Act and remanded "for EPA to engage in reasoned decision-making in accordance with our interpretation of 'unclassifiable' under 42 U.S.C. § 7407(d)(1)(A)(iii)."[9]

In *Texas v. EPA*,[10] the United States Court of Appeals for the Fifth Circuit denied a petition for review filed by Texas challenging EPA's disapproval[11] of Texas's Good Neighbor SIP submitted in 2012. EPA found the SIP did not adequately address the full set of statutory requirements. The SIP's conclusions were unsupported by sufficient analysis, and data developed in a concurrent rulemaking showed that emissions in Texas did in fact contribute to violations of the federal ozone standards in other states. Texas argued that EPA's action was arbitrary. The court held, *inter alia*, that EPA complied with the Administrative Procedure Act in reviewing and disapproving Texas's SIP and acted rationally in basing its disapproval on the SIP's failure to adequately demonstrate that Texas's ozone emissions did not interfere with the maintenance of air quality standards in other states.

In *Little Manila Rising v. EPA*,[12] plaintiffs argued that regulations required EPA to set an attainment date six months after the designation of a nonattainment area. After EPA designated the San Joaquin Valley a nonattainment area for the 1997 PM 2.5 NAAQS and approved an attainment date six months after such designation, California requested a one-year extension of the attainment date. EPA proposed to grant the requested extension, after which plaintiffs brought the suit at issue. When EPA published a final rule approving the extension, plaintiffs brought a separate suit in the Ninth Circuit challenging the extension. The Ninth Circuit denied plaintiffs' motion and approved the EPA rule. In the case at issue, the district court dismissed plaintiffs' claim, finding that whether there was a mandatory duty to set the attainment date within six months was an issue that only the Ninth Circuit had jurisdiction to determine, because it was "embedded in a challenge to the validity of an implementation plan," and thus jurisdiction was "in the circuit court reviewing the plan." Finding no jurisdiction over the claim, the court dismissed it.

In *Center for Biological Diversity v. EPA*,[13] Petitioners sought review of EPA's approval of Colorado's 2019 SIP revision. Colorado revised parts of its SIP by changing the wording of a permit requirement for new emission sources and adding to the definition of a key threshold. Having considered the revisions, EPA rejected Petitioners' objections and approved the changes. Petitioners brought a challenge in the Tenth Circuit. In an opinion filed April 28, [14]2025, the petition was denied in part and granted in part and remanded to the agency.

First, Colorado's SIP originally stated that regulated parties could not "[c]ommence construction or modify" a stationary source without a permit. This language was changed

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[8]137 F.4th at 374.

[9]*Id.*

[10]156 F.4th 523 (5th Cir. 2025).

[11]Approval and Promulgation of Air Quality Implementation Plans; Texas; Interstate Transport of Air Pollution for the 2008 Ozone National Ambient Air Quality Standards, 81 Fed. Reg. 53,284, 53,289 (Aug. 12, 2016) (codified at 40 C.F.R. pt. 52).

[12]No. 24-CV-07768-HSG, 2025 WL 605456 (N.D. Cal. Feb. 25, 2025).

[13]134 F.4th 1271 (10th Cir. 2025).

[14]The Tenth Circuit reissued the opinion on August 12, 2025 with some amended language but the same holding.

so that regulated parties could not "[c]onstruct, operate, or modify" a stationary source without a permit. Petitioners argued that this revision would prevent regulators from blocking construction when a new source would generate excessive emissions, and that the EPA failed to assess the effect of the revision on Colorado's progress toward achieving the NAAQS. The court rejected these arguments, noting that the revised language was not a substantive change that might interfere with NAAQS attainment, and that Colorado's program separately requires a permit to "commence" any of these activities.

Second, the 2019 revision added language to the definition of the term "commencement of operation," which originally meant when a new source "first conducts the activity that it was designed and permitted for." The SIP revision added a second sentence which, in the Petitioners' view, would allow regulators to disregard emissions during drilling, fracking, and well completion, as "commencement of operation" would now mean "no later than the end of well completion operations." The court concluded that EPA failed to address potential emissions during drilling, fracking, and well completion activities. Furthermore, the agency did not independently assess Colorado's characterization of the revision as being merely "clarifying" as opposed to being a substantive change.

In *Texas v. EPA*,[15] the United States Court of Appeals for the Fifth Circuit addressed state challenges to EPA's omnibus disapproval of several SIPs, particularly for failure to adequately apply the Good Neighbor Rule to decrease ground-level ozone. In its venue analysis, the Fifth Circuit applied the same, essential test, and came to the same conclusions as the Supreme Court in *Oklahoma v. EPA*.[16] Unlike *Oklahoma v. EPA*, the Fifth Circuit also addressed the merits of three particular SIP disapprovals. The case was a consolidation of three state challenges by Texas, Louisiana, and Mississippi. The Fifth Circuit approved EPA's disapprovals for Texas and Louisiana, but vacated EPA's disapproval of Mississippi's SIP, declining to grant EPA's request to remand its decision, instead preferring vacatur. Each state argued that, under the CAA, EPA was bound to approve the state's SIPs, so long as the States provided a reasoned explanation for their analysis and decision. But the Fifth Circuit rejected this argument, determining based on the statutory text that EPA was in the "driver's seat" when choosing whether to approve or deny a SIP.[17] In that role, the EPA is tasked with interpreting the CAA and rejecting SIPs that do not comply. The Fifth Circuit specifically stated that it was not assessing whether EPA was owed deference in its interpretation of the statute under *Loper Bright Enterprises v. Raimondo*.[18]

Applying this standard to Texas and Louisiana's SIPs, the Court determined that EPA provided a reasoned analysis for its rejection of those state SIPs. Importantly, EPA's rejection was narrowly tailored. Rather than disputing the data, modeling, or analytical frameworks of the Texas and Louisiana SIPs, the agency chose to reject them based on their own, internal deficiencies. Specifically, EPA latched on to the states' attempt to explain away or discount their own modeling, which showed that the states were contributing to the non-attainment of downwind states.

The Fifth Circuit did not find EPA's rejection of Mississippi's SIP sufficient. Mississippi set a relatively higher *de minimus* threshold for analyzing downwind contributions and relied on different modeling to determine downwind contributions. Because EPA's rejection only focused on the modeling difference, the Fifth Circuit did not address whether the EPA *could have* rejected the SIP on other grounds. On this narrow ground, the Fifth Circuit determined that the EPA's rejection was arbitrary and capricious. A key fact was that Mississippi had actually used EPA's most up to date modeling at the

[15]132 F.4th 808 (5th Cir. 2025).
[16]605 U.S. 609, 145 S. Ct. 1720 (2025).
[17]State of Texas v. Defendant, 132 F.4th 808 (5th Cir. 2025).
[18]Loper Bright Enters. v. Raimondo, 603 U.S. 369, 144 S. Ct. 2244 (2024).

time it submitted its SIP. EPA's preferred model, on which it based its rejection on, did not exist when Mississippi designed its SIP. In crafting its relief, the Fifth Circuit again ruled with Mississippi. EPA has requested that the Fifth Circuit remand the decision back to the EPA. As a practical matter, this would have allowed EPA to implement its own Federal Implementation Plan (FIP), while EPA worked to re-do its analysis. With skepticism about what EPA would do to justify its decision on remand, the Fifth Circuit decided to instead vacate EPA's decision altogether. Mississippi's SIP will go into effect until EPA publishes a corrected approval or rejection.

In *Center for Biological Diversity v. Colorado Department of Public Health and Environment*,[19] Plaintiff challenged a general state permit covering minor and synthetic-minor emissions of VOCs from routine operations of certain gas facilities. The permit particularly addressed techniques such as flaring and enclosed combustion, which burn off short and irregular bursts of VOC emissions that are otherwise released during routine operations at certain gas facilities.

Plaintiffs first challenged that the general permit did not require monitoring or testing the actual efficiency of emissions control devices or procedures. Instead, the permit presumed an efficiency rating of 95% and required only visual reporting to confirm its functioning. Plaintiffs submitted evidence of instances when such devices and procedures could fall well below 95%. They claimed this was evidence that, without monitoring actual efficiency, the state department could not assure emission controls were practically achievable, as required for Minor Source permits. The Colorado Court of Appeals disagreed, stressing its deference to the Department's technical expertise. It also emphasized that, whatever limitations are caused by presuming a blanket efficiency rating are natural trade-offs inherent to general permits. Plaintiffs also presented expert evidence to show how adoption of approved techniques under the general permit would violate Colorado's NO2 NAAQS. The Department recognized that NO2 is an expected byproduct. They disagreed, however, on the particulars of plaintiffs' analysis. The court deferred to the Department's technical expertise.

In *Sierra Club v. United States Environmental Protection Agency*,[20] Plaintiff challenged two of EPA's decisions involving the Detroit area's attainment of the National Ambient Air Quality Standards (NAAQS). In June 2018, EPA designated the Detroit area as marginal nonattainment for the NAAQS it had set in 2015 and set 2021 as the deadline to reach attainment. In 2022, EPA determined that the Detroit area had failed to attain the 2015 NAAQS by the deadline and reclassified the area as moderate nonattainment, subjecting it to additional reasonably available control technology (RACT) requirements. That same year, Michigan submitted an application to redesignate the area from marginal nonattainment to attainment of the 2015 NAAQS based on data from 2019 through 2021. While Michigan's application was pending, ozone data for the Detroit area exceeded the 2015 NAAQS because of smoke and other ozone precursors from wildfires in Canada. Michigan argued that this data should be excluded as an exceptional event, and EPA agreed.

Plaintiff challenged EPA's exceptional-event approval, arguing that it was arbitrary and capricious. The United States Court of Appeals for the Sixth Circuit disagreed, finding that EPA provided a reasoned decision and that the 2022 exceedances were due to the wildfires. However, the court found that EPA lacked authority to redesignate the area to attainment because the area did not satisfy the RACT requirement, and it therefore vacated the redesignation.

[19] No. 23CA2143, 2025 WL 1467356 (Colo. App. Div. I May 22, 2025) (unpublished).
[20] Nos. 23-3581/3583, 2025 WL 3496645 (6th Cir. Dec. 12, 2025).

B. New Source Review, Prevention of Significant Deterioration, New Source Performance Standards & Title V Permitting

In [*United States v. Erie Coke Corporation*](),[21] the government prosecuted the Erie Coke Corporation and one of the company's plant superintendents, Anthony Nearhoof, for alleged violations of Clean Air Act sections 42 U.S.C. Section 7413(c)(2)(C) and 42 U.S.C. Section 7413(c)(1). To operate, the Erie Coke plant is required to comply with Title V of the CAA. As a stationary source, the plant must meet certain emissions limitations, monitor air emissions, and report air emissions to federal and state authorities. To meet the limitations of its Title V permit, Erie Coke installed a Continuous Opacity Monitor. The United States alleged that the defendants tampered with the Continuous Opacity Monitor to avoid accurate reporting of emissions and violated the terms of Erie Coke's Title V permit by exceeding opacity levels on numerous occasions.

The defendants moved to dismiss and strike certain language in the indictment. They argued that their actions did not amount to tampering with, or rendering inaccurate, the Continuous Opacity Monitor and that the language in the indictment was irrelevant, speculative, and prejudicial. The United States District Court for the Western District of Pennsylvania denied the defendants' motions, finding that the indictment sufficiently alleged tampering with the monitoring device and that the challenged language was relevant and not prejudicial.

In [*SSM Litigation Group v. Environmental Protection Agency*](),[22] the United States District Court for the District of Columbia reversed EPA's 2023 Final Rule rescinding the longstanding "emergency" affirmative defense for stationary sources that exceed their Title V permit emissions. Since 1992, EPA has recognized an affirmative defense to actions brought for noncompliance with technology-based emission limitations, if a Title V facility experiences "any situation arising from sudden and reasonably unforeseeable events beyond the control of the source" that result in an exceedance of the permitted limitations "due to unavoidable increases in emissions attributable to the emergency."[23]

In support of rescission, EPA first argued that it did not have the authority to promulgate the affirmative defense because it encroached on the judiciary's statutory role in assessing penalties for emission limitation violations. The court agreed that EPA did not have the authority to create a defense limiting the federal court's remedial authority, but concluded that a "complete affirmative defense" like the one at issue is permissible because it "relates to the antecedent question of liability" instead of "impinging" on the judiciary's authority to "award appropriate civil penalties."[24] As a result, the court concluded EPA's rationale for the rescission was not in accordance with law.

EPA next argued the emergency affirmative defense violated the Clean Air Act's mandate that certain "section 112 standard[s] apply continuously" by allowing Title V facilities to temporarily exceed their emission limitations.[25] The court rejected this argument and noted it conflated the legal concept of an affirmative defense to liability and an *ex ante* exemption from an emission standard. The court explained that an affirmative defense assumes that a legal standard remains in force but nonetheless allows the defendant to avoid liability, whereas an *ex ante* exemption actually suspends the legal standard at issue in certain situations. The court ultimately held that a complete affirmative defense to liability does not render an emission limitation non-continuous under 42 U.S.C. § 7602(k)

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[21] United States v. Bartlett, No. 1:22-cr-00023-SPB, 2025 WL 1194277 (W.D. Pa. Apr. 24, 2025).
[22] 150 F.4th 593 (D.C. Cir. 2025).
[23] *Id*. at 596.
[24] *Id*. at 599.
[25] *Id*.

and EPA could therefore not use it to justify rescission of the rule.

In *Athletics Investment Group, LLC v. Schnitzer Steel Industries, Inc.*,[26] the United States District Court for the Northern District of California conducted a bench trial concerning alleged Clean Air Act violations at a 26-acre scrap metal recycling facility adjacent to the San Francisco Bay in Oakland, California. The court found for Plaintiff in part and for Defendant in part. Plaintiff's action stemmed from the recycling facility's vehicle shredding operations, which emit light fibrous material (LFM) composed of various hazardous pollutants that disperse off-site.

Plaintiff first alleged that Defendant operated the facility for over a decade without a requisite Title V permit by relying on outdated source testing from 2007 that predated a permitted increase in the tonnage processed by the shredder in 2009. The court concluded Plaintiff lacked statutory standing to assert the claim because the recycling facility submitted a Title V application in October 2018 and was therefore no longer out of compliance under relevant Bay Area Air Quality Management District (BAAQMD) regulations at the time Plaintiff filed suit.

Plaintiff next claimed the Facility failed to implement BACT for precursor organic compounds/volatile organic compounds (POCs/VOCs) following its 2009 increase in tonnage by failing to install a regenerative thermal oxidizer (RTO) coupled with a complete enclosure under EPA Method 204. The court rejected this argument because Plaintiff could not provide examples of facilities utilizing these technologies together, and, separately, BAAQMD had not determined this technology combination was the "most effective control device or technique or most stringent limitation" that was "technologically feasible" for the shredder.

Plaintiff then argued Defendant exceeded its permitted POC emission limitation between November 2020 and April 2022. In response, Defendant claimed the argument was moot because it installed RTOs and acid gas scrubbers in April 2022 and April 2023 that significantly reduced POC emissions below the permitted limit. The court rejected Defendant's argument and found the implemented reductions mooted Plaintiff's injunctive relief claims but not the imposition of civil penalties. The court then imposed a $400,000 civil penalty on Defendant.

Plaintiff lastly argued that Defendant operated non-ferrous raw material stockpiles and torch cutting activities at the facility without a permit to operate. The court found Plaintiff lacked standing to challenge the torch cutting activities because they did not produce LFM and Plaintiff's injuries only arose out of the emission and dispersion of LFM. The court otherwise rejected Defendant's argument that the stockpiles were exempt from the requirement to have a permit to operate under relevant BAAQMD regulations. However, the court acknowledged BAAQMD's discretion over exemptions and afforded Defendant the opportunity to file an application for a certificate of exemption.

In *Port Arthur Community Action Network v. Texas Commission on Environmental Quality*,[27] the United States Court of Appeals for the Fifth Circuit denied a petition for review challenging the Texas Commission on Environmental Quality's best available control technology (BACT) emissions limitations for a new liquefied natural gas (LNG) facility. The state agency granted the LNG facility a permit under the CAA's Prevention of Significant Deterioration new source review program. That permit included a BACT limitation for nitrogen oxides and carbon monoxide emissions that was less stringent than the agency's prior BACT determination for the same pollutants emitted by a similar new, but not yet operational, LNG facility. After certifying the question to the Texas Supreme Court, the court held that Texas law does not require a BACT determination to match the prior BACT determination. Instead, the court upheld the state agency's decision because

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[26] No. 21-cv-05246-MMC, 2025 WL 2696428 (N.D. Cal. Sept. 22, 2025).
[27] 147 F.4th 560 (5th Cir. 2025).

Texas law requires BACT to be based on a "pollution control method [that] has already been determined to be operational in the real world."[28] The court of appeals also held that the Texas BACT requirement, approved by EPA, "does not… undermine the federal Clean Air Act."[29]

In *United States v EES Coke Battery, LLC*,[30] the United States District Court for the Eastern District of Michigan granted the United States' motion for partial summary judgment on its complaint alleging that the defendants had made a major modification of its coke oven facility without complying with the requirements of the CAA's nonattainment and PSD new source review programs. EES changed its method of operations in 2013 and obtained a permit authorizing the change from the Michigan Department of Environment, Great Lakes and Energy ("EGLE") in 2014. EGLE determined that the operational change did not constitute a major modification requiring compliance with either nonattainment or PSD new source review requirements. Later, however, EPA determined that the operational changes authorized by the 2014 permit had caused a significant increase and net significant increase in emissions of nonattainment and PSD pollutants. Accordingly, EPA determined that the operational change constituted a major modification of the facility requiring compliance with nonattainment and PSD new source review permitting requirements.

The United States brought an enforcement action against the defendants, alleging that EES violated the CAA by operating its facility without complying with the requirements of the nonattainment and PSD new source review programs. The court held that the operational change caused a significant increase and net significant increase in emissions of nonattainment and PSD pollutants, requiring compliance with new source review permitting requirements. The court rejected EES's argument that the increases in emissions were excludable under a demand growth exclusion, finding that EES had failed to carry its burden of demonstrating that the increased emissions were unrelated to the operational change authorized by the 2014 permit. EES was also held to have violated reporting requirements under the Michigan state implementation plan concerning a "reasonable possibility" that a change, though not constituting a major modification at the time it was made, may nonetheless cause a significant increase in emissions. The court also rejected EES's contentions that the enforcement action was a collateral attack on the 2014 permit and was time-barred.

The court also denied the DTE defendants' motion for summary judgment, finding triable issues of fact on whether the DTE defendants could be held liable as operators of the EES coke facility. The court applied the standards for parental corporate liability established by the Supreme Court in its Comprehensive Environmental Response, Compensation, and Liability Act decision in *United States v. Bestfoods*.[31] Specifically, the court found there was evidence that each of the DTE defendants participated in and exercised actual control over the emissions operations at the EES facility, potentially rendering each of them an operator for purposes of liability under the CAA.

C. Title II - Mobile Sources & Fuels

In *Biederman v. FCA US LLC*,[32] a pickup truck buyer brought a putative class action against truck and engine manufacturers alleging the use of "defeat devices" in diesel

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[28]*Id*. at 566. (quoting Port Arthur Cmty. Action Network v. Tex. Comm. On Envtl. Qual., 707 S.W.3d 102, 107-08 (Texas 2025)).
[29]*Id.* at 567.
[30]796 F.Supp.3d 440 (E.D. Mich. 2025).
[31]524 U.S. 51 (1998).
[32]765 F. Supp. 3d 920 (N.D. Cal. 2025).

engines that allow vehicles to emit pollutants beyond regulatory limits to improve performance. Plaintiffs also asserted claims under several statutes, including the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Consumers Legal Remedies Act (CLRA).

With respect to the Clean Air Act, Defendants argued that the statute preempted Plaintiffs' claims to the extent they relied on alleged misrepresentations about the pickup trucks. First, the United States District Court for the Northern District of California considered whether Plaintiffs' claims were preempted under express or implied preemption. The court determined that the CAA includes an express preemption provision that prohibits states from enforcing standards related to the control of emissions from new motor vehicles or engines. However, Defendants failed to explain how that provision barred Plaintiffs' claims. Second, the court considered whether Plaintiffs' claims were preempted under implied preemption, either field or conflict preemption. The claims were not barred because Defendants failed to identify any CAA language manifesting congressional intent to preempt consumer protection claims concerning vehicle emissions and because of the presumption against preemption in areas traditionally regulated by the states. As to conflict preemption, the court found that claims based on alleged misrepresentations were not conflict-preempted, while those based solely on allegations that the trucks complied with EPA regulations were preempted.

In *Calumet Shreveport Refining LLC v. Regan*,[33] Calumet sought relief from its 2023 Renewable Fuel Standard (RFS) obligations, claiming compliance would cause significant economic hardship. The company argued that EPA had a mandatory duty under the Clean Air Act to respond to its petition within ninety days. Calumet sought to compel timely EPA action, while EPA conceded its violation but contested the remedy and timing. The United States District Court for the Western District of Louisiana agreed, ruling that the EPA failed to meet this deadline, emphasizing that its obligation to respond promptly is non-discretionary and enforceable.

In *Bledsoe v. FCA US LLC*, [34] the United States Court of Appeals for the Sixth Circuit affirmed in part, and reversed in part, a district court decision dismissing claims of a class action filed by purchasers of Dodge Ram trucks alleging that Defendants had misrepresented the trucks as environmentally friendly and fuel-efficient, while "defeat device" software allegedly reduced emissions controls in real-world driving, leading to higher NOx emissions and lower fuel economy than advertised. The Sixth Circuit held that Plaintiffs' claims requiring proof that vehicles exceeded EPA standards, involved "defeat devices," or constituted fraud on EPA are preempted by the Clean Air Act as they challenge EPA certifications. However, claims based on misrepresentations relative to comparable gasoline trucks, reasonable consumer expectations, or defendants' own advertisements (independent of EPA benchmarks) were not preempted and may proceed if provable without relying on federal standards. The case was remanded for the district court to assess whether surviving claims present genuine factual disputes and can be proven without impermissibly challenging EPA determinations.

In *United States v. EZ Lynk, SEZC*,[35] the United States Court of Appeals for the Second Circuit vacated a lower district court order that dismissed claims that the defendant manufactured and sold an automobile exhaust defeat device system in violation of the Clean Air Act. Defendants manufactured and allowed car owners to download an aftermarket automobile tuning system that could be used to disable vehicle emission controls. The defendants argued, and the district court agreed, that they only provided an open platform for others' software and thus were immune from suit under Section 230 of

[33] No. 5:24-cv-00890, 2025 WL 51576 (W.D. La. Jan. 7, 2025).
[34] No. 24-1094, 2025 WL 2268065 (6th Cir. Aug. 8, 2025).
[35] 149 F.4th 190 (2d Cir. 2025).

the Communications Decency Act. The Second Circuit reversed, holding that Section 230(c)(1) shields providers from liability as "publishers" of third-party content but does not apply if the provider "materially contributes" to the content's unlawfulness. The Second Circuit held that the complaint plausibly alleged that Defendants went beyond passive publication by developing the system's architecture, providing technical specifications to third-party exhaust system tuners, monitoring and approving tuner applications for compatibility, and marketing the system explicitly for emissions defeat.

In *Daimler Truck North America LLC v. California Air Resources Board*,[36] the United States District for the Eastern District of California granted in part and denied in part Plaintiffs' motion for a preliminary injunction enjoining the California Air Resources Board (CARB) from implementing, enforcing, or threatening to enforce the Clean Truck Partnership (CTP), a 2023 voluntary agreement between truck manufacturers and CARB directing compliance with stricter California emissions standards. The court held that plaintiff truck manufacturers demonstrated likely success on claims that the CTP is preempted by the Clean Air Act and the Supremacy Clause, after Congress revoked EPA waivers for California's heavy-duty truck emissions rules via Congressional Review Act resolutions. Plaintiffs also showed irreparable harm in the form of significant compliance costs and resources, such that the balance of equities and public interest favored preserving the *status quo* pending resolution on the merits. The court declined to enjoin California from enforcing its underlying heavy-duty truck emission regulations reasoning that these were not currently being enforced against manufacturers.

In *Center for Biological Diversity v. Environmental Protection Agency*,[37] the United States District Court for the District of Colombia remanded EPA's Final Rule establishing volume requirements under the Renewable Fuel Standard (RFS) Program for years 2023–2025. Under the RFS, EPA must set volume numbers for each renewable fuel category based on a "review of the implementation of the program in previous years and an analysis of six factors (set criteria) found in 42 U.S.C. § 7545(o)(2)(B)(ii)."[38] The court concluded that EPA failed to reasonably explain its decision to rely on a nearly fifteen-year-old study on the effects of renewable fuels on climate change, particularly because the study relied on a lower high-end emission estimate for corn-based ethanol than other available literature. Given the "outsized role" of corn-based ethanol in the RFS as the largest category of renewable fuel in the U.S., the court held that EPA failed to "articulate a rational connection between the facts found and the choice made" given EPA chose this lower-end estimate in an outdated study and then placed "significant weight" on climate conclusions to establish RFS volumes.

The Court also found the Fish and Wildlife Service's "no effect" determination for the Final Rule was arbitrary and capricious because it relied on EPA's inability to pinpoint where cropland conversions associated with renewable fuel production would occur as a basis to conclude that such conversions were not reasonably certain to happen. The Court rejected other petitioner challenges to the Final Rule and remanded it without vacatur to EPA and FWS to provide "further explanation of their decisions."

In *Counts v General Motors LLC*,[39] the United States Court of Appeals for the Sixth Circuit remanded a case to the United States District Court for the Eastern District of Michigan to determine whether fraud claims levied against the defendants are preempted by the CAA. Invoking the law of more than thirty states and the RICO Act, Plaintiffs advanced five theories of fraud. They claimed that automobiles manufactured by the defendant:

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[36] No. 2:25-cv-02255-DMC-AC, 2025 WL 3049944 (E.D. Cal. Oct. 31, 2025).
[37] 141 F.4th 153 (D.C. Cir. 2025).
[38] *Id.* at 164.
[39] 139 F.4th 576 (6th Cir. 2025).

> emit levels of NOx many times higher than (i) their gasoline counterparts, (ii) what a reasonable consumer would expect, (iii) what GM had advertised, (iv) the [EPA]'s maximum standards, and (v) the levels set for the vehicles to obtain a Certificate of Conformity that allows them to be sold in the United States.[40]

The court agreed with the district court that the last two of these claims were categorically preempted by the CAA. It remanded the case to the district court with instructions to determine whether the remaining claims depend on a disagreement with determinations made by EPA when it certified the defendants' automobiles as complying with the requirements of the CAA. More specifically, the court held that the remaining claims would be preempted unless two things were proven to be true: (1) the claims do not depend on the use of a "defeat device" or fraud in the process of testing the automobiles' emissions; and (2) the claims are independent of EPA determinations.

D. Procedural & Jurisdictional Issues

In *Oklahoma v Environmental Protection Agency*,[41] Oklahoma and Utah challenged EPA's disapproval of their State Implementation Plans (SIPs) for failure to comply with the ozone NAAQS, and for failures relating to the CAA's "Good Neighbor" provision. EPA had aggregated twenty-one SIPs disapprovals into one omnibus federal rule.[42] The United States Supreme Court reviewed whether the challenged rule was nationally or locally applicable for purposes of CAA's venue provision. Under the Act, nationally applicable rules are reviewable only in the United States Court of Appeals for the District of Columbia, while locally or regionally applicable rules are reviewable in the Circuit Court of that region.

According to EPA, the states were challenging EPA's omnibus rule, which was of nationwide scope or effect, and therefore only reviewable in the D.C. Circuit.[43] Oklahoma and Utah argued they were challenging EPA's specific action of denying their individual SIPs, which are regionally applicable. The Tenth Circuit had ruled that the omnibus rule was properly challenged in the D.C. Circuit. .[44]The Supreme Court reversed, relying on the two part test it articulated in *EPA v. Calumet*:[45] First, the court must identify the relevant EPA "action" being challenged.[46] If the action is "nationally applicable," then any challenge to it belongs in the D.C. Circuit.[47] Second, if the action is "locally or regionally applicable," the court must ask whether the "nationwide scope or effect" exception applies to override the default rule that "locally or regionally applicable" actions are reviewable only in the regional Circuits.[48] If the exception applies, then any challenge to the action must be brought in the D.C. Circuit.

Reasoning that an "action" under CAA's venue provision, 42 U.S.C. § 7607(b)(1), is defined as a "particular exercis[e] of EPA authority… pursuant to [a] particular CAA

[40]*Id.* at 579-80 (citation omitted).
[41]605 U.S. 609 (2025).
[42]Air Plan Disapprovals, 40 C.F.R. pt. 52 (2023).
[43]*Oklahoma*, 605 U.S. at 617.
[44]Oklahoma by and through Drummond v. Environmental Protection Agency, 93 F.4th 1262 (10th Cir. 2025).
[45]605 U.S. 627 (2025).
[46]*Oklahoma*, 605 U.S. at 615.
[47]*Id*.
[48]*Id*.

provisio[n],"[49] the Court determined that, while EPA was free to aggregate its SIPs disapprovals into one federal rule, it did so exercising its statutory authority to approve or disapprove *individual* SIPs. The action challenged by Utah and Oklahoma is EPA's denial of their individual SIPs. "An EPA decision on an individual SIP 'is the prototypical locally or regionally applicable action.'"[50] The Supreme Court found that EPA's action was not based on a determination of nationwide scope or effect. EPA's omnibus rule acknowledged that disapprovals were based on state-specific intensely factual determinations. EPA also evaluated the contents of each SIP on their own merits. Therefore the proper venue for each state's challenge their SIP disapproval in the omnibus rule was in the appropriate regional Circuit Court.

In *EPA v. Calumet Shreveport Refining LLC*,[51] the United States Supreme Court has established a clear process for reviewing actions taken by EPA in court. According to 42 U.S.C. Section 7607(b)(1), challenges to nationally significant EPA actions must be filed exclusively in the D.C. Circuit Court. In contrast, EPA actions that are local or regional typically go to the regional Circuits. However, if a locally or regionally applicable action has nationwide importance, it must be reviewed in the United States Court of Appeals for the District of Columbia, provided EPA publishes a notice confirming that such importance exists.

In this case, six small refineries petitioned EPA for exemptions from the CAA renewable fuel program, claiming they faced "disproportionate economic hardship" under 42 U.S.C. Section 7545. EPA denied these petitions, arguing that the concept of "disproportionate economic hardship" did not apply because the small refineries were able to pass the costs onto consumers entirely. In the denial notice, EPA indicated that these actions could only be reviewed in the D.C. Circuit, either as "nationally applicable" or "locally applicable" based on a determination of nationwide scope or effect. In response, the refineries challenged the denials in several circuits, but their cases were mostly dismissed for improper venue or transferred to the D.C. Circuit. Nevertheless, the United States court of Appeals for the Fifth Circuit retained jurisdiction and ruled in favor of the refineries, holding that EPA's actions were locally applicable because their legal impact was limited to the refineries that sued. The Fifth Circuit found the actions did not involve considerations of nationwide scope or effect, as the EPA had taken refinery-specific facts into account.

On appeal, the Supreme Court ruled that the EPA's denials were locally or regionally applicable actions that fell under the "nationwide scope or effect" exemption, confirming that the appropriate venue was the D.C. Circuit. The Court explained that Section 7607(b)(1) establishes a two-step process for determining the appropriate venue. First, courts must assess whether the EPA's action, "on its face," applies nationwide or only at a local or regional level. If the action is determined to be nationally applicable, it belongs in the D.C. Circuit. Conversely, if the action is locally or regionally applicable, and the EPA considers each refinery's exemption petition a separate petition—even if the EPA is considering multiple petitions from refineries—then the court moves on to the second step to evaluate whether the "nationwide scope or effect" exemption applies.

The Court emphasized that the Act's definition of "actions" each individual exemption petition denial is treated as a distinct "action" for jurisdictional purposes, even if these denials are part of a larger decision-making process.

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[49]*Id.* at 619 (quoting EPA v. Calumet Shreveport Refining LLC, 145 S. Ct. 1735, 1747 (2025)).
[50]*Id.* at 20 (quoting American Road & Transp. Builders Ass'n v. EPA, 705 F.3d 453, 455 (2013)).
[51]145 S.Ct. 1735 (2025).

In *GreenLatinos et al. v. Suncor Energy, Inc.*,[52] Plaintiffs sued Suncor under the citizen-suit provision of the CAA. They claimed Suncor failed to control hazardous emissions and violated its permits, affecting nearby neighborhoods. The United States District Court for the District of Colorado found that previous actions by EPA and the state, including a 2023 fine, ongoing oversight, and various compliance measures, constituted sufficient enforcement actions. As a result, Plaintiffs' citizen suit was precluded.

In *Diamond Alternative Energy, LLC v. EPA*,[53] the United States Supreme Court decided an issue related to Article III standing—specifically, whether fuel producers had the right to sue EPA over its 2022 approval of certain California vehicle emissions regulations. In a 7-2 decision, the Court reversed the United States Court of Appeals for the District of Columbia and held the fuel producers had standing to challenge EPA's approval. California had sought and received an EPA waiver under section 209(b) of the CAA to enforce the state's Advanced Clean Cars Program. The CAA generally preempts state vehicle emission standards, but Section 209(b) allows the EPA to grant California a waiver for the state to set its own more stringent standards. The California program, intended to reduce consumption of gasoline and other liquid fuels, limited average greenhouse-gas emissions for new vehicles and mandated a percentage of zero-emission vehicles across automaker fleets. Fuel producers, including Diamond Alternative Energy, challenged EPA's approval, arguing the program would reduce fuel demand and thereby harm the companies' businesses.

The Court addressed the issue of the fuel producers' Article III standing, which requires injury in fact, causation, and redressability. The D.C. Circuit had ruled that the fuel producers lacked standing by failing the redressability test, in that automakers might continue to produce electric vehicles due to customer demand even without the waiver. The Supreme Court found the standing requirements to be satisfied. With respect to injury in fact and causation, the California regulations would cause a reduction in fuel demand, resulting in monetary injury to the fuel producers. With respect to redressability, the Court found that invalidating the California program would likely alleviate at least some of the fuel producers' monetary injuries due to additional sales of gasoline and other liquid fuels. The Court also noted that expert economic evidence or affidavits from regulated third parties such as automakers were not necessary and would set too-high a bar for the redressability analysis. The case was reversed and remanded to the D.C. Circuit.

II. REGULATORY DEVELOPMENTS

A. Cross-State Pollution Rule

On April 22, 2025, EPA published a notice on the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. Specifically, the EPA completed final calculations for allocations of allowances from the new unit set-asides for the 2024 control period and posted spreadsheets containing the calculations.

On May 20, 2024, EPA published an interim final rule addressing nitrogen oxides (NOx) emissions from electricity generating units in Indiana during the 2024 ozone season and subsequent years under the Revised Cross-State Air Pollution Rule (CSAPR) Update.[54] In establishing state emissions budgets and default unit-level allocations under the Revised

[52] No. 24-CV-02164, 2025 WL 1747089 (D. Colo. May 23, 2025).
[53] 606 U.S. 100 (2025).
[54] Emissions Budget and Allowance Allocations for Indiana Under the Revised Cross-State Air Pollution Rule Update, 90 Fed. Reg. 21,423 (May 20, 2025) (to be codified at 40 C.F.R. pt. 97).

CSAPR, EPA relied on plans by some electricity generating units to retire. The purpose of the adjustments was to account for subsequent decisions by electricity generating unit owners to delay retirement.

A. Title I: National Ambient Air Quality Standards (NAAQS), Federal Implementation Plans (FIPs) & State Implementation Plans (SIPs)

On March 17, 2025, EPA published a proposed rule to grant a one-year extension of the "extreme" attainment date for the 1997 ozone National Ambient Air Quality Standards to the Coachella Valley ozone nonattainment area.[55]

On July 2, 2025, EPA published an interim final rule revising the compliance deadline in recent amendments to the National Volatile Organic Compound Emission Standards for aerosol coatings. In particular, the EPA moved the compliance deadline from July 17, 2025, to January 17, 2027.[56]

On July 31, 2025, EPA published a final determination that Indian country under the jurisdiction of the Shinnecock Indian Nation, located within the New York–Northern New Jersey–Long Island nonattainment area, failed to attain the 2015 ozone National Ambient Air Quality Standards by the applicable attainment date. This failure to attain reclassified the area as "serious" nonattainment.[57]

On September 4, 2025, EPA published a notice of adequacy notifying the public that the agency found the Limited Maintenance Plan for PM2.5 for the New York portion of the New York–Northern New Jersey–Long Island PM2.5 maintenance area adequate for transportation conformity purposes. The plan was submitted by the New York State Department of Environmental Conservation.[58]

On September 25, 2025, EPA published a Proposed Rule to approve a request submitted by the State of Utah on February 23, 2015, to expand the boundary for the Northern Wasatch Front 2015 8-hour ozone NAAQS nonattainment area to include the U.S. Magnesium facility located in Tooele County on the southwestern edge of the Great Salt Lake. The public comment period ended October 27, 2025.[59]

On October 2, 2025, EPA published an Advance Notice of Proposed Rulemaking soliciting information and requesting comment to assist in the development of regulatory changes to restructure the Regional Haze Rule in 40 C.F.R. Part 51 and streamline regulatory requirements impacting states' visibility improvement obligations under the CAA. The public comment period ended December 1, 2025.[60]

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[55] Extension of the Attainment Date of the Coachella Valley Extreme Nonattainment Area Under the 1997 Ozone National Ambient Air Quality Standards, 90 Fed. Reg. 12,239 (Mar. 17, 2025).

[56] National Volatile Organic Compound Emission Standards for Aerosol Coatings: Interim Final Rule, 90 Fed. Reg. 28,904 (July 2, 2025).

[57] Finding of Failure To Attain and Reclassification of Area in New York as Serious for the 2015 Ozone National Ambient Air Quality Standards—Shinnecock Indian Nation, 90 Fed. Reg. 35,985 (July 31, 2025).

[58] Adequacy Status of the New York Portion of the New York–Northern New Jersey–Long Island Submitted PM2.5 Limited Maintenance Plan, 2006 24-Hour PM2.5 Maintenance Area, 90 Fed. Reg. 42,762 (Sept. 4, 2025).

[59] Utah; Northern Wasatch Front; 2015 8- Hour Ozone Nonattainment Area Boundary Expansion and Applicability of Certain Clean Air Act Requirements, 90 Fed. Reg. 46,128, 46,129 (proposed Sept. 25, 2025) (to be codified at 40 C.F.R. pt. 81).

[60] Visibility Protection: Regional Haze State Plan Requirements Rule Revision; Advance notice of proposed rulemaking, 90 Fed. Reg. 47,677 (Oct. 2, 2025) (to be codified at 40 C.F.R. pt. 51).

B. New Source Review, Prevention of Significant Deterioration, New Source Performance Standards & Title V Permitting

On June 23, 2025, EPA provided notice that it was updating delegations to Louisiana to implement and enforce certain new source performance standards (NSPS) and proposed to approve a delegation to the state to implement and enforce certain national emissions standards for hazardous air pollutants (NESHAPs).[61]

On June 30, 2025, EPA issued a final rule concerning its periodic review of the emissions standards and other requirements for Other Solid Waste Incineration (OSWI) units in the applicable new source performance standards (NSPS) and emission guidelines.[62]

On July 7, 2025, EPA issued a proposed rule updating its delegation of authority to the Oklahoma Department of Environmental Quality (ODEQ) for implementation and enforcement of New Source Performance Standards (NSPS) following ODEQ's submission of updated state regulations that incorporate by reference EPA's NSPS through June 30, 2023.[63] The requested delegation also includes ODEQ's authority to administer state NSPS in certain areas of Indian country not otherwise excluded from state regulation under the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act.

On July 7, 2025, EPA issued a notice informing public and regulated facilities that it approved the Louisville (KY) Metro Air Pollution Control District's requested delegation of authority to enforce NSPS using the "adopt-by reference" mechanism on August 20, 2024.

On July 21, 2025, EPA withdrew its proposed rule titled "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Regulations Related to Project Emissions Accounting'' previously published in the Federal Register on May 3, 2024.[64] The proposed rule sought to "improve implementation and strengthen enforceability of the NSR program provisions finalized in the 2020 Project Emissions Accounting rule[,]" but EPA ultimately determined it would create "additional burdens and uncertainty on regulated stationary sources without clear and justifiable corresponding benefits."

On July 31, 2025, EPA issued an interim final rule extending certain deadlines within the final rule titled "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" published on March 8, 2024.[65] The interim final rule extends deadlines for provisions related to "control devices, equipment leaks, storage vessels, process controllers, and covers/closed vent systems in 'Subpart OOOOb—Standards of

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[61]New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Louisiana, 90 Fed. Reg. 26,482 (June 23, 2025) (to be codified at 40 C.F.R. pts. 60, 61, and 63).

[62]Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units Review, 90 Fed. Reg. 27,910 (June 30, 2025) (to be codified at 40 C.F.R. pt. 60).

[63]New Source Performance Standards; Delegation of Authority to Oklahoma, 90 Fed. Reg. 29,826 (July 7, 2025).

[64]Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Regulations Related to Project Emissions Accounting; Withdrawal of Proposed Rule, 90 Fed. Reg. 34,206 (July 21, 2025)

[65]Extension of Deadlines in Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Final Rule, 90 Fed. Reg. 35,966 (July 31, 2025).

Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022.'" The interim final rule also extends the date for implementation of the "SuperEmitter Program" and extends the state plan submittal deadline in "Subpart OOOOc—Emissions Guidelines (EG) for Greenhouse Gas Emissions from Existing Crude Oil and Natural Gas Facilities." EPA extended these deadlines in response to comments from stakeholders expressing concern that certain regulatory provisions "are not currently workable or contain problematic regulatory language that frustrates compliance."

C. Hazardous Air Pollutants

On March 31, 2025, EPA published a final rule and partial stay.[66] EPA's Office of Air and Radiation announced the convening of a proceeding for reconsideration of certain requirements in the final rule, "National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review." In this rule, EPA stayed provisions establishing compliance deadlines in 2025 for requirements that were added or revised by the April 3, 2024, final rule.

On June 17, 2025, EPA proposed to repeal certain amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired Electric Utility Steam Generating Units (MATS) rule for power plants that had been finalized in May 2024.[67] The proposal would repeal the 2024 revisions that had tightened the filterable particulate matter limit (the surrogate standard for non-mercury metal HAPs) for existing coal-fired electric generating units and that had lowered the allowable mercury emission rate for lignite-fired units. EPA explained that it is re-evaluating those MATS amendments and proposed to restore the prior standards; the proposal would leave in place the other MATS requirements and only rescind the specifically identified 2024 changes.

On July 3, 2025, EPA published an interim final action extending the compliance deadlines for certain 2024 NESHAP requirements affecting integrated iron and steel mills.[68] EPA's January 2024 technology-review rule for this source category imposed more stringent emission limits (e.g., tighter hydrogen chloride and particulate standards) with compliance originally required by mid-2025. Citing "serious concerns" about mills' ability to meet those new limits on time, EPA's interim rule reset the compliance dates to April 3, 2027. EPA requested public comment on the extension but made it immediately effective referencing the need to forestall widespread non-compliance or plant shutdowns.

On July 8, 2025, EPA issued an interim final rule extending the compliance deadlines for new emission controls on coke ovens. EPA's 2023 risk and technology review for coke oven batteries and coke oven pushing/quenching operations had set compliance dates in July 2025 (for some standards) and January 2026 (for others).[69] The interim final rule delays those deadlines until July 5, 2027 for both the Coke Oven Batteries NESHAP and

[66]Partial Administrative Stay of National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review, 90 Fed. Reg. 14,207 (Mar. 31, 2025).
[67]National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Review of the Residual Risk and Technology Review, 90 Fed. Reg. 25,535 (June 17, 2025) (to be codified at 40 C.F.R. pt. 63).
[68]National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review: Interim Final Rule, 90 Fed. Reg. 29,485 (July 3, 2025).
[69]National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review, 90 Fed. Reg. 29,997 (July 8, 2025).

the Coke Ovens Pushing/Quenching/Battery Stacks NESHAP. This 24-month extension was deemed necessary after industry groups demonstrated that the required control technology upgrades could not be completed within the original timeframe. EPA made the extension effective immediately and opened a comment period through August 7, 2025.

On July 10, 2025, EPA proposed to approve Oklahoma's request for an updated delegation of authority to enforce federal air toxics standards within the state. The Oklahoma Department of Environmental Quality (ODEQ) has adopted by reference all National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Parts 61 and 63 as they existed through June 30, 2023. EPA's proposed action would confirm ODEQ's authority to implement and enforce newer NESHAP for both major and area sources in Oklahoma, in lieu of federal EPA enforcement. Certain categories are excluded from this delegation. This delegated approval would apply to all areas of State of Oklahoma, including Indian country other than the certain excluded Indian country lands described in the proposal.[70]

On August 28, 2025, EPA proposed to approve regulatory amendments to two programs operated by the State of Connecticut, including the state operating permit program and regulation of hazardous air pollutants, to reflect EPA's addition of 1-bromopropane to the CAA's list of hazardous air pollutants.[71]

On October 1, 2025, EPA proposed amendments to the National Emissions Standards for Hazardous Air Pollutants for the Secondary Lead Smelting source category under Section 112 of the CAA.[72]

On November 10, 2025, EPA published a proposed rule that would establish emission limits and work practice standards for hydrogen fluoride and hydrogen cyanide emissions from HWC incinerators, cement kilns, solid fuel boilers, and liquid fuel boilers, and would eliminate the startup, shutdown, and malfunction (SSM) exemption. Additionally, it would add a work practice standard for periods of SSM, add electronic reporting procedures and requirements, and allow states to choose to exempt area sources from certain permitting requirements.[73]

On December 6, 2025, EPA EPA rescinded an interim final rule titled "National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review." The rescission reinstates the compliance deadlines set forth in the 2024 final rule revising the National Emission Standards for Hazardous Air Pollutants for Coke Ovens.[74]

On December 22, 2025, EPA proposed a rule to grant a petition to remove 2-Butoxyethyl benzoate (2-BEB) (Chemical Abstract Service (CAS) No.5451–76–3) from

[70]National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Oklahoma, 90 Fed. Reg. 30,613 (July 10, 2025) (proposed rule).

[71]Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants; State of Connecticut Department of Energy and Environmental Protection; Approval of the Clean Air Act Section 502, State Operating Permit Programs, State of Connecticut Department of Energy and Environmental Protection, 90 Fed. Reg. 41,938 (Aug. 28, 2025) (to be codified at 40 C.F.R. pts. 63 and 70).

[72]National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting Technology Review, 90 Fed. Reg. 47268 (proposed October 1, 2025) (to be codified at 40 C.F.R. pt. 63).

[73]National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors: Residual Risk and Technology Review; Withdrawal of Proposed Revisions to Standards for Periods of Malfunction, 90 Fed. Reg. 50,814 (Nov. 10, 2025).

[74]Petition To Delist Hazardous Air Pollutant: 2-Butoxyethyl Benzoate (2-BEB), 90 Fed. Reg. 59,768 (Dec. 22, 2025)

the glycol ethers category in the list of hazardous air pollutants (HAP) in Clean Air Act. The proposal finds there is adequate data on the health or environmental effects of the chemical to support the request for removal.[75]

D. Ozone

On November 10, 2025, EPA proposed to list several substitutes as acceptable under the Significant Alternatives Policy Program. The new rule would affect residential and light commercial air conditioning and heat pumps, chillers, household refrigerators and freezers, motor vehicle air conditioning, and fire suppression and explosion protection.[76]

E. Renewable Fuel Standard

On August 27, 2025, EPA published a notice regarding the reasoning behind its decisions regarding the 175 petitions submitted by 38 small refineries requesting exemptions under the Renewable Fuel Standard (RFS) for the compliance years 2016 to 2024. After reviewing these petitions, the EPA granted full (100 percent) exemptions to 63 petitions, partial (50 percent) exemptions to 77 petitions, denied 28 petitions, and determined that seven petitions were ineligible.[77]

B. Other

On April 7, 2025, EPA issued a notice announcing that it has designated one new equivalent method for measuring concentrations of PM2.5 and one new equivalent method for measuring PM10–2.5 in ambient air. Both methods for PM2.5 and PM10–2.5 are automated (monitoring) methods that use the beta attenuation principle.[78]

On August 26, 2025, EPA announced that it would take an interim final action to allow the temporary use of incineration units subject to the commercial and industrial solid waste incinerator (CISWI) regulations during disaster recovery. EPA said it would approve such temporary use of incinerators, including air curtain incinerators, subject to CISWI regulations by adding temporary-use provisions. This interim final rule is effective on August 26, 2025, and EPA will accept comments until October 10, 2025.[79]

[75] Petition To Delist Hazardous Air Pollutant: 2-Butoxyethyl Benzoate (2-BEB), 90 Fed. Reg. 59,768 (Dec. 22, 2025)

[76] Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Refrigeration and Air Conditioning and Fire Suppression, 90 Fed. Reg. 50,766 (Nov. 10, 2025).

[77] Notice of August 2025 Decisions on Petitions for Small Refinery Exemptions Under the Renewable Fuel Standard Program, 90 Fed. Reg. 41,829 (Aug. 27, 2025).

[78] Ambient Air Monitoring Reference and Equivalent Methods; Designation of Two New Equivalent Methods, 90 Fed. Reg. 15,001 (Apr. 7, 2025)

[79] Commercial and Industrial Solid Waste Incineration Units: Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery, 90 Fed. Reg. 41,508 (Aug. 26, 2025) (to be codified at 40 C.F.R. pts. 60, 62).

Chapter B: BIODIVERSITY
2025 Annual Report[1]

I. ADMINISTRATIVE DEVELOPMENTS

2025 was an active year for administrative developments under the Endangered Species Act (ESA). On April 17, 2025, The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively Services) jointly published a proposed rule to rescind the definition of "harm" that implements the ESA Section 9 take prohibition. And on November 21, 2025, the Services jointly published two proposed rules to revise regulations governing the Section 4 species listing and Critical Habitat designation process and the Section 7 interagency consultation process. Also, on November 21, FWS published two additional proposed rules on its own that would: (1) revise the manner in which Section 9 take prohibitions are made applicable to threatened species; and (2) revise the analytical approach used to decide whether to exclude certain areas from Critical Habitat designations.

A. Section 4: Issuance of a Proposed Rule to Revise Endangered Species Act Section 4 Listing Regulations[2]

The Services jointly issued a proposed rule to replace the Section 4 regulations that were promulgated in 2022 with regulations promulgated in 2020 during the first Trump Administration. This would result in the following five changes:

1. Mention of economic factors in the listing determination

The current regulations at 50 C.F.R. section 424.11(b) state: "The Secretary shall make any determination required by. . . this section solely on the basis of the best available scientific and commercial information regarding a species' status without reference to possible economic or other impacts of such determination." Reverting to the 2020 Rule would remove the phrase "without reference to possible economic or other impacts of such determination" from the end of 50 C.F.R. section 424.11(b).

2. Definition of "foreseeable future" for making listing determinations

For listing determinations involving threatened species, the proposed rule clarifies that when determining whether a species is likely to become endangered in the "foreseeable

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[2]Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat, 90 Fed. Reg. 52607 (Nov. 21, 2025) (to be codified at 50 C.F.R. pt. 424).

future," the Services are not required to identify the foreseeable future in terms of a specific period of time. Rather, the foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely.

3. Factors to be considered for delisting species

The proposed rule clarifies that the factors to be considered for both listing determinations and delisting determinations are the same. Reverting to the 2019 Rule would revise section 424.11(e) to list the following three circumstances in which it is appropriate to delist a species: "(1) the species is extinct, (2) the species does not meet the definition of an endangered species or a threatened species, [or] (3) the listed entity does not meet the definition of a species."[3]

4. Approach for determining that designation of Critical Habitat is not prudent

The proposed revision to Critical Habitat "not prudent" determinations would revise § 424.12(a)(1) by reinserting the circumstance that had been removed in the 2024 Rule that provides that a Critical Habitat designation may be "not prudent" where threats to a species' habitat "stem solely from causes that cannot be addressed [through] management actions identified in a section 7(a)(2) consultation."[4]

5. Critical Habitat designations for unoccupied Habitat

In reverting to the 2019 Rule, the Services are proposing to revise the criteria for designating unoccupied Critical Habitat to explicitly require a two-step process that prioritizes the designation of occupied areas over unoccupied areas. The proposed rule would add the following sentence: "The Secretary will only consider unoccupied areas to be essential where a Critical Habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species."[5] Reverting to the 2019 Rule would again require the two-step process of first evaluating occupied areas before considering unoccupied areas for designation and would also reinstate the requirement that to designate unoccupied areas as Critical Habitat, the Services must make a determination that there is reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of "those physical or biological features . . . essential to the conservation of the species."[6]

B. Section 4: Issuance of a Proposed Rule to Revise Section 4(b)(2) Regulation Governing Critical Habitat Exclusions[7]

FWS issued a proposed rule that would revise the process used to weigh the costs and benefits of designating Critical Habitat. The proposed rule would undo rulemaking promulgated in 2022 and return to the rule issued in 2020 during the first Trump Administration.[8] Two notable changes in the proposed rule include a revised approach to

[3] *Id.* at 52610.
[4] *Id.* at 52611.
[5] *Id.*
[6] 90 Fed. Reg. at 52611.
[7] Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat, 90 Fed. Reg. 52592 (Nov. 21, 2025) (to be codified at 50 C.F.R. pt. 17).
[8] *Id.* at 52593.

excluding federal lands, and giving greater weight to information received that is outside of FWS' area of expertise.[9]

1. Exclusions for federal lands

A new proposed paragraph for section 17.90(d)(1) addresses federal lands in instances where non-federal entities have a permit, lease, contract, or other authorization for use. The new paragraph would reverse longstanding policy guidance that FWS generally does not consider excluding federal lands from Critical Habitat for reasons other than national security. The proposed rule states that the ESA does not preclude an exclusion of federal lands from Critical Habitat designations and that there could be instances where excluding federal lands from a Critical Habitat designation may outweigh the benefits of inclusion.[10] The proposed rule would also add that considering the avoidance of administrative or transactional costs associated with the Section 7 consultation process for Critical Habitat would be considered a benefit of excluding particular areas of federal land.[11]

2. Weight to be given to information outside of the Fish and Wildlife Service's expertise

When analyzing the benefits of including or excluding an area based on information identified by experts during public comment that may be outside the scope of FWS' expertise, FWS will "give weight" to the information unless it has knowledge or evidence that rebuts that information.[12] Types of impacts identified in the proposed rule that may be outside the scope of FWS' expertise include nonbiological impacts identified by State or local governments or federally recognized Indian Tribes, and impacts based on national security or homeland security implications identified by federal agencies responsible for national security or homeland security.[13]

C. Section 4: Issuance of a Proposed Rule to Rescind the Blanket Section 4(d) Rule for Threatened Species[14]

FWS issued a proposed rule that would change the way the prohibitions in Section 9 of the ESA are made applicable to species listed as threatened. Section 9 of the ESA only prohibits the take of endangered species. However, Section 4(d) of the ESA authorizes the Services to make the Section 9 take prohibitions applicable to threatened species by regulation. In 1975, FWS issued a final rule that provided that unless a species-specific rule is issued, the full take prohibitions applicable to endangered species would automatically apply to the threatened species at the time of listing (referred to as the "blanket Section 4(d) rule").[15] NMFS did not issue a blanket Section 4(d) rule and has

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[9]*Id.* at 52595.
[10]*Id.*
[11]90 Fed. Reg. at 52596.
[12]90 Fed. Reg. at 52595.
[13]*Id.* at 52599.
[14]Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 90 Fed. Reg. 52587 (Nov. 21, 2025) (to be codified at 50 C.F.R. pt. 17).
[15]Endangered and Threatened Wildlife and Plants; Reclassification of American Alligator and Other Amendments, 40 Fed. Reg. 44412 (Sept. 26, 1975), codified at 50 C.F.R. § 17.31. A comparable rule for plants, 50 C.F.R. § 17.71(a), was promulgated in 1977, 42 Fed. Reg. 32374 (June 24, 1977).

always determined applicable take prohibitions for threatened species on a species-by-species basis. Under the first Trump Administration, FWS issued a final rule in 2019 that eliminated the blanket rule and required species-by-species determinations. In 2024, during the Biden Administration, FWS reinstated the blanket Section 4(d) rule.[16] The current proposed rule would replace the 2024 Rule with the 2019 Rule. In proposing to revert to the 2019 Rule, FWS stated that Congress intended the Services to determine the protections needed for threatened species on a species-by-species basis and that the blanket rule does not reflect the "single, best meaning" of the ESA.[17] FWS indicated that it intends to issue species-specific Section 4(d) rules for all threatened species currently protected under the blanket Section 4(d) rule but that until that occurs, the blanket rule will continue to prohibit take for those species in the same manner as for endangered species.[18]

D. Section 7: Issuance of Proposed Rule to Revise Endangered Species Act Section 7 Interagency Cooperation Regulations[19]

The Services jointly issued a proposed rule that would, in nearly all respects, replace regulations promulgated in 2024 with the final rule issued in 2019 during the first Trump Administration. Noteworthy changes that would result from reversion to the 2019 rule include: (1) elimination of the provision in the 2024 Rule that authorized the Services to require compensatory mitigation for impacts authorized in Incidental Take Statements; and (2) reinstatement of the causal factors to consider when evaluating the requirement that indirect and cumulative effects be "reasonably certain to occur."

1. Compensatory mitigation

For the first time in the history of the ESA, the 2024 Rule explicitly authorized the Services to require compensatory mitigation through reasonable and prudent measures issued with an Incidental Take Statement.[20] In the proposed rule, the Services now express concern that the 2024 Rule's requirement for an offset is not considered the "best reading" of the statute, noting that the term "offset" is not used in the statutory text, and that the term "mitigation" does not appear in the portion of the statute related to reasonable and prudent measures.[21] The Services also question whether requiring an offset is consistent with the "minor change rule," a requirement in the regulations not to impose anything more than "minor changes" to a proposed action through the reasonable and prudent measures.[22] The proposed rule would revise 50 C.F.R. section 402.14(i)(2) to remove the reference to offsets.

2. Proximate causation

The proposed rule would reinstate 50 C.F.R. section 402.17, which describes factors related to proximate causation that are to be considered when determining whether

[16] Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 89 Fed. Reg. 23919 (Apr. 5, 2024), codified at 50 C.F.R. § 17.
[17] 90 Fed. Reg. at 52589.
[18] *Id.* at 52588.
[19] Endangered and Threatened Wildlife and Plants; Interagency Cooperation Regulations, 90 Fed. Reg. 52600 (Nov. 21, 2025) (to be codified at 50 C.F.R. pt. 402).
[20] *See* 50 C.F.R. §§ 402.02, 402.14(i)(1)–(3) (definition of reasonable and prudent measure).
[21] 90 Fed. Reg. at 52601.
[22] *See* 50 C.F.R. § 402.14(i)(2).

indirect and cumulative effects are "reasonably certain to occur." Under Section 402.17, an effect is not caused by the proposed action if it is remote in time or geography, or is only reached through a lengthy causal chain that involves so many steps that the effect is not reasonably certain to occur.[23] The Services are also proposing to add two additional factors to section 402.17 that were not in the 2019 Rule: (1) "the agency has no ability to prevent the consequence due to its limited statutory authority;" and (2) "the consequence would occur regardless of whether the proposed action goes forward."[24]

E. Section 9: Issuance of Proposed Rule to Rescind the Definition of Harm[25]

The Services jointly issued a proposed rule to rescind the regulatory definition of "harm" that expands on the definition of "take" in Section 9 of the Act. The definition of "harm" provides that significant habitat modification or degradation that "actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering", is a prohibited form of take.[26] The current definition was first promulgated in 1981 and was upheld as a permissible reading of the statute by the United States Supreme Court in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*.[27] In proposing to rescind the definition, the Services stated that the definition is inconsistent with the structure of the ESA and does not reflect "the single, best meaning of the statutory text."[28] The Services indicated that they do not intend to propose a replacement definition and will instead rest on the statutory definition of "take."[29]

II. JUDICIAL DEVELOPMENTS

A. Section 4: Listings, Critical Habitat Designation, and Recovery Plans

1. Listings and Delistings

In Center for Biological Diversity v. National Marine Fisheries Service,[30] environmental plaintiffs challenged the decision by NMFS to deny a petition seeking to have NMFS promulgate a Section 4(d) rule that would extend the Section 9 take prohibitions to twenty (20) coral species that had been listed as threatened in 2014. Specifically, plaintiffs asserted that the denial by NMFS was arbitrary and capricious based on the lack of a reasoned explanation for finding a Section 4(d) rule not necessary to protect the coral species from threats posed by climate change. The United States District Court for the District of Hawaii agreed with plaintiffs that NMFS did not provide a reasoned explanation for its denial. During the 2014 listing decision, NMFS had determined that climate change posed the single greatest threat to the threatened coral species, but in denying the petition failed to offer a reasoned explanation for why Section 4(d) regulations would not be necessary and advisable. In granting the plaintiffs motion for summary judgment in part and remanding to NMFS, the court noted that simply stating that a Section

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[23]90 Fed. Reg. at 52604.
[24]*Id.*
[25]Rescinding the Definition of "Harm" Under the Endangered Species Act, 90 Fed. Reg. 16102 (Apr. 17, 2025) (to be codified at 50 C.F.R. pts. 17, 222).
[26]50 C.F.R. § 17.3. The NMFS regulation, 50 C.F.R. § 222.102, defines "harm" in nearly identical terms but adds "spawning, rearing, and migrating" to the list of essential behavioral patterns.
[27]515 U.S. 687, 704 (1995).
[28]90 Fed. Reg. at 16103.
[29]*Id.*
[30]No. 23-00306-MWJS-WRP, 2025 WL 719360 (D. Haw. Mar. 6, 2025).

4(d) rule would have only a limited effect on addressing climate change does not explain why it is not still necessary and advisable to enact the rule.

In *WildEarth Guardians v. U.S. Fish and Wildlife Service*,[31] plaintiffs challenged FWS's finding that two Joshua Tree species were not threatened or endangered under the ESA. The challenge focused on FWS' treatment of climate change risks, its definition of the "foreseeable future," and its analysis of threats across a significant portion of the species range. The United States District Court for the Central District of California identified multiple defects in the agency's decision making. Specifically, the court found that FWS's mid-century cutoff for "foreseeable future" lacked a rational explanation and failed to acknowledge or justify a policy change from its earlier end-of-century framing used in previous listing decisions. This, combined with the selective reliance on certain parts of studies—invoking favorable findings while failing to grapple with adverse projections—led to the court finding that FWS did not use the best data available to make its decision. While the court found that FWS properly took existing regulatory mechanisms into account, it held that the climate change and cumulative threat determinations were arbitrary and capricious. The court further concluded that the agency's significant portion of range analysis was internally inconsistent. The court set aside the finding and remanded to FWS for further consideration.

In *Center for Biological Diversity v. U.S. Fish and Wildlife Service*,[32] plaintiffs challenged FWS' 2024 determination that the listing of a distinct population segment of gray wolves as endangered or threatened was not warranted. Plaintiffs argued that FWS failed to consider a "significant portion" of the gray wolf's range by ignoring the historical range, failed to consider the "best available science" on gray wolf populations, and inadequately evaluated the existing threat to gray wolves from existing regulatory mechanisms. The United States District Court for the District of Montana largely agreed, explaining that the ESA requires FWS to make the listing decision based "solely on the basis of the best scientific and commercial data available. . . taking into account those efforts, if any, being made by any State. . . to protect such species, whether by predator control, protections of habitat and food supply, or other conservation practices."[33] The court held that FWS' definition of "range" to categorically include only the species' current range is contrary to the ESA, and that FWS failed to use the best available science in relying on population estimates without addressing criticisms of the studies.[34] The court entered judgment in favor of plaintiffs and remanded the determination to FWS.

In *San Fransico Baykeeper v. U.S. Fish and Wildlife Service*,[35] environmental plaintiffs challenged the failure by FWS to make a finding within twelve months on the plaintiffs' petition to list the San Francisco Estuary local population of white sturgeon as threatened. In reviewing the parties' cross-motions for summary judgment, the United States District Court for the Northern District of California explained that after a petition is received, Section 4(b)(3)(B) sets a "firm twelve-month deadline for making final determinations" of warranted, not warranted, or warranted-but-precluded.[36] FWS adopted procedures that did not allow it to meet the statutory deadline and further argued that there were budgetary constraints that did not allow it to meet the deadline. The court was unconvinced by either argument, noting that the one-year deadline is a "mandatory, nondiscretionary" duty and that defendants "must conform the aspects of the review… and

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[31] 782 F. Supp. 3d 893, 898-99 (C.D. Cal. 2025).
[32] No. CV 24-87-M-DWM, 2025 U.S. Dist. LEXIS 150500 (D. Mont. Aug. 5, 2025).
[33] *Id.* at *9.
[34] *Id.* at *57, *84–85.
[35] No. 25-cv-01360-LJC, 2025 U.S. Dist. LEXIS 171897 (N.D. Cal. Sept. 3, 2025).
[36] *Id.* at *14.

reach a decision, to fit the twelve-month deadline."[37] Accordingly, the court ordered FWS to make a finding on plaintiffs' petition no later than June 3, 2026.

In *State of Alaska v. National Marine Fisheries Service*,[38] plaintiffs appealed the decision by the United States District Court for the District of Alaska to uphold NMFS' denial of a petition to delist the Arctic ringed seal as an endangered species. In affirming the district court's decision in favor of NMFS, the United States Court of Appeals for the Ninth Circuit noted that where the agency has made a prior listing determination, a subsequent petition generally does not "present substantial scientific and commercial information. . .unless the petition provides new information not previously considered.'"[39] In this instance, the Ninth Circuit found: (1) NMFS reasonably determined that "new" climate change projections were consistent with those it had considered at the time of its 2012 listing decisions; (2) NMFS reasonably declined to rely on the FWS' 12-month findings about the Pacific walrus because they were not specific to the Arctic ringed seal; and (3) NMFS did not improperly disregard new information contained in the petition about the Arctic ringed seal's response to sea ice loss and other climate-related changes.[40] Applying a "highly deferential" standard, the Ninth Circuit deferred to NMFS' interpretation and found that NMFS reasonably determined that the petition did not present new information indicating that delisting the Arctic ringed seal may be warranted.

In *Center for Biological Diversity v. U.S. Fish & Wildlife Service*,[41] environmental plaintiffs appealed dismissal of their challenge to the FWS decision to downlist the American burying beetle from endangered to threatened. The United States Court of Appeals for the District of Columbia affirmed the district court's ruling in favor of the FWS. In distinguishing between whether the beetle is currently in danger of extinction (as required for an endangered species) versus whether the beetle is likely to become an endangered species within the foreseeable future (as required for a threatened species), the D.C. Circuit noted that the key difference is "the imminence of the extinction danger."[42] The "foreseeability" of an extinction danger is made on a "case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability."[43] The court found that FWS appropriately fulfilled this obligation in determining foreseeability, evaluating the beetle's current and prospective status both in the near-term and long-term, and that FWS' downlisting decision was therefore not arbitrary and capricious.[44]

In *New Mexico Cattle Growers' Association v. U.S. Fish and Wildlife Service*,[45] plaintiffs appealed the district court's decision to uphold FWS' denial of a petition to delist the southwestern willow flycatcher based on new genetic information. In affirming the decision of the district court, the United States Court of Appeals for the District of Columbia stated that "[w]ell-established principles of arbitrary and capricious review require only that the [FWS'] determination be reasonable and reasonably explained."[46] The court held that FWS met this requirement by inviting public comments, reviewing the body of existing scientific literature evaluating the validity of subspecies classification, and

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[37] *Id.* at *17.
[38] No. 24-3148, 2025 U.S. App. LEXIS 17151, at *1–2 (9th Cir. July 11, 2025).
[39] *Id.* at *2.
[40] *Id.* at *4.
[41] 146 F.4th 1144, 1150 (D.C. Cir. 2025).
[42] *Id.* at 1160
[43] *Id.* at 1151
[44] *Id.* at 1163.
[45] 148 F.4th 755, 759-61 (D.C. Cir. 2025).
[46] *Id.* at 760.

consulting with experts before concluding in "a detailed and well-reasoned 91-page report" that delisting was not warranted.[47]

In *Kansas National Resource Coalition v. U.S. Fish & Wildlife Service*,[48] landowners and a coalition of counties challenged the issuance of a Section 4(d) rule for the northern distinct population segment of the lesser prairie chicken. The United States District Court for the Western District of Texas granted summary judgment in favor of plaintiffs, finding that FWS failed to make a proper "necessary and advisable" determination in issuing its Section 4(d) rule when it failed to consider economic costs.[49] Section 4(d) provides:

> [w]henever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under [Section 9].[50]

In reviewing the statute, the district court agreed with plaintiffs that sentence one and sentence two depend on each other, and as such, held that a necessary and advisable determination must be made before a Section 4(d) rule may be issued.[51] The court further held that a "necessary and advisable determination" requires consideration of economic costs.[52] The court vacated the Section 4(d) rule because FWS failed to account for costs, including the cost of complying with the take prohibitions in the Section 4(d) rule.[53] Defendants' subsequent appeal to the United States Court of Appeals for the Fifth Circuit was voluntarily dismissed in July 2025.

2. Critical Habitat

In *Center for Biological Diversity v. U.S. Fish and Wildlife Service*,[54] environmental plaintiffs challenged the FWS' decision not to designate Critical Habitat for the threatened eastern black rail based on a "not prudent" finding tied to a potential increased threat of disturbance from bird watchers. FWS argued that under section 424.12(a)(1)(i), a finding that designating Critical Habitat is likely to increase the threat of disturbance to the species provides a sufficient basis for making a not-prudent finding, and that the agency is not required also to determine that designating Critical Habitat would not be beneficial. The United States District Court for the District of Columbia disagreed, finding that FWS' interpretation conflicted with the text, structure, and purpose of the ESA and holding that the ESA requires FWS to identify and weigh the benefits of Critical Habitat designation before concluding that a designation is not prudent. The court also found no reasoned explanation or record support for the conclusion that potential disturbance from bird watchers would outweigh the conservation value of Critical Habitat designation, particularly given recent measures limiting disclosure of species location

[47] *Id.* at 761-62.
[48] 780 F. Supp. 3d 650 (W.D. Tex. 2025).
[49] *Id.*
[50] 16 U.S.C. § 1533(d).
[51] *Kan. Nat. Res. Coal.*, 780 F. Supp.3d at 655.
[52] *Id.*
[53] *Id.* at 661.
[54] 792 F. Supp. 3d 50 (D.D.C. 2025).

information to the public.[55] The court granted plaintiffs' motion for summary judgment, vacated the decision not to designate Critical Habitat and remanded to FWS.

In *Skipper v. U.S. Fish and Wildlife Service*,[56] plaintiffs challenged FWS' final rule designating Critical Habitat for the black pine snake. The economic analysis used the "baseline" approach, which excludes costs attributable to the ESA listing itself and focuses narrowly on the incremental costs associated with the Critical Habitat designation. The economic analysis concluded that no Critical Habitat exclusions were warranted under ESA Section 4(b)(2) and that the designation would not impose significant costs, but it did not quantify costs related to diminished land values and "public stigma." The United States District Court for the Southern District of Alabama found that the baseline approach systemically undercounts the "true economic burden of the designation and prevents the Service from conducting the robust cost-benefit analysis that Section 4(b) requires."[57] Accordingly, the court held that FWS' economic impact analysis was arbitrary and capricious, vacated portions of the final rule and remanded to FWS for further proceedings.

B. Section 6:

In *Boot Barn, Inc. v. Bonta*,[58] plaintiffs challenged California Penal Code section 653o(c), which prohibits the sale of products made from certain lizard species not listed under the ESA, arguing that the ESA and federal regulations related to the Convention of International Trade in Endangered Species (CITES) preempt California's stricter ban. Applying preemption doctrine, the United States District Court for the Eastern District of California held that the ESA's express preemption provision, Section 6(f), voids state laws only to the extent the laws permit what federal law prohibits—or prohibit what federal law affirmatively authorizes—for endangered or threatened species. Because the lizard species at issue are not ESA-listed, the court found that Section 6(f) is not applicable to the California law. The court stated "[c]ongress expressly preempted many state laws when it passed the Endangered Species Act, but not state laws regulating trade in products made from animals that are neither threatened nor endangered."[59] The court also determined that CITES allows "stricter domestic measures." The court granted summary judgment to the State and intervenor defendants and denied plaintiffs' motion, holding that neither the ESA nor CITES preempts the California code provision.[60]

C. Section 7: Federal Agency Conservation Duty, Jeopardy Standard Consultations, and Incidental Take Statements

In *Center for Biological Diversity v. U.S. Bureau of Land Management*,[61] environmental plaintiffs challenged BLM's "no effect" conclusion regarding the effect of greenhouse gas emissions on listed species from an oil drilling project on the North Slope of Alaska. BLM had determined that effects to species from greenhouse gas emissions were not sufficiently linked to the project to merit further analysis. Plaintiffs argued that the best scientific data available showed a direct causal link between increased greenhouse gas emissions and decreased sea ice; therefore, the effect is reasonably certain to occur and Section 7 consultation is required. The United States Court of Appeals for the Ninth Circuit

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[55] *Id.* at 65
[56] 796 F. Supp. 3d 996 (S.D. Ala. 2025).
[57] *Id.* at 1009.
[58] No. 2:22-cv-02105-KJM-CKD, 2025 WL 901080 (E.D. Cal. Mar. 25, 2025).
[59] *Id.* at *7.
[60] *Id.*
[61] F.4th 976 (9th Cir. 2025).

affirmed the district court's order granting summary judgment for BLM, holding that BLM provided a detailed explanation for why it did not view project-specific greenhouse gas emissions as reasonably certain effects of the action.[62] Specifically, BLM explained that it could not predict with any precision where and when the sea ice reduction would occur and that more information would be needed to understand species-specific consequences of a marginal amount of sea ice loss by a specific project.[63]

In *Alliance for the Wild Rockies v. Mulholand*,[64] environmental plaintiffs challenged a Biological Opinion (BiOp) issued by FWS for a vegetation management project within the Flathead National Forest. Specifically, plaintiffs asserted that FWS failed to conduct a lawful cumulative effects analysis in the Section 7 consultation because it did not analyze the state and private activities that were reasonably certain to occur within the Project area. The United States District Court for the District of Montana disagreed and held that FWS did sufficiently address cumulative impacts, including the likely effects of roads on the grizzly bear. In particular, FWS' analysis included an assessment of state timber sales that required road use and road use on non-federal lands. The court found that FWS' rationale and use of scientific evidence was consistent with federal regulations and denied plaintiffs' motion for a preliminary injunction, stating that mere disagreement with conclusions reached by an agency in preparing the BiOp does not rise to a violation of the regulations.[65]

In *Klamath Forest Alliance v. U.S. Fish & Wildlife Service*,[66] environmental groups challenged FWS' BiOp for the South Fork Sacramento Public Safety and Forest Restoration Project, which found the project would not jeopardize the threatened Northern Spotted Owl. The BiOp came to this conclusion despite acknowledging some adverse effects, including habitat loss, reduced reproduction, and anticipated incidental take of up to twelve owls in key territories. Plaintiffs argued the FWS' analysis was arbitrary and capricious, particularly its conclusion that impacts to the habitat territories would not appreciably impair the recovery role of the affected recovery units. The BiOp stated that the affected territories are not the "sole source population" for the owl but provided no record support and failed to analyze other source populations that could offset species impacts. The United States District Court for the Eastern District of California held that the BiOp was arbitrary and capricious because FWS did not articulate a "rational connection between the facts and its conclusion."[67] The court granted a preliminary injunction, finding a likelihood of irreparable harm to both the owl and plaintiffs' interests absent injunctive relief.

In *Center for Biological Diversity v. Environmental Protection Agency*,[68] environmental petitioners challenged concurrence by the Services on EPA's not likely to adversely affect (NLAA) determination for the Renewable Fuel Standard ("RFS") rule setting standards for the program for years 2023, 2024, and 2025 ("Set Rule"). In its Biological Evaluation, EPA evaluated whether the Set Rule would induce the conversion of habitat into farmland to grow crops for renewable fuels and concluded that it would not be likely to adversely affect listed species or Critical Habitat. NMFS concurred with EPA's NLAA determination, finding that the effects were either discountable or insignificant. In upholding the NLAA concurrence by NMFS, the United States District Court for the District of Columbia stated that "[a] harm that cannot be meaningfully detected or

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[62] *Id.* at 1016.
[63] *Id.* at 1009.
[64] CV 25-5-M-KLD, 2025 WL 2051623 (D. Mont. July 22, 2025).
[65] *Id.* at *6.
[66] No. 2:24-cv-02347-DC-CSK, 2025 WL 2753167 (E.D. Cal. Sept. 26, 2025).
[67] *Id.* at *11.
[68] 141 F.4th 153, 162 (D.C. Cir. 2025).

measured cannot be attributed to an agency action."[69] FWS, inexplicably, opined that the Set Rule would have "no effect" rather than simply concur with EPA's determination of NLAA. The D.C. Circuit found that FWS' determination was arbitrary and capricious and remanded to FWS, stating "it is difficult to see how FWS can be right that the Rule had 'no effect' at all if EPA and NMFS correctly determined that there were identifiable effects of the Set Rule—albeit effects that were 'insignificant' or 'discountable.'"[70]

In Ctr. for Biological Diversity v. U.S. Bureau of Reclamation,71 environmental plaintiffs challenged the Bureau of Reclamation's (Reclamation) application of provisions of the 2016 Water Infrastructure Improvements for the Nation ("WIIN") Act, which governs certain types of contracts for water delivery. The court considered whether Reclamation's obligations under the WIIN Act regarding contract conversion precluded the agency from exercising discretion for the protected species' benefit because ESA regulations limit Section 7's application to actions in which there is discretionary Federal involvement or control. After reviewing the relevant provisions of the WIIN Act, the court adopted Reclamation's interpretation that the WIIN Act requires contract conversion upon request and that Section 4011(a)(4)(C) of the WIIN Act strips the agency of discretion to modify any "water service. . .contractual rights" other than those related to financial terms. Therefore, the United States District Court for the Eastern District of California held that because Reclamation did not have discretion to take actions for the benefit of protected species, the requirement to consult under Section 7 does not apply to the contract conversion process.[72]

In *South Carolina Coastal Conservation League v. U.S. Army Corps of Engineers*,[73] environmental plaintiffs unsuccessfully sought to enjoin development of the Cainhoy Plantation in South Carolina based on the assertion that the Incidental Take Statement included in the BiOp violated the ESA by relying on a habitat surrogate to set the anticipated incidental take level for the northern long-eared bat. Plaintiffs appealed to the United States Court of Appeals for the Fourth Circuit, which affirmed the district court's decision. The Fourth Circuit found that the district court did not abuse its discretion in determining plaintiffs were not likely to succeed on the merits of the claim because FWS justified use of a habitat surrogate based on the impracticability of determining the actual take in terms of numbers of individual bats, and because the causal link between the habitat surrogate and any incidental take of bats was clear.[74]

In *Center for Biological Diversity v. U.S. Forest Service*,[75] plaintiffs challenged the Forest Service's approval of a project in the Kootenai National Forest and the FWS' BiOp issued on grizzly bears. The court held that FWS' BiOp violated Section 7 by excluding documented unauthorized motorized road use from the calculations of open and total motorized route density and core habitat despite record evidence of illegal road use in the action area. The court found FWS' "qualitative analysis" unsupported by the best available science and inconsistent with precedent requiring consideration of the actual functionality of roads and the effectiveness of road closures.[76] The United States District Court for the District of Montana remanded the BiOp to FWS and enjoined project implementation during remand.

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[69]*Id.* at 180.
[70]*Id.* at 181.
[71]No. 1:20-cv-00706 JLT EPG, 2025 U.S. Dist. LEXIS 124184 (E.D. Cal. June 29, 2025).
[72]*Id.* at *103.
[73]127 F.4th 457 (4th Cir. 2025).
[74]*Id.*
[75]No. 23-2882, 2025 U.S. Dist. LEXIS 4173 (D. Mont. Feb. 24, 2025).
[76]*Id.* at *15-16.

D. Section 9: Prohibited Acts

In *Bear Warriors United, Inc. v. Lambert*,[77] the Florida Department of Environmental Protection (FDEP) sought to stay a preliminary injunction that stopped state septic tank permitting due to unauthorized take of manatees. The injunction followed earlier rulings finding FDEP the proximate cause of manatee take due to pollution from legacy and ongoing septic discharges and a continuing risk of future harm. FDEP moved to stay the injunction on grounds of attenuated causation. The United States District Court for the Middle District of Florida denied the stay, finding that the injuries were concrete and redressable, and FDEP's actions were not so attenuated as to break the chain of causation.[78]

In *Waterwatch of Oregon v. Winchester Water Control District*,[79] environmental plaintiffs alleged that the Winchester Dam on the North Umpqua River was causing unauthorized take of the threatened Oregon Coast coho salmon. After a five-day bench trial, the United States District Court for the District of Oregon concluded that plaintiffs failed to establish take by a preponderance of the evidence. Although the court found that the false attraction flows through the dam may delay the migration and cause the species to expend additional energy to navigate past the dam and that the design and location of the dam's fish ladder may delay migration, the court concluded that the plaintiffs did not prove that either of those dam features "significantly" impairs migration, spawning, or other essential behavioral patterns.[80]

In *San Luis Obispo Coastkeeper v. County of San Luis Obispo*,[81] environmental plaintiffs alleged Section 9 violations associated with decades of dam infrastructure operations and successfully obtained a mandatory preliminary injunction from the United States District Court for the Central District of California that required the County to change operations by increasing water releases for instream flow, and taking other actions to benefit the South-Central California Coast Steelhead. On appeal, the United States Court of Appeals for the Ninth Circuit vacated the preliminary injunction because the district court failed to weigh harms to two other ESA-listed species. The Ninth Circuit held that "when mandatory injunctive relief under the ESA may benefit one protected species at the expense of other protected species, a court must consider competing equities and the public interest as to those other species."[82]

F. Section 10: Exceptions

In *Center for Biological Diversity v. Haaland*,[83] environmental plaintiffs challenged a FWS rule promulgated under Section 10(j) to conserve the Mexican gray wolf. The United States District Court for the District of Arizona granted FWS' motion for summary judgment, finding their rulemaking was valid on several grounds. FWS did not act arbitrarily or capriciously in: (1) relying on a study with reasonable assumptions, after considering and rejecting other evidence; (2) relying on a proxy instead of an actual genetic outcome for Mexican wolves, given uncertainties in breeding practices; (3) promulgating take provisions that were conditioned on achievement of genetic objectives; (4) setting habitat boundaries based on the historic range; or (5) finding that the experimental

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[77] No. 6:22-cv-2048-CEM-LHP, 2025 U.S. Dist. LEXIS 161132 (M.D. Fla. June 9, 2025).
[78] *Id.* at *2.
[79] No. 3:20-cv-01927-IM, 2025 U.S. Dist. LEXIS 162516 (D. Or. Aug. 21, 2025).
[80] *Id.* at *48.
[81] 161 F.4th 590 (9th Cir. 2025).
[82] *Id.* at 594.
[83] 774 F. Supp. 3d 1206 (D. Ariz. 2025).

population of Mexican wolves was “nonessential” to the continued existence of the species, due to captive breeding programs and the population of wolves living in Mexico.[84]

[84] *Id.* at 1241.

Chapter C: CLIMATE CHANGE
2025 Annual Report[1]

I. INTERNATIONAL ACTIVITIES

A. United Nations

1. United Nations Framework Convention on Climate Change

The Thirtieth Meeting of the Conference of the Parties (COP30) to the United Nations Framework Convention on Climate Change (UNFCCC) took place in Belém, Brazil, from November 10 to 21, 2025. At COP30, the principal negotiated outcome was the "Global Mutirão" decision, which framed 2026–2028 as an implementation period tied to climate finance and global stocktake follow-up.[2] Parties "decided" to pursue efforts to at least triple public adaptation finance from key multilateral channels by 2030, and the New Collective Quantified Goal on climate finance sets a trajectory toward roughly USD $300 billion annually by 2035, with a significant share earmarked for adaptation.[3]

At the same time, Parties at COP30 did not agree on a concrete roadmap for a global phase-out of fossil fuels or for halting deforestation. Draft language that would have committed Parties to phase out fossil fuels on a time-bound schedule was opposed by major producers and was not included in the final text.[4]

COP30 also served as the Seventh Meeting of the Parties to the Paris Agreement (CMA7), taking place ten years after the Paris Agreement's signing. Outcomes at this meeting regarding adaptation were more concrete than outcomes regarding mitigation. For example, the Parties adopted the Belém Adaptation Indicators under the United Arab Emirates Framework for Global Climate Resilience, and they launched the Belém–Addis vision on adaptation to refine indicator metadata and methodologies, including by establishing a technical taskforce and mandating further technical work through subsidiary bodies and workshops through 2028. The Parties intended to operationalize methods to demonstrate and review progress towards national ambitions.[5]

Regarding the social aspects of treaty-related activities, the Parties launched the Global Climate Action Agenda (GCAA), with the aim of coordinating voluntary climate action by non-Party actors across six thematic axes. The six axes include (i) energy, industry, and transport; (ii) forests, oceans, and biodiversity; (iii) agriculture and food systems; (iv) cities, infrastructure, and water; (v) human and social development; and (vi) finance, technology, and capacity-building.[6] The Parties also advanced the United Arab

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[1] Any views or opinions expressed in this chapter are those of the authors in their personal capacities and do not represent the views of their firms, schools, and organizations. This chapter was edited by James Crisafulli, Scott Novak, and Zachary Pilchen, Year in Review Vice Chairs for the ABA SEER Climate Change Committee; authorship contributions are accredited to the Vice Chairs and to Katherine Lee Goyette, Patrick Seroogy, Benjamin Schultz, Siyi Shen, Harrison G. Bench, Zach Fader, Aaron Ramcharan, Joseph Mayson, Charity Lee, Elizabeth Carpenter, Connor Hughes, Aashini Choksi, and Zoe Shamis.

[2] U.N. Framework Convention on Climate Change, Global Mutirão: Uniting Humanity in a Global Mobilization Against Climate Change, Draft Decision -/CMA.7 (Advance Unedited Version, Nov. 21, 2025).

[3] *Id.* Section II, ¶ 53.

[4] *See, e.g.*, Vishwa Mohan, *COP30 Ends with Mixed Results, Agrees to Triple Adaptation Funds but Fails on Roadmap to Phase Out Fossil Fuels*, TIMES OF INDIA (last updated Nov. 22, 2025).

[5] UNFCCC, *Matters Relating to Adaptation*, Draft Decision -/CMA.7 (Nov. 22, 2025).

[6] Global Climate Action NAZCA, COP 30 (last visited Mar 20, 2026).

Emirates Just Transition Work Programme by deciding to develop a just transition mechanism, with recommendation submissions due March 15, 2026 and subsidiary bodies tasked to select a recommendation for operationalization by June 2026.[7]

COP30 also continued to operationalize loss-and-damage arrangements through guidance to the Fund for Responding to Loss and Damage.[8] On carbon markets, CMA7 issued further guidance on the Article 6.4 mechanism, including by welcoming the first mechanism methodology, noting adoption of multiple integrity-focused standards, extending the clean development mechanism transition approval deadline to June 30, 2026, and authorizing a USD $26.8 million transfer from the clean development mechanism trust fund.[9]

COP30 was also the first COP to occur after the International Court of Justice (ICJ) issued its advisory opinion on the obligations of States in respect of climate change,[10] wherein the ICJ stated the nationally determined contributions (NDCs) submitted by Parties to the Paris Agreement should "represent [a State's] highest possible ambition," including regarding "activities . . . by private actors."[11] Despite the recent attention to the ICJ's advisory opinion, observers assessed COP30-related mitigation outcomes as limited, in part due to substantive disagreements over fossil fuel-related phase-outs and a substantial reliance on non-Party voluntary initiatives outside the formal COP process.[12]

B. Regional and Country-Specific Activities

In 2025, national legislatures continued a clear shift from policy-based climate commitments toward enforceable statutory frameworks. A recurring feature was the adoption or strengthening of framework climate laws that bind public authorities, establish dedicated governance structures, and require climate risk and emissions considerations to be incorporated into routine governmental decision-making. For example, South Africa's Climate Change Act of 2024 entered phased commencement during 2025, imposing cross-government obligations to align laws, policies, and administrative decisions with national climate strategies and emissions commitments, and establishing a carbon budget framework for major emitters, subject to further implementation through secondary legislation.[13]

A second trend was the transformation of transparency commitments into mandatory emissions measurement, reporting, and verification (MRV) requirements, supported by administrative penalties. For example, the United Arab Emirates' Federal Decree-Law No. 11 of 2024 on the Reduction of Climate Change Effects took effect on May 30, 2025, requiring designated entities to measure and report greenhouse gas

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[7]UNFCCC, *United Arab Emirates Just Transition Work Programme*, Informal Note on CMA 7 Agenda Item 5 ¶ 27 (Nov. 18, 2025).
[8]*Id.* ¶ 2.
[9]*See* UNFCCC, *Further Guidance for the Mechanism Established by Article 6, Paragraph 4, of the Paris Agreement*, Draft Decision -/CMA.7 (Nov. 18, 2025).
[10]*See infra* Section I.D.1.
[11]Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. ___, ¶¶ 78–79 (July 2025).
[12]Simon Evans et al., *COP30: Key Outcomes Agreed at the Belém Climate Talks,* CARBON BRIEF (Nov. 23, 2025).
[13]Climate Change Act 22 of 2024 (S. Afr.),; Anthony Colegrave, *Unpacking the South African Climate Change Act*, WHITE & CASE (Dec. 12, 2024); Carlyn Frittelli Davies & Tarynn Davies, *South Africa's Climate Change Act: A Gradual Rollout*, LEXOLOGY (Apr. 29, 2025).

emissions through a national MRV system, with reported penalties for noncompliance reaching up to AED 2,000,000.[14]

A third development was the use of binding mid-term targets and market mechanisms to reinforce compliance pathways. In the European Union, the Council and Parliament reached a provisional political agreement on December 10, 2025, to amend Regulation (EU) 2021/1119 (the European Climate Law) to add a binding net greenhouse gas emissions reduction target of "at least 90%" (from 1990 levels) by 2040, while delaying the start of the emissions trading system for buildings and road transport (ETS2) by one year.[15] Turkey enacted Climate Law No. 7552 in July 2025, establishing the legal basis for a national emissions trading system, including permitting, allowance surrender obligations, and penalties for excess emissions, alongside institutions governing carbon markets and green finance.[16]

Several countries paired framework governance with carbon market infrastructure and climate finance mechanisms. For example, Ghana's Environmental Protection Act of 2025 designated the Environmental Protection Agency as the coordinating authority for the national climate response, required the integration of climate objectives into development planning, and established a carbon registry, carbon market committee, and mitigation fund.[17] Côte d'Ivoire adopted Law No. 2025-528 on combating climate change, providing for economy-wide governance, sectoral mitigation and adaptation measures, and institutional coordination for climate finance.[18]

Some countries targeted so-called "greenwashing." For example, Canada's Competition Act requires businesses to substantiate environmental claims with "adequate and proper testing."[19] While the bill was officially passed in 2024, key components of the bill went into effect in June 2025, granting private citizens the right to bring claims to the Competition Tribunal against companies that make false or misleading claims about their environmental impacts (i.e., greenwashing).[20] In late 2025, the Canadian government proposed further amendments to fine-tune these rules, aiming to boost investments in green initiatives while ensuring environmental claims are verifiable and genuine, affecting advertising, packaging, and social media.[21]

Finally, 2025 included technology-specific climate legislation aimed at emissions reductions in hard-to-abate sectors. For example, Malaysia enacted the Carbon Capture, Utilization, and Storage Act of 2025, establishing a statutory framework for carbon capture and geological storage as part of its national decarbonization strategy.[22]

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[14] Fed. Decree-Law No. (11) of 2024 on the Reduction of Climate Change Effects (U.A.E.); *UAE's Climate Change Law: Mandatory Emissions Reporting Obligations*, PwC (Nov. 27, 2025); Yasir Ahmad, *How UAE Is Transforming the Climate Landscape Through Legislative Action*, Ernst & Young (2025).
[15] Press Release, Council of the European Union, 2040 Climate Target: Council and Parliament Agree on a 90% Emissions Reduction (Dec. 10, 2025).
[16] Climate Law No. 7552 (Turk.) (July 9, 2025); International Carbon Action Partnership, *Türkiye Adopts Landmark Climate Law, Paving Way for National ETS* (July 15, 2025); Gide, *The Turkish Climate Law No. 7552* (July 11, 2025).
[17] Environmental Protection Act, 2025 (Act 1124) (Ghana).
[18] Law No. 2025-528 of 25 June 2025 on Combating Climate Change (Côte d'Ivoire).
[19] *See* Fall Economic Statement Implementation Act, 2023, S.C. 2024, c. 15 (Can. 2020).
[20] *See* Bill C-15, An Act to Implement Certain Provisions of the Budget Tabled in Parliament on November 4, 2025, 1st Sess., 45th Parl. (Can. 2025).
[21] *See id*.
[22] Violet George, *Malaysia Enacts CCUS Act 2025 with Royal Endorsement*, Carbon Herald (July 22, 2025).

C. International Organization Activities

1. The Greenhouse Gas Protocol

On October 20, 2025, the Greenhouse Gas Protocol (GHG Protocol) published amendments to its accounting frameworks, particularly its Scope 2 greenhouse gas (GHG) accounting framework.[23] The GHG Protocol was convened in 1998 by the World Business Council for Sustainable Development and the World Resources Institute and has developed the most widely used emissions accounting standards today.

The GHG Protocol initially published its *Scope 2 Guidance* in 2015. Updates to the *Scope 2 Guidance* generally address inventory accounting regarding indirect emissions associated with the purchase of electricity, steam, heating, and cooling. The 2025 proposed revisions retain the existing approach to dual location-based and market-based reporting methods but propose significant amendments, including to regional and temporal matching requirements.[24] While the *Scope 2 Guidance* and its approach to market-based reporting methods were instrumental in incentivizing the market-based proliferation of renewable electricity, including through renewable electricity credits and certificates (RECs), the proposed amendments are expected to substantially limit use of RECs, requiring them to be physically deliverable and time-matched to each hour of electricity consumption.

In parallel to the proposed Scope 2 accounting amendments, the GHG Protocol has proposed "consequential accounting methods" for estimating avoided emissions from actions affecting the electricity sector.[25] These methods estimate the system-wide impacts of actions such as clean energy procurement or investment beyond an organization's operational boundaries. The consequential accounting methods provide a means by which entities can report activities that may now be excluded by the Scope 2 accounting amendments. According to the GHG Protocol, work regarding consequential accounting methods will support the Actions and Market Instruments Technical Working Group, which is focusing on market-based accounting methods. According to the GHG Protocol, a second public consultation on Scope 2-related topics will follow in 2026, with final publication of the new standard expected in 2027.

2. The International Maritime Organization

In October 2025, the International Maritime Organization (IMO) deferred the adoption of its proposed Net-Zero Framework (NZF), which sought to align the global shipping sector with the Paris Agreement and the IMO's 2023 Revised Greenhouse Gas Strategy.[26] The NZF would have established a mandatory carbon credit trading program for ships exceeding 5,000 gross tons engaged in international voyages, a fuel standard based on full lifecycle GHG emission intensity, and a Net-Zero Fund to support the transition to alternative fuels and provide assistance to developing nations.

The Marine Environment Protection Committee (MPEC) of the IMO initially endorsed the NZF in principle in April 2025, with formal adoption expected in October.[27]

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[23] *GHG Protocol Public Consultations*, GREENHOUSE GAS PROTOCOL (last visited Mar. 20, 2025).

[24] GREENHOUSE GAS PROTOCOL, *Public Consultation – Scope 2* 4 (Oct. 2025).

[25] *Frequently Asked Questions: Scope 2 and Electricity Sector Consequential Accounting Public Consultations*, GREENHOUSE GAS PROTOCOL (Nov. 17, 2025).

[26] Press Release, IMO, IMO's Marine Environment Protection Committee Adjourns Discussions on the Adoption of the Net-Zero Framework for One Year (Oct. 17, 2025).

[27] Press Release, IMO, IMO Approves Net-Zero Regulations for Global Shipping (Apr. 11, 2025).

Opposition emerged during the adoption session, with opponents arguing that the credit pricing mechanism could distort trade competitiveness and questioning whether the distribution of Net-Zero Fund revenues was equitable for developing states.[28] Participating countries voted 57-49 in favor of the delay after Saudi Arabia called a vote, with European Union countries voting "no" and the United States, China, and Russia voting "yes." As a result, the adoption meeting for the NZF was deferred for one year, with negotiations scheduled for October 2026. Once approved, the NZF is expected to enter into force 16 months after adoption, after which national governments will be responsible for enforcement through domestic litigation and port-state control.[29]

D. Litigation

1. International Court of Justice Advisory Opinion

On July 23, 2025, the International Court of Justice (ICJ) issued a unanimous advisory opinion regarding the *Obligations of States in Respect of Climate Change*, which was initiated by a 2023 request from the United Nations General Assembly (UNGA).[30] The UNGA asked the ICJ to answer two questions: (1) What are States' obligations under international law to protect the climate system from GHG emissions?; and (2) What are the legal consequences for States causing significant harm to the climate system? The proceedings involved wide national participation, with participants including Canada, China, Egypt, Germany, India, Kenya, the Netherlands, Pakistan, Russia, Saudi Arabia, the United Kingdom, the United States, and Vanuatu, among others.

The ICJ found the "consequences of climate change are severe and far-reaching . . . [affecting] both natural ecosystems and human populations,"[31] and "the increases in GHG concentrations in the atmosphere since around 1750 are unequivocally caused by GHG emissions from human activities."[32] The ICJ concluded all states, not just treaty parties, have a duty under customary international law to act with due diligence to reduce their GHG emissions because "the specific character of the risk of significant harm to the climate system is indisputably established."[33] The ICJ stated the "[c]ustomary obligations are the same for all States and exist independently regardless of whether a State is a party to the climate change treaties . . . [and that] if a non-party State does not cooperate [with treaty obligations] . . . it has the full burden of demonstrating that its policies and practices are in conformity with its customary obligations."[34] The ICJ concluded, in customary international law, the precautionary principle guides the standard of due diligence owed under the duty to prevent significant harm, such that states must not refrain from or delay prevention in the face of scientific uncertainty, and failing to address "plausible indications of potential risks" does not meet due diligence.[35]

The ICJ also interpreted the obligations of states under certain international treaties regarding climate change, such as the Paris Agreement and the UNFCCC. The ICJ, applying the stringent standard of due diligence, concluded that when such a treaty frames its obligations as obligations of conduct—such as the duty to pursue domestic

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[28] *IMO Postpones Adoption of Net Zero Framework*, VINSON & ELKINS (Oct. 24, 2025).
[29] *The IMO Net-Zero Framework – FAQs*, IMO (last visited Mar. 20, 2026).
[30] *Obligations of States in Respect of Climate Change*, Advisory Opinion, 2025 I.C.J. ___ (July 2023) [hereinafter *Obligations of States*].
[31] *Id.* ¶ 73.
[32] *Id.* ¶ 80.
[33] *Id.* ¶ 137.
[34] *Id.* ¶ 96.
[35] *Id.* ¶ 293–294.

mitigation measures—a state's compliance with its duties depends on whether the state used "all means" at its disposal to prevent significant harm.[36]

The ICJ opinion provides that a state's failure to meet such obligations, under treaty law or customary international law or both, may constitute an internationally wrongful act for which the state may face liability under international law. The ICJ's advisory opinion may be the most significant development in the international law regarding climate change since the 2015 Paris Agreement.

2. Inter-American Court of Human Rights Advisory Opinion

In May 2025, the Inter-American Court of Human Rights (IACHR) issued Advisory Opinion AO-32/25, *Climate Emergency and Human Rights*, responding to a joint request from Chile and Colombia for guidance on state obligations under the American Convention on Human Rights and the Protocol of San Salvador in the context of the "climate emergency."[37] In its opinion, the IACHR characterized the climate emergency as "result[ing] from the accelerated increase in global temperature caused by various anthropogenic activities, which incrementally affect and severely threaten humanity—particularly those in situations of heightened vulnerability."[38]

Emphasizing that climate impacts directly endanger the enjoyment of protected rights, the IACHR held that states have obligations to "refrain from any conduct that results in a setback or delay or that limits the results of measures required to protect human rights from the impacts of climate change,"[39] and to adopt legislative, regulatory, and policy measures to address both the causes and consequences of climate change.[40] Specifically, the court recognized a right to a healthy climate as part of the right to a healthy environment, giving rise to, among other things, state responsibilities to comply with international obligations aimed at protecting the climate system and to provide legal protections to nature and its components, along with several other substantive and procedural state obligations in accordance with the standard of enhanced due diligence.[41] In doing so, the IACHR highlighted the principle of equality and non-discrimination (prohibiting arbitrary differences in treatment and adopting positive measures to reverse or modify any discrimination), emphasizing cooperation and fairness.[42]

[36]Obligations of States*, supra* note 30, ¶¶ 208, 252, 292.
[37]*Climate Emergency and Human Rights*, Advisory Opinion OC-32/25, Inter-Am. Ct. H.R. (ser. A) No. 32, at 5 (May 29, 2025).
[38]*Id.* ¶ 183.
[39]*Id*. ¶ 221.
[40]*Id.* ¶ 246.
[41]*Id.* ¶¶ 269, 302.
[42]*Id.* ¶¶ 589-91.

3. Regional and Country-Specific Litigation

In April 2024, the European Court of Human Rights held that Switzerland violated Article 8 of the European Convention on Human Rights (ECHR) by failing to implement sufficient climate mitigation measures. The court recognized non-governmental organization (NGO) standing under Article 34 of the ECHR and established a five-step test for evaluating whether states act within their margin of appreciation when setting emissions targets. The court clarified that Article 8 of the ECHR requires states to adopt binding emissions reduction targets and work toward carbon neutrality within approximately thirty years.[43] In March 2025, the Committee of Ministers of the Council of Europe issued a decision stating the payment awarded to the plaintiffs in the case had been made and steps were being taken to implement the decision, such as the enactment of a revised CO_2 Act, the development of a carbon budget, and the development of a climate adaptation strategy in Switzerland.[44]

In November 2024, the Dutch Court of Appeals confirmed that Shell owes a legally binding duty of care to help prevent dangerous climate change under Dutch tort law, interpreted in light of Articles 2 and 8 of the ECHR and the Paris Agreement. However, the appellate court reversed the district court's order requiring Shell to reduce emissions by 45 percent by 2030, finding that no fixed percentage could be judicially imposed on an individual company absent a clear legal or scientific consensus on proportionate corporate obligations.[45] In February 2025, the plaintiffs appealed the decision to the Supreme Court of the Netherlands, arguing that the court should be able to impose a specific percentage of required emissions reductions on Shell. A ruling by the Supreme Court is expected in 2026.[46]

In February 2024, the Supreme Court of New Zealand unanimously reinstated claims for public nuisance, negligence, and breach of a novel climate duty brought by the climate change spokesperson for a Māori development organization against seven high-emitting New Zealand companies in the agriculture and energy sectors, allowing the case to proceed to trial. The court held common law torts had not been displaced by New Zealand's climate-related statutes, and questions of causation, standing, and the role of tikanga Māori (customary Māori practices) should be examined at trial.[47] In April 2025, the High Court of New Zealand ruled the relief sought by the plaintiff was available (including a declaration of legal rights and equitable contribution), and the court rejected a defendant's application to join numerous third parties who also emitted greenhouse gases because the application contradicted the Supreme Court's ruling and because joining those parties "would significantly increase the risk of delay and uncertainty."[48] In June 2025, the High Court rejected a defendant's application to split claims and for costs, and rejected the plaintiff's application for a split trial on liability and remedy issues.[49] Trial is scheduled for April 2027.

In August 2024, the Korean Constitutional Court found the state's failure to quantify emissions targets for 2031 through 2049 undermined intergenerational equity

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[43] Verein KlimaSeniorinnen Schweiz v. Switzerland, App. No. 53600/20, ¶ 109 (Eur. Ct. H.R. Apr. 9, 2024).

[44] Council of Europe, Committee of Ministers (Ministers' Deputies), *Decisions,* 1521st Meeting, Doc. No. H46-30, ¶ 5 (Mar. 6, 2025).

[45] Milieudefensie v. Royal Dutch Shell, No. 200.302.332/01, ¶¶ 1, 5 (Ct. App. The Hague Nov. 12, 2024) (Neth.).

[46] Kimberly Potter & Anatasia Reklitis, *Climate Activists Head to Dutch Supreme Court: Milieudefensie et al. v. Royal Dutch Shell*, FASKEN (Mar. 17, 2025).

[47] Smith v. Fonterra Co-op. Grp. Ltd., [2024] NZSC 5, ¶¶ 188-90 (N.Z.).

[48] Smith v. Fonterra Co-op. Grp. Ltd., [2025] NZSC 940, ¶ 50 (N.Z.).

[49] Smith v. Fonterra Co-op. Grp. Ltd., [2025] NZSC 1605, ¶¶ 23, 24 (N.Z.).

and left future generations vulnerable to an excessive climate burden. The court held the right to a healthy environment under Article 35 of the South Korean Constitution encompasses climate change-related harms and the state has a corresponding obligation to mitigate climate change and adapt to its impacts.[50] As a result, in February 2025, the South Korean government released a plan to increase renewable energy output and promised a future long-term plan to achieve carbon neutrality by 2050.[51]

In May 2025, the German Higher Regional Court of Hamm dismissed a transnational claim by a Peruvian farmer seeking proportional damages from RWE, Germany's largest electricity producer, for glacial melt threatening his property, finding the flood risk insufficiently imminent. The court held, however, that major GHG emitters such as RWE can, in principle, be held accountable for emissions impacts under German civil law and that geographical distance does not render such transnational claims unfounded.[52]

II. National Activities

A. Executive Orders

On January 20, 2025, President Trump issued an executive order establishing "Energy Dominance" as the energy policy of the United States, which promotes fossil fuels as energy sources while sidelining renewable energy.[53] Among other things, the executive order disbanded the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG), established through President Biden's executive Order 13990,[54] and directed agencies to disregard all of the IWG's guidance regarding the social cost of GHGs (SC-GHG)—including carbon dioxide, methane, and nitrous oxide—when issuing permits and making regulatory decisions. President Trump's executive order portrays the SC-GHG, which aims to calculate the net socioeconomic harm of emitting one ton of GHGs annually,[55] as "marked by logical deficiencies, a poor basis in empirical science, politicization, and the absence of a foundation in legislation."[56] President Trump's downplaying and general rejection of climate change is also reflected in another January 20, 2025 executive order, which rescinded many of President Biden's executive orders aiming to tackle climate change and account for its impacts, and claimed that "[c]limate extremism has exploded inflation and overburdened businesses with regulation."[57]

On April 8, 2025, President Trump also issued an executive order targeting and challenging state climate and renewable energy policies it alleged constituted "state

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[50] *Do-Hyun Kim v. Republic of Korea*, Case No. 2020Hunma389, [2024] (Const. Ct. Kor.).
[51] Michelle (Chaewon) Kim, *South Korea's 11th Power Plan Makes Partial Progress Towards Decarbonization*, Inst. for Energy Econs. and Fin. Analysis (Mar. 31, 2025).
[52] Lliuya v. RWE AG, No. 2 O 285/15 (OLG Hamm May 28, 2025) (Ger.).
[53] Exec. Order No. 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 29, 2025).
[54] Exec. Order No 13,990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021).
[55] *The Social Cost of Greenhouse Gases (Carbon Dioxide, Methane, Nitrous Oxide)*, Envt'l & Energy L. Program at Harv. L. Sch. (last updated July 29, 2025).
[56] Exec. Order No. 14154, *supra* note 53, 90 Fed. Reg. at 8356.
[57] Exec. Order No. 14148, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 20, 2025).

overreach," purportedly hindering fossil fuel energy production.[58] The order directed the U.S. Attorney General to take action against state laws "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" and to prioritize such laws concerning climate change, "environmental, social, and governance" (ESG) initiatives, environmental justice, and carbon cap-and-trade systems.[59]

B. Regulatory Activities

Throughout the year, the Trump Administration undertook a wide-ranging deregulatory agenda, prompting extensive revisions and rollbacks of climate-related regulations across the U.S. Environmental Protection Agency (USEPA), the Department of Interior (DOI), the White House Council on Environmental Quality (CEQ), and other agencies. For example, USEPA announced 31 deregulatory actions in March on a single day,[60] including the reconsideration of rules for power plants[61] and wastewater regulations affecting oil and gas production.[62.63]

1. The National Environmental Policy Act

CEQ took two major actions in 2025 that reshaped the implementation of the National Environmental Policy Act (NEPA). On February 25, 2025, CEQ published an interim final rule to remove its NEPA implementing regulations from the Code of Federal Regulations, effective April 11, 2025.[64] This rescission fulfilled the mandate from Executive Order 14,154, *Unleashing American Energy*, directing CEQ to rescind its government-wide NEPA regulations.[65] In its justification for the rule, CEQ cited *Marin Audubon Society v. Federal Aviation Administration*, in which the United States Court of Appeals for the District of Columbia found CEQ lacked statutory authority to issue government-wide NEPA regulations.[66] By rescinding CEQ's binding regulations, which historically provided uniform procedural requirements for environmental reviews across all federal agencies, CEQ shifted the responsibility for developing NEPA procedures to individual agencies.

On May 28, 2025, CEQ formally withdrew its interim guidance, issued on January 9, 2023, entitled "National Environmental Policy Act Guidance on Consideration of

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[58]Exec. Order No. 14260, Protecting American Energy From State Overreach, 90 Fed. Reg. 15513 (Apr. 14, 2025).
[59]*Id.* at 15514.
[60]Press Release, Env't Prot. Agency, EPA Launches Biggest Deregulatory Action in U.S. History (Mar. 12, 2025).
[61]Press Release, Env't Prot. Agency, Trump EPA Announces Reconsideration of Biden-Harris Rule, "Clean Power Plan 2.0", That Prioritized Shutting Down Power Plants While Raising Costs on American Families (Mar. 12, 2025).
[62]Press Release, Env't Prot. Agency, EPA Will Revise Wastewater Regulations for Oil and Gas Extraction to Help Unleash American Energy (ELGs: Oil and Gas) (Mar. 12, 2025).
[63]Press Release, Env't Prot. Agency, EPA Terminates Biden's Environmental Justice, DEI Arms of Agency (Mar. 12, 2025).
[64]Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610, 10610 (Feb. 25, 2025) (to be codified at 40 C.F.R. pts. 1500–1508).
[65]Exec. Order No. 14154, *supra* note 53, 90 Fed. Reg. at 8355.
[66]Marin Audubon Soc'y v. FAA, 121 F.4th 902, 920 (D.C. Cir. 2024) (Srinivasan, J., dissenting).

Greenhouse Gas Emissions and Climate Change"[67] The withdrawal was effective immediately upon publication in the *Federal Register*.[68] The 2023 guidance advised federal agencies on how to consider GHG emissions and climate change impacts in NEPA environmental reviews.[69] The guidance encouraged the use of social cost of carbon estimates and emphasized climate change and environmental justice considerations in cumulative effects analyses.[70] In its May 2025 withdrawal of the 2023 guidance, CEQ explained the 2023 guidance was inconsistent with the policy objectives of Executive Order 14,154.[71] With the guidance withdrawn, agencies must rely on their own NEPA implementing regulations or guidance to determine how and whether GHG and climate change effects must be incorporated into environmental reviews.

2. Endangerment Finding

On August 1, 2025, USEPA published a proposal (Proposal)[72] to rescind the agency's 2009 finding, commonly known as the Endangerment Finding,[73] that a mix of six GHGs in the atmosphere—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—threaten the public health and welfare. As part of this finding, USEPA determined the combined emissions of these six GHGs from new motor vehicles and new motor vehicle engines contribute to GHG air pollution that endangers public health and welfare under the meaning of Title II of the Clean Air Act (CAA or Act). If this finding is revised or withdrawn, USEPA's authority to regulate GHG emissions under the CAA would be substantially constrained.

USEPA originally issued the Endangerment Finding in response to the United States Supreme Court's decision in *Massachusetts v. EPA*, which directed USEPA to determine under CAA Title II whether GHGs contribute to climate change (and, if so, to promulgate appropriate regulations), or explain why the agency cannot make such a determination.[74] Over the course of the last 16 years following USEPA's issuance of the Endangerment Finding, the agency has relied on its determinations in the Endangerment Finding to develop a suite of regulations under the CAA governing GHG emissions from various mobile and stationary sources.

In its recent move to rescind the Endangerment Finding, USEPA now proposes to find the CAA does not authorize the agency to establish emissions standards to address "global climate change concerns," and, on this basis, additionally proposes to rescind the agency's prior finding that emissions from new motor vehicles and engines contribute to air pollution which may endanger public health or welfare. USEPA further proposes to repeal all GHG emissions standards for light-, medium-, and heavy-duty vehicles and

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[67]Withdrawal of National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 90 Fed. Reg. 22472, 22473 n.1 (May 28, 2025).
[68]*Id.* at 22472.
[69]National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1197 (Jan. 9, 2023).
[70]*Id.* at 1202-03.
[71]Withdrawal of National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, *supra* note 67, 90 Fed. Reg. at 22473.
[72]Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36288 (Aug. 1, 2025) (to be codified at 40 C.F.R. pts. 85, 86, 600, 1036, 1037, 1039).
[73]*Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496 (Dec. 15, 2009) (codified at 40 C.F.R. pt. 1).
[74]*See* Massachusetts v. EPA, 549 U.S. 497 (2007).

engines promulgated pursuant to the agency's determinations in the Endangerment Finding.

In the alternative, USEPA proposes to rescind the Endangerment Finding on the basis that the agency "unreasonably" analyzed the available scientific record and that recent scientific developments "cast significant doubt" on USEPA's 2009 determinations.

As a final basis for repeal, regardless of whether USEPA retains or rescinds the Endangerment Finding, USEPA proposes to repeal all GHG emissions standards promulgated pursuant to the Endangerment Finding, asserting that "no requisite technology for vehicle and engine emission control can address the global climate change concerns identified in the [Endangerment Finding] without risking greater harms to public health and welfare."

According to USEPA, if rescission of the Endangerment Finding is finalized as proposed, the rescission also would repeal denials of petitions for reconsideration of the Endangerment Finding issued in 2010 and 2022. The agency notes the petition denials "have no prospective legal effect," but USEPA proposes to rescind the denials for consistency with the final rule rescinding the Endangerment Finding. The public comment period on the rescission of the Endangerment Finding ended in September, and USEPA has not yet issued a final rule or taken further action.

Notably, the Proposal does not explicitly address how rescission of the Endangerment Finding would impact the legal basis for certain stationary source GHG emissions standards issued pursuant to the Endangerment Finding, particularly GHG emissions standards for electric generating units promulgated under Section 111 of the CAA.[75]

On February 12, 2026, USEPA promulgated a final rule implementing the rescission.[76]

3. Greenhouse Gas Reporting Program

USEPA published a proposed rule on September 16, 2025, which would narrow the Greenhouse Gas Reporting Program (GHGRP) by removing reporting obligations for all source categories other than Petroleum and Natural Gas Systems under subpart W of USEPA's GHG reporting regulations, suspending all remaining subpart W reporting until 2034 and eliminating reporting for the Natural Gas Distribution segment.[77] The proposed rule comes in response to directives in two Executive Orders, Unleashing American Energy[78] and *Unleashing Prosperity Through Deregulation*,[79] under which USEPA asserted it "can no longer justify the cost of collecting data for all source categories at this time."[80] USEPA also stated that following the July 4, 2025 amendment to CAA section

[75]USEPA is currently considering GHG emission standards for electric generating units promulgated pursuant to 42 U.S.C. § 7411 in a separate rulemaking. *See* Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25,752 (June 17, 2025) (to be codified at 40 C.F.R. pt. 60).
[76]Final Rule: Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act, USEPA (Feb. 12, 2026).
[77]Reconsideration of the Greenhouse Gas Reporting Program, 90 Fed. Reg. 44,591 (Sep. 16, 2025) (to be codified at 40 C.F.R. pt. 98).
[78]*See* 90 Fed. Reg. at 8353.
[79]Exec. Order No. 14192, Unleashing Prosperity Through Deregulation, 90 Fed. Reg. 9065 (Feb. 6, 2025).
[80]90 Fed. Reg. at 44,599.

136(g), "there is no statutory requirement to collect GHG emissions information for sectors other than the subpart W segments subject to the waste emissions charge. . . ."[81]

If finalized as proposed, USEPA would extend the GHGRP reporting year 2025 submission deadline to June 10, 2026, to accommodate the amendments to the program.[82] USEPA would also discontinue reporting functionality for resubmissions and suspend recordkeeping obligations after reporting year 2024 until subpart W reporting resumes.[83] While acknowledging that GHGRP data have been used by other federal programs in support of regulation, including taxpayer credits for carbon capture and sequestration (CCS), USEPA maintained those non-CAA uses do not justify continued mandatory reporting, emphasized that other federally collected data can fill the same role, and invited comment on the impacts of removing all source categories related to CCS.[84] USEPA also sought input on landfill collection efficiency defaults in subpart HH of the GHGRP in light of a pending reconsideration petition,[85] should the agency not finalize removal of that subpart.[86]

4. Clean Air Act Section 111 Emissions Requirements

On June 17, 2025, USEPA proposed a rule to repeal all GHG emissions rules under section 111 of the CAA[87] for coal- and natural gas-fired electric generating units (EGUs). USEPA proposed to repeal a rule that it finalized in 2024,[88] which adopted New Source Performance Standards (NSPS) for new, reconstructed, or modified fossil fuel-fired EGUs and adopted GHG emissions guidelines for existing fossil fuel-fired EGUs. USEPA's proposed repeal was premised on its own new interpretation of section 111 of the CAA, under which USEPA would have to make a specific finding of significant contribution to dangerous air pollution for each source category in order to regulate that source. USEPA then proposed to make a negative finding on that basis to justify the repeal of all GHG emission requirements. USEPA proposed, in the alternative, a narrower approach involving the repeal of the best system of emission reduction (BSER) standards, which include 90 percent carbon capture and storage for long-term coal-fired and certain other modified power plants, and 40 percent natural gas co-firing for medium-term coal plants.[89]

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[81] *Id.* at 44,595.
[82] *Id.* at 44,600.
[83] *Id.*
[84] *Id*. at 44,603.
[85] Nat'l Waste & Recycling Ass'n, *Petition for Reconsideration of Revisions and Confidentiality Determinations for Certain Data Elements Under the Greenhouse Gas Reporting Program*, Docket No. EPA-HQ-OAR-2019-0424 (June 24, 2024).
[86] 90 Fed. Reg. at 44,602.
[87] 42 U.S.C. § 7411.
[88] New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39,798 (May 9, 2024) (codified at 40 C.F.R. pt. 60).
[89] Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25,752 (June 17, 2025) (to be codified at 40 C.F.R. pt. 60).

5. Methane Regulations

On December 3, 2025, USEPA promulgated a final rule,[90] implementing the Agency's July 31, 2025 interim final rule,[91] that extended several compliance deadlines and implementation timeframes associated with CAA methane regulations for the oil and natural gas industry, commonly referred to as the OOOOb/c regulations. The OOOOb/c regulations target methane and volatile organic compound (VOC) emissions from oil and natural gas sources and establish requirements for monitoring, leak detection and repair (LDAR), and performance standards for equipment such as storage vessels, compressors, and pneumatic controllers.[92]

USEPA previously issued a final rule on March 8, 2024, establishing multiple requirements to reduce methane and other air pollutant emissions from oil and natural gas operations.[93] That rule included NSPSs applicable to new, modified, and reconstructed sources, as well as Emissions Guidelines (EG) directing states to develop plans to limit methane emissions from existing sources.[94]

USEPA issued the July 2025 interim final rule to extend multiple compliance deadlines under the 2024 NSPS and EG. Specifically, the rule (1) extended the deadline for continuous monitoring of vent gas net heating value (NHV) for flares and enclosed combustion control devices to November 28, 2025; (2) extended the deadline to meet certain requirements for control devices, equipment leaks, storage vessels, process controllers, and covers and closed vent systems to January 22, 2027; (3) extended the deadline for states to submit plans addressing existing oil and gas sources under the 2024 EG to January 22, 2027; and (4) extended the deadline for future implementation of the Super Emitter Program (SEP) and associated methane detection technology approvals to January 22, 2027.[95] USEPA issued the interim final rule based on its determination that immediate action was necessary to provide regulatory relief to affected entities facing unintended implementation compliance difficulties under the deadlines in the 2024 final rule.[96] The December 2025 final rule reaffirmed the extensions adopted in the interim final rule.[97] The final rule also further extended the deadline for sources to comply with NHV monitoring requirements to June 1, 2026, and extended the deadline to submit annual reports to November 28, 2026.[98]

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[90]Oil and Natural Gas Sector Climate Review: Extension of Deadlines in Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources, 90 Fed. Reg. 55,671 (Dec. 3, 2025) (to be codified at 40 C.F.R. pt. 60).
[91]Extension of Deadlines in Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Final Rule, 90 Fed. Reg. 35,966 (July 31, 2025) (to be codified at 40 C.F.R. pt. 60).
[92]*See* 40 C.F.R. §§ 60.5360b-.5439b, 60.5360c-.5439c (2025).
[93]Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 89 Fed. Reg. 16,820 (Mar. 8, 2024)) (to be codified at 40 C.F.R. pt. 60).
[94]*Id.* at 16,820.
[95]Oil and Natural Gas Sector Climate Review: Extension of Deadlines in Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources, 90 Fed. Reg. at 55,674 (Dec. 3, 2025) (to be codified at 40 C.F.R. pt. 60).
[96]*Id.* at 55,673.
[97]*Id.*
[98]*Id.* 55,675.

6. Offshore Wind

Throughout the year, a series of federal actions negatively affected federal offshore wind leasing and project development. On January 20, 2025, a presidential memorandum withdrew the entire Outer Continental Shelf from availability for new offshore wind leasing and directed the DOI to halt federal leasing and permitting activity for both offshore and onshore wind.[99] The memorandum stopped all offshore permitting "pending the completion of a comprehensive assessment and review of Federal wind leasing and permitting practices."[100] In December 2025, DOI issued suspension orders pausing construction and lease rights for five large-scale offshore wind projects, citing national security concerns related to radar interference produced by turbine blades and structures.[101] These suspensions affected projects in advanced stages of construction, including a project that was approximately 87 percent complete. The leasing pauses remain under agency review, with outcomes dependent on pending litigation and defense-related assessments.

7. Inflation Reduction Act Waste Emissions Charge

In February 2025, Congress used the Congressional Review Act (CRA) to nullify USEPA's 2024 final rule implementing the Waste Emissions Charge (WEC). The WEC was established under the Inflation Reduction Act (IRA) and requires large oil and natural gas operators to pay a fee if a facility's methane emissions exceed certain thresholds.[102] The IRA structured the WEC so that it did not apply to facilities in compliance with USEPA's OOOOb/c rules.[103]

The House of Representatives passed a joint resolution disapproving USEPA's 2024 WEC final rule on February 26, 2025, and the Senate passed the joint resolution the next day.[104] President Trump signed the joint resolution of disapproval into law on March 14, 2025.[105] Under the joint resolution, and by operation of the CRA, the 2024 WEC final rule has no legal force or effect.[106] The CRA also prohibits USEPA from reissuing the rule in "substantially the same form" or promulgating "a new rule that is substantially the same" unless "specifically authorized" by a subsequent act of Congress.[107]

Following the enactment of the CRA resolution, USEPA formally removed the 2024 WEC final rule from the Code of Federal Regulations on May 19, 2025.[108] Although the CRA resolution nullified the WEC final rule, and it no longer exists in the Code of Federal Regulations, the underlying provision of the IRA establishing the WEC

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[99]Presidential Memorandum, *Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects*, 90 Fed. Reg. 8363 (Jan. 20, 2025).
[100]*Id.* at 8364.
[101]Press Release, Dep't of the Interior, The Trump Administration Protects U.S. National Security by Pausing Offshore Wind Leases (Dec. 22, 2025).
[102]Inflation Reduction Act, Pub. L. No. 117-169, § 60113, 136 Stat. 1818, 2074 (2022) (codified at 42 U.S.C. § 7436).
[103]*Id.* § 136(f)(6)(a).
[104]H.R.J. Res. 35, 119th Cong. (2025).
[105]Pub. L. No. 119-2, 139 Stat. 7 (2025).
[106]*Id. See also* 5 U.S.C. §§ 801-808.
[107]5 U.S.C. § 801(b)(2).
[108]Congressional Review Act Revocation of Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions, 90 Fed. Reg. 21,225 (May 19, 2025) (to be codified at 40 C.F.R. pts. 2, 98, 99).

remains in effect, leaving unresolved questions regarding how, or whether, the methane fee may be administered in the absence of an implementing rule.

8. Transportation Emissions

In March 2025, USEPA Administrator Lee Zeldin announced the agency would be reconsidering the Model Year 2027 light-duty and medium-duty vehicles regulation, as well as the greenhouse gas emissions standards for heavy-duty vehicles.[109] On April 28, 2025, USEPA issued a waiver to allow the sale of E15 gasoline during May 2025 to address fuel supply disruptions caused by hurricanes and other natural disasters.[110] In June 2025, President Trump signed three Congressional Review Act resolutions disapproving of California's Clean Air Act preemption waivers.[111]

9. Corporate Average Fuel Economy Interpretive Rule

The "Resetting the Corporate Average Fuel Economy (CAFE) Program" interpretive rule, which was issued by the National Highway Traffic Safety Administration (NHTSA) and took effect on June 11, 2025, asserts the NHTSA's position on its authority to set fuel economy standards under the Energy Policy and Conservation Act (EPCA) and the Energy Independence and Security Act (EISA).[112] The rule states the NHTSA is legally barred from considering factors such as electric vehicle penetration, subsidies, and related policies when establishing "maximum feasible" standards. The interpretive rule was developed in alignment with President Trump's Executive Order, *Unleashing American Energy*,[113] and the Secretary of Transportation's memorandum, *Fixing the CAFE Program*.[114]

The rule strictly interprets the EPCA and EISA statutes, stating that in deciding what levels of fuel economy are the "maximum feasible," the NHTSA "shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy."[115] Further, the rule states the fuel economy of automobiles operating on alternative fuels (i.e. methanol, hydrogen, or electricity) would not be considered in the development of the fuel standard, and flex-fuel vehicles, or plug-in hybrid electric vehicles, can only be considered if operated entirely on gasoline or diesel fuel. The NHTSA also declared that, pursuant to 49 U.S.C. § 32902(h), it is prohibited from considering the trading, transferring, or availability of manufacturer credits under section 32903 during any point in the process of establishing the fuel economy standards. The CAFE program interpretive rule did not immediately change current CAFE or medium- or heavy-duty efficiency standards. Instead, it lays out the NHTSA's "appropriate groundwork" for enforcing existing standards and for future agency rulemaking efforts.

The NHTSA initiated a formal rulemaking process for fuel economy standards on December 5, 2025, amending the Department of Transportation's fuel economy standards

[109] Press Release, U.S. ENV'T PROT. AGENCY, EPA Announces Action to Implement POTUS's Termination of Biden-Harris Electric Vehicle Mandate (Mar. 12, 2025).
[110] Press Release, U.S. ENV'T PROT. AGENCY, Ahead of Summer Driving Season, EPA Allows Nationwide Year-Round E15 (Apr. 28, 2025).
[111] Press Release, The White House, Statement by the President (June 12, 2025).
[112] Resetting the Corporate Average Fuel Economy Program, 90 Fed. Reg. 24,518 (June 11, 2025) (to be codified at 49 C.F.R. pts. 531, 533, 535).
[113] See 90 Fed. Reg. at 8353.
[114] U.S. Dep't of Transp., Memorandum: *Fixing the Corporate Average Fuel Economy (CAFE) Program* (Jan. 28, 2025).
[115] 49 U.S.C. § 32902(f).

for light-duty vehicles for 2022 through 2031.[116] The NHTSA proposed to set fuel economy standards increasing from the newly proposed 2022 standards at a rate of 0.5% per year through 2026, then at a rate of 0.25% per year through 2031.[117] The NHTSA has projected that the proposed amended fuel economy standards correspond to the industry fleetwide average for all light-duty vehicles of approximately 34.5 miles per gallon in 2031.[118]

C. Litigation

1. AIM Act

In August, the United States Court of Appeals for the District of Columbia unanimously upheld USEPA's authority under the American Innovation and Manufacturing (AIM) Act to phase down hydrofluorocarbons (HFCs) through a cap-and-trade program. Less than two months after rejecting challenges to the USEPA's HFC rule, the D.C. Circuit denied a petition for panel rehearing and rehearing en banc filed by a refrigerant importer, producer, and seller.[119] The company asserted that en banc review was necessary to address whether the AIM Act impermissibly delegated authority by providing insufficient guidance to USEPA, in violation of the nondelegation doctrine; whether the panel ignored statutory text and interpretive principles and improperly deferred to USEPA to supply an "intelligible principle" allegedly absent from the statute; and whether the HFC rule conflicted with the court's interpretation of the AIM Act.[120]

The D.C. Circuit rejected this claim, finding USEPA reasonably justified the exclusion. Given that the 2020 market was atypical due to the COVID-19 pandemic and related supply-chain disruptions, the Court found USEPA's decision reflected a reasoned policy judgment and was supported by stakeholder input, including from industry groups representing the HVAC and refrigeration sector.[121] No judge requested a vote on rehearing en banc.[122]

2. Youth Plaintiff Litigation

In March 2025, the United States Supreme Court denied plaintiffs' petition for certiorari in *Juliana v. United States*.[123] In that case, the plaintiffs filed a lawsuit in 2015 seeking a declaration that the U.S. government's support for fossil fuels and failure to mitigate climate change violated plaintiffs' constitutional rights under the Fifth and Ninth Amendments. On appeal, after the United States District Court for the District of Oregon denied the U.S. government's motion to dismiss, the United States Court of Appeals for the Ninth Circuit held the plaintiffs lacked standing, as the declaratory relief requested was not likely to redress the concrete injuries alleged, and ordered the district court to dismiss the complaint.[124] Instead, the district court permitted plaintiffs to amend their complaint. Subsequently, the Ninth Circuit granted mandamus and held that its prior

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[116] The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule III for Model Years 2022–2031 Passenger Cars and Light Trucks, 90 Fed. Reg. 56,438 (Dec. 5, 2025) (to be codified at 49 C.F.R. pts. 523, 531, 533, 536, 537).
[117] 90 Fed. Reg. at 56,438.
[118] 90 Fed. Reg. at 56,438.
[119] *See* Igas Holdings, Inc. v. EPA, 146 F.4th 1126 (D.C. Cir. 2025).
[120] *Id.* at 1135.
[121] *Id*. at 1142-43.
[122] *See id.*
[123] 145 S. Ct. 1428 (2025).
[124] *In re* United States, No. 24-684, 2024 WL 5102489 (9th Cir. May 1, 2024).

mandate to the district court did not permit leave to amend, and there was no intervening change of law that would have permitted the district court to deviate from the Ninth Circuit's mandate.

Plaintiffs sought certiorari, requesting the Supreme Court vacate the Ninth Circuit's ruling because the Ninth Circuit imposed an improperly "burdensome standing test" for declaratory relief that required a "particularized factual determination [as to how the] government defendant will redress a plaintiff's injuries following a favorable declaratory judgment that resolves a constitutional controversy, where the plaintiff has already established their injuries are traceable to a defendant's ongoing unconstitutional policies or practices."[125] Plaintiffs also argued the Ninth Circuit applied the wrong standard when granting mandamus to enforce its mandate that the district court dismiss the case. The cert petition was denied on March 24, 2025. In September 2025, several of the *Juliana* plaintiffs and the non-profit Our Children's Trust filed a petition with the Inter-American Commission on Human Rights, claiming the U.S. government violated their rights under international law by deliberately emitting greenhouse gas pollution, failing to "prevent harm to the global climate system," failing to "mitigate greenhouse gas pollution," and using "extraordinary tactics" to prevent their case from being heard in the U.S. courts.[126] This petition is pending as of April 2026.

In *Genesis B. v. EPA*, the United States District Court for the Central District of California, on February 11, 2025, dismissed plaintiffs' amended complaint against USEPA for allegedly harming and discriminating against plaintiffs by allowing dangerous levels of pollution.[127] Eighteen youths in California filed a lawsuit in December 2023 requesting a declaration that USEPA intentionally discriminated against children and violated their constitutional rights to equal protection and life by treating children differently than adults in their cost-benefit analyses, and the plaintiffs sought the recognition of children as a protected class for the purposes of equal protection. The plaintiffs also requested injunctive relief to prevent USEPA from discriminating against children through its analyses and regulatory programs. In dismissing the amended complaint, the court found the plaintiffs lacked standing due to a lack of redressability or injury-in-fact, as the plaintiffs did not demonstrate their injuries were fairly traceable to the alleged environmental harms (i.e. that certain USEPA policies result in under-regulation of greenhouse gas emissions), and their alleged harms "will be experienced relatively equally by all people," rather than impacting children distinctly.[128] The plaintiffs appealed to the Ninth Circuit in April 2025, and oral argument was held in March 2026; the parties are awaiting a decision as of April 2026.[129]

On May 29, 2025, 22 youth plaintiffs from Montana, Oregon, Hawai'i, California, and Florida, represented by Our Children's Trust, filed a complaint[130] against President Trump and numerous departments of the federal government, challenging the constitutionality of three of President Trump's climate-related executive orders (*Unleashing American Energy*,[131] *Declaring a National Energy Emergency*,[132] and *Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive*

[125]Petition for a Writ of Certiorari, *Juliana*, No. 24-645 (filed Dec. 9, 2024), at 4, 16.
[126]Petition, Our Children's Trust v. United States, Inter-Am. Comm'n H.R. (Sept. 23, 2025).
[127]No. CV-23-10345-NWF, 2025 WL 578354 (C.D. Cal. Feb. 11, 2025).
[128]*Id.* at *7.
[129]Genesis B. v. EPA, No. 25-2473 (9th Cir. Mar. 5, 2026).
[130]Lighthiser v. Trump, No. 25-cv-00054, 2025 WL 2930569 (D. Mont. Oct. 15, 2025).
[131]*See* 90 Fed. Reg. at 8353.
[132]Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 29, 2025).

Order 14241[133]) and "asserting their constitutional rights to life, health, and safety."[134] On October 15, 2025, the United States District Court for the District of Montana dismissed the complaint with prejudice. The court found the youth plaintiffs could not establish Article III standing and the court therefore lacked jurisdiction to hear the case.[135] Although the youth plaintiffs alleged sufficient injury and causation to establish standing, the court determined the injuries were not judicially redressable because the plaintiffs effectively asked the court to "create environmental policy."[136] In its opinion, the court made many comparisons between this case and the *Juliana* case[137] (discussed above, which was similarly dismissed for lack of Article III standing), stating the two cases "share several important characteristics" and determining "the relief sought here raises the same Article III concerns at issue in *Juliana*."[138]

According to the court, the youth plaintiffs sought to enjoin "not just three executive orders, but also tens—if not hundreds—of policy decisions, regulations, and projects promulgated" by other federal agencies, all of which the court would be required to monitor to determine whether they contravene a proposed injunction, which is "an unworkable request for which [the youth plaintiffs] provide no precedent."[139] The court's decision was appealed to the United States Court of Appeals for the Ninth Circuit on October 20, 2025, and oral argument before the Ninth Circuit was held on April 13, 2026.[140]

3. Department of Justice Climate-Related Lawsuits

President Trump's April 8, 2025 executive order targeting state laws and policies that "discriminate against" energy producers instructed the Attorney General to identify state laws and actions "burdening the identification, development, siting, production, or use of domestic energy resources."[141] Four weeks later, the Department of Justice (DOJ) filed suit against four states for enacted or prospective climate actions deemed adverse to the President's executive order: Hawai'i, Michigan, New York, and Vermont.[142] Neither Hawai'i nor Michigan had officially initiated planned suits against fossil fuel companies to recover damages for climate impacts. Nevertheless, the federal government, in its complaints, asserted that such prospective actions infringe upon its sovereign interest in upholding federal law, its proprietary interest in preserving energy-related fiscal benefits, and its *parens patriae* interest in protecting "the economic well-being of its citizens and the national energy market."[143] These are the same interests asserted by the federal

[133] Exec. Order No. 14261, 90 Fed. Reg. 15,517 (Apr. 8, 2025).
[134] *22 Youth Are Suing the Trump Administration! Lighthiser v. Trump*, Our Children's Trust (last visited Mar. 7, 2025).
[135] *Lighthiser*, 2025 WL 2930569, at *1, 11.
[136] *Id.* at *5, 6, 8, 10.
[137] 947 F.3d 1159 (9th Cir. 2020).
[138] *Lighthiser*, 2025 WL 2930569, at *10.
[139] *Id.* at *10, 11.
[140] Notice of Appeal, Lighthiser v. Trump, No. 2:25-cv-00054 (D. Mont. Oct. 20, 2025); *see* Lighthiser v. Trump, No. 25-6714 (9th Cir. Oct. 23, 2025).
[141] Exec. Order No. 14,260, Protecting American Energy From State Overreach, 90 Fed. Reg. 15,513 (Apr. 8, 2025).
[142] Press Release, Dep't of Just., Justice Department Files Complaints Against Hawaii, Michigan, New York, and Vermont Over Unconstitutional State Climate Actions (May 1, 2025).
[143] Complaint at ¶ 7, United States v. Hawai'i, No. 25-cv-00179 (D. Haw. Apr. 30, 2025) [hereinafter *Haw. Compl.*]; Complaint at ¶7, United States v. Michigan, No. 25-cv-00496 (W.D. Mich. Apr. 30, 2025) [hereinafter Mich. Compl.].

government in its complaints against New York and Vermont, which target the states' recently enacted Climate Superfund Acts.[144] These laws (both enacted in 2024) impose retroactive strict liability on fossil fuel companies whose GHG emissions have contributed to climate change-related damages within their state boundaries.[145]

Across all four complaints, the federal government argued the state actions are illegal on five grounds: Clean Air Act preemption, unconstitutional extraterritorial regulation, interstate commerce clause violation, foreign commerce clause violation, and foreign affairs preemption.[146] All four states have either filed answers or motions to dismiss.[147] On May 4, 2026, the DOJ filed a similar lawsuit against the State of Minnesota, which had filed a climate-deception lawsuit against fossil fuel companies in June 2020.[148] Notably, the same day the federal government filed its initial lawsuits in May 2025, Hawaiʻi filed a lawsuit against major fossil fuel industry members seeking to recover for the climate change impacts of their deception.[149] Hawaiʻi moved for judgment on the pleadings, arguing the U.S. lacks standing and has no valid claim, and that the federal court should abstain from interfering with ongoing or imminent state court proceedings.[150] On April 15, 2026, the United States District Court for the District of Hawaiʻi granted Hawaiʻi's motion, holding that the United States' "Complaint does not describe any concrete injury."[151]

Previously, in late 2024, the U.S. Chamber of Commerce and the American Petroleum Institute filed suit in the United States District Court for the District of Vermont to challenge Vermont's 2024 Climate Superfund Act on preemption, extraterritoriality, and constitutional grounds.[152] In May 2025, twenty-four states joined the lawsuit, and the DOJ filed its suit.[153] After several non-profits intervened to support the Act, Vermont moved to dismiss both the Chamber of Commerce and the DOJ cases in August 2025, arguing the Act was a valid exercise of state authority to protect public health, safety, and welfare by requiring large emitters to help fund adaptation and recovery from climate impacts. The Chamber of Commerce and the DOJ each moved for summary judgment in their respective cases in September 2025, seeking a permanent injunction against Vermont's implementation of the Act and arguing the Act was unconstitutional and unenforceable because it interferes with the federal government's

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[144]Complaint at ¶¶ 4-7, 10, United States v. New York, No. 25-cv-03656, 2025 WL 1276266 (S.D.N.Y. May 1, 2025) [hereinafter N.Y. Compl.]; Complaint at ¶¶ 4-7, 10, United States v. Vermont, No. 25-cv-00463 (D. Vt. May 1, 2025) [hereinafter Vt. Compl.].

[145]Climate Change Superfund Act, N.Y. ENV'T CONSERV. LAW §§ 76-0101 to -0105 (McKinney 2025); Climate Superfund Act, VT. STAT. ANN. tit. 10, §§ 596-599c, 8003(33) (2024).

[146]Haw. Compl. at ¶¶ 31, 41, 43, 54, 63-64, 70-72, 85-86, 88, *supra* note 130; Mich Compl. at ¶¶ 31, 41, 43, 54, 63-64, 70-72, 85-86, 88, *supra* note 130; N.Y. Compl. at ¶¶ 51, 61, 63, 75, 86-88, 94-96, 110-11, 113, *supra* note 131; Vt. Compl. at ¶¶ 48, 58, 60, 72, 83, 85, 91-93, 107-08, 110, *supra* note 131.

[147]Answer, *Hawai'i*, No. 25-cv-00179 (June 30, 2025), ECF No. 19; Motion to Dismiss, *Michigan*, No. 25-cv-00496 (July 31, 2025), ECF No. 11; Answer, *New York*, No. 25-cv-03656, (June 20, 2025) ECF No. 32; Motion to Dismiss, *Vermont*, No. 25-cv-00463 (Aug. 15, 2025) ECF No. 35-1.

[148]United States v. State of Minnesota, No. 0:26-cv-02456 (D. Minn. May 4, 2026).

[149]Complaint, State v. BP P.L.C., No. 1CCV-25-0000717 (Haw. 1st Cir. Ct. May 1, 2025).

[150]Defendants' Motion for Judgment on the Pleadings, *Hawai'i*, No. 25-cv-00179 (July 25, 2025), ECF No. 22-1.

[151]Order, United States v. Hawaiʻi, No. 25-cv-00179, at 16 (D. Haw. Apr. 15, 2026).

[152]Complaint, Chamber of Com. v. Moore, No. 24-cv-01513 (D. Vt. Dec. 30, 2024).

[153]Vt. Compl., *supra* note 131.

exclusive authority over interstate and global GHG emissions and energy policy. Vermont filed cross-motions for summary judgment in both cases seeking to have the Act upheld. The parties are briefing the motions to dismiss and for summary judgment.

III. State and Local Activities

A. Regulatory Activities

1. Regional Greenhouse Gas Initiative

In July 2025, the ten states participating in the Regional Greenhouse Gas Initiative (RGGI) concluded their Third Program Review[154] and adopted a new Model Rule[155] to guide the region's power sector GHG emissions cap through 2037. The updated Model Rule significantly tightens the regional CO_2 cap, with aggressive annual emissions reductions from 2027 to 2033 and a more moderate decline from 2033 to 2037. For example, the 2027 allowance has been reduced by nearly 10 percent from the prior model rule level.[156] No adjustments were made to the policy for banked allowances, which continue to be permitted. The cap for the years following 2037 will be decided after the Fourth Program Review, which is scheduled to start no later than 2028.

The revised Model Rule also expands the size of the existing Cost Containment Reserve, a protection against cost volatility, by creating a second tier of reserve allowances.[157] The preexisting Emissions Containment Reserve was replaced by a universal price floor. Other reforms include the elimination of offset credits for compliance after 2027 and a higher minimum auction reserve price.[158] Each participating state committed to amending its CO_2 budget trading program through statute or regulation to comply with the updated Model Rule by January 1, 2027.[159]

2. Cap-and-Invest Program Rulemakings

In September 2025, California Governor Gavin Newsom signed into law Assembly Bill 1207 (AB 1207), which reauthorized the state's cap-and-trade program.[160] Originally created by the California Global Warming Solutions Act of 2006, the program has now been extended for an additional 15 years, through 2045.[161] AB 1207 also renames the program as "Cap-and-Invest" and mandates the creation of the California Climate Mitigation Fund (Fund) in the State Treasury.[162] Revenue collected from the Cap-and-Invest program will be deposited into the Fund, which will be used for "direct rebates and investments to reduce household energy costs."[163] Further, the bill requests that the California Air Resources Board (CARB) implement regulations that transition

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[154]Press Release, Reg'l Greenhouse Gas Initiative, RGGI States Announce Results of Third Program Review (July 3, 2025).
[155]Reg'l Greenhouse Gas Initiative, *Model Rule* (July 3, 2025).
[156]*Program Review*, Reg'l Greenhouse Gas Initiative (last visited Mar. 25, 2026) (Reducing the regional emissions cap in 2027 to 69,806,919 tons of CO_2 from 75,717,784 tons under the previous Model Rule).
[157]*See id.*
[158]*Id.* at 21.
[159]*Id.* at 17.
[160]Cal. Air Res. Bd., Memorandum, Information Regarding Cap-and-Invest Regulation Update (Sep. 19, 2025).
[161]2025 Cal. Legis. Serv. ch. 117 (A.B. 1207) (West).
[162]*Id.*
[163]*Id.*

support from gas utilities to electric utilities.[164] These changes reflect the growing focus on affordability and electrification in state climate policy.

Shortly after AB 1207 was approved, CARB released a memo outlining its plans for regulatory updates to the Cap-and-Invest program.[165] Anticipated updates include those made to the program's annual allowance budgets, the mandated allowance transition from gas to electric utilities, residential bill climate credits, and triggers for corporate association group designation.[166] CARB also plans to make the program compatible with the Extended Day Ahead Market being developed by the California Independent Service Operator (CAISO), link the program with Quebec's cap-and-trade program, and meet the in-state carbon offset research requirements established in Senate Bill 840 (SB 840), which Governor Newsom also signed in September 2025.[167]

On October 29, 2025, CARB held a workshop that detailed the new laws and projected updates to Cap-and-Invest regulations.[168] CARB requested public feedback on several program changes, including allowance removals for offset use, out-of-state emissions leakage, industrial allowance allocation, manufacturing decarbonization, and the AB 1207-mandated utility allocation transition.[169] CARB anticipates consideration of proposed amendments in April 2026.[170]

Separately, the Washington Department of Ecology (Ecology) continues to advance efforts to link the state's cap-and-invest program under the Climate Commitment Act with California's and Québec's related cap-and-invest programs.[171] California and Québec have had linked cap-and-invest markets since 2014, and Ecology has been pursuing linkage with these programs since November 2023.[172] Washington's program currently has the highest allowance prices among the three jurisdictions, with the settlement price for current vintage allowances at $70.86 per allowance for the state's auction on December 3, 2025.[173] A linked market would permit allowances issued by California and Québec to be used by Washington entities to cover their emissions, and vice versa.[174] The three jurisdictions would also host joint allowance auctions and share a common allowance price.[175]

In 2025, Ecology initiated the development phase for rulemaking "that will facilitate linkage by making Washington's carbon market compatible with the California-Québec market."[176] The agency has shared two preliminary drafts of the rule amendments and held Tribal forums and public meetings to receive input on each draft.[177] Ecology plans to propose the draft rule in spring 2026 and expects to adopt rule

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[164] *Id.*
[165] Information Regarding Cap-and-Invest Regulation Update, *supra* note 145.
[166] *Id.*
[167] Information Regarding Cap-and-Invest Regulation Update, *supra* note 145; Cal. S.B. 840, 2025-2026 Reg. Sess. (Cal. 20225).
[168] *Cap and Invest Program Workshop*, CAL. AIR. RES. BD. (Oct. 29, 2025),
[169] *See Id.*
[170] *Id.* at 56.
[171] *See generally Cap-and-Invest Linkage*, WASH. DEP'T ECOLOGY (last visited Mar. 28, 2025) [hereinafter Cap-and-Invest Linkage].
[172] WASH. DEP'T ECOLOGY, Publ'n No. 25-14-019, *Cap-and-Invest Carbon Market Linkage Updates* 1 (Mar. 2025) [hereinafter Market Linkage Updates].
[173] WASH. DEP'T ECOLOGY, Publ'n No. 25-14-083, *Washington Cap-and-Invest Program Auction #12 December 2025 Summary Report* 1 (Dec. 10,2025).
[174] Market Linkage Updates, *supra* note 157 at 1.
[175] *Id.*
[176] *Id.* at 4.
[177] *Id.*

changes in summer 2026.[178] In order to effectuate linkage, Ecology will need to complete an Environmental Justice Assessment and do a final linkage criteria assessment, and California and Québec will have to take additional steps as well.[179] Ecology anticipates the jurisdictions could begin operating a linked market in 2027.[180]

3. California's Transportation Regulations

On January 13, 2025, CARB withdrew its request for a Clean Air Act waiver for its Advanced Clean Fleets regulation, which seeks to achieve a fully zero-emission medium- and heavy-duty vehicle fleet in California by 2045. However, CARB announced its continued enforcement of the Advanced Clean Fleets regulation with respect to state and local government fleets, which does not require a federal waiver.

In June 2025, Governor Newsom issued Executive Order N-27-25, reaffirming California's commitment to transportation emissions reductions. The same month, California and other states filed suit in the United States District court for the Northern District of California challenging the Congressional Review Act disapproval of Clean Air Act waivers for three California vehicle emission regulations.[181]

In July 2025, CARB proposed amendments to its Advanced Clean Fleets and Low Carbon Fuel Standard regulations. The same month, CARB proposed amendments to the Advanced Clean Trucks regulation (which aims to reduce harmful emissions from medium- and heavy-duty vehicles to the greatest degree feasible) and the Zero-Emission Powertrain Certification Test Procedure (testing procedures ensuring electric and fuel-cell heavy-duty powertrains meet certain performance, durability, and repairability standards).

In October 2025, CARB finalized adoption of emergency regulations that updated on-road heavy-duty engine and vehicle, low-carbon fuel, and emissions-ready rules to align with existing regulations. In addition, CARB is currently working on updates to its light-duty vehicle emissions standards for the 2030s and beyond.

B. Litigation

1. Climate Deception Litigation

On January 13, 2025, the United States Supreme Court denied a petition for certiorari filed by the defendants in *City and County of Honolulu v. Sunoco LP*.[182] In that case, the plaintiffs filed a lawsuit against major fossil fuel industry members alleging the defendants deceptively marketed fossil fuel products while omitting and concealing their knowledge that the products would cause climate change. In October 2023, the Supreme Court of Hawai‘i denied the defendants' motion to dismiss, holding the plaintiffs' state-law claims were not preempted by any federal law.[183] In February 2025, the defendants moved in state court for summary judgment on all claims as barred by the applicable two-year statute of limitations. Certain other defendants moved for summary judgment based on a lack of personal jurisdiction. The summary judgment motions remain pending, and the court recently denied a motion to stay the case pending the Supreme Court's decision in *Boulder*, discussed below.

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[178] *Id.*
[179] Cap-and-Invest linkage, *supra* note 156.
[180] *Id.*
[181] California v. United States, No. 25-cv-04966, 2025 WL 1666352 (N.D. Cal. June 12, 2025)
[182] 537 P.3d 1173 (Haw. 2023), *cert. denied*, 145 S. Ct. 1111 (2025).
[183] *Id*. at 1181.

On May 12, 2025, the Colorado Supreme Court ruled that similar claims brought by the City and County of Boulder were not preempted by federal law, allowing the case to proceed beyond the motion to dismiss stage.[184] The defendants filed a cert petition with the United States Supreme Court in August 2025.[185] On February 23, 2026, the Supreme Court granted the petition.[186] The Petitioners filed their opening brief on May 14, 2026, and the Respondents' brief is due on July 27, 2026.

In 2022, the New Jersey Attorney General brought a civil lawsuit against major fossil fuel companies, alleging that the defendants engaged in a decades-long deception campaign to hide the dangers of fossil fuels and their role in climate change. New Jersey brought claims under state common law and a state consumer protection statute. In February 2025, a New Jersey Superior Court judge dismissed the lawsuit.[187] The court found that New Jersey's state-law claims were preempted by federal law. The court reasoned the lawsuit essentially sought damages for interstate and international emissions that implicated uniquely federal interests and could not be resolved under New Jersey state tort or consumer protection laws.

In *State v. American Petroleum Institute*, the State of Minnesota brought claims against members of the fossil fuel industry for failure to warn, fraud and misrepresentation, and violations of multiple state consumer protection statutes. On February 14, 2025, the District Court of Minnesota largely denied the defendants' motions to dismiss, allowing all claims except a count under the Minnesota Consumer Fraud Act to proceed.[188] In April 2025, the Court of Appeals of Minnesota denied the defendants' petition for an interlocutory appeal of the trial court's order,[189] and the case is now proceeding with discovery.

In 2023, the Makah Indian Tribe and the Shoalwater Bay Indian Tribe sued major fossil fuel companies in Washington state court, alleging public nuisance and failure to warn based on the defendants' concealment of the harmful environmental effects of fossil fuels, which has caused climate change-related damages to tribal lands, including coastal erosion, flooding, and wildfires.[190] After the defendants removed the cases to federal court, the United States District Court for the Western District of Washington granted the Tribes' motions to remand back to state court in March 2025, finding no federal jurisdiction. The court held the Tribes' state law claims did not necessarily raise substantial federal questions about tribal land rights or other federal interests that would justify federal jurisdiction, and the plaintiffs' tribal status did not convert their claims into federal ones just because tribal land rights have a federal dimension. In April 2026, the Washington state court denied the defendants' motion to dismiss the case, holding the case was not preempted by federal law.[191]

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[184]Cnty. Comm'n of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc., 2025 CO 21, ¶ 26.
[185]Petition for a Writ of Certiorari, Suncor Energy (U.S.A.) Inc. v. Bd. of Cnty. Comm'n of Boulder Cnty., No. 25-170 (Aug. 8, 2025).
[186]Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County, No. 25-170 (Feb. 23, 2026).
[187]Platkin v. Exxon Mobil Corp., MER-L-001797-22 (N.J. Super. Ct. Law Div. Feb. 5, 2025).
[188]State v. Am. Petroleum Inst., No. 3:22-cv-01550, 2025 WL 562630 (Minn. Dist. Ct. Feb. 14, 2025).
[189]State v. Am. Petroleum Inst., Nos. A25-0419, A25-0421, 2025 WL 1203047 (Minn. Ct. App. Apr. 22, 2025).
[190]Shoalwater Bay Indian Tribe v. Exxon Mobil Corp., No. 2:24-cv-158 (W.D. Wash. Mar. 26, 2025), ECF No. 1-1; Makah Indian Tribe v. Exxon Mobil Corp., No. 2:24-cv-157 (W.D. Wash. Mar. 26, 2025), ECF No. 1-1.
[191]Shoalwater Bay Indian Tribe v. Exxon Mobil Corp., No. 23-2-25215-2 (Wash. Super. Ct. Apr. 29, 2026).

In November 2022, seventy-eight Puerto Rico municipalities filed a class action lawsuit in the United States District Court for the District of Puerto Rico against major fossil fuel companies, asserting Puerto Rico law claims as well as claims under the federal Sherman Act and the Racketeer Influenced and Corrupt Organizations (RICO) Act, all based on the defendants' alleged campaign of deception about fossil fuel risks which allegedly led to the devastating hurricanes in Puerto Rico in 2017.[192] In December 2023, the Municipality of San Juan filed a complaint with the same claims and allegations.[193]

In September 2025 in the municipalities class action case, the court dismissed claims against some defendants for lack of personal jurisdiction, and the court dismissed the remaining claims as time-barred, finding plaintiffs knew or should have known of their injuries by September 2021. The court held there was evidence of public knowledge by 2017 of climate science linking fossil fuel emissions to climate change and of the specific harms from the 2017 hurricanes in Puerto Rico, including from publicly available reports and news articles. Later in September 2025, the court dismissed San Juan's claims for the same reasons, adopting most of its earlier decision in the class action case. The municipalities have appealed the ruling in the class action case to the United States Court of Appeals for the First Circuit, and that appeal is ongoing.[194]

In May 2025, the Commonwealth of Puerto Rico voluntarily dismissed without prejudice its lawsuit against Exxon, BP, Chevron, and other fossil fuel companies. Puerto Rico alleged that the defendants' decades of deceptive practices about the impact of fossil fuels harmed the island through resulting impacts from climate change and extreme weather.[195] Puerto Rico filed its complaint in a local Puerto Rico court, and the defendants removed the case to federal court in late 2024. Puerto Rico filed a motion to remand the case, which was being litigated and had not been ruled on when Puerto Rico filed its notice of voluntary dismissal. Puerto Rico has not refiled its complaint after the voluntary dismissal.

The State of Vermont filed a lawsuit in 2021 in state court against fossil fuel companies alleging climate change-related deception and bringing claims under Vermont's consumer protection statute. In March 2025, the Vermont state court denied the defendants' motion for interlocutory review of the court's denial of their motions to dismiss.[196] In its denial of the motion to dismiss, the court had ruled that the plaintiffs plausibly alleged that the defendants had engaged in deceptive and unfair practices, in violation of Vermont law, by misrepresenting and concealing the climate harms associated with their products. The court also held that the out-of-state defendants were subject to personal jurisdiction in Vermont because they had delivered their products into the stream of commerce with the expectation that they would be purchased by consumers in the state. After being denied interlocutory review, the parties are proceeding with discovery.

Separately but relatedly, in July 2025, the Vermont Superior Court dismissed a suit filed by the Conservation Law Foundation against the Vermont Agency of Natural

[192]Complaint, Mun. of Bayamon v. Exxon Mobil Corp., No. 22-1550 (D.P.R. Sep. 11, 2025), ECF No. 1.
[193]Mun. of San Juan, Puerto Rico v. Exxon Mobil Corp., No. 3:2023-cv-01608 (D.P.R. Dec. 13, 2023).
[194]Mun. of Bayamon v. Exxon Mobil Corp., No. 25-191 (1st Cir. 2025).
[195]Plaintiff's Notice of Voluntary Dismissal, Commonwealth of Puerto Rico v. Exxon Mobil Corp., No. 3:24-cv-01393 (D.P.R. May 2, 2025).
[196]State of Vermont v. Exxon Mobil Corp., No. 21-CV-02778 (Vt. Super. Ct. Mar. 26, 2025).

Resources.[197] The suit challenged the state's implementation of Global Warming Solutions Act, specifically contesting how the law tracked progress toward legally binding greenhouse gas reduction targets. The suit was dismissed as a premature challenge to the agency's work, as the suit was filed before the agency's emissions report (which tracks whether Vermont met its targets) was finalized and released.

In May 2025, the Attorney General of Hawaiʻi sued major oil and gas companies in state court, bringing state tort claims based upon the defendants' alleged deception about the impacts of fossil fuel products and the resulting climate change injuries Hawaiʻi suffered, including harm to constitutionally protected "public trust resources."[198] The fossil fuel company defendants in Hawaiʻi's state court case moved to stay the state court proceedings pending resolution of the DOJ's suit in federal court (discussed in Section II.C.3 above), and the state court granted the motion, staying the case until the end of January 2026.

In 2020, the District of Columbia sued Exxon Mobil, Chevron, Shell, and BP in state court for allegedly violating the District of Columbia Consumer Protection Procedures Act (CPPA) through the deceptive marketing of their fossil fuel products.[199] In April 2025, the D.C. Superior Court denied defendants' motion to dismiss, allowing the District's claims to proceed, including those related to the defendants' alleged funding of third-party climate misinformation groups. Only one claim regarding a specific BP gasoline additive was dismissed, as the court found the District failed to state a facially plausible misrepresentation claim for that statement. In July 2025, the court denied defendants' motions for interlocutory appeal and for reconsideration of the denials of their motions to dismiss. The defendants subsequently answered the District's complaint, and the parties are proceeding with discovery.

Relatedly, Mighty Earth, a nonprofit environmental advocacy group, filed a climate-related consumer protection lawsuit in D.C. Superior Court against JBS USA and its affiliates in September 2025. The complaint alleged that JBS's marketing of "sustainable" and "net zero" beef products was misleading and failed to disclose the full climate impacts of the company's operations, including methane emissions from cattle and associated supply chains.[200] Mighty Earth asserts a claim under the CPPA and seeks declaratory and equitable relief, including corrective advertising and disgorgement of profits earned from JBS's allegedly deceptive practices.

Numerous cases filed by California municipalities, along with a case by the People of the State of California, against oil companies seeking accountability for alleged climate deception under state tort law were consolidated in early 2024 under the caption *In re Fuel Industry Climate Cases*.[201] In January 2025, the defendants filed a petition of review to the California Supreme Court regarding the trial court's decision finding personal jurisdiction over the defendants. The defendants argued the petition raises an important legal question concerning the limits of a court's specific personal jurisdiction over a nonresident defendant where the alleged in-state conduct did not cause the alleged harm that gave rise to the claim. In February 2025, the California Supreme Court denied the petition. In April 2025, the defendants filed their demurrer and motion to strike in California Superior Court. Proceedings on both of those motions have been stayed pending the final disposition of the *Boulder* case in the Supreme Court.

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[197] Conservation Law Found., Inc. v. Moore, No. 24-CV-03770 (Vt. Super. Ct. July 11, 2025).
[198] Hawai'i v. BP, No. 1CCV-25-0000717 (Haw. Cir. Ct. May 1, 2025).
[199] District of Columbia v. Exxon Mobil Corp., No. 2020 CA 002892 B (D.C. Super. Ct. July 25, 2020).
[200] *Mighty Earth v. JBS USA Foods Co.*, No. 2025-CAB-006549 (D.C. Super. Ct. Sept. 29, 2025).
[201] 117 Cal. App. 5th 882, 882 (2026).

In *Bucks County v. BP P.L.C.*, the trial court granted the defendants' preliminary objections in May 2025 on the grounds that Bucks County's climate deception claims were preempted by federal law.[202] The case is on appeal to the Commonwealth Court of Pennsylvania.

In *State v. Exxon Mobil Corporation*, the State of Connecticut sued Exxon for its allegedly deceptive marketing practices under the Connecticut Unfair Trade Practices Act. On November 26, 2025, the state trial court denied Exxon's motion to strike (dismiss) the State's claims, holding that the claims were not preempted by federal law and that the State met the required elements of the state consumer protection statute.[203]

In *City of Charleston v. Brabham Oil*, the trial court granted the defendants' joint motion to dismiss the complaint in August 2025 because "[f]ederal law precludes and preempts Plaintiff's claims."[204] The City of Charleston has elected not to appeal the trial court's decision.[205]

In *City of New York v. Exxon Mobil Corp.*, the City brought claims under New York City's Consumer Protection Law. On January 14, 2025, the state trial court dismissed the City's claims because the City failed to meet the statutory requirements of the Consumer Protection Law and the City's claims were barred by the applicable statute of limitations.[206] The defendants previously had removed this case to federal court, and the federal district court remanded the case and awarded the City fees and costs. The defendants appealed the fees and costs award, and on October 3, 2025, the United States Court of Appeals for the Second Circuit affirmed the award.[207]

In *Maine v. BP P.L.C.*, the U.S. District Court for the District of Maine granted the State's motion to remand on September 29, 2025, remanding the case to state court and awarding the State costs and fees.[208] The parties are briefing the issues of costs and fees, as well as whether a stay of state court litigation will be in effect pending the defendants' appeal of the remand order.

In *City of Chicago v. BP P.L.C.*, the U.S. District Court for the Northern District of Illinois granted the City's motion to remand on May 16, 2025, remanding the case to state court.[209] Subsequently, the defendants filed motions to dismiss in state court. The court recently granted in part and denied in part of stay of the case pending the Supreme Court's decision in *Boulder*, allowing discovery to proceed on the Chicago's consumer protection claims brought under its municipal code. Simultaneously, the parties are litigating the defendants' appeal of the remand order in the U.S. Court of Appeals for the Seventh Circuit.[210]

Finally, in Maryland, three climate deception cases were brought in recent years by the City of Baltimore, the City of Annapolis, and Anne Arundel County. A state trial court dismissed Baltimore's case in July 2024 on the grounds that the City's claims were preempted by federal law.[211] After the cases brought by Annapolis and Anne Arundel were consolidated, the state trial court similarly dismissed those cases on January 23,

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[202]No. 24-01836-0000*,* 2025 WL 1484203 (Pa. Ct. Com. Pl. May 16, 2025).
[203]No. HHD-CV20-6132568-S, 2025 WL 3459468 (Conn. Super. Ct. Nov. 26, 2025).
[204]No. 23-1802, 2025 WL 2269770 (S.C. Ct. Com. Pl. Aug 6, 2025).
[205]Keith Goldberg, *Charleston SC Not Appealing Dismissal of Climate Suit*, LAW360 (Sept. 15, 2025).
[206]226 N.Y.S.3d 863 (N.Y. Sup. Ct. 2025).
[207]City of New York v. Exxon Mobil Corp., 154 F.4th 36 (2d Cir. 2025).
[208]No. 2:25-cv-00001, 2025 WL 2753978 (D. Me. Sept. 29, 2025).
[209]No. 1:2024cv02496*,* 2025 WL 1426163 (N.D. Ill. May 16, 2025)
[210]City of Chicago v. BP P.L.C., No. 25-1916 (7th Cir. 2025).
[211]Mayor & City Council of Balt. V. BP P.L.C., No. 24-C-18-004219 2024 WL 3678699 (Md. Cir. Ct. July 10, 2024).

2025, relying on the dismissal of Baltimore's case.[212] All three municipalities appealed and filed petitions for certiorari in the Supreme Court of Maryland. The Supreme Court of Maryland granted certiorari to review the appeal on April 24, 2025. On March 24, 2026, the Supreme Court of Maryland affirmed the dismissal.[213]

2. Youth Plaintiff Litigation

In *Reynolds v. Florida Public Service Commission*, youth plaintiffs in Miami-Dade County filed a lawsuit in December 2024 challenging the Florida Public Service Commission's alleged decades-long rubber stamping of fossil fuel-dependent long-term energy plans, which the plaintiffs claimed violated their state constitutional rights.[214] In July 2025, the case was transferred from Miami-Dade County to Leon County. The parties briefed the defendant's motion to dismiss in late 2025 and are awaiting a ruling as of January 2026.

In *Roberts v. Board of Oil, Gas, and Mining*, ten youth plaintiffs in Utah filed a lawsuit in December 2025 against numerous state governmental defendants challenging fossil fuel permits issued for coal, oil, and gas development, arguing these permits are unnecessary, costly, and harmful and are violating the plaintiffs' state constitutional rights.[215] The plaintiffs are awaiting an answer or motion to dismiss.

On March 10, 2025, *Sagoonick v. State* was dismissed by an Alaska Superior Court.[216] This matter, brought by minors in the State of Alaska, sought to enjoin the Alaska Liquified Natural Gas Project (LNG) on the basis that the 30 years of contemplated operations for the project violated the plaintiffs' rights under the Alaska Constitution.[217] The lawsuit sought a declaration that the statutory provisions allowing for the LNG violated rights to equal access to public trust resources.[218] The lawsuit was dismissed on the basis of binding Alaska precedent, which held that similar relief was barred by the political question doctrine.[219] The Court stated that "important questions regarding climate change mitigation do not present justiciable questions because the Court lacks both the authority and the tools to reweigh the competing economic, environmental, social or conservation goals served by the legislature's policy choice to enact the challenged statute or advance the Alaska LNG Project."[220]

Motion to dismiss briefing is ongoing in *Dunn v. Public Service Commission of Wisconsin*, a case filed by Our Children's Trust and Midwest Environmental Advocates in August 2025.[221] The action, on behalf of 15 children, seeks to protect rights to life and liberty granted by the Wisconsin Constitution, challenging state laws which prevent the Public Service Commission from considering air pollution in permitting considerations

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[212] City of Annapolis v. BP P.L.C., 2025 WL 588595 (Md. Cir. Ct. Jan. 23, 2025).
[213] Mayor & City Council of Baltimore v. BP P.L.C., No. 11 (Md. Mar. 24, 2026).
[214] Reynolds v. Fla. Pub. Serv. Comm'n, No. 2024-019966-CA-01 (Fla. Cir. Ct. 2024).
[215] Complaint, Roberts v. Bd. of Oil, Gas, & Mining, No. 250909533 (Utah Dist. Ct., Dec. 1, 2025).
[216] No. 3AN-24-06508CI (Alaska Super. Ct. Mar. 10, 2025)
[217] Complaint for Declaratory & Injunctive Relief, Sagoonick v. Alaska, No. 3AN-24-06508CI (Alaska Super. Ct. Mar. 10, 2025).
[218] *Id.* at 81-82.
[219] *Supra* note 195, at 1-2.
[220] *Id*. at 4.
[221] No. 2025CV002797 (Wis. Cir. Ct. Dane Cnty. 2025); *15 Youth Sue Wisconsin for a Stable Climate*, OUR CHILDREN'S TRUST (last visited Mar. 28, 2026).

for fossil fuel infrastructure, allegedly worsening the climate crisis and violating plaintiffs' constitutional rights.[222]

3. Miscellaneous Climate-Related Litigation

In *Town of Carrboro v. Duke Energy Corp.*,[223] the Town of Carrboro, North Carolina, filed suit against the utility company Duke Energy Corporation in December 2024, seeking money damages based on the company's alleged contributions to climate change. Carrboro alleges that Duke Energy has proximately caused the Town to suffer climate change-related injuries through the company's purported greenwashing—namely, its "knowing deception campaign concerning the causes and dangers posed by the climate crisis." In particular, the Town asserts that Duke Energy has knowingly misled the Town over decades about its intentional contributions to climate change, misrepresenting climate-related risks while downplaying the importance of renewable energy. Carrboro contends this misconduct has contributed to and exacerbated climate-related injuries in the Town, including infrastructure damage from climate change-induced extreme weather.

Duke Energy filed a motion to dismiss the complaint in May 2025. Duke Energy's primary argument is that the causal connection between its conduct and Carrboro's alleged injuries is too attenuated to support liability. Duke Energy argues that even if some degree of "traceability" could be established, the fact that the North Carolina Public Service Commission is the regulator of the state's energy mix curbs Duke Energy's responsibility for the Town's injuries. A central argument between the two parties, as highlighted during oral argument on the motion to dismiss on September 26, 2025, concerns the nature of the relief Carrboro is seeking. Duke Energy asserts that Carrboro's theory of liability implicates changes to the state's energy mix, a form of injunctive relief that Duke Energy contends would be nonjusticiable. Carrboro, by contrast, maintains that it seeks only monetary relief for the alleged tortious conduct without requesting any injunctive relief.[224] The parties await a ruling on the motion to dismiss.

The *Kennedy v. Exxon* home insurance case is a first-of-its-kind case wherein plaintiffs seek to use litigation to hold the fossil fuel industry accountable for contributions not only to climate change but also the resulting insurance crisis that stems from severe weather-related disasters. Residents in Washington state filed a class action lawsuit in November 2025 in the United States District Court for the Western District of Washington against the American Petroleum Institute, ExxonMobil, Shell, Chevron, BP, and other large fossil fuel companies, arguing that the defendants' "coordinated and deliberate scheme to hide the truth about climate change and the effects of burning fossil fuels" resulted in rising home insurance costs.[225]

The plaintiffs allege that home insurance premiums have skyrocketed; on average, insurance rates have increased by 51 percent in the past six years, but for some that number is much higher.[226] Plaintiffs argue the defendants engaged in deceptive practices and misled the public regarding fossil fuels' contributions to the climate crisis, ultimately

[222]Complaint, Dunn v. Pub. Serv. Comm'n of Wis., No. 2025CV002797 (Wis. Cir. Ct. Dane Cnty. 2025); *see also supra* note 10.
[223]Town of Carrboro v. Duke Energy Corp., No. 24CV003385-670 (N.C. Super. Ct. Dec. 4, 2024).
[224]Brian Gordon, *Carrboro, Duke Energy Exchange Oral Arguments in Novel NC Climate Change Lawsuit*, News & Observer (Raleigh, N.C.) (Sept. 26, 2025).
[225]Complaint ¶ 4, Kennedy v. Exxon Mobil Corp., No. 2:25-cv-02378 (W.D. Wash. Nov. 15, 2025).
[226]*Id.* ¶ 3.

resulting in increasingly expensive insurance premiums for homeowners.[227] The defendants are expected to file motions to dismiss in March 2026.

In *Leon v. Exxon Mobil Corporation*, the United States District Court for the Western District of Washington remanded a climate change wrongful death action to state court after rejecting the defendants' theory of fraudulent joinder.[228] The plaintiff, representing the estate of a woman who died of hyperthermia during the June 2021 Pacific Northwest "Heat Dome," brought suit in King County Superior Court in May 2025 against twelve multinational oil and gas companies and one Washington-based entity, Olympic Pipe Line Company (Olympic).[229] The plaintiff asserted claims for product liability and public nuisance, alleging that the defendants' fossil fuel production and "campaign of deception" regarding the climate risks posed by fossil fuels caused the extreme heat event that led to the decedent's death.[230] The defendants removed the action to federal court, arguing that the court should disregard Olympic's Washington citizenship because the plaintiff failed to state a colorable claim against it, contending Olympic acted merely as a common carrier transporter and was therefore fraudulently joined.[231]

The court held the defendants failed to carry the "heavy burden" required to establish fraudulent joinder.[232] Regarding the product liability claim, the court applied the Washington Product Liability Act (WPLA), which defines a "product seller" as any entity "engaged in the business of selling products, whether the sale is for resale, or for use or consumption," expressly including a "wholesaler, distributor, or retailer."[233] The court found the plaintiff plausibly alleged that Olympic managed a distribution network for petroleum products, fitting the statutory definition of a distributor.[234] The court rejected the defendants' argument that Olympic was a "mere conduit," distinguishing the defendants' cited authority as applicable to lessors rather than distributors.[235] The court emphasized that the WPLA contains "no carve out for 'common carriers'" and that the defendants failed to provide authority establishing that a distributor is immune from liability at the pleading stage solely due to common carrier status.[236]

Because the plaintiff stated a colorable claim against the local defendant, the federal court lacked subject matter jurisdiction.[237] The court further noted the defendants failed to show Olympic could not be liable under Washington's public nuisance statute, Wash. Rev. Code § 7.48.120, which defines nuisance as "unlawfully doing an act, or omitting to perform a duty, which act or omission . . . annoys, injures or endangers the comfort, repose, health or safety of others."[238] Consequently, the court granted the motion to remand the case to King County Superior Court but denied the plaintiff's request for fees and costs, finding the removal objectively reasonable despite its lack of merit.[239] Upon remand, the plaintiff filed an amended complaint in December 2025 and is awaiting a response.

On January 3, 2025, the Supreme Court of Montana issued an opinion requiring the Montana Department of Environmental Quality (MDEQ) to analyze the GHG

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[227] *Id.* ¶ 132.
[228] No 2:2025cv01190, 2025 WL 3012037 (W.D. Wash. Oct. 28, 2025).
[229] *Id*. at 2–3
[230] *Id*. at 2, 4.
[231] *Id*. at 2–3, 8.
[232] *Id.* at 6.
[233] WASH. REV. CODE § 7.72.010(1) (2024); Order at 7, Kennedy v. Exxon, No. 2:25-cv-02378 (W.D. Wash. Nov. 15, 2025).
[234] Order at 7–8, *Kennedy*, No. 2:25-cv-02378.
[235] *Id.* at 8.
[236] *Id.*
[237] *Id.* at 14.
[238] *Id.* at 10–11.
[239] Kennedy, *supra* note 212, at 13–14.

emissions and related in-state environmental impacts associated with the Laurel Generating Station (LGS), a natural-gas-fueled power plant located near Laurel, Montana.[240] The court held that MDEQ's failure to analyze GHG emissions as part of its air quality permitting process for the LGS was arbitrary and capricious because the Montana Environmental Policy Act (MEPA) requires agencies to "fully consider all aspects" and "ensure that the public is informed of anticipated impacts" of potential state actions.[241] The court explained that

> in a case like this one, which undisputedly involves a significant amount of CO2e emissions (nearly 770,000 tons annually) from a fossil fuel Electric Generating Unit and generated hundreds of public concerns regarding potential impacts from those emissions, MEPA requires DEQ to analyze the direct, secondary, and cumulative impacts of this permitted action.[242]

Nevertheless, the court reinstated LGS's air quality permit due to the lower court's failure to properly apply provisions of the Montana Clean Air Act in vacating it.[243]

Following remand, MDEQ issued a new final supplemental environmental assessment (EA) for the LGS on August 1, 2025, which includes a GHG assessment in support of the approval of LGS's air quality permit.[244] This EA was challenged by two environmental advocacy groups on September 29, 2025, in a complaint filed in Montana's Thirteenth Judicial District Court for Yellowstone County.[245] The complaint alleges that the EA "fails to adequately evaluate the environmental impacts of [the LGS's] greenhouse gas emissions, despite the Montana Supreme Court's clear direction" to do so.[246] Particularly, the complaint states that MDEQ's analysis of the direct and cumulative impacts from the LGS's emissions consists merely of an estimate for the plant's annual emissions, and "[w]hile [M]DEQ admits that greenhouse gas emissions result in on-the ground impacts from climate change, [M]DEQ's analysis of such impacts . . . fails to adequately describe or explain, the scope of the secondary impacts that [M]DEQ admits will occur, including flooding, drought, rising temperatures, and the spread of invasive species."[247] The challenge to the EA is ongoing.

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[240] *Mont. Envtl. Info. Ctr. v. Mont. Dep't of Env't Quality*, 2025 MT 3 (Mont. 2025).
[241] *Id.* at 30.
[242] *Id.*
[243] *Id.* at 40.
[244] *See* Complaint at Ex. 3, Mont. Envtl. Info. Ctr. v. Mont. Dep't of Env't Quality, No. DV-56-2025-0001159-OC (Mont. 13th Jud. Dist. Ct. Sept. 29, 2025).
[245] *Id.*
[246] *Id.* at 2.
[247] *Id.* at 16-17.

Chapter D: ENERGY
2025 Annual Report[1]

I. DATA CENTERS AND RENEWABLE ENERGY

A. International Aspects

The World Economic Forum has indicated that there is a nexus between the data centers that are powering artificial intelligence (AI) and energy. By 2030, global data centers are projected to consume 945 TWh, surpassing the combined energy usage of Germany and France.[2] Through 2030, AI alone may account for 20% of total electricity demand growth, with fossil fuels still supplying ~40% of new demand. To mitigate risks to continuity, energy security, costs and carbon exposure, and renewable integration is essential.[3]

On September 5, 2025, the EU inaugurated Jupiter, Europe's first exascale supercomputer, in Germany.[4] Jupiter performs over one quintillion operations per second, ranking fourth globally and first in Europe for computing power.[5] It runs entirely on renewable energy and leads on energy efficiency in supercomputing.[6] Jupiter enables kilometer-scale climate and weather modelling, improving forecasts of extreme events like floods and heatwaves.[7] It supports AI development, including the upcoming AI Factory for training advanced generative models.[8]

B. United States

The growth in data centers powering the expansion of AI requires an extraordinary increase in energy generation and infrastructure. On July 23, 2025, the White House issued an executive order (EO) titled Accelerating Federal Permitting of Data Center Infrastructure, that has the goal of a "rapid and efficient buildout of this infrastructure by easing Federal regulatory burdens."[9] The EO focuses on expediting permitting for qualifying projects.

States across the country are experiencing a regulatory scramble to meet, regulate, and pay for this new data center demand. This demand is likely to drive up costs from all customers and undermine greenhouse gas reduction targets.[10] States are also struggling with the uncertainty and overestimation of the energy needs of data centers and the related risk of overbuilding energy infrastructure given that such demand is plagued with

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[1]This summary was prepared by Alejandro Martinez Sanchez, Charles L. Sharman, and Christopher Sinton, Year in Review Vice Chairs for the ABA SEER Energy Committee; authorship contributions are accredited to Sarah Berman, Melissa Douglas, and Aaron Levine.

[2]Lauren Smart & Sam Hsu, The AI-energy nexus will determine AI's impact. We must account for it better, WORLD ECON. F. (Dec. 1, 2025).

[3]*Id.*

[4]*Global AI Regulatory Update - December 2025*, EVERSHEDS SUTHERLAND (Dec. 11, 2025).

[5]*Id.*

[6]*Id.*

[7]*Id.*

[8]*Id.*

[9]*See* Exec. Order No. 14318, Accelerating Federal Permitting of Data Center Infrastructure, 90 Fed. Reg. 35,385 (July 23, 2025).

[10]MCKENNA BECK & JACKSON MORRIS, NAT. RES. DEF. COUNCIL, AT THE CROSSROADS: A BETTER PATH TO MANAGING DATA CENTER LOAD GROWTH 5 (SEPT. 2025).

overestimation.[11] While states are all tackling the legal implications of the explosive growth of data centers to various degrees, Colorado and Virginia provide lenses via which to learn how developers, regulators, advocacy groups, and agencies are navigating the laws and regulations that are struggling to keep up with growth.

1. Colorado

Utilities across the western United States are forecasting unprecedented amounts of load growth, in large part due to data center interconnection requests.[12] And even with large scale building and transportation electrification, data centers are driving immense load growth in Colorado.[13] In its most recent electric resource plan, Xcel Energy, Colorado's largest investor-owned utility, projected a nearly 50% increase in energy demand in 2030, and a 75% increase in 2035, as compared to its 2021 forecast for those years.[14] In its deliberations, the Colorado Public Utilities Commission expressed hesitation that this predicted load would come to fruition in the state, however, even if Xcel Energy builds only a fraction of forecasted load, Colorado ratepayers could be stuck with the bill for acquiring a record amount of new generation. To help avoid this, the Colorado Public Utilities Commission approved a set of principles that attempt to protect consumers and include upfront fees, 15-year contracts, minimum bills, security deposits, and early-exit fees.[15]

These principles are seen as a stepping stone towards utility large load tariffs in Colorado.[16] Large load tariffs are a tool to address the potential stranded assets, ratepayer burdens, cost controls, grid planning impacts, and emissions impacts associated with massive data center interconnection requests, particularly those that give rise to utility investments without firm commitments from data centers.[17] The Colorado Public Utilities Commission directed Xcel Energy to file a large load tariff in early 2026.[18] And Colorado is far from the only state pursuing large load tariffs; over 60 tariffs are proposed, pending, or approved across the Unites States.[19]

States are also being forced to navigate increased costs of energy procurement due to the Trump Administration's rescission of federal incentives for renewable energy credits. In the wake of these cuts, Colorado Governor Polis sent a letter to state agencies urging them to accelerate clean energy development.[20] This letter was issued in the midst of Xcel's electric resource plan proceeding,[21] and the Colorado Public Utilities Commission decided to initiate a near-term procurement to fast-track projects that qualify

[11]London Econ. Int'l LLC, *Uncertainty and Upward Bias Are Inherent in Data Center Electricity Demand Projections* 8 (July 2025).
[12]Deborah Kapiloff, Lindsay Rogers & Stacy Tellinghuisen, W. Res. Advocates, *Data Center Impacts in the West: Policy Solutions for Water and Energy Use* 24 (July 2025).
[13]*Id.* at 27.
[14]*Id.* at 61.
[15]Mark Jaffe, *More data centers are coming to Colorado, demanding more power than they'll need. Will customers foot the bill?*, COLO. SUN. (updated Dec. 11, 2025).
[16]*Id.*
[17]*Id.*; *Large Load Tariff Principles*, RMI (last visited May 16, 2026).
[18]Jaffe, *supra* note 14.
[19]*Database of Emerging Large-Load Tariffs (DELTa)*, SMART ELEC. POWER ALL. (last visited Feb. 4, 2026).
[20]Julian Spector, *Colorado goes big on clean energy before tax credits vanish*, CANARY MEDIA (Sept. 4, 2025).
[21]In re Application of Pub. Serv. Co. of Colo. for Approval of Its 2024 Electric Resource Plan, Proceeding No. 24A-0442E (Colo. Pub. Utils. Comm'n 2024).

for federal tax credits.[22] In sum, Colorado is a prime example of the pressure on state regulators to meet record demand due to data center growth, fast-track procurement, and simultaneously protect ratepayers.

2. Virginia

Virginia is home to approximately 35 percent of the world's data centers and has the highest concentration of data centers in the world.[23] Despite pushback from local and environmental interests, the industry's vital economic power prevailed in a clash between state lawmakers and Virginia Governor Glenn Youngkin.[24] The Governor vetoed Senate Bill 1449, which would have mandated new requirements for local governments when reviewing land use applications for data centers. Despite the fact that Virginia is home to so many current and planned data centers, related legislation is sparse and struggling to get out of committee let alone get signed into law.[25] During the last legislative session, almost all of the 33 bills related to data centers failed.[26]

Relatedly, the 2020 Virginia Clean Economy Act (VCEA) mandated 100 percent of the energy sold by Dominion Energy and Appalachian Power come from renewable sources by 2045 or 2050.[27] However, Dominion's newly released 2025 update of its 2024 Integrated Resource Plan indicates that VCEA's 2045 carbon-free electricity goal may not be achievable due to the dramatically increasing forecasts for data center demand.[28]

In November 2025, Virginia's State Corporation Commission approved a new electricity rate class for large-scale customers, including data centers, which will become effective in 2027.[29] While the new rate class has been critiqued as not sufficiently protective of ratepayers, the change will require increased contribution from data centers for grid upgrades.[30] Some industry groups testified to the state regulator that there are additional solutions that utilities are not taking advantage of such as battery storage, grid-enhancing technologies, virtual power plants, and agreements in which large energy users commit to using less energy during peak hours.[31]

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[22] Ishan Thakore, *Xcel Energy races to fast-track clean energy projects before federal tax credits vanish*, CPR NEWS (Aug. 27, 2025, 1:34 PM); Spector, *supra* note 19.

[23] *Overhyped data center growth is shaping our energy future*, S. ENVTL. L. CTR. (Aug. 8, 2025); Dan Gearino & Charles Paullin, *How Did This State Become the Data Center Capital of the World*, INSIDE CLIMATE NEWS (Oct. 26, 2025); Spencer Kimball & Gabriel Cortés, *Data centers are concentrated in these states. Here's what's happening to electricity prices*, CNBC (updated Nov. 17, 2025).

[24] Glenn Youngkin, Governor of Va., Veto Message to S.B. 1449, 2025 Gen. Assemb., Reg. Sess. (Va. 2025)

[25] Deep Vakil & Charles Paullin, *Va. Could Show How to Manage Data Center Growth. So Far, It's a Case Study in Stalling Legislation*, VIRGINIA MERCURY (Oct. 6, 2025).

[26] *Id.*

[27] Virginia Clean Economy Act, chs. 1193, 1194 (H.B. 1526, S.B. 851), 2020 Va. Acts.

[28] Vishwa B. Link, Letter to Bernard Logan, Clerk, Va. State Corp. Comm'n, Re: Virginia Electric & Power Co.'s 2025 Update to the 2024 Integrated Resource Plan, Case No. PUR-2025-00184 (Oct. 15, 2025).

[29] Press Release, S. Env't L. Ctr., Dominion Customers to See Rate Increase, Though SCC Takes Steps Designed to Ensure Data Centers Pay Fair Share, (Nov. 25, 2025).

[30] Chales Paullin, *Virginia Regulators Approve New Dominion Rates, Assign More Costs to Data Centers*, INSIDE CLIMATE NEWS (Jan. 7, 2026).

[31] In re Va. Elec. & Power Co., Application for Approval of a Certificate of Public Convenience & Necessity and a Rate Adjustment Clause, Hearing on Case No. PUR-2025-00037 Before the Va. State Corp. Comm'n (July 25, 2025) (testimony of Maria Roumpani, Ph.D., on behalf of Advanced Energy United).

Despite slow progress to regulate data centers, the incoming Spanberger Administration in Virginia has been vocal about requiring data centers to contribute fairly and increase clean energy generation.[32] Governor-elect Spanberger has placed a spotlight on energy affordability, battery storage, efficiency and weatherization, and rejoining the Regional Greenhouse Gas Initiative, in large part to combat the challenges the Virginia grid faces due to data center demand. Some local governments have echoed similar sentiments and have recently passed standards to regulate data center noise generation, energy consumption, and water usage.[33] 2026 may be a litmus test for whether the Virginia General Assembly and State Corporation Commission will follow the Governor-Elect's lead in addressing the challenges stemming from skyrocketing data center demand.

II. Repowering and Decommissioning

A. International Aspects

The United Kingdom's decision to include repowered onshore wind projects in Contracts for Difference Allocation Round 7 (CfD AR7) marks a significant policy shift.[34] For the first time, repowering is formally recognized within the CfD framework, with eligible projects able to access a 20-year contract term when the round opened in August 2025.[35]

In Poland a new regulatory framework focuses on two main areas namely repowering existing wind farms by replacing older turbines with more efficient models.[36] The Draft Regulation introduces an exemption from the requirement to obtain an environmental decision solely for repowering projects aimed at increasing installed capacity by no more than 30%, provided that such actions do not result in an increase in the number of turbines, a relocation of the tower beyond 250 meters from the axis of the existing tower, and that the total installed capacity after repowering remains below 100 MW.[37]

B. U.S. State and Local Wind and Solar Project Decommissioning Requirements

In 2025, the National Laboratory of the Rockies (formerly the National Renewable Energy Laboratory) released the 2025 editions of the U.S. Wind Siting Regulation and Zoning Ordinances database (wind ordinance database)[38] and the U.S. Solar Siting Regulation and Zoning Ordinances database (solar ordinance database).[39] The 2025 editions of the wind and solar ordinance databases were developed using large language models and searched for state-level, county-level and municipal-level regulations across approximately 10,000 authorities having jurisdiction (AHJs) in the United States. The 2025 editions include information on AHJ regulations related to many aspects of wind and solar

[32] Diana DiGangi, *Virginia Data Centers Must Pay "Fair Share," Incoming Lieutenant Governor Says*, UTILITY DIVE (Dec. 5, 2025).
[33] Wyatt Gordon, *Local Governments Tighten Rules as Data Centers Expand in Virginia*, WYDAILY (Dec. 12, 2025).
[34] GHD, *Repowering in AR7: A Turning Point for Onshore Wind in the UK* (Jan. 6, 2026).
[35] *Id*.
[36] DENTONS, *Poland - Repowering Wind Turbines Under Simplified Rules* (Oct. 10, 2025).
[37] *Id*.
[38] P. Pinchuk et al., *U.S. Wind Siting Regulation and Zoning Ordinances*, OPEN ENERGY DATA INITIATIVE (last updated Feb. 3, 2026).
[39] G. Castelão et al., *U.S. Solar Siting Regulation and Zoning Ordinances*, OPEN ENERGY DATA INITIATIVE (last updated Feb. 3, 2026).

siting, including height limits, setbacks, acreage limits, visual impact, noise, permitting requirements, prohibitions on development, and decommissioning requirements.

Decommissioning is generally described as the process for deactivating the facility, dismantling its components, and remediating the project site.[40] Specific to decommissioning requirements, the wind ordinance database identified 24 states with requirements that compel project owners to undertake actions such as developing decommissioning plans, providing financial assurance, and removing equipment and restoring the site to pre-construction conditions within a certain period of time after the project ceases operation. In addition to state-level requirements, the wind ordinance database identified approximately 1,000 county-level and municipal-level decommissioning requirements – demonstrating the growing focus on how the AHJs manage renewable energy systems at the end of their useful life for producing energy. The solar ordinance database identified 26 states with decommissioning requirements, similar in nature to the wind decommissioning requirements, which compel project owners to undertake actions such as developing decommissioning plans, providing financial assurance, and removing equipment and restoring the site to pre-construction conditions. In addition to state-level requirements, the solar ordinance database identified approximately 1,100 county-level and municipal-level decommissioning requirements – again demonstrating the growing focus on how AHJs manage renewable energy systems at the end of their useful life for producing energy.

In addition to the wind and solar ordinance databases, Womble, Bond, and Dickinson has authored a State Requirements for Decommissioning End-State Renewable Energy Projects guidebook.[41] The guidebook takes a broad look at state laws and regulations that apply to wind and solar decommissioning, providing a 50-state survey of decommissioning requirements, including planning, financial assurance and removal requirements.

Finally, with the growing interest in wind and solar decommissioning requirements, scholarly articles are turning to how to best design these policies. In 2025, the Colorado Environmental Law Journal published the article "End Game: Designing Smarter Wind and Solar Decommissioning Requirements" which analyses the design and impact of existing and proposed decommissioning and repowering policies and provides a recommended framework for standardizing these policies to strike a balance between responsible land development and reclamation with renewable energy project development.[42]

III. Midstream-Related Regulatory and Policy Change Highlights

In 2025, President Trump's administration entered office seeking to increase oil and gas production and related, necessary midstream infrastructure.[43] For example, on January 20, 2025, President Trump issued EO 14154, entitled "Unleashing American Energy."[44] EO 14154 set energy policy objectives including declaring that it is the policy of the United States, among other things, (1) to encourage energy exploration and

[40]Kyra Toering & Natalie Heun, *End Game: Designing Smarter Wind and Solar Decommissioning Requirements*, 26 Colo. Env't L.J. 67, 75 (2025).
[41]Womble Bond Dickinson, *State Requirements for Decommissioning End-Stage Renewable Energy Projects: What Project Participants Need to Know*, JD Supra (Dec. 12, 2025).
[42]Toering & Heun, End Game, *supra* note 39, at 75.
[43]Exec. Order No. 14154, Unleashing American Energy, 90 Fed. Reg. 8,353 (Jan. 29, 2025); see also *President Trump Issues Day One Executive Orders to Promote Oil and Gas Development*, Thomson Reuters Prac. L. Oil & Gas (Jan. 22, 2025).
[44]Exec. Order No. 14154, *supra* note 43.

production on Federal lands and waters, and (2) to ensure that all regulatory requirements related to energy are grounded in clearly applicable law.[45] EO 14154 further required an immediate review of all agency actions that potentially burden the development of domestic energy resources, including a review of all existing regulations, orders, guidance documents, policies, settlements, consent orders, and any other agency actions to identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources, with particular attention to oil, natural gas, coal, and other specified energy resources.[46]

Similarly, President Trump issued EO 14156, entitled "Declaring a National Energy Emergency."[47] EO 14156 specifically attempts to speed approval and development of traditional energy-related projects, "declaring that insufficient U.S. energy production, transportation, refining, and generation are a national emergency."[48]

In turn, federal midstream-related regulations and policies changed to effectuate these goals.

A. Streamlining Midstream-Related Project Approvals and Oversight Highlights

In 2025, the Trump Administration took several actions to help prioritize faster energy project approvals, including midstream-related projects. For example, consistent with the Trump Administration's efforts to increase pipeline development, the Environmental Protection Agency (EPA) in January 2026 issued a proposal to strip States' and Native American Tribes' authority to block oil and gas pipeline and other infrastructure projects.[49] The EPA's proposed rule "would narrow the scope of the section of the Clean Water Act that allows states and Tribes to review federal permits for projects that have the potential to pollute waterways and to either approve, place conditions on, or reject those permits."[50] Under current rules, states and Tribes may consider a proposed pipeline's direct water quality impacts and broader impacts, leading some states to block projects that would allegedly increase air pollution or cause other environmental damage.[51] The EPA's proposed rule restricts states and Tribes by allowing them to evaluate only a proposed pipeline's impact caused by "direct discharges into waters covered by the Clean Water Act," and the proposed rule also reduces "the number of waterways eligible for this review."[52] The new rule ostensibly should decrease permitting timelines for new midstream pipeline development, as the rule is "aimed at speeding up and streamlining the permitting process for large energy and infrastructure projects, including oil and gas pipelines."[53]Similarly, in June 2025, the Trump Administration rescinded an Advisory Bulletin issued by the Biden Administration related to the 2020 PIPES Act in an effort "to

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[45] *Id.*
[46] *Id.*
[47] Exec. Order No. 14156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8,433 (Jan. 29, 2025); see also President Trump Issues Day One Executive Orders, *supra* note 43; Madeline Rutledge, *President Trump Declares National Energy Emergency; Seeks to Boost Domestic Fossil Fuel Production*, WINSTON & STRAWN (Feb. 14, 2025).
[48] President Trump Issues Day One Executive Orders, *supra* note 43.
[49] Teresa Tomassoni, *New EPA Proposal Would Strip States' and Tribes' Authority to Block Oil and Gas Pipelines, Other Infrastructure Projects*, INSIDE CLIMATE NEWS (Jan. 14, 2026); *EPA Proposes to Limit States' Ability to Block Oil and Gas Pipelines*, CTR. FOR W. PRIORITIES (Jan. 15, 2026).
[50] EPA Proposes to Limit States' Ability to Block Oil and Gas Pipelines, *supra* note 49.
[51] *Id.*
[52] *Id.*
[53] *New EPA Proposal Would Strip States' and Tribes' Authority to Block Oil and Gas Pipelines, Other Infrastructure Projects*, *supra* note 49.

remove 'red tape' that could get in the way of the administration's goal of energy dominance."[54] Specifically, the Pipeline and Hazardous Materials Safety Administration (PHMSA) rescinded the Biden Administration's June 2021 Advisory Bulletin related to Section 114(a) of the PIPES Act regarding the adequacy of pipeline inspection and maintenance plans for reducing methane leaks and releases of natural gas from pipeline facilities.[55] "The Trump administration believes the [Biden administration's] guidance went beyond the letter of the law," with acting director Ben Kochman stating that Biden officials "exceeded their authority by imposing 'significant costs' on pipeline companies in 2021 when the guidance was issued . . . [and incorrectly] included non-gas pipelines and rural gathering pipelines" in the guidance.[56]

B. *Pipeline Safety Enforcement Highlights*

In 2025, the PHMSA initiated 111 enforcement cases, approximately 44% fewer than in 2024.[57] The PHMSA levied 11 fines last year, versus an annual average of 45.[58] Despite the lower number of fines levied in 2025, the total amount sought reached a record $14 million, almost 2.5 times the $5.7 million sought in 2024.[59] Further, the 2025 amount included the largest civil penalty sought by the PHMSA in history.[60]

In July 2025, the PHMSA issued a memorandum on its enforcement policies.[61] PHMSA ranked "Incidents and Accidents" first.[62] PHMSA spokesperson Emily Wong has also reiterated that the Trump administration prioritizes safety.[63]

In 2025, the PHMSA also began updating its enforcement process "to bolster due process protections for companies accused of violating PHMSA's minimum standards."[64] Then acting head of PHMSA Ben Kochman noted in June 2025 that the PHMSA was "ensuring due process and putting safety front and center."[65]

C. *Policy Shifts to Promote Midstream-Related Infrastructure*

In 2025, the Trump Administration expressed a desire to encourage increased midstream-related activity and development in part by reducing regulations and improving permit processing time.[66] The regulatory policy changes illustrated in this Article provide examples of such changes, including an emphasis on expediting permitting review timelines, concentrating PHMSA's focus on large bad incidents, and attempting to lessen state and Tribal legal challenges to pipeline development.

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[54] Abigail Corbett, *Trump Administration Rescinds Biden-Era Guidance on PIPES Act of 2020*, GTI ENERGY CTR. FOR METHANE RSCH 1(Aug. 2025).
[55] *Id.* at 2–3.
[56] *Id.* at 4.
[57] Mike Soraghan, *Pipeline Safety Enforcement Cut in Half in Trump's First Year*, E&E NEWS: ENERGYWIRE (Jan. 15, 2026).
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*; Linda Daugherty, *Inspection and Enforcement Priorities*, U.S. DEP'T OF TRANSP. PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMIN. 5 (July 17, 2025) [hereinafter PHMSA Memo].
[62] PHMSA Memo, *supra* note 62, at 5.
[63] *Pipeline Safety Enforcement Cut in Half in Trump's First Year*, *supra* note 58.
[64] *Id.*
[65] *Id.*
[66] *See supra* notes 44–49.

Industry appears to be responding to the policy shift. For example, the Permian Basin midstream sector is expanding or adding four pipelines for dry gas.[67] Likewise, natural gas liquid (NGL) pipeline capacity out of the Permian Basin is expected to increase almost 25% from 2024 to 2030.[68] Other project announcements and revivals in 2025 included prioritization of final permitting and infrastructure development needed for the completion of the Alaska NGL pipeline[69] and the approval of pipelines on public lands, including the 74-mile Helena to Three Forks natural gas pipeline in Montana and the 16-mile Pinyon Pipeline in Nevada.[70]

IV. Wind and Solar Permitting and Tax Policy

There have been a number of federal policy shifts in 2025 that have affected the permitting of renewable energy projects.

In 2025, H.R. 1[71] "One Big Beautiful Bill" or OBBB (signed July 4, 2025) had provisions that affected solar and wind, including:

- Section 70509 terminated the special five-year cost recovery period for investments in certain solar and wind property for projects that began after December 31, 2024.
- Section 70512 terminated the clean electricity production tax credit for wind and solar facilities placed into service after December 31, 2027. It also disallows the tax credit for certain foreign entities and foreign-influenced entities.
- Section 70513 terminated the clean electricity investment credit for wind and solar property placed into service after December 31, 2027. Likewise, it disallows the tax credit for certain foreign entities and foreign-influenced entities. Energy storage technologies are exempt from this.

The Department of Interior issued four policy measures including one that paused new approvals for offshore wind projects. The Bureau of Ocean Energy Management (BOEM) rescinded the regulatory requirement to publish a renewable energy leasing schedule every 2 years that had been specified in Section 585.150 of title 30 of the CFR.

V. Rare Earth Elements and Energy

Some of the seventeen rare earth element (REE) metals, such as neodymium and praseodymium, are critical for the high-performance magnets and sensors used in wind and solar energy generation. The mining and processing of these metals currently is dominated by China. In 2025, U.S. policy regarding REE was driven primarily by national security but these developments will affect their availability for renewable energy components.

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[67]Mitch Jennings, *Permian Pipeline & Production Update*, FACTSET INSIGHT: BTU ANALYTICS (July 30, 2025).

[68]*Id.*

[69]Emily P. Mallen et al., *Early Assessment of the Effect of President Trump's New Executive Orders on FERC Infrastructure Projects*, AKIN GUMP STRAUSS HAUER & FELD LLP (Jan. 24, 2025).

[70]Richard Packer, *Progress on Public Lands: BLM 2025 Trump Administration Accomplishments January 20 – December 31, 2025*, U.S. BUREAU OF LAND MGMT. (Jan. 6, 2026).

[71]*See* H.R. 1, 119th Cong. (2025) (Engrossed in House). *See also* One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025).

A. Federal Administrative Executive Orders

On March 20, 2025, Executive Order 14241[72] directed "immediate measures" to increase American mineral production and called for coordinated federal actions to facilitate domestic mineral development. It was followed by Executive Order 14272, dated April 15, 2025, which ordered the Secretary of Commerce to initiate a Section 232 investigation focused on imports of "processed critical minerals and derivative products," operationalizing the idea that dependency at the processing and derivative stage can be framed as a national-security vulnerability.

Building on that directive, the Federal Permitting Improvement Steering Council (Permitting Council) announced on April 18, 2025, the first wave of critical mineral production projects placed into the Council's transparency framework. The announcement emphasized increased transparency, accountability, predictability, and coordinated permitting timelines, tools often used to de-risk complex, multi-agency reviews even where underlying statutory obligations remain unchanged. In the same way, the Executive Order 14285 directs agencies to accelerate the responsible development of seabed mineral resources and to build domestic capability for exploration, collection, and processing of seabed minerals, while emphasizing streamlined permitting without compromising environmental and transparency standards.

B. Federal Legislation

In 2025, HR 1 OBBB had provisions that affect the domestic production and availability of REE materials. Section 20004 includes (among other allocations) appropriations for investments in critical minerals supply chains through the Industrial Base Fund, and dedicated funding for the Department of Defense Credit Program Account to support loans, loan guarantees, and technical assistance for critical minerals and related projects.

However, the OBBB also negatively affected the long-term domestic production of REE. In an effort to expand domestic production of critical minerals, such as the rare earths, the 2022 Inflation Reduction Act introduced an exemption of the Section 45X Production Tax Credit phaseout. eliminated that exemption for critical minerals. Specifically, domestic rare earths produced in 2031 will be eligible for 75% of the credit, but then it is lowered annually until the credit is eliminated for critical minerals produced in the U.S. after 2034.[73]

C. Federal Agencies

The Department of Defense directly supported private entities in supporting REE materials. A particularly visible example was MP Materials', which operates the Mountain Pass mine in California. It announced in July 2025 a public-private partnership with the Department of Defense, including a $400 million preferred-stock investment, long-term offtake and plans tied to magnet manufacturing scale-up and heavy rare earth separation.[74]

Ucore, a company that is developing rare earth extraction and separation technologies, received a Phase 2 award of $18.4 million from the U.S. Department of

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[72] Exec. Order No. 14,241, Immediate Measures To Increase American Mineral Production, 90 Fed. Reg. 13,673 (Mar. 20, 2025).

[73] *See* Gracelin Baskaran & Meredith Schwartz, Impacts of the One Big Beautiful Bill Act on the Mining Sector, CTR. FOR STRATEGIC & INT'L STUD. (July 9, 2025).

[74] Thomas Mitchell & Wesley Peebles, *EO 14241—Immediate Measures to Increase American Mineral Production: El Dorado or Bust?*, 55 Env't L. Rep. 10505 (2025).

Defense to scale up its rare earth refining facility in Louisiana.[75] The facility is located in the Louisiana Strategic Metals Complex at England Airpark, Alexandria.

On April 23, 2025, the U.S. Department of Commerce's Bureau of Industry and Security launched a Section 232 investigation to evaluate concerns on national security related, among others, to the rare earth elements and assess the vulnerabilities of the supply chain.

Rare earth elements can be a component of waste material remaining after mining other metals such as iron and nickel. The U.S. Geological Survey offered $5 million in grants to state geological surveys through its Earth Mapping Resources Initiative. The goal of the grants is to develop methods to extract critical minerals from existing mine wastes.[76]

[75] Press Release, Ucore Rare Metals Inc., Ucore and U.S. DoD Agree on U.S. $18.4M Initial Construction Funding for Rare Earth Processing in Louisiana (May 14, 2025).
[76] *See* Press Release, U.S. Geological Survey, U.S. Geological Survey Offers Funding to States to Find Critical Minerals in Mine Waste (May 12, 2025).

Chapter E: ENFORCEMENT AND LITIGATION
2025 Annual Report[1]

The 2025 Year-in-Review from the ABA SEER Enforcement & Litigation Committee provides the following articles against the backdrop of EPA's deregulatory actions. The articles cover: federal PFAS regulation across administrations and implications under CERCLA, the SDWA, RCRA, and TSCA; emerging microplastics policy and litigation trends at the federal and state levels; the Supreme Court's decision in *Trump v. CASA, Inc*. and its treatment of universal injunctions; and Department of the Interior memoranda affecting federal approvals and policy for wind and solar projects. Together, these articles provide an overview of key enforcement and litigation developments shaping environmental law.

I. Federal PFAS Regulation – Changes in Approach Across Administrations

Per- and polyfluoroalkyl substances, commonly known as PFAS, are thousands of manufactured chemicals frequently used in a wide range of products due to their resistance to heat, water, and oil. Because of their widespread use and the slow speed at which they break down, many PFAS are present in air, land, water, and living things. In response to growing public awareness, the U.S. Environmental Protection Agency (EPA) over the past six years has initiated historic actions under multiple federal environmental statutes to understand, identify, and address past and ongoing releases of PFAS into the environment. While the current Trump Administration EPA has shifted some tactics, it has generally indicated a continued commitment to regulating the chemicals, with potentially significant impacts for regulated entities, environmental law practitioners, and advocates.

A. First Trump Administration

Prior to the first Trump Administration, the EPA had only periodically dealt with PFAS, primarily through efforts to study and monitor particularly common chemicals such as perfluorooctanoic acid (PFOA). In May 2018, the EPA hosted a National Leadership Summit to discuss ongoing efforts and identify near-term actions surrounding PFAS.[2] It followed with community outreach over the next several months to seek input from impacted communities as to how EPA could support state, local, and tribal activities.[3]

In April 2019, the Trump Administration EPA released the nation's first-ever PFAS Action Plan containing approaches for identifying, researching, cleaning up, preventing, and communicating with the public about PFAS contamination.[4] Regarding PFOA and perfluorooctane sulfonic acid (PFOS), the plan called for evaluating the need for maximum contaminant levels, beginning steps for hazardous substance designation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and developing groundwater cleanup recommendations. The plan also called for developing toxicity values or oral reference doses for hexafluoropropylene oxide dimer

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[1]The Enforcement and Litigation Committee prepared this report, which summarizes significant judicial decisions and federally applicable regulations. Contributing authors include Megan Couch, Alston & Bird LLP; Ke "Kim" Zhang, Alston & Bird LLP; Joseph Zaleski, Shook, Hardy & Bacon LLP; and Matthew G. Giordano, McGuireWoods LLP. Naveed Nanjee of McGuireWoods LLP assisted with editing the report.
[2]*See* ENV'T PROT. AGENCY, *2018 PFAS National Leadership Summit* (Aug. 25, 2025).
[3]*See* ENV'T PROT. AGENCY, *2018 PFAS Community Engagement* (Aug. 25, 2025).
[4]ENV'T PROT. AGENCY, EPA'S PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) ACTION PLAN, EPA 823R18004 (2019).

acid (HFPO-DA or GenX) and perfluorobutane sulfonic acid (PFBS), and developing reporting rules under the Toxic Substances Control Act (TSCA).

B. Biden Administration

In line with his campaign promise to tackle PFAS contamination,[5] in April 2021, the Biden Administration EPA announced creation of a career-official Council on PFAS to collaborate on solutions across the country.[6] And in October 2021, the EPA released a PFAS Strategic Roadmap, announcing a whole-of-agency approach to addressing the chemicals.[7] The roadmap outlined three major goals: (1) proactively prevent PFAS releases, (2) broaden and accelerate cleanup of existing PFAS contamination, and (3) invest in research and development for identification and remediation technologies. In implementing these goals, EPA planned to work across its different offices and use authority under several statutes.

1. CERCLA

In August 2023, the EPA's Office of Enforcement and Compliance Assurance included tackling PFAS exposure as one of its National Enforcement and Compliance Initiatives for 2024-2027. These initiatives are the EPA's priority enforcement areas, aimed at addressing the most serious and widespread environmental problems. The EPA announced its intention to increase oversight and enforcement actions under existing statutes, including under CERCLA if any PFAS were successfully designated as hazardous substances. Significantly, EPA stated it would focus enforcement efforts on significant contributors such as major manufacturers, federal facilities, and other industrial parties.[8]

In April 2024, EPA officially designated PFOA and PFOS, including their salts and structural isomers, as hazardous substances under CERCLA.[9] The designation requires parties to report releases of at least one pound in a twenty-four-hour period and allows EPA to conduct response actions for actual or threatened releases without first establishing an imminent and substantial danger. Additionally, the designation opens the door for the government and private parties to seek recovery of remediation costs from potentially responsible parties.

At the same time, the EPA issued an Enforcement Discretion and Settlement Policy confirming its intent to focus enforcement on major industrial and federal contributors to PFAS contamination. The policy states that EPA did not aim to pursue entities such as "community water systems and publicly owned treatment works, municipal separate storm sewer systems, publicly owned/operated municipal solid waste landfills, publicly owned airports and local fire departments, and farms where biosolids are applied to the land."[10]

The EPA designated PFOA and PFOS through a first-time exercise of its authority under section 102(a) to promulgate regulations designating hazardous substances "which, when released into the environment may present substantial danger to the public health or welfare or the environment."[11] Previously, hazardous substances had been added to

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[5]*See* Press Release, The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity in a Clean Energy Future (July 14, 2020).
[6]Press Release, Env't Prot. Agency, EPA Administrator Regan Establishes New Council on PFAS (Apr. 27, 2021).
[7]Env't Prot. Agency, PFAS Strategic Roadmap, EPA-100-K-21-002 (Oct. 2021).
[8]*See* David M. Uhlmann, Env't Prot. Agency, *FY 2024-2027 National Enforcement and Compliance Initiatives* (Aug. 17, 2023).
[9]40 C.F.R. pt. 302 (2024).
[10]*See* David M. Uhlmann, *PFAS Enforcement Discretion and Settlement Policy Under CERCLA*, Env't Prot. Agency (Apr. 19, 2024).
[11]42 U.S.C. § 9602.

CERCLA's purview when designated as hazardous under different environmental statutes; CERCLA incorporated these designations by reference.

In June 2024, the U.S. Chamber of Commerce and other industry actors petitioned for review of the designation in the U.S. Court of Appeals for the D.C. Circuit. In their opening brief, the petitioners argued that the EPA interpreted the substantial danger test too broadly, giving itself too much discretion without clear or reviewable criteria for designation.[12] Additionally, petitioners challenged EPA's cost analysis and noted the EPA's enforcement discretion policy is not legally binding and does not protect parties from suits by states and private parties. In response, the EPA defended its cost analysis and argued PFOA and PFOS plainly meet the substantial danger standard given extensive evidence of their adverse health impacts and chemical properties, and CERCLA does not require EPA to precisely define the criteria for the test before exercising its 102(a) authority.[13]

2. Safe Drinking Water Act

In December 2021, the EPA published an Unregulated Contaminant Monitoring Rule requiring public water systems to collect samples for 29 PFAS between 2023 and 2025.[14] This monitoring rule aimed to help identify the occurrence of PFAS in drinking water to help inform EPA regulations and enforcement initiatives.

In April 2024, the EPA released the first ever National Primary Drinking Water Regulation establishing near-zero legally enforceable Maximum Contaminant Levels (MCLs) and health-based, nonenforceable MCL goals for six types of PFAS: PFOA, PFOS, HFPO-DA (GenX), perfluorononanoic acid (PFNA), perfluorohexanesulfonic acid (PFHxS), and mixtures containing PFBS. MCLs require water systems to monitor for and reduce these PFAS in drinking water if levels exceed regulatory standards. CERCLA requires that on-site remedial actions attain or waive federal environmental applicable or relevant and appropriate requirements (ARARs), or more stringent state ARARs, upon completion. MCLs are often used as ARARs, so these new PFAS MCLs may increase cleanup costs and timelines. Additionally, many state site cleanup programs use MCLs as cleanup standards for groundwater.

In June 2024, the American Water Works Association and Association of Metropolitan Water Agencies petitioned for review of the rule in the United States Court of Appeals for the District of Columbia. The petitioners' opening brief argued that the EPA did not follow the proper statutory procedure in adopting the rule, determined the rule arbitrarily, and failed to adequately consider costs in its analysis.[15] The EPA disputed these contentions, arguing it has statutory authority to adopt goals and standards for contaminants before making a final regulatory determination.[16] It also defended the reasonableness of the rule. The EPA noted it must set the MCLs as close to the non-enforceable goals as feasible, and feasibility does not depend on a cost-benefit analysis.

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[12] Opening Brief for Petitioners, Chamber of Commerce of the United States of America v. EPA, No. 24-1193 (D.C. Cir. Nov. 4, 2024).
[13] Brief for Respondent, Chamber of Commerce of the United States of America v. EPA, No. 24-1193 (D.C. Cir. Nov. 4, 2024).
[14] 40 C.F.R. pt. 141 (2021).
[15] Opening Brief for Petitioners, American Water Works Association v. EPA, No. 24-1188 (D.C. Cir. Oct. 7, 2024).
[16] Respondents' Proof Brief, American Water Works Association v. EPA, No. 24-1188 (D.C. Cir. Dec. 23, 2024).

3. Resource Conservation and Recovery Act

In February 2024, the EPA proposed changes to Resource Conservation and Recovery Act (RCRA) regulations by adding nine PFAS compounds, their salts, and their structural isomers to its list of hazardous constituents.[17] This listing would facilitate corrective actions for releases of PFOA, PFOS, PFBS, HFPO-DA (GenX), PFNA, PFHxS, perfluordecanoic acid (PFDA), perfluorohexanoic acid (PFHxA), and perfluorobutanoic acid (PFBA). At the same time, EPA proposed a rule that would clarify that the statutory definition of hazardous waste applies to corrective action for releases from solid waste management units at RCRA-permitted facilities, allowing the EPA to address emerging contaminants like PFAS without notice-and-comment rulemaking.[18] These rules signal a step toward listing PFAS as hazardous wastes under RCRA, which would trigger additional requirements and automatic listings under other environmental statutes.

4. Reporting Under Other Statutes

The EPA also moved to implement new PFAS reporting requirements under two statutes. In October 2023, the EPA promulgated a regulation under the TSCA requiring PFAS manufacturers to report known or reasonably ascertainable data from 2011 to 2022, including PFAS usage, production volumes, disposal, exposures, and hazards. In October 2024, the EPA proposed adding sixteen individual PFAS and fifteen PFAS categories to the Toxics Release Inventory (TRI), designating them as chemicals of special concern.[19] The TRI, created by the Emergency Planning and Community Right-to-Know Act, gathers data about how facilities that meet reporting requirements manage listed chemicals through recycling, energy recovery, treatment, and environmental releases.

A. Second Trump Administration

While not focusing explicitly on PFAS during his campaign for reelection, President Trump promised extensive deregulation while in office.[20] The Trump Administration sent early signals that it would back away from some of the PFAS regulations proposed during the Biden Administration. For example, in February 2025, the EPA moved to hold both the MCL and CERCLA designation cases in abeyance so the new agency leadership under the Trump Administration could review the underlying rule; the D.C. Circuit granted both motions.

In April 2025, EPA Administrator Zeldin announced the Trump Administration intended to advance many of the Biden Administration's PFAS initiatives while also easing some regulatory burden.[21] Zeldin signaled intent to focus on further data gathering, testing, and drinking water remediation efforts and to address industry concerns about the burdens imposed by the CERCLA hazardous substances designation, TSCA reporting rule, and proposed RCRA hazardous constituent listing.

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[17] Listing of Specific PFAS as Hazardous Constituents, 89 Fed. Reg. 8606 (Feb. 8, 2024) (to be codified at 40 C.F.R. pts 261, 271).
[18] Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units, 89 Fed. Reg. 8,598 (Feb. 8, 2024) (to be codified at 40 C.F.R. pts. 260, 261, 270).
[19] Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory (TRI), 89 Fed. Reg. 81,776 (Oct. 8., 2024) (to be codified at 40 C.F.R. pt. 372).
[20] *See, e.g.*, Nik Popli, *What Trump Says He Will Do on Day One*, TIME MAG. (Jan. 13, 2025, 5:41 PM).
[21] Press Release, Env't Prot. Agency, Administrator Zeldin Announces Major EPA Actions to Combat PFAS Contamination (Apr. 28, 2025).

In May 2025, the EPA announced it would keep the MCLs for PFOA and PFOS while rescinding regulations for PFHxS, PFNA, HFPO-DA (GenX), and PFBS.[22] The Administration nodded to the rule's legal challenge, saying any future drinking water regulations should follow the legal process laid out in the SDWA. It delayed compliance deadlines to 2031 and indicated an intent to establish an exemption framework and increased outreach to water systems. In keeping with this announcement, the EPA moved for partial vacatur of the rule in the D.C. Circuit.[23]

Despite signals that it would rescind the PFOA and PFOS hazardous substance designation under CERCLA in response to industry concern, in September 2025, Administrator Zeldin announced the EPA would retain the designation.[24] At the same time, it will initiate a future rulemaking to establish a "uniform framework" governing the designation of hazardous substances to address concerns raised over the Biden Administration's process. Additionally, it called on Congress to adopt new language in CERCLA to address shared concerns over the liability of "passive receivers" who do not manufacture or use PFAS but unintentionally receive these chemicals, such as water utilities. The EPA moved to lift the stay on the litigation challenging the designation in line with this announcement.[25]

In November 2025, however, the EPA proposed amendments to partially roll back the TSCA reporting rule "to make them more practical and implementable and reduce unnecessary, or potentially duplicative, reporting requirements."[26] The amendments aim to reduce regulatory burden mainly by incorporating exemptions for certain activities that the Administration says manufacturers are unlikely to know about or reasonably ascertain, including imported articles, research and development chemicals, and de minimis PFAS concentrations.[27]

Despite some curtailments to Biden-era rules, the Trump Administration's Unified Agenda of Regulatory and Deregulatory Actions, released in September, signals an overall commitment to PFAS regulation.[28] The agenda announced EPA plans to finalize the designation of nine PFAS compounds as hazardous constituents under RCRA and the addition of certain PFAS chemicals to the TRI. It reiterated its plan to propose rules extending the deadline to comply with MCLs for PFAS and narrow the regulation to apply only to PFOS and PFOA and requiring reporting under the TSCA. It also announced it would propose updates to National Pollutant Discharge Elimination System regulations to require permit applications to include monitoring and reporting of PFAS discharges. The EPA will also propose revisions to the Organic Chemicals, Plastics and Synthetic Fibers Effluent Limitations Guidelines and Standards to address PFAS discharges from manufacturing facilities.

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[22] Press Release, Env't Prot. Agency, EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS (Apr. 28, 2025).
[23] Respondents' Motion for Partial Vacatur, American Water Works Association v. EPA, No. 24-1188 (D.C. Cir. Sept. 11, 2023).
[24] Press Release, Env't Prot. Agency, Trump EPA Announces Next Steps on Regulatory PFOA and PFOS Cleanup Efforts, Provides Update on Liability and Passive Receiver Issues (Apr. 28, 2025).
[25] Motion to Govern, Chamber of Commerce of the United States of America v. EPA, No. 24-1193 (D.C. Cir. Sept. 17, 2025).
[26] Press Release, Env't Prot. Agency, EPA Proposes Changes to Make PFAS Reporting Requirements More Practical and Implementable, Reducing Regulatory Burden (Nov. 10, 2025).
[27] *See* Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Revision to Regulation, 90 Fed. Reg. 50,923 (Nov. 13, 2025) (to be codified at 40 C.F.R. pt. 705).
[28] OFF. OF MGMT. & BUDGET, *Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions* (Sept. 22, 2025).

While the full picture of PFAS regulation remains unclear, the momentum for regulating a variety of PFAS chemicals is unlikely to halt as the second Trump Administration moves beyond its first year. In the near term, the EPA will continue to propose and finalize rules under numerous statutes, target enforcement decisions, and push for a congressional response to passive receiver liability.

II. MICROPLASTICS

A. Administrative Development

1. National legislation and regulatory development

In the 2025 legislative session, two bills were introduced in Congress to study the health impact of microplastics, although no new federal legislation or regulation regarding microplastics was enacted. The current federal regulation of microplastics remains the Microbead-Free Waters Act of 2015, which banned microbeads in rinse-off cosmetics. Furthermore, federal agencies have shown a growing interest in this issue.

H. R. 4486 (Microplastics Safety Act) was introduced by Representative Janelle Bynum on July 17, 2025 to direct the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, to conduct a study and to submit to Congress a report on the human impacts of the exposure to microplastics in food and water.[29] H. R. 4903 (Plastic Health Research Act) was introduced by Representative Haley Stevens on August 5, 2025 to amend the Public Health Service Act to carry out, expand, and coordinate programs for research with respect to understanding plastic exposures and the potential health effects stemming from plastic exposure.[30] Neither bill passed the House of Representatives or Senate. Microplastic pollution has increasingly drawn attention from legislators, although federal legislation is still in the introduction and referral phase.

The U.S. Environmental Protection Agency ("EPA") is promulgating the Sixth Unregulated Contaminant Monitoring Rule ("UCMR 6") for public water systems, and may identify microplastics as a new unregulated contaminant to be monitored during the five-year UCMR 6 period of 2027-2031. The Safe Drinking Water Act requires that EPA establish a program to monitor unregulated contaminants every five years and the rules regarding the fifth cycle of monitoring were enacted on December 27, 2021 (86 FR 73131) which covers 2022-2026. Microplastics were included in the request for public comments to establish UCMR 6.[31] A proposed rule for UCMR 6 was scheduled to be released in November 2025 but not yet released. UCMR 6 is currently scheduled to be finalized in April 2027.[32]

In November 2024, a petition from 175 environmental groups led by Food & Water Watch was submitted to EPA calling for monitoring the presence of microplastics in drinking water under UCMR 6, because microplastics are ubiquitous and pervasive in the environment, threaten human health and occur in drinking water.[33] In June 2025, the EPA stated to Law360 that it is reviewing this petition, and considering research which could lead to regulation of microplastics, although policies may still be years away.[34] EPA

[29] H.R. 4486, 119th Cong. (2025-2026).
[30] H.R. 4903, 119th Cong. (2025-2026).
[31] 89 Fed. Reg. 8584 (Feb. 8, 2024). *See also* Office of Information and Regulatory Affairs, *Revisions to Establish the Sixth Unregulated Contaminant Monitoring Rule (UCMR 6) for Public Water Systems* (2024).
[32] *Id.*
[33] Food & Water Watch et al., *Petition to Include Microplastics on the Sixth Unregulated Contaminant Monitoring Rule under the Safe Drinking Water Act* (Nov. 24, 2024).
[34] Juan-Carlos Rodriguez, *Microplastics Focus May Force Change in Biz Practices*, LAW 360 (June 20, 2025).

acknowledges that "[t]here is a pressing need to develop and standardize collection, extraction, quantification, and identification methods for micro and nanoplastics to improve reliability, consistency, and comparability across studies."[35] Therefore, although federal regulations regarding microplastic pollution have not been enacted, it has emerged as an important issue for research and study, particularly in evaluating microplastics' impacts on human health and environment.

2. State legislation and regulatory development

In 2025, California passed Senate Concurrent Resolution 3 which commemorates the 50th anniversary of the Safe Drinking Water Act and acknowledges that "California has led the nation in adopting innovative drinking water standards, including the regulation of emerging contaminants such as perfluoroalkyl and polyfluoroalkyl substances or PFAS, hexavalent chromium, and microplastics."[36] While this resolution is not a binding law, it manifests Californian legislators' policy focus on regulating emerging contaminants such as microplastics.

In June 2025, the California Department of Toxic Substances Control ("DTSC") proposed to add microplastics to its Candidate Chemicals List "due to the concerns about widespread exposures and potential for adverse impacts."[37] A Candidate Chemical can become a Chemical of Concern as part of a product-chemical combination that makes up a Priority Product. Adding microplastics to the Candidate Chemicals List will not create any new regulatory requirements for microplastics but "would allow the [Safer Consumer Products Program] to evaluate potential Priority Products that may contain or release [microplastics]."[38] Concurrently with this proposal, DTSC has initiated preliminary screening research on products that can release microplastics.[39]

New Jersey legislators have been active in enacting statutes and regulations concerning microplastic pollution. In 2024, New Jersey approved P.L.2023, c.318, an Act concerning Microplastics and Supplementing Title 58 of the Revised Statutes, which defines and establishes microplastics as regulated contaminants in drinking water supplies.[40] It directs the Department of Environmental Protection ("DEP") to "commence a comprehensive, collaborative study to evaluate the current feasibility and benefits of the use of microplastics removal technologies by system owners or operators to remove microplastics from drinking water."[41] In March 2025, the NJ DEP adopted a new rule "to reduce plastic pollution by limiting the sale and use of single-use plastic and paper carryout bags as well as polystyrene foam food service products."[42]

Many states have been actively considering legislation regulating microplastics or nanoplastics, although the proposed bills were not enacted into binding law.

In August 2025, Michigan legislators introduced three bills (Senate Bills 503 through 505) in the Senate Natural Resources and Agriculture Committee to regulate microplastics, including bans on microbeads in products (S.B. 503), the establishment of microplastic baseline conditions in drinking water supplies (S.B. 504), and the creation of

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[35] *See* U.S. ENVTL. PROT. AGENCY, Microplastics Research (July 2, 2025).
[36] S. Con. Res. 3, 2025-2026 Leg., Reg. Sess. (Cal. 2025).
[37] DTSC, *Proposed Addition to the Candidate Chemicals List: Microplastics* (last visited Apr. 29, 2026).
[38] CAL. DEP'T OF TOXIC SUBSTANCES CONTROL, SAFER CONSUMER PRODS. PROGRAM, *Technical Document for the Proposal to Add Microplastics to the Candidate Chemicals List* 1–2, 8 (last visited Apr. 29 2026).
[39] CAL. DEP'T OF TOXIC SUBSTANCES CONTROL, SAFER CONSUMER PRODS. PROGRAM, Three-Year Priority Product Work Plan (2024–2026) 22 (last visited Apr. 29, 2026).
[40] N.J. Stat. Ann. §§ 58:12A-24.1 to -24.2 (West 2024).
[41] *Id.*
[42] *Adoption of Rules*, 56 N.J.R. 683(a) (Apr. 7, 2025).

a statewide research and monitoring plan (S.B. 505).[43] These bills were not passed into law.

In 2025, Illinois considered several microplastics-related bills. Illinois Senate Bill 1531 was introduced to create a Disposable Food Service Container Act, which prohibits the sale or distribution of disposable food service containers by January 1, 2030.[44] Another Senate Bill 0030 was introduced to amend the Environmental Protection Act which requires that on and after January 1, 2040, no new washing machine shall be sold without a microfiber filtration system.[45] These bills were not passed in this legislative session.

Rhode Islands considered House Bill 5492 and its corresponding Senate Bill 406, Microplastics Reduction Act, to prohibit the sale or distribution of products containing synthetic polymer micro particles.[46] Neither was passed into law.

In sum, while state legislators are considering bills to evaluate and regulate the presence of microplastics, the proposed bills were not passed into law in 2025. However, the legislators are likely to introduce similar bills in the next legislative session.

III. Judicial Development

State attorneys general and plaintiffs' lawyers are suing product manufacturers, accusing them of making false or misleading statements regarding microplastics. Some courts have allowed microplastics-related claims to proceed past the motion-to-dismiss stage, while other courts have dismissed such claims.

In *Cortez v. Handi-Craft Co.* ("*Cortez*"), the United States District Court for the Northern District Court of California dismissed a microplastics class action which alleged that the defendant violated California consumer protection laws by deceiving customers about the potential existence of microplastics in infant bottles and sippy cups. The Court dismissed the complaint without prejudice and allowed the plaintiffs to amend, but the plaintiffs voluntarily dismissed the case.[47] In dismissing the theory of unreasonable safety hazard, the court reasoned that plaintiffs failed to "identify a threshold at which the amount of microplastics exposed to children become unreasonably unsafe" and the Court would not accept an expansive theory of harm that "no amount of microplastics exposure can be safe."[48] This ruling suggests that plaintiffs should allege, with specific thresholds, how a certain amount of microplastics could cause the alleged harm with substantiated facts.

In *Sierra Club, Inc. v. Exxon Mobil Corp.*, a group of environmental non-profits sued Exxon Mobil Corporation alleging that it has created a public nuisance by producing, promoting and distributing single-use plastics as recyclable while they are not. "Given the data on recycling efficiency and the chemistry in plastic polymers, Plaintiffs allege that inevitably, single-use plastics break down into microplastics that pollute the land, air, sea, and even human bodies. These substances are harmful and last, effectively, forever."[49] Exxon has the "knowledge that the polymers it produced would never degrade and thus would inevitably create a pollution crisis."[50] The claim of public nuisance survived motion to dismiss.

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[43] Michigan Legislature, *Bill Analysis – Microplastics Prevention Program* (Sept. 8, 2025).
[44] S.B. 1531, 104th Gen. Assemb., Reg. Sess. (Ill. 2025-2026).
[45] S.B. 0030, 104th Gen. Assemb., Reg. Sess. (Ill. 2025-2026).
[46] S. B. 406, 2025 Gen. Assemb., Jan. Sess. (R.I. 2025-2026); H. B. 5492, 2025 Gen. Assemb., Jan. Sess. (R.I. 2025-2026).
[47] No. 4:24-CV-3782-YGR, 2025 U.S. Dist. LEXIS 97686 *11-12 (N.D. Cal. April 29, 2025).
[48] *Ibid.*
[49] No. 24-cv-07288-RS, 2025 U.S. Dist. LEXIS 173949, *3 (N.D. Cal. September 5, 2025).
[50] *Id.* *18.

In *Daly v. The Wonderful Co.*, the United States District court for the Northern District of Illinois dismissed a complaint suing the Wonderful Co. who distributes and sells Fiji Water, alleging that use of the term "Natural Artesian Water" on the label of Fiji Water bottles is deceptive because the water contains microplastics.[51] Plaintiffs' unsubstantiated allegation that Fiji Water contains microplastics was insufficient to survive the motion to dismiss.[52] The Court suggested that it might be sufficient "if plaintiffs had cited to relatively contemporaneous tests of other bottles of Fiji Water (whether opened or unopened)."[53] Similar as *Cortez,* the *Daly* Court suggests that plaintiffs should substantiate their claims by contemporaneous studies which explain a proposed mechanism for how microplastic contamination occurs.

In May 2025, a putative class action was filed against S.C. Johnson & Son, Inc., alleging that the company's Ziploc products were deceptively marketed as microwave safe and for freezer use, while failing to warn that microplastics could leach from the containers when heated or frozen. The parties stipulated to voluntary dismissal of this case.[54]

In sum, consumer plaintiffs are bringing class actions against product manufacturers or distributors on the theory of false advertisement and deception of the existence of microplastics. Based upon the existing rulings, there is a threshold issue to these actions – the amount of microplastics contained in the product that renders it unsafe for consumers. Absent studies on the specific product or the proposed mechanism of microplastic contamination, many of these actions may not survive a motion to dismiss.

IV. TRUMP V. CASA, INC

In *Trump v. CASA, Inc.*[55] the United States Supreme Court addressed the significant question of whether federal courts have equitable authority to issue so-called "universal injunctions" – injunctive relief that goes beyond named plaintiffs in an individual case and instead applies to anyone nationwide. In a 6-3 decision authored by Justice Amy Coney Barret, the Court held that federal courts likely do not have the equitable authority to issue universal injunctions under Congressional authority provided in the Judiciary Act of 1789.

The full impact of this decision is still playing out, but it certainly has the potential to limit the scope of individual federal court rulings that seek to enjoin the Executive Branch, be it Executive Orders or other administrative actions.

The underlying facts of *CASA, Inc.* involved suits filed by individuals, organizations, and some States to stop the enforcement of President Trump's 2025 Executive Order No. 14160, "Protective the Meaning and Value of American Citizenship,"[56] which interpreted the Fourteenth Amendment and identified a number of circumstances in which a person born or naturalized in the United States would not be "subject to the jurisdiction thereof." Three federal District Courts issued universal injunctions barring application of the Executive Order nationwide and the federal appellate courts on appeal denied the government's requests to stay those injunctions.

In holding that the Judiciary Act likely does not provide federal courts with equitable authority to issue universal injunctions, the Court analyzed the types of relief claimed by English courts of equity and early American courts at the time of the Founding and determined that there was no historical remedy analogous to the modern universal

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[51]No. 24 C 1267, 2025 U.S. Dist. LEXIS 37347 *1-2 (N.D. Ill. Mar 03, 2025).
[52]*Id.* *6.
[53]*Id.*
[54]Linda Cheslow v. S.C. Johnson & Son, Inc., United States District Court, Northern District of California, San Francisco Division, Case No. 3:25-cv-0365, Docket No. 42 [Stipulation of Dismissal].
[55]606 U.S. 831 (2025).
[56]Exec. Order No. 14160, Protecting the Meaning and Value of American Citizenship, 90 Fed. Reg. 8449 (Jan. 29, 2025).

injunction; instead, the majority found that early English and American courts regularly limited their grants of injunctive relief to parties named in the suit at hand and refused to extend the remedy to individuals or entities not directly involved in the suit:

> [t]he universal injunction was conspicuously nonexistent for most of our Nation's history. Its absence from 18th- and 19th-century equity practices settles the question of judicial authority…That the absence continued into the 20th century renders any claim of historical pedigree still more implausible…[and] [b]ecause the universal injunction lacks a historical pedigree, it falls outside the bounds of a federal court's equitable authority under the Judiciary Act.[57]

The majority also assessed the argument that the modern universal injunction is akin to historical decrees resulting from a "bill of peace," which was a type of group litigation in early English courts that allowed courts to adjudicate the rights of different groups not formally joined to the lawsuit. The majority rejected this line of thought, finding that courts issuing a decree pursuant to a bill of peace still limited the relief to a relatively small, cohesive group and still did not resolve legal issues for individuals throughout the nation (or realm). The Court instead found that the modern equivalent to the historical bill of peace is the class-action lawsuit, governed by Federal Rule of Civil Procedure 23. Indeed, the Court highlighted that modern universal injunctions have essentially functioned as a "class-action workaround" that circumvent the procedural requirements of Rule 23.[58]

The majority also assessed the argument that modern universal injunctions are permissible because they satisfy the deep-rooted principle that courts in equity are empowered to "fashion a remedy that awards complete relief."[59] The majority agreed that the "complete relief" principle is well-established, but found that "complete relief is not synonymous with universal relief" and that the tradition of equitable relief embraces the general rule that courts must administer complete relief as between the parties to an action.[60] At the same time, however, the majority declined to take up additional arguments raised below that the State plaintiffs *did* require universal injunctive relief in order to receive complete relief; the Court instead left this issue to lower courts to decide this issue in the first instance.

Finally, there are two other points about the *CASA, Inc.* decision worth noting: *first,* the majority did not opine on the constitutionality of universal injunctions, instead it focused squarely on an interpretation of judicial authority afforded under the 1789 Judiciary Act. As Justice Barrett wrote in conclusion to the majority opinion, "federal courts do not exercise general oversight of the Executive Branch; they resolve cases and controversies *consistent with the authority Congress has given them*. When a court concludes that the Executive Branch has acted unlawfully, the answer is not for the court to exceed its power, too."[61] Second, the Court was explicit that nothing in this opinion resolves another, related but still outstanding question of whether the Administrative Procedure Act empowers federal courts to vacate federal agency action.[62] The issue of whether vacatur is a valid remedy under the APA "has been subject to thoughtful debate by

[57] *CASA, Inc.*, 606 U.S. at 845-47 (citations omitted).
[58] *Id.* at 850.
[59] *Id.*
[60] *Id.* at 851.
[61] *Id.* at 861 (emphasis added).
[62] *See id.* at n. 10.

Members of [the] Court"[63] but has not as yet been formally addressed or resolved by the Supreme Court

IV. DOI MEMORANDUMS IMPACT SOLAR AND WIND PROJECTS

Since day one of the second Trump Administration, renewable energy projects have faced major hurdles to new or continued development. On inauguration day, President Trump issued a memorandum withdrawing certain offshore lands from wind leasing and mandating review of federal wind leasing and permitting practices.[64] In lockstep with the President, the Department of the Interior ("DOI") has kept the hits to this industry coming.

On July 4, 2025, President Trump signed the One Big Beautiful Bill Act ("OBBA") into law, eliminating clean electricity production and investment tax credits for wind and solar facilities under sections 45Y and 48E of the Internal Revenue Code.[65] Three days later, Executive Order 14315[66], outlined how the DOI should implement the OBBBA to end subsidies for "unreliable" energy sources. Termination of these tax credits marked a shift in energy policy from wind and solar to other energy sources.

In response to President Trump's shift, the DOI issued two memos in July 2025, further hindering wind and solar projects on federal lands. Interior's initial directive on July 15, mandates approval of the Office of the Secretary of the Interior for nearly every aspect of new wind and solar projects on federal lands.[67] The new approval process goes through the Office of the Executive Secretariat and Regulatory Affairs, then to the Office of the Deputy Secretary, before eventually landing on Secretary Burgum's desk.

Eliminating the tax credits and implementing the DOI's approval process have had an immediate effect on wind and solar projects on federal lands, including projects not fully constructed. Approvals for major projects on federal lands have largely stalled, and uncertainty around approvals has resulted in stressed financials and significant delays. This uncertainty extends to private land projects with a federal nexus, subjecting them to the DOI's multi-step approval process.

Interior's second directive on July 29, implements EO 14315. This policy directs the DOI to eliminate "preferential treatment" toward solar and wind facilities in its regulations, guidance, policies and practices. The directive requires thorough review and identification of instances of "preferential treatment." Once identified, the DOI must report on actions to eliminate such treatment, which could further stall solar and wind projects.

Taken together, the DOI directives have had a chilling effect on wind and solar projects. In 2026, expect to see this battle continue in the courts, with multiple lawsuits already filed by states and offshore wind developers.

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[63]*See,* Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve Sys., 603 U.S. 799 at n. 2 (2024) (citing United Staes v. Texas, 599 U.S. 670, 693-702 (2023 (Gorsuch, J., concurring in the judgment)).

[64]Presidential Memorandum, Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects (Jan. 20, 2025).

[65]H.R. 1, 119th Cong. (2025–2026).

[66]Exec. Order No. 14,315, Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources, 90 Fed. Reg. 30,821 (July 7, 2025).

[67]U.S. DEP'T OF THE INTERIOR, *Departmental Review Procedures for Decisions, Actions, Consultations, and Other Undertakings Related to Wind and Solar Energy Facilities* (July 15, 2025).

Chapter F: ENVIRONMENTAL, SOCIAL, GOVERNANCE, AND SUSTAINABILITY
2025 Annual Report[1]

I. UNITED STATES DEVELOPMENTS

A. U.S. Administrative Law Developments

The U.S. Securities and Exchange Commission (SEC) voted to end defense of its climate disclosure rules before the U.S. Court of Appeals for the Eighth Circuit on March 27, 2025.[2] The Enhancement and Standardization of Climate-Related Disclosures for Investors, adopted on March 28, 2024, was designed to standardize public companies' disclosure of material climate-related risks and greenhouse gas (GHG) emissions to investors in registration statements and annual reports, aligning U.S. practices more closely with international standards.[3]

Following litigation in *Iowa v. Sec. & Exch. Comm'n*, the Eighth Circuit issued an order on September 12, 2025, holding the case in abeyance and deferring judicial resolution until the SEC either reconsiders the rule by notice-and-comment rulemaking or renews its defense.[4] As a result, the rule remains stayed and unenforceable. Commissioner Mark T. Uyeda wrote in support of the decision, stating the SEC is "without statutory authority or expertise" to address climate issues and that the costs on the regulated community outweigh the benefits.[5] Writing in dissent, Commissioner Caroline A. Crenshaw warned that abandoning the rule's defense would weaken investor protection and compromise the SEC's ability to ensure the provision of decision-useful climate information in U.S. markets.[6]

B. U.S. Judicial Developments

1. Greenwashing Litigation

U.S. greenwashing litigation in 2025 has significantly increased at both federal and state levels. Federal regulators are retreating from environmental, social, and governance

[1]This summary was prepared by Lauren Lynam and John Rutherford, Year in Review Vice Chairs for the ABA SEER ESG and Sustainability Committee; authorship contributions are accredited to John Rutherford, Lauren Lynam, Maggie Pahl, Chris Shlag, Gabriella Mickel, Shaune Hickson, Julie Bazile, Alisa Nazaire, Bethel Bekele, and Jonathan Nwagbaraocha.
[2]U.S. Sec. & Exch. Comm'n, *SEC Votes to End Defense of Climate Disclosure Rules*, No. 2025-58 (Mar. 27, 2025), https://www.sec.gov/newsroom/press-releases/2025-58.
[3]The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21,668 (Mar. 28, 2024) (to be codified at 17 C.F.R. pts. 210, 229, 230, 232, 239, 249).\
[4]Order, Iowa v. S.E.C., No. 24-1522 (8th Cir. Sept. 12, 2025).
[5]Mark T. Uyeda, *Acting Chairman Statement on Climate-Related Disclosure Rules* (Feb. 11, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-climate-change-021025.
[6]Caroline A. Crenshaw, *Statement on the Commission's Status Report in the Climate-Related Disclosure Rules Litigation* (July 23, 2025), https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-climate-related-disclosure-rules-litigation-072325.

(ESG) enforcement,[7] and courts have shown increased skepticism of consumer-fraud greenwashing claims, dismissing suits at the pleading stage for failure to plausibly allege deception or demonstrate concrete injury.[8] Broad ESG branding is protected as puffery, but courts are more willing to let claims proceed when companies make specific, time-bound environmental promises.[9]

State attorneys general are emerging as effective enforcers, securing major settlements and driving climate-washing accountability.[10] Increasingly politicized state-level action has ranged dramatically, with New York and California bringing consumer protection actions against companies for overstating climate commitments and mislabeling environmental attributes, while Texas and Florida have moved to limit ESG disclosure requirements as ideologically driven and inconsistent with traditional limits on state authority and market regulation.[11]

2. Antitrust

U.S. and international antitrust authorities are increasing scrutiny of collaborations tied to ESG initiatives and net-zero GHG commitments. In many jurisdictions, regulators are working to create frameworks that permit certain sustainability agreements viewed as procompetitive. For example, E.U., U.K., and Dutch authorities have issued guidance allowing exemptions from antitrust prohibitions if agreements meet strict criteria, such as demonstrable efficiency gains, consumer benefits, necessity in achieving those benefits, and preservation of competition. However, U.S. enforcement agencies remain focused on traditional antitrust concerns and courts continue to apply strict interpretations, signaling

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[7] SEC Votes to End Defense of Climate Disclosure Rules, *supra* note 2 (the Sierra Club dropped its legal challenge to the SEC's ESG disclosure rule in 2024 and the SEC has since chosen not to defend its own rule, leaving its fate to the Eighth Circuit); See also Utah v. Su, 109 F.4th 313 (5th Cir. 2024).

[8] *See* Gyani v. Lululemon USA Inc.**,** No. 24-cv-22651, 2025 WL 548405 (S.D. Fla. Mar. 11, 2025) (dismissing greenwashing claims at the pleading stage for failure to plausibly allege a concrete price-premium injury tied to sustainability representations); Salguero v. Mondeléz Int'l, Inc.**,** No. 25-cv-02139, 2025 WL 3004534, at 6–9 (N.D. Ill. Oct. 27, 2025) (dismissing with prejudice where "climate neutral certified" statement on labeling was held not misleading to reasonable consumers because it accurately reflected third-party certification).

[9] Complaint, Alzaidi v. Procter & Gamble Co., No. 3:25-04519 (N.D. Cal. May 28, 2025); In re Procter & Gamble Co. "Protect, Grow & Restore" Mktg. & Sales Pracs. Litig., 796 F. Supp. 3d 1373 (U.S. Jud. Pan. Mult. Lit. 2025) (consolidating federal suits, the Judicial Panel on Multidistrict Litigation formed an single multidistrict litigation case over claims that P&G's Charmin's "Keep Forests as Forests" campaign and "Protect-Grow-Restore" logo constitute misleading greenwashing).

[10] Assurance of Discontinuance, People v. JBS USA Food Co., No. 450682/2024 (N.Y. Sup. Ct. Oct. 31, 2025) (New York Attorney General resolved claims that JBS's "net-zero by 2040" marketing was misleading). *See also* Complaint, State v. Reynolds Consumer Prod., Inc., No. CV2025-029649 (Ariz. Super. Ct. Aug. 20, 2025).

[11] Complaint, Office of the Att'y Gen. v. Institutional S'holder Servs. Inc., No. 236237226 (Fla. Cir. Ct. Nov. 20, 2025). *See* also Complaint, Institutional S'holder Servs. Inc. v. Paxton, No. 1:25-cv-01160 (W.D. Tex. July 24, 2025); Complaint, People v. JBS USA Food Co., *supra* note 10; People v. Novolex Holdings, LLC, No. CGC-25-630237 (Cal. Super. Ct. Oct. 17, 2025).

limited flexibility for sustainability collaborations that resemble price-fixing, market allocation, or coordinated boycotts.[12]

In *Texas v. BlackRock, Inc.*,[13] institutional investors were accused of violating antitrust laws, specifically Section 7 of the Clayton Antitrust Act,[14] by coordinating actions to restrict investment in fossil fuel companies, thereby allegedly distorting market competition. On August 1, 2025, the United States District Court for the Eastern District of Texas denied BlackRock's motion to dismiss, finding that "antitrust law does not yield to the prevailing social policy of the day."[15] Although this is only a procedural step, the court's ruling underscores that the passive-investor safe harbor is not absolute when investors actively influence portfolio company behavior.

C. U.S. Deregulatory Efforts

1. Executive Order 14260 - Protecting American Energy from State Overreach

On April 8, 2025, President Trump issued Executive Order 14260 - Protecting American Energy from State Overreach, directing the federal government to stop enforcement of state and local measures the Administration deems unlawful impediments to domestic energy development, consistent with the Unleashing American Energy agenda articulated in Executive Order 14154.[16] Citing state actions such as retroactive energy producer fines, carbon mandates, delayed permitting, and climate-related litigation, the Order asserts that certain "climate change," ESG, and environmental justice policies are unconstitutional or discriminatorily targeted, undermine federal energy policy, increase costs for consumers, and disrupt the balance of federalism. The Order instructs the Attorney General to identify state climate, ESG, or environmental justice laws and legal actions that may be unconstitutional or preempted by federal authority and to take appropriate steps to halt their enforcement. It further requires a report to the President on actions taken and clarifies that the Order creates no private rights or enforceable legal entitlements.

2. Environmental Protection Agency Greenhouse Gas Reporting Program

The U.S. Environmental Protection Agency (EPA) announced a proposal to eliminate the Greenhouse Gas Reporting Program on September 12, 2025.[17] The Greenhouse Gas Reporting Program serves as a nationwide data collection system for annual GHG emissions from more than 8,000 direct emitters, suppliers, and CO_2 injection

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[12] *See* Texas v. BlackRock, Inc., No. 6:24-cv-437, 2025 U.S. Dist. LEXIS 147891 (E.D. Tex. Aug. 1, 2025).
[13] *Id.*
[14] 15 U.S.C. § 18.
[15] Texas v. Blackrock, *supra* note 12 at *5.
[16] Exec. Order No. 14260, 90 Fed. Reg. 15513 (Apr. 8, 2025). *See also* Exec. Order No. 14154, 90 Fed. Reg. 8353 (Jan. 20, 2025) (directing federal agencies to eliminate regulatory, permitting, and policy barriers which the Administration believes have limited energy production, raised consumer costs, and undermined national security).
[17] Press Release, Env't Prot. Agency, Releases Proposal to End the Burdensome, Costly Greenhouse Gas Reporting Program, Saving up to $2.4 Billion (Sept. 12, 2025).

facilities since its launch in 2010.[18] The proposed rule would terminate reporting obligations for 46 of the 47 covered industrial sectors beginning with the 2024 reporting year—those remaining in subpart W (petroleum and natural gas systems subject to the waste emissions charge introduced in the Inflation Reduction Act) would have reporting suspended until the 2034 reporting.[19]

The EPA characterized the repeal as reducing administrative burden and compliance costs, projecting annual savings of approximately $2.4 billion for U.S. businesses.[20] Critics argue that dismantling the program will weaken accountability mechanisms for U.S. producers, and places federal standards at odds with emerging international and state emissions reporting requirements.[21]

D. State Legislative Developments

1. Greenhouse Gas Disclosures

California passed legislation requiring businesses to disclose GHG emissions and climate risks. SB 253 mandates annual reporting of Scope 1 and 2 emissions beginning in 2026, and Scope 3 emissions beginning in 2027.[22] SB 261 requires biennial disclosure of climate-related financial risks and mitigation measures beginning in 2026;[23] however, the Ninth Circuit of California granted a motion by the U.S. Chamber of Commerce and other appellants for an injunction pending appeal.[24] New York passed legislation creating a mandatory GHG reporting program, codified at 6 NYCRR Part 253.[25] The Department of Environmental Conservation (DEC) finalized this rule in December 2025. First reports (covering 2026 data) are due June 1, 2027.

Pending corporate disclosure bills appliable to companies with revenues greater than $1 billion include New York (SB 3456),[26] Illinois (HB 3673),[27] New Jersey, (SB 4117)[28] with varying scope requirements.

2. Extended Producer Responsibility

Extended Producer Responsibility (EPR) requirements have also recently expanded, with seven U.S. states—California, Colorado, Maine, Maryland, Minnesota, Oregon, and Washington—enacting packaging EPR legislation since 2021.[29]

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[18] *What is the GHGRP?*, EPA (last updated Aug. 14, 2025). *See also* Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844 (2007).
[19] Reconsideration of the Greenhouse Gas Reporting Program, 90 Fed. Reg. 44,591 (proposed Sept. 16, 2025) (to be codified at 40 C.F.R. pt. 98).
[20] *See EPA Releases Proposal to End the Burdensome, Costly Greenhouse Gas Reporting Program, Saving up to $2.4 Billion, supra* note 16.
[21] Jim Giles, *What You Should Know About the EPA's Plan to Stop Collecting Emissions Data*, TRELLIS (Oct. 6, 2025).
[22] A.B. 253, 2025–26 Reg. Sess. (Cal. 2025).
[23] A.B. 261, 2025–26 Reg. Sess. (Cal. 2025).
[24] Order Denying Plaintiffs' Motion for Injunction Pending Appeal, Chamber of Com. v. Cal. Air Res. Bd., 2025 U.S. Dist. LEXIS 156829, No. 2:24-cv-00801 (C.D. Cal. Aug. 13, 2025).
[25] Climate Leadership and Community Protection Act, 2019 N.Y. Laws ch. 106.
[26] S.B. 3456, 2025–26 Reg. Sess. (N.Y. 2025).
[27] H.B. 3673, 104th Gen. Assem. (Ill. 2025).
[28] S.B. 4117, 221st Leg. (N.J. 2025).
[29] Jonathan Obiawuotu Nwagbaraocha, *Sustainability and Effective Corporate Governance*, A.B.A. (Sept. 30, 2025).

In 2025, Maryland and Washington became the sixth and seventh states to pass packaging EPR programs. Maryland's SB 901 permits multiple Producer Responsibility Organizations to operate the program and incentivizes recyclable, reusable, or compostable packaging.[30] Washington's SB 5284 targets consumer packaging and will expand collection services to underserved homes while aiming to reduce consumer recycling costs.[31]

Companies doing business in Washington (SB 5284) and Colorado (HB 22-1355) prepared for appointing a Producer Responsibility Organization (PRO) and beginning to pay annual producer-responsibility dues, respectively, effective January 1, 2026.[32]

II. INTERNATIONAL DEVELOPMENTS

A. E.U. Updates

1. Omnibus Sustainability Rules Simplification Package

In December 2025, the European Parliament and the Council reached a political agreement on changes to the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CS3D).[33] The agreement concludes nearly a year-long process of revision, which began in February 2025, when the European Commission announced a consolidation and simplification initiative referred to as the sustainability Omnibus package (the "2025 Omnibus").[34]

While the original 2022 CSRD[35] core double-materiality sustainability reporting framework remains intact, the 2025 Omnibus agreement introduced a series of substantive modifications. First, the CSRD scope was narrowed, now roughly reducing 90 percent of entities from mandatory disclosure, and implementation deadlines for most companies within the revised scope are deferred.[36] Additionally, the number of total datapoints required under the European Sustainability Reporting Standards (ESRS)[37] framework was also significantly reduced, with the reporting load estimated to decline by as much as 70 percent, subject to finalization of the ESRS' technical standards in 2026. The 2025 Omnibus also indefinitely removed the requirement for companies to transition to "reasonable assurance" and instead mandates only "limited assurance" — a lower level of external verification of sustainability disclosures, rather than the more rigorous, audit-style review originally planned.

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[30]S.B. 901, 2025 Reg. Sess. (Md. 2025).
[31]S.B. 5284, 69th Leg., Reg. Sess. (Wash. 2025).
[32]*Id.*; H.B. 22-1355, 75th Gen. Assemb., Reg. Sess. (Colo. 2022).
[33]European Parliament, Legislative Resolution of 16 December 2025 on the Proposal for a Directive Amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as Regards Corporate Sustainability Reporting and Due Diligence Requirements.
[34]European Commission, Proposal for a Directive Amending Corporate Sustainability Reporting and Due Diligence Requirements, COM(2025) 81 final (Feb. 26, 2025).
[35]Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on Corporate Sustainability Reporting, 2022 O.J. (L 322) 15.
[36]Agreement on the CSRD/CS3D Omnibus Package: Key Changes and Implications, Council of the European Union, MONDAQ (Dec. 23, 2025).
[37]ESRS standards are drafted by the European Financial Reporting Advisory Group (EFRAG).

The original 2023 CS3D[38] is an EU Directive which required large companies operating in the EU to identify, prevent, mitigate, and remedy adverse human rights and environmental impacts throughout their value chains. It mandated active management of sustainability impacts, with potential civil liability associated with non-compliance. The overall scope of CS3D was reduced by roughly 70 percent of entities from mandatory disclosure, and civil liability provisions were removed and replaced by national administrative enforcement mechanisms.[39] CS3D covered entities are no longer required to adopt stand-alone climate transition plans; however, related disclosures remain within the scope of the CSRD reporting framework if climate impacts are deemed material under the directive's double materiality assessment.

B. China Updates

1. China Securities Regulatory Commission Introduced Mandatory ESG Disclosure Rules

On September 3, 2025, China's Ministry of Finance released an "Application Guide for the Corporate Sustainability Disclosure Standards – Basic Standards (Trial)."[40] This guide provides clarification and guidance for enterprises implementing the Corporate Sustainability Disclosures Standards (CSDS), released in 2024, a significant step towards a uniform national ESG reporting framework.[41]

The CSDS facilitate China's directive towards peak carbon by 2030 and carbon neutrality by 2060.[42] Prior to the CSDS' launch, China's three stock exchanges released guidelines mandating corporate sustainability disclosure for listed companies.[43] The CSDS draws from the International Sustainability Standards Board structure but employs a "double materiality" approach,[44] requiring companies to report "both the financial impact of ESG factors and the broader social and environmental impacts." Implementation is currently voluntary, with mandatory implementation expected by 2030.[45]

2. National Green Finance Taxonomy

China published the Green Finance Endorsed Project Catalogue, 2025 Edition in October of 2025, which aims to boost liquidity in the green finance market, improve

[38]Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence, 2024 O.J. (L 191) 1, https://eur-lex.europa.eu/eli/dir/2024/1760/oj/eng.
[39]*Agreement on the CSRD/CS3D Omnibus Package: Key Changes and Implications*, Mondaq (Dec. 23, 2025).
[40]*Id*.
[41]Gilly Hutchinson & Jennifer Wu, *Quick Guide: Key Sustainability Disclosure Regimes: PRC Sustainability Disclosure Standards*, LINKLATERS (last updated Jan. 22, 2026).
[42]Giulia Interesse, *China's New Application Guide for ESG Disclosure Standards: Implications for Businesses,* CHINA BRIEFING (Oct. 15, 2025).
[43]Lucia Brancaccio, *China's Stock Exchanges Announce ESG Reporting Guidelines for Listed Companies,* CHINA BRIEFING (Mar. 18, 2024).
[44]*China Embarks on a Journey of ESG Disclosure*, UN Environment Programme Finance Initiative (Nov. 2, 2023).
[45]*See* Gilly Hutchinson & Jennifer Wu, *supra* note 45; *China Takes Steps Towards Unified National Sustainability Disclosure Regime* (Jan. 24, 2025).

asset management efficiency and reduce the costs.[46] The Catalogue details a new categorization system defining what qualifies as "green" or environmentally friendly projects across industries. This new green finance taxonomy is a more efficient method to funding green projects, consolidating and reducing reporting costs to encourage decarbonization. China's goal in updating their green finance taxonomy is to work towards strengthening their net-zero transition goals and enable investors to identify green investments more efficiently.[47]

The Catalogue's covered projects include energy conservation, carbon reduction, environmental protection, ecological protection and restoration, and green infrastructure upgrades.[48] Green trade and green consumption categories signal an interest in focusing on areas outside of production (trade and consumerism), which have historically received less climate-focused attention, though projects related to climate adaptation are comparatively underrepresented in the Catalogue.[49]

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[46]绿色金融支持项目目录 (2025 年版) [Green Finance Endorsed Project Catalogue (2025 Edition)] (2025); *Overview of Green Finance*, People's Bank of China (last updated Jan. 1, 2025), https://jrj.sh.gov.cn/cmsres/f2/f240b589ac7c4a2a8887be4f783e1acf/f79d291883df843c8d2d59bb5e3aaa40.pdf

[47]Emily Chasan, *China Updates Green Taxonomy to Increase Energy-Transition Finance*, GREEN CENTRAL BANKING (Aug. 4, 2025).

[48]*China Releases New Green Finance Taxonomy*, ESG Today (Aug. 4, 2025).

[49]*One Chinese Green Taxonomy to Rule Them All*, Dialogue Earth (Aug. 5, 2025).

Chapter G: FOOD AND AGRICULTURE
2025 Annual Report[1]

I. THE FARM BILL EXTENSION CONTINUES INTO 2026

Every five years, Congress used to consider the Farm Bill, a package of legislation affecting commodity prices, conservation measures, trade and subsidy programs, nutrition, and food infrastructure programs (such as the Supplemental Nutrition Assistance Program), loan programs and crop insurance for farmers, rural development and economic growth, agricultural and food research and development, energy programs (biofuel, research programs, etc.), and more.[2] The last Farm Bill was passed in 2018, so negotiations for the next Farm Bill should have ended in 2023.

The American Relief Act, 2025, signed into law on December 21, 2024, extended the Agriculture Improvement Act of 2018 (also known as the 2018 Farm Bill) for one year through Sept. 30, 2025.[3] The one-year extension during 2025 continues all of the 2018 farm bill provided $177 million of mandatory funding, with offsets, to 19 of the 21 programs from the 2018 farm bill that did not have continuing funding. If Congress were to pass another extension or Farm Bill, the threat of expiration would disappear.[4]

The agriculture leaders in both parties continue to call for a new, modernized Farm Bill With two principal expiration dates for the farm bill: the end of the fiscal year (September, 2025) and the end of the crop year (December, 2025), Congress needs to act in 2026, and in keeping with the five year cycle, tee up another Farm Bill in 2031.

II. MAKING AMERICA HEALTHY AGAIN COMES TO AGRICULTURE

Mainstream agriculture wondered about the $700 million Regenerative Pilot Program the USDA rolled out in December 2025 as part of the RFK JR. “Make American Healthy Again” agenda. There is no specific definition of what “regenerative” means, and some groups have documented more than 200 different descriptions, so it is not just another certified organic operation. Producers complain that existing conservation programs are too bureaucratic and time-consuming to be paid for regenerative or soil-health-focused practices. This new program focusses on “soil health” and could lower production costs, given its reduction in chemical use.[5]

The USDA's new priorities for research and development activities aim to strengthen national security, protect U.S. agriculture, and support American farmers and consumers. These priorities focus on increasing profitability, expanding markets, and creating new uses for U.S. agricultural products. The 2025 One Big Beautiful Bill Act includes spends on farm programs and expands the farmer safety net. USDA will provide higher Agricultural Risk Coverage or Price Loss Coverage payment rates for the coming crop year, with a projected total of $13.5 billion.

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[2]See, e.g., CNTR. ON BUDGET AND POLICY PRIORITIES, *The Supplemental Nutrition Assistance Program (SNAP)*, (last updated Nov. 25, 2024).

[3]American Relief Act, 2025, Pub. L. No. 118-158, 138 Stat. 1722 (2024).

[4]CONGRESSIONAL RESEARCH SERV., *Expiration of the 2018 Farm Bill and Issues for the 2025 Farm Bill*, CRS Rep. No. R47659 (Dec. 17, 2024).

[5]Press Release, U.S. Dep’t of Agric., USDA Launches New Regenerative Pilot Program to Lower Farmer Production Costs and Advance MAHA Agenda (Dec. 10, 2025).

III. Can States Regulate Animal Welfare?

The House Agriculture Committee held hearings in late 2025 on the legal and economic implications of California's Proposition 12 (Prop. 12) law banning the in-state sale of pork, eggs, and veal from animals "confined in a cruel manner".[6] The Food Security and Farm Protection Act would gut Prop 12 and is up for consideration in Congress. In 2018, California voters passed Prop 12, a measure establishing minimum welfare for egg-laying hens, breeding pigs, and calves raised for veal.[7] The challenge to Prop. 12 could also come from the controversial Ending Agricultural Trade Suppression (EATS) Act, which was included in last year's House Farm Bill draft and would preempt state laws that impede commerce. 30 Senate Democrats wrote to Senate Ag Committee Chairman Boozman, urging the committee not to preempt California's Prop 12 in the Farm Bill.[8] The Trump Administration was the latest to sue the state of California over the law in 2025.

The United States Supreme Court let a state regulate agriculture in *National Pork Producers Council v. Ross*, with the majority determining that a state's interest in protecting the public health and welfare can extend to actions that occur beyond the state's boundaries in 2023.[9] The role of states in managing animal welfare will continue to be an issue in 2026, as the courts struggle to determine.

Substantial changes occurred to the National Environmental Policy Act in 2025 as a result of court decisions and actions taken by the Trump Administration. NEPA developments are discussed in detail in the Constitutional Law and Project Development chapters.

IV. Golden State Continues to Lead the Way on Mandatory Greenhouse Gas Emissions Disclosures

The U.S. Securities and Exchange Commission (SEC) finally issued in March 2024 its final climate disclosure rule to enhance and standardize climate-related disclosures by public companies and in public offerings. In 2025, the Trump administration took steps to dismantle this rule.[10]

The State of California continues to lead where federal laws fail to go, enacting its own mandatory climate disclosure and greenhouse gas (GHG) emissions reporting regime in October 2023 called the Climate Accountability Package (CAP). California's new disclosure requirements will require many U.S. companies—including large US agribusinesses—to make a public accounting of their GHG emissions and key climate-related financial risks. Responding to the CAP will require an industry-wide effort to measure (and mitigate) emissions up and down the global supply chains and distribution networks for food, fiber and fuel.

The CAP consists of two landmark laws: the Climate Corporate Data Accountability Act (SB 253)[11] and the Climate-Related Financial Risk Act (SB 261).[12] The former requires the annual third-party verification and public disclosure of companies' GHG emissions, while the latter requires companies to publish, on a biennial basis, reports

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[6]An Examination of the Implications of Proposition 12: Hearing Before the H. Comm. on Agric., 119th Cong. (July 23, 2025).
[7]Cal. Health & Safety Code §§ 25990–25994; Cal. Code Regs. tit. 3, §§ 1320–1326.
[8]Ending Agricultural Trade Suppression Act, S. 2019, 118th Cong. (2023).
[9]598 U.S. 356 (2023).
[10]Soyoung Ho, Trump's SEC Takes First Step to Rescind Climate Disclosure Rule, Thomson Reuters (Feb. 12, 2025).
[11]Climate Corporate Data Accountability Act, S.B. 253, ch. 382, 2023 Cal. Stat.
[12]Climate-Related Financial Risk Act, S.B. 261, ch. 383, 2023 Cal. Stat.

of their climate-related financial risks and the steps they are taking to reduce or adapt to such risks.

The Golden State's new greenhouse gas and climate disclosure rules are now nearing their actual deadline in 2026 for compliance with the relevant reporting requirements. And the reach of these California laws sweeps well beyond the SEC's proposed rule, covering not only the publicly traded companies contemplated under the SEC proposal, but also capturing partnerships, corporations, limited liability companies, and any other business entities (public or private) doing business in California. Given the number of American businesses operating in California in some manner, the reach of this legal regime could be significant.

A. Climate Corporate Data Accountability Act (SB 253)

The Climate Corporate Data Accountability Act (SB 253) applies to U.S. companies (public or private) doing business in California with total revenues in excess of $1 billion in the prior fiscal year.[13] (This revenue threshold includes *all* of a company's revenues, not only revenues attributable to the company's business in California.) SB 253 calls for the annual public reporting of a company's Scope 1 and 2 emissions beginning in 2026, with annual reporting of Scope 3 emissions starting in 2027.[14] For purposes of SB 253, "Scope 1 emissions" are defined as all direct emissions stemming from sources a reporting entity owns or directly controls, including fuel combustion activities, while Scope 2 emissions capture indirect greenhouse gas emissions "from consumed electricity, steam, heating or cooling purchased or acquired by [the] reporting entity."[15] Scope 3 emissions—a broad, catch-all category of emissions—include "indirect upstream and downstream greenhouse gas emissions, other than Scope 2 emissions, from sources that the reporting entity does not own or directly control and [that] may include. . . purchased goods and services, business travel, employee commutes, and processing and use of sold products."[16]

SB 253 requires a company's emissions reports to be audited by an independent third-party assurance provider before being submitted to a non-profit emissions reporting organization designated by CARB. For Scope 1 and 2 emissions, these audits are to be performed at a "limited assurance" level until 2030, when a "reasonable assurance" standard takes effect. For Scope 3 emissions, the California Air Resources Board (CARB) may establish an assurance standard by January 1, 2027, that will govern reporting before 2030; then, beginning in 2030, audits of Scope 3 emission reports will become subject to a "reasonable assurance" audit standard. A copy of the third-party assurance provider's audit report must be submitted in connection with a reporting entity's greenhouse gas emissions disclosure. The CARB-designated emissions reporting organization is required to make reporting entities' disclosures available on a publicly accessible online platform.[17]

SB 253 authorizes CARB to adopt regulations imposing penalties of up to $500,000 per reporting year for insufficient reporting or for failure to report. Reporting entities will not be subject to penalties with respect to misstatements of Scope 3 emissions that are "made with a reasonable basis and disclosed in good faith," and from 2027 to 2030, penalties with respect to Scope 3 emissions reporting will only be imposed for a failure to file disclosures.[18]

[13] Cal. Health & Saf. Code § 38532(B)(2).
[14] Cal. Health & Saf. Code § 38532(c)(1)(A)(i)(I)-(II).
[15] Cal. Health & Saf. Code § 38532(B)(3)-(4).
[16] Cal. Health & Saf. Code § 38532(B)(5).
[17] Cal. Health & Saf. Code § 38532, 38533.
[18] Cal. Health & Saf. Code § 38532(f)(2)(B)-(C).

B. Climate-Related Financial Risk Act (SB 261)

The Climate-Related Financial Risk Act (SB 261) applies to any U.S. company that does business in California (excluding certain insurance businesses) with total revenues in excess of $500 million in the previous fiscal year.[19] (As with SB 253, the revenue threshold for SB 261 includes all revenues, not just those derived from business in California.) The law requires these covered entities to publish on their public-facing websites reports of relevant climate-related financial risks on at least a biennial basis, starting January 1, 2026.[20] The law broadly defines "climate-related financial risk" as a:

> material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health.[21]

Disclosures under SB 261 must be made in accordance with a recognized standard accepted under the statute, such as the Task Force on Climate-Related Financial Disclosures framework or the International Financial Reporting Standards Sustainability Disclosure Standards issued by the International Sustainability Standards Board.[22]

SB 261 also calls for CARB to contract a nonprofit climate reporting organization to prepare, on a biennial basis, a public report summarizing climate-related financial risks from companies' public disclosures.[23] The climate reporting organization will also aid in enforcement by identifying inadequate or insufficient reports.[24] Companies may face administrative penalties of up to $50,000 in a reporting year for inadequate reporting or for failure to publish a report.[25]

C. Implementation of California's Climate Disclosure Laws

Before the reporting obligations in SB 253 and 261 take effect, CARB must issue regulations to clarify the implementation and administration of the laws' climate-related financial risk and greenhouse gas emissions disclosure obligations. As the regulated community awaits further guidance from CARB on the scope and application of the California laws, it remains to be seen whether the SEC will adapt its own disclosure rule in light of California's more expansive reporting regime.

V. ARTIFICIAL INTELLIGENCE (AI)

AI offers aid to all farmers at a time in human history when the sustainability of agriculture is a key to human survival. 150 years from now, men will look at AI as far more useful than plows, hybrid seed or GMOS in making them more productive. AI in use today offers tools to allow farmers to grow crops more sustainably, with increased efficiency, yield and attention to environmental impacts. The long-used term "precision agriculture" will become standard practice as AI algorithms enable farmers to analyse existing "Big

19 Cal. Health & Saf. Code § 38533(a)(4).
20 Cal. Health & Saf. Code 38533(b)(1)(A).
21 Cal. Health & Saf. Code §38533(B)(2).
22 Cal. Health & Saf. Code § 38533(b)(4).
23 Cal. Health & Saf. Code § 38533(d)(1).
24 Cal. Health & Saf. Code § 38533(d)(1)(C).
25 Cal. Health & Saf. Code § 38533(e)(2).

Data" tracking soil conditions, environmental impacts, and weather patterns, allowing informed decisions that increase the efficiency of agriculture. Farming equipment makers sell AI tractors that can plant seeds and apply fertilizers and pesticides more accurately, reducing waste and increasing efficiency. For example, John Deere has been a consistent force in the agricultural automation space, pushing the boundaries of what's possible with connected machines, autonomous tractors, and AI-powered harvesters.[26]

Big Data concerns about sharing data with online AI systems were addressed ten years ago via American Farm Bureau's program.[27] Farmers will increasingly use AI-driven systems like irrigation to monitor soil moisture levels and adjust irrigation daily to meet specific field needs.

This precise AI control is coming to dairies with 2% robotic and nearly all new construction of US dairies being robotic. The EU has been faster in using robotic milking systems with 35% of all dairy farms. These farms reduce labor dependency and improve milk productivity. McKinsey & Company reported these systems will increase operational efficiency by 25%.[28] Increases in productivity and animal welfare will combine with reduced labor costs to make the robotic dairy the future dominant mode of milk production.

VI. PFAS

The bad news for agriculture continues be PFAS pollution, as fluorine salts pose health risks. These beneficial products permeated products, firefighting foam and other sources contaminating landfills and public treatment works (biosolids). The EPA finally listed two PFAS compounds under CERCLA in 2024 (PFOA and PFOS), and the Trump EPA kept this listing to the surprise of some.[29] For farmers facing PFAS, this threat of CERCLA could turn their biggest asset – the land – into a liability. EU NGOs estimated an annual cost of $17.4 trillion per year to clean up the mess worldwide.

Although many state courts have yet to decide whether PFAS fall within the "pollution exclusion" contained in many insurance policies, some courts have historically held that pollution exclusions are ambiguous and do not bar insurance coverage.[30] So the farmer facing possible PFAS issues has potential insurance coverage to allow him to keep his farm.

3M, Dupont and many other companies face mass tort lawsuits including medical monitoring (nearly all citizens have traces of PFAS in their blood with no safe level yet determined). Uncertain health effects and unclear remediation scope make PFAS a looming threat farmers everywhere must address. Dairies with PFAS contamination have closed in Maine, with more to come as states assess the scope of the PFAS contamination.

In general, PFAS-related laws have grown more expansive and more proscriptive as time goes on. Earlier laws, like California and New York, prohibited the intentional addition of PFAS chemicals in certain types of fiber-based packaging that comes into direct contact with foods. Subsequent laws, however, have expanded beyond intentionally added PFAS to capture any PFAS, applying to all food containers (not just those made out of

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[26] Sam Francis, *Exclusive interview: John Deere deepens its automation strategy*, **ROBOTICS & AUTOMATION NEWS** (July 3, 2025).

[27] FARM PROGRESS, *Coalition of Ag Groups, Companies Reach Data Agreement, Farm Progress* (November 13, 2014).

[28] Emillia Santos, Digital Transformation in The Dairy Industry Statistics, GITNUX (Feb. 13, 2026).

[29] INDIANAPOLIS BAR ASSOCIATION, *Trump EPA Keeps PFOA and PFOS CERCLA Hazardous Substances Designation* (Oct 21, 2025).

[30] *See Nat'l Foam, Inc. v. Zurich Am. Ins. Co.*, 768 F. Supp. 3d 1009, 1022–24, (N.D. Cal. 2025); Indianapolis Bar Association, *Trump EPA Keeps PFOA and PFOS CERCLA Hazardous Substances Designation* (Oct 21, 2025).

plant fibers), or even defining food packaging to include things like shipping containers and pallets. Consumer alert to the PFAS issue is demanding removal from all consumer products, including mascara and dental floss.

EPA and the states have also been taking action with respect to PFAS chemicals in pesticide products and pesticide product packaging. EPA has removed certain PFAS chemicals from its approved inert ingredients list[31] and issued TSCA orders directing a packaging supplier that supplies to the pesticide industry (among other industries) to cease producing PFAS chemicals as part of its production of fluorinated HDPE containers.[32] Several states have passed laws prohibiting or regulating the intentional use of PFAS chemicals in pesticide products and packaging.[33]

VII. Beef Lawsuits & Consumer Plant-Base Choices

2025 saw two major beef lawsuits settled; one with Tyson Foods and Cargill, and another involving Tyson Foods. The Tyson settlement was part of a broader antitrust litigation, while the Tyson Foods settlement was related to a separate class action lawsuit. Both settlements were reached to avoid the costs and uncertainties of continued litigation.[34]

Beef continues its downturn on menus, not so much "what's for dinner" anymore, with a steady decline in U.S. meat consumption for the second consecutive year at 1.4% less US consumption in 2025. U.S. beef's decline started a decade ago, despite a recent post-COVID uptick[35] and recent research showing beef improving consumers moods by reducing depression rates.[36] In contrast, the global plant-based meat market is projected to grow from $7.5 billion in 2021 to $15.8 billion in 2028.

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[31] Pesticides; Removal of PFAS Chemicals From Approved Inert Ingredient List for Pesticide Product, 87 Fed. Reg. 76,488 (Dec. 14, 2022).

[32] *See* Envt'l Prot. Agency, Per- and Polyfluoroalkyl Substances (PFAS) in Pesticide and Other Packaging | US EPA (last updated Nov. 3, 2024).

[33] *See, e.g.*, MINN STAT. §116.943, §18B.26, and §18C.202 (2023); Me. Rev. Stat. tit. 7, § 606(1)(H)–(I) (2022).

[34] In re Cattle and Beef Antitrust Litigation, No. 0:22-md-03031 (D. Minn. 2025).

[35] Agricultural Economic Insights, *Beef Consumption Continues Higher, Trouble Ahead?*
(June 5, 2023).

[36] Lin Hui-chin and Jonathan Chin, *Beef might stave off depression, new study suggests* (Jan 22, 2023).

Chapter H: FOREST RESOURCES
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I. FEDERAL CASES

In *WildEarth Guardians v. United States Forest Service*,[2] the United States Court of Appeals for the Tenth Circuit held the U.S. Forest Service ("USFS") violated the National Environmental Policy Act ("NEPA") when it arbitrarily and capriciously approved the Wishbone Allotments for domestic sheep grazing in Colorado's Rio Grande National Forest. In 2013 and 2015, the USFS vacated two grazing allotments ("Fisher-Ivy/Goose Lake and Snow Mesa") based on their Risk of Contact Model ("RCM") showing a high risk of disease transmission from domestic sheep to vulnerable Rocky Mountain bighorn sheep populations. However, when the RCM again predicted high risk for the proposed Wishbone Allotments in 2017, the USFS downgraded the risk to "moderate" using "local factors" such as topographical barriers, project design criteria, and temporal separation. The Tenth Circuit found this decision arbitrary and capricious because: (1) the USFS provided no scientific support for using local factors to override the RCM results, contradicting its previous reliance on the model as "best available science"; (2) the administrative record showed project design criteria had been ineffective; (3) the USFS failed to analyze cumulative impacts on neighboring bighorn sheep herds; and (4) the agency failed to offer data-driven analysis to justify its inconsistent approach, violating NEPA. The case was remanded to the district court to determine proper remedies.

In *North Cascades Conservation Council v. United States Forest Service*,[3] the United States Court of Appeals for the Ninth Circuit held the USFS violated NEPA when it approved the Twisp Restoration Project (24,140 acres of forest land in the Okanogan-Wenatchee National Forest) without analyzing the cumulative effects of the related Midnight Restoration Project. In 2019, the USFS developed the Twisp Restoration Project, which is a collection of protective actions designed to improve species' habitat and mitigate wildfire risk. Although the court affirmed several aspects of the USFS's NEPA analysis, it reversed in part due to the USFS's failure to analyze cumulative effects of the Twisp Restoration Project in combination with the Midnight Restoration Project. The Midnight Restoration Project is a portion of a previous version of the Twisp Restoration; the two projects were separated and the Midnight Restoration Project created after a wildfire burned through the project area in between the draft EA and the final EA. Because the Midnight Restoration Project area was originally part of the EA, the USFS had substantial information about its project area and proposed treatments. The court thus held that the USFS had a duty to analyze the Midnight Restoration Project in the Final EA as part of its cumulative effects analysis.

In *Wildlife Preserves, Inc. v. Romero*,[4] the United States Court of Appeals for the Second Circuit considered whether the National Parks Service's proposed activities would violate deed restrictions on land conveyed by plaintiff Wildlife Preserves, Inc. In 1955 and 1966, Wildlife Preserves conveyed land on Fire Island to the government for the conservation of a rare maritime holly forest, creating the Sunken Forest Preserve. The

[1]Author contributors to this report were Susan Jane Brown of Silvix Resources, Ryder Seamons, Alesia Ash, Samantha Ogden, and Colton Edwards from Holland & Hart LLP. This report was edited by Janet M. Howe, from Holland & Hart LLP. This report covers many (but, due to space constraints, by no means all) of the notable developments in forest management law in 2025. Any opinions of the authors in this report should not be construed to be those of Silvix Resources or Holland & Hart.

[2]137 F.4th 1068 (10th Cir. 2025).

[3]136 F.4th 816 (9th Cir. 2025).

[4]153 F.4th 192 (2d Cir. 2025).

deeds to this land include certain restrictions, requiring the Sunken Forest Preserve to be "maintained in [its] natural state and operated as a preserve for the maintenance of wildlife."[5] The deed also contained reversionary clauses that would automatically return title to Wildlife Preserves if the restrictions were violated. The Second Circuit in this case affirmed the district court's grant of summary judgment for the government, holding that the National Park Service's 2016 White-Tailed Deer Management Plan—which proposed exclusion fencing and deer culling activities—did not violate the deed restrictions. The court reasoned that, under New York law, deed restrictions creating reversionary interests must be strictly construed against the grantor. The court thus concluded that the proposed activities were reasonably interpreted as consistent with maintaining the land in its natural state, and that actions adversely affecting one species for the net benefit of the broader ecosystem were consistent with the deed's wildlife conservation purposes.

In *Cascadia Wildlands v. United States Bureau of Land Management*,[6] the United States Court of Appeals Ninth Circuit affirmed the district court's summary judgment for the Bureau of Land Management ("BLM"), holding that BLM's approval of the Big Weekly Elk ("BWE") Forest Management Project did not violate the Federal Land Policy and Management Act ("FLPMA") or NEPA. The case arose when the petitioner challenged BLM's approval of a commercial timber harvesting project in coastal Oregon, home to the marbled murrelet, a threatened seabird species. The project would designate occupied murrelet nesting habitats as off-limits for harvesting but would allow forest thinning activities to proceed in areas directly adjacent to occupied habitats. The petitioner argued that such activities violated the Resource Management Plan ("RMP"), which forbids "modifying nesting habitat." BLM interpreted the phrase more narrowly, indicating that adjacent activities would not *directly* modify the habitats themselves and are therefore permissible. The court found the phrase "modifying nesting habitat" to be ambiguous. Holding that *Kisor v. Wilkie*[7] required courts to defer to an agency's construction of a land use plan, the court deferred to BLM's narrow interpretation, concluding that the interpretation did not violate the RMP or FLMPA. Regarding NEPA, the court applied the substantial deference standard articulated in the Supreme Court's recent decision in *Seven County Infrastructure Coalition v. Eagle County*,[8] concluding that BLM satisfied the "hard look" requirement by incorporating extensive prior analysis from the Environmental Impact Statement ("EIS").

In *South Carolina Coastal Conservation League v. United States Army Corps of Engineers*,[9] several environmental plaintiffs challenged the Army Corps of Engineers' ("Corps") issuance of a Clean Water Act Section 404 permit that allowed the Cainhoy Plantation development project to fill wetlands in South Carolina. The project encompasses 3,906 acres, including 181.5 acres of wetlands, slated for commercial and residential development. Petitioners sued and moved for a preliminary injunction, alleging that the U.S. Fish and Wildlife Service ("FWS") violated the Endangered Species Act ("ESA") by using a habitat surrogate rather than quantifying the number of individual species the project might take. They also argued that the Corps violated NEPA by preparing only an Environmental Assessment ("EA") instead of a more comprehensive EIS. In August 2022, the United States District Court for the District of South Carolina denied the motion for a preliminary injunction. On appeal, the United States Court of Appeals the for the Fourth Circuit agreed, holding that the FWS did not violate the ESA because it would be impractical to quantify the species take, and the habitat surrogate provided an adequate, enforceable standard for reinitiating consultation.

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[5] *Id.* at 195.
[6] 153 F.4th 869 (9th Cir. 2025).
[7] 588 U.S. 558 (2019).
[8] 605 U.S. 168 (2025).
[9] 127 F.4th 457 (4th Cir. 2025).

In *Center for Biological Diversity v. United States Forest Service*,[10] several environmental plaintiffs challenged the approval of the South Plateau Landscape Area Treatment Project in the Custer Gallatin National Forest within the Greater Yellowstone Ecosystem. The Project authorized up to 16,462 acres of forest treatments and 56.8 miles of temporary roads. Plaintiffs moved for summary judgment, arguing multiple violations of the Administrative Procedure Act ("APA"), NEPA, the National Forest Management Act ("NFMA"), and the ESA. The plaintiffs focused on impacts to grizzly bears in the area and USFS's use of a "landscape approach," under which the precise locations of forest treatments and temporary roads would be identified during Project implementation rather than at the initial planning stage. The United States District Court for the District of Montana denied the plaintiffs' motion on all claims. First, the court held that the Project complied with the Forest Plan because no two projects would occur simultaneously within a single bear management subunit and because the as-yet-undetermined placement of temporary roads was consistent with the Forest Plan's staging allowance. Second, the court deferred to the USFS's scientific judgment that the Project would not "jeopardize the continued existence of the grizzly bear."[11] Third, the court concluded that USFS took the requisite hard look at the Project's environmental effects on grizzly bears and climate change.

In *Mahler v. United States Forest Service*,[12] multiple environmental plaintiffs challenged the implementation of the USFS's Paoli Tornado Response and Research Project, which aimed to salvage timber and remove tornado debris in an area of the Hoosier National Forest. The USFS bypassed NEPA review for the Project by applying three separate categorical exclusions: CE-5, regeneration of area to native tree species, CE-13, salvage of dead/dying tree, and CE-19, removal of debris. In January 2025, the plaintiffs sought a preliminary injunction, alleging that four types of irreparable harm may occur absent preliminary relief: (1) harm to tricolored bats; (2) damage to historic site; (3) removal of healthy old growth trees; and (4) informational harm. The United States District Court for the District of Indiana denied the injunction, holding that the plaintiff's speculative arguments about potential harm to bats, historic sites, and old growth trees did not meet the standard for irreparable harm. The court also dismissed the informational harm claim, stating "[a]n agency's failure to comply with NEPA and fully evaluate the impact of its actions is not, by itself, an irreparable injury."[13]

In *Center for Biological Diversity v. United States Forest Service*,[14] several environmental groups challenged the Knotty Pine Project in Montana's Kootenai National Forest, focusing on how unauthorized road use within the Project area would affect habitat for the threatened grizzly bear. Most of the Project lies within Bear Management Unit (BMU) 12 of the Cabinet-Yaak Ecosystem Recovery Zone. Following an initial preliminary injunction and a subsequent Amended Biological Opinion issued by the FWS, the plaintiffs filed a Second Amended Complaint, and the parties filed cross motions for summary judgment. The United States District Court for the District of Montana agreed with the plaintiffs on four of the six claims, finding that by excluding known illegal road use from road-density calculations in the EA, the USFS and FWS violated NEPA, NFMA, the APA, and the ESA. Because the agencies failed to consider important data regarding unauthorized motorized use, the court further held that reinitiation of consultation under the ESA was required.

[10]No. 9:23-cv-00110, 2025 WL 3303917 (D. Mont. Mar. 31, 2025).
[11]*Id.* at *2.
[12]No. 24-cv-00174, 2025 WL 447719 (S.D. Ind. Feb. 10, 2025).
[13]*Id.* at *8.
[14]No. 22-cv-00091, 2025 WL 3006790 (D. Mont. Oct. 27, 2025).

Rescission of Conservation and Landscape Health Rule. Passed by the BLM in June 2024, the Conservation and Landscape Health Rule created a “policy for the BLM to build and maintain the resilience of ecosystems on public lands by: (1) protecting the most intact, functioning landscapes; (2) restoring degraded habitat and ecosystems; and (3) using science and data as the foundation for management decisions across all plans and programs.”[15] The final rule was challenged in federal court by user groups and states that disagreed with the BLM’s contemporary approach to federal land management, and defended by conservation groups that claimed that the final rule was essential to improving the quality of those lands and delivering multiple uses to society in the future. While that litigation was pending, the second Trump Administration proposed rescission of the rule.[16] The public comment period on the proposed recission of the Final Rule closed on November 10, 2025.

Forest Provisions of the One Big Beautiful Bill. On July 4, 2025, Congress enacted H.R. 1, budgetary reconciliation legislation also known as the One Big Beautiful Bill Act.[17] Among the numerous policy measures in the legislation are important policy riders that direct federal forest management. First, between fiscal years 2026 through 2034, H.R. 1 requires the USFS to “sell” 250 million board feet (MMbf) of more timber than the quantity of timber volume sold in the prior fiscal year and requires BLM to sell 20 MMbf more timber than the prior fiscal year. Second, between fiscal years 2026 through 2034, the legislation requires USFS to enter into not fewer than 40 long-term timber sale contracts of at least 20 years in duration, and the BLM to enter into 5 such contracts. Finally, receipts from these timber sale contracts “shall be deposited in the general fund of the Treasury,”[18] and not shared with states and counties pursuant to numerous revenue-sharing statutes such as the 1908 Act[19] or the Oregon and California Lands Act of 1937,[20] marking a significant change in policy direction.

Executive Order 14308.[21] On June 12, 2025, President Trump issued Executive Order 14,308: Empowering Commonsense Wildfire Prevention and Response. The order calls for the consolidation of Department of the Interior (“DOI”) and USDA wildland fire programs to the maximum degree practicable. It also calls for the DOI and USDA to (1) expand and strengthen the use of partnerships, agreements, and compacts, and mutual aid capabilities that empower Federal, State, local, tribal, and community-driven land management that reduces wildfire risk and improves wildfire response; (2) develop and expand the use of other measurements to incentivize responsible land management and wildfire prevention, mitigation and response at the state and local levels; (3) develop a comprehensive technology roadmap to increase wildfire firefighting capabilities; and (4) promote the use of a risk-informed approach to develop new policies that remove barriers to preventing and responding to wildfires. The Executive Order also requires numerous agencies to consider measures that would improve wildfire mitigation, such as modifying or rescinding rules that prevent prescribed fires or use of fire retardant. The DOI is moving forward with the consolidation of fire management operations. In September 2025, Interior

[15]Conservation and Landscape Health, 89 Fed. Reg. 40,308 (May 9, 2024) (codified at 43 C.F.R. pt. 1600, 6100).
[16]Rescission of Conservation and Landscape Health Rule, 90 Fed. Reg. 43,990 (Sept. 11, 2025) (to be codified at 43 C.F.R. pt. 1600, 6100).
[17]Pub. L. No. 119-21, 139 Stat. 72 (2025).
[18]*Id.* § 50301(a)(3)(C), 139 Stat. at 147.
[19]16 U.S.C. § 500.
[20]43 U.S.C. § 2601.
[21]Exec. Order No. 14308, Empowering Commonsense Wildfire Prevention and Response, 90 Fed. Reg. 26,175 (June 12, 2025).

Secretary Doug Burgum promulgated Secretarial Order 3443[22] calling for the establishment of the Wildland Fire Service within Interior, an announcement joined by Agriculture Secretary Brooke Rollins.

Fix Our Forests Act.[23] Introduced on January 16, 2025, the Fix Our Forests Act aims to reduce wildfire threats, expedite the review of forest management projects, and implement other forest management practices. To address emergency wildfire risks the Act designates at-risk fireshed management areas; directs the USFS and U.S. Geological Survey to maintain a publicly available fireshed registry; and establishes assessments to be made which identify wildfire exposure risk, at-risk communities, and potential fireshed management projects. Review of forest management practices are expedited through revised NEPA procedures and collaborative tools to reduce wildfire risk and improve overall forest health. Finally, the Act creates other programs to protect communities in the wildland-urban interface; increase utility rights-of-way within forest lands; and research the benefits of biochar; and establish White Oak resiliency. After passing the House, the bill was sent to the Senate on April 10, 2025.[24] This bill was placed on the Senate Legislative Calendar on October 27, 2025, but has not passed the Senate vote.

Rescission of the Roadless Rule. In June 2025, the U.S. Department of Agriculture ("USDA") announced the rescission of the 2001 Roadless Area Conservation Rule.[25] The USDA characterized the Rule as overly restrictive, inconsistent with congressional intent, and at odds with the USFS's mandate to sustain the health, diversity, and productivity of the nation's forests and grasslands. The rescission will remove prohibitions on road construction, reconstruction, and timber harvest across nearly 59 million acres of inventoried roadless areas—about 30% of National Forest System lands—thereby enabling fire prevention activities and timber production. USDA also noted that 28 million acres of inventoried roadless areas are at high or very high wildfire risk and framed the repeal as shifting more decisions to local forest managers. USDA stated the action aligns with Executive Order 14192, Unleashing Prosperity Through Deregulation,[26] which directs agencies to reduce regulatory burdens and streamline regulatory processes.

Executive Order 14223.[27] Issued by President Trump in March 2025, Executive Order 14,223 directs the Secretary of Commerce to investigate under the Trade Expansion Act whether imports of timber, lumber, and derivative products threaten to impair national security. The order frames the wood products industry as critical to national defense and economic resilience and instructs the Secretary of Commerce to consult with the Secretary of Defense and other agencies. It also requires the Secretary of Commerce to evaluate domestic demand and capacity, foreign supply chain roles and subsidies, and the impacts of existing trade policies. Within 270 days, the Department of Commerce must report findings and recommend mitigation measures, which may include tariffs, export controls, incentives to increase domestic production, and permitting reforms.

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[22]U.S. Dep't of the Interior, Order No. 3443: Elevating and Unifying DOI's Wildland Fire Management Program (Sept. 10, 2025).

[23]H.R. 471, 119th Cong. (2025).

[24]*See* The Fix Our Forests Act and Options to Reduce Catastrophic Wildfire: Hearing to Review H.R. 471 Before the S. Subcomm. on Conservation, Forestry, Nat. Res., & Biotech of the S. Comm. on Agric., Nutrition, & Forestry, 119th Cong. 27 (2025).

[25]Press Release, U.S. Dep't of Agric., Secretary Rollins Rescinds Roadless Rule, Eliminating Impediment to Responsible Forest Management (June 23, 2025).

[26]Exec. Order No. 14192, Unleashing Prosperity Through Deregulation90 Fed. Reg. 9065 (Jan. 31, 2025).

[27]Exec. Order No. 14223, Addressing the Threat to National Security From Imports of Timber, Lumber, and Their Derivative Products, 90 Fed. Reg. 11,359 (Mar. 1, 2025).

Executive Order 14225.[28] Issued March 2025, Executive Order 14,225 directs the DOI and USDA to accelerate timber production and forest management on federal lands. The order calls for BLM and USFS to issue guidance on deploying tools and submit any legislative proposals to expand authorities within 30 days. Within 60 days, FWS and NOAA Fisheries must complete a strategy to streamline ESA section 7 consultations for USFS and BLM projects, including evaluating delegation options. Within 90 days, the DOI and USDA must propose 4-year targets for timber offered for sale. The order further requires completion of the Whitebark Pine rangewide programmatic consultation within 120 days, consideration and adoption of categorical exclusions to reduce NEPA timelines within 180 days, and establishment of new categorical exclusions for thinning and salvage within 280 days. It also calls for eliminating undue permitting delays and utilizing ESA emergency consultation provisions and the Endangered Species Committee to address obstacles to domestic timber infrastructure.

Secretary Memorandum 1078-006.[29] Issued in April 2025, this USDA memorandum makes an Emergency Situation Determination under section 40807 of the Infrastructure Investment and Jobs Act for 112,646,000 acres of National Forest System lands, comprising 66,940,000 acres rated very high or high wildfire risk and 78,800,000 acres designated under section 602 of the Healthy Forests Restoration Act as experiencing health decline, risk of tree mortality, or an imminent risk to public health, infrastructure, and safety (33,846,000 acres overlapping). The memo authorizes expedited emergency actions where at least half of treatment areas are within the designated acres. Authorized actions include salvage of dead or dying trees; commercial and noncommercial sanitation harvest to control insects or disease (including already infested trees); harvest of wind- or ice-damaged trees; reforestation and revegetation to restore forest species; removal of hazardous trees and fuels; restoration of water sources and infrastructure; and reconstruction or replacement of utilities and underground cables. Any required NEPA analysis for such actions is limited to the proposed action and the no-action alternative.

III. State Cases

In *Save Kaiwa Ridge v. Department of Land and Natural Resources*,[30] Dawn and Matthew Horn sought Hawaii Department of Land and Natural Resources ("DLNR") approvals to construct a single-family residence and forest management project on 36.89 acres of undeveloped land. The property consisted of 30.22 acres in a Conservation District, therefore the project required a conservation district use permit ("CDUP"). After preparing a Final Environmental Assessment ("FEA") that complied with approved Forest Stewardship and Conservation Plans, the DLNR Office of Conservation and Coastal Lands determined no significant environmental effects and issued a Finding of No Significant Impact ("FONSI"). The Environmental Court upheld the FONSI and concluded that the FEA was compiled in good faith. On appeal, SKR claimed that the FEA failed to disclose and assess all information required by Hawaii law. The Hawaii Court of Appeals affirmed the Environmental Court, holding that the FEA satisfied the Rule-of-Reason standard by adequately describing the project, evaluating impacts, discussing alternatives, and proposing mitigation measures. Furthermore, the FEA provided enough information for consideration of all environmental factors to render a reasoned decision, analyzed all

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[28]Exec. Order No. 14225, Immediate Expansion of American Timber Production, 90 Fed. Reg. 11,365 (Mar. 1, 2025).

[29]Sec'y of the U.S. Dep't of Agric., Memorandum No. 1078-006: Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands (Apr. 3, 2025).

[30]No. CAAP-22-0000261, 2025 WL 2436060, 574 P.3d 320 (Haw. Ct. App. Aug. 25, 2025) (table).

aspects of the project, and "sets forth sufficient information to enable the [DLNR and the Board] to consider fully the environmental factors involved and to make a reasoned decision."[31] Finally the appellate court held that the DLNR's FONSI was supported by substantial evidence.

In *Rodriguez v. Conservation Commission of Norwell*,[32] plaintiff James M. Rodriguez, challenged two enforcement orders related to a forest cutting plan he received from the Massachusetts Department of Conservation and Recreation. The plan allowed Rodriguiez to clear cut for commercial harvesting and perform non-commercial thinning. Because Rodriguez's work would be within a wetlands resource area and its buffer zone, the Norwell town counsel notified Rodriguez that he needed to file a notice of intent. Rodriguez sought to have the work deemed agricultural and exempt from the Wetlands Protection Act, which the Norwell Conservation Commission denied. Rodriguez appealed to the Massachusetts Department of Environmental Protection ("DEP"), which also found the work was not exempt. Rodriguez appealed. While the appeal was pending, DEP changed its position and determined that the work was agricultural and therefore exempt. The Office of Appeals and Dispute Resolution agreed. DEP then issued a determination in accord. After the DEP's determination, the Commission issued enforcement orders against Rodriguez, claiming that the plan had expired. Rodriguez alleged that the Commission's enforcement orders were arbitrary and capricious and conflicted with DEP's determination. But the Appeals Court of Massachusetts disagreed, holding that the enforcement orders related to work after the plan expired, while the DEP proceedings were only related to whether work conducted under the plan was exempt from the Wetlands Protection Act.

In *Public Utility District No. 1 of Snohomish County v. State*,[33] the Public Utility District No. 1 of Snohomish County ("PUD") and a PUD employee sued the State of Washington, Sierra Pacific Industries ("Sierra Pacific"), and Precision Forestry Inc. ("Precision Forestry") for negligence, gross negligence, and nuisance. The case arose when the PUD employee was seriously injured when trees that were left standing on state forestland from recent logging operations fell on his vehicle. The trees were left standing after Sierra Pacific and Precision Forestry logged within a riparian management zone ("RMZ"), which provides a buffer of trees near rivers and creeks. Washington's Forest Practices Act of 1974 provides immunity to forestland owners from liability when trees left standing within an RMZ fall and cause damage. The trial court granted summary judgment for defendants. The court of appeals reversed, holding that Sierra and Precision were not forestland owners and were thus not eligible for immunity. The Washington Supreme Court reversed again, holding that because Sierra Pacific and Precision Forestry have actual control of the land, they are forestland owners. Further, Sierra Pacific is a forestland owner because it had "a contractual right to harvest and sell the timber" and Precision Forestry, as Sierra Pacific's agent, had the same rights.[34] While neither party had the right to harvest timber within the RMZ, the court found that the immunity applies to any person who "ha[s] the right to dispose of *any* of the timber in a unit of forestland."[35]

[31]*Id.* at *4 (quoting Unite Here! Local 5 v. PACREP LLC, No. SCAP-22-00000601, 2025 WL 573299, at *14 (Haw. Feb. 21, 2025).
[32]No. 24-P-885, 2025 WL 1249388, 257 N.E.3d 916 (Mass. App. Ct. Apr. 30, 2025).
[33]562 P.3d 343 (Wash. 2025).
[34]*Id.* at 348.
[35]*Id.* at 349.

On August 26, 2025, the Washington Commissioner of Public Lands proposed a forest conservation plan to conserve 77,000 acres of state-owned forests.[36] The conserved lands will focus on older forests with the goal of having them "become the old growth forests of tomorrow."[37] The Commissioner plans to obtain authority to sell carbon credits on the conserved lands. Approximately 29,000 acres of state forest will remain available for logging. But the plan has faced criticism with some arguing that it will harm counties that depend on timber sale revenue.[38]

[36]Press Release, Wash. State Dep't of Nat. Res., Commissioner Upthegrove Takes Bold Step to Conserve Washington's Most Valuable Forests (Aug. 26, 2025).
[37]*Id.*
[38]Bellamy Pailthorp, New WA Lands Commissioner's Forest Conservation Plan Under Fire, KNKX PUB. RADIO (Sept. 11, 2025).

Chapter I: INDIGENOUS LAW
2025 Annual Report[1]

Calendar year 2025 was relatively quiet from the federal judiciary: while lower court results were mixed, there were no landmark decisions concerning tribes or Indigenous peoples. For its part, the United States Supreme Court considered longstanding Indian law precedents through two certiorari petition denials, although it remains to be seen whether the ideas expressed by the Justices will inject additional confusion into the practice area. Separately, Congress appeared to respect its special relationship with members of Indian tribes, excepting tribal members from the major spending cuts and policy changes of the large reconciliation package which defined an otherwise dormant legislative year. The federal executive branch appeared to take less consistent policy approach toward Indian country, instead paying individual and particularized attention to certain tribes in connection with the administration's policy or electoral goals. Notably, a bipartisan bill which would have enabled the Miccosukee Tribe of Indians to control environmental protection efforts within a portion of Everglades National Park drew the first veto of President Trump's second term.

I. JUDICIAL DEVELOPMENTS

A. United States Supreme Court

1. Veneno Jr. v. United States[2]

On November 10, 2025, Justice Neil Gorsuch dissented from the denial of certiorari in *Veneno v. United States*, urging the Court to overturn a longstanding precedent that held Congress possesses "plenary power" to legislate in Indian country. Defendant Quentin Veneno, Jr., a member of the Jicarilla Apache Tribe (Tribe), was tried and convicted under the Major Crimes Act (MCA)[3] for assaults that occurred in Indian country against another member of the Tribe. Veneno appealed to the United States Court of Appeals for the Tenth Circuit, which affirmed the United States District Court for the District of New Mexico's conviction. Veneno asked the Court to overturn its decision in *United States v. Kagama*[4] and declare the Major Crimes Act unconstitutional. The Supreme Court denied Veneno's Petition for Certiorari, and Justice Gorsuch, joined by Justice Thomas, dissented.

In his dissent from the denial, Justice Gorsuch wrote that *Kagama* should be overruled: "This Court is responsible for *Kagama*, and this Court holds the power to correct it. We should not shirk from the task."[5] The Supreme Court heard *Kagama* after Congress passed the MCA, in 1885, to determine whether Congress possessed the Constitutional authority to enact the law, which authorized the federal government to prosecute crimes committed by or against tribal members in Indian country.[6] The Supreme Court rejected

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[1]This Chapter, which addresses the year's significant cases and developments in Indigenous Law, was prepared by attorneys and staff of Hobbs, Straus, Dean & Walker, LLP, Oklahoma City, Oklahoma: William R. Norman, Jr., Michael D. McMahan, Jonathan Sutton, M. Vincent Amato, Zaine A. Ristau, Rachel M. Yost, and Winyan-Was'Te James.

[2]146 S. Ct. 52 (U.S. 2025) (Gorsuch, J., dissenting from denial of cert.), *denying cert.* to United States v. Veneno, 94 F.4th 1196 (10th Cir. 2024).

[3]18 U.S.C. § 1153.

[4]118 U.S. 375 (1896).

[5]*Veneno*, 146 S. Ct. at 53 (Gorsuch, J., dissenting).

[6]*See Kagama*, 118 U.S. 375.

the government's arguments that the Indian Commerce Clause of the Constitution[7] authorized Congress to enact the MCA because the act did not contain any reference to any kind of commerce.[8] Nonetheless, the Court relied on the "Doctrine of Discovery," as imported into federal law by Chief Justice John Marshall in the foundational and controversial "Marshall Trilogy" of Indian law cases.[9] Despite Tribes retaining "distinct, independent political communities" under the Doctrine of Discovery, Justice Gorsuch noted, the *Kagama* court held that the federal government owed a "duty of protection" to Tribes which comes with a corresponding "power" to legislate for Tribes' protection.[10]

Justice Gorsuch noted the *Kagama* court's conclusions lacked any textual support from the Constitution, and argued the *Kagama* decision conflicts with numerous Supreme Court precedents that hold Congress enjoys only limited and enumerated powers over sovereign and independent Tribes: "Yet, thanks to decisions like *Kagama*, this Court has also sometimes suggested that Congress enjoys plenary power to 'regulate virtually every aspect of the tribes.'"[11]

Justice Gorsuch, too, urged the Court to overturn *Kagama*'s plenary power precedent and to return to Tribes the power to address major crimes within their jurisdictions, noting that many Tribes already operate their own court systems.[12] Further, if a Tribe and the federal government agree that federal involvement in prosecutions is necessary, the Constitution permits that involvement through treaty, a practice Congress has not engaged in since 1871.[13] In closing, Justice Gorsuch compared *Kagama* to *Plessy v. Ferguson* and *Korematsu v. United States*, two of the Supreme Court's most notorious, and subsequently overruled, decisions, noting, "[a]nd, as with those cases, our plenary power decisions demand reconsideration if this Court is ever to bring coherence to the law and make good on its promise of fidelity to the Constitution."[14]

2. *Apache Stronghold v. United States*[15]

On May 27, 2025, Justice Neil Gorsuch dissented from the denial of certiorari in *Apache Stronghold v. United States*, decrying the United States Court of Appeals for the Ninth Circuit's en banc opinion,[16] which denied the religious freedom claims of Apache tribal members and approving the transfer of thousands of acres of land to a private company for copper mining. At issue in this case is the United States' transfer of Oak Flat – a sacred site for several Apache tribes – to a privately owned mining company for mining development. Oak Flat came under federal ownership after the United States forced the Apache tribes onto reservations in the late 19th century.[17]

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[7] *See* U.S. CONST. art. I, § 8, cl. 3.
[8] *Kagama*, 118 U.S. at 378–79.
[9] *See* Johnson v. M'Intosh, 21 U.S. 543 (1823); Cherokee Nation v. Georgia, 30 U.S. 1 (1831), Worcester v. Georgia, 31 U.S. 515 (1832).
[10] *Veneno*, 146 S. Ct. at 54-55 (Gorsuch, J., dissenting) (quoting *Worcester*, 31 U.S. at 536; *Kagama*, 118 U.S. at 384).
[11] *Id.* at 55 (quoting United States v. Lara, 541 U.S. 193, 214–15 (2004) (Thomas, J., concurring)).
[12] *Id.* at 53.
[13] *Id.* at 56.
[14] *Id.* (discussing *Plessy,* 163 U.S. 537 (1896), and *Korematsu*, 323 U.S. 214 (1944)).
[15] 145 S. Ct. 1480 (2025) (Gorsuch, J., dissenting from denial of certiorari), *denying cert. to* 101 F.4th 1036 (9th Cir. 2024), *reh'g denied*, 146 S. Ct. 285 (2025).
[16] *Apache Stronghold,* 101 F.4th at 1036, *superseding* Apache Stronghold v. United States, 95 F.4th 608 (9th Cir. 2024).
[17] *Apache Stronghold*, 145 S. Ct. at 1482.

Oak Flat was largely protected from development and mining activities for more than 100 years, starting in 1905, with the creation of the Tonto National Forest. The site was specifically protected from mining in 1955, and the federal government continued to restrict mining at the site for decades, despite numerous efforts from members of Congress to transfer the land to private ownership.[18] In 2014, however, the National Defense Authorization Act contained "a last-minute rider" that authorized the government to transfer Oak Flat to Resolution Copper, a mining company, and revoked orders by Presidents Eisenhower and Nixon protecting the area.[19] In 2021, Apache Stronghold, a nonprofit organization, filed suit in the United States District Court for the District of Arizona to prevent the United States from conveying the land to Resolution Copper,[20] arguing, among other things, that the transfer imposed a substantial burden on their religious exercise in violation of the Religious Freedom Restoration Act (RFRA).[21]

Under RFRA, the federal government is prohibited from "substantially burdening a person's sincere exercise of religion unless that burden is the least restrictive means of furthering a compelling governmental interest."[22] Although acknowledging mining at the site would foreclose Apache people from utilizing the site for religious purposes, meaning the transfer would qualify as a substantial burden under RFRA, the Ninth Circuit ruled en banc that the transfer of Oak Flat did not offend RFRA.[23] Relying on the Supreme Court's decision in *Lyng v. Northwest Indian Cemetery Protective Association*,[24] the Ninth Circuit held where an action challenged under RFRA concerns "a disposition of government real property," RFRA's restrictions do not apply.[25]

Lyng, however, predates RFRA and was a First Amendment challenge, specifically, to the construction of logging roads near a sacred site. The *Lyng* court held the federal government is permitted to utilize its property without offending the free exercise of religion, so long as it does not "coerce individuals into acting contrary to their religious beliefs" and does not discriminate against or among religions.[26] Justice Gorsuch questioned the Ninths Circuit's reliance on *Lyng*, noting that *Lyng* was not based on the test for RFRA, which is more expansive than First Amendment protections for religious free exercise.[27]

Justice Gorsuch drew a comparison to the Endangered Species Act,[28] which courts have held may restrict the use of federal property when such use may have a negative impact on an endangered species,[29] writing: "If Congress went to such lengths to accommodate the snail darter, why would we suppose it offered less protection to people practicing an ancient faith?"[30]

[18] *Id.*
[19] 145 S. Ct. at 1483. *See also* Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113–291, § 3003, 128 Stat. 3292, 3732–41 (2014) (codified as amended at 16 U.S.C. § 539p).
[20] *Id.* at 1484.
[21] *See* 42 U.S.C. § 2000bb, *et seq.*
[22] *Apache Stronghold,* 145 S. Ct. at 1484 (discussing 42 U.S.C. § 2000bb-1(a), (b)).
[23] *Apache Stronghold,* 101 F.4th at 1063.
[24] 485 U.S. 439, 458 (1988).
[25] *Apache Stronghold,* 101 F.4th at 1044.
[26] *Lyng,* 485 U.S. at 450–51.
[27] *Apache Stronghold,* 145 S. Ct. at 1487.
[28] *See* 16 U.S.C. § 1531, *et seq.*
[29] Tenn. Valley Auth. v. Hill, 437 U.S. 153, 156, 158 (1978).
[30] *Apache Stronghold,* 145 S. Ct. at 1487.

B. *U.S. Circuit Courts of Appeals*

1. *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*[31]

In late 2024, the Standing Rock Sioux Tribe (Tribe) filed its most recent federal suit, in the United States District Court for the District of Columbia, with regard to the controversial Dakota Access Pipeline (DAPL) project;[32] here, the Tribe challenged DAPL's continued operation through, and potential contamination and pollution of, the Lake Oahe Reservoir (Reservoir).[33] The Reservoir is a sacred place for various Tribal Nations in the northern plains region and "holds special significance" to the Tribe.[34] The Tribe alleged violations of the National Environmental Policy Act, the National Historical Preservation Act, the Mineral Leasing Act, the Administrative Procedure Act, and the Clean Water Act against the U.S. Army Corps of Engineers (Corps) for its failure to assess DAPL's environmental and cultural impacts before granting permits to allow DAPL to cross the Reservoir.[35]

On March 28, 2025, the court dismissed the Tribe's request for injunctive relief as prematurely filed, stating "[n]o matter its frustration with [the Corps'] sluggish pace, [the Tribe] is not yet entitled to a second bite at the apple."[36] The court noted the Corps was in the process of, but had not yet finished, a Court-ordered environmental impact statement (EIS) for DAPL, and, fatal here, the court previously denied the Tribe's request for injunctive relief to halt DAPL's operation during the pendency of the EIS. The Tribe since appealed to the United States for the District of Columbia, arguing in its opening brief that the Corps "unlawfully withheld mandatory actions . . . allowing DAPL to continue operating on federal land without a valid easement or a legally compliant Facility Response Plan."[37] Briefing in the case should conclude in March 2026.[38]

2. *Osage Wind, LLC v. United States*[39]

This appeal concerns a decade-plus-long suit over the construction of a wind farm on land beneficially owned by the Osage Nation.[40] At the end of 2024, the United States

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[31]No. 24-2905 (D.D.C. Mar. 28, 2025), *appeal docketed*, Standing Rock Sioux Tribe v. United States No. 25-5198 (D.C. Cir. May 29, 2025).
[32]Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs, No. 1:24-cv-02905 (D.D.C. filed Oct. 14, 2024).
[33]*Id.* at 31. *See also* Treaty with the Sioux-Brule, *et al.*, Sioux Nation-U.S., Apr. 29, 1868, 15 Stat. 635.
[34]Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs, No. 24-cv-02905, 2025 WL 947469, at *2(D.D.C. Mar. 28, 2025)
(quoting Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs, 255 F. Supp. 3d 101, 114 (D.D.C. 2017)).
[35]Complaint, *supra* note 32, at 21–23, 25–30.
[36]*Standing Rock Sioux Tribe,* 2025 WL 947469, at *7.
[37]Appellant Brief at 10–11, Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs, No. 25-5198 (D.C. Cir. Nov. 5, 2025).
[38]*See Per Curiam* Scheduling Order, Standing Rock Sioux Tribe, No. 25-5198.
[39]United States v. Osage Wind*, LLC* (Osage Wind IV), No. 14-cv-704, 2025 WL 678039, at *9 (N.D. Okla. Mar. 3, 2025) (order staying judgment). *See also* United States v. Osage Wind*, LLC* (Osage Wind III), No. 14-cv-704, 2024 WL 5158188, at *32 (N.D. Okla. Dec. 18, 2024) (awarding trespass damages and ordering wind turbine removal).
[40]*See, e.g.*, United States v. Osage Wind*,* LLC, 871 F.3d 1078 (10th Cir. 2017), *rev'g* United States v. Osage Wind, LLC (Osage Wind I), No. 14-cv-704, 2015 WL 5775378 (N.D. Okla. Sept. 30, 2015) (granting Osage Wind's Motion for Summary Judgment).

District Court for the Northern District of Oklahoma ordered Osage Wind, LLC (Osage Wind) to remove 84 wind turbines it had erected on the Osage Mineral Estate by December 1, 2025.[41] Thereafter, Osage Wind filed a Motion to Stay the District Court's judgment pending appeal and appealed to the Tenth Circuit.[42] On March 3, 2025, the district court granted Osage Wind's motion for stay and ordered Osage Wind to post a $10,036,500 bond.[43] In late April 2025, the State of Oklahoma filed an amicus curiae brief in support of Osage Wind and asserted its interests in maintaining the windfarm.[44] Osage Wind's appeal of the mandatory ejection of the wind farm remains pending before the United States Court of Appeals for the Tenth Circuit.

3. *Tohono O'odham Nation v. U.S. Department of the Interior*[45]

This appeal concerned a transmission line construction project (Project) in the San Pedro Valley (Valley), an important cultural landscape for many Tribal Nations, including the Tohono O'odham Nation and the San Carlos Apache Tribe (Tribes).[46] As stated by the Tribes in their opening brief before the United States Court of Appeals for the Ninth Circuit: "For millennia, Tribal members have fostered deep relationships with the Valley's landscape, riparian ecosystem, flora, and fauna, making it an inseparable part of their respective communities' cultural identifies, collective histories, and continuing spiritual and religious observances."[47] The Tribes brought a lawsuit alleging, in part, that the Bureau of Land Management (BLM) violated the National Historical Preservation Act (NHPA) in connection with the Project, and that "BLM authorized this construction in the Valley by issuing Limited Notices to Proceed (LNTPs) before completing a lawful Section 106 consultation process[.]"[48] The United States District Court for the District of Arizona granted the federal defendants' motions to dismiss, and the Tribes appealed.[49]

NHPA section 106 requires federal agencies to "take into account the effect of [an] undertaking on any historic property."[50] Traditional cultural places or properties, like the Valley, are "eligible for inclusion in the National Register of Historic Places because of [their] association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community."[51]

On appeal, the Ninth Circuit noted the Project undisputedly qualified as an "undertaking" under the NHPA.[52] Moreover, BLM and the Tribes negotiated and executed a programmatic agreement (PA), in December 2014, to govern BLM's obligations under NHPA section 106.[53] The Ninth Circuit examined "whether [BLM] failed to meet certain

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[41] *Osage Wind III*, 2024 WL 5158188, at *105.
[42] *See* United States v. Osage, No. 25-5004 (10th Cir. Jan. 13, 2025).
[43] *Osage Wind IV*, 2025 WL 678039, at *9.
[44] *See* Osage Wind, LLC v. United States, No. 25-5004 (10th Cir. filed Apr. 23, 2025) (Brief as *Amicus Curiae* State of Oklahoma in Support of Plaintiff-Appellants).
[45] No. 24-3659 (9th Cir. June 11, 2024).
[46] Plaintiffs' Opening Brief at 1, Tohono O'odham Nation v. U.S. Dep't of the Interior, No. 24-3659 (9th Cir. July 22, 2024).
[47] *Id.*
[48] *Id.*; *see also* 54 U.S.C. § 300101 *et seq.*
[49] Tohono O'odham Nation v. U.S. Dep't of the Interior, 138 F.4th 1189, 1199 (9th Cir. 2025).
[50] *Id.* at 1193. *See also* 54 U.S.C. § 306108.
[51] Plaintiffs' Opening Brief, *supra* note 46, at 6 (quoting Pueblo of Sandia v. United States, 50 F.3d 856, 859 n.2 (10th Cir. 1995)).
[52] *Tohono O'odham*, 138 F.4th at 1193 n.2.
[53] *Id.* at 1195.

of its NHPA obligations under the PA"[54] and identified two such failures.[55] First, the Ninth Circuit noted BLM had knowledge that the Valley was a traditional cultural place to the Tribes, yet had failed to properly consult the Tribes as required.[56] Second, because BLM failed to properly identify the Valley as a traditional cultural place of the Tribes, the Ninth Circuit held the Tribes could plausibly assert a claim alleging BLM failed to properly identify all historic properties likely to be affected by the Project and work to avoid, minimize, or mitigate adverse effects.[57] Accordingly, the Ninth Circuit determined the district court erred in granting defendants' motions to dismiss, reversed the district court's decision, and remanded the case.[58]

B. U.S. District Courts

1. Grand Traverse Band of Ottawa and Chippewa Indians v. Burnette Foods[59]

In 2023, the Grand Traverse Band of Ottawa and Chippewa Indians and two Michigan environmental nonprofit corporations (Plaintiffs) filed suit against Burnette Foods, Incorporated (Burnette), a fruit processor, and alleged violations of both federal and state environmental laws, including section 301(a) of the Clean Water Act (CWA) and section 1701 of the Michigan Natural Recourses and Environmental Protection Act (MEPA).[60] Specifically, Plaintiffs contended that Burnette discharged wastewater from its fruit processing operations into Spencer Creek (Creek), a waterbody which flows into a protected wetlands area for approximately 10 months of the year.[61]

Citing in its complaint[62] a duty under its tribal constitution to "preserve and protect the natural resources" within its ancestral homeland,[63] the Grand Traverse Band found it necessary to bring action against Burnette "to protect and restore the species and habitats vital to the continued responsible utilization of these resources."[64] Notably, neither federal or state regulators investigated or enforced against Burnette's activity.[65] On November 12, 2025, the United States District Court for the Western District of Michigan ruled in favor of the Plaintiffs by granting their Motion for Summary Judgment and denying Burnette's cross-motion.[66] At issue, in part, was the CWA's applicability to the polluted waterbody.[67]

Employing the United States Supreme Court's two-part adjacency test established in *Sackett v. EPA*[68] for determining whether a court may assert jurisdiction over wetlands under the CWA, the court first found the Creek was "a relatively permanent waterbody"

[54] *Id.* at 1199.
[55] *Id.* at 1203.
[56] *Id.*
[57] *Id.* at 26.
[58] *Tohono O'odham*, 138 F.4th at 26.
[59] Grand Traverse Band of Ottawa & Chippewa Indians v. Burnette Foods, Inc., No. 1:23-cv-589, slip op. (W.D. Mich. Nov. 12, 2025).
[60] *Burnette Foods*, slip. op. at 1–2, 13–14; *see also* 33 U.S.C. § 1311(a); Mich. Comp. Laws § 324.1701.
[61] *Id*. at 5.
[62] *See* Compl., Grand Traverse Band of Ottawa & Chippewa Indians v. Burnette Foods, Inc., No. 1:23-cv-589 (W.D. Mich. June 7, 2024).
[63] *Id*. at 8; *see also* CONST. OF GRAND TRAVERSE BAND OF CHIPPEWA INDIANS pmbl.
[64] *Id*. at 8–9.
[65] *Id.*
[66] *Burnette Foods*, slip. op. at 1.
[67] *Id.* at 17.
[68] 598 U.S. 651 (2023).

and not "an intermittent stream" such that the Creek was waters of the United States.[69] Second, the court determined the Creek and wetland have "a continuous surface connection" and are, therefore, indistinguishable.[70] Finding the two-part adjacency test to have been met, the court determined Plaintiffs' met their burden to establish that Burnette added a pollutant to navigable waters from a point source without a proper permit, in violation of the CWA.[71]

Regarding the MEPA claim, the court held that Plaintiffs "convincingly satisfied their prima facie case" as Burnette's "conduct 'has, or is likely to pollute, impair, or destroy the air, water or other natural resources.'"[72] Specifically, the court found it sufficient that Burnette violated the terms of its state Groundwater Discharge Permit by discharging pollutants into surface water.[73]

2. *Cook Inletkeeper v. U.S. Army Corps of Engineers*[74]

On May 20, 2025, Plaintiffs filed suit in the United States District Court for the District of Alaska, alleging that the U.S. Army Corps of Engineers (Corps) did not comply with the Clean Water Act (CWA),[75] the Endangered Species Act,[76] or the National Environmental Policy Act (NEPA)[77] when granting a permit for Contango Ore, a private company, to expand its mining operations.[78] Among various Plaintiffs, the Chickaloon Native Village (Tribe) alleges that Defendants permitted the project without proper tribal consultation, a full NEPA review, including an assessment of potential risk of acid rock drainage and contaminants leaching, or compliance with CWA requirements.[79] The Tribe alleges that the Corps' failure threatens an immediate risk to the Tribe's cultural, economic, moral, and other interests.[80]

3. *United States v. ACF Industries, LLC*[81]

On October 23, 2025, the United States District Court for the District of Oregon approved two settlement agreements that resolved a nearly two-decades-long effort to hold a slew of companies responsible for polluting the Willamette River (River).[82] In 2010, the federal government, the State of Oregon, and five tribal governments joined forces to leverage the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or Superfund, to address centuries of oil, chemical manufacturing, and wood

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[69] *Burnette Foods*, slip op. at 25.
[70] *Id.* at 26.
[71] *Id.* at 17, 35 (citing Tenn. Clean Water Network v. Tenn. Valley Auth., 905 F.3d 436, 439 (6th Cir. 2018)).
[72] *Id*. at 39 (citing Dwyer v. City of Ann Arbor, 261 N.W.2d 231, 236 (Mich. Ct. App. 1977)).
[73] *Id.*
[74] Compl., Cook Inletkeeper v. U.S. Army Corps of Engineers, No. 3:25-cv-00097 (D. Alaska May 20, 2025).
[75] 33 U.S.C. §§ 1251–1387.
[76] 16 U.S.C. §§ 1531–1544.
[77] 42 U.S.C. §§ 4321–4370.
[78] Compl., Cook Inletkeeper v. U.S. Army Corps of Engineers, No. 3:25-cv-00097 at ¶ 5 (D. Alaska May 20, 2025).
[79] *Id.* ¶¶ 1–15.
[80] *Id*. ¶ 15.
[81] No. 3:23-cv-1603-SI (D. Or. Oct. 23, 2025).
[82] *Id.* at 5, 30.

treatment runoff in the River.[83] The government plaintiffs and nearly all defendants were in agreement with one of the two proposed CERCLA consent decrees, which required the polluting companies to make payments for habitat restoration and ecological testing, among other ecosystem improvement projects.[84] The Court found that the consent decrees were not in conflict with the two "major policy concerns of CERCLA" because they ensured the federal government response to "the release of oil and other chemicals into" the River was prompt and effective and the defendants bore "the cost and responsibility of remedying" the ecological damage to the River.[85]

C. State Courts

1. Michigan v. Caswell[86]

Pursuant to the 1836 Treaty of Washington (1836 Treaty), over a dozen bands of Indian tribes collectively referred to the Ottawa (or Odawa) and Chippewa Nations ceded 14 million acres of land on Michigan's eastern Upper Peninsula and western Lower Peninsula to the federal government in exchange for the rights to hunt and fish on the ceded lands.[87] While a later 1855 Treaty with the Ottawa and Chippewa dissolved several Chippawa and Odawa tribes, the treaty did not alter the fishing rights guaranteed under the 1836 Treaty.[88] To resolve various hunting and inland fishing rights disputes that followed, in 2007, the Michigan Department of Natural Resources (DNR) entered a consent decree with the five federally recognized tribes (Consent Decree) DNR viewed as the successors to the 1836 Treaty. The Consent Decree allows those five tribes to regulate their own hunting and fishing seasons and methods, including spear fishing for tribal members.[89]

In this case, the defendant, Walter Caswell, was spear fishing on lands subject to the Consent Decree when a DNR officer cited him for fishing in a trout stream both out of season and by illegal methods. While Mr. Caswell possessed a state fishing license, the license did not grant him the right to spear fish or fish out of season. Mr. Caswell, however, did also have a tribal fishing license, issued by the Mackinac Tribe of Odawa (Tribe), which permitted spear fishing and had no seasonal limitations. Based on his tribal membership and fishing license, Mr. Caswell filed to dismiss the charges. Michigan opposed the motion, asserting that the Tribe was not among the five federally recognized tribes whose hunting and fishing rights were protected under the 1836 Treaty, and that the Tribe was not a party to the Consent Decree.[90]

Following a hearing that included testimony regarding the history of the peninsula area tribes and Mr. Caswell's own ancestry, the state district court dismissed the charges. The state circuit court, however, reversed in favor of Michigan, observing the Tribe was not federally recognized.[91] But in 2021, the Michigan Court of Appeals vacated the reversal and remanded the case back to the state district court for an evidentiary hearing to determine whether the Tribe "is a successor in interest to a signatory tribe of the 1836

[83] *Id*. at 8. *See also* 42 U.S.C. §§ 9601–9675.
[84] United States v. ACF Indus., LLC, No. 3:23-cv-01603-SI, slip op. at 14–15 (D. Or. Oct. 23, 2025).
[85] *Id*. at 28 – 29 (citing United States v. Cannons Eng'g Corp., 899 F.2d 79, 90–91 (1st Cir. 1990)).
[86] Michigan v. Caswell, No. 368232, slip op. (Mich. Ct. App. Nov. 24, 2025).
[87] *Caswell*, slip op. at 2 (citing Michigan v. LeBlanc, 248 N.W.2d 199 (Mich. 1976)).
[88] *Id.* (citing Mackinac Tribe v. Jewell, 829 F.3d 754, 755 (D.C. Cir. 2016); *LeBlanc*, 248 N.W.2d at 212.
[89] *Id.*
[90] *Id.*
[91] *Id.* at 3.

treaty" based on its determination that the current federal recognition status of a tribe does not affect previously secured treaty rights, including fishing rights, under the 1836 Treaty.[92]

On remand, in 2022, the state district court determined that Mr. Caswell's great-grandmother was named in the 1836 Treaty and that the Tribe had continued to exist in some form since 1836. Thus, the state district court again dismissed the charges.[93] The state circuit court affirmed the judgment in favor of Mr. Caswell, finding no clear error in the Court's determination, and, confirming de novo the Tribe's status as a successor in interest to the 1836 Treaty. On November 24, 2025, the Michigan Court of Appeals affirmed.[94]

II. Legislative and Executive Developments

A. The One Big Beautiful Bill[95]

In aligning with President Trump's preference that his administration's domestic policy agenda be implemented through a single legislative act or, a "big, beautiful bill," the U.S. House of Representatives introduced H.R. 1 in May 2025.[96] Initially given the short title "One Big Beautiful Bill Act" (OBBBA),[97] the 900-page omnibus reconciliation package contained numerous tax reforms and federal spending policy changes, including: new tax deductions for overtime pay and service industry tips;[98] a gradual discontinuation of many Inflation Reduction Act environmental tax credits which promoted renewable energy development over fossil fuel dependence;[99] and a tenfold funding increase for U.S. Immigration and Customs Enforcement,[100] making the U.S. Department of Homeland Security subagency the largest and highest-funded federal law enforcement agency.

The OBBBA also made significant cuts to, and added or heightened eligibility requirements for, several federal public assistance programs, including Medicare, Medicaid, and the Children's Health Insurance Program,[101] as well as the Supplemental Nutrition Assistance Program (SNAP).[102] Congress, however, categorically excluded tribal members from many of the most onerous new requirements, in recognition of its unique relationship with Indian tribes and tribal members. While the OBBBA removed exemptions which enabled homeless individuals, veterans, young adults aging out of foster care, and persons aged 55–65 to participate in SNAP without working at least 20 hours per week, the Act also newly excepted Indians from the work requirements altogether.[103] Additionally, the OBBBA established a similar work requirement for individuals receiving

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[92] *Id.* at 4 (*citing* Michigan v. Caswell, 969 N.W.2d 538, 546, 547 (2021) ("the Mackinac Tribe's nonrecognition status has no bearing on whether it is entitled to exercise treaty fishing rights . . .").
[93] *Id.* at 5–7.
[94] *Id.* at 8, 10–13.
[95] Pub. L. No. 119-21, 139 Stat. 72 (2025) (adjusting appropriations and amending scattered sections of titles 7, 8, 12, 15, 16, 20, 22, 26, 30, 42, 43, and 47 of the United States Code).
[96] *See* For the People Act of 2025, H.R. 1, 119th Cong. § 1 (as introduced May 20, 2025).
[97] *Id.* § 1. The U.S. Senate later amended the bill, removing the short title, in July 2025.
[98] Pub. L. No. 119-21, §§ 70201, 70202 (codified at 26 U.S.C. §§ 224–225 (2024)).
[99] *Id.* §§ 70501–70515 (amending 26 U.S.C. §§ 25C, 25D, 25E, 30C, 30D, 45L, 45U, 45V, 45W, 45X, 45Y, 48C, 48E, 168, 179D).
[100] *Id.* §§ 90003, 100052.
[101] *Id.* §§ 71103–71203 (amending 42 U.S.C. §§ 1396a, 1396b, 1396p).
[102] *Id.* §§ 10102, 10108 (amending 7 U.S.C. § 2015 (2024)).
[103] *Id.* § 10102 (amending 7 U.S.C. § 2015 (2024)).

health insurance through Medicaid expansion programs under the Affordable Care Act; again, Congress excluded Indians from the work requirements.[104]

B. Government Reform Executive Actions

Upon returning to the White House in January 2025, President Trump immediately issued a record-breaking number of executive orders and presidential memoranda aimed at implementing administration policy goals. While none of these initial presidential actions directly referenced Indian affairs, policy changes in accordance with these actions has broadly impacted the provision of government services, including native human services programs, to Indian country.

First, President Trump signed a series of executive orders to remove diversity, equity, and inclusion (DEI) considerations from federal government practice, whether through eliminating agency programs[105] or revising federal hiring policies.[106] While U.S. Supreme Court precedent establishes that Indian status is not a racial classification, and instead is a political classification,[107] written guidance confirming tribal exclusion from DEI elimination efforts has been generally nonexistent. For this reason, uncertainty has persisted, for example, with regard to tribal government inclusion in the Small Business Administration's Business Development Program and Indian preference in federal hiring.

Second, President Trump's government efficiency efforts – spearheaded by the reorganization and renaming of the U.S. Digital Service as the U.S. DOGE Service,[108] a federal hiring freeze,[109] a federal agency spending freeze,[110] and large-scale federal workforce reductions in force[111] – failed to categorically exclude Indian services agencies from the orders' severe restrictions, including the U.S. Department of the Interior's Bureau of Indian Affairs and Bureau of Indian Education, the U.S. Department of Health and Human Services' Indian Health Service, and the U.S. Department of Housing and Urban Development's Office of Public and Indian Housing, among many others.

C. Lumbee Fairness Act[112]

Since 1885, the State of North Carolina has recognized the Lumbee people as an Indian tribe and,[113] starting in 1956, federal law acknowledged the Lumbee Tribe as well; however, in doing so, Congress also determined to foreclose federal benefits or Indian status – the hallmarks of what is known as "federal recognition" – from both the tribe and its members.[114] For 70 years, Lumbee attempts to overcome the 1956 Act and obtain federal recognition were generally unsuccessful, in no small part due to opposition from

[104]*Id.* § 71119 (amending 42 U.S.C. § 1396a (2024)).
[105]*See* Exec. Order No. 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing, 90 Fed. Reg. 8,339 (Jan. 29, 2025).
[106] *See* Exec. Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8,633 (Jan. 31, 2025).
[107]Morton v. Mancari, 417 U.S. 535, 553–54 (1974).
[108]*See* Exec. Order No. 14158, Establishing and Implementing the President's "Department of Government Efficiency", 90 Fed. Reg. 8,441 (Jan. 29, 2025).
[109] *See* Memorandum on Hiring Freeze, 90 Fed. Reg. 8,247 (Jan. 28, 2025).
[110] *See* Exec. Order No. 14222, Implementing the President's "Department of Government Efficiency" Cost Efficiency Initiative, 90 Fed. Reg. 11,095 (Mar. 3, 2025).
[111] *See* Exec. Order No. 14210, 90 Fed. Reg. 9,669 (Feb. 14, 2025).
[112]National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119–60, § 8803, ___ Stat. ___, – (2025).
[113]1885 N.C. Sess. Laws 82.
[114]Act of June 7, 1956, ch. 375, 70 Stat. 254.

other federally recognized Indian tribes.[115] And as recently as 2024, a piece of bipartisan legislation titled the Lumbee Fairness Act passed in the U.S. House of Representatives before ultimately stalling in the U.S. Senate.[116]

Leading up to the 2024 presidential election, Donald Trump made federal recognition of the Lumbee Tribe a campaign promise.[117] Following election, and just three days into his second term, President Trump issued a presidential memorandum declaring "it is the policy of the United States to support the full Federal recognition, including the authority to receive full Federal benefits, of the Lumbee Tribe of North Carolina."[118] The memorandum directed the U.S. Department of the Interior (Interior) to review the processes governing federal recognition and to submit to the president "a plan to assist the Lumbee Tribe in obtaining full Federal recognition."[119]

Correspondingly, the Lumbee Fairness Act was reintroduced in both the U.S. House of Representatives and U.S. Senate in January 2025,[120] and a Senate hearing was held for the bill on November 5, 2025. Notably, Interior testified that it preferred Congressional action, explaining that the agency's administrative pathway to federal recognition, known as the "Part 83" or federal acknowledgement process, was ill-suited for the Lumbee Tribe, on account of the 1956 act.[121]

On December 10, 2025, the U.S. House of Representatives included the Lumbee Fairness Act as a rider to the annual National Defense Authorization Act (NDAA).[122] Within eight days' time, the 3,000-page NDAA passed both chambers of Congress and was signed by President Trump; with the NDAA becoming law, the Lumbee Tribe became the 575th federally recognized tribe in the United States.[123]

D. Miccosukee Reserved Area Amendments Act[124]

In 1998, the Miccosukee Reserved Area Act (MRAA) became law, establishing a "Reserved Area" within Everglades National Park (the Everglades) for the perpetual use and occupancy of the Miccosukee Tribe of Indians of Florida (Tribe) while transferring certain internal government affairs and environmental protection responsibilities within the Reserved Area to the Tribe.[125] In 2025, H.R. 504 – an uncontroversial two-page amendment to the MRAA – was passed by voice vote in both the U.S. House of Representatives and U.S. Senate.[126] The act called for an expansion to the Reserved Area

[115] *See* James Ennis Street, *Federal Recognition of Native American Tribes in the United States and the International Right to Self-Determination: Why Congress Should Recognize the Lumbee Tribe*, 33 DUKE J. OF COMP. & INT'L L. 121, 129–137.
[116] H.R. 1101, 118th Cong. § 2 (2024).
[117] *See* WHITE HOUSE, *Fact Sheet: President Donald J. Trump Directs Administration to Advance Lumbee Tribe Recognition* (Jan. 23, 2025).
[118] Memorandum on Federal Recognition of the Lumbee Tribe of North Carolina, 90 Fed. Reg. 8653 (Jan. 23, 2025).
[119] *Id.*
[120] *See* H.R. 474, 119th Cong. § 1 (as introduced, 2025); S. 107, 119th Cong. § 1 (as introduced, 2025).
[121] *Legislative Hearing on S. 107 Before the S. Comm. on Indian Affs.*, 119th Cong. 1 (2025) (statement of the U.S. Dep't of the Interior).
[122] Pub. L. No. 119-60, § 8803.
[123] *NCAI Statement on Federal Recognition of the Lumbee Tribe of North Carolina*, NAT'L CONG. OF AM. INDIANS (Dec. 19, 2025).
[124] H.R. 504, 119th Cong. § 1 (2025) (enrolled).
[125] Pub. L. No. 105-313, 112 Stat. 2964 (1998).
[126] 171 Cong. Rec. H3230 (daily ed. July 14, 2025); 171 Cong. Rec. S8693 (daily ed. Dec. 11, 2025).

to return an inhabited tribal village and tribal cultural site within the Everglades to the Tribe, and directed the Secretary of the Interior to work with the Tribe to protect the village from flooding.[127] Congress chose to expand the Tribe's Reserved Area due to the Tribe's track record of successful Everglades ecosystem management; in the words of a bill sponsor, "[f]or generations, the [Tribe] has served as a responsible steward of the fragile environment. [The Tribe's] leadership in conservation, water management, and environmental protection has helped preserve the natural beauty, the biodiversity, and the cultural heritage of south Florida. This bill is about fairness and conservation."[128]

Despite bipartisan support for the MRAA amendment, on December 29, 2025, the bill received the first veto of President Trump's second term. President Trump's veto message detailed his position that the Tribe "actively sought to obstruct reasonable immigration policies that the American people decisively voted for...."[129] The presidential veto, therefore, appeared to be retribution for the Tribe's participation in ongoing federal litigation which was initially successful in halting the construction and operation of an immigration detention center in the Everglades sometimes referred to as "Alligator Alcatraz."[130] On January 8, 2026, the president's veto of the MRA amendment was sustained after only a simple majority, and not the necessary two-thirds majority, voted in favor of veto override.[131]

[127] H.R. 504, 119th Cong. §§ 2–3 (2025).
[128] 171 Cong. Rec. H3230 (daily ed. July 14, 2025) (statement of Rep. Gimenez).
[129] 171 Cong. Rec. H6136 (daily ed. Jan. 2, 2026) (message from the President).
[130] *See* Friends of the Everglades, Inc. v. Noem, 796 F. Supp. 3d 1234, 1247, 1248–49 (S.D. Fla. 2025) (detailing the Tribe's proximity to, and use of the lands near, the facility).
[131] 172 Cong. Rec. H211-12 (daily ed. Jan. 8, 2026).

Chapter J: IN-HOUSE COUNSEL
2025 Annual Report[1]

I. California's Climate Disclosure Laws (SB 261 and SB 253): Litigation, Legislative, and Agency Updates,

California's Climate Disclosure laws (SB 261(2023) and SB 253(2023)), passed in 2023, require U.S. companies doing business in the state to disclose climate-related financial risks and greenhouse gas emissions, if their total annual revenue for the prior fiscal year exceeds certain thresholds.

The Chamber of Commerce and other business and trade organizations challenged SB 261 and SB 253 alleging violations of the First Amendment, Supremacy Clause, and constitutional limitations on extraterritorial regulation.[2] The United States Court of Appeals for Ninth Circuit granted the Chamber of Commerce's injunction pending appeal for SB 261.[3] With the Ninth Circuit's recently issued order, covered entities under SB 261 are temporarily relieved from that statute's obligations pending a final ruling on the merits.

California's Air Resources Board (CARB) is tasked with enforcing SB 261 and SB 253 and provides updates and resources to assist entities with reporting requirements, including public workshops, checklists, templates, FAQs, and other information posted on the agency's website.

A. Overview of SB 261 and SB 253: Statutory Provisions

In October 2023, California's legislature passed two Climate Disclosure bills, SB 261 and SB 253, which were subsequently signed into law by Governor Gavin Newsom. SB 261 and SB 253 require U.S. entities doing business in California to disclose climate-related financial risks and greenhouse gas (GHG) emissions, respectively, if their total annual revenue for the prior fiscal year exceeds certain thresholds.[4] Key highlights from SB 261 and SB 253 are summarized below.

1. SB 261

SB 261 requires US-organized entities doing business in California with total annual revenues exceeding $500 million in the prior fiscal year to biennially disclose climate-related financial risks.[5] Under SB 261, covered entities may use one of several frameworks to meet disclosure requirements, including:

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[2] Complaint, U.S. Chamber of Com. of the United States v. Cal. Air Res. Bd., No. 2:24-cv-00801 (C.D. Cal. Jan. 20, 2024).

[3] U.S. Chamber of Com. v. Randolph, No. 25-5327, 2025 U.S. App. LEXIS 32205, at *2 (9th Cir. Nov. 18, 2025).

[4] Cal. Health & Safety Code § 38533(a)(4) (Westlaw through Ch. 2 of 2026 Reg. Sess.); Cal. Health & Safety Code § 38532(b)(2).

[5] Under SB 261, a climate-related financial risk is defined as a "material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder

(1) the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD 2017 or subsequent iterations[6]);
(2) the International Financial Reporting Standards Sustainability Disclosure Standards issued by the International Sustainability Standards Board (IRFS S2); or
(3) any report developed in accordance with any regulated exchange, national government, or other governmental entity, including a law or regulation issued by the United States government.[7]

TCFD and IRFS S2 outline disclosure of climate-related risks in four areas:

(1) Governance: "Management oversight of climate-related risks and opportunities, including a description pertaining to Board oversight of climate related risks and opportunities (if the reporting entity has a Board)"[8]
(2) Strategy: Identification of "climate-related risks and opportunities over the short-, medium-, and long-term"; "impacts of climate-related risks and opportunities on the organization's operations, strategy and financial planning"; and "resilience of an organization's strategy, taking into consideration future impacts of climate change under various climate scenarios"[9]
(3) Risk: "[A] qualitative description of: the process a reporting entity Management uses for identifying, managing, and assessing climate-related risks, and how those considerations and processes are integrated into an organization's overall risk management"[10]
(4) Metrics and Identification of "metrics and targets used to assess and manage Targets relevant climate-related risks and opportunities where such information is material"[11]

Entities deviating from the above standards must provide CARB with a reasonable basis for doing so. Under SB 261, entities are required to adopt measures to reduce and adapt to any identified climate-related financial risks.[12] But insurers are excluded from reporting requirements under SB 261.[13] To comply with SB 261, covered entities were initially required to report climate-related financial risks publicly on their websites on or before January 1, 2026, as written in the statute.[14] However, as will be discussed in the litigation updates section, the Ninth Circuit issued an order on November 18, 2025 temporarily pausing SB 261, which effectively relieves covered entities from SB 261 obligations pending a final ruling on the merits. Following its initial disclosure, a covered

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value, consumer demand, and financial markets and economic health." Cal. Health & Safety § 38533(a)(2).
[6]TCFD provides specific guidance for companies in the financial sector and those in the energy, transportation, materials and buildings, and agriculture, food, and forest products industries. For more information on TCFD, *see* generally TASK FORCE ON CLIMATE-RELATED FIN. DISCLOSURES, *Publications* (last visited April 9, 2026).
[7]Cal. Health & Safety § 38533(b)(3)(A).
[8]CAL. AIR RES. BD., *SB 253/261/219 Public Workshop: Regulation Development and Additional Guidance* 30 (Aug. 21, 2025).
[9]*Id.* at 31.
[10]*Id.* at 32.
[11]*Id.* at 33.
[12]Cal. Health & Safety § 38533(b)(1)(A)(ii).
[13]*Id*. § 38533(a)(4).
[14]*Id*. at (c)(1).

entity is required to make additional disclosures on a biennial basis.[15] Reporting under SB 261 may be consolidated at the parent company level.[16] As such, subsidiaries that independently qualify as covered entities need not submit a separate report. Covered entities in violation of SB 261 are subject to a fine of up to $50,000 per reporting year.[17]

2. SB 253

SB 253 requires U.S.-organized entities doing business in California with total annual revenues exceeding $1 billion in the prior fiscal year to publicly disclose direct GHG emissions (Scope 1),[18] indirect GHG emissions from consumed energy (Scope 2),[19] and indirect upstream and downstream GHG emissions (Scope 3)[20] on an annual basis.[21] All disclosures must be uploaded electronically through CARB's publicly available database.[22] Measurement and reporting requirements should conform to those established under the Greenhouse Gas Protocol.[23] SB 253 tasks CARB with developing and adopting regulations to implement the reporting program based on input from stakeholders, including government officials, climate experts, investors, consumer and environmental groups, and "reporting entities that have demonstrated leadership in full-scope GHG emissions accounting and public disclosure and GHG emissions reductions."[24]

Reporting obligations start in the year 2026 for Scope 1 and Scope 2 GHG emissions (for the prior fiscal year) and in the year 2027 for Scope 3 GHG emissions (for the prior fiscal year).[25] Under SB 253, disclosures must be independently assured.[26] This means that each reporting entity's disclosures must be independently verified by a third-party assurance provider. Initially, assurance providers were required to be approved by

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[15] *Id*. at (b)(1)(A).
[16] *Id*. at (b)(2).
[17] *Id*. at (e)(2).
[18]Under SB 253, Scope 1 GHG emissions refers to "all direct GHG emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities."; *See* Cal. Health & Safety § 38532(b)(3).
[19]Under SB 253, Scope 2 GHG emissions refers to "indirect GHG emissions from consumed electricity, steam, heating, or cooling purchased or acquired by a reporting entity, regardless of location." *See* Cal. Health & Safety § 38532(b)(4).
[20]Under SB 253, Scope 3 GHG emissions refers to "indirect upstream and downstream GHG emissions, other than Scope 2 GHG emissions, from sources that the reporting entity does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products." ; HEALTH & SAFETY § 38532(b)(5).
[21]HEALTH & SAFETY § 38532(c)(1).
[22]*Id*. (d)(2).
[23]HEALTH & SAFETY § 38532(c)(2)(A)(ii), For more information about the Greenhouse Gas Protocol, *see* generally JANET RANGANATHAN ET AL., WORLD BUS. COUNCIL FOR SUSTAINABILITY DEV. & WORLD RES. INST., THE GREENHOUSE GAS PROTOCOL: A CORPORATE ACCOUNTING AND REPORTING STANDARD (2004).
[24]HEALTH & SAFETY § 38532(c)(4-5).
[25]CAL. HEALTH & SAFETY § 38532(c)(2)(A)(i)(I-II).
[26]Under SB 253, assurance providers must be "third-party," "independent," and have "significant experience in measuring, analyzing, reporting, or attesting…in accordance with professional standards and applicable legal and regulatory requirements." CAL. HEALTH & SAFETY § 38532(c)(F)(i), (iv).

CARB.[27] However, as will be discussed in the legislative updates section, SB 219(2024) amended SB 253 to authorize, rather than require, CARB to contract with an emissions reporting organization to receive emissions disclosures and make those disclosures public on a digital platform.

According to CARB, verification entails a "systematic, independent, and documented process for evaluating a reporting entity's emissions data report against CARB's reporting procedures and methods for calculation and reporting of GHG emissions and product data."[28] As noted by CARB, verification is "[j]udged against a set standard and to a given level of assurance" with "[f]indings based on an examination of objective evidence."[29] For Scope 1 and Scope 2 GHG emissions, limited assurance is required beginning in the year 2026, while reasonable assurance[30] is required starting in the year 2030.[31] For Scope 3 GHG emissions, limited assurance is required beginning in the year 2030.[32] Reports prepared to satisfy international requirements (e.g., European Sustainability Reporting Standards, European Union Corporate Sustainability Reporting Directive, or International Financial Reporting Standards) can be submitted in lieu of requirements listed under SB 253 so long as they also meet SB 253 requirements.[33] Finally, administrative penalties up to $500,000 dollars are possible for noncompliance, including for entities that report late or not at all.[34] However, SB 253 carves out a safe harbor for Scope 3 GHG emissions: "penalties will not apply to any misstatements regarding Scope 3 GHG emissions that were made with a reasonable basis and disclosed in good faith, and until the year 2030, penalties will only be assessed on Scope 3 reporting for failures to disclose."[35]

B. Legislative Updates: SB 219 Amends SB 261 and SB 253

In September 2024, California passed SB 219 which amended SB 261. SB 219 removed SB 261's requirement that CARB contract with an emissions reporting organization in preparation of the biennial report on a covered entity's disclosures.[36] Covered entities are still required to pay an annual fee to cover CARB's costs of administering and implementing the law; however, SB 219 amended SB 261 such that the annual fee need not be paid at the same time an entity discloses its climate-related financial risks.

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[27] CAL. HEALTH & SAFETY § 38532(c)(1).
[28] Regulation Development and Additional Guidance, supra note 8, at 37.
[29] *Id.*
[30] CAL. CODE REGS. tit. 17, § 95102(a) (2026).
[31] CAL. HEALTH & SAFETY § 38532(c)(2)(F)(ii)
[32] *Id.*
[33] *Id*. at (c)(1)(D)(i).
[34] *Id*. at (f)(2)(A).
[35] *Id*. at (f)(2)(A-C).
[36] Under SB 261, the biennial report on a covered entity's disclosures may include an "analysis of the systemic and sector-wide climate-related risks facing the State of California based on the contents of climate-related financial risk reports (e.g., potential impacts on economically vulnerable communities) or gathering input on required disclosure from representatives of sectors responsible for reporting climate-related financial risks, state agencies responsible for oversight of reporting sectors, investment managers, academic experts, standard setting organizations, climate and corporate sustainability organizations, labor union representatives whose members work in impacted sectors, and other stakeholders." CAL. HEALTH & SAFETY § 38533(d)(2).

While SB 253 initially required CARB to adopt implementing regulations no later than January 1, 2025, SB 219 extended this deadline by six months to July 1, 2025. Additionally, SB 219 amended SB 253 to require reporting entities to publicly disclose Scope 3 GHG emissions on a schedule specified by CARB, rather than within 180 days after disclosing Scopes 1 and 2 GHG emissions. Pursuant to SB 219, reporting under SB 253 may be consolidated at the parent company level. Accordingly, subsidiaries that independently qualify as a reporting entity need not submit a separate report. Similar to provisions listed under SB 261, payment of the annual fee is also now delinked from the filing of disclosure for reporting entities. Finally, when developing a reporting program, SB 219 amended SB 253 to authorize, rather than require, CARB to contract with an emissions reporting organization to receive emissions disclosures and make them public on a digital platform. Appendix A summarizes key highlights of SB 261 and SB 253 following passage of SB 219.

C. Litigation Updates: Chamber of Commerce v. California Air Resources Board

In January 2024, the US Chamber of Commerce, the California Chamber of Commerce, and other business and trade organizations (Chamber) challenged the constitutionality of SB 261 and SB 253 in the United States District Court for the Central District of California (*Chamber of Commerce of the United States of America, et al. v. California Air Resources Board, et al.*) The complaint[37] challenges California's Climate Disclosure laws on grounds that they violate: (1) the First Amendment of the US Constitution by impermissibly compelling speech, (2) the Supremacy clause since they are preempted by the Clean Air Act, and (3) constitutional limitations on extraterritorial regulation by regulating interstate commerce in violation of the Dormant Commerce Clause.

In November 2024, the District Court denied Chamber's motion for summary judgment on the First Amendment claims stated in the complaint with leave to refile finding that the Court did not yet have the necessary information to perform a "fact-driven" First Amendment analysis.

In February 2025, the District Court held that Chamber failed to identify language in the US Constitution or the federal Clean Air Act preempting SB 261. Accordingly, the District Court dismissed Chamber's Supremacy Clause challenge to SB 261 with prejudice.[38] Chamber's extraterritoriality claims were also dismissed by the District Court without prejudice on grounds that Chamber failed to plausibly allege a significant burden on interstate commerce.[39]

In August 2025, the District Court denied Chamber's motion for a preliminary injunction challenging SB 261 and SB 253 on First Amendment grounds, holding that both statute's disclosure requirements are reasonably related to substantial government interests, including providing investors with climate information, promoting emissions reductions, and informing investors about the impacts of climate-related risks on their investment choices. While the District Court found that SB 261 an SB 253 regulate commercial speech and are subject to First Amendment scrutiny, the Court concluded that Chamber is unlikely to succeed on the merits of their facial First Amendment challenge.

In September 2025, Chamber requested an injunction pending appeal from the Ninth Circuit, citing "imminent and irreparable harm" from SB 261 and SB 253's rapidly approaching compliance deadlines.

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[37]763 F.Supp.3d 1005(C.D. Cal. 2025).
[38]*Id.* at 1023.
[39]*Id.* at 2026-27.

In November 2025, the Ninth Circuit granted Chamber's motion for an injunction pending appeal for SB 261 only.[40] Following the Ninth Circuit's order, covered entities under SB 261 are temporarily relieved from that statute's obligations pending a final ruling on the merits. The Ninth Circuit did not agree to similarly halt SB 253. As will be discussed in the agency updates section, CARB has proposed a deadline of August 10, 2026 for Scope 1 and Scope 2 GHG emissions reporting under SB 253. CARB is reviewing the Ninth Circuit's order and may issue updated SB 261 guidance in the immediate future. The case is now scheduled for oral arguments on January 9, 2026.

D. Agency Updates: CARB's Public Engagement and Guidance

1. Information Solicitation and Enforcement Notice

In December 2024, CARB solicited public comments[41] to inform its implementation of California's Climate Disclosure laws and clarify vague and ambiguous provisions of SB 261 and SB 253. Specifically, questions focused on the meaning of the phrase "doing business in California" (i.e., is the test overinclusive and covering entities with no more than a de minimis nexus to California?) and clarification of protocols/standards (i.e., are protocols and standards duplicative of requirements under international law? can they be streamlined?), costs and logistics of data reporting (i.e., can reporting be standardized for Scopes 1 through 3 GHG emissions?), and reporting timelines/deadlines (i.e., are reporting timelines and deadlines realistic, especially for companies who are not subject to international tracking and reporting requirements?).

In December 2024, CARB also released an Enforcement Notice.[42] The Notice recognized that SB 219 extended CARB's deadline to adopt regulations by six months (from January 1 to July 1, 2025) without any corresponding delay in compliance deadlines for reporting entities. According to the Enforcement Notice, CARB will not initiate enforcement actions against entities subject to SB 253 for inaccurate or incomplete reporting of Scope 1 and Scope 2 GHG emissions in their first reporting period so long as an entity demonstrates a "good faith effort to comply with the requirements of the law and retain all data relevant to emissions reporting for an entity's prior fiscal year."[43] Further, pursuant to the Notice, CARB will allow reporting entities to use Scope 1 and Scope 2 GHG emissions data that they already possess or are collecting as of the date of the Notice (December 5, 2024). Finally, the Enforcement Notice acknowledges that CARB will continue to provide updates related to subsequent reporting cycles.

2. Virtual Public Workshops

On May 29, August 21, and November 18, 2025, CARB held virtual public workshops on SB 261 and SB 253. The tables below summarize highlights from the public

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[40] Chamber of Commerce of United States et. al. v. Sanchez, 25-5327 (9th Cir. Nov. 18, 2025).

[41] For more information about CARB's Information Solicitation, see generally CAL. AIR RES. BD., *Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation Senate Bills 253 and 261, as amended by SB 219* (Dec. 16, 2024).

[42] For more information about CARB's Enforcement Notice, See generally CAL. AIR. RES. Bd., *The Climate Corporate Data Accountability Act Enforcement Notice* (Dec. 5, 2024).

[43] According to CARB's December 2024 Enforcement Notice, "good faith efforts" relate to use of the best available information, including information from past fiscal years when making climate-related financial risk disclosures. *Id.* at 1.

workshops, including key definitions (Table 1), proposed exemptions (Table 2), and timeline and fee reporting updates (Table 3).

Table 1: Definitions of Revenue, Doing Business in California, and Subsidiary

Workshop Date	Revenue	Doing Business in California	Subsidiary
November 18, 2025[44]	CARB will incorporate California's Revenue and Tax Code (RTC) §25120(f)(2) definition.[45]	CARB will incorporate RTC §23101(a) and (b) definition,[49] applying minor modifications.	CARB will incorporate Title 17, California Code of Regulations §95833 definition.[52]

[44]For more information about the Public Workshop, *see* CAL. AIR RES. BD., SB *253/261/219 Public Workshop: Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs* (Nov. 18, 2025).

[45]"Revenue" is defined as "the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction that produces business income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code, as applicable for purposes of this part. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold." Cal. Rev. & Tax. Code § 25120(f)(2) (2009).

[49]An entity is considered as "doing business in California" if: "(a) It is actively engaging in any transaction for the purpose of financial or pecuniary gain or profit; and (b) Any one of the following conditions are met during any part of the reporting year: (1) The entity is organized or commercially domiciled in California; (2) Sales (as defined in RTC §§25120(e) or (f)) exceed the inflation adjusted threshold of $735,019.00 (for 2024). For these purposes, sales of the entity would include sales by an agent or independent contractor, and sales in California would be determined using the rules for assigning sales under RTC §§25135 through 25137; (3) The real property and tangible personal property of the entity in California exceed the lesser of the inflation adjusted threshold of $73,502.00 (for 2024) or 25% of the entity's real property and tangible personal property, with the value of property and the determination of whether property is in California to be determined using rules listed in RTC §§25129 to 25131 and RTC §25137; or (4) The amount paid in California for compensation (as defined in RTC §25120(c)) exceeds the inflation adjusted threshold of $73,502.00 (for 2024) or 25% of the total compensation paid by the entity. Compensation in California would be determined using the rules for assigning payroll in RTC§§ 25133 and 25137." Cal. Rev. & Tax. Code §23101(a-b) (2012).

[52]Subsidiary is defined as "a corporate association that exists when one entity has an ownership interest in or control over a second entity…The following indicia of control determine ownership or control: (1) greater than 50 percent of ownership of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other entity; (2) greater than 50 percent of common owners, directors, or officers of the other entity; (3) greater than 50 percent of the voting power of the other entity; (4) in the case of a partnership other than a limited partnership, greater than 50 percent of the interests of the partnership; (5) in the case of a limited partnership, greater than 50 percent of control over the general partner or greater than 50 percent of the voting rights to select the general partner; and (6) in the case of a limited liability corporation, greater than 50 percent of ownership in the other entity regardless of how the interest is held." Cal. Code Regs. tit 17, § 95833 (2024).

	For applicability, CARB will consider total gross receipts, regardless of whether revenue was generated within California.[46] According to CARB, gross receipts are verifiable in California Franchise Tax Board ("FTB") filings, including specific line items of entities' California tax filings (i.e., Schedule F, Line 1a of corporations' and S-corporations' tax filings on Form 100 and Form 100S, respectively, Line 1a of partnerships' tax filings on Form 565, and Schedule B, Line 1a of LLCs' tax filings on Form 568) as showing the amount of "total revenue."[47] To account for annual changes in revenue, CARB proposed assessing whether an entity meets the applicable annual revenue threshold using a two-year lookback period. Accordingly, an entity would only be required to report if "the lesser of [its]	CARB proposed omitting sections of the RTC §23101(b) definition relating to property holdings and payroll, because entities subject to SB 253 and SB 261 "should have a significant economic nexus within the State of California."[50] According to CARB, whether a company has sufficient in-state sales to be deemed as "doing business in California" can be verified in California FTB filings, referencing Schedule R-1, column (b) of entities' California tax filings (i.e., Form 100, Form 100S, Form 565 and Form 568 for corporations, S-corporations, partnerships and LLCs, respectively) for the amount of in-state sales.[51]	According to CARB, a subsidiary may request for a parent to report on the subsidiary's behalf; however, parent-subsidiary relationships do not determine which entities are regulated.[53] CARB recommends that inclusion criteria be assessed on an individual company basis: if a company meets the inclusion criteria thresholds, it is subject to SB 261 and/or SB 253.[54] Parent companies have the option to report on behalf of in-scope subsidiaries, even if the parent company is not subject to SB 261 and/or SB 253.[55] If a parent company and its subsidiaries file California taxes as a unitary business, then the revenue of the subsidiaries counts towards the revenue of the parent company as part of its gross receipts.[56]

[46] Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs, *supra* note 41, at 23.
[47] *Id.* at 21.
[50] *Id.* at 24.
[51] *Id.*
[53] Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs, *supra* note 41, at 26.
[54] *Id.* at 28.
[55] *Id.* at 29-30.
[56] Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs, *supra* note 41, at 29-30. *See also* CAL. AIR RES. BD., *California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs: Frequently Asked Questions Related to Regulatory Development and Initial Reports* (July 9, 2025).

	annual revenue for the two previous fiscal years" exceeded the applicable revenue threshold.[48]		
August 21, 2025[57]	CARB proposed to define "revenue" to mean "the total global amount of money or sales a company receives from its business activities, such as selling products or providing services," because the definition is consistent with metrics used by major data tracking and reporting industries (e.g., Dunn & Bradstreet, S&P, etc.).[58]	CARB proposed to define entities "doing business in California" as the entities listed on the California Secretary of State Business Entity database with "Active" status.[59]	CARB proposed identifying subsidiaries through evaluation of commercial databases, cross-referenced with the Secretary of State database and/or the Franchise Tax Board.[60]
May 29, 2025[61]	CARB proposed using California's Revenue and Tax Code (RTC) §25120(f)(2) definition[62] (for a discussion, see November 18, 2025 public workshop row above).	CARB proposed using California's Revenue and Tax Code (RTC) §23101(a) and (b) definition[63](for a discussion, see November 18, 2025 public workshop row above).	CARB proposed using California's Cap-and-Trade[64] definition.

Table 2: Proposed Exemptions

Workshop Date	Proposed Exemptions
November 18, 2025	(1) Federal, State and local government entities, and companies that are majority-owned by government entities (>50.00%),

[48]*See id.* at 23.
[57]For more information about the Public Workshop, *see* Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs, *supra* note 41.
[58]*Id.* at 14.
[59]*Id*. at 16.
[60]Id. at 17.
[61] For more information about the Public Workshop, *see* CAL. AIR RES. BD., *Kickoff Workshop: California Corporate Greenhouse Gas Reporting and Climate Related Financial Risk Disclosure Programs* (May 29, 2025).
[62]*Id*. at 25.
[63]*Id*. at 22.
[64]Under the California's Cap-and-Trade program, subsidiary is defined as "a business in which another company (the parent or holding company) owns more than 50% of its voting stock. A subsidiary has a different legal business name than its parent company. This corporate relationship implies that the parent company has a controlling interest and can influence the subsidiary's operations, management, and financial decisions, even though the subsidiary operates as a separate legal entity." *Id.* at 28. *See* Regulation Development and Additional Guidance, supra note 8, at 17.

	(2) Non-profit or charitable organizations that are tax-exempt under the Internal Revenue Code, (3) Entities whose only business in California is the presence of teleworking employees, and (4) Entities whose only business within California consists of wholesale electricity transactions.[65] CARB proposes to exempt insurance companies from both laws, even though the exemption for insurance companies is only explicit in the text of SB 261.[66]
August 21, 2025	(1) Nonprofits, (2) Companies whose only business in California is the presence of teleworking employees, (3) Government entities, and (4) California Independent System Operators or business entities whose only activity within the State of California consists of wholesale electricity transactions that occur in interstate commerce.[67]
May 29, 2025	N/A

Table 3: Timeline and Fee Reporting Updates

Workshop	Timeline	Fee Reporting
November 18, 2025	CARB proposed a first year Scope 1 and Scope 2 GHG emissions reporting deadline for SB 253 of August 10, 2026.[68]	CARB proposed a flat, per-entity fee structure: if a parent company is paying for all subsidiaries covered by a consolidated report, it will be invoiced based on the total number of in-scope entities in its corporate structure.[69] CARB stated that it will invoice companies after they file their first reports and after CARB finalizes its rulemaking on concepts such as "doing business in

[65]*See* Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs, *supra* note 41, at 31.
[66]*Id.*
[67]*See* Regulation Development and Additional Guidance, supra note 8, at 18.
[68]*See id.*
[69]*Id.* at 16.

		California" and "revenue."[70] CARB announced that it intends to make its SB 253 and SB 261 fee assessment on September 10, 2026.[71]
August 21, 2025	CARB proposed a first year Scope 1 and Scope 2 GHG emissions reporting deadline for SB 253 of June 30, 2026.[72] CARB stated that the agency will post a public docket on December 1, 2025 for entities to publish the public link to their SB 261 reports which will close on July 1, 2026.[73]	CARB stated that reporting entities with more than $1 billion dollars in revenue are subject to fees for both SB 253 and SB 261.[74] CARB estimated annual fees of $3,106 and $1,403 for SB 253 and SB 261 covered entities, respectively.[75]
May 29, 2025	N/A	N/A

3. Frequently Asked Questions, Preliminary List of Covered/Reporting Entities, and Draft Scope 1 & Scope 2 Emissions Reporting Template

a. Frequently Asked Questions Document

In July 2025, CARB released a document entitled "California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs: Frequently Asked Questions Related to Regulatory Development and Initial Reports."[76] The July 2025 FAQ document contains information related to CARB's regulatory development and information regarding submission of initial reports for SB 261 and SB 263. Additionally, the document rehashed information presented in the December 2024 enforcement notice and May 29, 2025 virtual public workshop. The July 2025 FAQ document was updated in November 2025 to incorporate up-to-date definitions of "revenue," "doing business in California," "parent-subsidiary," and "good faith efforts" as previously discussed at CARB's virtual public workshops and in other agency guidance.

The updated FAQ document also noted CARB plans to present an initial proposed draft regulation to the Board in the first quarter of 2026.[77] The initial rulemaking will

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[70]*Id.* at 6.
[71]See *id.* at 18.
[72]*Id.* at 34.
[73]Regulation Development and Additional Guidance, *supra* note 8, at 27.
[74]*Id.* at 22.
[75]*Id.* at 24.
[76]For more information about the July 2025 CARB FAQ Document, See CAL. AIR RES. BD., *California Corporate Greenhouse Gas Reporting And Climate-Related Financial Risk Disclosure Programs: Frequently Asked Questions About Regulatory Development And Initial Reports* (last updated Nov. 17, 2025).
[77]*Id. at* 1.

establish a fee program and a first year 2026 reporting deadline for SB 352 reports, including Scope 1 and Scope 2 GHG emissions reporting.[78] Under the initial rulemaking, CARB will propose a deadline of August 10, 2026 for entity reporting of Scope 1 and Scope 2 GHG emissions as discussed previously at the November 18, 2025 virtual public workshop.[79] Further, CARB plans on undergoing a public process for a second rulemaking in 2026 to address program requirements in 2027 and beyond.[80]

b. Preliminary List of Covered/Reporting Entities

In September 2025, CARB released a preliminary list of covered/reporting entities. At the November 2025 workshop, the agency stated the goal of the list is "to help estimate approximate numbers of entities potentially subject to [California's Climate Disclosure laws] for the purpose of estimating annual fees" and the list is not meant to operate as a "compliance tool."[81] CARB also acknowledged there were several issues with the list which was based on a third-party database and publicly available data at the time. Potential issues include duplicative and missing entries, major data holes, imprecise revenue estimates, and outdated information.[82] The preliminary list may have inadvertently omitted entities and CARB's November 2025 FAQ document states that "each potentially regulated entity remains responsible for compliance with statutory requirements regardless of whether it was included in staff's preliminary list or outreach."[83]

c. Draft Scope 1 and Scope 2 Emissions Reporting Template

In October 2025, CARB issued a draft Scope 1 and Scope 2 emissions reporting template[84] to streamline reporting, especially for entities disclosing GHG emissions for the first time. The template is organized based on organization information, third-party verification, inventory boundary, Scope 1 and Scope 2 disclosure, methodology, de minimis/minor sources, California Mandatory Reporting Regulation (if applicable), and emission reductions (if applicable). According to CARB, the template is voluntary for the 2026 reporting cycle.

E. SB 261 Draft Guidance

In September 2025, CARB released draft guidance on SB 261.[85] According to the Guidance, "reporting entities should focus on disclosing climate-related financial risks and measures adopted to reduce and adapt to climate-related financial risks that are material to their operations and financial outlook"[86] and be developed for an audience of investors and

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[78] *Id. at 2-3*.
[79] *Id.*
[80] *Id.* at 1.
[81] *See* Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs, *supra* note 41, at 18.
[82] *Id.* at 19.
[83] *California Corporate Greenhouse Gas Reporting And Climate-Related Financial Risk Disclosure Programs: Frequently Asked Questions About Regulatory Development And Initial Reports*, *supra* note 73, at 6.
[84] *See* Cal. Air Res. Bd.,
[85] For more information about the SB 261 Draft Guidance, *See* CAL. AIR RES. BD., *Climate Related Financial Risk Disclosures: Checklist* (last updated Nov. 17, 2025).
[86] *Id.* at 3.

other stakeholders. In addition to the minimum disclosures outlined in the Guidance, when drafting SB 261 disclosures, CARB notes that entities are required to:

(1) State which framework is being used (i.e., TCFD, IFRS S2 or another acceptable framework),
(2) Discuss which recommendations and disclosures have been compiled and which have not,
(3) Provide a short summary of the reasons why any recommendations/disclosures have not been included, and
(4) Discuss any plans for future disclosures.[87]

The Guidance states that CARB will not require a scenario analysis, in contrast to recommendations listed in the TCFD framework.[88] Rather, a scenario analysis is encouraged where it is feasible and relevant for a particular company. However, it should be noted that, based on CARB's remarks at its August 2025 workshop, the agency may require scenario analyses reporting in future reporting periods.

The Guidance does, however, require disclosure on "[t]he resilience of the organization's strategy, if any, taking into consideration the future impacts of climate change under various climate scenarios."[89] Such a discussion need not be quantitative and may be qualitative in nature. The Guidance also indicates that Scope 1, Scope 2 and Scope 3 emissions data are not a minimum CARB requirement for the initial SB 261 reporting period.[90]

CARB's Guidance also notes that SB 261 does not specify whether Calendar Year or Fiscal Year data should be covered in entities' reports. Covered entities should use the most recent/best available data for the first report.[91] The guidance did not discuss parent-subsidiary relationship matters, including consolidated reporting. However, CARB has repeatedly stated that only US entities are in the scope of SB 261 and that companies can report at the parent level.

According to the Guidance, CARB will establish a public docket for companies to post the link to their SB 261 reports. The docket will go online on December 1, 2025, and remain active until July 1, 2026.[92] According to CARB, the window for posting to the docket does not alter the SB 261 requirement that companies publish their SB 261 reports on their websites by January 1, 2026.[93] Of course, this deadline is no longer applicable following the Ninth Circuit's recent decision pausing SB 261 pending a final ruling on the merits as previously discussed in the litigation updates section.

Appendix A: Summary of California's Climate Disclosure Laws

Topic	Climate-Related Financial Risk Act (SB 261)	Climate Corporate Data Accountability Act (SB 253)
General Requirements	Preparation and public disclosure on a biennial basis of climate-related	Public disclosure and verification of Scopes 1-3

[87]*Id.* at 4–5.
[88]*Id.* at 5
[89]*Id.* at 6.
[90]*Climate Related Financial Risk Disclosures: Checklist*, *supra* note 82, at 6-7.
[91]*Id.* at 2.
[92]*Id.*
[93]*Id.*

	financial risks based on recommendations of the Task Force on Climate-Related Financial Disclosures or an equivalent framework.	GHG emissions on an annual basis.
Reporting Entities Covered	Public/private US entities that "do business in California" and have > $500 million USD in annual revenue (excludes insurers).	Public/private US entities that "do business in California" and have > $1 billion USD in total annual revenue.
Compliance Deadline	Unclear following the Ninth Circuit's temporary pause on SB 261 on November 18, 2025.	The year 2026 for information from fiscal year 2025.
Disclosure Requirements	Initial reports must be published publicly on a covered entity's website. Thereafter, reporting occurs on a biennial basis.	**Scope 1 and Scope 2:** Must be disclosed beginning in the year 2026. CARB has proposed an August 10, 2026, but no fixed date has been set yet. **Scope 3:** Must be disclosed beginning in the year 2027. Reporting entity disclosure for Scopes 1-3 GHG emissions must occur electronically via a publicly available database developed by CARB.
Assurance	N/A	**Scopes 1 and 2**: Limited assurance beginning in the year 2026 with a transition to reasonable assurance by the year 2030. **Scope 3:** Limited assurance by the year 2030.
Penalties	Up to $50,000 USD per reporting year.	Up to $500,000 USD per reporting year.

II. Extended Producer Responsibility Packaging Laws in the United States

In 2025, Extended Producer Responsibility (EPR) packaging laws continue expanding across various jurisdictions in the United States, leaving businesses with a patchwork of regulatory obligations and uncertainty about the enforceability of those regulations. To date, EPR packaging laws have been enacted in seven (7) states. Looking forward, eight (8) states have introduced EPR packaging bills, which are expected to become EPR packaging laws in 2026.

Most state EPR packaging laws employ a tiered approach for determining which party is the producer, placing responsibility first on the manufacturer of the manufacturer branded/unbranded product, then on the brand owner or licensee of the brand or trademark, and finally on the importer of record. Most state EPR packaging laws require producer participation in a Producer Responsibility Organization (PRO) which is typically responsible for paying fees to the enforcement agency, establishing a fee schedule, submitting and implementing program plans, and operating in reporting, compliance, accounting, and other functions associated with administration of the EPR program.

In a few states, compliance deadlines have already passed and companies may find it useful to evaluate packaging portfolios, identify covered materials, determine producer responsibility, register with a PRO (if applicable), prepare reporting or initiate registration (if applicable), and monitor regulatory updates.

The seven (7) states with EPR packaging laws include: Maine,[94] Oregon,[95] Colorado,[96] California,[97] Minnesota,[98] Maryland,[99] and Washington.[100] Eight (8) additional states—New York,[101] Massachusetts,[102] Rhode Island,[103] New Jersey,[104] Illinois,[105] Tennessee,[106] North Carolina,[107] and Hawaii[108]—have introduced similar EPR packaging bills. Compliance with packaging-focused EPR laws is becoming a new reality for companies that manufacture, distribute, or sell packaged products.

For those seven (7) states with existing EPR packaging laws, the following provides a summary of those laws and their regulatory obligations on businesses.

A. Maine

Maine was the first state to adopt a packaging-focused EPR law. In July 2021, Maine's EPR bill, An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money (LD 1541), was passed and signed into law. LD 1541 covers most types of consumer packaging material, including plastic, paper, glass, metal, cardboard, etc.[109] While LD 1541 does not create a separate "printed paper" category, paper is included when it functions as packaging.[110] Like other states, producers—defined as entities responsible for introducing covered material into the state—must comply with LD 1541. There is no

[94] An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money, L.D. 1541, 130th Leg., 1st Spec. Sess. (Me. 2021).
[95] Plastic Pollution and Recycling Modernization Act, S.B. 582, 81st Leg., Reg. Sess. (Or. 2021).
[96] Producer Responsibility Program for Recycling, H.B. 22-1355, 73d Gen. Assemb., 2d Reg. Sess. (Colo. 2022).
[97] Plastic Pollution Producer Responsibility Act, S.B. 54, 2021–2022 Reg. Sess. (Cal. 2022).
[98] H.F. 3911, 2023-2024 Reg. Sess. (Minn. 2024).
[99] S.B. 901, 2025 Reg. Sess. (Md. 2025).
[100] S.B. 5284, 2025-2026 Reg. Sess. (Wash. 2026).
[101] S.B. 5062, 2025-2026 Reg. Sess. (N.Y. 2025).
[102] S.B. 571, 194th Gen. Ct. (Mass. 2025).
[103] S.B. 939, Gen. Assemb. (R.I. 2025).
[104] A.B. 5009, 221st Leg.. (N.J. 2024); S.B. 3398, 221st Leg. (N.J. 2024).
[105] H.B. 4064, 104th Gen. Assemb. (Ill. 2025).
[106] H.B. 600, Gen. Assemb. (Tenn. 2025).
[107] H.B. 882, Gen. Assemb. (N.C. 2025).
[108] H.B. 1264, Leg. (Haw. 2025).
[109] ME. STAT. tit. 38, § 2146(1)(I) (2025).
[110] *Id.*

requirement that producers be physically present in the state and LD 1541 follows a tiered approach for determining which party is the producer[111] as shown in Figure 1 below:

Figure 1: Determining Responsible Party under LD 1541

The brand owner/manufacturer is primarily responsible. →

If there is no brand owner/manufacturer, responsibility next falls on the licensee or the importer/distributor. →

If none of these entities can be identified, a catch-all provision places responsibility on either the retailer or the entity responsible for the first point of sale into the state.

*MRSA § 2146 2(A-C) contains exceptions for producers whose annual gross revenue is less than $2 million, or who distribute less than 1 ton of packaging in the state annually.

In contrast to other states which use a PRO, Maine has adopted a municipal cost-reimbursement model where producers pay fees to a state-selected Stewardship Organization (SO).[112] The SO then directly reimburses municipalities for managing covered materials.[113] While the SO is responsible for day-to-day operations of the EPR program, Maine's Department of Environmental Protection (DEP) provides oversight which is funded by producer payments.[114] Rulemaking began in late 2023 and continues today.[115] In Maine, producers are required to register with an approved SO and report their estimated packaging data for 2025 by May 2026.[116] By 2027, the full EPR program is expected to become operational.[117]

B. Oregon

In August 2021, Oregon became the second state to enact packaging-related EPR legislation through its Plastic Pollution and Recycling Modernization Act (SB 582). SB 582 covers three separate categories—packaging, printing and writing paper, and food service ware.[118] SB 582 mandates PRO membership for all producers, which includes membership fees to fund improvements and ensure collected recyclables go to responsible end markets.[119] Determining producer responsibility follows a hierarchy similar to Maine's (*See* Figure 1). The priority is as follows: manufacturer of the manufacturer branded/unbranded product, then the brand owner or licensee of the brand or trademark,

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[111]Me. Stat. tit. 38, § 2146(1)(N) (2025).
[112]Me. Stat. tit. 3, § 2146(10) (2025).
[113]*Id.*
[114]ME. DEP'T OF ENV'T PROT., [Stewardship Program for Packaging]() (last visited April 9, 2026).
[115]*Id.*
[116]*Stewardship Program for Packaging*, *supra* note 111.
[117]*Id.*
[118]Or. Rev. Stat. § 459.995(6)(a)(A)–(C) (2023).
[119]Or. Rev. Stat. § 459.995(12) (2023).

and finally the importer of record.[120] SB 582 does not apply to a company that has a gross revenue of less than $5 million dollars or sold less than one metric ton of covered products in the state for the company's most recent fiscal year.[121] Oregon's Department of Environmental Quality is tasked with enforcement of SB 582[122] and can impose noncompliance penalties of up to $25,000 per day.[123] Producers are required to register with The Role of the Circular Action Alliance (CAA), a nonprofit organization founded by major packaging producers, or submit an approved individual plan and report 2024 data by March 31, 2025.[124] Non-compliant producers are barred from selling products with covered materials in Oregon after July 1, 2025.[125]

C. Colorado

In June 2022, Colorado enacted its Producer Responsibility Program for Recycling Act (HB 22-1355) which is modeled off of Oregon's SB 582 and covers most types of consumer packaging as well as paper products, including printed paper, newspapers, magazines, flyers, brochures, etc.[126] As in Oregon, producers are required to register with the CAA or establish an approved individual program to coordinate, fund, and manage the recycling system established under HB22-1355.[127] The compliance deadline was July 1, 2025 with non-complaint producers barred from selling products with covered materials in Colorado after that date.[128] Additionally, producers of paper products and packaging materials must have submitted initial supply reports to the CAA by July 31, 2025, which were later incorporated into calculations involving producer dues to be paid in January 2026.[129] HB 22-1355 also mandates producers to fund all program operations, including collection, education/outreach, and promotional campaigns.[130] HB 22-1355's producer exemptions are identical to Oregon's.[131] Additionally, determining producer responsibility follows a hierarchy identical to Oregon's.[132]

D. California

In June 2022, California enacted The Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). SB 54 focuses on single-use packaging (regardless

[120] Or. Rev. Stat. § 459.995(1)(a)(A)–(C) (2023).
[121] Or. Rev. Stat. § 459.995(1) (2023); Or. Rev. Stat. § 459.995(32)(C), (E) (2023).
[122] Or. Rev. Stat. § 459.995(1) (2023).
[123] Or. Rev. Stat. § 459.995(1)(a) (2023).
[124] OR. DEP'T OF ENV'T QUALITY, Recycling Modernization Act Implementation Timeline (last visited April 9, 2026).
[125] *Id.*
[126] Colo. Rev. Stat. § 25-17-703(26).
[127] Colo. Rev. Stat. § 25-17-705(1)(a)(I)-(III) (2025).
[128] Colo. Rev. Stat. § 25-17-708(1) (2025).
[129] 6 Colo. Code Regs. § 1007-2(18.2.4) (2026).
[130] Colo. Rev. Stat. § 25-17-707(1)(a)-(c) (2025).
[131] Colo. Rev. Stat. § 25-17-713(1)(a)-(b) (2025).
[132] Colo. Rev. Stat. § 25-17-702(1)(g) (2025).

of material)[133] and single-use plastic food service ware.[134] The Act introduced statutory recycling rate targets for plastic covered material that apply directly to individual producers: 30% by 2028, 40% by 2030, and 65% by 2032.[135] Under SB 54, producers of covered material selling or distributing their products in the state are also responsible for achieving source reduction and recyclability or composability.[136] Determining producer responsibility is similar to the hierarchies set forth under Maine, Oregon, and Colorado's EPR packaging laws as described above. The priority is as follows: the California-based manufacturer (if also the brand owner) of the product, then the California-based brand owner or licensee of the brand or trademark, and finally, the company that distributes or sells the product in California.[137] CalRecycle is the agency tasked with enforcing SB 54 and may impose administrative civil penalties on any entity's noncompliance with SB 54's requirements, with a maximum penalty of $50,000 per day per violation.[138]

SB 54 carves out exclusions for food safety,[139] reusable and refillable packaging,[140] packaging of de minimis weight or volume,[141] packaging for medical devices and prescription drugs,[142] packaging for certain non-prescription medical products,[143] and packaging used for the long-term protection or storage of a good having a lifespan of not less than five years.[144] Additionally, SB 54 exempts small volume producers with less than $1,000,000 in gross sales in the state.[145] If approved, the exemption is valid for two years (extended from the previous one-year period) and could be renewed for an additional two years from the original expiration date.[146] Producers can also be exempted if they can show that the covered material meets all of the following criteria:

> "(1) The covered material is not collected through a residential recycling collection service;
> (2) The covered material does not undergo separation from other materials at a commingled recycling processing facility;
> (3) The covered material is 'recycled at a responsible end market'; and

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[133]Under SB 54, single use packaging includes "packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer." Broad material classes for packaging include (1) glass, (2) ceramic, (3) metal, (4) paper and fiber, (5) plastic, and (6) wood and other organics. Cal. Pub. Res. Code § 42041(e)(1)(A) (Deering 2025).
[134]Under SB 54, single use plastic food service ware includes "plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material." Examples include trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, straws, wraps or wrappers, and bags sold to food service establishments (beverage containers are excluded). CAL. PUB. RES. CODE § 42041(e)(1)(B)(i-ii) (Deering 2025).
[135]Cal. Pub. Res. Code § 42050(c)(1)-(3) (Deering 2025).
[136]Cal. Pub. Res. Code § 42050(a)-(c).
[137]Cal. Pub. Res. Code § 42041(w)(1)-(3) (Deering 2025).
[138]Cal. Pub. Res. Code § 42081(a)(1) (Deering 2025).
[139]Cal. Pub. Res. Code § 42060(b) (Deering 2025).
[140]Cal. Pub. Res. Code § 42041(af)(1)(A)-(D) (Deering 2025).
[141]Cal. Pub. Res. Code § 42041(s)(4)(A).
[142]Cal. Pub. Res. Code § 42041(e)(2)(A)(i).
[143]Cal. Pub. Res. Code § 42041(e)(2)(A)(ii)-(iv).
[144]Cal. Pub. Res. Code § 42041(e)(2)(F).
[145]Cal. Pub. Res. Code § 42060(a)(5)(A) (Deering 2025).
[146]Cal. Pub. Res. Code § 42060.5(b) (Deering 2025).

> (4) The material has demonstrated a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually, as demonstrated to CalRecycle every two years."[147]

SB 54 requires producers to form and join a PRO.[148] After approval by CalRecycle, the PRO is responsible for developing an implementation plan to carry out SB 54 requirements,[149] including source reduction requirements of 25% reduction by weight and 25% reduction by plastic component source by 2032.[150] The implementation plan must also include all actions and investments to be implemented for compliance, a source reduction plan, technologies to be utilized, and objective and measurable criteria to describe how the PRO will implement SB 54 requirements.[151] SB 54 does, however, allow producers to assume responsibility for compliance obligations individually.[152] Before the PRO develops its implementation plan, CalRecycle, with guidance from the PRO and local jurisdictions, must prepare an initial statewide needs assessment to identify the investments and necessary steps to achieve SB 54 mandates.[153] SB 54 requires the PRO to submit a needs assessment to the Advisory Board for review which is developed through a public process, including a public meeting.[154] Obligations of the PRO include remittance of CalRecycle's implementation costs[155] and a $500 million dollar annual surcharge which will be collected from producer participants and plastic resin manufacturers who sell plastic resin to the producers for use in covered material and paid to the California Department of Tax and Fee Administration.[156] According to SB 54, the funding will be used to minimize the environmental, environmental justice, and public health impacts of plastics, in accordance with Public Resources Code §§42064(j) and (k).

Due to a delay in rulemaking, Governor Newsom directed CalRecycle, to restart the process in March 2025.[157] In August 2025, CalRecycle's proposed regulations were published in the state regulatory notice register, opening a 45-day public comment period through October 2025.[158] According to statutory requirements, producers must join a PRO or obtain approval for individual compliance by January 1, 2027, with escalating recycling targets through 2032.[159] The CAA opened a registration portal to encourage producers to register by September 2025 and submit supply reports by November 2025.[160]

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[147]Cal. Pub. Res. Code § 42041(e)(2)(H)(i)(I)-(IV) (Deering 2025).
[148]Cal. Pub. Res. Code § 42051(a) (Deering 2025).
[149]Cal. Pub. Res. Code § 42051(b)(1).
[150]Cal. Pub. Res. Code § 42057(a)(1) (Deering 2025).
[151]Cal. Pub. Res. Code § 42051.1(b)-(c) (Deering 2025).
[152]Cal. Pub. Res. Code § 42051(b)(2)(A) (Deering 2025).
[153]Cal. Pub. Res. Code § 42067(a) (Deering 2025).
[154]Cal. Pub. Res. Code § 42067(d)-(e) (Deering 2025).
[155]Cal. Pub. Res. Code § 42064(a)(1) (Deering 2025).
[156]Cal. Pub. Res. Code § 42064(e)(1)-(2).
[157]John Smith, *Newsom Orders Redo of California's Landmark Anti-Plastic Rules, Citing Cost*, BLOOMBERG (Mar. 7, 2025).
[158]34-Z Cal. Regulatory Notice Reg. 1039 (Aug. 22, 2025).
[159]Cal. Pub. Res. Code § 42051(b)(2)(A) (Deering 2025).
[160]Press Release, Circular Action Alliance, Producer Registration Now Open for California's New Packaging EPR Program (Aug. 20, 2025).

E. Minnesota

In May 2024, Minnesota enacted The Packaging Waste and Cost Reduction Act as part of Omnibus Bill HF 3911 which covers consumer packaging[161] and paper products[162] generally (including boat wrap,[163] a plastic film used to protect boats during storage). The Act contains limited exemptions for packaging for specific uses such as infant formula, medical supplies, or print publications among others.[164] De minimis producers that have introduced less than one ton of covered material into the state or earned global gross revenues of less than $2 million dollars are also exempt from the Act's requirements.[165]

Like other states, Minnesota follows a hierarchy to determine producer responsibility under HF 3911. Under HF 3911, producers are defined as entities who first introduce "item[s] sold in or with packaging" into the state, such as retailers at physical locations or retailers through "e-commerce, remote sale, or distribution."[166] Additionally, producers are defined as those who "package items that ship to retailers or directly to consumers."[167] If the item is sold "with packaging under the brand of the item manufacturer or is sold in packaging that lacks identification of a brand," the producer is the item's manufacturer.[168] If the item is sold in packaging without the brand identification of the manufacturer, "the producer is the brand owner of the item."[169] If none of the above applies, then the producer responsibility falls on the importer of record.[170] Finally, certain publishers of magazines, publications, etc., are also considered paper product producers.[171]

HF 3911 requires producers to join a registered PRO (currently, the CAA) by July 1, 2025.[172] Subsequently, PROs must submit their first comprehensive stewardship plan to the Minnesota Pollution Control Agency by October 1, 2028 and update it every five years.[173] The stewardship plan sets specific performance targets for product reuse, return, composting, waste reduction, and post-consumer recycled content rates, including what units to measure each performance target in and the measurement criteria for these targets.[174] Under HF 3911, PROs must reimburse municipalities and service providers for increasing percentages of the net costs of recycling and processing covered materials: 50% by February 1, 2029, 75% by 2030 and 90% by 2031.[175]

After January 1, 2032, no producer may introduce covered materials, unless the materials meet certain criteria as recyclable, refillable, or reusable, or the producer seeks

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[161]Under HF 3911, consumer packaging includes "containers or any items that provide transport, marketing, protecting, or handling of a product." This definition includes pallets and packing materials like closures, coatings, cushioning, dyes, inks, and labels. Minn. Stat. §115A.1441 Subd. 23 (2025).

[162]Under HF 3911, a paper product is defined as a "product primarily made from wood pulp or other cellulosic fibers." Minn. Stat. §115A.1441 Subd. 24 (2025).

[163]Minn. Stat. §115A.1416 Subd. 1(c) (2025).

[164]Minn. Stat. §115A.1441 Subd. 16 (2025).

[165]Minn. Stat. §115A.1441 Subd. 13 (2025).

[166]Minn. Stat. §115A.1441 Subd. 26(a)(1)-(2) (2025).

[167]*Id.*

[168]*Id.*

[169]*Id.*

[170]Minn. Stat. §115A.1441 Subd. 26(a)(3) (2025).

[171]Minn. Stat. §115A.1441 Subd. 26(a)(4)-(5) (2025).

[172]Minn. Stat. §115A.1443 Subd. 1(a) (2025).

[173]Minn. Stat. §115A.1443 Subd. 2(a) (2025).

[174]Minn. Stat. §115A.1451 Subd. 3 (2025).

[175]Minn. Stat. §115A.1455 Subd. 4(a)(1)-(3) (2025).

an extension from the commissioner.[176] For violations of the Act, producers may face a maximum civil penalty of $25,000 per day per violation.[177] If a producer violates the Act a second time within five years of approval of their stewardship plan, the producer may face a maximum civil penalty of $50,000 per day per violation; a third violation would result in a maximum civil penalty of $100,000 per day per violation.[178]

F. Maryland

In May 2025, Maryland enacted its Environment Packaging and Paper Products Producer Responsibility Plans (SB 901) which covers consumer packaging[179] and paper products[180] generally. Like other states, SB 901 considers the brand owner of the product sold in product packaging to be the responsible producer with obligations applying to products sold at physical retail locations in the state as well as products sold or distributed via e-commerce.[181] Under SB 901, a producer is considered the manufacturer if the item carries the manufacturer's brand or no brand; otherwise, the brand owner, the US importer, or the distributor.[182] Exclusions are similar to those in other states and include packaging for infant formula, drug or medical devices, newsprint and packaging used for long-term protection or storage among others.[183] Exemptions apply to de minimis producers that have introduced less than one ton of covered material into the state or earned global gross revenues of less than $2 million dollars in their most recent fiscal year.[184]

In contrast to other states like Oregon and Minnesota, SB 901 allows multiple PROs to operate concurrently.[185] Producers must either join an existing PRO (currently, the CAA is the only approved PRO in Maryland) or submit an individual compliance plan to the Maryland Department of Environment (MDE) by July 1, 2026.[186] All PROs and individual producers must submit comprehensive responsibility plans to the MDE by July 1, 2028, and every five years thereafter detailing how a producer will meet performance requirements and goals for recycling, composting, reuse, and waste reduction.[187] Producers must reimburse local governments for the costs per ton of collecting, transporting, and processing recyclable or compostable packaging materials with reimbursement

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[176]Minn. Stat. §115A.1448 Subd. 1(c)(1)-(2) (2025).
[177]Minn. Stat. §115A.1462(b) (2025).
[178]Minn. Stat. §115A.1462(c) (2025).
[179]Under SB 901, packaging is defined as a "material, substance, or object used to protect, contain, transport, serve, or facilitate the delivery of a product that is sold or supplied with the product to the consumer for personal, non-commercial use." This definition includes primary, secondary, and tertiary packaging and service packaging such as carry-out bags, bulk good bags, take-out and home delivery food service packaging, and beverage containers with a volume of less than five liters. Md. Code Ann., Env't § 9-2501(n)(1)-(2) (LexisNexis 2025).
[180]Under SB 901, a paper product is defined as a "product made primarily from wood pulp or other cellulosic fibers." This definition excludes bound books and products not accepted by materials recycling facilities or composting facilities due to the unsafe or unsanitary nature of the product. MD. CODE ANN., ENV'T § 9–2501(o)(1)-(2) (LexisNexis 2025).
[181]Md. Code Ann., Env't § 9-2501 (p)(1)(i)-(ii) (LexisNexis 2025).
[182]*Id.*
[183]Md. Code Ann., Env't § 9-2501 (l) (LexisNexis 2025).
[184]Md. Code Ann., Env't § 9-2501 (j) (LexisNexis 2025).
[185]Md. Code Ann., Env't § 9-2501 (q) (LexisNexis 2025).
[186]Md. Code Ann., Env't § 9-2501 (a)(3)(i) (LexisNexis 2025).
[187]Md. Code Ann., Env't § 9–2505(B)(1) (LexisNexis 2025).

percentages, based on the cost per ton, increasing over time as follows: 50% by July 1, 2028; 75% by July 1, 2029; and 90% by July 1, 2030 and each year thereafter.[188]

G. Washington

In May 2025, Washington enacted its Recycling Reform Act (SB 5284) which covers consumer packaging[189] and paper products[190] generally. Under SB 5284, producers must either join a PRO or register individually by January 1, 2026.[191] PROs are responsible for the payment of fees to the Washington State Department of Ecology (Ecology), establishing the producer fee schedule, submitting the program plan to Ecology and implementing the program, along with reporting, compliance, accounting, and other functions associated with administration of the EPR program.[192] PROs must submit their full compliance plan to Ecology by October 1, 2028,[193] ahead of the statewide implementation on January 1, 2030.[194] Reimbursement rates must cover at least 50% of net covered-service costs by February 15, 2030, 75% by 2031, and 90% by 2032.[195] SB 5284 mandates PROs to fund a reuse financial assistance program with at least $5 million dollars annually beginning in 2029.[196]

Washington employs the same producer hierarchy as Maryland, with one distinct difference for online sales: the entity that packages the product for shipment is treated as the producer of the shipping materials.[197] Exclusions are similar to those in the other states, including packaging for infant formula, hazardous products, medical products, or packaging with specified recycling rates among others.[198] SB 5284 also exempts de minimis producers that, in their most recent fiscal year, introduced less than one ton of covered materials into the state or with a global gross revenue (not including on-premises alcohol sales) for the prior fiscal year of less than $5 million dollars.[199] Failure by producers or PROs to meet their obligations under the Act can result in civil penalties of up to $1,000 per violation per day (increasing to $10,000 for repeat violations), with additional penalties for continuing to sell noncompliant products after warnings.[200]

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[188]*Id.* at § 9-2505(e)(1)(ii)(4).
[189]Under SB 5284, packaging is defined as "a material, substance, or object that is used to protect, contain, transport, serve, or facilitate delivery of a product and that is sold or supplied with the product to the consumer for personal, noncommercial use." Recycling Reform Act § 102(25)(a), 2025 Wash. Leg. Serv. Ch. 316 (West).
[190]Under SB 5284, a paper product is defined as "paper sold or supplied to a consumer for personal, noncommercial use, including flyers, brochures, booklets, catalogs, magazines, printed paper, and all other paper materials." This definition excludes bound books, conservation- and archival-grade paper, newspapers (including supplements or enclosures), and magazines with a circulation of fewer than 95,000 and including content derived from primary sources related to news or current events, copy paper, paper for use in building construction, and paper that can be reasonably anticipated to become unsafe or unsanitary to handle. E2SSB 5284, 69th Leg., Reg. Sess. § 102(26) (Wash. 2025).
[191]E2SSB 5284, 69th Leg., Reg. Sess. § 103(1).
[192]E2SSB 5284, 69th Leg., Reg. Sess. § 104(1).
[193]E2SSB 5284, 69th Leg., Reg. Sess. §§ 104(3)(c), 113(1).
[194]E2SSB 5284, 69th Leg., Reg. Sess. §104(3)(d).
[195]Recycling Reform Act, § 117(2)(a), 2025 Wash. Leg. Serv. Ch. 316 (West).
[196]Recycling Reform Act, § 104(5)(a)(i).
[197]Recycling Reform Act, § 102(29)(a)(i)-(v).
[198]Recycling Reform Act, § 102(19).
[199]Recycling Reform Act, § 102(29)(b)(iii).
[200]Recycling Reform Act, § 123(2)(a)-(b).

Varying state requirements create opportunities and challenges for companies operating across multiple jurisdictions at all levels of the supply chain. While state EPR packaging program share overall goals with one another, each program has its own distinctive set of design parameters, including recycling targets, fee structures, and timelines. While PROs will likely manage a majority of compliance requirements in most states, companies can be proactive now by identifying covered materials, determining producer responsibility, registering with a PRO (if applicable), preparing reporting (if applicable), and monitoring regulatory updates. If compliance deadlines have already passed, companies may find it useful to evaluate packaging portfolios, confirm exemption status, or initiate registration for future compliance.

Chapter K: INTERNATIONAL LAW
2025 Committee Report[1]

I. Aviation Emissions

The year 2025 marked a significant turning point in aviation emissions regulation, particularly in the European Union, as several long-anticipated regulatory frameworks moved from adoption to implementation. Most notably, 2025 represents the first year in which binding sustainable aviation fuel ("SAF") supply mandates and tightened carbon-pricing rules applied concurrently to commercial aviation operations, signaling a shift away from voluntary or offset-based approaches toward enforceable emissions-reduction obligations.

A. Implementation of the ReFuelEU Aviation Regulation

On January 1, 2025, the European Union's ReFuelEU Aviation Regulation formally entered into force, establishing the first legally binding SAF blending mandate applicable to fuel suppliers at EU airports.[2] Beginning in 2025, suppliers are required to ensure that at least 2% of aviation fuel made available at covered airports qualifies as SAF.[3] The regulation sets a progressively increasing trajectory, with intermediate targets culminating in a long-term goal of 70% SAF by 2050.[4]

Unlike prior SAF initiatives, which relied largely on voluntary airline commitments or national incentive programs, ReFuelEU imposes compliance obligations directly on fuel suppliers, accompanied by monitoring, reporting, and verification requirements overseen by national authorities and the European Union Aviation Safety Agency ("EASA").[5] In October 2025, EASA published the first annual technical report assessing compliance and implementation challenges during the regulation's inaugural year.[6]

The regulation is intended to address persistent market failures that have constrained SAF deployment, including fragmented demand signals and limited investment certainty. By creating a uniform, EU-wide mandate, policymakers aim to accelerate SAF production capacity and infrastructure development while avoiding distortive competition between Member States.

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[1]Kiran Chahal and Connor Sakati, Year in Review Vice Chairs for the ABA SEER International Environmental Law Committee, prepared this report. Paige Power Kendrick authored the sections on aviation and maritime emissions, Joseph Mayson authored the section on international trade developments, and Nikhita Mani authored the section on climate displacement.
[2]Regulation (EU) 2023/2405 of the European Parliament and of the Council of 18 October 2023 on Ensuring a Level Playing Field for Sustainable Air Transport (ReFuelEU Aviation), 2023 OJ (L).
[3]*Id.* at art. 4, Annex I.
[4]*Id.* at annex I.
[5]*Frequently Asked Questions on the Interpretation of Certain Provisions of Regulation (EU) 2023/2405 on Ensuring a Level Playing Field for Sustainable Air Transport (ReFuelEU Aviation)*, Eur. Comm'n (last visited Apr. 23, 2025).
[6]ReFuelEU Aviation Annual Technical Report 2025, Eur. Union Aviation Safety Agency (Oct. 22, 2025).

1. Strategic Investment and Market-Support Measures

Recognizing that mandates alone are insufficient to scale SAF production, the European Commission in 2025 unveiled a Sustainable Transport Investment Plan aimed at mobilizing public and private capital for renewable and low-carbon fuels across both the aviation and maritime sectors.[7] The plan emphasizes supply-side financing, long-term offtake certainty, and infrastructure development as prerequisites to meeting future blending targets.

These measures reflect an acknowledgment that SAF remains substantially more expensive than conventional jet fuel and that cost differentials may persist for years absent large-scale industrial deployment and technological learning. Regulatory certainty in 2025 has therefore been framed as a necessary precondition for de-risking multi-billion-euro investments in new SAF refineries and synthetic fuel facilities.[8]

2. Broader Context and Ongoing Challenges

The regulatory developments of 2025 occurred against the backdrop of a rebound in aviation activity and emissions following the COVID-19 pandemic. Aviation emissions had approached pre-pandemic levels in 2024, underscoring the limited durability of emissions reductions achieved through demand suppression alone.[9]

Despite the significance of the 2025 reforms, substantial uncertainties remain. Global SAF production capacity continues to lag behind projected demand, particularly for synthetic "e-fuels," which are expected to play a critical role in meeting long-term decarbonization targets. Additionally, the administrative complexity of monitoring SAF compliance across hundreds of airports and fuel suppliers presents non-trivial enforcement challenges.

Taken together, the developments of 2025 mark a decisive shift in aviation emissions regulation. The entry into force of ReFuelEU Aviation, combined with tightened carbon pricing under the EU Emission Trading System and targeted investment support, reflects a move away from aspirational climate goals toward binding regulatory obligations. While the effectiveness of these measures will depend on sustained industrial scale-up and regulatory enforcement, 2025 stands as a watershed year in the evolution of aviation climate policy—one in which emissions reduction became a matter of compliance rather than choice.

II. Maritime Shipping Emissions

The year 2025 marked a decisive shift in maritime emissions regulation, as several European Union climate measures moved from preparatory phases into active compliance, while the International Maritime Organization ("IMO") advanced binding global decarbonization architecture under MARPOL Annex VI. Collectively, these developments reflect a transition from aspirational emissions targets toward enforceable fuel standards, carbon pricing, and recurring compliance obligations for international shipping.

[7] *Commission Unveils the Sustainable Transport Investment Plan*, EUR. COMM'N (Nov. 5, 2025).

[8] Martin Elms & Antonio Tantalo, *From Ambition to Reality: Securing Europe's Aviation Fuel Supply with Sustainable Aviation Fuels*, AIRBUS (Dec. 2, 2025).

[9] *Greenhouse Gas Emissions from Transport: Aviation Indicator*, EUR. ENV'T AGENCY (Nov. 5, 2025).

A. FuelEU Maritime Enters Full Application

On January 1, 2025, the EU's FuelEU Maritime Regulation applied in full, establishing binding lifecycle greenhouse gas ("GHG") intensity limits on energy used by ships above 5,000 gross tonnage calling at EU and EEA ports, regardless of flag.[10] FuelEU Maritime requires ships to meet progressively stricter "well-to-wake" GHG intensity thresholds, beginning with a 2% reduction in 2025 and escalating to an 80% reduction by 2050.[11]

Unlike prior EU maritime climate initiatives that focused primarily on emissions monitoring, FuelEU Maritime directly regulates fuel choice by constraining the allowable GHG intensity of onboard energy use. Compliance is assessed annually and enforced through penalties for excess emissions, while limited flexibility mechanisms—such as pooling and banking—are intended to smooth early compliance challenges.[12] The regulation is administered through existing monitoring and verification systems, including the European Maritime Safety Agency's ("EMSA") THETIS-MRV platform, integrating FuelEU Maritime into the EU's broader maritime compliance architecture.[13]

Implementation complexities emerged in 2025 with respect to the European Economic Area. The European Commission clarified that until FuelEU Maritime is incorporated into the EEA Agreement, ports in Norway and Iceland would be treated as third-country ports for FuelEU purposes, underscoring the challenges of applying regional climate rules in interconnected maritime markets.[14]

B. EU Emissions Trading System: First Allowance Surrender for Shipping

The year 2025 also marked a critical compliance milestone for shipping under the EU Emissions Trading System ("ETS"). Although maritime emissions reporting under the ETS began in 2024, September 30, 2025, was the first deadline by which shipping companies were required to surrender emission allowances, covering 40% of verified 2024 emissions.[15] This phased-in approach is designed to ease the sector into carbon pricing while establishing a predictable annual compliance cycle.[16]

During 2025, the ETS scope for shipping remained limited to carbon dioxide, with methane and nitrous oxide scheduled for inclusion in later phases.[17] Nevertheless, the introduction of allowance-surrender obligations transformed emissions monitoring into a recurring financial and operational compliance requirement, embedding carbon pricing as a central feature of EU maritime climate policy.[18]

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[10]Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the Use of Renewable and Low-Carbon Fuels in Maritime Transport, and Amending Directive 2009/16/EC, OJ (L 234).
[11]*Id.* at art. 4, Annex I.
[12]*Id.* at art. 21–23.
[13]*FuelEU Maritime: Full Application from 1 January 2025*, EUROPEAN MARITIME SAFETY AGENCY (last visited Apr. 23, 2026).
[14]*Decarbonising Maritime Transport – FuelEU Maritime*, EUROPEAN COMMISSION (last visited Apr. 23, 2026).
[15]*FAQ: Maritime Transport in the EU Emissions Trading System (ETS)*, EUROPEAN COMMISSION (last visited Apr. 23, 2026).
[16]*Id.*
[17]*Id.*
[18]*Id.*

C. Mediterranean SOx Emission Control Area Takes Effect

Outside the EU's climate-pricing framework, 2025 also delivered a major air-pollution milestone under MARPOL Annex VI. On May 1, 2025, the Mediterranean Sea officially became a sulphur oxides Emission Control Area ("SOx ECA"), subjecting ships operating in the region to a 0.10% m/m sulphur limit for fuel oil.[19] This represents a significant tightening from the global sulphur cap of 0.5% and aligns the Mediterranean with existing ECAs in the Baltic Sea, North Sea, and North American waters.[20]

Given the Mediterranean's dense shipping traffic and proximity to populated coastal regions, regulators emphasized the anticipated public-health and environmental benefits of the new standard, including reductions in particulate matter and acidifying emissions.[21]

D. IMO Advances Net-Zero Regulatory Framework

At the international level, 2025 saw meaningful progress toward a binding global decarbonization regime for shipping. In April 2025, the IMO's Marine Environment Protection Committee at its 83rd session approved draft amendments to MARPOL Annex VI establishing a "Net-Zero Framework" that combines a mandatory marine fuel standard with a global GHG pricing mechanism.[22] The IMO indicated that the measures were scheduled for formal adoption in October 2025, with entry into force anticipated in 2027 and applicability to ships over 5,000 gross tonnage.[23]

Despite this progress, negotiations in 2025 revealed continued disagreement among IMO Member States regarding the ambition and structure of a global pricing mechanism, highlighting potential implementation challenges even as the regulatory framework advances.[24]

E. Conclusion

The maritime emissions landscape in 2025 was defined by implementation and escalation. FuelEU Maritime entered full application with binding GHG-intensity limits, the EU ETS imposed its first allowance-surrender obligations on shipping companies, and MARPOL Annex VI delivered a new Mediterranean SOx ECA with immediate operational consequences. At the same time, the IMO advanced draft net-zero regulations pairing fuel standards with global pricing. Together, these developments reflect a decisive move toward enforceable maritime emissions regulation, embedding climate and air-pollution controls into the routine compliance obligations of international shipping.

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[19] *New Sulphur Emissions Limits Enter into Effect in the Mediterranean*, INT'L MAR. ORG. (May 1, 2025).

[20] *MARPOL Annex VI – Regulation 14*, EXHAUST GAS CLEANING SYSTEMS ASSOCIATION (last visited Apr. 23, 2026); *Emission Control Areas (ECAs) Designated Under MARPOL Annex VI*, Int'l Mar. Org. (last visited Apr. 30, 2026).

[21] *Stricter Air Pollution Limits for Shipping in the Mediterranean*, EUR. COMM'N (Apr. 30, 2025).

[22] *IMO Approves Net-Zero Regulations for Global Shipping*, INT'L MAR. ORG. (Apr. 11, 2025).

[23] *Id.*

[24] Enes Tunagur, *UN Shipping Emissions Deal to Pit US Against EU-Led Bloc*, REUTERS (Oct. 13, 2025).

In 2025, trade-related environmental measures shifted from policy design to concrete administration. Carbon border adjustment mechanisms (CBAMs) remained the most prominent example, particularly in the European Union (EU) and the United Kingdom (UK). The year was characterized less by new instruments than by amendments, implementing rules, and early legal challenges clarifying how these regimes affect international trade.

A. EU: Carbon Border Adjustment Mechanism Implementation

CBAMs address "carbon leakage"—the shift of emissions-intensive production to countries with weaker climate policies—and ensure that national or regional environmental aims are spread to other countries/regions.[25] The EU CBAM requires importers of covered goods (cement, iron and steel, aluminum, fertilizers, electricity, and hydrogen) to purchase certificates corresponding to embedded carbon emissions, with prices linked to EU Emissions Trading System auction results.[26]

Additionally, 2025 was the final full year of the CBAM transitional reporting phase. The "definitive period" begins January 1, 2026. In this period, importers must surrender certificates corresponding to the greenhouse gas emissions generated during production of covered goods ("embedded emissions"). Certificate purchases will commence in 2027 (paying for 2026 embedded emissions), a one-year delay intended to ease the transition. The deadline for submitting annual CBAM declarations—which report the previous year's imports and corresponding embedded emissions—was extended from May 31 to September 30, and the quarterly certificate holding requirement was reduced from 80% to 50% of reported emissions.[27]

In October 2025, the EU adopted Regulation 2025/2083, introducing a *de minimis* exemption for importers of 50 tons or less annually of covered goods, excluding electricity and hydrogen. This exempts approximately 90% of importers while maintaining coverage of 99% of embedded emissions.[28] In December 2025, the European Commission (EC) adopted an implementing regulation specifying certificate price calculations: quarterly averaging for 2026, weekly averaging from 2027.[29]

U.S. exporters of covered goods—particularly steel and aluminum—face two effects: EU customers will request verified emissions data to satisfy reporting requirements and, once certificate purchases begin, EU importers may shift the added carbon cost back to suppliers through reduced contract prices or smaller orders. In an August 21, 2025 joint

[25] Antoine Bonnett & Ieva Baršauskaitė, *The State of BCAs 2025*, Int'l Inst. for Sustainable Dev. (Feb. 23, 2025).
[26] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism, 2023 O.J. (L 130) 52, art. 21.
[27] *EU Adopts Simplifications of CBAM Rules Ahead of the Compliance Phase Starting in 2026*, Int'l Carbon Action P'ship (Oct. 20, 2025).
[28] Regulation (EU) 2025/2083 of the European Parliament and of the Council of 8 October 2025 Amending Regulation (EU) 2023/956 as Regards Simplifying and Strengthening the Carbon Border Adjustment Mechanism, 2025 O.J. (L); International Carbon Action Partnership, *supra* note 27.
[29] Commission Implementing Regulation (EU) 2025/2548 of 10 December 2025 Laying Down Rules for the Application of Regulation (EU) 2023/956 of the European Parliament and of the Council as Regards the Calculation and Publication of the Price of CBAM Certificates, 2025 O.J. (L).

statement, the EU acknowledged U.S. concerns and committed to implementation flexibilities.[30]

B. EU: Proposed Expansion and WTO Scrutiny

On December 17, 2025, the EC proposed extending CBAM to downstream products incorporating covered materials (e.g., screws, machinery containing steel or aluminum) and introducing anti-circumvention measures targeting practices like minimal processing in third countries before EU import—for example, shipping high-carbon steel to a non-CBAM jurisdiction for minor finishing (cutting, coating, or assembly) to obscure its origin and avoid certificate obligations.[31]

In May 2025, the Russian Federation initiated World Trade Organization (WTO) dispute settlement consultations, arguing the CBAM violates GATT Articles I (most-favored-nation), III (national treatment), and XI (quantitative restrictions). The EU declined to enter consultations—a procedurally unusual response that leaves the dispute in limbo unless Russia requests a panel.[32] Broader WTO discussions have urged international coordination to ensure such measures are transparent and equitable.[33]

C. Free Trade Agreements: EU–Mercosur and Climate Conditionality

In September 2025, the EC submitted the EU-Mercosur trade agreement to the EU Council for approval. The agreement would create one of the world's largest free trade areas, eliminating or reducing tariffs on most goods traded between the EU and Brazil, Argentina, Paraguay, and Uruguay.[34] The revised text designates the Paris Agreement as an "essential element"—a clause standard in EU external agreements for human rights but novel for climate. Under this provision, withdrawal from the Paris Agreement or flouting climate pledges could permit suspension of trade preferences. Ambiguity remains: it is unclear whether falling short of a national emissions target (e.g. a nation's Nationally Determined Contribution) would constitute a breach.[35]

D. UK: Draft Carbon Border Adjustment Mechanism Legislation

The UK advanced draft primary legislation to introduce a CBAM from January 1, 2027. The mechanism will initially impose charges on direct emissions from imported steel, cement, aluminum, fertilizers, and hydrogen. Indirect emissions from electricity used in production will be excluded until at least 2029; glass and ceramics are excluded from the first phase. The UK CBAM aligns with the UK Emissions Trading Scheme: free

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[30] *Joint Statement Between the United States and the European Union on a Framework Agreement for Reciprocal, Fair, and Balanced Trade*, Off. of the Fed. Reg., Nat'l Archives & Recs. Admin., GovInfo (Aug. 21, 2025).
[31] *Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EU) 2023/956 as Regards the Extension of its Scope to Downstream Goods and Anti-Circumvention Measures*, COM (2025) 989 final, (Dec. 17, 2025).
[32] *Russia Initiates WTO Dispute Regarding EU's Carbon Border Adjustment and Emissions Trading*, World Trade Org., [URL] (May 19, 2025); *Communication from the European Union, European Union and its Member States – Carbon Border Adjustment Mechanism*, WTO Doc. WT/DS639/2 (May 26, 2026).
[33] Bonnett & Baršauskaitė, *supra* note 25, at 18, 20.
[34] *EU-Mercosur: Text of the Agreement*, EUR. COMM'N (last visited Apr. 23, 2026).
[35] James Harrison & Sophia Paulini, *The Revised EU-Mercosur Trade Deal: Does it Adequately Address Trade-Environment-Development Interlinkages?*, EJIL:TALK! (Sept. 24, 2025).

allowance allocations for covered sectors will phase out starting 2027 on a nine-year trajectory.[36] U.S. exporters in covered sectors may face distinct compliance regimes in both the EU and UK.

E. Other Border-Relevant Environmental Measures

In December 2025, the Council of the European Union postponed application of the deforestation-free products regulation until December 30, 2026, for large operators and June 30, 2027, for small firms. The regulation requires importers of seven forest-risk commodities—cattle, cocoa, coffee, palm oil, soy, rubber, and wood—to demonstrate products are not sourced from land deforested after 2020 and comply with local laws. The delay responds to concerns about supply-chain tracing readiness.[37]

In April 2025, the International Maritime Organization approved draft amendments establishing a global shipping GHG fuel standard and pricing framework. The standard would require progressively lower carbon-intensity fuels, paired with an economic mechanism to incentivize compliance. However, adoption was postponed at the October 2025 extraordinary session due to unresolved disagreements over levy levels and fund governance, delaying final action until at least 2026.[38]

In the U.S., Republican Senators Bill Cassidy and Lindsey Graham reintroduced the Foreign Pollution Fee Act of 2025 in April 2025. The bill would impose fees on imports of carbon-intensive goods based on embedded emissions relative to U.S. production benchmarks. Unlike the EU CBAM, the proposal does not require a linked domestic emissions trading system. Other proposals—including the Fair, Affordable, Innovative, and Resilient (FAIR) Transition and Competition Act and Clean Competition Act—likewise aimed to price carbon at the border. All remained in committee.[39]

F. Conclusion

2025 marked the transition from design to implementation for border carbon measures. The EU's CBAM enters its payable phase in 2026; the UK follows in 2027. U.S. exporters and policymakers face increasing pressure to engage with these regimes or develop domestic alternatives. How these mechanisms interact with WTO rules—and whether they accelerate or impede global climate ambition—will define the trade-environment agenda in the years ahead.

IV. CLIMATE DISPLACEMENT

Climate change is a significant driver of displacement, with weather-related disasters internally displacing an estimated 250 million people worldwide over the past ten years.[40] In 2025, climate change-driven extreme weather events intensified, with extremely

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[36]*Factsheet: Carbon Border Adjustment Mechanism*, HM Treasury, Nov. 28, 2025.
[37]Press Release, Council of the European Union, Deforestation: Council Signs Off Targeted Revision to Simplify and Postpone the Regulation (Dec. 18, 2025).
[38]*IMO Approves Draft Net-Zero Regulations for Global Shipping*, INT'L MAR. ORG. (Apr. 11, 2025); Meeting Summary, International Maritime Organization, Marine Environment Protection Committee, 2nd Extraordinary Session (MEPC/ES.2), 14 to 17 October 2025.
[39]S. 1325, 119th Cong. (2025); Farhad Panahov, *Carbon Pricing & Competitiveness: Steering Canada's Climate Policies Amid Trade Shocks*, ROYAL BANK OF CAN. (Aug. 28, 2025).
[40]United Nations High Commissioner for Refugees (UNHCR), No Escape II – The Way Forward: Bringing Climate Solutions to the Frontlines of Displacement and Conflict, 6 (Nov. 2025).

high global temperatures causing prolonged heatwaves, droughts, and severe storms and flooding, displacing millions of people.[41] In this context, the issuance of two landmark advisory opinions in 2025 by the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR), is especially significant as they provide important clarifications on state obligations regarding climate change, and notably, offer guidance on how states should address climate-related displacement.

A. IACtHR Advisory Opinion on the Climate Emergency and Human Rights

On July 3, 2025, the IACtHR published its Advisory Opinion on the climate emergency and human rights following a joint request by Chile and Colombia.[42] Significantly, the Opinion directly linked climate-related displacement to human rights violations, most notably in relation to the right to freedom of movement, but also in discussing the impact on other protected rights, including the right to private and family life[43] and the right to culture.[44] The Opinion also made some important pronouncements regarding the corresponding obligations of Organization of American member states.

1. Freedom of Movement and Residence

The IACtHR recognized that climate change affects freedom of movement, protected under Article 22 of the American Convention on Human Rights (ACHR) by forcing people to migrate, as well as causing immobility.[45] In its analysis, the IACtHR drew from its prior jurisprudence on the right not to be forcibly displaced in the context of conflict-situations.[46] This is significant as, by discussing climate displacement in the context of Article 22, the IACtHR frames climate-related displacement as a matter of human rights, rather than merely a "humanitarian concern,"[47] thereby triggering corresponding obligations on states under the ACHR.

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[41] *Unequal Evidence and Impacts, Limits to Adaptation: Extreme Weather in 2025*, WORLD WEATHER ATTRIBUTION, (Dec. 29, 2025).

[42] Climate Emergency and Human Rights (Arts. 1(1), 2, 4(1), 5(1), 8, 11(2), 13, 17(1), 19, 21, 22, 23, 25, and 26 American Convention on Human Rights; 1, 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," and I, II, IV, V, VI, VII, VIII, XI, XII, XIII, XIV, XVI, XVIII, XX, XXIII, and XXVII American Declaration of the Rights and Duties of Man), Advisory Opinion AO-23/25, Inter-Am. Ct. H.R. (ser. A) No. 32 (May 29, 2025) [hereinafter IACtHR Opinion].

[43] *Id*. at ¶¶ 403-04 (noting that displacement and migration can impact family unity and that States must take measures to guarantee family unity during climate-related displacement).

[44] *Id.* at ¶ 449 (noting that climate impacts threaten the right to participate in cultural life as it leads to the destruction of culturally significant sites and involuntary displacement).

[45] *Id.* at ¶¶ 415-19.

[46] *Id*. at ¶ 414. *See* Moiwana Cmty. v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶¶ 119-20 (June 15, 2005) (finding that Suriname had violated the Moiwana community's right to freedom of movement and residence by failing to ensure their rights to move freely within the State, choose their place of residence and to establish conditions to facilitate return to their land).

[47] Lena Riemer & Luca Scheid, *A Differentiated Path Forward: The Inter-American Court's Advisory Opinion on Climate Change and Human Mobility Rights*, COLUM. L. SCH.: CLIMATE LAW (July 10, 2025).

2. Enhanced Due Diligence and State Obligations

The Opinion has far-reaching implications for state obligations toward climate-displaced persons, with the IACtHR affirming that States are subject to an enhanced due diligence standard in relation to the adoption of measures to prevent climate-related displacement.[48] This requires States to adopt preventive, regulatory, policy, institutional and budgetary measures, including through climate adaptation, disaster risk reduction, and the protection of housing, food and water security, and income sources.[49] The IACtHR further emphasized that effective protection depends on international and regional cooperation, framing climate-related human mobility as a shared responsibility.[50] In cross-border contexts, the IACtHR found that States must establish legal and administrative mechanisms, such as through humanitarian visas, refugee status, temporary residence permits, and protection against refoulement,[51] and is the first human rights tribunal to explicitly order the creation of such mechanisms to protect persons displaced across borders.[52]

B. ICJ Advisory Opinion on the Obligations of States in Respect of Climate Change

Just weeks after the IACtHR's opinion, the ICJ unanimously found that States bear legal obligations in relation to the adverse impacts of climate change, and that failure to comply with these obligations may give rise to State responsibility.[53] While advisory in nature and therefore not binding, its unanimous adoption by all fifteen judges is rare in ICJ jurisprudence, and lends the opinion considerable persuasive authority and legitimacy.[54]

1. Displacement, Non-Refoulement, and Human Rights

The ICJ confirmed that the right to a clean, healthy, and sustainable environment is integral to the enjoyment of fundamental human rights.[55] This recognition may play an important role in shaping future international protection claims, as climate-related environmental degradation can undermine the enjoyment of rights protected by non-refoulement, such as the rights to life and to freedom from inhuman or degrading treatment. Moreover, the ICJ affirmed that the right to a healthy environment requires States to take measures to protect against climate-related harm.[56] This could be significant for international protection claims as a State's failure to take such measures against known

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[48] IACtHR Opinion, *supra* note 42, at ¶ 422.
[49] *Id.* at ¶¶ 422-24.
[50] *Id.* at ¶¶ 430-31.
[51] *Id.* at ¶ 433.
[52] Riemer and Scheid, *supra* note 47.
[53] Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. 187, ¶ 457 (July 23) [hereinafter ICJ Opinion].
[54] *See* Press Release, International Court of Justice, Obligations of States in Respect of Climate Change: The Court Gives its Advisory Opinion and Responds to the Questions Posed by the General Assembly, No. 2025/36 (July 23, 2025) (discussing how, among 29 advisory opinions, this was only the fifth to be adopted unanimously by the Court). *See also* JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 40 (8th ed. 2012) ("[A] decision [of the ICJ], especially if unanimous or almost unanimous, may play a catalytic role in the development of the law").
[55] ICJ Opinion, *supra* note 53, at ¶¶ 377-84.
[56] *Id.* at ¶ 377.

climate risks may support claims to refugee or complementary protection (while effective mitigation and adaptation may signal that protection is not needed).[57]

The ICJ recognized displacement as among the most serious consequences of climate change, describing it as an "urgent and existential threat"[58] and affirmed that persons displaced across borders by climate-related harm may be entitled to international protection.[59] Citing the Human Rights Committee's decision in *Teitiota v. New Zealand*[60], the ICJ confirmed that non-refoulement applies where return would expose an individual to a real risk of irreparable harm to the right to life.[61] In doing so, the Opinion contributes to the growing body of jurisprudence and scholarship recognizing that States' non-refoulement obligations may be engaged in the context of climate change.[62] However, the ICJ stopped short of articulating any concrete positive obligations in relation to this.[63] Specific positive obligations may be illuminated by the ICJ's emphasis on the duty to cooperate, which entails collective responsibility to ensure "equitable solutions" such as through financial support, technology transfer, and humanitarian measures.[64] Although the ICJ did not detail specific obligations with this duty in relation to climate displacement, submissions by states such as Portugal[65] and the Netherlands[66] suggest that cooperation could include facilitating movement across borders and creating regional migration arrangements. Indeed, instruments such as the 2016 New York Declaration on Refugees and Migrants and the 2018 Global Compact for Safe, Orderly and Regular Migration already emphasize the importance of cooperation in managing migration through capacity-building, financial support, technological support and responsibility-sharing.[67]

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[57]Jane McAdam, *Displacement in the ICJ's Advisory Opinion on Climate Change*, 56 ENV'T POL'Y & L. 39, 43 (2025).
[58]ICJ Opinion, *supra* note 53, at ¶ 73.
[59]*Id.* at ¶ 378.
[60]Commc'n No. CCPR/C/127/D/2728/2016 (Jan. 7, 2020).
[61]ICJ Opinion, *supra* note 53, at ¶ 378.
[62]*See, e.g.*, UNHCR, *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters*, ¶¶ 19, 21 (Oct. 1 2020) (discussing how climate change can threaten the right to life and therefore implicate non-refoulement); U.N. Human Rights Committee, *Views Adopted by the Committee Under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2728/2016*, U.N. Doc. CCPR/C/127/D/2728/2016 (Oct. 24, 2019) (finding that returning individuals to a place where there are substantial grounds to believe that climate change would threaten the right to life might trigger the non-refoulement obligations in the sending state).
[63]*See* Obligations of States in Respect of Climate Change, Advisory Opinion, ¶¶ 25-26 (separate opinion by Aurescu, J.) (questioning the limited treatment of non-refoulement and arguing that the ICJ should have gone further by articulating positive obligations to prevent refoulement).
[64]ICJ Opinion, *supra* note 53, at ¶¶ 260-70, 365.
[65]*See* Obligations of States in Respect of Climate Change (Request for an Advisory Opinion Submitted by the General Assembly of the United Nations), Verbatim Record, 15 ¶ 41 (Dec. 10, 2024, 3:00 p.m.) (suggesting that the duty to cooperate may include facilitating cross-border movement, providing temporary or permanent residence, developing bilateral or regional arrangements to manage displacement and coordinating efforts to find sustainable and durable solutions).
[66]*See* Obligations of States in Respect of Climate Change (Request for an Advisory Opinion), Written Statement of the Netherlands, ¶ 5.44 (Mar. 21, 2024) ("States have a duty to cooperate to ensure that such [climate-displaced] persons are accommodated elsewhere. This is a collective responsibility of the international community as a whole").
[67]G.A. Res. 71/1, ¶ 40 (Oct. 3, 2016); G.A. Res. 73/195 (Dec. 19, 2018).

2. Statehood of Small Island States

The ICJ's pronouncements on the protection of statehood of Small Island States (SIS) are particularly significant given that rising sea levels threaten not only the physical territory of these nations, but also the economic value of their Exclusive Economic Zones (EEZs). Under the United Nations Convention on the Law of the Sea (UNCLOS), coastal and island States have sovereign rights over marine resources within 200 nautical miles from their baseline coastlines.[68] For Small Island Developing States, EEZs are often vastly larger than their land area, making them their "most valuable national asset."[69] For instance, Fiji's land mass is around only 18,270 km^2, but its EEZ spans approximately 1.3 million km^2, giving it access to enormous marine resources and expanding the area for economic activities.[70] Climate change, particularly sea-level rise, poses a unique threat to these zones because, if the coastline baselines from which EEZs are measured were considered to move with rising seas, it could theoretically shrink these zones, reducing maritime entitlements.[71] Worse, some scholars have suggested that complete inundation of islands could jeopardize statehood itself under the Montevideo Convention.[72] The ICJ Opinion emphasized that "once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood."[73]

The ICJ discussed how sea-level rise may implicate the right to self-determination,[74] which marks an expansion of its jurisprudence on self-determination beyond the traditional contexts of decolonization and occupation, to encompass climate-induced loss of territory and resources, and opens the door to claims of breach of self-determination by affected peoples and States.[75] On the issue of EEZs, the ICJ found that UNCLOS does not obligate states to adjust established baselines or maritime boundaries in response to physical changes.[76] Therefore, existing maritime entitlements remain valid despite rising sea levels. This offers crucial reassurance to SIS confronted with the loss of their territory due to climate change.

C. Conclusion

The Advisory Opinions are an important development in defining states' obligations on climate change and human rights, including those related to climate

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[68] U.N. Convention on the Law of the Sea, art. 57, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994); Wil Burns, *ICJ Climate Opinion & Small Island States' Rights*, ILLUMINEM (July 31, 2025).

[69] U.N. Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS), Small Island Developing States in Numbers: Oceans Edition 2020, 4; Ori Sharon, *Tides of Climate Change: Protecting the Natural Wealth Rights of Disappearing States*, 60 HARV. INT'L L.J. 95, 96 (2019).

[70] UN-OHRLLS, *supra* note 68, at 4.

[71] Roberto Virzo, *Sea-Level Rise and State of Necessity: Maintaining Current Baselines and Outer Limits of National Maritime Zones*, 2 ITALIAN REV. INT'L & COMPAR. L. 21, 22-23 (2022); Burns, *supra* note 67.

[72] Sumudu Atapattu, *Climate Change: Disappearing States, Migration, and Challenges for International Law*, 4 WASH. J. ENV'T. L. & POL'Y. 1, 14-19 (2014).

[73] ICJ Opinion, *supra* note 53, at ¶ 363.

[74] *Id.* at ¶ 357.

[75] Dave-Inder Comar, *The ICJ's Historic Nod to Self-Determination and Climate Change Impacts*, VÖLKERRECHTSBLOG (Aug. 7, 2025).

[76] ICJ Opinion, *supra* note 53, at ¶ 362.

displacement. Their impact is already visible in how they are shaping domestic litigation. In Canada, the Federal Court referenced the ICJ Opinion when holding that a constitutional climate challenge was justiciable and could be based on a novel common law tort based on a breach of customary international law,[77] while in Brazil, the IACtHR Opinion informed a decision to suspend the environmental licenses of a coal mine and plant.[78] However, it remains to be seen how they will be applied in the climate mobility context specifically. Looking ahead, another advisory opinion on climate change and human rights is pending before the African Court of People and Human Rights, offering a chance to clarify these obligations again in another regional context.

[77] Lho'Imggin v. Canada, 2025 FC 1586.

[78] Judicial Responses to the Advisory Opinion from the Inter-American Court of Human Rights on the Climate Emergency, INST. FOR GOVERNANCE & SUSTAINABLE DEV. (Feb. 2, 2026).

Chapter L: MINING
2025 Annual Report[1]

I. JUDICIAL DEVELOPMENTS

A. Federal Court Cases

1. Challenges to the Resolution Copper Project

In *San Carlos Apache Tribe v. United States Forest Service*,[2] the United States District Court for the District of Arizona denied two overlapping motions for preliminary injunction filed in separate (but effectively consolidated) cases brought by the San Carlos Apache Tribe and a coalition of private plaintiffs led by the Arizona Mining Reform Coalition. Each motion sought to block the exchange of 2,422 acres of federal land in the Tonto National Forest for 5,459 acres of private land held by Resolution Copper Mining LLC.

The federal land at issue includes Oak Flat, an Apache ceremonial ground of great spiritual value to the Western Apache people. Oak Flat also sits atop the world's third-largest deposit of copper ore. Congress authorized the land exchange through the Southeast Arizona Land Exchange and Conservation Act (SALECA)[3] with the express intent of enabling Resolution Copper to mine the ore. In doing so, Congress weighed considerable tradeoffs. On one hand, the mining activity is expected to produce $1.2 billion annually and further the United States' national security interests. On the other hand, it would eventually prevent recreational and religious access to much of Oak Flat.[4] The claims underlying the motions for preliminary injunction fell into four broad categories: (1) appraisal claims under SALECA, arguing the Forest Service "low-ball[ed] the appraised value" of the copper deposits; (2) National Environmental Policy Act (NEPA) claims, alleging shortcomings in the Forest Service's final environmental impact statement; (3) consultation claims, asserting inadequate government-to-government consultation with the Tribe under the National Historic Preservation Act (NHPA); and (4) National Forest Management Act claims, contending the Forest Service failed to follow requisite processes for amending the relevant Forest Plan.

The court denied the injunctions as to each claim, finding that Plaintiffs failed to establish a likelihood of success on the merits.[5] Likewise, despite certain equitable and public-interest considerations favoring Plaintiffs, the court found they "do not tip sharply in Plaintiffs' favor."[6] The court reasoned that "SALECA represents a considered choice by the political branches to prioritize the significant potential benefits that Resolution

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[2]No. CV-21-00068-PHX, 2025 U.S. Dist. LEXIS 158408 (D. Ariz. Aug. 15, 2025).
[3]16 U.S.C. § 539p.
[4]*San Carlos Apache Tribe*, 2025 U.S. Dist. LEXIS 158408, at *6 (quoting Apache Stronghold v. United States, 145 S. Ct. 1480 (Gorsuch, J., dissenting from denial of certiorari)).
[5]*Id.* at *9–12.
[6]*Id.* at *162.

Copper's mining activity is expected to generate."[7] The court declined to "second-guess" the political branches' judgment.[8] The court also later denied Plaintiffs' requests for an injunction pending appeal. The United States Court of Appeals for the Ninth Circuit affirmed the district court's order by an opinion issued on March 13, 2026.[9] Resolution Copper and the government finalized the land exchange soon after.[10]

In *Lopez v. United States*,[11] the United States District Court for the District of Arizona addressed issues that overlapped significantly with those raised in the *San Carlos* case.[12] Seeking to preserve Oak Flat, Plaintiffs—a group of Apache women and girls—sought a preliminary injunction to preclude the land exchange or, in the alternative, an injunction pending appeal. The court denied relief, finding that Plaintiffs were unlikely to succeed on the merits of their claims. First, the court rejected Plaintiffs' challenges under the Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause, concluding the United States Court of Appeals for the Ninth Circuit's rejection of nearly identical claims in *Apache Stronghold v. United States*[13] was binding precedent, especially considering the United States Supreme Court's denial of certiorari in *Apache Stronghold*, discussed below.[14] Second, the court found that even if the Forest Service's final environmental impact statement violated NEPA's page-limit requirements, such violation constituted, at most, harmless error.[15] The court also rejected Plaintiffs' assertion that the Forest Service "uncritically accept[ed] Resolution Copper's proposed mining method," finding instead that it had taken the "hard look" at alternatives that NEPA required.[16] Finally, the court found the Forest Service fulfilled its consultation duties under NHPA. *Lopez* was consolidated with *San Carlos* for the Ninth Circuit appeal. The *Lopez* plaintiffs sought an emergency stay from the Supreme Court, which Justice Kagan denied on March 19, 2026.[17]

In *Apache Stronghold*,[18] the United States Supreme Court denied a writ of certiorari to the Ninth Circuit. After Apache Stronghold filed a RFRA suit to halt the transfer of Oak Flat under SALECA, the United States Court of Appeals for the Ninth Circuit narrowly rejected the plaintiff's claims in a 6-5 en banc decision, holding that while a government action usually imposes a "substantial burden" on religious exercise when it prevents that exercise, a different rule applies when the "disposition" of federal land is involved.[19] Under that exception, the Ninth Circuit determined, a substantial burden arises only when the government coerces a person into defying their religious beliefs or discriminates between religions.[20] Dissenting from the denial of certiorari, Justice Gorsuch, joined by Justice Thomas, argued that "this case meets every one of the standards we generally apply when

[7] *Id.* at *159–60.

[8] *Id.* at *160.

[9] Ariz. Mining Reform Coal. v. U.S. Forest Serv., No. 25-5185, 2026 U.S. App. LEXIS 7582 (9th Cir. Mar. 13, 2026).

[10] *See* Resolution Copper, *United States Forest Service and Resolution Copper Complete Land Exchange* (Mar. 16, 2026).

[11] No. CV-25-02758-PHX, 2025 U.S. Dist. LEXIS 158995 (D. Ariz. Aug. 17, 2025).

[12] *See* San Carlos Apache Tribe v. U.S. Forest Serv., No. CV-21-00068-PHX, 2025 U.S. Dist. LEXIS 158408 (D. Ariz. Aug. 15, 2025).

[13] 101 F.4th 1036 (9th Cir. 2024) (en banc), *cert. denied*, 145 S. Ct. 1480 (2025).

[14] *Lopez*, 2025 U.S. Dist. LEXIS 158995, at *12–13.

[15] *Id.* at *19, *21 n.5.

[16] *Id.* at *22–23, *27.

[17] *See* No. 25A1008, Supreme Court of the United States (Mar. 19, 2026).

[18] *See Apache Stronghold*, 101 F.4th at 1036.

[19] *Id.* at 1484–85 (Gorsuch, J., dissenting from denial of certiorari).

[20] *Id.* at 1484.

assessing petitions seeking our review."[21] First, the dissenters asserted the Ninth Circuit's decision was highly doubtful as a matter of law primarily because, in their view, "nothing in the phrase 'substantial burden'—or anything else in RFRA's text—suggests that a different and more demanding standard applies" to the "disposition" of government property.[22] Second, they argued that certiorari was warranted because this case "implicates both a vital question and a circuit split."[23] Justice Gorsuch observed that the Ninth Circuit's holding "stands as an outlier" and—based on the circuit's size and geography—"will govern most (if not all) RFRA sacred-site disputes in this country."[24] Apache Stronghold unsuccessfully sought reconsideration of the Court's denial of certiorari. The case is currently stayed in the district court pending the Ninth Circuit's decision in *Lopez* and *San Carlos*.

2. National Environmental Policy Act (NEPA) Cases

In *Orutsararmuit Native Council v. U.S. Army Corps of Engineers*,[25] Donlin Gold, LLC applied for a permit from the U.S. Army Corps of Engineers to discharge fill within waters of the United States as part of its planned open-pit gold mine in southwestern Alaska. The Corps prepared an environmental impact statement, which the Bureau of Land Management (BLM) adopted. Those cooperating agencies filed a joint record of decision authorizing the discharge pursuant to the Clean Water Act. In an earlier order, the United States District Court for the District of Alaska ruled that the Corps and BLM had violated NEPA because the environmental impact statement failed to consider the possibility of "a tailings spill larger than 0.5% of the [tailings storage facility's] total volume and by declining to assess a catastrophic tailings spill based solely on its low probability of occurrence."[26] In this order, the court found that the appropriate remedy for the NEPA violation was "remand without vacatur," meaning the agencies must supplement their NEPA analysis but the project otherwise can proceed.[27] It reasoned that vacatur would cause significant disruption to Donlin and local residents while the flaws in the environmental impact statement were not "fundamental" to the agencies' approval of the project.[28]

B. State Court Cases

1. Arizona

In *Patagonia Area Resource Alliance v. Arizona Department of Environmental Quality*,[29] the Arizona Court of Appeals held that Arizona law does not require mines to install monitoring wells at a particular "point of compliance" in order to determine whether groundwater meets aquifer water quality standards at that location. The case arose after the Arizona Department of Environmental Quality (ADEQ) granted an amendment to South32 Hermosa Inc.'s (South32) aquifer protection permit for a zinc and manganese mining project in southern Arizona. The amendment authorized the construction of a second water

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[21] *Id.* at 1486.
[22] *Id.*
[23] *Id.* at 1487.
[24] *Apache Stronghold*, 145 S. Ct. at 1488.
[25] No. 3:23-cv-00071, 2025 U.S. Dist. LEXIS 110107 (D. Alaska June 10, 2025).
[26] *Id.* at *3 (alteration in original).
[27] *Id.* at *10.
[28] *Id.* at *9–10.
[29] 564 P.3d 296 (Ariz. Ct. App. 2025), *review denied sub nom.* Patagonia v. Hermosa, No. CV-25-0042, 2025 Ariz. LEXIS 265 (Ariz. Aug. 19, 2025).

treatment plant that discharges treated effluent into an adjacent creek. ADEQ designated a point of compliance for water quality standards about nine miles downstream, and South32 agreed to assess water quality at that point without installing a monitoring well.

On appeal, Patagonia Area Resource Alliance argued that A.R.S. section 49-244, which instructs mines to "determine" if groundwater meets water quality standards at a designated "point of compliance," categorically requires permittees to install a monitoring well at that point. The court of appeals disagreed. It concluded that mines may determine groundwater quality at the point of compliance through various investigative and calculation methods, without necessarily installing a well at that location. The court emphasized that for South32's permit, ADEQ mandated a comprehensive monitoring and control system, including continuous monitoring at the treatment plant, flow measurements, best available technology, and recordkeeping, and it determined that this approach was more protective than physically sampling the aquifer nine miles downstream. The court thus affirmed ADEQ's issuance of South32's permit. The Arizona Supreme Court denied review.

2. Montana

In *Montana Trout Unlimited v. Montana Department of Natural Resources and Conservation*,[30] the Montana Supreme Court upheld the Department of Natural Resources and Conservation's (DNRC) longstanding interpretation of state law, that mine dewatering "without further beneficial use" falls outside the permitting scheme of the Montana Water Use Act (MWUA). Tintina Montana, Inc. plans to operate an underground copper mine in a specially regulated subbasin and expects to withdraw about 807 acre feet of groundwater annually, of which approximately 350 acre feet will be used for mining operations. The remaining 457-acre feet (Remainder Water) will be treated and returned to the aquifer, serving no mining-related purpose. DNRC granted a permit for the 350 acre feet but found the Remainder Water did not require a permit. Environmental groups objected, arguing that Tintina was also required to obtain a beneficial use permit for the Remainder Water.

On appeal, the Montana Supreme Court concluded that water "removed from a mine to permit mining operations" and subject to "disposal . . . without further beneficial use" is neither waste nor a beneficial use subject to permitting under the MWUA.[31] The Court also rejected a constitutional challenge, reiterating the MWUA's primary purpose is administration of water rights under the Montana Constitution, while environmental protection goals are implemented through other statutes that regulate mine discharges and hydrologic impacts. Accordingly, the Court affirmed DNRC's decision granting the water use permit and held that Tintina may treat and return the Remainder Water to the aquifer without a beneficial use permit.

3. Texas

In *Myers-Woodward, LLC v. Underground Services Markham, LLC*,[32] the Texas Supreme Court clarified that, absent an agreement otherwise, the holder of the surface estate, not the mineral owner, owns the empty underground space left behind by salt mining. The case arose after Underground Services Markham, LLC (USM) acquired the salt interest ("salt and salt formations only") within the mineral estate. After producing salt and creating caverns in the formation, USM sought a declaration that it owned the cavern space it created. The trial court found that the mineral owner owned the caverns but could not use them for off-site storage of hydrocarbons. The court of appeals reversed, holding

[30] 561 P.3d 995 (Mont. 2025).
[31] *Id.* at 1011 (quoting MONT. CODE ANN. § 85-2-505(1)(c)).
[32] 716 S.W.3d 461 (Tex. 2025).

that the surface owner retained subsurface space and that the mineral owner had no right to use the caverns for purposes not specified in the deed.

The Texas Supreme Court affirmed. It held that the surface owner has possessory rights in the space beneath the property, including voids within salt formations created by mining. As the Court reasoned, "empty space is not salt."[33] The Court explained the mineral estate's implied right extends to using as much of the surface and subsurface estate as is reasonably necessary to produce the property's minerals but does not include a general possessory right to subsurface space. Thus, it held that the mineral owner could not use the caverns to store hydrocarbons produced elsewhere, because such use was unrelated to producing salt from the property and would impermissibly increase the burden on the surface estate for the benefit of other lands.

II. Policy Developments

A. Federal Policy

1. Executive Orders and Presidential Proclamations

Executive Order No. 14153, signed by President Trump on January 20, 2025, aims to highlight and promote the development of natural resources in Alaska and expand production and development of minerals, timber, and oil and natural gas in previously protected areas.[34] The order calls on federal agencies and departments to maximize natural resource development on federal and state lands in Alaska, expedite permitting for energy and resource development projects, and emphasize development of Alaska's liquefied natural gas reserves. The Secretary of the Interior is authorized to withdraw prior rules limiting resource development activity in the Arctic National Wildlife Refuge, expedite development of transport infrastructure to support resource development projects, and initiate additional oil and gas leasing on public lands. The Department of Agriculture will also help to facilitate transport infrastructure by halting activities under the "Roadless Area Conservation" policy and reinstating prior, less restrictive rules. Likewise, the U.S. Army Corps of Engineers will review and rescind any actions that may delay or hinder resource development projects in Alaska.

Executive Order No. 14154, also signed on January 20, 2025, "Unleash[es] American Energy"[35] by encouraging energy exploration and production on federal lands and the outer continental shelf, aiming to make America a leading producer of critical minerals, including rare earth elements. The order directs federal agencies to review and suspend burdensome regulations that hinder energy development and request that courts delay litigation where it may relate to those regulations. Additionally, the order streamlines the energy and mining permitting process by revoking environmental review requirements under NEPA beyond basic legislative mandates, urging agencies to undertake all efforts and use all authorities to expedite permitting. Finally, the order prioritizes domestic mineral exploration and processing to reduce dependence on foreign sources.

Executive Order No. 14156, the third in a series of mining and energy-related orders signed by President Trump on January 20, 2025, declares a national energy emergency based on the United States's inadequate domestic energy and critical minerals capacity, emphasizing the importance of reliable, diversified, and affordable domestic energy

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[33] *Id.* at 469.

[34] Exec. Order No. 14154, Unleashing Alaska's Extraordinary Resource Potential, 90 Fed. Reg. 8,347 (Jan. 20, 2025).

[35] Exec. Order No. 14154, Unleashing American Energy, 90 Fed. Reg. 8,353 (Jan. 20, 2025).

supplies for manufacturing, transportation, agriculture, and military readiness.[36] The order directs federal departments and agencies to expedite authorized energy infrastructure projects, with a particular focus on facilitating energy supply, refining, and transportation in the west, northeast, and Alaska. The order leverages emergency provisions under the Clean Water Act, Rivers and Harbors Act, and Marine Protection Research and Sanctuaries Act through expedited Army Corps of Engineers permitting, as well as Endangered Species Act emergency consultation regulations to overcome environmental regulatory obstacles to domestic energy development.

Executive Order No. 14241, signed on March 20, 2025, aims to increase "domestic mineral production to the maximum possible extent."[37] It directs federal agency heads and the National Economic Development Council (NEDC) to create comprehensive priority project lists, identifying critical minerals projects for immediate approval, and establishes "transparency projects" with expedited review schedules. Industry will provide feedback on regulatory bottlenecks and acceleration strategies. The order mandates identification and prioritization of mineral-rich federal lands for mining operations, amending existing land-use plans to support mineral extraction and identifying suitable federal lands for commercial mineral production. Leveraging the national emergency declared in Executive Order No. 14156, this order paves the way for expedited public-private agreements to increase mineral production on public lands. It encourages coordination with the Small Business Administration to ensure favorable terms for private parties in public land agreements and recommends legislation to enhance private-public capital partnerships in the critical minerals sector.

Finally, on October 24, 2025, President Trump issued a Proclamation entitled "Regulatory Relief for Certain Stationary Sources to Promote American Mineral Security."[38] The President reiterated that copper is a "critical material essential to the national security, economic strength, and industrial resilience of the United States."[39] The proclamation also recognized that a May 13, 2024 EPA rule[40] imposes new stationary-source emissions requirements on primary copper smelters under the Clean Air Act. The proclamation found these new standards were not achievable and risked accelerating closure of the few remaining copper smelters in operation. Pursuant to the President's authority under section 112(i)(4) of the Clean Air Act, the Proclamation exempts certain identified stationary sources from the new EPA standards "for a period of 2 years" beyond the regulations' compliance deadlines.[41]

2. National Environmental Policy Act (NEPA)

On February 25, 2025, the Council on Environmental Quality (CEQ) announced a rule to rescind its existing implementing regulations for the National Environmental Policy Act (NEPA).[42] The rule responds to Executive Order No. 14154, *Unleashing American Energy*, which revoked CEQ's direction to issue NEPA implementing regulations. Based on that order, and an order by the United States District Court for the District of North

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[36]Exec. Order No. 14156, Declaring a National Energy Emergency, 90 Fed. Reg. 8,433 (Jan. 20, 2025).
[37]Exec. Order No. 14241, Immediate Measures to Increase American Mineral Production, 90 Fed. Reg. 13,673, 13,673 (Mar. 20, 2025).
[38]Proclamation No. 10987, 90 Fed. Reg. 49,211 (Oct. 24, 2025).
[39]*Id*. at 49,211.
[40]*See* National Emission Standards for Hazardous Air Pollutants, 89 Fed. Reg. 41,648 (May 13, 2024).
[41]Proclamation No. 10987, 90 Fed. Reg. at 49,211–12.
[42]Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10,610 (Feb. 25, 2025).

Dakota, CEQ determined it "may lack authority to issue binding rules on agencies."[43] Soon after, the U.S. Forest Service[44] and BLM[45] also modified their own NEPA regulations. Both agencies issued interim final rules on July 3, 2025, noting that statutory amendments in the 2023 Fiscal Responsibility Act[46] and the U.S. Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County*[47] necessitated an update. The Forest Service revisions confirm deadlines and page limits for environmental reviews, define "major Federal actions" consistent with NEPA's text, adopt new categorical exclusions, define what information the agency must include in an environmental impact statement, and require public comment for notices of intent to prepare environmental impact statements.[48] BLM rescinded parts of its NEPA regulations and moved them to a BLM guidance handbook.[49]

The Department of Interior also announced emergency permitting procedures to reduce permitting timelines under NEPA, the Endangered Species Act, and the National Historic Preservation Act.[50] This procedure directs that projects should be analyzed within 14 days for environmental assessments and 28 days for environmental impact statements. Relying on Executive Order No. 14156, *Declaring a National Energy Emergency*, the Department adopted alternative, expedited arrangements for NEPA compliance.[51] Eligible projects include those "that seek to identify, lease, site, produce, transport, refine, or generate energy resources" and "for which the project applicant(s) have submitted plans of operations, applications for permits to drill, or other applications."[52] Signal Peak Energy has already utilized the new NEPA arrangements. In 2024, Signal Peak filed a lawsuit[53] in the United States District Court for the District of Columbia, seeking an order requiring the Office of Surface Mining Reclamation and Enforcement to complete a final environmental impact statement for Signal Peak's underground coal mine within the two-year deadline set by the Fiscal Responsibility Act.[54] After the court sided with the agency, on May 6, 2025, Signal Peak requested that the Department utilize the alternative arrangements, resulting in a final environmental impact statement and draft record of decision being issued a month later.[55]

The Fixing America's Surface Transportation (FAST) Act was enacted in 2015 to facilitate efficient and transparent federal environmental reviews and approvals for critical

[43]*Id.* at 10,611, 10,613 (citing Iowa v. Council on Env't Quality, 765 F. Supp. 3d 859 (D.N.D. 2025)).
[44]National Environmental Policy Act, 90 Fed. Reg. 29,632 (July 3, 2025) (to be codified at 7 C.F.R. pts. 1b, 372, 520, 650, 799, 1970, 2407; 36 C.F.R. pt. 220).
[45]National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 29,498 (July 3, 2025) (to be codified at 43 C.F.R. pt. 46).
[46]*See* Pub. L. No. 118-5, 137 Stat. 10 (2023).
[47]*See* 605 U.S. 168 (2025).
[48]National Environmental Policy Act, 90 Fed. Reg. at 29,634.
[49]*See* U.S. DEP'T OF THE INTERIOR, *516 DM 1: National Environmental Policy Act Implementing Procedures* (2025).
[50]Press Release, U.S. Dep't of Interior, Department of the Interior Implements Emergency Permitting Procedures to Strengthen Domestic Energy Supply (Apr. 23, 2025).
[51]*See* Exec. Order No. 14156, 90 Fed. Reg. 8,433 (Jan. 20, 2025). *See also* 43 C.F.R. § 46.150(c)–(d) (2025).
[52]U.S. DEP'T OF INTERIOR, Alternative Arrangements for NEPA Compliance, at 1 (Apr. 4, 2023).
[53]Signal Peak Energy, LLC v. Haaland, No. 1:24-cv-00366, 2024 WL 3887386 (D.D.C. Aug. 21, 2024).
[54]Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023).
[55]Joint Stipulation of Dismissal, Signal Peak Energy, LLC v. Burgum, No. 1:24-cv-00366 (D.D.C. July 1, 2025).

infrastructure projects.[56] Title 41 of the FAST Act identifies Covered Projects, which gain access to clear permitting timelines, publicly available at an online Permitting Dashboard, and collaborative inter-agency management of overlapping federal approvals.[57] In 2025, thirteen mineral projects were added to the list, including several uranium projects in New Mexico and South Dakota; gold and silver projects in California, Alaska, and Nevada; and critical minerals projects in Alaska, California, Florida, Nevada, and New York.

3. Other Statutory and Regulatory Updates

On November 7, 2025, the Department of Interior published its Final 2025 List of Critical Minerals.[58] Executive Order No. 14154 required the agency to consider updating the list of critical minerals while Executive Order No. 14261, *Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241*, directed the Secretary of the Interior to consider including metallurgical coal on the list. Based on public comments and inter-agency coordination, the final list adds ten new minerals, including copper, silver, and uranium. The updated Critical Minerals list unlocks streamlined federal permitting and funding opportunities for projects targeting the listed minerals.

The Mine Safety and Health Administration (MSHA) published eighteen notices of proposed rulemaking on July 1, 2025.[59] These rules aim to simplify mine-safety regulations under Executive Order No. 14192, *Unleashing Prosperity Through Deregulation*.[60] Among the notable changes are revisions to rules governing diesel particulate matter in metal and non-metal underground mines.[61] MSHA set the maximum personal exposure to diesel particulate matter at 160 micrograms. The regulatory updates also limit the powers of MSHA district managers. For example, a district manager can no longer require additional measures to be included in roof control plans[62] or mine ventilation plans.[63] MSHA determined that allowing district managers to require additional measures may violate the Appointments Clause and the Administrative Procedure Act. Finally, MSHA proposed updates to equipment and technology regulations, including eliminating trolley regulations[64] and updating regulations related to conveyor belts.[65]

On July 4, 2025, President Trump signed the One Big Beautiful Bill Act into law.[66] As relevant to mining law, the Act targets several Biden-era tax credit programs, including

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[56] Fixing America's Surface Transportation Act, Pub. L. No. 114-94, 129 Stat. 1311 (2015).

[57] Permitting Dashboard, Fed. Permitting Improvement Steering Council, (last visited Mar. 20, 2026).

[58] Final 2025 List of Critical Minerals, 90 Fed. Reg. 50,494 (Nov. 7, 2025).

[59] *See* 90 Fed. Reg. 28,375, 28,383, 28,390, 28,392, 28,395, 28,400, 28,403, 28,406, 28,418, 28,421, 28,424, 28,426, 28,429, 28,432, 28,438, 28,440, 28,443, 28,454 (July 1, 2025).

[60] *See, e.g.*, Improving and Eliminating Regulations; Diesel Particulate Matter Emission Limits in Underground Coal Mines, 90 Fed. Reg. 28,418 (July 1, 2025) (to be codified at 30 C.F.R. pt. 72).

[61] *Id.* at 28,421.

[62] Roof Control Plan Approval Criteria, 90 Fed. Reg. 28,432 (July 1, 2025) (to be codified at 30 C.F.R. pt. 75).

[63] Ventilation Plan Approval Criteria, 90 Fed. Reg. 28,443 (July 1, 2025) (to be codified at 30 C.F.R. pt. 75).

[64] Trolleys, 90 Fed. Reg. 28,395 (July 1, 2025) (to be codified at 30 C.F.R. pts. 56, 57, 75, 77).

[65] Improving and Eliminating Regulations; Approved Conveyor Belts in Underground Coal Mines, 90 Fed. Reg. 28,424 (July 1, 2025) (to be codified at 30 C.F.R. pt. 75).

[66] One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025).

the Section 30D Clean Vehicle Credit, which provided a $7,500 credit for electric vehicles that rely on minerals sourced from free-trade agreement countries, and the Section 45X Tax Credit, which provided a 10% incentive for extraction and processing costs related to producing critical minerals that meet specified purity thresholds. The Act eliminates the Section 30D tax credit, while the Section 45X tax credit will be phased out by 2033. The Act also creates new categories of foreign entities of concern, collectively referred to as "prohibited foreign entities." The Act subjects these entities to additional trade and tax restrictions, such as ineligibility for Section 45X credits beginning in 2026. The Act also provides funding to promote domestic mineral security. The Act allocates $2 billion to the Secretary of Defense to boost stockpiles of critical minerals and $5 billion for investments in critical mineral supply chains through the end of the fiscal year in 2029.

The Act also required the BLM to make at least 4 million additional acres of federal land available for mineral leasing within 90 days of enactment. Accordingly, on October 2, 2025, BLM announced it had made an additional 13.1 million acres of public land available for coal leasing.[67] In determining which land to make available, BLM excluded certain areas such as National Monuments and National Conservation Areas; areas around public schools and census-designated places with 1,000 or more residents; areas composing habitat for the greater sage grouse; alluvial valley floors; and areas within a quarter-mile of recreation sites. Leasing of areas made available under BLM's notice are still subject to existing federal mineral lease requirements. The lands newly available for leasing are concentrated in Wyoming, Montana, and North Dakota.

BLM has finalized a rule rescinding and replacing the Management and Protection of the National Petroleum Reserve in Alaska (NPR-A) regulations promulgated in May 2024, altering the regulatory framework governing surface resource management in the NPR-A to be more consistent with statutory directions and national energy policy.[68] BLM determined the 2024 rule, which had expanded procedural requirements and protective measures for surface resources and "special areas" within the reserve, exceeded the agency's authority under the Naval Petroleum Reserves Production Act of 1976, undermined the purpose of that statute, and conflicted with broader national energy objectives. The new rule, effective December 17, 2025, replaces the 2024 rule with regulations based largely on prior rules issued in 1977, with limited technical updates and clarifications. The rule also removes expanded special-area protections, subsistence resource safeguards, and additional procedural steps that had been criticized as redundant and burdensome.

B. State Policy

1. Montana

Montana Governor Greg Gianforte signed House Bill 717 into law on May 8, 2025, expanding the Montana Department of Environmental Protection's authority to seize mine properties via eminent domain where the associated mining permit is suspended or bonds have been forfeited.[69] The law empowers the Department to initiate condemnation proceedings if the property is located within the permit boundary of an operator prohibited from mining for at least one year or the submitted bond is insufficient for the mining operation, and seizing the property is in the public's interest. It also expands the means by

[67] Implementing Section 50203 of the One Big Beautiful Bill Act, 90 Fed. Reg. 47,813 (Oct. 2, 2025).
[68] Rescission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations, Issued May 7, 2024, 90 Fed. Reg. 51,470 (Nov. 17, 2025) (to be codified at 43 C.F.R. pt. 2360).
[69] MONT. CODE ANN. § 82-4-340(4)(a) (2025).

which seized mining properties may be transferred to a new operator, including by sale, assignment, or lease. New operators must comply with existing reclamation plans, operate according to existing permits or approved modifications, and submit additional bonds when necessary.[70] Operators who have their properties seized must receive just compensation based on the cost of site reclamation, existing liens, the value of the mineral interests and development potential, and costs incurred by the state.[71]

2. Colorado

On May 16, 2025, Colorado enacted Senate Bill 25-054.[72] The law amends the Colorado Mined Land Reclamation Act to establish mine reclamation-only permits for applicants seeking to conduct reclamation activities on legacy mining parcels smaller than five acres. Legacy mines are defined as sites "where pre-law mining operations have occurred or the mining operations have been abandoned, and no bond or other financial assurance or reclamation responsibility" exists.[73] These permits cannot be converted to another permit type and expire after three years. Applicants must demonstrate that they have or can obtain the legal right to enter the subject land, proof of financial warranty, and a comprehensive reclamation plan. A permit may not be issued if toxic or acidic chemicals used in extractive metal processing are present on the project site, where toxic or acidic chemicals will be exposed or disturbed through the mining process, or where uranium is extracted by leach mining or conventional means.

The law also joins Colorado to the 1966 Interstate Mining Compact, a multi-state agreement that established the Interstate Mining Compact Commission and facilitates coordination on interstate mining and resource management issues.[74]

3. Idaho

On January 24, 2025, Idaho Governor Brad Little signed Executive Order No. 2025-02, the Strategic Permitting, Efficiency, and Economic Development (SPEED) Act, aimed at streamlining state permitting requirements for projects that promote U.S. energy independence, national security, or economic development.[75] The SPEED Act creates an inter-agency council with a mission to improve agency consultation; design and implement a coordinated permitting process; establish project-specific timelines for state approvals and environmental reviews; increase accountability; and identify statutes and regulations that needlessly prolong the permitting process or are otherwise unnecessary.[76] According to a press release, the SPEED Act responds directly to President Trump's return to the White House and the increased focus on permitting efficiency at the federal level.[77] The SPEED Act emphasizes streamlined permitting for large projects that require approvals from multiple agencies, such as electricity generation and transmission projects and mining projects, among other "important projects that support communities across Idaho, as determined by the SPEED Council."[78]

[70] *Id.* § 82-4-340(3).
[71] *Id.* § 82-4-340(7).
[72] COLO. REV. STAT. § 34-32-110 (2025).
[73] *Id.* § 34-32-103(5.9).
[74] COLO. REV. STAT. § 24-60-5002 (2025).
[75] Exec. Order No. 2025-02, Idaho Strategic Permitting, Efficiency & Economic Development (SPEED) Act (Jan. 24, 2025).
[76] *Id.*
[77] Press Release, OFF. OF THE GOVERNOR OF IDAHO, Gov. Little Signs SPEED Act to Further Streamline State Permitting (Jan 24, 2025).
[78] *Id.*

Chapter M: NUCLEAR LAW
2025Annual Report[1]

I. JUDICIAL DEVELOPMENTS

A. Nuclear Regulatory Commission v. Texas[2]

In 2023, the State of Texas and the Texas Commission of Environmental Quality (Texas), along with two oil and mineral firms (Fasken) filed a petition for review of a U.S. Nuclear Regulatory Commission's (NRC, or Commission) decision to issue a special nuclear materials (SNM) license to store spent nuclear fuel to Interim Storage Partners LLC (ISP) with the United States Court of Appeals for the Fifth Circuit. Texas argued, among other things, that the NRC lacked the authority to issue a license under the Atomic Energy Act of 1954, as amended (AEA), for a temporary away-from reactor spent fuel storage facility. Although Texas had not sought to intervene before the case was on appeal, the Fifth Circuit Panel granted Texas standing under its *ultra vires* exception.[3]

Taking a textual approach in its analysis, the Fifth Circuit opined that the AEA authorizes the Commission to issue licenses only for certain enumerated purposes—"none of which encompass storage or disposal of material as radioactive as spent nuclear fuel."[4] Because the court held that the NRC had no statutory authority to issue the license which contradicted Congressional policy under the NWPA, the court granted the Petitioners' petition for review, and vacated ISP's license.[5]

On June 12, 2024, NRC and ISP filed a petition for certiorari before the United States. Supreme Court, and on October 4, 2024, the Supreme Court granted the petition for review. The petition presented two questions for the Supreme Court's consideration: whether the Hobbs Act permits nonparties to obtain a review of claims asserting that an agency has exceeded its statutory authority, and whether the AEA and the NWPA allow the NRC to license private entities to temporarily store spent fuel away from the reactor that generated the spent fuel. Oral argument was conducted on March 5, 2025.

Writing for the 6-3 majority on June 18, 2025, Justice Kavanaugh explained that, under the Hobbs Act, Texas had no standing in the proceeding because it had not sought to intervene and proffer a contention before the NRC's Atomic Safety and Licensing Board (ASLB). The Court also concluded Fasken likewise had no standing, because Fasken failed to raise its argument at the Circuit Court level:

> Texas and Fasken had ample opportunity to present their views . . . [t]hey did so. And they had the opportunity to try to intervene before the Commission and become a party—and after being denied, raise their arguments for intervention on appeal . . . and if unsuccessful there, to this

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[1]The contributor of this chapter is Joseph D. McManus, Senior Nuclear Regulatory Counsel at Westinghouse Electric Company LLC (Westinghouse). His contributions are made in his personal capacity and do not reflect Westinghouse's views.

[2]605 U.S. 665 (2025).

[3]The Fifth Circuit-specific exception applies in either of "two rare instances" where standing is given "even if not a party to the original agency proceeding—(1) where 'the agency action is attacked as exceeding [its] power' and (2) where the person 'challenges the constitutionality of the statute conferring authority on the agency.'" *Texas v. Nuclear Regul. Comm'n*, 78 F.4th 827, 839 (5th Cir. 2024) (quoting *Am. Trucking Assn's v. ICC*, 673 F.2d 82, 85 n.4 (5th Cir. 1982)).

[4] *Texas*, 78 F.4th at 840.

[5] *Id.* at 844.

Court. They did not prevail (or did not try) in those forums.[6]

Accordingly, the Court concluded that because Texas and Fasken were never parties to a licensing proceeding under the AEA, Texas and Fasken could not obtain judicial review of NRC's licensing decision.

Notably, the Court opined in dicta regarding the 50-year long history regarding consistent Congressional action, NRC practice, and judicial interpretation regarding the NRC's power to license spent fuel storage facilities. The Court was careful to state that, given these points, it was not indicating or making a holding as to whether NRC has the authority under AEA to license such facilities. However, it appears that the Court has no appetite to revisit this question on the merits—on October 31, 2025, Beyond Nuclear, an antinuclear group, submitted a petition for certiorari to review the Court of Appeals for the District of Columbia's holding in *Beyond Nuclear, Inc. v. Nuclear Regulation Commission* that the NRC may issue a consolidated spent fuel storage facility license notwithstanding alleged statutory restrictions. On January 12, 2026, the Court denied the petition for review.[7]

B. Cotter Corporation v. Mazzocchio[8]

On October 30, 2024, the United States Court of Appeals for the Eighth Circuit decided in *Mazzocchio* that the federal regulations that govern dose limits (i.e., 10 CFR 20) do not preempt state law standards of care in tort cases brought under the Price-Anderson Act related to alleged radioactive exposure. Instead, the Eighth Circuit panel of judges affirmed the lower District Court's ruling that state law could provide the relevant standard of care in a Price-Anderson Act claim by a member of the public.

This holding departs from every other Federal Circuit Court ruling that considered this issue. In similar cases, these courts held that because the field of nuclear safety is occupied by federal regulation, the incorporation of a "state duty" into a public liability action would infringe upon pervasive federal safety regulations in the field of nuclear safety. These courts also noted that a jury should not be applying state-law standards to a negligence claim or permissible levels of radiological exposure when the federal government (i.e., NRC) has already brought its expertise in deciding the federal standard through rulemaking. These points notwithstanding, the Eighth Circuit held that the NRC's regulations need not provide the *exclusive* standard of care in public liability actions.

Cotter Corporation (Cotter) petitioned for an *en banc* review on November 27, 2024, but was denied in December 2024. In March 2025, Cotter subsequently sought United States Supreme Court review of its case. On October 6, 2025, the Supreme Court invited the U.S. Solicitor General (USG) to file a brief in the case expressing the views of the United States. On April 9, 2026, the USG filed its view with the Court.[9] The USG opined that, although it maintains the case was wrongly decided by the Eighth Circuit and is in conflict with other Federal Courts of Appeals, "further percolation" of the case is warranted so that the Court "could benefit from further consideration and development of the arguments on both sides of the question presented before it grants review."[10] The USG

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[6] 605 U.S. at 690.

[7] 133 F.4th 956 (D.C. Ct. App. 2024), *cert. denied*, 223 L. Ed. 2d 513 (U.S. Jan. 12, 2026) (No. 25-540).

[8] 120 F.4th 565 (8th Cir. 2024), *reh'g denied*, No. 23-3709, 2024 U.S. App. LEXIS 32260 (Dec. 18, 2024), *petition for cert. filed*, No. 24-1001 (U.S. Mar. 10, 2025).

[9] *Cotter Corp. v. Mazzochio*, Brief for the United States as Amicus Curiae, No. 24-1001 (https://www.supremecourt.gov/DocketPDF/24/24-1001/404074/20260409174539566_24-1001_Cotter_CVSG_FINAL.pdf) (April 9, 2026).

[10] *Id.* at 19-20.

wrote that, because the case is currently in an interlocutory posture, the Court will be in a better position to decide whether to grant the case for review after final judgment is issued by the Court of Appeals.[11] It is therefore unlikely that the Supreme Court will grant review on this case for the 2025-26 Supreme Court term.

II. Key Executive Orders

A. Summaries

On May 23, 2025, President Trump issued four Executive Orders (EO) with the goal of accelerating deployment of nuclear energy in the United States:

- EO 14299, "Deploying Advanced Nuclear Reactor Technologies for National Security."[12]

EO 14299 directs the Secretary of War, through the Secretary of the Army, to establish a program for utilizing nuclear energy for both installation and operational energy, with the Army instructed to operate a nuclear reactor no later than September 30, 2028. This EO also directs the Secretaries of Energy and State to provide the Army with technical advice and any international legal requirements, respectively.

This EO also directs the Secretary of Energy to initiate the process for designing artificial intelligence (AI) data centers within the lower 48 states and the District of Columbia that are located at or operated in coordination with DOE facilities. Importantly, the EO directs the Energy Secretary to utilize all available legal authorities to site, approve, and authorize the design, construction, and operation of privately funded advanced nuclear reactor technologies at DOE-owned or controlled sites for powering AI infrastructure, other national security needs, supply chain items, or on-site infrastructure, with the goal of operating an advanced nuclear reactor at such sites no later than January 2029. The order also directs the Secretaries of War and Energy to consult with the Chairman of the Council on Environmental Quality (CEQ) regarding more efficient NEPA reviews for such advance reactors.

Finally, the EO directs the State Secretary to promote American nuclear exports; specifically, to lead diplomatic engagement and negotiations for Agreements to Peaceful Nuclear Cooperation under Section 123 of the AEA and aggressively pursue at least 20 new 123 Agreements by January 2028.

- EO 14300, "Ordering the Reform of the Nuclear Regulatory Commission"[13]

This EO sets for the Trump Administration's policy to reestablish the U.S. as the global leader in nuclear energy, facilitate and employ increased deployment of new reactor technology, including safe acceleration of modeling, simulation, testing, and approval of such designs, and facilitate expansion of nuclear energy capacity to 400 gigawatts (GW) by 2050.

Citing the 2024 Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy (ADVANCE) Act,[14] EO 14300 instructs the NRC to reform its culture via mission statement to facilitate nuclear power while ensuring reactor safety. The EO also directs NRC to reform its structure, as to not unduly restrict the benefits of nuclear power.

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[11] *Id.* at 20.

[12] Exec. Order No. 14299, Deploying Advanced Nuclear Reactor Technologies for National Security, 90 Fed. Reg. 22,581 (May 29, 2025).

[13] Exec. Order No. 14300, Ordering the Reform of the Nuclear Regulatory Commission, 90 Fed. Reg. 22587 (May 29, 2025).

[14] Pub. L. No 118-67, 138 Stat. 1448 (2024).

Accordingly, the Administration directs NRC to conduct a "wholesale" revision of its regulations and guidance, to be finalized before the end of 2026, which shall include streamlining the public hearing process. Many of these proposed regulations are due to be proposed for public comment in February and April 2026. Further, the EO directs the NRC to establish a process for high-volume licensing of microreactors and modular reactors, and to reconsider the linear no-threshold model for radiation exposure when determining radiation limits in the NRC's regulations.

This EO also directs NRC to establish fixed review deadlines for licensing actions—no more than 18 months for reviews of new reactor technology, and a deadline of no more than 12 months for license renewals. The Administration directs NRC to establish an expedited path to approve reactor designs that have already been tested and demonstrated by DOW or DOE, only reviewing the risks in the gaps between the DOW/DOD demonstrated reactor and the proposed commercial reactor to be reviewed at the NRC.

- EO 14301, "Reforming Nuclear Reactor Testing at the Department of Energy"[15]

This EO directs the DOE to reform the National Laboratory process for reactor testing to significantly expedite the review and approval and deployment of advance reactors under DOE jurisdiction. The EO also establishes a pilot program outside the DOE National Laboratories, directing the Secretary to approve at least three reactors under the pilot program to achieve first criticality by July 4, 2026.

The Order also directed the DOE to streamline and expedite environmental reviews under NEPA regarding reactor deployment, in consultation with the CEQ, no later than June 30, 2025.

- EO 14302, "Reinvigorating the Nuclear Industrial Base"[16]

EO 14302 was issued under U.S. policy to expedite and promote the production and operation of nuclear energy to provide affordable, reliable, safe, and secure energy to Americans, power advanced nuclear technologies, build associated supply chains and protect national security. Accordingly, the Trump Administration directed the Secretary of Energy to submit a report on recommended national policy to support the management of spent fuel and high-level waste, among other things. The EO called upon the DOE in consultation with the NRC Chairman and OMB Director to develop a plan to expand domestic uranium conversion capacity and expand enrichment capabilities to meet projected reactor needs for low enriched uranium, high enriched uranium, and high assay, low enriched uranium. The President also directed the DOE to provide procurement support, forward contracts, or guarantees regarding nuclear fuel supply chain to ensure offtake for newly established domestic fuel supply.

The Order also discusses funding for nuclear plant restarts, completion, uprate, or construction. The EO directs the DOE to prioritize work to facilitate 5 GW of power uprates to the current fleet and have 10 new large reactors under construction by 2030. DOE is also directed to work with the DOW to assess feasibility of restarting or repurposing shuttered nuclear plants as energy hubs for military microgrid support, with a focus on sites with insufficient power resilience.

[15]Exec. Order No. 14301, Reforming Nuclear Reactor Testing at the Department of Energy, 90 Fed. Reg. 22,591 (May 29, 2025).
[16]Exec. Order No. 14302, Reinvigorating the Nuclear Industrial Base, 90 Fed. Reg. 22,595 (May 29, 2025).

A. Commission Makeup

On January 27, 2025, President Trump designated Commissioner David Wright as Commission Charman. In June 2025, while Chairman Wright's nomination for another 5-year term was pending before the Senate, Chairman Wright's term expired on June 30, 2025. Commissioner Annie Caputo was accordingly delegated certain Chairman authority by Chairman Wright until his nomination cleared the Senate. After his Senate confirmation, Chairman Wright was sworn in as Chairman for his third consecutive term on September 8, 2025, expiring on June 30, 2030.

Notably, although Commissioner (and former Chair) Christopher Hanson's term was not to expire until 2029, President Trump dismissed Mr. Hanson from serving as a Commissioner on June 14, 2025. The Trump Administration did not offer a reason for dismissing Mr. Hanson before his term was to expire, but Deputy Press Secretary Anna Kelly stated, "President Trump reserves the right to remove employees within his own Executive Branch who exert his executive authority."[17] Although Mr. Hanson has not sought judicial relief over his dismissal, the Supreme Court's future holding in the case *Trump v. Slaughter*[18] may provide some clarity as to whether President Trump may terminate an NRC Commissioner notwithstanding the AEA's clear statutory language that Commissioners may only be removed for "inefficiency, neglect of duty, or malfeasance in office."

On July 29, 2025, Commissioner Annie Caputo stated she intended to resign from the NRC, effective when Chairman Wright rejoined the Commission after Senate confirmation.

On July 30, 2025, President Trump nominated Ho Nieh for a five-year term as Commissioner, with the term to expire on June 30, 2029.[19] The Senate confirmed Mr. Nieh 66-32 and was sworn into office December 4, 2025.[20] Previously, Commissioner Nieh served more than 20 years as an NRC executive staff member and recently served as Vice President of Regulatory Affairs for Southern Nuclear Company.

On November 5, 2025, President Trump nominated Douglas Weaver to fill the remainder of Ms. Caputo's term, to expire June 2026.[21] Mr. Weaver was confirmed by the Senate on December 17, 2025, by a 71-29 vote.[22] Commissioner Weaver previously had worked as an executive NRC staff member for almost 20 years, and more recently served as an independent consultant and as Westinghouse's Vice President of Regulatory Affairs.

The Commission is fully staffed at five Commissioners, with Commissioner Crowell's term due to expire on June 30, 2027,[23] and Commissioner Marzano's term set to expire on June 30, 2028.[24] On January 8, 2026, President Trump designated Commissioner Nieh as Chairman of the Commission.[25]

[17] POLITICO, Trump fires Democratic nuclear commissioner (June 16, 2025),

[18] No. 25-332 (Ct. App. D.C. 2025).

[19] *Nominations Sent to the Senate*, THE WHITE HOUSE (July 30, 2025), Nominations Sent to the Senate – The White House.

[20] U.S. Senate, Roll Call Vote No. 620, 119th Cong. (Nov. 19, 2025).

[21] *Nominations Sent to the Senate*, THE WHITE HOUSE (Nov. 5, 2025). Nominations Sent to the Senate – The White House

[22] U.S. Senate, Roll Call Vote No. 651, 119th Cong. (Dec. 17, 2025).

[23] U.S. NUCLEAR REGUL. COMM'N, Commissioner Bradley R. Crowell, (last updated Jan. 12, 2025).

[24] U.S. NUCLEAR REGUL. COMM'N, Commissioner Matthew J. Marzano (last updated Feb. 3, 2026).

[25] U.S. NUCLEAR REGUL. COMM'N, Ho Nieh Named 20th NRC Chairman (No. 26-005,

A. Applications, New Licenses, License Renewals, Design Certifications

There are ninety-four operating commercial nuclear power reactors in the United States. Ten reactors have been operating for over fifty years; forty-two have been operating for between forty and forty-nine years; thirty-seven have been operating for between thirty and thirty-nine years; two have been operating between twenty and twenty-nine years, and three reactors operating between one and nineteen years.

B. New Operating Reactor License Applications

On September 8, 2025, the NRC accepted two submissions of a Combined License (COL) application from Fermi America LLC for four Westinghouse AP1000 reactors in Carson County, Texas. The NRC is currently reviewing the application under the EO 14300 timeframe.[26]

C. Operating License Renewals

In March 2025, the NRC renewed Duke Energy Carolina's Oconee Nuclear Station Units 1, 2, and 3 operating license (South Carolina) for a second (i.e., subsequent) time. In June, NRC granted a subsequent license renewal to Dominion Energy South Carolina Inc.'s V.C. Summer Nuclear Station, Unit 1 (South Carolina). In July 2025, the NRC renewed Vistra Operation Company LLC's Perry Nuclear Power Plant (Ohio) operating license for another 20 years.

In September, the NRC issued a subsequent license renewal for NextEra Energy's Point Beach, Units 1 and 2 (Wisconsin). In December, NRC issued a subsequent license renewal to the Tennessee Valley Authority's Browns Ferry Nuclear Plant Units 1, 2, and 3 (Alabama). The NRC also issued an initial license renewal to Constellation Energy Generation, LLC's (CEG) Clinton Unit 1 and a subsequent license renewal to CEG's Dresden Units 2 and 3 (both plants in Illinois), bringing a total of thirteen operating reactor licenses renewed in 2025. In April 2026, the NRC issued renewed licenses for Pacific Gas & Electric Company's Diablo Canyon Power Plant Units 1 and 2 (California), marking the 99th and 100th renewed commercial operating reactor licenses.[27]

The NRC is currently reviewing subsequent license renewals for Florida Power and Light's St. Lucie plant; Duke Energy Progress's H.B. Robinson Steam Electric Plant, Unit No. 2 (South Carolina); and Southern Nuclear Operating Co.'s Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Georgia).

D. Design Certification Extensions

In July 2025, the NRC promulgated a direct final rule under 10 CFR 52 revising the duration of design certifications from a 15-year term to 40-years.[28] After opening up the rule for significant adverse comments from the public, the NRC determined that no

Jan. 8, 2026).

[26] U.S. NUCLEAR REGUL. COMM'N, NRC Accepts Partial Fermi America Combined License Application (No. 25-051, Sept. 8, 2025).

[27] U.S. NUCLEAR REGUL. COMM'N, *NRC Issues 100th Renewed License with Diablo Canyon Approvals* (No. 26-039, Apr. 2, 2026).

[28] Revising the Duration of Design Certifications, 90 Fed. Reg. 28,869 (July 2, 2025) (codified at 10 C.F.R. pt. 52).

comment submitted was a significant adverse comment to withdraw the direct final rule; accordingly, the rule became effective September 15, 2025.[29]

E. Potential Plant Restarts

With increased clean power demands from the grid, the emergence of artificial intelligence (AI) and its increased appetite for energy, 2025 was an interesting and exciting time for new nuclear energy. Three nuclear reactors once slated for decommissioning have possible new life, and the reactors' respective owners have sought to restart power operations to accommodate projected grid energy demands along with data center needs.

- Palisades[30]

On May 20, 2022, Palisades (Michigan) ceased power operations and ownership of the plant was transferred to Holtec International, Inc. (Holtec) for decommissioning. However, starting in 2023 and continuing through 2025, Holtec submitted licensing actions for NRC review and approval to restart the shuttered nuclear plant. With support from a $1.52 billion loan from DOE, the 805 Megawatt electric (Mwe) reactor is scheduled to restart in 2026.

Also adjacent to the Palisades Site, Holtec plans to construct two twin SMR-300s, named Pioneer 1 and 2. Holtec received a DOE Tier 1 $400 Million award to accelerate deployment of these reactors, in alignment with the relevant EOs discussed above.

- Crane Clean Energy Center (formerly Three Mile Island, Unit 1)[31]

CEG's Crane Clean Energy Center (Pennsylvania) ceased power operations in 2019 and was slated for decommissioning. However, in late 2024, CEG expressed interest to the NRC in restarting the 835MWe plant to operational status. In 2024, CEG announced that it had signed a 20-year power purchase agreement with Microsoft to help with its electricity goals in powering its data centers. In November 2025, the DOE closed a $1 billion loan to CEG to help finance the restart project.[32]

- Duane Arnold Energy Center[33]

Although Duane Arnold (Iowa) permanently shut down in 2020, in 2025 owner NextEra Energy announced a collaboration with Google to restart the 615 MWe plant. Google and NextEra agreed to a 25-year power purchase agreement whereby Google would purchase power from the plant to help support its growing cloud and AI infrastructure.[34]

[29] 10 C.F.R. § 52 (2025).
[30] *Palisades Nuclear Plant*, U.S. NUCLEAR REGUL. COMM'N (Mar. 20, 2026).
[31] U.S. NUCLEAR REGUL. COMM'N, Christopher M. Crane Clean Energy Center (CCEC) (last visited May 15, 2026).
[32] U.S. DEP'T OF ENERGY, Crane Restart (last visited May 15, 2026).
[33] *Duane Arnold Energy Center*, U.S. NUCLEAR REGUL. COMM'N (Feb. 9, 2026).
[34] NEXTERA ENERGY, NextEra Energy and Google Announce New Collaboration to Accelerate Nuclear Energy Deployment in the U.S. (Oct. 27, 2025).

F. Possible Resumption of Construction

- V.C. Summer, Units 2 and 3(South Carolina)

Construction of these Westinghouse AP1000 units began in 2013, but the project was abandoned due to cost overruns in 2017. Since then, the site has been idle, but in 2025, site owner Santee Cooper set forth a competitive bidding process to sell the site to complete the partially-built units. Santee Cooper selected Brookfield Asset Management, the majority owner of Westinghouse, as the winning bidder, in hopes of completing the partially constructed units.[35]

G. Non-power/Research Reactors

There are twenty-nine licensed operating research and test reactors in the United States.[36] Three of these facilities are currently undergoing decommissioning, all located in California.

H. Agreement State Applications; State and Global Actions Concerning Nuclear

On September 25, 2025, the State of Connecticut became the 40th state to become an agreement state.[37]

The nuclear industry also continues to see state moratoriums on the construction of new nuclear be overturned by various state legislatures. On January 8, 2026, Illinois Governor J.B. Pritzger signed The Clean and Reliable Grid Affordability Act[38], lifting the moratorium on new, large nuclear for the state. New York appeared to do an about-face on nuclear, with Governor Kathy Hochul setting a goal for the state to pursue 5 GW of new nuclear capacity to keep up with projected electricity demand and meet carbon emission goals.[39] Notably, New York State was a major influence in the permanent shutdown of Indian Point Nuclear Generating Units 2 and 3 in 2021.

Around the world in 2025, countries have also lifted or are heavily reconsidering their planned phaseout of nuclear power. These countries include Belgium, Taiwan, Denmark, and Germany.[40]

I. Notable Commission Adjudicatory Decisions

The number of Commission decisions nominally ticked upward in 2025 with five orders issued in 2025, compared to three in 2024. Two of the five orders concerned various appeals from ASLB decisions in license renewal proceedings for Diablo Canyon Power Plant and the Dewey-Burdock *in situ* uranium recovery facility. Two other orders concerned license transfers for Palisades and Big Rock Point Site to Holtec International.

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[35] WORLD NUCLEAR NEWS, *Santee Cooper Selects Brookfield to Take on VC Summer* (Oct. 27, 2025).

[36] See Information Digest, *Section 2*, 2024-25 (NUREG-1350, Vol. 35) (last visited May 15, 2026).

[37] U.S. NUCLEAR REGUL. COMM'N, Connecticut Becomes 40th NRC Agreement State, No. 25-057 (Sept. 25, 2025).

[38] Press Release, Off. of Ill. Governor JB Pritzker, Governor Pritzker Signs Historic Clean and Reliable Grid Affordability Act (Jan. 8, 2026).

[39] SYRACUSE, Hochul Ratchets Up Nuclear Plans, Aims to Lead U.S. in Building New Power Reactors, (Jan. 12, 2026).

[40] AM. NUCLEAR SOC'Y, Nuclear Moratoriums Crumble Around the World (May 20, 2025).

The fifth order concerned the State of Nevada's request to lift the current suspension of the Yucca Mountain adjudicatory proceeding for the Commission to consider three of its dispositive motions challenging the DOE's application for a high-level waste repository in Nevada. The Commission denied Nevada's request and continues to hold the proceeding in abeyance.

Chapter N: OCEANS AND COASTS
2025 Annual Report[1]

I. FISHERIES

A. Judicial Developments

1. *New England Fishermen's Stewardship Association v. Raimondo*[2]

The New England Fishermen's Stewardship Association sued the federal government, alleging violations of the U.S. Constitution's Appointments Clause and private non-delegation doctrine as it relates to the issuance of a federal fishery framework adjustment and associated regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The MSA provides regional fishery management councils (Council) with pocket-veto powers to block the Secretary of Commerce from repealing a fisheries management plan or imposing a limited access system without prior approval from the Council. The Councils also exercise advisory functions under the MSA. Council members are drawn from state governments, the fishing industry, consumer groups, environmental organizations, and other interested parties within the private sector. Council members are nominated by state governors within the region and are selected by the Secretary of Commerce from curated lists. In 2023, the National Marine Fisheries Service (NMFS) published a rule in the Federal Register to implement a New England Fishery Management Council federal fishery framework adjustment. The trade group asked the district court to set aside and declare void ab initio the framework adjustment and regulations, arguing the Council members were officers of the United States appointed in violation of the Appointment Clause since neither the President, nor any court selected Council members, none of the Council members were confirmed by the Senate, no principal officer oversee the Council members or can remove them, and the MSA limits NMFS's review of Council decisions. Ruling on cross motions for summary judgment, the district court partially granted summary judgment in favor of the trade group, finding that Council members were federal officers appointed in violation of the Appointments Clause, and the court severed the portions of the MSA that violated the Appointments Clause.

2. *United States v. Cooke Inc.*[3]

On behalf of the United States of America, pursuant to the False Claims Act, two private citizens sued a Canadian seafood conglomerate, its subsidiaries, and its affiliates for allegedly defrauding the Government by submitting false statements and omitting material information in order to secure commercial fishing vessel licenses under the American Fisheries Act and to harvest fish in U.S. waters. The American Fisheries Act (AFA) provides that a vessel owned by an entity is eligible for a fishery endorsement only if 75% of the interest is owned and controlled by citizens of the

[1]This report was prepared by the Oceans and Coasts Committee and edited where necessary by Gladys P. Miles, Keirsey Carns, and Patricia A. McKee. Contributors also include Terra Bowling. Case summaries in this chapter from the *NSGLC Ocean and Coastal Case Alert* are used with permission. Nothing in this review represents the views of the contributors' respective employers or clients.
[2]761 F. Supp. 3d 141 (D. Me. 2024).
[3]No. 21-CV-5743, 2025 WL 27662 (S.D.N.Y. Jan. 3, 2025).

United States.[4] Noncompliance with the AFA's citizenship requirement can result in revocation of a fishery endorsement and the imposition of civil penalties. The Canadian seafood conglomerate acquired a publicly traded U.S. company, its subsidiaries, and its assets in December 2017. The publicly traded U.S. company owned a fleet of fishing vessels that historically harvested fish in U.S. waters of the Atlantic Ocean and the Gulf of Mexico. The Canadian seafood conglomerate restructured the entire acquisition by transferring the fishing vessels to a new Delaware shell entity that owned 20% and a U.S. citizen who owned 80%. The plaintiffs argued the U.S. citizen was "just a figurehead" and the Canadian seafood conglomerate retained control over the fishing vessels. The district court granted the Canadian seafood conglomerate's motion to dismiss, holding that the False Claims Act applies only to fraud related to a request or demand for money or "property" that is presented to an officer, agent, or employee of the United States, and the fishery endorsement and wild fish harvested in U.S. waters are not "property" under the False Claims Act. The court further held that the statutory penalties under the AFA are discretionary, and potential fines not yet assessed do not fall within the scope of the False Claims Act.

3. *Unkechaug Indian Nation v. Seggos*[5]

The United States Court of Appeals for the Second Circuit affirmed a district court's ruling against the Unkechaug Indian Nation in their challenge to New York State's regulations prohibiting the harvesting of American glass eels in off-reservation waters. The Tribe argued that a 1676 agreement between the Governor of New York and the Tribe is a valid and enforceable federal treaty that preempted the state fishing regulations. The court held the order does not qualify as federal law under either the U.S. Constitution's Debts and Engagements Clause or the Supremacy Clause, since it predated the United States and was not ratified. The court also held that while the Eleventh Amendment barred claims against the New York Department of Environmental Conservation, claims against its commissioner could proceed under the *Ex parte Young* exception to Eleventh Amendment immunity. The court also found no abuse of discretion in the district court's handling of Daubert motions and discovery objections before entering summary judgment, as those issues were not relevant to the dispositive treaty question, and ultimately ruled that the district court did not err in granting summary judgment to the defendants.

4. *Slash Creek Waterworks, Inc. v. Raimondo*[6]

Commercial fishermen challenged NMFS regulations for South Atlantic red snapper that excluded dead discards from the annual catch limit (ACL). The plaintiffs argued that the regulation failed to limit catch, prevent overfishing, and maintain a fair allocation between the commercial and recreational sectors in violation of the MSA. The district court granted summary judgment in favor of NMFS, finding that the MSA does not define ACL and that NMFS's approach was reasonable given scientific uncertainties in measuring discards. The court further found that NMFS can prevent overfishing even when excluding dead discards from the ACL by accounting for them in the overfishing limit (OFL) and acceptable biological catch (ABC) calculations. The

[4] 46 U.S.C. § 12113(c)(1) (2024).
[5] 126 F.4th 822 (2d Cir. 2025), *cert. denied sub nom.* Unkechaug Indian Nation v. Lefton, 146 S. Ct. 113 (2025).
[6] Memorandum Opinion, No. 23-1755, 2025 WL 358770 (D.D.C. Jan. 31, 2025), *appeal filed*, No. 25-5042 (D.C. Cir. Feb. 25, 2025).

court held that excluding dead discards did not constitute an unlawful reallocation of fishing privileges between sectors, and the incidental effects are reasonably calculated to further conservation.

5. *Southern Cross Seafoods, LLC v. United States*[7]

An American seafood importer, Southern Cross, challenged the U.S. government's denial of its request for a preapproval certificate to import Patagonian toothfish harvested in the South Atlantic Ocean. The U.S. found that allowing fishing in the absence of a conservation measure (CM) would be inconsistent with the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). The CCAMLR is a multilateral treaty established in 1980 to conserve Antarctic marine ecosystems through science-based conservation measures, including setting catch limits. The treaty established the Commission of Antarctic Marine Living Resources (the Commission), which is required, under CM 31-01, to adopt toothfish catch limits or other measures for each season. However, the Commission failed to reach a consensus on a catch limit for the 2021/2022 season due to Russia's veto. The district court first established that while Southern Cross lacked standing for a declaratory judgment claim, it had prudential standing to pursue its Administrative Procedure Act (APA) claim. The district court upheld the U.S. government's denial of the import request upon finding that allowing fishing in such circumstances would undermine the treaty's purpose and lead to potentially unrestricted exploitation of Antarctic marine resources. The denial of the import request was affirmed.

6. *White's Landing Fisheries, Inc. v. Ohio Department of Natural Resources Division of Wildlife*[8]

The U.S. District Court for the Northern District of Ohio dismissed a lawsuit challenging commercial fishing regulations enacted in 2023. Plaintiffs alleged that the regulations, which eliminated seine fishing for yellow perch in Lake Erie, were an unlawful taking of property under the Fifth and Fourteenth Amendments. The court rejected the argument and held that, while commercial fishing licenses may constitute property interests, license holders have no vested interest in uncaught fish, as such fish belong to the state. The court also dismissed the breach of fiduciary duty and civil conspiracy claims, finding that the Eleventh Amendment protects the state from suit and the federal defendants were improperly served.

7. *Louisiana Shrimp Association v. Biden*[9]

Commercial shrimpers filed a lawsuit requesting that the district court set aside or vacate a 2019 federal regulation issued by NMFS requiring Turtle Excluder Devices (TEDs) on certain skimmer trawl vessels operating in inshore waters. Plaintiffs argued that the regulation is arbitrary and capricious and violates plaintiffs' rights under the Commerce Clause and/or the Major Questions doctrine. On cross-motions for summary judgment, the district court granted summary judgment in favor of NMFS upon finding that NMFS provided adequate justification for changing its position regarding the

[7]No. 24-cv-60040, 2025 WL 958237 (S.D. Fla. Mar. 31, 2025), *appeal filed*, No. 25-11722 (11th Cir. May 20, 2025).
[8]No. 3:24-cv-01371, 2025 WL 1141827 (N.D. Ohio Apr. 17, 2025), *appeal filed*, No. 25-3345 (6th Cir. May 5, 2025).
[9]789 F. Supp. 3d 467 (E.D. La. 2025), *appeal filed*, No. 25-30408 (5th Cir. Jul. 23, 2025).

requirements; thus, the regulation was not arbitrary and capricious; a 2014 Biological Opinion lends support to the regulations, NMFS properly considered the costs and benefits of the regulation and determined in its discretion that the conservation benefits justified the costs of TEDs, and the regulation does not violate the Commerce Clause or Major Questions doctrine.

8. *United Cook Inlet Drift Association v. National Marine Fisheries Service*[10]

Several organizations challenged NMFS's adoption of Amendment 16 to the Fishery Management Plan for Salmon Fisheries in the Exclusive Economic Zone (EEZ) off the Coast of Alaska (Cook Inlet Salmon FMP). The plaintiffs alleged that the amendment violates the MSA and the APA because it is limited to the salmon in the federal waters of Cook Inlet. According to the plaintiffs, the FMP measures should apply to salmon in state waters. The district court dismissed the case, finding the MSA does not require NMFS to adopt an FMP that includes waters outside the EEZ.

9. *Relentless, Inc. v. U.S. Department of Commerce*[11]

Following a remand from the Supreme Court, the district court held that the MSA authorized NMFS to require fishing vessels to pay for at-sea monitors. The court further found that the New England Fishery Management Council has discretionary authority to develop fishery management plans under the MSA and did not violate the statute by requiring fishing vessels to pay for at-sea monitors.

II. Marine Mammals and the Marine Mammal Protection Act

A. *Judicial Developments*

1. *Massachusetts Lobstermen's Association, Inc. v. Menashes*[12]

Off the coast of Massachusetts lies a 200-nautical-mile stretch of previously unprotected federal waters known as "the Wedge," a key migration corridor for North Atlantic right whales during their spring migration. The right whale is designated as endangered under the Endangered Species Act (ESA) and is designated as depleted under the Marine Mammal Protection Act (MMPA). To safeguard these critically endangered whales, with only about 356 remaining, NMFS issued a "Final Rule" under section 118 of the MMPA, closing the Wedge to vertical buoy lines used in the lobster and Jonah crab fishery from February 1 through April 30 each year in order to prevent entanglement. In the district court, the Massachusetts Lobstermen's Association, Inc. successfully argued that the Final Rule conflicted with a temporary law contained in a rider to the Consolidated Appropriations Act of 2023, allowing lobster and Jonah crab fishing in the area, and the court declared the Final Rule was invalid. However, on appeal, the First Circuit reversed the district court's decision and upheld the Final Rule upon finding that it falls within an exception contained in that same rider.

[10] No. 3:24-cv-00116, 2025 WL 1807761 (D. Alaska July 1, 2025).
[11] No. 1:20-cv-00108-WES-PAS, 2025 WL 1939025 (D.R.I. July 15, 2025), *appeal filed*, No. 25-1845 (1st Cir. Sept. 11, 2025).
[12] 127 F.4th 398 (1st Cir. 2025).

2. [Harrison County v. U.S. Army Corps of Engineers][13]

A coalition of Mississippi local governments and industrial groups (collectively, Harrison County) filed suit against the U.S. Army Corps of Engineers (Corps), alleging that the Corps' operation of the Bonnet Carré Spillway led to the unlawful incidental "takes" of bottlenose dolphins in the Mississippi Sound in violation of the MMPA. Harrison County sought a requirement for the Corps to obtain an incidental take authorization before opening the spillway in the future. The federal district court dismissed the case for lack of subject matter jurisdiction, and the Fifth Circuit Court of Appeals affirmed. The appellate court found that Harrison County failed to establish Article III standing because it could not prove that future spillway openings were imminent and that injury would occur.

III. ENDANGERED SPECIES ACT (ESA)

A. Judicial Developments

1. [Bear Warriors United, Inc. v. Lambert][14]

A non-profit organization sued the Florida Department of Environmental Protection (FDEP) for allegedly violating the ESA. Plaintiffs alleged the FDEP promulgated wastewater discharge regulations that unlawfully take manatees in the North Indian River Lagoon and sought declaratory and injunctive relief, including a court order requiring the state to apply for an incidental take permit. In 2024, the district court partially granted summary judgment in favor of plaintiffs, and the only remaining issue for trial concerned "whether there is an ongoing risk of manatee takings under FDEP's regulatory regime."[15] Following a two-day bench trial in April 2025, the court granted declaratory and injunctive relief in favor of plaintiffs, including an order requiring FDEP to apply for an incidental take permit to develop a formal plan to minimize and mitigate impact. In deciding the matter, the court rejected and found inapplicable FDEP's constitutional challenge based on the Anti-Commandeering Doctrine. This doctrine precludes Congress from commandeering the process by directly compelling the State to enact and enforce a federal regulatory program. The court held that the doctrine does not apply when Congress evenhandedly regulates an activity in which both States and private actors engage.

2. [Center for Biological Diversity v. U.S. Fish & Wildlife Service][16]

In 2020, the U.S. Fish and Wildlife Service (FWS) listed the eastern black rail as "threatened" under the ESA, but FWS did not protect the species' critical habitat, stating that doing so would not be "prudent." Specifically, FWS argued that it would not be prudent to designate critical habitat for the eastern black rail because publicizing the locations of the species's habitat would increase disturbance of the species by birders. Plaintiffs, Center for Biological Diversity and Healthy Gulf, challenged FWS's determination, arguing that the ESA required FWS to weigh the benefits of critical habitat designation against any costs before concluding that it would not be prudent to

[13] No. 24-60553, 2025 WL 2860643 (5th Cir. Oct. 9, 2025).
[14] 778 F. Supp. 3d 1242 (M.D. Fla. Apr. 11, 2025), *appeal filed*, No. 25-11821 (11th Cir. May 29, 2025).
[15] *Id*. at 1248.
[16] 792 F. Supp. 3d 50 (D.D.C. 2025).

designate critical habitat. The court ruled in favor of the plaintiffs, and granted their motion for summary judgment. The court vacated FWS's decision not to designate critical habitat and remanded the decision back to FWS to apply the balancing test.

3. *San Francisco Baykeeper v. U.S. Fish & Wildlife Service*[17]

In 2023, plaintiff, the San Francisco Baykeeper, filed a petition with FWS to list the San Francisco Estuary population of white sturgeon as a threatened species under the ESA. FWS was statutorily required to make its "twelve-month finding" within a year of the petition, but failed to do so. FWS admits it is late in issuing its finding, so the remaining issue is how long the court should grant FWS to complete its finding on this petition. FWS requested a 2029 deadline due to staffing shortages and a hiring freeze, while the plaintiff proposed a deadline between thirty days and six months. The court pointed out that FWS's procedures for reviewing petitions, as constructed, do not permit petitions to be reviewed in accordance with the timeframes set out in the ESA and contributed to the agency's delayed review. Therefore, the court ruled against FWS and ordered the agency to complete its findings within nine months.

4. *Center for Biological Diversity v. Raimondo*[18]

In 2023, the court granted summary judgment in favor of plaintiff, Center for Biological Diversity, holding that NMFS could not delay developing a take reduction plan of humpback whales while simultaneously issuing incidental take permits for humpback whales. Following that order, the parties entered into a settlement agreement establishing deadlines for NMFS to create a take-reduction team and to hold an initial take-reduction team meeting. NMFS asked the court to grant a stay of the settlement deadlines relating to the take-reduction plan due to a lapse in appropriated funds and indicated that an additional stay may be requested in the future. As to NMFS's argument that their employees are prohibited from working due to the lapse in appropriated funds, the plaintiff pointed out that the Department of Commerce has an exception in its government shutdown plan that keeps NMFS in operation. The court denied the stay, concluding that NMFS did not provide any basis for an indefinite stay.

IV. AQUACULTURE

A. *Judicial Developments*

1. *Eastern Maine Conservation Initiative v. Board of Environmental Protection*[19]

Eastern Maine Conservation Initiative and Roque Island Gardner Homestead Corporation appealed a judgment from the Superior Court of Maine affirming the issuance of a permit granted by Maine's Department of Environmental Protection (DEP) for an aquaculture operation. The permit authorized the construction of an aquaculture facility and the installation of intake pipes to draw water from Chandler Bay and outfall pipes to discharge treated wastewater back into the Bay. The petitioners argued that DEP erred in its issuance of the permit by failing to assess the impact that the discharge would have on wildlife habitat and by failing to conduct an independent

[17] No. 25-cv-01360-LJC, 2025 WL 2528687 (N.D. Cal. Sept. 3, 2025).
[18] No. 22-cv-00117, 2025 WL 2998164 (N.D. Cal. Oct. 4, 2025).
[19] 334 A.3d 706 (Me. 2025).

assessment as to the unreasonableness of the harm to wildlife habitats that would be caused by the aquaculture operation. Instead of conducting an independent assessment, DEP relied on the findings of a previously issued permit for the same aquaculture operation. The Maine Supreme Judicial Court held that DEP's interpretation of the scope of Maine law was correct and that DEP did not abuse its discretion by relying on the findings of the previously issued permit. The court upheld the permit issued by DEP.

2. *Sound Action v. King County*[20]

Appellant, Sound Action, appealed the Shorelines Hearings Board's (Board) decision to uphold a permit for a 9.6-acre site consisting of a kelp and shellfish farm located about 300 feet off the coast of Washington. Appellant asserts that the Board's decision was unsupported by substantial evidence, contrary to the law, or arbitrary and capricious. The court found that the record is sufficient to persuade a "fair-minded person" that the Board's findings were based on substantial evidence, and held that the appellant failed to establish that the Board's decision was clearly erroneous. Additionally, the court found that the Board's decision to issue the permit was not arbitrary and capricious because the appellant failed to establish that the decision was "willfully unreasonable, without consideration, and in disregard of facts or circumstances." The court upheld the issuance of the permit.

V. OFFSHORE WIND

Note: The pace of offshore wind development is anticipated to slow down considerably due to Executive Order 14154 and the President's January 20, 2025 Memorandum, Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, which rescinds the past administration's clean energy and climate related initiatives.

A. Judicial Developments

1. *Green Oceans v. U.S. Department of the Interior*[21]

Environmental organizations and individuals challenged federal agency approvals of a wind project off the coast of Rhode Island and Massachusetts, alleging the agencies violated several federal laws, including the APA, the Outer Continental Shelf Lands Act (OCSLA), National Environmental Policy Act (NEPA), the ESA, the MMPA, the Migratory Bird Treaty Act (MBTA), the Clean Water Act, the Coastal Zone Management Act (CZMA), and the National Historic Preservation Act. The defendants argued that the plaintiffs lacked standing to bring those claims. The court concluded that forty of the forty-five original plaintiffs had standing to continue with six of the nine claims. The judge dismissed three claims under OCSLA, MBTA, and CZMA.

[20] No. 86228-6-I, 2025 WL 1432898 (Wash. Ct. App. May 19, 2025).
[21] No. 1:24-cv-141-RCL, 2025 WL 973540 (D.D.C. Apr. 1, 2025).

2. *Save Long Beach Island v. U.S. Department of Commerce*[22]

The U.S. District Court for the District of New Jersey dismissed a lawsuit filed by an environmental group and an individual challenging approvals issued by NMFS to windfarm developers in New York and New Jersey. Specifically, the plaintiffs challenged six Incidental Harassment Authorizations (IHA) and one Letter of Authorization (LOA) issued for the "take" of two species: the North Atlantic right whale and the humpback whale. The court found two of the challenged IHAs moot due to expiration. The court concluded that the group lacked standing to pursue the remaining claims because they did not show injury in fact. Although the court granted summary judgment on jurisdictional grounds, it also held that the claims failed on the merits. The plaintiffs did not meet their high burden to prove that NMFS's take estimates of right whales and humpback whales were arbitrary and capricious under the MMPA's "small numbers" and "negligible impact" requirements. Further, the plaintiffs failed to show that NMFS's decision not to conduct further environmental review under NEPA before issuing the IHAs and LOA was arbitrary and capricious.

3. *Ocean City v. U.S. Department of the Interior*[23]

Thirty-four plaintiffs challenged federal approvals of the construction and operations plan for a wind farm off the coast of Ocean City, Maryland and Fenwick Island, Delaware, alleging various procedural irregularities and violations of various environmental statutes. The federal defendants (to wit, the Bureau of Ocean Energy Management (BOEM), the NMFS, the United States Department of the Interior, and several of their officials) filed a partial motion to dismiss two counts of the amended complaint, and the intervenor-defendant (i.e., the offshore wind developer) filed a motion to dismiss the eight-count amended complaint in its entirety. Plaintiffs filed a consolidated opposition to the motions. After consideration of the parties' arguments and finding the plaintiffs established standing, the district court granted the federal defendants' motion to dismiss, and partially granted the intervenor-defendant's motion to dismiss. More specifically, the court dismissed plaintiffs' (1) CZMA claim upon finding that there is no private right of action to challenge consistence certification concurrences from states; (2) MBTA claim upon finding that regulatory review of a third-party activity does not constitute "take" of migratory birds; and (3) first claim under the APA based on the failure by the plaintiffs to identify particularized factual allegations suggesting that the Defendants acted in an arbitrary and capricious manner. The dismissal motions related to violations of the ESA, NEPA, OCSLA, MMPA, and NHPA were denied.

VI. Offshore Oil & Gas

A. Judicial Developments

1. *Healthy Gulf v. Federal Energy Regulation Commission*[24]

The Federal Energy Regulatory Commission (FERC) granted Driftwood Pipeline LLC a certificate of public convenience and necessity to construct two new natural gas pipelines in southwestern Louisiana. Following FERC approval, two environmental organizations petitioned for further review, arguing that FERC violated NEPA and the

[22] 794 F. Supp. 3d 273 (D.N.J. 2025).
[23] No. SAG-24-3111, 2025 WL 1827963 (D. Md. July 2, 2025).
[24] 132 F.4th 544 (D.C. Cir. 2025).

Natural Gas Act (NGA). The D.C. Circuit Court concluded that FERC did not violate NEPA by declining to evaluate the anticipated upstream impacts or to determine whether the total projected greenhouse gas emissions would be significant. The court also found that the environmental organizations forfeited their NEPA claim because they did not raise that issue during the public comment period on the draft Environmental Impact Statement (EIS).

2. *Healthy Gulf v. Burgum*[25]

In 2023, BOEM approved Lease Sale 259, opening over 70 million acres in the Gulf of Mexico for offshore oil and gas development. Six environmental groups filed suit to challenge Lease Sale 259, arguing that BOEM violated NEPA by failing to evaluate environmental impacts. The district court found that BOEM failed to adequately assess the greenhouse gas emissions from the sale due to its reliance on an outdated reference case that did not account for laws enacted after 2020, thereby failing to provide the "hard look" required under NEPA. The court also ruled that BOEM acted arbitrarily by failing to consider the Rice whale's expanded habitat range in the Gulf. The court upheld BOEM's analysis regarding oil spill risks, concluding that its assessment of potential catastrophic oil spills was reasonable and sufficient under NEPA. Lastly, BOEM's consideration of alternatives was deemed adequate, as the agency was not required to explore every proposed alternative; rather, it reasonably discussed options that met its statutory obligations. Therefore, the court granted in part and denied in part both parties' summary judgments.

3. *Sierra Club v. U.S. Department of Energy*[26]

The D.C. Circuit Court of Appeals rejected challenges to the U.S. Department of Energy's (DOE) approval of an Alaskan liquified natural gas (LNG) project seeking to export natural gas to non-free-trade-agreement countries. Environmental groups argued that DOE misapplied the public interest standard under the NGA and failed to comply with NEPA. The court held that DOE's determination was supported by substantial evidence, and many of the challenges raised by plaintiffs were addressed in an earlier case involving the same project.

4. *Healthy Gulf v. U.S. Department of the Interior*[27]

Environmental organizations challenged the U.S. Department of the Interior's approval of the 2024–2029 National Outer Continental Shelf Oil and Gas Leasing Program, which authorizes up to three lease sales in the Gulf of Mexico region. Petitioners argued that the government failed to adequately assess the risks to vulnerable coastal communities, failed to properly consider the endangered Rice's whale in its environmental sensitivity analysis, overlooked potential conflicts with other ocean uses, and failed to sufficiently balance the program's projected benefits against its environmental costs. On appeal, the court denied the petitioners' request for remand upon finding that the government had satisfied the statutory requirements under the OCSLA, the Department reasonably evaluated environmental justice concerns, the selection of representative species for environmental sensitivity analysis, and potential conflicts with other uses of the Gulf.

[25] 775 F. Supp. 3d 455 (D.D.C. 2025).
[26] 134 F.4th 568 (D.C. Cir. 2025).
[27] 152 F.4th 180 (D.C. Cir. 2025).

5. *Louisiana v. Biden*[28]

President Biden issued two memoranda that indefinitely prohibited oil and gas leasing in certain areas of the Outer Continental Shelf. Several states sued seeking declaratory and injunctive relief, asserting that the memoranda exceeded the presidential constitutional authority and violated OCSLA. Although the current administration rescinded the memoranda, the court rejected the defendants' mootness-based motion to dismiss. The district court granted the plaintiff's motion for summary judgment, concluding that the withdrawn memoranda violated OCSLA because they imposed an indefinite, unspecified duration.

VII. Miscellaneous: Other Significant Matters

A. Judicial Developments

1. *Indigenous Peoples of the Coastal Bend v. U.S. Army Corps of Engineers*[29]

A crude export terminal in Texas sought an expansion permit to dredge the seafloor and dispose of that material in U.S. waters. The Corps offered a public comment period and conducted an environmental assessment before issuing the permit. Two local tribes and an environmental association sued to invalidate the permit, arguing that the Corps' decision violated NEPA, the Clean Water Act, and the APA. The district court ruled in favor of the Corps, concluding that the agency had adequately studied the environmental impacts of the proposed expansion.[30] On appeal, the Fifth Circuit affirmed, holding that the Corps complied with NEPA by 1) addressing impacts beyond increased vessel traffic, 2) evaluating the project's benefits and costs, 3) assessing both incremental and cumulative impacts, and 4) considering climate change. The court also found that the Corps complied with the CWA in evaluating the project's benefits, costs, and cumulative impacts. Finally, the court ruled that the plaintiffs forfeited an argument regarding vessel traffic and that the Corps was not required to prepare an EIS under NEPA.

2. *Okeelanta Corporation v. U.S. Army Corps of Engineers*[31]

Agricultural groups challenged the Corps' approval of the Everglades Agricultural Area (EAA) Project under the Water Resources Development Act (WRDA). The EEA Project includes a 240,000-acre-foot reservoir and a 6,500-acre stormwater treatment area. Plaintiffs argued that the Corps used the wrong baseline for assessing water-supply impacts and failed to examine how that would affect water availability. They claimed that the WRDA's Savings Clause guaranteed them a certain water supply and asserted that the Corps failed to consider the effects of operating the stormwater treatment area. The Eleventh Circuit held that the plaintiffs had standing, but their challenge to the stormwater treatment area was not ripe for review since the Corps had not made any final decision. The court further concluded that the Savings Clause only required replacing water due to the EAA Project, not water reductions caused by nature-related infrastructure concerns. Thus, the Corps acted reasonably. Lastly, the

[28] No. 2:25-CV-00071, 2025 WL 2808502 (W.D. La. Oct. 2, 2025).
[29] 132 F.4th 872 (5th Cir. 2025).
[30] *Id.* at 879-70.
[31] 132 F.4th 1320 (11th Cir. 2025).

court concluded that the stormwater treatment area had independent utility and could function effectively without the reservoir, making a separate EIS appropriate under NEPA. Therefore, the court affirmed in part and reversed in part the district court's ruling.

3. *Gunstream Land Corp. v. Hansen*[32]

The Gunstream Land Corporation sued nearby property owners, arguing that their dam had failed, causing ongoing damage to a fishing preserve. At trial, the jury found in favor of the defendant, concluding that the increased sedimentation did not violate the Clean Water Act (CWA). On appeal, the plaintiff was not granted a new trial.

4. *Enbridge Energy, LP v. Whitmer*[33]

Enbridge Energy sued Michigan Governor Gretchen Whitmer concerning the operation of a pipeline crossing the Straits of Mackinac. In 2020, Michigan sought to revoke an easement issued for the pipeline due to sustained violations of the easement terms. However, the State of Michigan argued that it had immunity from the suit. The court determined that Enbridge's claims fell within the *Ex parte Young* exception to the Eleventh Amendment because the requested relief would neither deprive Michigan of substantial control over its submerged lands nor constitute a demand for specific performance of a state contract.

5. *WildEarth Guardians v. U.S. Department of Agriculture*[34]

Several environmental conservation organizations challenged the U.S. Department of Agriculture's (USDA) decision to authorize a predator-damage and conflict-management program. The court affirmed that the Wilderness Act supports lethal predator management to support livestock grazing. However, the court also found that the USDA violated NEPA by failing to analyze localized environmental impacts. Therefore, the court vacated the USDA's environmental assessment and directed the Department to either revise its assessment or conduct a full environmental impact statement.

6. *Mitchell v. City of Benton Harbor*[35]

The public water system in Benton Harbor, Michigan became contaminated with lead, impacting several hundred children, whose guardians sued state and city officials. Plaintiffs argued that the defendants failed to mitigate the lead-water crisis and even exacerbated it. They asserted substantive due process and state-created-danger claims under section 1983, a cause of action for individuals whose constitutional rights have been violated by state or local officials, as well as state-law negligence claims. On appeal, the section 1983 claim against state officials were dismissed, and the Sixth Circuit reversed the dismissal of the claims against the city and city officials, remanding the case to the lower court.

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[32] No. 6:21-cv-00451, 2025 WL 915410 (E.D. Tex. Mar. 26, 2025).
[33] 135 F.4th 467 (6th Cir. 2025).
[34] 135 F.4th 717 (9th Cir. 2025).
[35] 137 F.4th 430 (6th Cir. 2025).

7. *Seven County Infrastructure Coalition v. Eagle County*[36]

The U.S. Supreme Court reversed a decision by the D.C. Circuit Court, throwing out federal approval for a railroad line designed to transport crude oil from Utah to Gulf Coast refineries. According to the Court, NEPA grants agencies broad discretion in conducting environmental reviews and courts should apply the APA's "arbitrary and capricious" standard when evaluating those decisions.

8. *South Carolina Coastal Conservation League v. U.S. Army of Corps of Engineers*[37]

The district court granted summary judgment to the Corps and the EPA over a permit allowing development of part of the Cainhoy Peninsula. Several environmental groups had challenged the agencies' decision to approve the permit, arguing that it violated the CWA and NEPA. The court dismissed the plaintiffs' claims, finding that the federal government did not violate the CWA because it carefully considered all alternative plans, potential impacts on aquatic ecosystems, and public benefits. The court also found that the government's decision to prepare an environmental assessment, rather than an EIS, for the project was not arbitrary and capricious and did not violate NEPA. Additionally, because the plaintiffs did not move for summary judgment on their separate claims against the FWS, the court held that the plaintiffs waived those claims and granted summary judgment to the FWS.

9. *Alaska Department of Fish & Game v. Federal Subsistence Board*[38]

The U.S. Court of Appeals for the Ninth Circuit dismissed a lawsuit by the Alaska Department of Fish and Game challenging the Federal Subsistence Board's approval of an emergency deer and moose hunt. The plaintiffs argued that this approval violated the Alaska National Interest Lands Conservation Act (ANILCA) by unlawfully delegating hunt management to the specified tribe. However, the court ruled that the Board had authority under ANILCA to allow emergency subsistence hunts and could rely on regulations permitting wildlife harvest on federal lands.

10. *Idaho Conservation League v. Bonneville Power Admininstration*[39]

Environmental organizations challenged the Bonneville Power Administration's (Administration) decision to allocate only about 10% of its excess financial reserves to fish and wildlife protection. The plaintiffs asserted that the Administration's actions violated the Northwest Power Act (NWPA), but the Ninth Circuit rejected the challenge. The NWPA's fish-and-wildlife provision governs the physical operation of hydroelectric projects, not the Administration's choices about how to distribute the funds.

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[36] 605 U.S. 168 (2025).

[37] No. 2:22-cv-2727-RMG, 2025 WL 1476517 (D.S.C. May 22, 2025), *appeal filed*, No. 25-1797 (4th Cir. Jul. 15, 2025).

[38] 139 F.4th 773 (9th Cir. 2025).

[39] 142 F.4th 636 (9th Cir. 2025).

11. *Association to Preserve & Protect Local Livelihoods v. Sidman*[40]

Several businesses challenged a Bar Harbor, Maine ordinance capping the number of cruise ship departures to 1,000 passengers per day. The district court upheld the ordinance, holding that the ordinance was not preempted by the Supremacy Clause of the U.S. Constitution, nor did it violate the Commerce and Due Process Clauses. However, on appeal, the First Circuit remanded, directing the lower court to reevaluate whether the ordinance imposes an excessive burden on interstate commerce.

12. *Defenders of Wildlife v. U.S. Fish & Wildlife Service*[41]

Conservation groups sued the FWS over its pilot watershed restoration project in the Mattamuskeet National Wildlife Refuge, alleging the agency violated the Refuge Act, NEPA, and other federal laws in authorizing the project. The district court vacated the environmental assessment and FONSI, holding that the FWS should have prepared a compatibility determination for the project under the Refuge Act and FWS violated NEPA by failing to prepare an EIS.

13. *Kāpaʻa v. Trump*[42]

In April 2025, the President of the United States issued a proclamation titled "Unleashing American Commercial Fishing in the Pacific," which directed the Secretary of Commerce to "expeditiously publish new proposed rules in the Federal Register to amend or repeal all burdensome regulations that restrict commercial fishing" within the Pacific Islands Heritage Marine National Monument Expansion Area (Monument Expansion Area).[43] Acting on behalf of the Secretary of Commerce, NMFS did not propose any new rules, rather the agency sent a letter advising permit holders that the regulations prohibiting commercial fishing in the Monument Expansion Area were no longer effective. Upon receipt of this letter, commercial fishing operations commenced in the Monument Expansion Area. In response, several cultural and environmental organizations sued. The plaintiffs alleged that NMFS violated the MSA and APA by failing to conduct notice-and-comment rulemaking before issuing its letter. The district court granted summary judgment to the plaintiffs, finding that they had established Article III standing under the U.S. Constitution and that NMFS violated the APA by failing to follow the required rulemaking procedures.

14. *Glynn Env Coalition Inc. v. Sea Island Acquisition, LLC*[44]

An environmental organization filed a CWA citizen suit, alleging that a property owner illegally filled wetlands on St. Simons Island, Georgia. The U.S. District Court for the Southern District of Georgia dismissed the claim for a lack of standing. On appeal, the Eleventh Circuit vacated and remanded the district court's ruling. However, before the lower court could reevaluate the case, the U.S. Supreme Court issued its decision in *Sackett v. EPA*.[45] Based on the new "waters of the United States" (WOTUS)

[40] 147 F.4th 40 (1st Cir. 2025).
[41] No. 4:24-CV-73-BO-BM, 2025 WL 2078309 (E.D.N.C. July 23, 2025), *appeal filed*, No. 25-2137 (4th Cir. Jul. 15, 2025).
[42] 794 F. Supp. 3d 793 (D. Haw. 2025).
[43] *Id.* at 802.
[44] 146 F.4th 1080 (11th Cir. 2025), *reh'g denied*, (Aug. 29, 2025).
[45] 598 U.S. 651 (2023).

scope, the district court dismissed the complaint, finding the wetland was not a WOTUS subject to CWA jurisdiction under the new *Sackett* test. The court of appeals affirmed the dismissal of the case.

15. *Friends of the Everglades, Inc. v. Noem*[46]

Environmental groups filed a lawsuit seeking declaratory and injunctive relief to halt the construction of a mass migrant detention and deportation facility known as "Alligator Alcatraz" until the federal government complied with NEPA and other federal, state, and local laws. The district court granted a Temporary Restraining Order (TRO) to halt construction for two weeks. In granting the TRO, the court cited a "sufficient likelihood of success" on the plaintiffs' claim that the facility required an environmental review and the chance for irreparable harm if construction continues. The judge also noted the balance of equities and the public interest favored granting the order, and that the Immigration and Nationality Act did not strip the court of jurisdiction to review decisions relating to the detention and removal of noncitizens.

16. *Global Marine Exploration, Inc. v. Republic of France*[47]

An *in personam* action was brought against France by a private salvage company seeking a salvage award following the recovery of a 16th-century French shipwreck found off the coast of Florida. The plaintiff salvage company had originally filed an *in rem* action against the ship, but the district court dismissed the case upon finding that the salvage award claim was barred by the Sunken Military Craft Act (SMCA) because the ship was engaged in "military noncommercial service" when the vessel sank. On appeal, the Eleventh Circuit affirmed and held that the salvage award was barred by the SMCA, and that France did not violate the Florida Uniform Trade Secrets Act, and that France did not tortiously interfere with the company's business relationship with the Florida Department of State.

17. *Confederated Tribes of the Colville Reservation v. Tech Cominco Metals, Ltd.*[48]

The Confederated Tribes of Colville Reservation sought damages from a Canadian mining company under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the lost use of injured natural resources due to the defendant's discharge of hazardous materials from a lead-zinc smelter into the Upper Columbia River. The Tribes included cultural losses in its claim for damages due to the impact on the Tribes' ability to use the river for traditional purposes. The U.S. District Court for the Eastern District of Washington granted the defendants' motion for partial summary judgment and subsequently denied their motion for reconsideration. On appeal, the Ninth Circuit reversed and remanded, holding that damages for the loss of use of natural resources with a cultural component are authorized under CERCLA. The court remanded to the district court to determine whether the tribes sustained damages under CERCLA.

[46] 796 F. Supp. 3d 1234 (S.D. Fla. 2025), *appeal filed*, No. 25-12887 (11th Cir. Aug. 25, 2025).
[47] 151 F.4th 1296 (11th Cir. 2025), *reh'g denied*, (Oct. 6, 2025).
[48] 153 F.4th 947 (9th Cir. 2025), *stay granted*, (Nov. 12, 2025) (allowing the United States additional time to file an amicus curiae submission regarding rehearing en banc).

18. *Wai Ola Alliance v. U.S. Department of the Navy*[49]

Several environmental organizations sued the Navy for CWA violations stemming from mismanagement of a bulk fuel storage facility that had begun leaking. The U.S. District Court for the District of Hawai'i rejected the Navy's motion for summary judgment, citing conflicting evidence over whether the facility continues to discharge pollutants.

[49] No. 22-00272-LEK-RT, 2025 WL 2784456 (D. Haw. Sept. 29, 2025).

Chapter O: OIL AND GAS
2025 Annual Report[1]

I. ALASKA

A. Federal Legislative and Administrative Developments

1. On January 20, 2025, Executive Order 14153, titled "Unleashing Alaska's Extraordinary Resource Potential" was issued by President Trump to reverse protections and policies placed by the Biden administration on natural resource development in Alaska.[2]
2. On June 1, 2025, the Department of Interior moved to expand oil and gas development in Alaska's National Petroleum Reserve ("ANWR") by issuing a draft analysis that supports the selection of a new alternative from the 2020 plan that would reopen up to 82% of the 23-million-acre reserve to oil and gas leasing and development.[3]
3. On July 28, 2025, the Bureau of Land Management ("BLM") rescinded the "Special Areas within the National Petroleum Reserve in Alaska" that was published in the Federal Register in July 2024, issued a report titled "Maximizing Protection in the National Petroleum Reserve – Alaska" published in January 2025, and a BLM memorandum titled "BLM Interim Management of Special Areas within the National Petroleum Reserve – Alaska" published in January 2025.[4]
4. On November 17, 2025, the Department of the Interior published the "Rescission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations" which rescinded the "Management and Protection of the National Petroleum Reserve in Alaska" final ruling, issued on May 7, 2024.[5] The 2024 regulation attempted to set standards for managing the oil and gas development activities of the National Petroleum Reserve to protect and support fish, wildlife, their habitats, and their subsistence use.[6]

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[1]The Oil and Gas Committee prepared this report. This report lists significant judicial decisions and regulatory changes by State. Calder H. Lamb of Koeppel, LLC, New Orleans, Houston, Dallas, edited the report. Contributing authors were George R. Lyle and Bree J. Mucha of Guess & Rudd P.C. (Alaska); Thomas A. Daily, Daily & Woods P.L.L.C. (Arkansas); John Harris, Casso & Sparks, LLP (California); Brian Annes, Stephanie Morr, and John Siragusa, Davis Graham & Stubbs LLP (Colorado); Diana Stanley and Christ Stiencamp, Depew Gillen Rathbu & McInteer, LC (Kansas); Martha Thibaut, Loyola Collect of Law (Louisiana); Ann C. Tripp and Andrew Cloutier, Hinkle Shanor LLP (New Mexico); Gregory D. Russell, Ilya Batikov, Mark A. Hylton, Matthew D. Fazekas and Eric A. Parker, Vorys, Sater, Seymour and Pease LLP (Ohio); Nicolle R. Snyder Bagnell and Gina Kantos, Reed Smith LLP (Pennsylvania); Aaron C. Powell, Anna Boyer, and James Ashmore, Holland & Knight LLP (Texas).

[2]Exec. Order No. 14,153, 90 Fed. Reg. 8347, 8347 (Jan. 29, 2025).

[3]Press Release, U.S. Dep't of the Interior, Interior Withdraws Restrictive Special Area Policies in Alaska's National Petroleum Reserve (July 28, 2025).

[4]*Id.*

[5]Rescission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations, 90 Fed. Reg. 23507, 23507 (June 3, 2025) (to be codified at 43 C.F.R. pt. 2360).

[6]Management and Protection of the National Petroleum Reserve in Alaska, 89 Fed. Reg. 33872, 33872 (May 7, 2024) (codified at 43 C.F.R. pt. 2360).

5. Effective on December 11, 2025, Public Law No: 119-52, a Joint Resolution passed on November 18, 2025, by the House and December 4, 2025, by the Senate, nullified a December 9, 2024, BLM rule and related record of decision (ROD) for ANWR oil and gas leasing.[7] As a result, the prior 2020 ROD, which made all 1.6 million acres of the ANWR Coastal Palin area available for oil and gas leasing and development, was reinstated.
6. On December 22, 2025, the Bureau of Ocean Energy Management, Interior published their announcement of the availability of the modified ROD for the Cook Inlet Outer Continental Shelf ("OCS") Oil and Gas Lease Sale 258.[8] This affirmed the federal Cook Inlet oil and gas lease sale held at the end of 2022, asserting that impacts to endangered Beluga whales and other resources were adequately considered and no changes in the leasing plan are needed.[9]

B. Judicial Developments

1. Alaska Supreme Court Decisions

a. *Orutsararmuit Native Council, et al. v. Boyle, et al.*

In 2021 the Department of Natural Resources ("DNR") approved a pipeline right-of-way lease (the "lease") application "to transport natural gas for operational use at the Donlin Gold mine site"[10] Several Alaska Native tribes (the "Tribes") submitted a request for reconsideration to the Commissioner arguing that DNR was required to consider the "negative impacts of the 'entire project' to determine whether the lease was in the public interest".[11] The Commissioner initially denied the request but later retroactively granted the request for DNR to conduct "further analysis of the cumulative and reasonably foreseeable impacts" of the lease.[12] The revised decision once again granted the lease, with the Commissioner noting that DNR had ""a duty to consider cumulative impacts as a project evolves through its phases, the Donlin Gold Mine is not a phase of the Donlin Pipeline' because the pipeline is merely 'an associated action.'"[13] The Tribes appealed to the Superior Court who affirmed the DNR's decision.[14] The Tribes then appealed to the Alaska Supreme Court, arguing that article VIII of the Alaska Constitution required the DNR to examine the cumulative impacts of the Donlin Mine and the downstream effects, such as the proposed pipeline's market, before granting the lease.[15] The Supreme Court rejected the Tribes' argument and held that the DNR "did not err in limiting analysis of the impacts of the pipeline to the pipeline itself, rather than also considering the effects of the mining that would be powered by gas transported by the pipeline" as the DNR's approval process "extends only to the applicant's ability to perform the acts of construction, transportation, and maintenance required to transport gas by pipeline."[16]

[7]Pub. L. No. 119-52, 139 Stat. 701 (2025).
[8]Alaska Outer Continental Shelf, Cook Inlet Planning Area, Oil & Gas Lease Sale 258, 90 Fed. Reg. 59864 (Dec. 22, 2025).
[9]*Id*. at 59865.
[10]Orutsararmiut Native Council v. Boyle, 579 P.3d 434, 436 (Alaska 2025).
[11]*Id*. at 440.
[12]*Id.*
[13]*Id.*
[14]*Id.*
[15]*Id*. at 440-43.
[16]Orutsararmiu Native Council, at 442-43.

2. *Federal District Court of Alaska*

a. *Sovereign Inupiat for a Living Arctic, et al., v. Bureau of Land Management & ConocoPhillips Alaska Inc* & *Center for Biological Diversity v. Bureau of Land Management & ConocoPhillips Alaska Inc.*

BLM approved the Willow Project (the "Project") in 2023, allowing ConocoPhillips Alaska, Inc. to construct infrastructure to produce and transport oil and gas from its leases in ANWR.[17] The United States District Court for the District of Alaska combined two related cases where Plaintiffs were challenging the BLM's decision and granted summary judgment dismissing the Plaintiffs' claims under the National Environmental Policy Act ("NEPA"), the Naval Petroleum Reserves Production Act ("Reserves Act"), the Alaska National Interest Lands Conservation Act ("ANILCA"), and the Endangered Species Act ("ESA").[18] The Plaintiffs appealed to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit held that the BLM's assessment of downstream emissions from the future oil development caused by the Project complied with NEPA by considering both indirect effects and cumulative impacts, which is all that NEPA and its implementing regulations require.[19] The Court further held that the BLM can satisfy the Reserves Act maximum-protection directive with mitigating measures that the Secretary of the Interior deems necessary or appropriate, even while using the full field development standard.[20] Moreover, the Court determined that the BLM's application for the Project satisfied ANILCA by providing notice and hearing procedures and making the specified factual findings, including that reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources.[21]

II. Arkansas

A. Legislative Developments

There were no 2025 Arkansas legislative developments. The Arkansas General Assembly meets in general session biannually, in odd numbered years.

B. Judicial Developments

Last year's Annual Report discussed two conflicting 2023 decisions involving Arkansas' royalty blending statute, Ark. Code Ann. section15-72-305, which requires gas unit operators to combine and blend one-eighth of the proceeds of all unit participants' gas sales for royalty payment purposes so that all royalty owners within a producing unit receive their proportionate share of that one-eighth at the blended price, rather than at the actual price received by each of their respective lessees.

Specifically, the statute requires the selling parties to remit to the operator "…one-eighth (1/8) of the revenue realized or royalty moneys from gas sales computed at the mouth of the well, less all lawful deductions, including, but not limited to, all federal and state taxes levied upon the production or proceeds…."

The two 2023 cases, a United States District for the Eastern District of Arkansas

[17] Ctr. for Biological Diversity v. Bureau of Land Mgmt., 141 F.4th 976, 989 (9th Cir. 2025).
[18] *Id.*
[19] *Id.* at 1000-01.
[20] *Id.* at 1002-03.
[21] *Id.* at 1005-06.

case, *Hurd v. Flywood Energy Production L.L.C* (*"Hurd"*), and an Arkansas Court of Appeals case, *Flywheel Energy Production, L.L.C. v. Ark. Oil & Gas Commission* ("*Flywheel*"), reached conflicting results as to the meaning of the phrase "less all lawful deductions." In both cases, the plaintiff royalty owners' interests were subject to "gross proceeds" leases, forbidding any deduction other than taxes.

The federal district court in *Hurd* ruled the statute overrode such lease provisions, as to that portion of the royalty contributed to the Arkansas' blended one-eighth royalty pool, thus permitting the deductions as to the pooled one-eighth. Prior to issuing its decision in *Hurd*, the United States district court had attempted to certify to the Arkansas Supreme Court the question whether the statutory language "less all lawful deductions" overrode the lease provisions with respect to gross proceeds but, that court refused the certification request.

Flywheel arose in state court as an appeal from an Arkansas Oil and Gas Commission ruling that the "lawful deductions" reference in the statute only permitted deduction of taxes and non-affiliated third-party transportation charges. Thus, the Commission forbade deduction of other post-production expenses such as compression, treating and gathering. After Flywheel unsuccessfully challenged that ruling, both in circuit court and then in the Arkansas Court of Appeals it petitioned for review by the Arkansas Supreme Court. That petition was denied, thus placing *Flywheel* in direct conflict with *Hurd.*

The unsuccessful *Hurd* royalty owners then moved the federal judge to reconsider his ruling permitting the deductions, arguing that he was bound by the state appeals court's *Flywheel* decision under the *Erie* doctrine established by *Erie Railroad Co. v. Tompkins*[22], and its progeny.

The district judge declined to so. He disagreed with the logic of the state appeals court's decision and concluded that he was not absolutely bound by a decision of that court (as opposed to the Arkansas Supreme Court). He reasoned that the Arkansas Supreme Court's refusal to review the appeals court's *Flywheel* decision did not necessarily indicate that it agreed with the intermediate appeals court's statutory interpretation. That most recent district court opinion, *Hurd*, is a lengthy and well-reasoned treatise upon the *Erie* doctrine's application to lower state court appellate decisions.

The district court also dismissed the complaint in a near-identical case, *Pennington v. BHP Billition Petroleum*[23] *("Fayetteville")*, on the basis of his ruling in *Flywheel. Pennington* had been filed as a putative class action, but the dismissal order also dismissed the Plaintiffs class certification motion as moot.

The time for appealing the district court's latest *Hurd* decision in to the Eighth Circuit Court of Appeals has passed, with no appeal taken, so the state/federal conflict on this important issue remains unresolved.

C. Administrative Developments

The Smackover Limestone Formation, ("Smackover") underlies portions of four Southwest Arkansas counties at a subsea depth of approximately 10,000 feet. It also extends southeast into North Louisiana and Southwest into Northwest Texas. The Smackover was a prolific source of Ark-La-Tex oil production during the early-to-mid twentieth century. Those were mostly "water drive" wells whose formation pressure was supplied by salt water located below the formation's oil. While the oil production is now mostly depleted, the salt water ("brine") has independent commercial value, due to its concentrations of dissolved mineral salts.

Years ago, scientists discovered that the Smackover's saltwater ("brine") contained

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[22]Erie R.R. v. Tompkins, 304 U.S. 64 (1938).
[23]No. 4:20-cv-00178-LPR, 2024 WL 4652196 (E.D. Ark. Nov. 1, 2024).

the highest concentrations of bromide salts known to exist in the Western Hemisphere, thus giving birth to a bromine industry which continues to exist, in two of the four underlain counties, today. Brine is produced from large-diameter wells equipped with powerful down-hole pumps and piped to chemical plants where bromine is extracted. The de-brominated brine ("tail brine") is then returned by different pipelines to strategic locations within the field where it is reinjected into the Smackover. The result is a water-flood operation which maintains formation pressure and drives additional chemical-rich brine toward the production wells. All such brine production is regulated by the Arkansas Oil and Gas Commission pursuant to statute, Arkansas' Brine Conservation Act (Ark. Code Ann. §§ 15-76-301-324).

Smackover brine contains other valuable chemicals, as well. In 2007, the Oil and Gas Commission approved a project operated by TETRA Technologies, Inc. to commercially extract three salts, sodium chloride, calcium chloride and magnesium hydroxide from brine from tail brine from which bromine had been extracted prior to its reinjection.

Smackover brine also contains commercial concentrations of lithium. In late 2022, the Oil and Gas Commission approved the operation of a pilot facility to confirm and perfect extraction Lithium from Smackover brine. The apparent success of that pilot facility led to a brine lease play which will expand production into the remaining Smacker-underlain counties. Commission has since approved three brine units, the TETRA Technologies, Inc. Evergreen Unit, the Saltwerx LLC Pine Unit and the SWA Lithium, LLC Reynolds Unit). Those unit operators intend to extract lithium from produced brine and are currently constructing chemical facilities to do so.

The Brine Conservation Act sets minimum compensation to underlying brine owners as minimum specified per-acre payment, which is annually adjusted to reflect changes in a statute-specified wholesale price index. However, payment of that annual compensation only entitles a producer to produce the unit's brine and extract bromine. Producers are required by Ark. Code Ann §15-76-315(C) to account "separately and on a fair and equitable basis" to underlying owners for all other substances found by the Oil and Gas Commission to be profitably extracted from the brine.[24]

The Commission has approved Saltwerx and SWA Lithium's applications for establishment of the royalty payable for their units' extracted lithium. (Order Nos. 035-2025-06 and 032-2025-05, respectively). A similar request, pertaining to the TETRA Technogies Evergreen Unit, is scheduled for hearing in January 2026. Those Commission orders reflect the fact that no wellhead market exists for the produced brine. Rather, the value is created when extracted chemicals are refined into marketable products. Thus, the Commission has approved a lithium royalty equal to 2.5% of the indexed market value the first marketable lithium-containing product, known to be producible, using the lithium extracted from the brine. That product is standard grade lithium carbonate.

Lithium extracted from brine may ultimately be formulated into any number of different lithium-containing products. To account for that, the commission approved a conversion factor ("Lithium Carbonate Equivalent" or "LCE") so that the 2.5% royalty can be calculated on the base lithium carbonate value, notwithstanding whatever product is ultimately manufactured. That LCE value will be determined, based upon a market index, the Technical Grade Lithium Carbonate Index for North American Markets published by Fastmarkets, an international commodity price tracker. Royalty will be distributed quarterly to each underlying owner in the percentage that such owner's net brine ownership bears to the total unit acreage.

All of the Oil and Gas Commission's orders pertaining to brine production and chemical extraction are collected on the Commission's web page, aogc.state.ar.us, under the menu tab "hearings" and the sub-tab "Orders."

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[24] Ark. Code Ann §15-76-315(C).

The Oil and Gas Commission is also currently studying possible brine regulations for ultimate adoption. Since the Arkansas Oil and Gas Commission's regulations are constantly in revision, the practitioner is advised to regularly check these regulations.[25] Proposed rule changes as well as a tabulation of recently enacted, repealed or amended rules are online.[26]

III. CALIFORNIA

A. Legislative Developments

1. Kern County Permit Streamlining Ordinance Validated by Legislature.

Kern County adopted an ordinance in 2015 to streamline the permitting process for new oil and gas wells[27]. In 2020, the Court of Appeal in *King & Gardiner Farms, LLC v. County of Kern*[28] held that the County's environmental impact report (EIR) prepared under the California Environmental Quality Act ("CEQA")[29] was defective. Last year, the Court of Appeal in *V Lions Farming, LLC v. County of Kern*[30] held that the County's supplemental EIR failed to comply with CEQA in a number of respects, and set aside any well permit approvals that the County had already issued. In 2025, the California Legislature stepped in with the passage of Senate Bill 237 [31], which, among other things, determined that Kern County's certified Second Supplemental Environmental Impact Report ("SSEIR") was deemed to be in full compliance with CEQA [32], thereby allowing the County and the California Geologic Energy Management Division ("CalGEM") to resume permitting for up to 2,000 new oil wells per year[33] (outside of a "health protection zone"[34]) until January 1, 2036[35]. The Legislature's approval of permits issued by the County applies both prospectively and retroactively to claims pending as of January 1, 2026[36]. Subsequently, the Kern County Superior Court lifted a suspension of the County's permitting ordinance[37].

2. *Restarting Offshore Platforms and Subsea and Onshore Pipelines.*

Senate Bill 237 [38] also addressed issues raised by the efforts by Sable Offshore Corporation ("Sable") to restart offshore oil and gas production from the Santa Ynez Unit platforms in the Santa Barbara Channel and resume transportation of oil through a pipeline that had been shut-in since a rupture and spill in 2015. The new legislation prohibits an existing oil pipeline that is six inches or larger and has been idle, inactive, or out of service for five years or more being restarted without meeting specific testing requirements determined by the State Fire Marshal (SFM). The bill also provides that the repair,

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[25]Ark. Dep't of Energy and Envt., Oil & Gas Commission (last visited May 15, 2026).
[26]Ark. Dep't of Energy and Envt., Oil & Gas Commission Rules (last visited May 15, 2026).
[27]Kern Cnty., Cal., Zoning Ordinance ch. 19.98 (2015).
[28]King & Gardiner Farms, LLC v. Cnty. of Kern, 45 Cal. App. 5th 814, 259 Cal. Rptr. 3d 109 (2020).
[29]CAL. PUB. RES. CODE § 21000 (West 2025).
[30]Lions Farming, LLC v. Cnty. of Kern, 100 Cal. App. 5th 412, 318 Cal. Rptr. 3d 879 (2024).
[31]S.B. 237, 2025–2026 Leg., ch. 118 (Cal. 2025).
32CAL. PUB. RES. CODE § 21080.81(b) (West 2025).
33CAL. PUB. RES. CODE § 21080.81(h) (West 2025).
34CAL. PUB. RES. CODE § 3203 (West 2025).
[35]CAL. PUB. RES. CODE § 21080.81(j) (West 2025).
[36]CAL. PUB. RES. CODE § 21080.81(d) (West 2025).
[37]Vaquero Energy Inc. v. Cnty. of Kern, 255 Cal. Rptr. 3d 221, 336 (Cal. Ct. App. 2019).
[38]S.B. 237, 2025–2026 Leg., ch. 118 (Cal. 2025).

reactivation, and maintenance of an oil and gas facility, including an oil pipeline, that has been idled, inactive, or out of service for five years or more, shall be considered a new or expanded development requiring a new coastal development permit[39] under the California Coastal Act[40]. The bill requires the SFM to promulgate regulations to implement the new testing requirements.[41] The bill also requires oil produced offshore as a result of new, expanded, or reactivated operations be transported once onshore by pipelines using the best available technology[42]. The bill further mandates a certificate of financial responsibility to be obtained for any vessel carrying oil across the waters of the state,[43]

IV. JUDICIAL DEVELOPMENTS

A. Liability for Releases from Steaming Operations

As discussed in the 2024 issue, the California Supreme Court had granted review of the Court of Appeal's decision in TRC Operating Co. v. Chevron USA, Inc.[44] regarding an operator's liability for damages for another operator's lost production resulting from CalGEM orders suspending steam injection. Review of the case was dismissed on June 18, 2025, pursuant to the parties' request.[45]

B. Statutory Immunity for Well Abandonment Approved by the State

The United States Court of Appeals for the Ninth Circuit in *Powers v. McDonough*,[46] affirmed a United States District Court for the Central District of California judgment holding that a passthrough license from the Veteran's Administration ("VA") which allowed an operator to directionally drill through the subsurface of a VA campus in return for a royalty violated the "West Los Angeles Leasing Act of 2016"[47] on the basis that the license did not principally benefit veterans. However, the Ninth Circuit also held that the district court abused its discretion and vacated an injunction prohibiting slant drilling to adjoining oil leases through the subsurface of the VA campus[48].

In an unreported decision, a California federal district court found in *MDR Hotels, LLV v. Marathon Oil Company*[49], that claims for nuisance and trespass relating to an abandoned well that had to be re-abandoned to develop a property were barred by statutory immunity under Section 3482 of the California Civil Code[50]. The court held that Section 3482 provided statutory immunity to operators which had obtained approval from the predecessor agency of CalGEM for the abandonment of a well in accordance with the Division's standards at the time of abandonment.

[39] CAL. PUB. RES. CODE § 30262(a) (West 2025).
[40] CAL. PUB. RES. CODE § 30000 (West 2025).
[41] CAL. GOV'T CODE § 51014.1 (West 2025).
[42] CAL. PUB. RES. CODE § 8760 (West 2025).
[43] CAL. GOV'T CODE § 51014.1 (West 2025).
[44] 22 Cal. Rptr. 3d 353 (2024).
[45] TRC Operating Co. v. Chevron USA, 569 P.3d 1139, 1139 (Cal. 2025).
[46] 163 F.4th 1162, 1194 (9th Cir. 2025).
[47] West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226, 130 Stat. 926; West Los Angeles VA Campus Improvement Act of 2021, Pub. L. No. 117-18, 135 Stat. 288 (2021).
[48] Powers, at 1197.
[49] MDR Hotels, LLC v. Marathon Oil Co., No. 2:20-cv-08008-FLA (JPRx), 2025 WL 3089052, at *6 (C.D. Cal. Sept. 26, 2025).
[50] *See* CAL. CIV. CODE § 3482 (West 2025).

A. CEQA Compliance for Well Permits in Kern County.

CalGEM issued Notice to Operators 2025-09[51] to provide guidance on the compliance process under CEQA[52] for new well permits as a result of the enactment of SB 237. Among other procedural guidelines, the Notice clarifies that, commencing January 1, 2026, Kern County will act as the CEQA lead agency for projects covered by its ordinance and SSEIR, discussed above. However, CalGEM will remain the lead agency for any application for a well permit within a "health protection zone."[53]

B. Regulatory Implementation of SB 1137.

Following the 2022 passage of Senate Bill 1137[54] which prohibits CalGEM from issuing new permits for drilling and certain other well work within a designated "health protection zone", CalGEM adopted emergency regulations implementing the law.[55] Since the emergency regulations will only remain in effect until July 1, 2026, CalGEM gave notice of its proposed regulations on August 1, 2025.[56] CalGEM subsequently revised the proposed regulations in October and November 2025 and the regulations are anticipated to be finalized in 2026.

C. Professional Signature Requirements for UIC Water Disposal Projects.

CalGEM issued Notice to Operators 2025-05[57] revising a 2021 Notice to Operators regarding licensed professional signature and seal requirements to confirm that submissions to CalGEM in support of a disposal injection project can be signed by a registered petroleum engineer, rather than a civil engineer.

VI. COLORADO

A. Administrative Developments

1. AQCC Adopts Rulemaking Identify Five Priority Toxic Air Contaminants; Emissions Regulations to Follow

On September 19, 2025, the Colorado Air Quality Control Commission (AQCC) adopted final rules in response to HB 22-1244 which required that AQCC evaluate and identify up to five "priority toxic air contaminants" (PTACs) that may pose a risk of harm to public health.[58] The five PTACs identified by the AQCC are benzene, chromium, ethylene oxide, formaldehyde, and hydrogen sulfide, with benzene and formaldehyde designated as contaminants associated with oil and gas operations.[59] While there is no current permitting or regulatory impact from the designation, the AQCC must submit

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[51] CAL. DEP'T OF CONSERVATION, NOTICE TO OPERATORS NO. 2025-09 (Nov. 3, 2025).
[52] CAL. PUB. RES. CODE § 21000 et seq. (West 2025).
[53] CAL. PUB. RES. CODE § 3280(b) (West 2025).
[54] S.B. 1137, 2021–2022 Reg. Sess., ch. 365, 2022 Cal. Stat. (Cal. 2022).
[55] CAL. CODE REGS. tit. 14 § 1753 (2025).
[56] CAL. DEP'T OF CONSERVATION, FRAMEWORK FOR IMPLEMENTING THE RESTRICTIONS AND REQUIREMENTS WITHIN A HEALTH PROTECTION ZONE at 964 (2025).
[57] CAL. DEP'T OF CONSERVATION, NOTICE TO OPERATORS 2025-05 (May 15, 2025).
[58] COLO. CODE REGS. § 1001-34 pt. C, I (2025).
[59] COLO. CODE REGS. § 1001-34 pt. B (2025).

health-based emissions standards to the Colorado legislature by April 30, 2026.[60] After legislative approval, the AQCC will adopt emission control regulations designed to reduce emissions of each PTAC.[61]

B. Judicial Developments

1. Colorado Supreme Court Determines Boulder Climate Change Accountability Suit Against Fossil Fuel Companies Not Preempted by CAA and Other Federal Law

In the latest ruling in a long-standing climate change lawsuit brought by Boulder County and the City of Boulder (collectively, "Boulder"), the Colorado Supreme Court held that common law tort claims against Exxon Mobil and two Suncor entities are not preempted by federal law.[62] Boulder alleges the defendants knowingly exacerbated climate change through the production, refining, marketing and sale of fossil fuels and seeks damages for harm to Boulder's property and its residents under theories of public and private nuisance, trespass, unjust enrichment, and civil conspiracy.[63] The damages sought include compensation from past and future costs to mitigate the impacts of climate change, including costs related to wildfire, flood, and drought management and mitigation.[64]

While Boulder initially filed suit in 2018, no court has heard the merits of the case as the parties have disputed venue and jurisdiction. After years of federal litigation regarding removal of the case to federal court, including two certiorari petitions in the U.S. Supreme Court, the Tenth Circuit finally affirmed its remand order in 2022.[65] Since then, the parties have been litigating the defendants' motion to dismiss for failure to state a claim, arguing Boulder's claims were preempted by federal common law of interstate pollution and the Clean Air Act ("CAA"), a motion which lower courts have denied.[66]

In May 2025, the Colorado Supreme Court affirmed those denials, holding that the federal common law governing air pollution and greenhouse gas emissions had been displaced by the CAA and that the CAA does not preempt state law claims related to air pollution.[67] Of note, the court found field preemption does not apply to the CAA, which permits states to set emissions standards which are more strict than federal standards and explicitly "preserves 'any right to which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief'".[68] Additionally, and substantially following a Hawaii Supreme Court ruling in *City & County. of Honolulu v. Sunoco LP*, the court ruled that obstacle preemption does not apply to Boulder's claims because such claims do not involve the regulation of emissions, instead involving nuisance abatement issues and other torts – traditional state law matters implicating important state law issues outside the scope of federal preemption.[69]

Despite this ruling, litigation on the merits is not imminent. On August 8, 2025, the defendants petitioned the United States Supreme Court for a third time in this case,

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[60]H.B. 22-1244, 73d Gen. Assemb., Reg. Sess. (Colo. 2022).
[61]*Id.*
[62]*Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy U.S.A., Inc.*, 2025 CO 21, ¶ 1.
[63]*Id.*
[64]*Id.* at ¶ 10.
[65]*See Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1246 (10th Cir. 2022).
[66]*Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy USA, Inc.,* 2025 CO 21 at ¶ 14-17.
[67]*Id.* at ¶ 32, 48.
[68]*Id.* at ¶ 41.
[69]*Id.* at ¶ 44 (citing *Honolulu*, 537 P.3d 1173, 1181 (Haw. 2023)).

requesting the Court review whether federal law preempts state-law claims seeking relief for injuries allegedly caused by interstate and international greenhouse gas emissions.[70] As of the writing of this update, the petition remains pending.

VII. KANSAS

While there are cases pending on the appellate level, Kansas had a relatively quiet year in terms of oil and gas decisions. Two decisions were issued of interest to practitioners.

A. *Judicial Developments*

1. Paying Quantities

The Court of Appeals of the State of Kansas issued an unpublished decision in *N&B Enterprises, Inc. v. English*,[71] finding that a lease in a gas field supplying the City of Iola was not producing in paying quantities. N&B Enterprises owns and operates 23 interconnected leases in a gas field in Allen County. Across the leases, there are 86 free-flowing gas wells which flow into a single compressor station. The Englishes filed a lease cancellation action. N&B Enterprises filed a counter claim. Like many leases, the lease allowed the lessor to receive "gas free of cost" for their "principle dwelling house on said land."[72] The plaintiffs had connected both their house and a second house on the property.

The two main arguments on appeal were (1) whether the court should include "lifting expenses" for the lease and (2) whether the lease expenses should be allocated prorata—equally between the 23 leases—or by volume of production. The district court agreed with the operator on which expenses to include on the lease, but applied a prorata allocation of general liability insurance and licensing costs.

On the lifting expenses question, the operator argued that the free-flowing gas wells had almost no operating expenses because they do not require artificial lift or pumping costs to get the gas to the surface. The Court of Appeals included the costs of the compressor station, along with costs of labor and chemicals in the lease expenses by relying on the marketable product rule's theory that expenses should include the costs of producing and marketing the oil or gas. The court did appear to agree that this analysis might have been different if the 23 leases had been unitized, but they had not been.

Turning to the allocation method, the Court acknowledged that it was difficult to determine whether the prorata or the volume allocation method was more appropriate for each expense at issue based on the facts presented. Ultimately, the court reversed to the extent that the district court had not included any costs for contract labor, gas compression, and chemicals, but remanded for the district court to determine the direct costs for operating the lease using the method that best fits the attributes of each expense.

On the operator's counterclaim, the plaintiffs made several arguments. First, the plaintiff argued that she was the owner of the well which predated the operator's lease and she was entitled to produce natural gas for her own use. She also argued that the operator's claim was barred by waiver, estoppel, laches, agreement, and easement because the gas was used at the second home for over 20 years.

First, the court found that the lease had given the operator the *exclusive* right to produce from the leasehold. On the waiver and similar arguments, the plaintiff did not produce legal authority, but instead referred to briefs filed in the district court. The Court

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[70] *Petition for a Writ of Certiorari, Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, No. 25-170 (May 12, 2025).
[71] *N&B Enters., Inc. v. English*, 562 P.3d 1013 (Kan. Ct. App. 2025).
[72] *Id.*

found that the plaintiff had waived the argument because litigants cannot incorporate arguments by reference to briefs in the district court.

As a final issue on appeal, the parties disputed whether to admit expert testimony of an expert who reviewed the lease expenses for plaintiff. Paying quantities cases often have expert testimony due to the complicated nature of oil and gas operations. Plaintiffs submit expert testimony of someone in the oil and gas industry to support that a reasonably prudent operator would not continue to operate the lease. In this case, the defendant disputed the admission of plaintiff's expert because he had no experience in the free-flowing gas wells of the subject-lease. The plaintiff's expert also had no accounting experience for gas well operations. Applying the abuse of discretion standard, the Court of Appeals found that a reasonable juror could have concluded that the expert did not have sufficient experience to establish a basis for his opinion.

N&B Enterprises raises significant questions on the costs that should be included under the paying quantities test, especially for leases which are not unitized, but are operated closely together by the same operator. One of the unexplained questions in this opinion is why both parties and the Court included the cost of general liability insurance in the lease expenses. The paying quantities test is not meant to include general overhead expenses. Insurance premiums are typically priced to consider all leases operated by an operator. Requiring insurance premiums be included could force a district court to try to prorate premiums across hundreds of leases from multiple states and would unnecessarily complicate an already complicated analysis.

2. Royalty Deductions

In the Federal District of Kansas, Judge Vratil declined to grant plaintiffs' motion for class certification in *Rider, trustee of Cherry Rider Fam. Tr. v. OXY USA, Inc*.[73] In *Rider*, the plaintiffs are trustees of mineral and royalty interests in the Kansas Hugoton Gas Field. In 1998, a class action lawsuit was filed alleging improper royalty payment calculations. A settlement was reached with Oxy in 2007, with specific limitations on deductions from royalty payments. In 2014, Merit acquired Oxy's assets in the gas field. Plaintiffs alleged that Merit took improper deductions from royalty payments in violation of the 2007 settlement.

The Plaintiffs proposed a class definition of all persons or entities to whom Merit had paid royalties since December 2, 2017 under leases in the Kansas Hugoton Field that were assigned to Merit by Oxy circa 2014. Defendant Merit challenged the putative class based on ascertainability. The plaintiffs argued that the class was definite because when Merit acquired the assets, Oxy provided Merit with royalty payment records and payment information regarding property ownership. Merit responded that (1) their payment records do not tie payees to specific oil and gas leases, (2) payees may not be the current legal title owners to the minerals, (3) a successor to a class member in the previous settlement may not have acquired an alleged class claim for underpayment of royalties, (4) the class definition was unclear whether plaintiffs are making a claim related to wells drilled after 2008, and (5) some of Merit's payments on former Oxy properties are derived from interests not subject to the prior settlement.

The United States District Court for the District of Kansas gave considerable discussion to the practical issues of tracking ownership of leases for purchasers where the purchaser is reliant on mineral owners providing notices of ownership changes. Based on these issues, the Court found that the class was not sufficiently identifiable. The court also found that there were issues with commonality and typicality under Rule 23(b)(3).

[73] No. 23-1274-KHV, 2025 U.S. Dist. LEXIS 116385, at *1 (D. Kan. June 18, 2025).

B. Administrative and Legislative Developments

There were no state regulatory changes related to oil, gas, and mineral law within the survey period. While a few bills affecting oil and gas were introduced to the Legislature, none of them passed.

VII. LOUISIANA – FOCUS ON CARBON CAPTURE AND SEQUESTRATION.

A. Carbon Capture and Storage, Federal Incentives, and the Challenge of Permanence

The 2025 change in federal administration marked a period of significant alteration in federal climate, energy, and environmental policies. Few federally-funded or federally-subsidized initiatives aimed to reduce greenhouse gases ("GHGs") under the Biden administration remain, but bipartisan support and federal incentives for carbon capture and storage ("CCS") or carbon capture, utilization, and storage ("CCUS") remain through the section 45Q tax credit. Indeed, the subsidy program has expanded under the "One Big Beautiful Bill" Act. The credit now qualifies carbon dioxide captured pursuant to the enhanced oil recovery ("EOR") process for the same maximum amount as carbon dioxide sequestered in more secure geological storage for non-commercial purposes, whereas previously the EOR credits were $25 less per metric ton.[74] Moreover, the Treasury and IRS issued a safe harbor (Notice 2026-1) allowing taxpayers to use independent engineer or geologist verification of sequestered carbon dioxide for 2025 tax credit claims if the EPA's reporting system is not operational by June 10, 2026, thus loosening regulation to ensure projects claiming 45Q tax credits will have a compliance method. Finally, the IRS issued Notice 2025-25, which provides for applying an inflation adjustment factor to the carbon dioxide credit. These policies have corresponded with significant growth in CCS projects, particularly in the Midwest and Gulf Coast. [e.g., DOE awards to Baytown and Project Tundra].[75]

CCS's ability to reduce GHGs and aid in a "just transition" is premised on the assumption that injected carbon dioxide can be securely confined within designated geologic formations indefinitely. In practice, CCS involves injecting compressed carbon dioxide into deep saline formations or depleted oil and gas reservoirs, where it is intended to remain isolated from the atmosphere through geologic trapping and pressure management. While subsurface injection is a familiar industrial practice – used in natural gas storage, wastewater disposal, and enhanced oil recovery – CCS is distinct in its scale and objective. Unlike historical EOR practice, for example, the intention of CCS is to achieve permanent containment rather than temporary storage or resource recovery.[76]

But recent scientific literature highlights the limits of predicting subsurface behavior over extended time periods.[77] Injected carbon dioxide can migrate laterally into

[74] One Big Beautiful Bill Act, Pub. L. No. 119-2, 139 Stat. 72; *see also* Emma Jones Fredrickson & Anna Littlefield, *Keeping Up with Carbon: Key Changes for 45Q Tax Credits Under "One Big Beautiful Bill Act" and Possible Impacts,* PAYNE INST. FOR PUB. POL'Y (Aug. 18, 2025).

[75] Daniel Weeks, *U.S. DOE Awards $890 Million to Projects Using Carbon Capture Technologies*, S&P GLOBAL (Dec. 15, 2023). 26 U.S.C. § 45Y (2026).

[76] *See* Bruce Hill, Susan Hovorka & Steve Melzer, *Geologic Carbon Storage Through Enhanced Oil Recovery*, 37 ENERGY PROCEDIA 6808, 6812 (2013) ("Until recently enhancing the storing of CO2 has never been a consideration in flood design.").

[77] *See, e.g.,* Wendy B. Jacobs, *Proposed Liability Framework for Geological Sequestration of Carbon Dioxide*, Harvard L. Sch., Emmett Envtl. L. & Pol'y Clinic (Oct. 2010).

adjacent formations or vertically toward overlying layers, raising risks of unintended escape, contamination, or interference with other underground uses. Long-term monitoring and management are essential to track the location and stability of stored carbon, but regulatory and technical frameworks for indefinite oversight remain incomplete.[78] These uncertainties have implications not only for the environmental effectiveness of CCS projects, but also for legal questions concerning subsurface property rights, liability, and the allocation of regulatory responsibility.

Despite federal economic incentives encouraging rapid CCS deployment and growing concerns about lateral and vertical migration of injected carbon dioxide, which may implicate subsurface trespass, state property law remains underdeveloped as to both subsurface ownership and subsurface trespass. Only a few states have adopted explicit statutory frameworks defining pore space ownership. For example, Wyoming, and North Dakota have enacted statutes treating pore space as part of the surface owner's property: Montana and Wyoming allow pore space to be severed and transferred with the surface estate, while North Dakota and Illinois laws vest pore space in the surface owner and prohibit severance.[79]

In contrast, even states with substantial CCS development have not yet resolved the question of pore space ownership in ways that eliminate legal uncertainty. Louisiana's statutory and regulatory framework for carbon sequestration, including the Louisiana Geologic Sequestration of Carbon Dioxide Act, presumes that pore space is vested in the surface owner under general property principles but does not expressly define pore space ownership or clarify severability as a matter of statutory law, and courts have not directly addressed these questions in the context of CCS operations.[80] Texas has seen active legislative efforts to clarify pore space rights, including Senate Bill 1258, defining pore space as "geologic structures below the surface of land" and vesting ownership in the surface estate unless otherwise modified.[81] But these measures remain pending, and Texas courts until recently had not definitively resolved pore space ownership in the CCS context.[82] Additionally, as discussed in Parts II and III below, uncertainty remains under national caselaw as to whether a traditional trespass action exists for any landowner who did not consent to or is not included in unitization of pore space but nonetheless finds carbon dioxide trapped in their subsurface.

This contribution situates CCS within the existing body of subsurface trespass law, highlighting how courts have required that plaintiffs prove actual damages before a subsurface intrusion could be actionable. It examines how caselaw from non-CCS underground injections, such as natural gas storage, wastewater disposal, and EOR, has addressed these issues, and how courts have interpreted trespass and property rights when

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[78]The EPA regulates EOR and CCS operations through its Underground Injection Control ("UIC") Program. 40 C.F.R. § 144.1. Nevertheless, instances of life-threatening CO_2 leakage from EOR operations have occurred. *See, e.g.*, *CO_2 in Stream, Dead Ducks Prompt DEQ Citation*, WYO. PUB. RADIO (Sept. 28, 2012).

[79]MONT. CODE ANN. § 82-11-204 (2025); WYO. STAT. ANN. § 34-1-152 (2025); N.D. CENT. CODE § 47-31-03 (2025); Safety and Aid for the Environment in Carbon Capture and Sequestration Act, Pub. Act 103-0651 (Ill. 2024).

[80]LA. STAT. ANN. § 30:1101 et seq. (2025) (defining "landowner" as "any person who owns the surface and subsurface of land or water bottoms used for geologic storage, injection, or transportation of carbon dioxide who is not the owner or operator of the storage facility or carbon dioxide transmission pipeline or the generator of the carbon dioxide being handled by either the facility or pipeline.").

[81]S.B. 1258, 89th Leg., Reg. Sess. (Tex. 2025) (addressing "ownership of the pore space underlying the surface of land").

[82]*See* Myers-Woodward, LLC v. Underground Servs. Markham, LLC, 716 S.W.3d 461 (Tex. 2025) (both the Texas court and the proposed S.B. 1258 permit severance).

subsurface occupation crosses property lines. Shaped by climate policy incentives and scientific uncertainty surrounding long-term containment, CCS raises questions for both traditional subsurface trespass doctrine and the functional trespass framework adopted in the 2025 Tentative Draft of the Restatement (Fourth) of Property.

IX. TRADITIONAL PRINCIPLES OF SUBSURFACE TRESPASS AND THE ADDED REQUIREMENT OF ACTUAL DAMAGE FOR SUBSURFACE INTRUSIONS

Although courts have long recognized that landownership extends beneath the surface, subsurface trespass doctrine has developed differently from its surface counterpart. Unlike surface trespass, where unauthorized physical entry is typically actionable without proof of harm,[83] courts addressing subsurface intrusions have frequently required plaintiffs to demonstrate actual damage or interference with use.[84] Mere physical migration underground has been deemed insufficient to establish liability.[85]

This distinction emerged early in cases involving oil and gas production and was reiterated in later disputes involving other underground injection technologies such as wastewater disposal.[86] Courts both disputed that landowners possess legally cognizable interests in the subsurface and further declined to impose trespass liability absent impairment of an existing or reasonably foreseeable use.[87] As a result, subsurface trespass doctrine evolved as a harm-contingent cause of action and thus diverged from ordinary trespass law.

Early oil and gas cases did not articulate ownership of subsurface space as a discrete property interest, as disputes during this period were framed around mineral extraction rather than occupation of underground formations.[88] Nevertheless, even in the absence of a settled theory of subsurface title, courts frequently addressed early subsurface injection migration claims framed in the language of trespass, while declining to impose liability

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[83]RESTATEMENT (SECOND) OF TORTS § 7 (Am. L. Inst. 1965) ("The most usual form of injury is the infliction of some harm; but there may be an injury although no harm is done. Thus, any intrusion upon land in the possession of another is an injury, and, if not privileged, gives rise to a cause of action even though the intrusion is beneficial, or so transitory that it constitutes no interference with or detriment to the land or its beneficial enjoyment.").

[84]*See, e.g.*, Chance v. BP Chems., Inc., 670 N.E.2d 985, 991 (Ohio 1996) (finding no trespass where plaintiffs failed to demonstrate actual physical damage or interference with use).

[85]*See, e.g.,* Baatz v. Columbia Gas Transmission, LLC, 929 F.3d 773, 777 (6th Cir. 2019) (rejecting landowners' claim under trespass law where they failed to demonstrate that subsurface intrusion interfered with their reasonable and foreseeable use).

[86]*See* W. Edmond Salt Water Disposal Ass'n v. Rosecrans, 226 P.2d 965, 973 (Okla. 1950) (holding "that the contention of defendants that they are liable only for actual damage suffered by plaintiffs resulting from the injection of salt water into said well must be sustained"); *see also* Tara K. Righetti, *Correlative Rights & Limited Common Property in the Pore Space: A Response to the Challenge of Subsurface Trespass in Carbon Capture & Sequestration*, 47 ENV'T L. REP. 10420, 10429 (2017) ("Subsurface intrusions routinely occur in the context of oil and gas development and production and wastewater disposal.").

[87]*See, e.g., W. Edmond Salt Water Disposal Ass'n*, 226 P.2d at 973 (finding that underground migration of injected saltwater did not constitute a trespass).

[88]*See, e.g.*, Gulf Land Co. v. Atl. Refin. Co., 131 S.W.2d 73, 80 (Tex. 1939) ("The minerals owner is entitled, not to the molecules actually residing below the surface, but to 'a fair chance *to recover* the oil and gas in or under his land, or their equivalents in kind.'") (emphasis added).

absent extraction or demonstrable harm.[89] Decisions from this period reflect judicial awareness of underground intrusion without corresponding willingness to treat subsurface migration as actionable trespass per se.

By the mid-twentieth century, courts reviewing claims arising from wastewater disposal and secondary recovery operations began to require proof of actual damage before imposing trespass liability, even where underground migration across property lines was alleged.[90] In *West Edmond Salt Water Disposal Association v. Rosecrans*, the Oklahoma Supreme Court held the migration of injected saltwater through a subsurface formation did not constitute trespass where the formation was already saturated with brine and the plaintiffs could not show resulting harm.[91] The court emphasized that disposal by injection was a practical necessity for oil production and concluded that recognizing trespass based solely on underground movement would effectively and undesirably prohibit the practice.[92] Although the court did not deny the possibility of subsurface intrusion, it treated the absence of damage as dispositive.[93]

Subsequent courts adopted similar reasoning. In *Chance v. BP Chemicals, Inc.*, the Ohio Supreme Court rejected landowners' claims that deepwell hazardous waste injection constituted trespass.[94] The court held that the plaintiffs failed to show either physical damage or interference with reasonable and foreseeable use of their property.[95] Although the court found no evidence that the injected waste had migrated beneath the plaintiffs' land, it nonetheless expounded on the appropriate trespass doctrine, namely that ownership rights do not necessarily extend indefinitely downward and that subsurface trespass requires proof of actual harm.[96] The court's discussion of ownership thus arose in a case

[89]*See* FPL Farming Ltd. v. Envtl. Processing Sys., L.C., 351 S.W.3d 306, 313-14 (Tex. 2011) (explaining that nonpossessory mineral lessors must show actual damage to prove trespass).

[90]*See generally* R.R. Comm'n of Tex. v. Manziel, 361 S.W.2d 560, 568 (Tex. 1962) (explaining that the first landowner to inject his subsurface pore space may escape liability to neighboring surface owners "even if it thus results in the displacement under such land of more valuable with less valuable substances"); *see also* Keith B. Hall, *Hydraulic Fracturing: If Fractures Cross Property Lines, Is There an Actionable Subsurface Trespass?*, 54 NAT. RESOURCES J. 361, 380–81 (2014) (explaining courts' reasoning that "a plaintiff must be able to show actual damages or an interference with some reasonably anticipated use of his property in order to sustain a trespass action") (citing W. Edmond Salt Water Disposal Ass'n v. Rosecrans, at 969–70).

[91]226 P.2d at 973 (Okla. 1950) (finding no trespass because "the only effect of such migration . . . was to displace a similar amount of salt water in said formation and cause it to migrate further east.").

[92]*Id.* at 969-70.

[93]*Id.* at 969.

[94]Chance v. BP Chems., Inc., 670 N.E.2d 985, 993-94 (Ohio 1996).

[95]*Id.* at 993 ("Appellee operates the wells pursuant to required permits; appellants' subsurface property rights are not absolute and in these circumstances are contingent upon interference with the reasonable and foreseeable use of the properties; the trespass alleged is an indirect one and, due to the type of invasion alleged, physical damage or actual interference with the reasonable and foreseeable use of the properties must be demonstrated.").

[96]*Id.* at 991-92 ("absolute ownership of [subsurface] rights is a doctrine which 'has no place in the modern world'" (quoting Vill. of Willoughby Hills v. Corrigan, 278 N.E.2d 658, 665 (Ohio 1972))).

where physical invasion was unproven, and its broader statements functioned primarily as limitations on the availability of trespass remedies.[97]

Rather than focusing on physical presence underground, they evaluated whether the alleged intrusion caused measurable injury, such as contamination, loss of minerals, or impairment of use.[98] Essentially these courts treated trespass as unavailable unless migration produced tangible consequences based on immediate, intended use or possession.[99] In doing so, they reinforced a version of subsurface trespass doctrine in which proof of actual damage functioned as a threshold requirement.

A small number of decisions have permitted recovery for subsurface invasion without proof of injury. In *Beck v. Northern Natural Gas Co.*, the Tenth Circuit affirmed an award of fair rental value where injected gas occupied a subsurface formation beneath plaintiffs' land.[100] The court relied on Kansas law expressly recognizing compensation for use of substrata, and its holding was tied to that statutory framework.[101] And in *FPL Farming Ltd. v. Environmental Processing Systems, L.C.* the court declined to find that regulatory authority automatically provides immunity for trespass.[102] The court left open whether subsurface wastewater migration constituted trespass in the absence of actual damage.[103]

Taken together, these decisions reflect a consistent judicial practice across decades: courts have addressed subsurface intrusions using the vocabulary of trespass while declining to impose liability absent damage or interference with use. This history provides the doctrinal context in which contemporary disputes over CCS and CCUS are likely to be, or at the very least could be, evaluated. At the same time, not all decisions have adhered strictly to an actual-damage or intended-use requirement, and courts have not uniformly resolved whether physical occupation of subsurface space may itself constitute a cognizable invasion. As CCS increasingly involves long-term occupation of subsurface pore space, and as scientists call into question whether lateral migration will occur, the continued use of present or intended use as a limiting principle may be tested in circumstances where such occupation precludes future economic use of the subsurface.

X. The Restatement (Fourth) of Property and Its Reframing of Subsurface Ownership and Trespass

The Restatement (Fourth) of Property thus arrives at a moment of rapid change in the use of the subsurface and is a 2025 inflection point for subsurface trespass doctrine. The sixth Draft of the Restatement (Fourth) represents the near-final articulation of the American Law Institute's position on these issues. Although formally styled as a synthesis

[97]*Id.* at 992-93. Similarly, in Baatz v. Columbia Gas Transmission, LLC, the Sixth Circuit held that landowners could not maintain a trespass claim where stored natural gas migrated beneath their property but did not interfere with any current or planned use of the subsurface. 929 F.3d 767, 777 (6th Cir. 2019) ("[l]andowners do not have a present possessory interest in their subsurface and by extension, lack the present ability to exclude Columbia Gas from its subsurface."). Relying on Chance, the court treated the absence of use as determinative, reinforcing an approach that ties subsurface trespass liability to demonstrable interference rather than physical occupation alone. Baatz, at 777.
[98]Chance v. BP Chems., Inc., 670 N.E.2d 985, 993–94 (Ohio 1996).
[99]*See generally id.*
[100]Beck v. N. Nat. Gas Co., 170 F.3d 1018, 1022, 1024 (10th Cir. 1999) (affirming the lower court because "a jury could make a reasonable inference from [the] evidence that there was an entry of storage gas in each of the landowners' properties.").
[101]*Id.* at 1023.
[102]FPL Farming Ltd. v. Envt'l Processing Sys., L.C., 351 S.W.3d 306, 313 (Tex. 2011).
[103]*Id*. at 314-15.

of existing common law, the Restatement's treatment of subsurface ownership and trespass takes positions that are contrary to the jurisprudence set forth above. In the context of subsurface trespass, this is natural. Rather than emerging after judicial consensus has developed, the Restatement enters the field without a large body of cases addressing how to analyze deep subsurface invasions associated with modern energy and waste-management practices. Many disputes arise from novel technologies and courts often rely on analogy rather than direct authority in the subsurface context. The Restatement therefore has the potential to play an outsized role in shaping how future claims are characterized and resolved.

A. Affirmation of Subsurface Ownership—In Theory

As a threshold matter, the Restatement (Fourth) affirms that landownership extends beneath the surface. It expressly rejects the notion that the subsurface is part of a public domain or that private ownership terminates at some undefined depth. Instead, the Restatement recognizes that landowners hold title *ad inferos*, encompassing the geologic strata beneath their land, including pore space.[104]

This recognition is consistent with modern statutory developments on pore space where they exist. The Restatement does not treat subsurface space as a public or purely regulatory domain, instead proceeding from the premise that subsurface strata are part of landownership as defined by state law, even as it limits the circumstances under which trespass liability arises. In doing so, it rejects arguments that subsurface space is categorically unavailable for private ownership or that its use is inherently subject to uncompensated public access.

At the same time, the Restatement's recognition of subsurface ownership is limited by the effects of that classification. While it affirms title, it does not treat that title as conferring the same scope of enforceable rights that apply at the surface. Instead, the practical content of subsurface ownership is shaped primarily through the Restatement's treatment of trespass.

B. Subsurface Trespass Pursuant to the Restatement

The most consequential feature of the Restatement (Fourth)'s approach lies in its redefinition of trespass when applied below ground. Departing from the traditional rule that trespass is established by unauthorized physical invasion, the Restatement adopts a functional framework that emphasizes interference with possible effective possession, *i.e.* foreseeable use based on technology at the time of inquiry.[105]

Specific to the right to pore space ownership, Section 1.17 of Volume I of the Restatement, approved in 2023, provides:

> An actor who holds the right to the surface has the right to possess caves, fissures, and other open spaces subjacent to the surface, provided effective possession of such spaces is possible. Prominent examples of such open spaces include not only caves, but also abandoned mines and wells, fissures in underground rock formations, and pores in permeable rock. The right to

[104] RESTATEMENT (FOURTH) OF PROPERTY § 1.1 (Tentative Draft No. 4, 2023); *see also* Owen L. Anderson, *Geologic CO2 Sequestration: Who Owns the Pore Space?*, 9 WYO. L. REV. 97 (2009); David E. Pierce, *Employing a Reservoir Community Analysis to Define and Marshal Correlative Rights in the Oil and Gas Reservoir*, 76 LA. L. REV. 787, 789–90 (2016); Hill, Carbon Capture, *supra* note 45, at 51.
[105] RESTATEMENT (FOURTH) OF PROPERTY § 1.2 (TD No. 4, 2023).

> possess such spaces is subject to positive legislation and regulation that satisfies the requirements of constitutional and administrative law.[106]

Under this framework, deep subsurface rights, including rights to pore space, are subject to legislative regulation by unitization and pooling. Specifically as to intrusions into pore space of fugacious material, Section 1.18 provides:

> An actor who has the right to possess the underground space subjacent to land is entitled to inject fugacious material into a cave, abandoned well, or other fissure below the surface—either for storage of valuable fugacious minerals or for disposal of waste material generated by production of other fugacious material. As long as the method of injection does not constitute an intentional and unauthorized entry onto the land or the subjacent space of another actor, the injector is not liable for trespass for subsequent migration of the fugacious material into subjacent space subject to another's superior possessory rights.[107]

Arguably, this provision could apply to CCUS, which involves "disposal of waste material generated by production of other fugacious material," but the more apparently relevant subsection on underground injection relative to CCS is Section 1.2D, which provides:

> An actor who has the right to possess subjacent underground space is entitled to inject liquids or solids into a cavity, abandoned well, or other fissure below the surface, without fear of trespass liability, whether to stimulate production, for storage, or for disposal, provided the actor does not intend or know to a near certainty that the material will migrate into subsurface space subject to another's superior possessory rights.[108]

Under either provision in the Restatement, intentional intrusion or knowledge of migration "to a near certainty" is required for a claim of trespass.

C. Implications for Carbon Capture

Applied to CCS and CCUS, the Restatement's framework has significant implications. By conditioning trespass liability on intentional intrusion or knowledge of migration to a near certainty, the Restatement departs from the purely invasion-based conception of trespass relative to surface ownership and instead places emphasis on the mental state of the injecting actor. Under this approach, the Restatement is consistent with current jurisprudence on deep injection trespass in that the mere fact that injected carbon dioxide migrates into subjacent pore space owned by another is not, standing alone, sufficient to establish liability.

This approach nevertheless differs in important respects from the historical treatment of underground injection in the case law. As discussed in Part II, courts addressing underground storage of fugacious materials and wastewater have generally focused on the presence or absence of actual damage or interference with use, rather than on the injecting actor's mental state. In those cases, liability turned on whether migration produced tangible effects and whether the surface owner was in possession rather than on whether the injecting surface owner intended or knew with near certainty that subsurface migration would occur. The Restatement's emphasis on intent or knowledge of the injector

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[106] RESTATEMENT (FOURTH) OF PROPERTY § 1.17 (TD No. 6, 2025).
[107] RESTATEMENT (FOURTH) OF PROPERTY § 1.18 (TD No. 6, 2025).
[108] RESTATEMENT (FOURTH) OF PROPERTY § 1.2E (TD No. 6, 2025).

as a threshold condition reframes subsurface trespass analysis away from post-intrusion consequences and toward ex-ante assessments of foreseeability and operational design.

CCS and CCUS present a particular challenge to this proposed understanding of subsurface trespass in light of contemporaneous scientific literature, cited in Part I above, questioning the permanence of geologic sequestration. CCS projects are premised on long-term containment, yet scientists question whether plume migration can be accurately predicted. Migration is not merely a theoretical possibility, but a foreseeable feature of storage operations. Whether such modeling and prediction constitutes "knowledge to a near certainty" within the meaning of Sections 1.18 or 1.2D is not resolved by the Restatement. The application of the Restatement to CCS may depend on how courts characterize the degree of certainty associated with anticipated migration.

XI. Looking Forward with Property Law in the Context of CCS and CCUS

The Restatement's treatment of subsurface trespass reflects an effort to reconcile private ownership with the unique concerns raised by pressure and movement of fugacious minerals and waste in pore space. By recognizing subsurface ownership while limiting trespass liability to cases involving intent or near-certain knowledge of migration, the Restatement narrows the circumstances in which physical occupation of pore space gives rise to private remedies.

At the same time, the Restatement leaves several questions unresolved. It does not address how courts should evaluate evolving technological capabilities in determining whether effective possession is possible, nor does it specify how advances in subsurface modeling should inform assessments of intent or knowledge.

As CCS expands and pore space becomes an increasingly valuable and tradable resource, disputes are likely to arise in factual settings not fully contemplated by the Restatement's drafters. In such cases, courts applying the Restatement will be required to determine whether its functional approach to trespass accommodates long-term, planned subsurface occupation that forecloses future uses without surface disturbance. How those questions are resolved will shape the practical scope of subsurface ownership in the energy transition.

XIII. New Mexico

A. Judicial Developments

1. Atencio v. State of New Mexico

In *Atencio*,[109] 15 plaintiff groups filed for declaratory and injunctive relief against eight state defendants under the New Mexico State Constitution's Pollution Control Clause, Inherent Rights, Due Process, and Equal Protection Clauses,[110] arguing that New Mexico's regulatory framework promotes oil and gas development to the detriment and violation of certain enumerated, personal rights. The *Atencio* plaintiffs sought injunctive relief in the form of blanket suspension of state oil and gas permitting. On early motions to dismiss, the district court partially granted dismissal of the plaintiffs' Civil Rights Act claims against the Legislature and certified the issue for interlocutory appeal.[111]

On interlocutory appeal, the New Mexico Court of Appeals reversed and dismissed all of plaintiffs' claims, finding that the Pollution Control Clause did not create an

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[109] Atencio v. State, No. A-1-CA-42006, 2025 WL 1621659, at *1 (N.M. Ct. App. June 3, 2025).
[110] *See* N.M. Const. art. XX, § 21; N.M. Const. art, §§ 4 & 18.
[111] Order, Atencio v. State, No. D-101-CV-2023-01038 (N.M. 1st Dist. Ct. June 10, 2024).

individual right to a specific level of control nor did it create an individual right to a beautiful and healthful environment.[112] Instead, the language of the Pollution Control Clause simply imposed a duty on the Legislature to balance pollution control with resource development for the public benefit.[113] The court also found that there was no fundamental individual right to a beautiful or healthful environment under the Due Process or Inherent Rights Clauses of the State Constitution, and neither did the Pollution Control Clause support an inference of a due process right to a beautiful and healthful environment.[114]

The court expressed wariness of judicial encroachment of legislative and executive powers.[115] The court found that the Equal Protection Clause of the State Constitution was not violated because the alleged inadequacy of oil and gas regulations did not create a class resulting in discriminatory treatment.[116] The *Atencio* plaintiffs petitioned for certiorari with the New Mexico Supreme Court, which was granted with briefing to occur in early 2026.[117] The plaintiffs' petition raises the same constitutional challenges under the Pollution Control Clause, the Equal Protection Clause, and whether the State Constitution can be interpreted under its Declaratory Judgment Act as to collective rights.[118]

2. Richard v. Marathon Petroleum Corporation

In *Richard v. Marathon Petroleum Corporation*, the New Mexico Court of Appeals addressed whether the Commissioner of Public Lands ("CPL") could pursue tort claims against Marathon as the successor in interest to a prior state oil and gas lessee even though the lessee had previously assigned the lease to a third party.[119] Specifically, whether the CPL's approval of the lease assignment cuts off lease obligations for the assignor and successors, including statutory and common law duties arising out of leasehold and well operations.[120] Here, Marathon was the successor to the previous lessee Tesoro Petroleum Company.[121] Tesoro had acquired the two leases in question in 1964, owned and operated both for over 20 years, and then assigned the leases to a third party, which the CPL approved.[122] Tesoro was later acquired by Marathon.[123] The CPL alleged that Tesoro had damaged and failed to properly remediate state trust lands by leaving behind numerous oil spills, unplugged wells, and abandoned infrastructure on the state trust lands, and therefore Marathon was liable as its successor.[124] Marathon argued that the lease terms, the statute governing the assignment of state oil and gas leases,[125] and state regulations[126] relieve the assignor lessee of all common law and contractual duties under the leases.[127] Marathon

112 *Atencio*, No. A-1-CA-42006, 2025 WL 1621659, at *7.
113 *Id.* at *8.
114 *Id.* at *15.
115 *Atencio*, No. D-101-CV-2023-01038, at 4.
116 *Atencio*, No. A-1-CA-42006, 2025 WL 1621659 at *16.
117 *See* Order, Atencio v. State, Case No. S-1-SC-40980 (N.M. Sup. Ct. Nov. 10, 2025). *See also* Order Granting Extension Request, Atencio v. State (N.M. Sup. Ct. Dec. 3, 2025).
118 *See* Petition for Writ of Certiorari, Case No. S-1SC-40980 (N.M. Sup. Ct. July 1, 2025).
119 No. A-1-CA-40747, 2025 WL 1430595, at *3 (N.M. Ct. App. May 14, 2025).
120 *Id.* at *10.
121 *Id.* at *1.
122 *Id.*
123 *Id.* at *2.
124 *Id.*
125 N.M. STAT. ANN. § 19-10-13 (2026).
126 N.M. ADMIN. CODE § 19.2.100.43 (2026).
127 *Richard*, No. A-1-CA-40747, 2025 WL 1430595, at *2.

also argued that because the leases imposed contractual duties, the contract encompassed and supplanted any alleged common law duties.[128] The district court ruled in favor of Marathon and the CPL appealed.[129]

On appeal, the New Mexico Court of Appeals reversed the judgment of the district court,[130] finding that the CPL's tort claims arise from duties independent and outside of the leases.[131] The court also found that neither the language of the lease, the statute,[132] nor the regulation,[133] extinguished Marathon's liability for damages caused by Tesoro on the state trust lands.[134] Ultimately, the fact that the CPL approved the assignment of leases did not absolve Marathon of liability.[135] While the court determined the lease provision to be ambiguous and therefore lacking an express limitation on tort liability,[136] it found that the release of "all obligations" in both statue and regulation was limited to contractual obligations, and did not reach or release assignor lessees of extra-contractual obligations and past misconduct.[137] Marathon has petitioned the New Mexico Supreme Court for review, asserting that the appellate court's interpretation judicially amends the New Mexico Oil and Gas Act, the leases, and all existing state oil and gas leases, and briefing is underway.[138]

3. State ex rel. Office of the State Engineer v. Intrepid Potash, Inc.

In *State ex rel. Office of the State Engineer v. Intrepid Potash, Inc.*, the New Mexico Supreme Court held that water rights are abandoned after extended periods of nonuse,[139] under the test for abandonment.[140] Intrepid Potash obtained Pecos River water rights in the early 1930s for industrial use in its Loving Refinery.[141] After the Loving Refinery shut down and Intrepid built a new refinery in a different location,[142] Intrepid attempted to maintain its water rights by filing extensions with the State Engineer, negotiating agreements with the Interstate Stream Commission, and reaching an agreement with the United Salt Corporation to transfer water rights.[143] However, when Intrepid filed to change the use purpose, several parties objected.[144] The district court found that Intrepid abandoned and forfeited all but 150 acre-feet per year, or just 0.2% of Intrepid's original allotment.[145] After the New Mexico Court of Appeals affirmed the district court's decision,[146] Intrepid petitioned the New Mexico Supreme Court, which also affirmed the

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128 *Id.*
129 *Id.*
130 *Id.* at *15.
131 *Id.* at *6.
132 N.M. STAT. ANN. § 19-10-13 (2026).
133 N.M. ADMIN. CODE § 19.2.100.43 (2026).
134 *Richard*, No. A-1-CA-40747, 2025 WL 1430595, at *7, *15.
135 *Id.* at *14.
136 *Id.* at *9.
137 *Id.* at *13-14 n.6.
138 Richard v. Marathon Petroleum Corporation, No. S-1SC-40983 (N.M. Sup. Ct. Jan. 2, 2026).
139 580 P.3d 130, 134-35 (N.M. 2025).
140 *Id.* at 141-42.
141 *Id.* at 135.
142 *Id.*
143 *Id.* at 136.
144 *Id.*
145 *Intrepid Potash*, 580 P.3d at 137.
146 *Id.*

lower court decision on two bases:[147] (i) the *South Springs* abandonment test was the proper test to determine if Intrepid had abandoned its water rights and there was sufficient evidence that Intrepid had abandoned by nonuse,[148] and (ii) holding water rights purely for speculative sale without beneficial use is not allowed under New Mexico's anti-speculation doctrine, adopted for the first time in New Mexico by the court in this opinion.[149]

4. BOKF, N.A. v. Unknown Heirs of Pacheco

In *BOKF, N.A. v. Unknown Heirs of Pacheco*, the New Mexico Supreme Court addressed the issue of whether the foreclosure judgment obtained by BOKF was void due to insufficient service of process on the unknown heirs and devisees of Linora Pacheco, as well as the failure to name and serve known heirs.[150] Linora Pacheco executed a promissory note and deed of trust in favor of BOKF[151] granting BOKF a lien on her property in Santa Fe, New Mexico.[152] Ms. Pacheco eventually defaulted on her obligations under the promissory note, leading to BOKF seeking foreclosure.[153] BOKF did not locate valid addresses for Linora Pacheco and John Doe Pacheco.[154] As a result, BOKF sought permission to serve Linora Pacheco and John Doe Pacheco through publication.[155] The affidavit by the process service in support of BOKF's motion of service by publication attested that Linora Pacheco and John Doe Pacheco lived somewhere in "Vegas."[156] Another affidavit submitted by the investigative agency employed by BOKF also stated that the agency was unable to locate a good address for Linora Pacheco or John Doe Pacheco.[157]

During the lawsuit, Ms. Pacheco died and BOKF then attempted to serve process on her heirs and devisees.[158] Service was only made on Raymond Pacheco, one of Ms. Pacheco's sons, and BOKF never moved to serve the unknown heirs and devisees of Linora Pacheco via publication.[159] The district court granted BOKF's motion for default judgment.[160] After the foreclosure sale, a dispute arose between a third party who obtained redemption rights from two sons of Ms. Pacheco and the purchaser at the foreclosure sale.[161]

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[147]*Id.* at 137, 145.
[148]*Id.* at 139, 144. *See also* State v. S. Springs Co., 452 P.2d 478, 481, 482 (N.M. 1969) ((1) "abandonment is the relinquishment of the right by the owner with the intention to forsake and desert it;" (2) "proof of nonuse for an unreasonable period establishes a presumption of abandonment and is prima facie proof thereof;" and (3) "to rebut the presumption of abandonment arising from such long period of nonuse, there must be established not merely expressions of desire or hope or intent, but some fact or condition excusing such long nonuse.").
[149]*Intrepid Potash*, 580 P.3d at 145.
[150]578 P.3d 1057 (N.M. 2025).
[151]*Id.* at 1062.
[152]*Id.*
[153]*Id.*
[154]*Id.* at 1063.
[155]*Id.*
[156]*BOKF*, 578 P.3d at 1063.
[157]*Id.*
[158]*Id.* at 1063-64.
[159]*Id.*
[160]*Id.* at 1064-65.
[161]*Id.* at 1062-65.

On appeal addressing the sufficiency of service and its impact on the foreclosure, the New Mexico Supreme Court remanded the case for additional fact-finding.[162] The court ruled that the default foreclosure judgment may have been void due to inadequate service of process on the known and unknown heirs and devisees of Linora Pacheco.[163] The court found that the affidavit submitted by the process server did not specify which "Vegas" (Las Vegas, New Mexico or Las Vegas, Nevada) Ms. Pacheco purported to live in.[164] The court noted that the affidavit contained no information as to what efforts, tools, or means were used, to determine where Ms. Pacheco resided.[165] Given these deficiencies in service, the court held that default judgment may have been void due to the lack of proper service of process on one or more heirs and devisees of Ms. Pacheco, and remanded for further fact-finding.[166]

5. Blanchard Corona Ranch, LLC v. Richard

In *Blanchard Corona Ranch, LLC v. Richard*, the New Mexico Supreme Court addressed the issue of whether a lawsuit challenging the Commissioner of Public Lands' (CPL) issuance of wind energy leases, which were overlapped a prior grazing lease, had an "interest in lands" as its object under the New Mexico venue statute.[167] In 2019, the CPL renewed a grazing lease with Blanchard Corona Ranch ("Blanchard").[168] The CPL then issued two wind energy leases which overlapped some of the same Lincoln County, New Mexico lands.[169] Blanchard sued the CPL, claiming that the CPL had failed to follow State Land Office rules when it issued the wind leases.[170] The CPL moved to dismiss on the ground that venue was improper in Lincoln County, [171] because section 38-3-1(D)(1)[172] did not apply when the object of the lawsuit challenges the lawfulness of the leasing process.[173] Blanchard maintained that venue in Lincoln County was proper because it was the county where the land which was the subject of the dispute was located[174] and the declaratory judgment would determine the impact of the wind leases on Blanchard's grazing lease interest.[175] The district court denied the CPL's motion and determined that the declaratory judgment action involved Blanchard's interest in land located in Lincoln County.[176] The CPL then filed a writ of error and an application for an interlocutory appeal, but was denied on both.[177] The CPL then appealed to the New Mexico Supreme Court.[178]

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162 *BOKF*, 578 P.3d at 1062, 1065.
163 *Id.* at 1070.
164 *Id.* at 1071-72.
165 *Id.*
166 *Id.* at 1072-73.
167 Blanchard Corona Ranch, LLC v. Richard, 578 P.3d 1044, 1045 (N.M. 2025); N.M. STAT. ANN. § 38-3-1 (2026).
168 *Blanchard*, 578 P.3d at 1045.
169 *Id.*
170 *Id.*
171 *Id.* at 1046.
172 N.M. STAT. ANN. § 38-3-1(D)(1) ("When lands or any interest in lands are the object of any suit in whole or in part, the suit shall be brought in the county where the land or any portion of the land is situate.").
173 *Blanchard*, 578 P.3d at 1046.
174 *Id.*
175 *Id.*
176 *Id.* at 1048.
177 *Id.* at 1046.
178 *Id.*

The New Mexico Supreme Court reversed and remanded the case to be dismissed without prejudice for improper venue.[179] Adopting a prior opinion of the New Mexico Court of Appeals concerning trespass actions,[180] the court held that the lawsuit did not concern "an interest in lands" because the judgment would not create, transfer, or revoke title or a possessory interest in land.[181] In its opinion, the court distinguished between a judgment related to a possessory interest in land from an interest in land the object of suit.[182]

6. Foundation Minerals, LLC v. Montgomery

In *Foundation Minerals, LLC v. Montgomery*, the New Mexico Court of Appeals reviewed whether a purchase agreement governed by Texas law was unenforceable because of insufficient mutual assent on a formula-calculated purchase price,[183] and whether the buyer was entitled to specific performance.[184] Foundation Minerals, LLC (Foundation) entered into an agreement to purchase mineral interests from Montie Carol Montgomery (Montgomery).[185] The contract terms set the purchase price according to a formula based on the number of net royalty acres.[186] The agreement stated that, for the purposes of the agreement, it was believed that Montgomery owned 257.48 net royalty acres with a corresponding total purchase price of $4,000,000,[187] and that closing would occur 20 business days after the execution.[188] However, both were subject to a title examination period and when the transaction did not close, Montgomery sent notice of repudiation and Foundation filed suit.[189] Foundation argued that the agreement created an enforceable contract, and it was entitled to specific performance of the assignment of the mineral interests.[190] Montgomery argued that because unleased mineral interests and nonparticipating royalty interests were not specifically accounted for in the formula, there was no meeting of the minds as to the purchase price.[191] The District court agreed with Montgomery's position and granted partial summary judgment in her favor, dismissing Foundation's claim for specific performance.[192]

The New Mexico Court of Appeals reversed on both issues.[193] Because the parties had agreed how to calculate the purchase price and there was no express guarantee as to a sum certain, the court found a sufficient meeting of the minds.[194] As to specific performance, relying on precedent which links tender to express "time is of the essence"

[179] *Blanchard*, 578 P.3d at 1050.
[180] Kaywal, Inc. v. Avangrid Renewables, LLC, 495 P.3d 550 (N.M. Ct. App. 2019).
[181] *Id.* at 554, 575.
[182] *Id.* at 557-58.
[183] 562 P.3d 593, 596 (N.M. Ct. App. 2023).
[184] *Id.* at 604.
[185] *Id.* at 596.
[186] *Id.* at 599.
[187] *Id.* at 599, 603
[188] *Id.* at 600.
[189] *Found. Minerals*, 562 P.3d at 596, 599.
[190] *Id.* at 596, 604.
[191] *Id.* at 601.
[192] *Id.* at 596.
[193] *Id.* at 607.
[194] *Id.* at 603.

language,[195] the court held that genuine disputed facts precluded summary judgment, especially in light of buyer's serial offers to perform and seller's erratic conduct.[196]

7. Anderson Living Trust v. ConocoPhillips Company

In *Anderson Living Trust v. ConocoPhillips Company*, the United States District Court of New Mexico addressed the issue of whether a subset of a proposed class, using a narrower class definition than a previously denied class, can still be certified as a class.[197] The two main issues to be decided regarding Rule 23(a)'s commonality requirement and Rule 23(b)(3)'s predominance requirement were: (i) whether "the implied duty to market exists in all oil-and-gas leases" establishes a "common question which predominates over individualized issues;" and (ii) whether ConocoPhillips (COP) owed an "interest on late gas royalty payments pursuant to New Mexico State law is a common question which predominates over individualized issues."[198]

The Plaintiffs owned royalty interests in oil and gas leases held by COP.[199] Plaintiffs sued COP alleging that COP had failed to pay the proper amount of royalties to Plaintiffs[200] and had breached the implied duty to market by failing to obtain the highest reasonable price for gas from the Plaintiffs' wells[201] by selling the gas to its own affiliates in non-arms-length transactions for a price allegedly lower than could have been obtained.[202] The Plaintiffs claimed that COP improperly paid royalties based on the affiliate sales, rather than the higher value of resales downstream.[203]

In 2022, the district court denied class certification of the original class because it failed to meet the predominance requirement.[204] Then in 2024, the Plaintiffs filed another motion for class certification with a narrower proposed class definition limiting the class to only royalty owners: "(i) whose wells in the San Juan Basin of New Mexico produced raw gas; (ii) which [COP] sent to one of six processing plants . . . in the San Juan Basin for processing; (iii) where the processed gas [combined or commingled] with the processed gas from other wells;" and (iv) where COP sold the processed gas at the plant tailgate.[205]

The district court certified a subclass of the Plaintiffs' new proposed class definition.[206] The court found that:

> (i) individualized lease language can negate the implied duty to market; (ii) a subclass [of the proposed new class] excluding those whose leases negate the implied duty to market – leaving only those for whom [Defendant] must obtain the highest reasonable price for gas from the Plaintiffs' wells – eliminates individualized issues based in the implied duty to market; and (iii) individualized issues of whether [Defendant] owe[d] interest on late gas royalty payments pursuant to New Mexico State law defeat rule 23(a)'s

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[195] *Found. Minerals*, 562 P.3d at 603-04 (citing TLC Hosp., LLC v. Pillar Income Asset Mgmt., Inc., 570 S.W.3d 749, 768 (Tex. Ct. App. 2018)). *See also* Mercury Gas & Oil Corp. v. Rincon Oil & Gas Corp., 445 P.2d 958, 960 (N.M. 1968).
[196] *Found. Minerals*, 562 P.3d at 604.
[197] F.R.D. 365, 376 (D.N.M. 2025).
[198] *Id.* at 376–77.
[199] *Id.* at 378.
[200] *Id.* at 379.
[201] *Id.* at 380.
[202] *Id.*
[203] *Anderson Living Tr.*, 349 F.R.D. at 380.
[204] *Id.*
[205] *Id.* at 384.
[206] *Id.* at 446.

commonality requirement and rule 23(b)(3)'s predominance requirement.[207]

B. Regulatory and Legislative Developments

1. Revised New Mexico Oil Conservation Division Procedures

In public notices issued November 1, 2025, the New Mexico Oil and Conservation Division ("OCD") revised its technical guidance on hearing procedures, development plan deviations, and compulsory pooling applications.[208] While the change to hearing request information is built into OCD's online permitting and submission platform, OCD is now requiring a new evidentiary exhibit to compulsory pooling applications regarding committed and uncommitted owners. The new exhibit must set forth the following information in a table format: owner name, ownership status, commitment type, notice provided, to ensure full compliance with NMAC 19.15.4.12.A(1)(a). This guidance updates the prior April 24, 2024 "OCD Hearing Updates and Clarification of Processes" which covered required checklists, exhibit formats, and templates. With respect to deviation from existing development plans approved under prior compulsory pooling orders, OCD seeks to avoid unnecessary hearings on extensions or minor deviations unless an objection is filed in response to notice to affected parties under NMAC 19.15.4.12.B. The 2025 guidance updates and amends the July 12, 2024 "OCD Clarification of Compulsory Pooling Processes Updates" regarding compulsory pooling order timelines.

The OCD has also adopted a new priority list submission plan, effective after June 1, 2025, and outlined in its "Guidance to Operators Submitted Priority Lists to OCD" dated May 12, 2025. These Priority Lists will enable operators to designate the top ten applications or actions on a once-per-month basis submitted to the Administrative Engineering Team in a designated Excel-format.

2. New PFAS Rule

By Order No. R-23824, the Oil Conservation Commission ("OCC") announced its "PFAS Rule Making Order and Reasons for the Action Taken."[209] The OCC adopted a definition for "PFAS chemicals," meaning a perfluoroalkyl or polyfluoroalkyl substance with at least one fully fluorinated carbon atom, but rejected proposed definitions for chemical, chemical disclosure list, trade secret, and undisclosed chemicals. The OCC partially adopted the applicants' proposal for additional disclosure of PFAS chemicals in Well Completion Reports, known as Form C-105, which now requires operators to certify that no PFAS chemicals were added to fluid used in completion or recompletion of the well.[210] Operators are likewise now required to certify on an application for permit to drill (APD) that no PFAS chemicals will be introduced during the completion or recompletion of the well, which also provides grounds for denial of the APD if not in compliance with

[207] *Id.* at 377.
[208] *See* OIL CONSERVATION DIV., N.M. ENERGY, MINERALS & NAT. RES. DEP'T, Public Notice: Clarification of Evidentiary Requirements for Compulsory Pooling Applications (Nov. 1, 2025); OIL CONSERVATION DIV., N.M. ENERGY, MINERALS & NAT. RES. DEP'T, Notice: Procedure for Deviation from Orders (Nov. 1, 2025); OIL CONSERVATION DIV., N.M. ENERGY, MINERALS & NAT. RES. DEP'T, NOTICE: CHANGES TO THE HEARING SUBMISSION PROCESS (Nov. 1, 2025).
[209] PFAS Rule Making Order and Reasons for the Action Taken, Order No. R-23824, Case No. 23580 (N.M. Oil Conservation Comm'n June 3, 2025).
[210] N.M. CODE R. § 19.15.7.16(A) (LexisNexis 2025).

the same.[211] The new rules also expand on well-integrity requirements, response, and testing and mandate additional disclosure of FracFocus chemical reports to private water well owners within a mile of the well site, the State Land Office, the Bureau of Land Management, tribal entities, law enforcement agencies, and public water system administrators.[212] The final part of the adopted rules requires mechanical integrity testing for subsequent casing repairs.[213]

Applicants in the rulemaking, WildEarth Guardians and New Energy Economy, appealed the OCC's Order, alleging that the decision arbitrarily limited the prohibition of PFAS chemicals to a narrower set of downhole operations: completions and recompletions.[214] The New Mexico Oil and Gas Association has challenged Applicants' appeal as untimely in a motion to dismiss because Applicants filed (by various means) their Notice of Appeal on August 13, 2025, 71 days after the OCC's Order and 42 days after the motion for rehearing was denied, relying on case law and the language of Rule 12-601 NMRA 2025, which sets the appeal period at 30 days and purports to superseded any conflicting statute.[215]

3. Administrative Decision in Goodnight Midstream Permian, LLC v. Empire New Mexico, LLC

In Order No. R-24004, the OCC denied the application of Goodnight Midstream Permian, LLC, a midstream company, for increased disposal rates and a new salt water disposal wells (Goodnight) and partially granted Empire New Mexico, LLC, an oil company, application to revoke Goodnight's injection authority[216] The OCC found that Empire has the exclusive right to produce from the residual oil zone (ROZ)[217] underlying the Eunice Monument South Area Unit (EMSU), some 14,000 acres in Lea County, New Mexico. Experts in the contested hearing agreed that in the San Andres, the lowest formation in the EMSU, 30 to 40 percent oil saturation existed.[218] Empire purchased the EMSU for the specific purpose of starting a new carbon dioxide flood as part of an enhanced oil recovery project.[219] The OCC denied Goodnight's applications because the disposal of produced water during Empire's active CO2 flood would adversely affect recovery and economics. The OCC was mindful of its primary duty to prevent waste and protect correlative rights.[220] However, Empire failed to demonstrate the need to permanently revoke Goodnight's injection authority, which the OCC determined to be a

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[211] §§ 19.15.14.9(D), 19.15.14.10 (2025).
[212] §§ 19.15.16.17(A)(1)–(3), (B), 19.15.16.19(D)–(E) (2025).
[213] § 19.15.25.14 (2025).
[214] *See* Appellants' Brief in Chief, WildEarth Guardians v. N.M. Oil Conservation Comm'n, No. A-1-CA-42858 (N.M. Ct. App. Dec. 15, 2025).
[215] *See* James v. N.M. Hum. Serv. Dep't, Income Support Div., 742 P.2d 530, 532 (N.M. Ct. App. 1987); Maples v. State, 791 P.2d 788, 790 (N.M. 1990).
[216] *See* Order Denying Goodnight's Applications and Partially Granting/Partially Denying Empire's Applications, R-24004, Case Nos. 24123, 23614–17, 23775, 24018-19, 24020, and 24025 (consolidated) (N.M. Oil Conservation Comm'n Sept. 12, 2025) [hereinafter OCC Order No. R-24004].
[217] ROZ is commonly understood to be the section of an oil reservoir beneath the main producing zone and transitional zone, which naturally occurs after waterflooding and may be recoverable using CO2 enhanced oil recovery. *See* L. STEPHEN MELZER, ADVANCED RES. INT'L, & OFF. OF OIL & NAT. GAS, U.S. DEP'T OF ENERGY, STRANDED OIL IN THE RESIDUAL OIL ZONE (Feb. 2006).
[218] OCC Order No. R-24004, *supra* note 210, at 7, ¶ 37.
[219] *Id.* at 6, ¶ 26.
[220] N.M. STAT. ANN. § 70-2-11(A) (2025).

premature request, and instead temporarily suspended Goodnight's injection authority for a period of three (3) years while Empire ascertains the recoverability of the ROZ.[221]

4. Well Repurposing Act and New Mexico UIC Class VI Primacy

In the 2025 Legislative session, New Mexico adopted the "Well Repurposing Act" (WPA),[222] which creates a framework for converting inactive or abandoned oil and gas wells into energy storage assets, with the authority of the New Mexico Energy, Minerals, and Natural Resources Department to regulate the process. Notably, a well that has been converted for energy storage purposes is characterized as a well being used for beneficial purposes, which releases the well from other requirements to be plugged and abandoned.[223] The passage of the WPA supports New Mexico's application for Underground Injection Control Class VI Primacy with the Environmental Protection Agency ("EPA"), which will allow the state itself to issue and enforce CO2 injection well permits for long term storage and drastically reduces permitting timelines. Draft rules for a state Class VI UIC program were announced by the Oil Conservation Division on August 22, 2025, for public comment and filed in Case No. 25,875 on December 22, 2025. North Dakota and Wyoming have obtained primary and permitted 26 Class VI wells as of May 2025. New Mexico's application for primacy is scheduled to go through public notice and comment periods in 2026, and the current status is available on the EPA's tracking website.[224]

5. New Royalty Rates for State Oil and Gas Leases

The 2025 legislative session also adopted new royalty rates for oil and gas leases on state lands. The State Development lease form,[225] now requires a royalty rate of not more than one-fourth (1/4) , and not less than one-fifth (1/5) for leases issued by the CPL after July 1, 2025 on certain lands, being Lea and Eddy Counties, New Mexico, which encompass Permian Basin lands and the Southeast corner of the state. This legislation increases the royalty rate on state leases from the prior 1/5 (20%) cap to ¼ (25%) for the specified lands.

XIV. OHIO[226]

In 2025, Ohio courts issued a series of decisions that will shape the legal landscape for oil and gas development in the Buckeye State for years to come. Appellate courts refined the allocation of postproduction costs and the treatment of overriding royalty and market- enhancement clauses, clarified the scope of operators' surface- use rights and remedies, and tightened standing requirements in regulatory and unitization disputes. At the same time, courts continued to grapple with the interaction between Ohio's Dormant Mineral Act and Marketable Title Act, particularly with respect to mineral buyers and long- severed interests. Together, these rulings provide- important guidance to lessors, lessees, surface owners, and regulators navigating Ohio's mature but evolving shale play.

[221] OCC Order No. R-24004, *supra* note 210, at 13.
[222] N.M. STAT. ANN. §§ 71-9A-1–71-9A-4 (2025).
[223] § 71-9A-4(A).
[224] See Primary Enforcement Authority for the Underground Injection Control Program, ENVTL. PROT. AGENCY (Mar. 23, 2026).
[225] N.M. STAT. ANN. § 19-10-4.3.
[226] Gregory D. Russell, Ilya Batikov, Casey N. Valentine, and Mark A. Hylton, Vorys, Sater, Seymour and Pease LLP.

A. Lease and Royalty Disputes

In *Gateway Royalty, LLC v. EAP Ohio, LLC*,[227] Ohio's Seventh District Court of Appeals held that overriding royalty interests (ORRIs) are not subject to post-production cost deductions when the governing instrument is silent on cost allocation. Relying on a definition first adopted by earlier Ohio decisions in unrelated circumstances, the *Gateway* court held that an ORRI is "a fractional interest in the gross production of oil and gas under a lease in addition to usual royalties paid to the lessor, free of any expense for exploration, drilling, development, operating, marketing and other costs incident to the production and sale of oil and gas.[228]" On that basis, the court held that when an instrument creating an ORRI is silent as to cost allocation, the ORRI remains cost-free, and post-production costs may not be deducted unless the parties expressly agree otherwise. In December 2025, the Supreme Court of Ohio agreed to hear the case.[229] The Court is expected to issue its decision in 2026.[230]

In *Grissoms, LLC v. Antero Resources Corporation*,[231] the United States Court of Appeals for the Sixth Circuit affirmed the district court's finding that a lease's market enhancement clause did not authorize the deduction of processing and fractionation costs from the lessors' royalties. The market enhancement clause provided that royalties would be paid without deductions "to transform the product into marketable form," but that "any such costs which result in enhancing the value of the marketable oil, gas or other products to receive a better price may be proportionally deducted." The Sixth Circuit found that "[a] transformed product is 'marketable' when it is '[o]f commercially acceptable quality; fit for sale and in demand by buyers,' or '[f]it to be offered for sale, as in a market[.]'"[232] Therefore, "[t]he oil, gas, and other products first become marketable when they can be sold in crude oil markets, refined gas markets, ethane markets, and so on."[233] Based on the summary judgment record before it, the court concluded that with respect to the wet gas wells at issue, "'processing' and 'fractionation' are essential parts of transforming the unrefined gas into marketable natural gas and of transforming the YGrade non-methane gas mixture into marketable gas products (ethane, propane, butane, and natural gasoline)."[234] Accordingly, the lessee was not permitted to deduct these costs from the lessors' royalties.

In *Eaton v. Ascent Resources-Utica, LLC*,[235] the United States District Court for the Southern District of Ohio addressed which party had the burden of proving whether post-production costs deducted from lease royalties were reasonable. The plaintiff class of leased landowners filed a motion for partial summary judgment arguing that the defendant-lessee bore that burden.[236] The oil and gas leases were silent on the issue, so the court looked to substantive Ohio law.[237] Because Ohio law puts the burden of proof on the party asserting the claim, the court found that "as in any other civil case, the party who asserts a

[227]No. 24 CA 0980, 2025 WL 2402064 (Ohio Ct. App. Aug. 15, 2025).
[228]*Id.* at *7 (quoting Gateway Royalty II, LLC v. Gulfport Energy Corp., 255 N.E.3d 110, 118 (Ohio Ct. App. 2024)).
[229]*See* Case Announcements, Appeals Accepted for Review, Gateway Royalty, L.L.C. v. EAP Ohio, LLC, 272 N.E.3d 384 (Table) (Ohio, Dec. 24, 2025).
[230]Vorys, Sater, Seymour and Pease LLP represents the appellant, EAP Ohio, LLC, in this litigation.
[231]133 F.4th 605 (6th Cir. 2025).
[232]*Id.* at 609 (internal citations omitted).
[233]*Id.*
[234]*Id.* at 610-11.
[235]No. 19-cv-03412, 2025 U.S. Dist. LEXIS 117574 (S.D. Ohio June 20, 2025).
[236]*Id.* at *2.
[237]*Id.* at *14-15.

breach of an oil and gas lease carries the burden of proof."[238] The court also found the plaintiffs' argument for a burden shifting approach based on the defendant having more information unpersuasive, stating that the "power imbalance is better redressed through Plaintiffs' accounting claim, or through discovery, not Plaintiffs' breach of contract claim."[239] Accordingly, the court denied the plaintiffs' partial motion for summary judgment on this issue.[240]

B. Development Disputes

In *Pirl v. Rice Drilling D, LLC*,[241] the United States Court of Appeals for the Sixth Circuit was asked to consider the consequences of attaching a plat to a surface use agreement (SUA) for "informational purposes only." The landowners entered into an oil and gas lease and subsequently negotiated an SUA with the lessee. The SUA granted the lessee broad authority to construct a well pad and related facilities and also incorporated by reference a topography plat depicting the surface use plans "for informational purposes only."[242] The plat included, among other things, a well pad, a specified limit of disturbance, and two topsoil stockpiles.[243] Pursuant to the agreement, the landowners were paid compensation for any damages to or loss of use of the disturbed acreage.[244] Nonetheless, after construction, the landowners sued for breach of contract, trespass, and quiet title, claiming that the lessee violated the SUA by placing fencing outside the limit of disturbance and maintaining topsoil in a manner that violated the SUA.[245] The lower court granted summary judgment in favor of the lessee, holding that the topography plat was not binding on the parties because it was incorporated for informational purposes only.[246] And without the plat, the terms of the SUA authorized the lessee to construct the fence and maintain the topsoil stockpile as it did.

On appeal, the court looked to the ordinary meaning of the SUA's language and agreed with the lower court that the plat being incorporated "for informational purposes only" did not create a binding set of precise specifications that the lessee had to follow.[247] This determination was also supported by the inclusion of language on the plat expressly allowing for certain variations.[248] Given this and the broad granting language in the SUA, the court reasoned that the agreement only required the lessee to (i) compensate the landowner for the full amount of disturbed acreage, which it did, and (ii) "confer" with the landowner prior to commencing construction.[249] On the second point, the court disagreed with the landowner that their acquiescence was required, instead finding that the consultation between the landowner and lessee that occurred prior to construction was sufficient.[250] As a consequence, the lessee's use of the surface was consistent with the terms of the SUA, such that there was no breach.[251] Furthermore, the landowners' trespass and

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[238] *Id.* at *15 (citing Pfalzgraf v. Miley, 116 N.E.3d 893, 897 (Ohio Ct. App. 2018)).
[239] *Id.* at *21-22.
[240] *Id.* at *23.
[241] No. 24-3838, 2025 U.S. App. LEXIS 11681 (6th Cir. May 12, 2025).
[242] *Id.* at *2-3.
[243] *Id.* at *4.
[244] *Id.*
[245] *Id.* at *7.
[246] *Id.*
[247] *Pirl*, 2025 U.S. App. LEXIS 11681, at *11.
[248] *Id.* The plat specifically provided for the possibility of variations to pad size, location, and elevation.
[249] *Id.* at *13-14.
[250] *Id.* at *15.
[251] *Id.* at *17-18.

quiet title claims similarly failed because the lessee was operating within the confines established in the SUA, and therefore the court affirmed the grant of summary judgment to the lessee.[252]

In *EOG Resources, Inc. v. Lucky Land Management, LLC*,[253] the United States Court of Appeals for the Sixth Circuit considered whether the trial court properly granted a preliminary injunction to allow the lessee of a severed mineral interest to begin construction of a surface location on the property to produce oil and gas from neighboring properties. Finding that the injunction was improper the court of appeals reversed.[254] First, it found that "Ohio law presumes that a severance deed grants an easement to use the surface only in connection with mineral production under that surface. Anything more exceeds the scope of the easement and is an unauthorized surface use."[255] This, according to the court of appeals, was consistent with expert authorities and case law from producing jurisdictions around the country.[256] And because the severance deed did not grant any more authority regarding surface use, the lessee was unlikely to win on the merits and a preliminary injunction should not have been issued.[257] Second, the court of appeals found that a preliminary injunction cannot be granted unless the plaintiff will suffer irreparable harm, i.e., harm that is "not fully compensable by monetary damages." Here, the trial court found that delaying the drilling schedule of EOG Resources, Inc. ("EOG") would, at worst, lead to lost profits.[258] Because EOG's harm was fully compensable by monetary damages, the court of appeals held that the grant of the preliminary injunction was in error.[259]

C. Regulatory Disputes

In *Eric Petroleum Corporation v. Vendel*,[260] Ohio's Tenth District Court of Appeals addressed whether a party who claimed a disputed option to acquire a working interest in a statutory unit had standing to appeal the issuance of an order approving an application for statutory unitization. As background, a producer applied for and subsequently received a statutory unitization order that authorized the development of its statutory unit.[261] Eric Petroleum Corporation ("Eric Petroleum") appealed the order to the Ohio Oil and Gas Commission, claiming that it owned a contractual option to participate as a working interest owner in the unit and that the order was unlawful and unreasonable.[262] The producer disputed Eric Petroleum's claim to an option and noted that the property dispute was the subject of a pending parallel civil lawsuit. Finding that it lacked jurisdiction to resolve the underlying property rights disputes, the Commission determined that Eric Petroleum lacked standing to pursue the appeal.[263] Eric Petroleum then appealed the Commission's order of dismissal to the trial court, which determined that Eric Petroleum did in fact have standing to appeal the statutory unitization order.[264] Upon further appeal, the court of appeals disagreed with the trial court's finding.

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[252] *Id.* at *19-20.
[253] 134 F.4th 868 (6th Cir. 2025).
[254] *Id.* at 872-73.
[255] *Id.* at 875.
[256] *Id.* at 876-77.
[257] *Id.* at 880.
[258] *Id.* at 884-85 (quoting Overstreet v. Lexington-Fayette Urb. Cnty. Gov't., 305 F.3d 566, 578 (6th Cir. 2002)).
[259] *EOG*, 134 F.4th at 885.
[260] Nos. 24AP-272, 24AP-275, 2025 Ohio App. LEXIS 1200 (Apr. 8, 2025).
[261] *Id.* at *2-3.
[262] *Id.* at *5-7.
[263] *Id.* at *9-12.
[264] *Id.* at *12-13.

In approaching the question of Eric Petroleum's standing, the appellate court looked to the statute establishing the right to appeal a unitization order to the Commission.[265] That statute provides that "[a]ny person *adversely affected* by an order by the chief of the division of oil and gas resources management may appeal to the oil and gas commission for an order vacating or modifying the order."[266] Disagreeing with the trial court, the appellate court declined "to expand the plain and ordinary meaning of 'adversely affected' to include persons 'claiming to be' adversely affected," noting that the legislature had previously eliminated the phrase "claiming to be" from an earlier version of the statute.[267] The appellate court also noted that nothing in R.C. 1509.36 "clearly abrogates a person's duty to show a real and current injury, or threat thereof, to challenge the Chief's Order."[268] Thus, to have standing Eric Petroleum needed to show that the statutory unitization order produced an effect harmful to its interest.[269] Here, the court agreed with the Commission and found that Eric Petroleum's asserted contractual option to acquire an interest in the unit – an interest whose validity was concurrently being litigated in another court – was too speculative to permit Eric Petroleum's challenge to the order.[270]

In *Save Ohio Parks v. Oil and Gas Land Management Commission*,[271] Ohio's Tenth District Court of Appeals affirmed the trial court's decision below finding that the land management commission's approval of a nomination to lease state lands is not appealable under R.C. 119.12.[272] It reasoned that the commission's approval of the nominations was not a decision "issued pursuant to an adjudication" as required by R.C. 119.12.[273] Nor did it involve the "issuing, suspending, revoking, or canceling of a license," also as required by that statute.[274] As a consequence, that action (i.e., the approval of the nominations) was not appealable under this part of the Revised Code.[275] But even if that action had been appealable, the court also found that "these particular appellants lacked standing to bring such a challenge" because they were unable to demonstrate that they suffered an injury.[276] The court of appeals found that, at best, the appellants could only speculate that they *may* be harmed in the future if the nominated lands are leased for oil and gas development.[277]

D. Ohio's Dormant Mineral Act and Marketable Title Act

In *1803 Resources, LLC v. Lineback*,[278] Ohio's Seventh District Court of Appeals reversed the trial court's judgment that the appellant 1803 Resources, LLC, a mineral buyer, lacked standing to pursue its claims relating to two severed royalty interests.[279] The trial court found this case to be "virtually identical" to the facts in *Cardinal Minerals, LLC v. Miller*,[280] in which the Seventh District held that a mineral buyer lacked standing to

[265] *Id.* at *20-22.
[266] OHIO REV. CODE ANN. § 1509.36 (LexisNexis 2025) (emphasis added).
[267] *Eric Petroleum*, 2025 Ohio App. LEXIS 1200, at *22-23.
[268] *Id.* at *23.
[269] *Id.* at *25-26.
[270] *Id.* at *26-27.
[271] No. 24AP-206, 2025 Ohio App. LEXIS 804 (Mar. 13, 2025).
[272] *Id.* at *11.
[273] *Id.* at *10.
[274] *Id.* (internal quotation marks omitted).
[275] *Id.* at *11.
[276] *Id.* at *15.
[277] *Save Ohio Parks*, 2025 Ohio App. LEXIS 804, at *13.
[278] 7th Dist. Monroe Nos. 24MO-0019, 0023, 2025-Ohio-3271.
[279] *Id.* at ¶ 124.
[280] 2024-Ohio-2133, 246 N.E.3d 71 (Ohio App. 2024).

pursue its claims regarding a severed mineral interest that was previously the subject of a completed abandonment pursuant to the procedures set forth in Ohio's Dormant Mineral Act, Ohio Revised Code § 5301.56 ("DMA").[281] Under Section (H)(2)(c) of the DMA, a severed mineral interest ceases to be a legally recognized interest in the public record once the abandonment procedures are completed. Because the mineral buyer in *Cardinal Minerals* accepted transfers of interests that did not exist in the public record, the court found it did not acquire a legally recognized interest and, as a consequence, did *not* have standing to contest the validity of the abandonment.[282] Conversely, here, the court of appeals noted that the appellant's record chain of title did not include a public record notice of abandonment.[283] Second, the court of appeals found that the two severed royalty interests at issue were not previously extinguished under Ohio's Marketable Title Act, Ohio Revised Code § 5301.47, *et seq.*[284] Therefore, the court of appeals concluded that 1803 Resources had standing to pursue its claims because, unlike the putative mineral owner in *Cardinal Minerals*, 1803 Resources had, in fact, acquired a legally recognized royalty interest.[285]

In *Kocher v. Ascent Resources-Utica, LLC*,[286] Ohio's Seventh District Court of Appeals affirmed the trial court's ruling that a severed 9/10th mineral interest was not abandoned under the DMA because the mineral owners timely filed claims to preserve pursuant to Section (H)(1)(a) of the DMA.[287] The court of appeals also affirmed the trial court's decision denying the severed mineral owners' motion for summary judgment that they are entitled to recover 9/10ths of the lease bonus paid to the surface owners.[288] The severed mineral owners pointed to *Miller v. Cloud*,[289] in which the court of appeals previously held that the equitable remedy of disgorgement may be available when there is wrongdoing.[290] However, like in *Miller*, the court of appeals found no evidence that the surface owners engaged in any wrongful or fraudulent activity.[291] The court of appeals further found that the surface owners acted under a good faith belief that they owned 100% of the mineral rights and that any disgorgement of lease bonuses that they received several years prior would be inequitable.[292] In addition, the court of appeals determined that the equitable remedies of accounting and constructive trust would be improper in this case because there was no evidence of a fiduciary or trust relationship between the parties.[293] Finally, the court of appeals rejected the severed mineral owners' unjust enrichment claim.[294] Under Ohio law, the benefit that is unjustly retained (i.e., the lease bonus) must have been conferred on the defendant (i.e., the surface owners) by the plaintiff (i.e., the severed mineral owners).[295] Here, the severed mineral owners admitted that they conferred no benefit upon the surface owners and, as a consequence, their unjust enrichment claim failed.[296] Accordingly, the court of appeals concluded that the severed mineral owners had

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[281] *1803 Resources, LLC*, 2025-Ohio-3271, ¶ 118.
[282] *Id.* at ¶ 121.
[283] *Id.* at ¶ 123.
[284] *Id.*
[285] *Id.* at ¶ 124.
[286] Nos. 24JE-0019, 0020, 0021, 2025-Ohio-1311 (Ohio App. 7th Dist. 2025).
[287] *Id.* at ¶ 37.
[288] *Id.* at ¶ 51.
[289] 76 N.E.3d 297, 2016-Ohio-5390 (Ohio App. 7th Dist. 2016).
[290] *Kocher*, 2025-Ohio-1311, at ¶ 39.
[291] *Id.* at ¶ 40.
[292] *Id.* at ¶ 41.
[293] *Id.* at ¶ 47.
[294] *Id.* at ¶¶ 50-51.
[295] *Id.* at ¶ 50.
[296] *Id.* at ¶ 52.

no cause of action at law against the surface owners for the recovery of the lease bonuses and, therefore, had no cause of action in equity.[297]

XV. OKLAHOMA

A. Legislative Developments

During the 2025 legislative session, the Oklahoma Legislature adopted, and the Governor approved, Senate Bill 269,[298] which amended the Carbon Capture and Geologic Sequestration Act. The new law places regulatory authority over geologic sequestration of carbon dioxide in Oklahoma with the Oklahoma Corporation Commission and empowers the Commission to create carbon dioxide storage units upon an application and consent of at least 63% of the concerned pore space owners. It also clarifies that injected carbon dioxide remains the property of the operator, provides for certain rights and duties between mineral and surface owners involving carbon storage facilities, provides for the transfer of liability from an operator to the state for certain storage facilities, and provides for the financing of site-monitoring and maintenance.

The Legislature also enacted Senate Bill 132[299] amending Oklahoma Statutes, title 17, section 53. The amendment provides a schedule for plugging idle gas wells. If an operator is responsible for an idle gas well that has not been plugged or produced from for twenty consecutive years before the effective date of the Act, the operator must reduce its number of idle gas wells by 25% by July 1, 2028, by 50% by July 1, 2031, and shall plug all remaining idle gas wells by July 1, 2035. Operators with idle gas wells that have not produced for a time period of less than twenty consecutive years before the effective date, or that have an idle gas well on and after the effective date, shall have ten years from the effective date to plug or produce each such well.

Through House Bill 1369,[300] the Legislature amended Oklahoma Statutes, title 52, section 318.1—relating to evidence of financial ability for drilling and operating wells—to remove Category A surety for new operators. Category A surety consisted of a financial statement listing assets and liabilities worth at least $50,000, together with a general release so that the information may be verified with banks and other financial institutions. Current operators who have valid Category A surety and are in good standing with the Corporation Commission may retain their Category A surety. The bill also amends Category B surety (irrevocable letter of credit) by providing a graduated dollar amount based on the operator's number of wells.

Finally, through passage of Senate Bill 897,[301] the Legislature extended the termination date of the Corporation Commission Plugging Fund to July 1, 2031.

B. Judicial Developments

In 2025, the Oklahoma Supreme Court decided in *Mills v. J-M Manufacturing Co., Inc.*[302] that the holder of an easement for a saltwater line is entitled to common law indemnification from the manufacturer and distributor of the pipe installed on the easement for damages caused to the servient estate by a defect in the pipe. The opinion explains that "[i]ndemnity is a right of a party who fulfills a legal obligation to seek reimbursement from

[297]*Id.* at ¶ 51.
[298]S.B. 269, 60th Leg., 1st Reg. Sess. (Okla. 2025).
[299]S.B. 132, 60th Leg., 1st Reg. Sess. (Okla. 2025).
[300]H.B. 1369, 60th Leg., 1st Reg. Sess. (Okla. 2025).
[301]S.B. 897, 60th Leg., 1st Reg. Sess. (Okla. 2025).
[302]2025 OK 23, 567 P.3d 385.

another party that should have borne that responsibility."[303] The easement holder owed a nondelegable duty to the owner of the servient estate not to damage the servient estate. The easement holder was thus liable to the servient estate owner for the damage that occurred when the pipe failed. The easement holder was faultless, however, and the court concluded that the liability should have been born by the manufacturer and distributor of the pipe.[304]

The Oklahoma Court of Civil Appeals decided one published case concerning oil and gas law, *Special Energy Corporation v. Territory Resources, LLC*.[305] The issue on appeal concerned the standing of a purchaser of assets to enforce a confidentiality agreement between the seller and a third-party prospective purchaser. In this case, Devon Energy Production Corporation sold a package of assets located in Oklahoma. Devon required prospective purchasers to execute a confidentiality agreement before reviewing any of Devon's confidential information involving the package. Special Energy and Territory Resources each executed a confidentiality agreement with Devon for this purpose. Although Territory Resources decided not to make an offer on the package after reviewing the confidential information, Special Energy eventually purchased the package from Devon pursuant to a purchase agreement. Following closing, Special Energy brought this action against Territory Resources, alleging that Territory Resources used Devon's confidential information to obtain a top lease on two of the leases in the package in breach of the terms of the confidentiality agreement between Territory Resources and Devon.

The trial court ruled that Special Energy lacked standing to sue for breach of Territory Resources' confidentiality agreement with Devon. The court provided two reasons. First, the agreement was excluded from the assets sold to Special Energy under its purchase agreement with Devon. And second, Special Energy's own confidentiality agreement with Devon prohibited Special Energy from making any claim to any right, title, or interest in Devon's confidential information.[306] The trial court also denied Special Energy's motion to reconsider in light of an assignment of the Territory Resources confidentiality agreement given by Devon to Special Energy after Special Energy commenced the lawsuit but which was backdated to the date of closing.[307]

The Court of Appeals reversed the trial court on all three grounds. The court interpreted the Devon–Special Energy purchase agreement to include the Territory Resources confidentiality agreement, even though the agreement was not specifically listed as one of the agreements sold. The agreement was also not listed as an "excluded interest," leading the court to conclude based on the purchase agreement as a whole that the parties intended to transfer the confidentiality agreement.[308] Furthermore, the court held that Special Energy was a third-party beneficiary under Devon's confidentiality agreement with Territory Resources. According to the court, the provision in Special Energy's confidentiality agreement prohibiting it from making any claim to Devon's confidential information must be read in *pari materia* with Special Energy's purchase agreement with Devon. Thus, construing these two agreements together, there is no reasonable interpretation by which Special Energy would be barred from enforcing the confidentiality agreement. Per the court, "No prospective purchaser would sign a confidentiality contract agreeing that it would make no claim to the confidential information it might eventually purchase."[309] Finally, the court held that the trial court should have considered the backdated assignment from Devon because the confidentiality agreement was assignable

[303]*Id.* ¶ 9, 567 P.3d at 388 (citing Thomas v. E-Z Mart Stores, Inc., 2004 OK 82, ¶ 20, 102 P.3d 133, 139).
[304]*Id.* ¶ 13, 567 P.3d at 389.
[305]2025 OK CIV APP 14, 573 P.3d 363.
[306]*Id.* ¶ 14, 573 P.3d at 368.
[307]*Id.* ¶ 17, 573 P.3d at 369.
[308]*Id.* ¶¶ 34–38, 573 P.3d at 372–73.
[309]*Id.* ¶ 40, 573 P.3d at 373.

and parties are entitled to cure defects of standing by filing amended pleadings, as Special Energy did in this case.[310]

The United States Court of Appeals for the Tenth Circuit issued a decision in the class action royalty-payment dispute, *Cline v. Sunoco, Inc. (R&M)*.[311] Following a four-day bench trial, the trial court awarded the class $103 million in actual damages and $75 million in punitive damages against crude-purchaser Sunoco for failure to pay statutorily required interest on untimely payments when disbursing revenue to owners under Oklahoma's Production Revenue Standards Act (PRSA). Under the PRSA, unless there is a bona fide title dispute, proceeds on sales of hydrocarbons must be paid to owners within six months from the date of the first sale and within two months of any subsequent sales.[312] The act requires payment of interest at the default rate of 12% per annum, "compounded annually … until the day paid" on late proceeds.[313]

The Tenth Circuit reversed the trial court's award of punitive damages but otherwise affirmed the trial court's decisions certifying the class, finding that all class members have standing—even those whose payments went to unclaimed property funds—and awarding prejudgment interest.[314] The court held that interest continues accruing under the PRSA not only until the payment of the untimely proceeds but until the statutory interest is itself paid.[315] Because the statute calls for "compound interest," the interest becomes "part of the principal and therefore earns interest."[316] In other words, "[a]s unpaid compound interest accrues, it is *added* to the principal, effectively converting it from unpaid interest to become a portion of the unpaid principal proceeds that are owed the plaintiff."[317] Therefore, merely paying the underlying principal amount of proceeds originally due under the PRSA does not stop the accrual of statutory interest.

Further, applying Oklahoma case law, the court interpreted a claim brought for failure to pay under the PRSA as a breach of contract claim, precluding punitive damages.[318] The reasoning is that a PRSA violation "is based upon a breach of the obligation to pay the royalty arising *ex contractu* in the manner prescribed by" the statute.[319] Punitive damages are available under Oklahoma's Energy Litigation Reform Act (ELRA), but under that statute, they require a showing of "actual, knowing and willful" intent to deceive or deprive the victim of proceeds, which was not met in this case.[320]

A dissent authored by Judge Moritz took issue with the majority's conclusions regarding when interest stops accruing on PRSA claims and whether punitive damages were available under the ELRA. In her view, the proper interpretation of the PRSA is that payment of the untimely proceeds cuts off the accrual of further interest on those proceeds.[321] Further, she reads the ELRA to provide for punitive damages in cases of willful withholding of proceeds payments, which is to be given effect over the general statutory rule in Oklahoma barring punitive damages for ordinary breaches of contract.[322]

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[310]*Id.* ¶¶ 47–50, 573 P.3d at 375–76.
[311]159 F.4th 1171 (10th Cir. 2025).
[312]*Id.* at 1180 (citing OKLA. STAT. ANN. tit. 52, § 570.10(B)(1).
[313]*Id.* (quoting OKLA. STAT. ANN. tit. 52, § 570.10(D)).
[314]*Id.* at 1184.
[315]*Id.* at 1200.
[316]*Id.* (quoting Cline v. Sunoco, Inc. (R&M), 479 F. Supp. 3d 1148, 1157 (E.D. Okla. 2020).
[317]*Id.*
[318]*Id.* at 1203 (first citing Purcell v. Santa Fe Minerals, 961 P.2d 188, 193 (Okla. 1998); and then citing Krug v. Helmerich & Payne, Inc., 362 P.3d 205, 213 (Okla. 2015)).
[319]*Id.* (quoting *Purcell*, 961 P.2d at 193).
[320]*Id.* at 1203 (citing OKLA. STAT. ANN. tit. 52, § 903 (2026)).
[321]*Id.* at 1205 (Moritz, J., dissenting).
[322]*Id.*

XVI. PENNSYLVANIA[323]

A. Legislative Developments

In October 2025, Pennsylvania House Bill 1946 was introduced and referred to the Environmental & Natural Resources Protection Committee.[324] If passed, the bill would amend Pennsylvania's Oil and Gas Act to provide a greater setback distance for unconventional wells. The bill would measure the distance from the perimeter of the well pad rather than from the vertical wellbore.[325] The following distance increases are proposed: (1) from 500 to 2,500 feet between wells and buildings and water wells unless written consent from the owner is obtained; (2) from 1,000 to 2,500 feet between wells and water wells, surface water intakes, reservoirs, or other water supply extraction points used by a water purveyor; (3) from 300 to 750 feet between wells and natural water bodies such as streams, springs, and wetlands.[326] The Bill also includes a new provision prohibiting unconventional wells and their infrastructure from being located within 2,500 feet of a building, water well, or water supply or within 5,000 feet of a school, hospital, long-term care facility, child-care facility, or facility housing or serving intellectually or developmentally disabled individuals.[327]

B. Judicial Developments

a. Briggs v. Southwestern Energy Production Company ("Briggs II")

After the *Briggs I* Court concluded that the plaintiffs had failed to specifically allege physical invasion of their property via fracking and therefore could not sustain their trespass or conversion claims, the plaintiffs filed a complaint in *Briggs II* that included those allegations.[328] Specifically, the plaintiffs asserted that the fracking of one well in June 2013 resulted in the injection of fluids and proppants beneath the plaintiff's property which remained beneath the property.[329] The court granted summary judgment based on the plaintiffs' failure to offer any evidence that the defendant fracked beneath the plaintiffs' property, injected proppants beneath it, or that the proppants remained beneath the property to facilitate gas production from it.[330] Additionally, the court explained that, because the only alleged trespass occurred in June 2013 when the property was subject to an oil and gas lease held by the defendant, the purportedly trespassory actions were permissible under the terms of the lease.[331] The court concluded that the plaintiffs' trespass and conversion claims failed for the additional reason that the trespass would be permanent rather than continuing and therefore the statute of limitations had already expired.[332] The court reasoned that, although it had previously concluded that the plaintiffs stated a continuous

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[323] Nicolle R. Snyder Bagnell and Gina M. Kantos, Reed Smith LLP. Special thanks to Cassidy G. Eckrote, Nina A. Ordinario, and Victoria L. Thorp for their research assistance.
[324] H.B. 1946, Gen. Assemb., Reg. Sess. (Pa. 2025).
[325] *Id.*
[326] *Id.*
[327] *Id.*
[328] *Briggs v. Sw. Energy Prod. Co.*, No. 3:21-CV-520, 2025 U.S. Dist. LEXIS 52005, at *4-5 (M.D. Pa. Mar. 21, 2025).
[329] *Id.* at *20.
[330] *Id.* at *36-37.
[331] *Id.* at *41.
[332] *Id.* at *47.

trespass claim through their allegations regarding proppants remaining on the land, continuing trespass required the continued presence of an object that had been "tortiously placed there."[333] Because the plaintiffs' property was subject to an oil and gas lease at the time fracking occurred, the court concluded that the proppants could not have been tortiously placed.[334] Without facts or evidence "from which a reasonable jury could infer that [the defendant] continues to commit harm causing action, as opposed to the past harm that results from actions which have already ceased and were nevertheless privileged," the court concluded that the plaintiffs' claims must fail.[335]

b. Protect Elizabeth Township v. Elizabeth Township

In *Protect Elizabeth Township v. Elizabeth Township*, the Pennsylvania Commonwealth Court concluded that a local zoning ordinance prevented oil and gas facilities from being located on lots where homes already existed as principal structures.[336] For districts in which family dwellings were authorized, the zoning ordinance in question required that these dwellings be "the only principal structure on the lot."[337] The ordinance defined "principal structure" as "the building structure in which the principal use is conducted" and the "principal use" as "the primary or predominant use to which the property is or may be devoted, and to which all other uses on the premises are accessory."[338] Because the parties agreed that the proposed well pads would become the predominant use of the lots, the court concluded that they constituted principal structures that could not be located on lots already containing family dwellings.[339] The court rejected the argument that the oil and gas ordinance permitting well pads as conditional uses within the district prevailed over the zoning ordinance.[340] It reasoned that, although the oil and gas ordinance did not prohibit well pads on lots with family dwellings, it contained no language expressly conflicting with, or rendering inapplicable, the zoning ordinance.[341] Therefore, the zoning ordinance applied and prohibited well pads on parcels with family dwellings.[342]

c. Cole v. Pennsylvania Department of Environmental Protection

In *Cole v. Pennsylvania Department of Environmental Protection*, the Pennsylvania Supreme Court determined that the Pennsylvania Environmental Hearing Board ("EHB") possessed jurisdiction to review the Pennsylvania Department of Environmental Protection's ("DEP") permitting decisions regarding natural gas projects despite the federal Natural Gas Act's regulation of these permits.[343] After the DEP approved permits for an interstate natural gas compressor station project, the permits were appealed to the EHB.[344] The permittee argued that the EHB lacked jurisdiction over the

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[333]*Briggs*, No. 3:21-CV-520, 2025 U.S. Dist. LEXIS 52005, at *52.
[334]*Id.*
[335]*Id.* at *55-56.
[336]No. 830 C.D. 2024, 2025 Pa. Commw. Unpub. LEXIS 297 (Pa. Commw. Ct. June 13, 2025).
[337]*Id.* at *11.
[338]*Id.* at *11, *14.
[339]*Id.* at *15.
[340]*Id.* at *15-17.
[341]*Id.* at *16-17.
[342]*Id.* at *17.
[343]329 A.3d 1228 (Pa. 2025).
[344]*Id.* at 1234.

appeal based on the Natural Gas Act's provision vesting exclusive jurisdiction in the federal court

> for the circuit in which a facility . . . is proposed to be constructed, expanded or operated" over "any civil action for the review of an order or action of a federal agency . . . or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence or approval . . . required under Federal law[345]

The court concluded that EHB review is an administrative proceeding, not the type of "civil action" contemplated by the NGA for federal courts to have exclusive jurisdiction.[346]

C. Administrative Developments

On September 11, 2025, the Pennsylvania Public Utility Commission issued a Final Order aimed at identifying and accelerating the replacement of older, at-risk plastic pipes used to distribute natural gas.[347] The Order requires the Bureau of Technical Utility Services to request natural gas distribution utilities provide "an accounting of the quantities of the various types of plastic pipelines and components within their distribution systems."[348] Public utilities who cannot provide an accurate accounting shall provide a plan to identify and catalogue these items and an explanation of how they intend to distinguish between older and newer plastic pipes within their systems.[349] Any public utilities failing to comply with the Bureau's previous requests shall be referred to the Bureau of Investigation and Enforcement for further action.[350]

XVII. TEXAS

Since last year's update, Texas courts issued several impactful opinions clarifying numerous oil and gas issues. Decisions addressed pore space and produced water ownership, "fixed vs. floating" royalty issues, contract interpretation matters, right-of-way issues, the statute of frauds, and other matters.

This year, Texas courts faced the challenge of stipulating ownership of underground pore space and water that is produced alongside hydrocarbons as an inherent result of oil and gas operations. These decisions clearly outline the rights of surface owners as they apply to unique areas of law such as carbon capture and sequestration as well as the increasing profitability of produced water.

In *Myers-Woodward, LLC v. Underground Services Markham, LLC*, the Supreme Court of Texas addressed, as a matter of first impression, (1) whether the surface or mineral estate owner holds title to subsurface spaces, and (2) whether the mineral owner has the right to use those spaces for storage of hydrocarbons produced off-site.[351] The court affirmed the lower court's decision and held that, absent contrary agreement, the surface estate owner retains ownership of empty geologic space and that the mineral estate does not include

345 *Id.*
346 *Id.* at 1246.
347 Replacement of Older Plastic Pipe in Natural Gas Distribution Systems, Docket No. M-2024-3050313 (Pa. Pub. Util. Comm'n Sept. 11, 2025) (Final Order).
348 *Id.*
349 *Id.*
350 *Id.*
351 Myers-Woodward, LLC v. Underground Servs. Markham, *LLC*, 716 S.W.3d 461, 463-64 (Tex. 2025).

physical ownership of voids created by mineral extraction; the mineral owner's right to use the surface and subsurface is limited to uses "reasonably necessary to recover its minerals," which does not include storage of hydrocarbons produced elsewhere.[352]

In *Cactus Water Services v. COG Operating, LLC*, the Supreme Court of Texas held that produced water that comes up with mineral production is inherently included in a mineral deed or lease conveyance, unless otherwise explicitly agreed.[353] COG, the mineral lessee, was bringing produced water to the surface as a necessary byproduct of hydrocarbon production. In light of the increased value of produced water across the oil and gas industry, Cactus Water Services obtained "produced water lease agreements" from the surface owners of the subject property and asserted ownership of the produced water.[354] The central question was whether "produced water" is part of the surface estate or whether it is conveyed alongside the minerals in a mineral lease.[355] The court reasoned that the legislative definition of "fluid oil and gas waste" (among other definitions of oil and gas waste) includes produced water and that "the common and ordinary meaning of a grant of hydrocarbons includes the water incidentally produced with those substances . . . ."[356]

As was the case in 2024, Texas courts continue to develop the interpretation of the historical 1/8 royalty as it applies in conveyances and reservations.

In *Boren Descendants and Royalty Owners v. Fasken Oil and Ranch, Ltd.*, the Eastland Court of Appeals construed a 1933 deed reserving "an undivided one-fourth (1/4th) of the usual one-eighth (1/8th) royalty in and to all oil, gas, and other minerals" as creating a perpetual floating 1/4 royalty interest rather than a fixed 1/32 interest.[357] Applying the Supreme Court of Texas's reasoning in *Van Dyke v. Navigator Group*[358], the court held that the use of "1/8" in a double-fraction clause raises a rebuttable presumption that it refers to the entire mineral estate and found no language in the deed sufficient to rebut that presumption.[359] The court rejected defenses of equitable estoppel, quasi-estoppel, waiver, ratification, and presumed grant, emphasizing that such equitable doctrines cannot override the plain language of an unambiguous deed.[360]

The court in *Karli v. Wilson* addressed (1) whether an oil and gas deed reserved a royalty interest or a mineral interest stripped of the executive and development rights, and (2) whether the reserved interest was entitled to 1/4 or 1/32 of the lease royalties.[361] The language in the reservation provided that two grantors each reserved "an undivided one-thirty second right, title and interest in and to all, oil gas and other minerals . . . however [the grantors] shall not be entitled to receive any rental or bonus monies."[362] However, the reservation further stated, "it being the intention to reserve . . . a one-fourth non-participating interest in the customary one-eighth royalty."[363] The court ultimately sided with the grantee-successors that the reservation was a mineral interest by finding the

352 *Id*. at 469-70.
353 Cactus Water Services, LLC v. COG Operating*, LLC*, 718 S.W.3d 214, 230 (Tex. 2025), reh'g denied (Sept. 5, 2025).
354 *Id.* at 22.
355 *Id.* at 222.
356 *Id*. at 225-27.
357 Boren Descendants & Royalty Owners v. Fasken Oil and Ranch, Ltd., 703 S.W.3d 874, 882 (Tex. App.—Eastland 2024, pet. filed).
358 668 S.W.3d 353 (Tex. 2023), *reh'g denied* (June 16, 2023).
359 *See Boren Descendants*, 703 S.W.3d at 884-85.
360 *Id*. at 886-93.
361 Karli v. Wilson, No. 08-24-00065-CV, 2025 WL 3039609 (Tex. App.—El Paso Oct. 30, 2025, no pet.).
362 *Id*. at *1.
363 *Id*.

grantors intended to convey the executive right to the grantee.[364] Since the deed included no language to the contrary, the development rights were also conveyed.[365] As to the fractional size of the interest, the court relied on the double-fraction decisions in *Van Dyke* and *Tipps* to find that "a one-fourth non-participating interest in the customary one-eighth royalty" intended the reservation of 1/4 royalty interest to each grantor.[366] Thus, the reservation was of 1/4 of the mineral estate "stripped of all rights except the right to royalty payments" of 1/4 of the lease royalty.[367]

The Supreme Court of Texas heard oral arguments for *Clifton v. Johnson* on December 2, 2025. In this case's predecessor, the appellate court held, by applying the reasoning in *Van Dyke* and *Hysaw*, that a deed conveying "one-one hundred and twenty-eighth (1/128) interest in and to all of the oil, gas and other minerals . . ." effectively conveyed a 1/16 floating royalty interest.[368] However, unlike *Van Dyke* and *Hysaw*, there was no double fraction involved; rather, the court looked to the fact that 1/128 is a multiple of the legacy 1/8 standard royalty as evidence of the estate misconception theory.[369] The Supreme Court of Texas will ultimately review the estate misconception theory and the reading of the standard 1/8 royalty into this conveyance.

Texas courts addressed a variety of other deed and contract interpretation matters, including statute of frauds issues, the effect of an exhibit on granting language within a deed, and the validity of corrected assignments, among others.

The court in *Valence Operating Co. v. Davidson* examined whether a 1964 deed reserved a mineral interest or merely referenced a prior mineral reservation.[370] The deed stated that "all Oil, Gas and other Minerals have been excepted and reserved by former owners," and the court found that that language did not create a new reservation. The language merely acknowledged a prior reservation made in a 1956 deed by Myrtle Briggs, who had reserved a life estate in one-half of the minerals.[371] This acknowledgment served only to alert the grantees to the existing mineral interests previously reserved by Myrtle Briggs in the 1956 deed, and functioned to limit the grantors' warranty obligations, rather than to carve out a new interest for themselves, as Texas law requires reservations to be made with clear, express language and not by implication.[372]

In *Vaughn v. Vaughan*, the Eastland Court of Appeals addressed whether a deed of trust conveyed both surface and mineral rights, or the surface estate only.[373] Two borrowers defaulted on a note secured by a deed of trust to land, and the property was sold in a foreclosure sale.[374] The deed of trust included property described on Exhibit A, "together with all rights (including the rights to mining products, gravel, oil, gas, coal[,] or other minerals), interests, easements, fixtures, hereditaments, [and] appurtenances. . . ."[375] However, the exhibit included the words "SURFACE ESTATE ONLY", and further recited that it was "subject to the following exceptions and/or reservations", including "[a]ll outstanding ownership in the oil, gas and other minerals in, on and under that may be

364 *Id*. at *12.
365 *Id*.
366 *Id*. at *12-14; *see Van Dyke,* 668 S.W.3d at 353, *reh'g denied* (June 16, 2023); *see Tipps v. Bodine*, 101 S.W.2d 1076 (Tex. App.—Texarkana 1936, no writ).
367 *Karli*, No. 08-24-00065-CV, 2025 WL 3039609, at *14.
368 Johnson v. Clifton, 719 S.W.3d 270, 285–86 (Tex. App.—El Paso 2023, pet. granted).
369 *Id*. at 284.
370 No. 06-23-00090-CV, 2024 WL 5180100 (Tex. App.—Texarkana Dec. 20, 2024, pet. denied), *reh'g denied* (Feb. 19, 2025).
371 *Id.* at *3.
372 *Id.* at *5.
373 Vaughn v. Vaughan, 710 S.W.3d 412, 416 (Tex. App.—Eastland 2025).
374 *Id.* at 415-16.
375 *Id.*

produced from the described premises, as such outstanding interest are shown" in the county records.[376] The court held that Exhibit A clearly and unambiguously limited the conveyance to the surface estate, and that the phrase "together with all rights" was limited to whatever rights were permitted by the Exhibit A description.[377]

In *Alcott v. 1893 Oil and Gas, Ltd.*, the court found that a mineral deed did not adequately describe the subject property to satisfy the statute of frauds.[378] The deed in question referenced all minerals "under or upon any part of" a specified 2,098.08-acre tract.[379] The court held the deed violated the statute of frauds for two reasons: (1) there was no further description of the subject property to identify it, and (2) the grantor of the acreage in question did not own the entirety of the tract described.[380]

Thagard Mineral Partnership v. Cass also involved the effect of language within an exhibit upon the grant contained in a conveyance.[381] The court determined that the conveyance from Thagard to Cass unambiguously conveyed all of Thagard's interests.[382] Among other points, Thagard argued the conveyance was facially incomplete because the conveyance referred to leases on Exhibit A, which did not list any leases.[383] Thagard further argued that, in accordance with the fact that Exhibit A's land descriptions did not contain leases, he only conveyed the surface interest because the grant was limited to "the extent described on Exhibit A."[384] While noting that an exhibit description is controlling on the scope of the grant, the court found no language in Exhibit A limiting the grant to only the surface estate or any other narrowing of the conveyance.[385] The court held that Thagard conveyed all of his interest in the subject property because a deed will pass all of grantor's interest unless it contains language to the contrary.[386]

In *Callon (PerAmian) LLC v. KWF Enterprises, LP*, the court held that corrected assignments of overriding royalty interests ("ORRI") were not enforceable against the third-party working interest owner burdened by the ORRI, where the original assignment did not require a result that was consistent with the corrections.[387] The subject sales contracts provided that assignor "may" assign the subject interests to key personnel or affiliates.[388] The original assignments only conveyed 65% of the subject interests, so the assignor executed corrected assignments assigning 100%, citing "scrivenor's error."[389] The sales contracts used permissive language such as "may" instead of "shall" or "must," so the court held the contracts did not necessitate the assignment of 100% of the interests.[390] Because the original 65% assignments were valid and the corrections were not authorized by the contract, the attempted corrections were held to be invalid and unenforceable against any subsequent purchaser.[391]

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[376] *Id*.
[377] *Id*. at 422-23.
[378] No. 13-23-00492-CV, 2025 WL 2858113, at *3 (Tex. App.—Corpus Christi–Edinburg Oct. 9, 2025, no pet. h.).
[379] *Id*. at *1.
[380] *Id*. at *3.
[381] No. 11-23-00207-CV, 2025 WL 2412837 (Tex. App.—Eastland Aug. 21, 2025).
[382] *Id*. at *10.
[383] *Id*. at *8.
[384] *Id*. at *8-9.
[385] *Id*. at *9.
[386] *Id*. at *8-10.
[387] No. 08-24-00043-CV, 2025 WL 322862, at *7 (Tex. App.—El Paso Jan. 28, 2025).
[388] *Id*. at *1
[389] *Id*.
[390] *Id*. at *5.
[391] *Id*. at *7.

Evans Resources, L.P. v. Diamondback E&P, LLC addressed the appellants' claim for fraud after appellee made oral representations that it would drill horizontal wells and failed to do so.[392] The appellees contended that the oral representations to drill such wells were contradictory to the ultimate written agreements.[393] However, those oral representations could not be justifiably relied upon because the assigned agreements "did not require drilling, but only contemplate its possibility."[394] The court found that justifiable reliance is not possible where an oral representation directly contradicts the terms of the parties' written agreement.[395] The court also found that a surface use agreement between the parties did not violate the rule against perpetuities, because the agreement was not a perpetual right and vested Diamondback with an immediate right to drill from certain well pads.[396]

Texas courts also received a fair amount of litigation regarding lease provisions, including such issues as post-production costs, early payment of shut-in royalties, and pipeline burial obligations.

In *City of Crowley v. TotalEnergies E&P USA, Inc.*, the court, relying on its prior opinion in *Shirlaine W. Props. Ltd. v. Jamestown Res., L.L.C.*, held that when a lease contemplates royalty valuation to be calculated at the wellhead, "no royalty [is] due on post-sale production costs."[397] The lessor argued that lessee's downstream sale of the production, which was calculated at the wellhead to account for a third-party buyer's post-production costs, had the effect of lessees' realizing proceeds on post-production costs.[398] However, the court found since the wellhead valuation provision fixed the location of the point of sale, the wellhead, and because lessee realized its proceeds at the wellhead, there were no post-production cost deductions for which lessee received proceeds.[399]

In *Scout Energy Management, LLC v. Taylor Properties,* the Supreme Court of Texas addressed whether a lessee's early payment of a shut-in royalty (one month following the previous payment) reset the one-year constructive production period provided by the previous shut-in royalty payment or provided for an additional year of constructive production.[400] The court found that the lease language was unambiguous: each $50 payment secured one full year of constructive production, regardless of when the next payment was made.[401] It rejected the argument that the notation "Mth Begin" on the shut-in royalty check receipt could override the lease terms and represent a new agreement, finding such notation too vague to constitute a valid contract modification.[402]

The court in *Byrne Oil Company v. Walraven*, court addressed whether (1) a lease provision requires the lessee, upon request, to bury pipelines on the subject property and (2) the lessor could itself bury the pipeline (and seek compensation for doing so).[403] The lessor, after repeated requests to have the pipelines buried, hired a company to bury the

[392]Evans Res., LP v. Diamondback E&P, LLC, No. 11-24-00107-CV, 2025 WL 2980661, at *1 (Tex. App.—Eastland Oct.23, 2025).
[393]*Id*. at *6.
[394]*Id*. at *7.
[395]*Id*.
[396]*Id*. at *12.
[397]No. 02-24-00088-CV, 2025 WL 2005511, at *1 (Tex. App.—Fort Worth July 17, 2025, pet. filed); *Shirlaine W. Props. Ltd. v. Jamestown Res., LLC*, No. 02-18-00424-CV, 2021 WL 5367849 (Tex. App.—Fort Worth Nov. 18, 2021).
[398]*Crowley*, 2025 WL 2005511 at *3.
[399]*Id*. at *8-9.
[400]704 S.W.3d 544, 545 (Tex. 2024).
[401]*Id*. at 547.
[402]*Id*. at 549.
[403]722 S.W.3d 339, 341 (Tex. App.—Eastland 2025)/

pipelines and sought reimbursement from the lessee for the burial.[404] The pipeline-burial provision of the lease was silent as to the lessor's remedy, but the court ultimately held that lessor's burial of the pipelines constituted self-help, which was unjustified where "legal remedies of damages and injunctive relief were available."[405]

In *Cromwell v. Anadarko E&P Onshore, LLC,* the Supreme Court of Texas addressed whether a habendum clause that does not specify who must cause production resulted in the automatic termination of oil and gas leases at the end of their primary terms due to the lessee's failure to personally produce minerals.[406] The central issue was the interpretation of passive-voice habendum clauses in two leases, which stated the leases would continue so long as oil or gas "is produced" but did not specify by whom.[407] Anadarko argued that Cromwell's leases expired because he did not personally cause production.[408] The court rejected this argument, holding that the leases' plain language did not require personal production by the lessee and that continuous production in paying quantities by any party was sufficient to maintain the leases.[409] The court emphasized that ambiguity in lease terms should not result in forfeiture of mineral interests and disapproved prior decisions that imposed personal production requirements not found in the lease text.[410]

In *Basic Energy Services, LP v. PPC Energy LLP*, the El Paso Court of Appeals addressed whether a commercial saltwater disposal well operator could be held liable for statutory "waste" under Section 85.321 of the Texas Natural Resources Code.[411] PPC alleged that Basic's injection operations drowned out its producing wells.[412] The jury was instructed that "it is negligence to commit 'waste,'" defined as "the drowning with water a stratum or part of a stratum that is capable of producing oil or gas or both in paying quantities."[413] The appeals court held that the statutory prohibition on waste applies to disposal well operators because wastewater handling is integral to oil and gas production.[414] However, the appeals court also found that the trial court erred in refusing to submit Basic's requested "reasonably prudent operator" defense, which is expressly provided for in Section 85.321 and supported by some evidence of compliance with industry standards and permitting requirements of the Railroad Commission of Texas.[415]

In *Coffeyville Resources Crude Transportation, LLC v. ExxonMobil Pipeline Company*, ExxonMobil entered into a purchase and sale agreement ("PSA") with Salter Creek for the sale of a pipeline asset.[416] The PSA contained language that if either party assigned its interest under the PSA without the consent of the other party, such assignment would be "void and of no force and effect."[417] Salter Creek purported to assign its interest in the PSA to a Coffeyville without obtaining ExxonMobil's consent.[418] When an oil leak was discovered on the pipeline, the Railroad Commission of Texas ordered ExxonMobil to

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404 *Id*. at 342-44.
405 *Id*. at 346, 350.
406 716 S.W.3d 515, 518 (Tex. 2025).
407 *Id*. at 522.
408 *Id*.
409 *Id*. at 522-23.
410 *Id*. at 523-25.
411 No. 08-23-00218-CV, 2024 WL 5239902, at *2 (Tex. App.—El Paso Dec.27, 2024).
412 *Id*. at *1.
413 *Id*. at *2-3.
414 *See id.* at *9
415 *Id*. at *11-12.
416 No. 12-23-00276-CV, 2025 WL 356222 at *1 (Tex. App.—Tyler Jan. 31, 2025
417 *Id*. at *3.
418 *Id*. at *1.

remediate the leak.[419] ExxonMobil sued a subsequent successor for the expense of the remediation, arguing that such subsequent successor had assumed all liabilities related to the pipeline under the PSA's assumption-of-liability language.[420] The court held that the attempted assignment from Salter Creek to Coffeyville was void under the PSA's transfer restriction, and declined to enforce the assumption language reasoning that "it is axiomatic that the parties would not have assumed the liabilities associated with the PSA's assets without the assignment of those assets as well."[421] The court rejected both of ExxonMobil's arguments that consent could be implied and that assumption of obligations could be separated from assignment of assets[422].

In *T.B. Farms, Ltd. v. Grand Prix Pipeline, LLC*, the court considered whether Grand Prix Pipeline had the legal authority to condemn a pipeline easement across private property under Texas's common carrier doctrine.[423] T.B. Farms challenged Grand Prix's eminent domain power, arguing that the pipeline was not for public use but rather served private interests, particularly those of an affiliate.[424] The court upheld Grand Prix's condemnation authority, finding that it qualified as a common carrier under the Texas Natural Resources Code because it owned a pipeline transporting natural gas liquids for hire, including for at least one unaffiliated third-party customer.[425] The court emphasized that the "public use" requirement was satisfied as a matter of law when a pipeline is reasonably probable to serve even one unaffiliated customer.[426]

In *Bush v. Yarborough*, the court addressed whether a 1948 tax foreclosure judgment extinguished a severed 1/2 mineral interest that had been conveyed in 1937.[427] The successors of the mineral owner brought a trespass-to-try-title action against the successors of the tax sale purchaser and their lessees, asserting that the foreclosure judgment did not affect their mineral interest because they were not named or served in the tax suit.[428] The court agreed, holding that the foreclosure judgment and sheriff's deed only applied to the surface owner's interest and did not reach the severed minerals.[429] The sheriff's deed read in part, "bargained, sold and conveyed… all the right, title and interest of the said Defendant, in and to the following described land that said Defendant had in and to the said land."[430] The court emphasized that tax liens attach only to the interests of named defendants and that foreclosure must comply with due process.[431] This decision reinforces the principle that severed mineral interests are not extinguished by tax foreclosures unless the mineral owners are properly joined and served.

ConocoPhillips Co. v. Hahn, addressed the central question of whether a non-participating royalty interest ("NPRI") holder's fixed royalty could become a floating royalty, either by ratifying a lease with a different royalty rate, or by executing a stipulation and cross-conveyance reallocating royalty interests.[432] The Supreme Court of Texas held

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[419] *Id.*
[420] *Id.*
[421] *Id.* at *4.
[422] *Id.* at *3-4
[423] No. 01-23-00243-CV, 2025 WL 920101, at *1 (Tex. App.—Houston [1st Dist.] 2025, *pet. denied*) (mem. op.).
[424] *See id.* at *5-6.
[425] *See id.* at *3-5.
[426] *Id.* at *5.
[427] 705 S.W.3d 451, 451 (Tex. App.—El Paso 2024).
[428] *See id*. at 457.
[429] *See id*. at 469.
[430] *See id*. at 461.
[431] *See id*. at 467.
[432] ConocoPhillips Co. v. Hahn, 704 S.W.3d 515, 519-20 (Tex. 2024).

that lease ratification by a NPRI owner did not reduce a fixed NPRI.[433] However, the court held that a stipulation entered into by Hahn effectively changed Hahn's fixed NPRI to a floating NPRI because it clearly expressed intent and included valid conveyance language.[434]

The court in *Texas Crude Energy, LLC v. Burlington Resources Oil & Gas Co., LP*, interpreted the commencement of operations provision under a joint operating agreement. The agreement required that "[i]f all parties elect to participate in such a proposed operation, Operator shall, within ninety (90) days after expiration of the notice period of thirty (30) days . . . actually commence the proposed operation and complete it with due diligence."[435] The court held that this language imposes a mandatory duty on the operator to timely commence operations when all parties consent and that the operating agreement's resubmittal provision does not excuse the operator's failure to do so.[436] The court further found that the exculpatory clause requiring operations be conducted "in a good and workmanlike manner" does not shield the operator from liability for failing to commence operations, as that clause applies only to operations actually undertaken.[437]

In *DDR Weinert, Ltd. v. Ovintiv USA, Inc.*, the issue was whether Ovintiv could recoup royalty overpayments made to prior owners of a mineral interest by deducting them from royalties owed to DDR, the current owner.[438] After DDR acquired the interest, Ovintiv began withholding approximately $608,000 in past overpayments through a "prior period adjustment."[439] Applying the doctrine of equitable recoupment, which requires (1) an overpayment, and (2) that both the debtor's claim and the offset arise from a single transaction, the court upheld Ovintiv's right to recoup.[440] The court concluded the single transaction requirement was met because the royalty obligations arose under the same lease and the parties who received the overpayments also controlled DDR, making the overpayments and the amounts currently owed part of a continuous transaction.[441]

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[433]*Id*. at 525-28.
[434]*Id*. at 530-36.
[435]Texas Crude Energy, LLC v. Burlington Resources Oil & Gas Co., LP, No. 13-23-00072-CV, 2025 WL 339035, at *3 (Tex. App.—Corpus Christi–Edinburg Jan. 30, 2025, pet. filed).
[436]*Id*. at *9.
[437]*Id*. at *6-7.
[438]No. 23-50479, 2025 WL 636315 at, *2 (5th Cir. Feb. 27, 2025).
[439]*Id.* at *1.
[440]*Id.* at *3.
[441]*Id.* at *3.

Chapter P: PESTICIDES AND CHEMICALS
2025 ANNUAL REPORT[1]

Following the change in Administration, 2025 was an eventful year for the pesticides and chemicals community. The U.S. Environmental Protection Agency (EPA) continued struggling to meet statutory deadlines for new chemical reviews. EPA's existing chemicals program centered on revising the procedural framework rule for risk evaluations, completing risk evaluations, and revisiting completed risk management rules. In the pesticides area, EPA met several milestones for the Pesticide Registration Improvement Act of 2022 (PRIA 5), including bilingual labeling.

I. TOXIC SUBSTANCES CONTROL ACT (TSCA)

A. New Chemicals Program, Significant New Use Rules (SNURs) and Litigation

1. New Chemical Reviews

The pace of EPA's new chemical reviews dropped in FY 2025. EPA completed 135 cases in FY 2025 versus 165 in FY 2024. Weighed against incoming submissions, this means that the Agency's "backlog" effectively grew by 19 cases. There are, however, some promising signs that EPA's reviews are getting more efficient. For example, the 18 Pre-manufacture Notices (PMN) determinations that EPA made on cases it received in FY 2025 have waited on average less than six months versus a broader average review time of multiple years. In terms of regulatory outcomes, EPA continues to regulate nearly all PMNs in some way—84% of all determinations made in FY 2025—unless a chemical was deemed to present a low hazard.

2. SNURs on New Chemicals

In 2024, EPA proposed eight batches of SNURs covering 194 chemicals. In 2025, EPA proposed four batches of SNURs (through November 17, 2025) covering 142 chemicals. Although this volume reflects progress by EPA, there remain 148 chemicals still awaiting proposed SNURs. Also, 194 cases have proposed SNURs, but still await final SNUR publication. Closing the time gap between the issuance of a TSCA Section 5 order and a subsequent SNUR remains a significant hurdle to the commercialization of new chemical substances.

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[1]Judah Prero and Lawrence E. Culleen, Arnold & Porter Kaye Scholer LLP; Lynn L. Bergeson, Richard E. Engler, Ph.D., Ryan N. Schmit, and Carla N. Hutton, Bergeson & Campbell, P.C.; Julia A. Hatcher, Hunter J. Kendrick, and Tom Lee, Latham & Watkins LLP; Matthew C. Brewer, Andrew R. Stewart, and Leena Dai, Sidley Austin LLP; Michael Boucher and Nina M. MacLeay, Steptoe LLP; Karyn M. Schmidt, Squire Patton Boggs; Sara Beth Watson, Hume M. Ross, Sarah E. Simonetti, and Emma Howard, Wiley Rein LLP.

3. TSCA Section 5 Litigation Update

New litigation on EPA's actions under TSCA Section 5 included a challenge to EPA's final rule[2] revising the procedural requirements for reviewing new chemicals. Among other changes, the final rule made per- and polyfluoroalkyl substances (PFAS) and other persistent, bioaccumulative, and toxic (PBT) chemicals ineligible for both the low volume exemption (LVE) and the low release and exposure exemption (LoREX).

In January 2025, several environmental and labor groups filed suit alleging EPA's new procedures are contrary to statutory mandates for transparency and risk assessment. The petitions were consolidated in the United States Court of Appeals for the Ninth Circuit as *Alaska Community Action on Toxics v. United States Environmental Protection Agency, et al.*[3] Petitioners allege EPA routinely fails to provide information to the public that it is entitled to under TSCA, fails to timely publish Federal Register notices of PMN receipt, and EPA's treatment of PFAS and other PBT chemicals is inadequate because some of these chemicals may still be "fast-tracked" for approval via expedited review exemptions.

4. New Chemicals Process Updates

EPA announced in December 2024 a final rule updating new chemicals procedural regulations.[4] Changes included an increase in the number of days for requesting informal suspensions of the review period, from 15 to 30 days, codification of requirements under the 2016 TSCA amendments, and categorical ineligibility for any PFAS for an LVE or LoREX exemption. EPA also included provisions aimed to reduce "rework"—cases in which a submitter provides information after an initial submission that requires EPA to re-review the case.

B. TSCA Section 4 Test Order Activity and Litigation

The EPA issued no new test orders in 2025. EPA's use of Section 4 authority in 2024 was focused on PFAS under its 2021 National PFAS Testing Strategy.[5] Although the Strategy identified 24 candidates for a first phase of testing, EPA has issued test orders for only a handful, including two PFAS not on the original list—2-(N-Methylperfluoro-1-octanesulfonamido) ethanol (NMeFOSE; CAS RN® 2448-09-7)[6] and 6:2 Fluorotelomer acrylate (6:2 FTAc; CAS RN 17527-29-6)[7]—possibly as better representatives of certain PFAS subcategories. EPA's 2024 TSCA Fees rule projected "approximately 14 test orders per year" between FY 2024 and FY 2026 (about 10 for PFAS), but that volume of test orders has not materialized.[8]

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[2]Updates to New Chemicals Regulations Under the Toxic Substances Control Act, 89 Fed. Reg. 102,773 (Dec. 18, 2024) (codified at 40 C.F.R. pts. 68, 372, 703, 720, 721, 723, 725, 761).
[3]No. 25-158 (9th Cir. Jan. 8, 2025).
[4]9 Fed. Reg. at 102787.
[5]ENVTL. PROT. AGENCY, National PFAS Testing Strategy: Identification of Candidate Per- and Poly-fluoroalkyl Substances (PFAS) for Testing 3-4 (Oct. 2021).
[6]ENVTL. PROT. AGENCY, *Order Under Section 4 of the Toxic Substances Control Act (TSCA)*, EPA-HQ-OPPT-2023-0544 (Oct. 8, 2024).
[7]*Id.*
[8]Fees for the Administration of the Toxic Substances Control Act (TSCA), 89 Fed. Reg. 12,961 (Feb. 21, 2024) (codified at 40 C.F.R. pt. 700)

The status of EPA's implementation of the National PFAS Testing Strategy remains unclear, aside from an April 2025 press release wherein EPA Administrator [Lee] Zeldin pledged to "[i]mplement a PFAS testing strategy under [TSCA] Section 4 to seek scientific information informed by hazard characteristics and exposure pathways."[9] EPA publicly stated that it would refine its approach in the National PFAS Testing Strategy, but no further updates to the 2021 Strategy were issued.[10] It remains unclear when EPA will resume issuing test orders, either for PFAS or other chemical substances undergoing or being considered for risk evaluation under TSCA Section 6.

C. Regulation of Existing Chemicals

EPA's existing chemicals program centered, in 2025, on revising the procedural framework rule for TSCA risk evaluations, completing consent-decree risk evaluations, and revisiting completed risk management rules. There are now 38 chemicals in some stage of TSCA risk evaluation or risk management processes,[11] although EPA continues to lag behind the statutory schedules for completion set out in the 2016 Lautenberg amendments.

1. Prioritization

In late 2024, EPA designated five additional chemicals as high priority: acetaldehyde, acrylonitrile, benzenamine, vinyl chloride, and 4,4'- methylene bis(chloroaniline) (MBOCA).[12] All five proceeded to risk evaluation in 2025. However, out of these five chemicals, EPA proposed a draft risk evaluation scope for only one, vinyl chloride (January), and did not finalize it in 2025. EPA initiated prioritization for five more chemicals (benzene, ethylbenzene, naphthalene, styrene, and 4-tert-octylphenol) on December 18, 2024, but made no high-priority designations in 2025, so those chemicals remain in prioritization.[13]

EPA extended the reporting deadline several times for manufacturers and importers of 16 chemicals to submit unpublished health and safety studies under a 2024 TSCA Section 8(d) rule; in June, EPA extended the deadline for all 16 chemicals to May 22, 2026.[14] EPA did not issue a broader data gathering proposal in 2025.[15]

[9]Press Release, U.S. ENVTL. PROT. AGENCY, Administrator Zeldin Announces Major EPA Actions to Combat PFAS Contamination (Apr. 28, 2025).
[10]*See* U.S. ENVTL. PROT. AGENCY, *February 2024 TSCA PFAS Workshop* (last updated Feb. 26, 2026).
[11]U.S. ENVTL. PROT. AGENCY, *Ongoing and Completed Chemical Risk Evaluations under TSCA* (last updated Dec. 31, 2025).
[12]High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA) and Initiation of Risk Evaluation on High-Priority Substances; Notice of Availability, 89 Fed. Reg. 102,900 (Dec. 18, 2024).
[13]U.S. ENVTL. PROT. AGENCY, *Prioritization Actions under TSCA* (last updated May 30, 2025).
[14]Certain Existing Chemicals; Request to Submit Unpublished Health and Safety Data Under the Toxic Substances Control Act (TSCA); Extension of Submission Deadline, 90 Fed. Reg. 24228, 24229 (June 9, 2025) (to be codified at 40 C.F.R. pt. 716).
[15]ENVTL. PROT. AGENCY, *A Working Approach for Identifying Potential Candidate Chemicals for Prioritization* (Sept. 27, 2018).

2. Risk Evaluation Procedural Framework

In September, EPA proposed a third risk evaluation framework rule[16] to govern the process of conducting TSCA risk evaluations. EPA is expected to finalize the rule in early 2026. The proposal would largely return to approaches reflected in the first TSCA framework rule, including: (i) making condition-of-use-specific risk determinations at the end of each evaluation; (ii) relying on reasonably available information about real-world exposures, including use of personal protective equipment; (iii) removing "overburdened communities" from the definition of "potentially exposed" or "susceptible subpopulation"; and (iv) confirming EPA may exclude from scope certain exposures already regulated by other EPA offices or other agencies.[17] EPA's third proposed risk evaluation framework rule would make several key changes to how the agency approaches manufacturer-requested risk evaluations (MRREs). The second framework rule remains in litigation in the United States District Court for the District of Columbia, although the court has held the matter in abeyance while EPA proposes this third round of changes.[18]

3. Risk Evaluations

EPA released a draft scope for a risk evaluation for vinyl chloride in January[19] but did not issue a final scope in 2025. EPA released a draft risk evaluation for 1,2-dichloroethane.[20] On December 31, EPA issued final risk evaluations for five phthalate esters as a group: butyl benzyl phthalate (BBP), dibutyl phthalate (DBP), dicyclohexyl phthalate (DCHP), di-ethylhexyl phthalate (DEHP), and diisobutyl phthalate (DIBP).[21] EPA explained that these evaluations focused on TSCA-regulated uses and that the agency did not analyze exposures from products regulated by the U.S. Food and Drug Administration (FDA) or U.S. Consumer Product Safety Commission (CPSC) (e.g., food, food additives, food packaging, medical devices, cosmetics, and other consumer products).

The EPA also finalized MRRE risk evaluations for diisodecyl phthalate (DIDP) and diisononyl phthalate (DINP), and released a draft MRRE risk evaluation for the manufacturer-requested review of octamethylcyclotetrasiloxane (D4) on September 17, 2025.[22] For D4, EPA preliminarily found unreasonable risk to workers for 23 conditions of use (COUs), to consumers for one COU, and to the environment for seven COUs. Another 37 COUs did not preliminarily present unreasonable risk.

[16] Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act, 90 Fed. Reg. 45,690 (Sept. 23, 2025) (to be codified at 40 C.F.R. pt. 702).
[17] *Id.* at 45,693.
[18] United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. EPA, No. 24-1151 (D.C. Cir. Mar. 21, 2025).
[19] Vinyl Chloride; Draft Scope of the Risk Evaluation Under the Toxic Substances Control Act (TSCA), 90 Fed. Reg. 4738 (Jan. 16, 2025).
[20] 1,2-Dichloroethane; Draft Risk Evaluation under the Toxic Substances Control Act (TSCA); Notice of Availability and Request for Comment, 90 Fed. Reg. 52,054 (Nov. 19, 2025).
[21] Press Release, Envtl. Prot. Agency, EPA Announces Intent to Regulate Dozens of Uses of Five Phthalate Chemicals to Protect Workers and Environment (Dec. 31, 2025).
[22] Octamethylcyclotetrasiloxane (Cyclotetrasiloxane, 2,2,4,4,6,6,8,8-octamethyl-) (D4); Draft Risk Evaluation Under the Toxic Substances Control Act (TSCA); Extension of the Comment Period, 90 Fed. Reg. 50944 (Nov. 13, 2025).

EPA released an updated risk evaluation for formaldehyde on January 3,[23] concluding that the chemical presents an unreasonable risk to human health under many conditions of use. On December 3, EPA issued an updated draft risk calculation memorandum,[24] to refine certain assumptions for the revised draft risk evaluation. EPA sought public comment on the updated analysis, especially regarding the manufacture and use of formaldehyde, while proceeding with developing risk management rules.

EPA completed its final risk evaluation for 1,3-butadiene on January 5, 2026.[25] EPA removed two COUs based on information that the uses were no longer in active commerce and added four based on the latest Chemical Data Reporting rule. EPA changed the risk status for commercial use-laboratory chemicals from unreasonable risk to no unreasonable risk based on information that the full-shift assumption previously used was overly conservative. Three COUs for the general population were also changed to no unreasonable risk. The review found potential unreasonable health risks for workers in 11 industrial workplace settings and no unreasonable risks for remaining exposures. EPA also finalized a risk evaluation for 1,1-dichloroethane.[26]

Two suits moved forward in 2025 attempting to challenge the risk evaluation for 1,4-dioxane. Environmental groups challenged, in the Ninth Circuit, EPA's finding of no unreasonable risk for certain uses.[27] A chemical company separately challenged the risk evaluation, in the Fifth Circuit. The Fifth Circuit stayed the matter since EPA represented it needed more time to conduct an additional cancer risk analysis. EPA indicated it needs until 2026 to complete its updated analysis.[28]

4. Risk Management Rules

In 2024, EPA finalized TSCA risk management rules for five of the first 10 chemicals selected for risk evaluation: chrysotile asbestos, methylene chloride, perchloroethylene, trichloroethylene (TCE), and carbon tetrachloride. All five remained subject to legal challenges in 2025.

For chrysotile asbestos, the final rule phases out multiple uses on aggressive timelines but exempts sheet gaskets installed for use in chemical production before May 27, 2026.[29] Challenges are pending in the Fifth Circuit.[30] EPA completed a risk evaluation for additional asbestos types and certain additional legacy uses and disposal in late 2024 but did not propose additional risk management in 2025.

For methylene chloride, EPA extended compliance dates for laboratories using methylene chloride to align with compliance dates for federal laboratories and their

[23]Formaldehyde; Risk Evaluation Under the Toxic Substances Control Act (TSCA); Notice of Availability, 90 Fed. Reg. 316 (Jan. 3, 2025).
[24]Formaldehyde; Updated Draft Risk Calculation Memorandum; Notice of Availability and Request for Comment, 90 Fed. Reg. 55,726 (Dec. 3, 2025).
[25]1,3-Butadiene; Risk Evaluation Under the Toxic Substances Control Act (TSCA); Notice of Availability, 91 Fed. Reg. 264 (Jan. 5, 2026).
[26]1,1-Dichloroethane; Risk Evaluation Under the Toxic Substances Control Act (TSCA); Notice of Availability, 90 Fed. Reg. 26,581 (June 23, 2025).
[27]Environmental Defense Fund v. EPA, No. 21-70162 (9th Cir. 2021).
[28]Union Carbide Corp. v. EPA, No. 24-60615 (5th Cir. 2024).
[29]Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use under the Toxic Substances Control Act (TSCA), 89 Fed. Reg. 21,970 (Mar. 28, 2024) (codified at 40 C.F.R. pt. 751).
[30]Tex. Chem. Council v. EPA, No. 24-60193 (5th Cir. 2024).

contractors. Under the extension, initial monitoring requirements will begin November 9, 2026. The final rule is being challenged in the Fifth Circuit.[31]

EPA released its final risk management rule for carbon tetrachloride in 2024. Petitions for review consolidated in the Eight circuit challenged the final rule.[32] Meanwhile, EPA is reconsidering the final rule,[33] and it accepted additional comment on the final rule.[34]

For TCE, legal challenges were filed and assigned to the U.S. Court of Appeals for the Fifth Circuit, which granted a temporary stay of the rule's effective date. The petitions were later consolidated and transferred to the Third Circuit.[35] EPA has indicated in court filings that it intends to reassess the final risk management rule.

EPA released its final risk management rule for perchloroethylene in 2024. The rule is subject to several legal challenges consolidated in the U.S. Court of Appeals for the Fifth Circuit;[36] the case is in abeyance while EPA reconsiders the rule. EPA expects to propose amendments around summer 2026 and finalize them in 2027.

5. Risk Management Rules for certain PBT chemicals

TSCA Section 6(h) requires risk management for certain PBT chemicals. The final risk management rules[37] for two of these PBTs, decabromodiphenyl ether (decaBDE) and phenol, isopropylated phosphate (3:1) (PIP (3:1)) took effect in January 2025 after multiple compliance-date extensions. Absent further EPA action or an exemption, a ban on products containing PIP (3:1) is scheduled for October 31, 2026. Two separate lawsuits were filed by environmental groups and the Yurok tribe challenging the decaBDE rule and are consolidated in the Ninth Circuit with oral argument scheduled for March 3, 2026.[38]

D. Section 8 Recordkeeping and Reporting Rules

EPA issued two final rules extending the submission deadline for all 16 substances under a TSCA Section 8(d) rule published last year requiring manufacturers (including importers) to submit unpublished health and safety studies to EPA by May 22, 2026.[39]

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[31] E. Fork Enters., Inc. v. EPA, No. 24-60227 (5th Cir.) (pending).

[32] Olin Corp. v. EPA, No. 25-1014 (8th Cir. 2025).

[33] Envtl. Prot. Agency, *EPA Announces Next Steps for the Final TSCA Risk Management Rule for Carbon Tetrachloride* (Sept. 12, 2025).

[34] Carbon Tetrachloride (CTC); Regulation Under the Toxic Substances Control Act (TSCA); Request for Comment, 90 Fed. Reg. 48203 (Oct. 9, 2025).

[35] United Steel Paper & Forestry Rubber Mfg. Energy Allied Indus. and Serv. Workers Int'l Union AFL CIO v. EPA, No. 25-1055 (3d Cir. 2025)

[36] FabriClean Supply v. EPA, No. 25-60006 (5th Cir. 2025).

[37] Decabromodiphenyl Ether and Phenol, Isopropylated Phosphate (3:1); Revision to the Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under the Toxic Substances Control Act (TSCA), 89 Fed. Reg. 91486 (Nov. 19, 2024) (codified at C.F.R. pt 751).

[38] Alaska Cmty. Action on Toxics v. EPA, No. 25-158 (9th Cir. 2025).

[39] Certain Existing Chemicals; Request To Submit Unpublished Health and Safety Data Under the Toxic Substances Control Act (TSCA); Extension of Submission Deadline, 90 Fed. Reg. 11,899, 11899 (Mar. 13, 2025) (codified at 40 C.F.R. pt. 716); Certain Existing Chemicals; Request To Submit Unpublished Health and Safety Data Under the Toxic Substances Control Act (TSCA); Extension of Submission Deadline, 90 Fed. Reg. 24,228 (June 9, 2025) (codified at 40 C.F.R. pt. 716).

EPA published a proposed rule that would pare back the PFAS Data Reporting Rule under TSCA Section 8(a)(7).[40] The proposal would introduce key exemptions, including fully exempting PFAS in imported articles. EPA also proposed a <0.1% *de minimis* concentration exemption for PFAS in mixtures or articles, and exclusions for PFAS made as impurities or byproducts, non-isolated intermediates, and for research and development purposes. Additionally, EPA plans to shorten and delay the reporting period: instead of a six-month window starting July 2025, EPA proposed a three-month window beginning 60 days after the final rule's (amended) effective date.

E. TSCA Section 21 Rulemaking Petitions

Environmental groups continued to use the Section 21 petition process in 2025. The Center for Environmental Accountability petitioned EPA to reconsider the agency's third iteration of a procedural rule for TSCA risk evaluations.[41] Several months later, the petition was withdrawn.[42] EPA denied a petition by the Clean Air Council and other groups seeking a TSCA Section 6(a) rule to prohibit hydrogen fluoride use in domestic oil refining.[43] EPA denied this petition on the basis that the petitioners did not satisfy their burden of showing the necessity of issuing a rule under TSCA Section 6(a).[44]

Separately, litigation continued over EPA's denial of a 2016 petition[45] from the Fluoride Action Network and several other environmental groups who were seeking a TSCA Section 6 prohibition against fluoride being added to drinking water.[46] The groups challenged the denial in the Eastern District of California; the court ruled in late 2024 that fluoridation meets TSCA's unreasonable-risk standard for children and ordered EPA to pursue a regulatory response.[47] EPA appealed to the Ninth Circuit, where the case was briefed in 2025,[48] and it is scheduled for oral argument on March 3, 2026.[49]

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[40] Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Revision to Regulation, 90 Fed. Reg. 50,923 (Nov. 13, 2025).

[41] Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA), 89 Fed. Reg. 37,028 (May 3, 2024) (codified at C.F.R. pt. 702).

[42] *See* Letter from Mary Elissa Reaves, Dir., Off. of Pollution Prevention & Toxics, U.S. Envtl. Prot. Agency, to Paul E. Salamanca, Ctr. for Env't Accountability (Aug. 13, 2025).

[43] NAT'L RES. DEF. COUNS., Petition to Prohibit the Use of Hydrogen Fluoride in Domestic Oil Refining Under Sections 21 and 6(A) of the Toxic Substances Control Act (Feb. 11, 2025).

[44] Denial of Requested Rulemaking, Hydrogen Fluoride; TSCA Section 21 Petition for Rulemaking Under TSCA Section 6; Reasons for Agency Response, 90 Fed. Reg. 20,575 (May 15, 2025) (to be codified at 40 C.F.R. ch. I).

[45] FLUORIDE ACTION NETWORK, Citizen Petition Under Section 21 of TSCA Regarding the Neurotoxic Risks Posed by Fluoride Chemicals in Drinking Water (Nov. 22, 2016).

[46] Letter from Wendy Cleland-Hamnett, Acting Assistant Adm'r, Off. of Chem. Safety & Pollution Prevention, U.S. Envtl. Prot. Agency, to Michael Connett, Fluoride Action Network (Feb. 17, 2017).

[47] Food and Water Watch, Inc. v. EPA, No. 17-cv-02162, U.S. Dist. LEXIS 172635 (N.D. Cal. Sept. 24, 2024).

[48] Notice of Appeal, Food and Water Watch, Inc. v. EPA, No. 25-384 (9th Cir. Jan. 17, 2025).

[49] Calendar for James R. Browning U.S. Courthouse, S.F., Mar. 2-6, 2026.

F. Confidential Business Information (CBI) Claims

The EPA issued its latest semiannual TSCA Inventory update, as well as extending the deadline for completing its review of all "active" Inventory CBI claims to February 19, 2026—the second extension beyond the original February 2024 statutory deadline—citing the volume of claims, resource constraints, and earlier technical issues that slowed determinations.

G. TSCA National Program Chemicals

In *Texas Chemistry Council v. EPA*,[50] EPA filed and then withdrew a request to hold a challenge to the agency's chrysotile asbestos ban in abeyance for six months while the agency reconsiders the rule. The case, which is pending in the Fifth Circuit, involves industry claims that EPA overstepped its TSCA authority in promulgating the ban.

EPA issued a final rule[51] under the APA's good-cause exception correcting an earlier final rule that revised its lead-based paint regulations.[52] The rule restores regulatory text at 40 C.F.R. section 745.227(e)(8)(v)(A)–(C) governing post-abatement dust sampling inadvertently deleted by the prior rule.

II. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)

The EPA added nine PFAS to the EPCRA section 313 Toxic Release Inventory (TRI)[53] list in early 2025, pursuant to the FY 2020 National Defense Authorization Act requirement to add PFAS when EPA finalizes a toxicity value and the compound is not subject to a confidential business information claim. The nine PFAS are: Ammonium perfluorodecanoate (PFDA NH4) (CASRN 3108-42-7); Sodium perfluorodecanoate (PFDA-Na) (CASRN 3830-45-3); Perfluoro-3-methoxypropanoic acid (CASRN 377-73-1); 6:2 Fluorotelomer sulfonate acid (CASRN 27619-97-2); 6:2 Fluorotelomer sulfonate anion (CASRN 425670-75-3); 6:2 Fluorotelomer sulfonate potassium salt (CASRN 59587-38-1); 6:2 Fluorotelomer sulfonate ammonium salt (CASRN 59587-39-2); 6:2 Fluorotelomer sulfonate sodium salt (CASRN 27619-94-9); and Acetic acid, [(γ-ω-perfluoro-C8-10-alkyl)thio] derivs., Bu esters (CASRN 3030471-22-5). All TRI-listed PFAS, along with TRI-listed PBT chemicals and dioxin and dioxin-like compounds, have been classified by EPA as "chemicals of special concern."[54]

EPA amended its EPCRA section 313 regulations to eliminate the *de minimis* exemption for TRI-listed PFAS, meaning facilities must now report PFAS even in small concentrations (below 1% or 0.1%) in mixtures, ending the ability to disregard them in

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[50] Notice of Withdrawal of Motion to Hold Case in Abeyance, No. 24-60193 (5th Cir. 2025).

[51] Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels; Correction, 90 Fed. Reg. 30,211 (July 9, 2025) (codified at 40 C.F.R. pt. 745).

[52] Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels, 89 Fed. Reg. 89,416 (Nov. 12, 2024) (codified at 40 C.F.R. pt. 745). *See* 40 C.F.R. § 745.227(e)(8)(v) (2024).

[53] Press Release, Env't Prot. Agency, EPA Adds Nine Additional PFAS to the Toxics Release Inventory (Jan. 3, 2025).

[54] ENVTL. PROT AGENCY, *TRI-Listed Chemicals: TRI Chemicals of Special Concern* (last updated Mar. 10, 2026).

threshold calculations, and also to require that facilities must use the more fulsome TRI Form R, instead of the abbreviated Form A, for all TRI-listed PFAS reporting.[55] These changes, however, did not become effective until the 2024 reporting year for which reports were due by July 1, 2025.

In August 2025, EPA released its TRI National Analysis for Reporting Year 2023 indicating that environmental releases of TRI-listed chemicals had decreased over time, including a 21% drop overall between 2014 and 2023.[56]

EPA EPCRA enforcement in 2025 included a September settlement with four companies in New York, New Jersey, and Puerto Rico for failure to file EPCRA section 313 reports for various TRI-listed chemicals[57] (civil penalties ranged from $22,900 to $63,800) and commitments to implement compliance plans. In December, EPA announced a separate settlement with another company for alleged violations of EPCRA section 312 (Tier II reporting) and Clean Air Act Section 112(r) (accident prevention and risk management planning).[58] The total civil penalty was $262,971; EPA did not specify how much related to the alleged EPCRA section 312 violations.

In November, EPA proposed technical amendments to its EPCRA section 311 and section 312 Hazardous Chemical Inventory Reporting regulations.[59] If finalized, the proposal would conform the definition of "hazardous chemical" in these regulations to the Occupational Safety and Health Administration's amended Hazard Communication Standard, which aligns their hazard classification with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals. The rule is anticipated to go into effect on January 16, 2026, with a compliance deadline of December 1, 2026.

III. Biotechnology and Nanotechnology Developments

In March 2025, President Trump rescinded 19 executive actions, including former President Biden's 2022 Executive Order (EO) 14081, "Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy."[60] According to the White House's March 14, 2025, fact sheet, EO 14,081 "funneled Federal resources into radical biotech and biomanufacturing initiatives under the guise of environmental policy."[61]

In April 2025, the bipartisan National Security Commission on Emerging Biotechnology (NSCEB) released its final report and action plan, calling for congressional

[55] Changes to Reporting Requirements for Per-and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting, 88 Fed. Reg. 74,360 (Oct. 31, 2023) (codified at 40 C.F.R. pt. 372).
[56] Press Release, Envtl. Prot. Agency, New Data Shows Chemical Releases Decline While American Economy Thrives (Aug. 21, 2025).
[57] Press Release, Envtl. Prot. Agency, EPA Settles with Four Companies to Improve Community Safety, Chemical Reporting (Sep. 30, 2025).
[58] Press Release, Envtl. Prot. Agency, EPA Enforcement Action Against Lodi Facility Results in Significant Chemical Safety Improvements (Dec. 8, 2025).
[59] Technical Amendments to the EPCRA Hazardous Chemical Inventory Reporting Requirements to Conform to the 2024 OSHA Hazard Communication Standard, 90 Fed. Reg. 51,266 (Nov. 17, 2025) (to be codified at 40 C.F.R. pt. 370).
[60] Exec. Order No. 14,236, 90 Fed. Reg. 13,037 (Mar. 20, 2025).
[61] The White House, Fact Sheet: President Donald J. Trump Rescinds Additional Harmful Biden Executive Actions, (Mar. 14, 2025).

action to–maintain U.S. leadership in biotechnology.[62] After the report's release, Representatives Chrissy Houlahan (D-PA) and Stephanie Bice (R-OK) formed the BIOTech Caucus on June 26, 2025 to advance bipartisan biotech policy.[63] On July 1, 2025, NSCEB launched two surveys to gather input on modernizing U.S. biotechnology product regulation and creating simpler, faster, science-based pathways to market.[64]

On December 2, 2024, the United States District Court for the Northern District of California granted summary judgment in part to plaintiffs who challenged the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service's (APHIS) May 2020 Sustainable, Ecological, Consistent, Uniform, Responsible, Efficient (SECURE) rule.[65] APHIS then announced on December 10, 2024, the re-establishment of the regulatory and nonregulatory processes under the pre-May 2020 framework, "including pathways for authorizing regulated activities, commercializing products, and providing compliance oversight for products of biotechnology."[66] APHIS restarted the "Am I Regulated" process, allowing stakeholders to submit an inquiry to determine if an organism developed using genetic engineering meets the definition of a "regulated article."[67] On March 3, 2025, APHIS began accepting petitions for nonregulated status according to APHIS biotechnology regulations at 7 C.F.R. part 340 (2019).[68] APHIS published a February 2025 user guide that provides more information on the specific requirements and instructions on how to apply.[69]

To ensure that the petition process aligns with developments related to the National Environmental Policy Act and APHIS's authority under the Plant Protection Act, in July 2025, APHIS announced updated practices for reviewing petitions seeking a determination of nonregulated status for organisms altered or produced through genetic engineering.[70]

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[62] Press Release, Nat'l Sec. Comm'n on Emerging Biotech., National Security Commission on Emerging Biotechnology Urges Swift Action to Protect U.S. National Security (Apr. 8, 2025).
[63] Press Release, U.S. Representative Chrissy Houlahan, Representatives Houlahan, Bice Announce Biotech Caucus: Bipartisan House Caucus Will Advance Domestic Bioeconomy and Competitive Posture (June 26, 2025).
[64] Press Release, Nat'l Sec. Comm'n on Emerging Biotech., Modernizing U.S. Biotechnology Regulation with Stakeholder Insights: NCEB Invites Input on Statutory Amendments to Enable Simple Regulatory Pathways and Accelerate Innovation (July 1, 2025).
[65] Nat'l Fam. Farm Coal. v. Vilsack, 758 F. Supp. 3d 1060 (N.D. Cal. 2024).
[66] Press Release, Animal & Plant Health Inspection Serv., U.S. DEP'T OF AGRIC., APHIS Restarts Permitting and Am I Regulated Processes for Products of Biotechnology (last visited Mar. 28, 2026).
[67] ANIMAL & PLANT HEALTH INSPECTION SERV., U.S. DEP'T OF AGRIC., Am I Regulated? (Nov. 17, 2025).
[68] Press Release, Animal & Plant Health Inspection Serv., U.S. DEP'T OF AGRIC., APHIS Resumes Receipt of Petitions for Nonregulated Status (last visited Mar. 28, 2026).
[69] ANIMAL & PLANT HEALTH INSPECTION SERV., U.S. DEP'T OF AGRIC., *Petition User Guide: with Reference to 7 CFR Part 340 – Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests*, BRS-GD-2024-0003 (Feb. 19, 2025).
[70] Press Release, Animal & Plant Health Inspection Serv., U.S. Dep't of Agric., APHIS Announces Update to Practices for Reviewing Petitions Seeking a Determination of Nonregulated Status for Organisms Altered or Produced Through Genetic Engineering (last visited Mar. 28, 2026).

On December 18, 2024, the National Nanotechnology Initiative (NNI) announced the availability of the National Nanotechnology Initiative Environmental, Health, and Safety Research Strategy: 2024 Update (2024 Update).[71] The 2024 Update builds on the initial 2011 strategy, laying out a comprehensive, integrated approach reflecting current opportunities to enable responsible nanotechnology innovation.

IV. Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

A. Pesticide Regulatory Developments

The EPA eliminated the requirement for applicants to submit a copy of data matrices in which reference data are redacted for publication, since these data have never been confidential under 40 C.F.R. section 152.119, and EPA eliminated the option to submit paper copies of data matrices.[72] For 782 conventional and antimicrobial pesticides and degradates, EPA released an updated version of its Aquatic Life Benchmarks, which estimate pesticide concentrations not expected to harm freshwater organisms.[73]

For public comment and peer review by the FIFRA Scientific Advisory Panel, EPA released a white paper and supporting materials on genetically engineered (GE) mosquitoes for mosquito control, outlining design considerations and analytical methods to confirm the absence of novel proteins in GE female mosquito saliva.[74]

EPA released Interim Registration Review Decisions for the fungicide and antimicrobial chlorothalonil, the insecticide dicrotophos, the sterilant ethylene oxide, and the fungicides thiophanate-methyl and its degradate carbendazim, updating risk mitigation measures, as appropriate, to address risks to human health and the environment.[75] For chlorothalonil, EPA will issue a data call-in (DCI) notice to registrants for additional data about risks to invertebrate pollinators.

B. Pollinator Protection

EPA's Endangered Species Act (ESA) pesticide program continued its transition from framework to deployment. The Insecticide Strategy, finalized after last year's draft, now operates alongside the Herbicide Strategy on a shared mitigation menu and point system, with obligations expressed on labels and, where applicable, through Bulletins Live!

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[71] Nat'l Science & Tech. Council, *National Nanotechnology Initiative Environmental, Health, and Safety Research Strategy: 2024 Update* (Dec. 2024).

[72] Envtl. Prot. Agency, PRN 2025-1, *Revised Procedures for Citing Data to Support Pesticide Registrations (EPA Forms No. 8570-34 And 8570-35)* (Mar. 23, 2025).

[73] Envtl. Prot. Agency, *Summary of September 2025 Updates to Aquatic Life Benchmarks Table* (Sept. 4, 2025).

[74] Envtl. Prot. Agency, *EPA Releases Documents on Genetically Engineered Mosquitoes for Public Comment and Peer Review* (Aug. 21, 2025).

[75] Envtl. Prot. Agency, *Chlorothalonil Interim Registration Review Decision Case Number 0097*, EPA-HQ-OPP-2011-0840-0363 (Dec. 2024); Envtl. Prot. Agency, *Dicrotophos Interim Registration Review Decision Case Number 0145*, EPA-HQ-OPP-2008-0440-0090(Apr. 2025); Envtl. Prot. Agency, *Ethylene Oxide Interim Registration Review Decision Case Number 2275*, EPA-HQ-OPP-2013-0244-0435 (Jan. 2025); Envtl. Prot. Agency, *Thiophanate-methyl and Carbendazim Interim Registration Review Decision Case Number 2680*, EPA-HQ-OPP-2014-0004-0190 (Dec. 2024).

Two (BLT), EPA's web-based application to access Endangered Species Protection Bulletins.[76]

Species- and product-specific ESA outcomes are now appearing on pesticide labels. Final biological opinions for carbaryl and methomyl are driving drift/runoff controls, application limits, and BLT look-ups, with similar pathways expected for other active ingredients.[77] In parallel, EPA proposed over-the-top dicamba registrations with added safeguards, illustrating how programmatic strategies interlock with product labels.[78]

In the pollinator context, EPA finalized a tolerance exemption for Vadescana (a double-stranded RNA product that uses RNA interference to target the Varroa mite) and later issued a final registration decision for on-hive Varroa control, providing a targeted tool for beekeeping operations that can be layered into apiary integrated pest management programs.[79] The U.S. Fish and Wildlife Service (FWS) reopened comment on the monarch listing proposal (with a 4(d) rule and proposed critical habitat), which—if finalized—could expand BLT/PULA-based restrictions in affected areas.[80]

C. Endocrine Disruptors

EPA operationalized its Endocrine Disruptor Screening Program (EDSP) commitments. A public Group-1 tracking page shows EDSP data call-ins/test orders rolling into registration review, consistent with EPA's January 2025 settlement resolving EDSP-timeline litigation.[81] Under that agreement, EPA committed to issuing and publicly

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[76] ENVTL. PROT. AGENCY, *Strategy to Protect Endangered Species from Insecticides*, (April 29, 2025); OFF. OF PESTICIDE PROGRAMS, OFF. OF CHEM. SAFETY & POLLUTION PREVENTION, ENV'T PROT. AGENCY, *Insecticide Strategy (Final) to Reduce Exposure of Federally Listed Endangered and Threatened Species and Designated Critical Habitats from the Use of Conventional Agricultural Insecticides* (Apr. 2025) [hereinafter EPA Final Insecticide Strategy]; ENVTL. PROT. AGENCY, Bulletins Live! Two (last visited April 11, 2026).

[77] Press Release, Nat'l Oceanic & Atmospheric Admin. Fisheries, Conference and Biological Opinion on the Environmental Protection Agency's Registration Review of Pesticide Products Containing Carbaryl and Methomyl (Jan. 17, 2024); Press Release, Envtl. Prot. Agency, EPA Announces Multiple Actions to Protect Endangered Species from Insecticide Carbaryl (Apr. 9, 2025); Press Release, Envtl. Prot. Agency, EPA Shares Fish and Wildlife Service's Final Endangered Species Act Biological Opinion for Methomyl (Jan. 16, 2025).

[78] Registration of Dicamba for Use on Dicamba-Tolerant Crops, ENVTL. PROT. AGENCY (Feb. 6, 2026).

[79] Vadescana Double-Stranded RNA; Exemption From the Requirement of a Tolerance, 90 Fed. Reg. 25,155 (June 16, 2025) (to be codified at 40 C.F.R. pt. 180); 40 C.F.R. § 180.1417 (2026); Press Release, Envtl. Prot. Agency, EPA Provides New Tool to Protect Honey Bees, Ensuring Safe and Abundant Food Supply (Sep. 25, 2025).

[80] Press Release, U.S. Fish & Wildlife Serv., U.S. Fish and Wildlife Service Reopens Public Comment Period for Monarch Butterfly Endangered Species Act Listing Proposal (Mar. 18, 2025).

[81] ENVTL. PROT. AGENCY, *Status of Endocrine Disruptor Screening Program Data Call-In (DCI) Notices for Group 1 Chemicals* (Mar. 10, 2026).

tracking Group-1 endocrine orders, signaling earlier endocrine data requests. Registrants in review should plan timelines and resources accordingly.[82]

EPA refreshed EDSP Policies & Procedures to clarify order format, fair and equitable cost-sharing, data compensation, confidentiality, and response and challenge mechanics, and it aligned program materials with the Registration Manual.[83]

"EPA has released its reviews of the Tier-1 screening assay results for the first 52 pesticide chemicals (active and inert ingredients)" and updated Tier-1 documentation and status tables.[84] Together, these materials clarify when Tier-2 testing will be required and provide a road map for study expectations when Tier-1 screening indicates endocrine bioactivity with relevant exposure.

D. Products and Uses of National Significance

EPA extended the public comment period on a proposed rule to revoke certain tolerances for the herbicide chlorpyrifos.[85] Under the registration review process for chlorpyrifos, EPA plans to issue an amended Proposed Interim Decision for public comment, followed by a final Interim Review Decision in 2026.[86]

EPA proposed to register three dicamba products for over-the-top applications to dicamba-tolerant cotton and soybean to control broadleaf weeds, including herbicide-resistant weeds, and improve crop yields.[87]

A registrant of the herbicide glyphosate petitioned the Supreme Court of the United States for a writ of certiorari to resolve a split in the circuit courts regarding whether FIFRA preempts a state-law failure-to-warn claim when EPA has repeatedly concluded that the warning is not required and the warning cannot be added to a pesticide product's label without EPA's approval.[88] The Court invited the Solicitor General of the United States to express his views, and he submitted an amicus brief supporting the granting of a writ.[89]

In response to a FIFRA section 6(a)(2) submission from a registrant of the herbicide paraquat, EPA conducted a new review of the potential for paraquat to volatilize from field uses and identified uncertainties, as a result of which EPA will issue a DCI notice to registrants for additional information about volatilization.[90]

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[82] Press Release, Envtl. Prot. Agency, EPA Finalizes Settlement and Announces New Tracking Website for Endocrine Disruptor Screening Program Data Call-In Notices (Jan. 7, 2025).

[83] ENVTL. PROT. AGENCY, *Endocrine Disruptor Screening Program (EDSP) Policies and Procedures* (June 25, 2025).

[84] Press Release, Envtl. Prot. Agency, *Endocrine Disruptor Screening Program (EDSP) Tier 1 Assessments* (Feb. 10, 2026).

[85] Cloropyrifos: Tolerance Revocation; Reopening of the Comment Period, 90 Fed. Reg. 9958 (Feb. 20, 2025) (to be codified at 40 C.F.R. pt. 180).

[86] U.S. ENVTL. PROT. AGENCY, *Frequently Asked Questions about the Current Status of Chlorpyrifos and Anticipated Path Forward* (Sept. 8, 2025).

[87] ENVTL. PROT. AGENCY, *EPA Announces Proposed Decision to Approve Registration for New Uses of Dicamba, Outlines New Measures to Protect Human Health, Environment* (July 23, 2025).

[88] Petition for Writ of Certiorari, Monsanto Co. v. Durnell, No. 24-1068 (U.S. 2025).

[89] Brief for the United States as Amicus Curiae, Monsanto Co. v. Durnell, No. 24-1068 (U.S. 2025).

[90] Press Release, Entvl. Prot. Agency, EPA Updates Review on Potential Paraquat Volatilization and Plans to Request Additional Data from Manufacturers (Nov. 13, 2025).

Anti-pesticide pressure groups petitioned the United States Court of Appeals for the Ninth Circuit for a writ of mandamus to compel EPA to act on the groups' 2021 petition to cancel all registered uses and revoke all tolerances that EPA cannot find safe for 12 organophosphate pesticides.[91] The case was argued and submitted on December 2, 2025, and awaits a judgment by the court.

E. ESA Consultations on Pesticide Registrations

The EPA issued registrations for several new active ingredients subject to the ESA-related procedures set forth in EPA's 2022 workplan.[92] Under this approach, EPA may make predicted Jeopardy/Adverse Modification (J/AM) calls for listed species and apply any mitigations that it deems necessary to avoid J/AM pending completion of consultation with the FWS or the National Marine Fisheries Service (NMFS) (collectively, the Services) under section 7 of the ESA. New registrations that were the subject of EPA ESA reviews in 2025 included isocycloseram and cyclobutrifluram.

In April, EPA issued the final "Insecticide Strategy," the latest in a series of class-wide strategies that EPA intends to use to standardize ESA mitigations across pesticide classes.[93] The final "class-wide" strategy, for fungicides, is expected to be available as a draft, and finalized, in April and November of 2026, respectively.[94] EPA's use of the strategies to further an efficient, multi-chemical approach to satisfying its ESA obligations in connection with species under FWS's jurisdiction is further described in a document EPA released in early 2025.[95]

In August, EPA announced the implementation of new measures restricting the use of methomyl in order to protect endangered species, which measures arose from an NMFS biological opinion (BiOp) issued the prior year.[96] EPA also announced new measures guiding the use of another carbamate insecticide, carbaryl, related to BiOps issued by both of the Services.[97]

A lawsuit was filed late in 2024 challenging FWS's Final Biological Opinion for Malathion, asserting that elements of the analytical framework applied by FWS were arbitrary.[98] While EPA and the Services' consultation approach continues to have been refined at the margins since the malathion BiOp was completed, the outcome of this litigation could affect the basic approach going forward.

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[91] Petition for a Writ of Mandamus, Pesticide Action & Agroecology Network N. Am. v. EPA, No. 25-3955 (9th Cir. filed June 25, 2025).

[92] OFF. OF PESTICIDE PROGRAMS, ENVTL. PROT. AGENCY, *Memorandum Supporting Final Decision to Approve Registration for the New Active Ingredient Isomer, Glufosinate-P*, EPA-HQ-OPP-2020-0250-0047 (Oct. 18, 2024).

[93] EPA Final Insecticide Strategy, *supra* note 71.

[94] Status Report, Ctr. for Biological Diversity v. EPA, No. 11-cv-293 (N.D. Cal. 2024). Issuance of the fungicide strategy will complete EPA's obligations in connection with the settlement of this lawsuit.

[95] Off. of Pesticide Programs. Envtl. Prot. Agency, *Addressing Endangered Species Act 7(a)(1) and 7(a)(2) Obligations: Plan to Promote the Recovery of Species and Streamline Consultation for Conventional Pesticides and Endangered Species Act Listed Species Under the Authority of the US Fish and Wildlife Service* (Jan. 14, 2025).

[96] Press Release, Envtl. Prot. Agency, EPA Announces Action to Protect Endangered Species from Insecticide Methomyl (Aug. 12, 2025).

[97] EPA Press Release: Insecticide Carbaryl, *supra* note 72.

[98] Complaint, Pesticide Action Network N. Am. v. Williams, No. 3:24-cv-06324 (N.D. Cal. 2024), ECF No. 1.

EPA released the Pesticide App for Label Mitigations, an app intended to help farmers and applicators determine how many "points" they have (or need) in connection with several of EPA's new mitigation approaches (including the Insecticide and Herbicide strategies).[99]

On December 30, the EPA released its Final Guidance for Antimicrobial Pesticides that Require Endangered Species Act Reviews.[100] The guidance provides an overview of the types of information EPA considers as part of an ESA assessment. The guidance applies to new active ingredient applications, new uses of registered active ingredients, and registration review decisions for antimicrobial pesticide products with one or more uses with the potential for outdoor exposures.

F. State Pesticide Developments of National Significance

Georgia and North Dakota enacted the first laws shielding manufacturers of EPA-registered pesticides from certain state-law failure-to-warn suits seeking warnings beyond those assessed and required by EPA. In Georgia, manufacturers may assert a defense where the pesticide displays an EPA-approved label or a label consistent with EPA's most recent FIFRA human-health risk assessment;[101] the pesticide manufacturer may raise this as a defense to any failure-to-warn claims. In North Dakota, the label may also be consistent with EPA's FIFRA carcinogenicity classification to qualify for the defense.[102] Similar bills introduced in Florida, Idaho, Iowa, Mississippi, Missouri, Montana, North Carolina, Oklahoma, Tennessee, and Wyoming did not pass.

SprayDays California launched on March 24, 2025, becoming the nation's first statewide pesticide notification system. It provides advance public notice of restricted material pesticide applications—48 hours for soil fumigants and 24 hours for other restricted materials—via an interactive map and optional email/text alerts. The program stems from regulations effective February 24, 2025, requiring growers and applicators to electronically submit Notices of Intent to the relevant County Agricultural Commissioner before the use of restricted material pesticides.[103]

G. Pesticide Regulatory Petitions Submitted to EPA

In January, EPA sought comment on an August 7, 2024, petition submitted by the attorneys general of 11 states, including Alabama, Iowa, Nebraska, and South Carolina.[104] The petition requested that EPA amend its regulations so state labeling requirements inconsistent with EPA's human-health risk assessment would constitute misbranding.

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[99] ENVTL. PROT. AGENCY, *Pesticide App for Label Mitigations* (Aug. 14, 2025). *See also* Press Release, Envtl. Prot. Agency, EPA Releases New Mobile Tool to Help Farmers Implement Recommended Ecological Pesticide Mitigation Measures (Aug. 14. 2025).

[100] ENVTL. PROT. AGENCY, *Final Guidance to Registrants on Activities to Improve the Efficiency of Endangered Species Act Considerations for New Active Ingredient and New Use Registrations and Registration Review for Antimicrobial Pesticides*, EPA-HQ-OPP-2023-0281-0045 (Dec. 30, 2025).

[101] 7 U.S.C. §§ 136–136y (2026); *S.B. 144*, Gen. Assemb., Reg. Sess. (Ga. 2025).

[102] *H.B. 1318*, 69th Legis. Assemb., Reg. Sess. (N.D. 2025).

[103] CAL. AGRIC. CODE § 6434 (West 2026); Cal. Dep't of Pesticide Regul., *Statewide Notification of Agricultural Use of Restricted Materials* (last visited May 18, 2026).

[104] Pesticides; Petition Seeking Rulemaking to Modify Labeling Requirements for Pesticides and Devices, 90 Fed. Reg. 7037 (Jan. 21, 2025).

In February, the Center for Biological Diversity (CBD) submitted a petition to President Trump and several agencies (including EPA, FDA, and USDA) requesting that they take action to protect the public and the environment from particular pesticides.[105] In support, CBD alleges links to chronic diseases, development disorders, and environmental harm. The petition seeks: (i) stricter FDA controls on imported foods contaminated with banned pesticides; (ii) an EPA ban on atrazine, glyphosate, paraquat, neonicotinoids, and organophosphates in foods for human consumption; (iii) conditioning USDA crop insurance eligibility on eliminating or reducing those pesticides in food crops; and (iv) mandating that the USDA and the U.S. Department of Health and Human Services include recommendations in the Dietary Guidelines for Americans to avoid foods produced with such pesticides and prioritize organic alternatives. EPA does not appear to have taken action on this petition.

In October, the Natural Resources Defense Council (NRDC) filed suit in the United States Court of Appeals for the District of Columbia Circuit against EPA for allegedly failing to respond to a 2020 petition requesting that EPA revoke all food tolerances for neurotoxic neonicotinoid pesticides.[106] The NRDC's 2020 petition argued that current tolerances violate the Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act, because they expose the public to developmental neurotoxicants.[107]

H. Pesticide Registration Improvement Act of 2022

EPA met several milestones for PRIA 5 in 2025, including bilingual labeling. PRIA 5 requires Spanish translations for certain sections of end-use pesticide product labeling.[108] The Spanish translation may be found either on the product container or via scannable technology or another readily accessible electronic method on the container.[109] The statute phases in deadlines, with the first deadline on December 29, 2025, for restricted use pesticides and agricultural products in Acute Toxicity Category I.[110] In 2025, EPA updated its Bilingual Labeling Questions & Answers.[111] EPA also sought comment on a streamlined approach for tracking the adoption of bilingual labeling via the MyPeST app.[112] In December 2025, EPA submitted an information collection request on bilingual

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[105] Petition from Ctr. for Biological Diversity to President Donald J. Trump, A Petition to Make America Healthy Again by Eliminating Extraordinary Toxic Pesticides from Food (Feb. 18, 2025).
[106] Petition for a Writ of Mandamus, *In re* Nat. Res. Def. Council, Inc., No. 25-1251 (D.C. Cir. Oct. 29, 2025) Doc. No. 2142988.
[107] Petition to Revoke All Neonic Tolerances and Comments Regarding Dietary Exposure, *In re Nat. Res. Def. Council, Inc.*, No. 25-1251 (May 4, 2020) Doc. No. 2142988.
[108] 7 U.S.C. § 136a(f)(5)(A).
[109] *Id.*
[110] *Id.* at § 136a(f)(5)(B).
[111] Press Release, Envtl. Prot. Agency, EPA Seeks Public Comment on New Plan to Streamline Tracking of Bilingual Labeling Adoption and Releases Updated Bilingual Labeling Resources (July 21, 2025).
[112] Agency Information Collection Activities; Proposed New Collection and Request for Comment; Bilingual Pesticide Label Tracking (EPA ICR No. 7795.01; OMB Control No. 2070-NEW), 90 Fed. Reg. 34,269 (July 21, 2025); ENVTL. PROT. AGENCY, *Attachment D: Instructions for Reporting Bilingual Labeling Compliance in Accordance with PRIA 5*, EPA-HQ-OPP-2025-0049-0003 (July 21, 2025).

labeling tracking to OMB for its review and approval.[113] EPA also stated it is publishing a final Pesticide Registration Notice addressing tracking on end-use pesticide product labels.[114]

EPA released three significant PRIA 5 evaluations in 2025, including the FY 2024 Annual Report required by statute,[115] providing registration review metrics and updates on PRIA 5 process and database enhancement efforts.[116] EPA also released the PRIA 5 Process Assessment Final Report, a third-party evaluation of the Office of Pesticide Programs' (OPP) electronic submission process with recommendations to reduce review timelines.[117] In addition, EPA released the OPP Training Gap Report,[118] which analyzed OPP's internal training and education programs and identified areas for improvement. Despite the issues identified in these evaluations, EPA continued to prioritize reducing the backlog of pending pesticide regulatory actions, decreasing the backlog by more than 5,000 since January 2025.[119]

EPA awarded two new cooperative agreements for health care provider training on pesticide-related illnesses and farmworker training on pesticide safety and continued funding for existing cooperative agreements under set-asides for partnership grants, pesticide safety education programs, and technical assistance to grantees.[120]

V. State Chemical Control Developments

Several states enacted laws addressing chemicals in personal care products and foods. California[121] and Arkansas[122] adopted legislation regulating hair relaxers and other hair care products. Arkansas prohibits the sale of products containing specified chemicals of concern when marketed for use by minors and requires compliance with labeling and safety standards. Illinois[123] enacted legislation addressing contaminants in baby food, establishing limits for heavy metals such as lead, cadmium, arsenic, and mercury, and requiring manufacturers to test products and make compliance disclosures to the state.

States also acted to restrict specific chemicals in consumer and medical products. North Carolina[124] enacted a prohibition on the use of DEHP in certain products, including medical and childcare-related applications, subject to defined exceptions. Virginia[125] enacted legislation limiting the allowable concentration of metals such as lead, cadmium,

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[113] Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Bilingual Pesticide Label Tracking (New), 90 Fed. Reg. 57,758 (Dec. 12, 2025).
[114] *Id.* at 57,759.
[115] 7 U.S.C § 136w-8(k).
[116] Off. of Pesticide Programs, Envtl. Prot. Agency, *FY 2024 Pesticide Registration Improvement Act (PRIA) Annual Report* (June 30, 2025).
[117] Censeo Consulting Grp., *Business Process Review and Optimization for EPA Office of Pesticide Programs Final Report* (Sept. 30, 2025).
[118] Envtl. Prot. Agency, *PRIA 5 Gaps Analysis Report* (Oct. 9, 2025).
[119] Press Release, Envtl. Prot. Agency, EPA Releases Reports as Part of Agency Efforts to Optimize Pesticide Registration Processes (Oct. 9, 2025).
[120] Envtl. Prot. Agency, *Pesticide Cooperative Agreements* (last updated Oct. 21, 2025).
[121] S.B. 236, 2025–2026 Reg. Sess. (Cal. 2025).
[122] S.B. 632, 95th Gen. Assemb., Reg. Sess. (Ark. 2025).
[123] S.B. 73, 104th Gen. Assemb., Reg. Sess. (Ill. 2025).
[124] S.B. 600, 2025 Gen. Assemb., Reg. Sess. (N.C. 2025).
[125] H.B. 1844, 2025 Gen. Assemb., Reg. Sess. (Va. 2025).

and mercury in designated consumer product categories and authorizing state agencies to enforce compliance through testing and reporting requirements. Washington[126] enacted additional restrictions on lead, including prohibitions on lead or lead compounds in specified consumer products.

Some jurisdictions enacted product-specific bans or disclosure requirements for PFAS. Illinois,[127] New Hampshire,[128] New York,[129] New Mexico,[130] and Vermont[131] each enacted or expanded restrictions on PFAS in consumer products. Although the scope and effective dates vary by state, these laws generally prohibit intentionally added PFAS in defined product categories, including food packaging, cosmetics, textiles, juvenile products, cookware, and personal care items. Several statutes also include reporting or notification requirements, obligating manufacturers to disclose the presence of PFAS in certain products to designated state agencies prior to sale or distribution.

A number of states have moved forward with implementing regulations for the PFAS laws. Connecticut approved label language indicating PFAS content at the point of sale and in online listings that will be required starting July 1, 2026. Minnesota[132] finalized its PFAS-in-products reporting and fees rule, which pertains to reporting that is to begin in January and conclude July 1, 2026. New Mexico[133] proposed rules to implement its PFAS Protection Act, which phases out certain products containing intentionally added PFAS, requires manufacturers to provide detailed information on PFAS use, and establishes consumer-facing labeling requirements.

Washington, under Cycle 1.5 of its Safer Products for Washington program, adopted regulations prohibiting the in-state manufacture, sale, and distribution of apparel and accessories, automotive washes, and cleaning products that contain intentionally added PFAS and imposing PFAS reporting requirements on manufacturers of nine additional consumer product categories.[134] Under Cycle 2, Washington is evaluating products such as architectural paints with PFAS and alkylphenol ethoxylates, artificial turf with N-(1,3-dimethylbutyl)-N'-phenyl-p-phenylenediamine (6PPD) and PFAS and cosmetics with cyclic volatile methyl siloxanes.[135]

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126 S.B. 5628, 69th Leg., 2025 Reg. Sess. (Wash. 2025).
127 H.B. 2516, 104th Gen. Assemb., Reg. Sess. (Ill. 2025).
128 H.B. 167, 2025 Leg., Reg. Sess. (N.H. 2025).
129 S.B. 1548, 2025-2026 Leg., Reg. Sess. (N.Y. 2025).
130 H.B. 212, 57th Leg., 1st Reg. Sess. (N.M. 2025).
131 H.B. 238, 2025 Gen. Assemb., Reg. Sess. (Vt. 2025).
132 Minn. R. §§ 7026.0010-.0100 (2025); CONN. DEP'T OF ENERGY & ENV'T PROT., PFAS in Products, https://portal.ct.gov/deep/p2/pfas-in-products (last visited May 18, 2026).
133 H.B. 212 (N.M.), *supra* note 124.
134 WASH. DEP'T OF ECOLOGY, Chapter 173-337 WAC – Safer Products Restrictions and Reporting (Cycle 1.5: PFAS) (last visited April 11, 2026).
135 WASH. DEP'T OF ECOLOGY, PUBL'N 25-04-030, *Identification of Priority Products Report to the Legislature: Safer Products for Washington Cycle 2 Phase 2* (June 2025).

Chapter Q: PROJECT DEVELOPMENT
2025 Annual Report[1]

I. NEPA Updates

Executive, legislative, and judicial actions in 2025 have significantly reshaped the National Environmental Policy Act (NEPA) landscape.

A. Congressional Changes to NEPA

Congress streamlined the NEPA process in amendments from the Fiscal Responsibility Act of 2023 (FRA)[2] and the One Big Beautiful Bill Act (OBBBA)[3] in 2025. The FRA defined "major Federal action," clarified that the scope of NEPA is limited to "reasonably foreseeable environmental effects," and established page limits and deadlines for environmental impact statements (EIS) and environmental assessments (EA).[4] The OBBBA created a framework to allow developers to opt into an expedited NEPA review, obligating agencies to complete an EA or EIS in a shorter timeframe.[5]

B. Judicial Changes to NEPA

The U.S. Supreme Court issued a self-proclaimed "course correction" for NEPA reviews in its 2025 decision, *Seven County Infrastructure Coal. v. Eagle County*.[6] The Court reinforced the rudimentary principle that NEPA is a purely procedural statute that prescribes the appropriate process of environmental review, and does not mandate certain results. The Court held that 1) NEPA requires courts to afford agencies "substantial deference," and 2) NEPA does *not* require agencies to analyze "effects from potential future projects or from geographically separate projects."[7] This case is important because it limited the scope of NEPA reviews.

C. Administrative Changes to NEPA

On January 20, 2025, President Trump issued an Executive Order (EO) EO 14154, *Unleashing American Energy*, revoking EO 11991 and seeking to expedite and simplify the federal permitting process. EO 14154 directed the Chairman of the Council on Environmental Quality (CEQ) to "provide guidance on implementing" NEPA "and propose rescinding CEQ's NEPA regulations found at 40 C.F.R. pt. 1500 *et seq*."[8]

In February 2025, following the landmark United States Court of Appeals for the D.C. Circuit decision in *Marin Audubon v. FAA*[9] which held that CEQ's NEPA regulations

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[1]This chapter covers some major federal and state legislative, regulatory, and judicial developments relevant to project development. Vice Chairs Abigail Contreras and Sam Boden would like to thank Kerry McGrath, Nate Menard, and Sadie Mapstone for their contributions on NEPA updates, Martin Stratte for his contributions on Executive Orders affecting critical mineral development, and Coleman Wheeler and Marie LaRosa for their contributions on energy permitting.
[2]Pub. L. No. 118-5, § 321, 137 Stat. 10 (2023).
[3]Pub. L. No. 119-21, § 60026, 139 Stat. 74 (2025).
[4]*See* 42 U.S.C. §§ 4332(C), 4336a(e), (g), 4336e(10)(A) (2023).
[5] One Big Beautiful Bill Act, Pub. L. No. 119-21, § 60026, 139 Stat. 74 (2025).
[6]605 U.S. 168, 184 (2025).
[7]*Id.* at 180, 186, 191.
[8]Exec. Order No. 14,154, 90 Fed. Reg. 8353 (Jan. 20, 2025).
[9]121 F.4th 902, 908 (2024)

are *ultra vires*, CEQ issued an interim final rule rescinding its NEPA implementing regulations.[10] According to the preamble, CEQ did not have authority to maintain its NEPA implementing regulations.[11]

The interim final rule was issued without notice and comment under the "good cause" exception, which authorizes agencies to issue regulations without notice and comment when notice and comment is "impracticable, unnecessary, or contrary to the public interest."[12] CEQ found that the good cause exception was appropriate to meet the deadlines in EO 14154 and "to avoid agency confusion given the recent vacatur of CEQ's 2024 Rule."[13]

In corresponding guidance,[14] CEQ directed agencies to revise their regulations to expedite permitting approvals and for consistency with the 2023 NEPA Amendments.[15] Additionally, the guidance communicates that agencies should continue pending or ongoing NEPA analyses, consistent with the 2023 NEPA Amendments, while undertaking appropriate regulatory revisions. The guidance also provides specific directives for agencies to follow when they undergo NEPA revisions. Such directives include: to develop transparent, clear, and predictable procedures for review of project sponsor-prepared EAs and EISs; to consider only a reasonable range of alternatives that are technically and economically feasible; and to exclude analysis of environmental justice.

On September 29, 2025, CEQ issued revised guidance, which included a template for agencies to use to ensure consistency with recent statutory changes, *Seven County*,[16] and CEQ directives to streamline and improve permitting.[17]

Agencies have started responding to CEQ directives by implementing revised NEPA regulations.[18] The Department of Energy, Army Corps of Engineers, and the Department of the Interior (DOI), among other agencies, have revised their NEPA procedures pursuant to CEQ's directives and consistent with *Seven County.* and the 2023 NEPA Amendments.

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[10]Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10,610 (Interim Final Rule Feb. 25, 2025) (to be codified at 40 C.F.R. pts. 1500–08).

[11]*Id.* at 10,613, 10,611.

[12]*See* 5 U.S.C. § 553(b)(B).

[13]90 Fed. Reg. at 10,614.

[14]Memorandum from Katherine R. Scarlett, Chief of Staff, Council on Env't Quality, to the Heads of Fed. Dep'ts & Agencies (Feb. 19, 2025).

[15]The Fiscal Responsibility Act of 2023 amended NEPA by, among other things, defining "major Federal action," clarifying that the scope of NEPA review is focused on "reasonably foreseeable environmental effects," and establishing page limits and deadlines for environmental impact statements and environmental assessments. See Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10; 42 U.S.C. §§ 4332(2), 4336a (2023).

[16]*Seven Cnty. Infrastructure Coal.*, 605 U.S. at 180, 186. (holding that NEPA requires courts to give agencies "substantial deference" and that NEPA does not require agencies to analyze "effects from potential future projects or from geographically separate projects").

[17]Memorandum for Heads of Fed. Dep'ts & Agencies, Council on Env't Quality, Implementation of the Nat'l Env't Pol'y Act (Sept. 29, 2025).

[18]*See* Procedures for Implementing NEPA; Processing of Department of the Army Permits, 90 Fed. Reg. 29,465 (July 3, 2025) (to be codified at 33 C.F.R. pts. 320, 325, 333); National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 29,498 (July 3, 2025) (to be codified at 43 C.F.R. pt. 46); Revision of National Environmental Policy Act Implementing Procedures, 90 Fed. Reg. 29,676 (July 3, 2025) (to be codified at 10 C.F.R. pts. 205, 1021).

As a result, there is likely to be some uncertainty as project proponents and agencies navigate this new NEPA landscape.

D. Streamlined Permitting of Data Centers in the New NEPA Landscape

These changes to NEPA are particularly important as artificial intelligence (AI) and the corresponding buildout of data centers drive unprecedented energy demand and the need for new energy generation and related infrastructure, necessitating streamlined permitting processes.[19] With the emergence of AI and the corresponding buildout of data centers, energy demand is increasing.[20] The U.S. will need to put new and upgraded infrastructure in place to meet this increasing energy demand. Streamlined permitting is viewed as critical for getting these projects online expeditiously.

President Trump has issued a series of EOs targeting U.S. energy generation and directing agencies to implement procedures to streamline the permitting process for energy-related projects such as data center development.[21] Notably, EO 14318, Accelerating Federal Permitting of Data Center Infrastructure, directed relevant agencies to identify and establish categorical exclusions that could facilitate the construction of certain data center projects without preparing an EA or EIS.[22]

Data center projects may be subject to NEPA if they require federal permitting that constitutes a "major Federal action" (i.e., actions that are "subject to substantial Federal control and responsibility").[23] The new NEPA landscape should result in opportunities for data center developers to complete efficient and limited NEPA reviews, thus streamlining the permitting process and facilitating the development of energy infrastructure and the data center buildout.

II. FAST-41 Permitting Developments

The FAST-41 permitting program is not new. But it is being used more than ever before as a result of the Trump Administration's efforts to stimulate development, particularly in the mining and data center industries.

Created by Congress in 2015 pursuant to Title 41 of the Fixing America's Surface Transportation Act (FAST Act),[24] the program improves federal agency coordination and timeliness of environmental reviews for "covered projects." A "covered project" is defined as an infrastructure project[25] that: "(I) is subject to NEPA; (II) is likely to require a total

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[19]*See DOE Releases New Report Evaluating Increase in Electricity Demand from Data Centers*, U.S. Dep't of Energy (Dec. 20, 2024) (estimating that data center load growth has tripled over the past 10 years and is projected to double or triple again by 2028).
[20]*See* S&P Global Commodity Insights, *U.S. National Power Demand Study*, 15 (Mar. 2025) (projecting a 35-40 percent increase between 2024 and 2040).
[21]*See* Exec. Order No. 14,154, 90 Fed. Reg. 8353 (Jan. 20, 2025); Exec. Order No. 14,156, 90 Fed. Reg. 8433 (Jan. 20, 2025); Exec. Order No. 14,318, 90 Fed. Reg. 35,385 (July 23, 2025).
[22]90 Fed. Reg. at 35,386.
[23]42 U.S.C. § 4336e(10)(A) (2023).
[24]42 U.S.C. §§ 4370m–4370m-11 (2023).
[25]Qualifying categories of infrastructure projects include "renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, semiconductors, artificial intelligence and machine learning, high-performance computing and advanced computer hardware and software, quantum information science and technology, data storage and data management, cybersecurity, carbon capture, energy

investment of more than $200,000,000; and (III) does not qualify for abbreviated authorization or environmental review processes under any applicable law" (e.g., certain Department of Transportation projects).[26]

The FAST-41 program is administered by the Federal Permitting Improvement Steering Council (Permitting Council), which serves as a project manager for qualifying projects undergoing permitting and environmental review.

A. Recent Developments Influencing the Increased Use of FAST-41

- On March 20, 2025, President Trump issued an Executive Order, "Immediate Measures to Increase American Mineral Production," directing all agencies involved with critical mineral[27] permitting to propose mineral production projects as FAST-41 "transparency projects."[28] In response to the order, the administration announced two tranches of critical mineral projects added to the program. On November 20, 2025, the Permitting Council announced that 50 critical mineral and mining projects are now enrolled as covered projects and transparency projects.[29]
- On July 23, 2025, President Trump issued an Executive Order, "Accelerating Federal Permitting of Data Center Infrastructure," directing the Executive Director of the Permitting Council to leverage the FAST-41 program to expedite the development of artificial intelligence data centers and associated infrastructure (e.g., transmission lines, power generating facilities, networking equipment, and data storage).[30] The order is part of the Trump Administration's effort to enhance "American manufacturing and technological dominance."

All FAST-41 projects (both covered projects and transparency projects) are listed on the permitting dashboard to encourage transparency in permitting decisions.[31]

III. Energy Permitting in the Trump Administration

A. Renewable Energy

In 2025, the Trump Administration took action to delay or prevent issuance of permits for wind and solar energy projects. While the effects of these actions are most

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storage, or any other sector as determined by a majority vote of the [Permitting] Council." 42 U.S.C. § 4370m(6)(A) (2023). In 2021, a majority of the Permitting Council voted to designate "mining" as a FAST-41 sector, which is codified at 40 C.F.R. § 1900.2(a) (2021).

[26] 42 U.S.C. § 4370m(6)(A)(i) (2023).

[27] Critical minerals are considered "essential for national security, economic stability, and supply chain resilience because they underpin key industries, drive technological innovation, and support critical infrastructure vital for a modern American economy." Final 2025 List of Critical Minerals 90 Fed. Reg. 50,494, 50, 495 (Nov. 7, 2025). The U.S. Geologic Survey released the Final 2025 List of Critical Minerals on November 7, 2025. Id. at 50,496-97.

[28] Exec. Order No. 14,241, 90 Fed. Reg. 13,673 (Mar. 20, 2025).

[29] Press Release, Fed. Permitting Improvement Steering Council, Permitting Council Meets Agency Milestone with 50 Mining Infrastructure Projects Receiving Council Benefits (Nov. 20, 2025).

[30] 90 Fed. Reg. at 35,386–87.

[31] Federal Infrastructure Permitting Dashboard, *Permitting Dashboard* (last visited Feb. 22, 2026).

clearly felt on public land, including the continental shelf, the Administration's actions create additional risk for projects on private land to the extent they have a federal nexus.

Offshore wind has been a particular target of the Administration. The first anti-offshore wind action came on January 20, 2025, when the Administration issued a Memorandum that withdrew all areas on the continental shelf from offshore wind leasing and ordered a review of federal wind leasing and permitting practices.[32] The moratorium on offshore wind leasing was subsequently struck down by a Massachusetts District Court Judge on December 8, 2025.[33] However, on December 22, 2025, the DOI announced that "it is pausing—effective immediately—the leases for all large-scale offshore wind projects under construction," due to undisclosed national security concerns identified by the Department of War.[34]

In addition to actions specifically targeting offshore wind, the DOI took general actions to delay issuance of permits for wind and solar projects pursuant to President Trump's July 7, 2025 EO 14,315 entitled "Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources."[35] In addition to other directives, EO 14315 directs the DOI to eliminate preferential treatment for wind and solar facilities found within DOI regulations, guidance, policies, and practices and to submit a report of planned actions to the President.

DOI issued a Memorandum on July 15, 2025 mandating that all DOI actions pertaining to wind or solar projects obtain individual approval from the Secretary's office.[36] Next, Secretarial Order 3437, issued on July 29, 2025, dictated that the DOI will identify and terminate policies that favor wind and solar.[37] A press release associated with Order 3437 indicated that the DOI will perform a careful review of the effect of wind projects on avian mortality and restore Congress's mandate to equally consider all uses of public lands, both of which pose barriers to renewable projects on public lands.[38] Additionally, in Order 3438 the DOI stipulated that it will optimize public land use by considering "energy projects' capacity density" when performing the NEPA alternatives analysis.[39] Order 3438 provides a capacity density table that lists wind and solar as having the lowest capacity density which disadvantages them as compared to other energy projects.[40] Finally, in a memorandum issued on August 4, 2025, the DOI declared it would be performing an audit of the Fish and Wildlife Service's Eagle Take Permit Program with the potential of stricter

[32]Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Fed. Gov't's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (Jan. 20, 2025).
[33]New York v. Trump, No. 25-cv-11221, 2025 WL 3514301 (D. Mass. Dec. 8, 2025).
[34]Press Release, U.S. Dep't of the Interior, The Trump Administration Protects U.S. National Security by Pausing Offshore Wind Leases (Dec. 22, 2025).
[35]90 Fed. Reg. 30,821 (July 7, 2025).
[36]*Departmental Review Procedures for Decisions, Actions, Consultations, and Other Undertakings Related to Wind and Solar Energy Facilities*, U.S. DEP'T OF THE INTERIOR (July 15, 2025)
[37]U.S. Dep't of the Interior, Secretarial Order No. 3437, Ending Preferential Treatment for Unreliable, Foreign-Controlled Energy Sources in Department Decision Making (July 29, 2025),
[38]Department of the Interior Curbs Preferential Treatment for Wind Energy, U.S. Dep't OF THE Interior (July 29, 2025).
[39]U.S. Dep't of the Interior, Secretarial Order No. 3438, Managing Federal Energy Resources and Protecting the Environment (Aug. 1, 2025).
[40]*Id. § 6.*

enforcement in the future, understood to be largely directed at planned and operational wind projects.[41]

B. Fossil Fuel and Other Energy Projects

In 2025, in contrast to actions taken to delay renewable energy permitting, the Trump Administration took steps to speed up and streamline permitting for fossil fuel and other traditional energy projects. For example, President Trump utilized the National Emergencies Act, declaring a National Energy Emergency Order, which permits the government to use statutory authorities that are reserved for times of national emergencies.[42]

Under this Order, President Trump directed agencies to utilize their statutory emergency powers to speed up development and authorization of fossil fuel and other traditional energy projects.[43] Specifically, heads of executive departments and agencies were directed to identify authorities to facilitate domestic energy production on Federal lands, identify planned or potential actions to facilitate energy production that may be subject to the Army Corps' emergency permitting provisions, and use these authorities to facilitate the nation's energy supply. The Order required Agencies to report their findings and work with the Army Corps and EPA to coordinate application of Army Corps permitting provisions.

The National Energy Emergency Order also directed agencies to speed up permitting under other applicable laws. For example, the Order required EPA to consider issuing emergency fuel waivers to allow the year-round sale of E15 gasoline. Likewise, the Order required the Endangered Species Act (ESA) Committee to meet quarterly to review applications for exemption from requirements of the ESA, and set strict deadlines for the Secretary of the Interior to determine an applicant's eligibility for an ESA exemption and for the ESA Committee to grant or deny the application. Finally, the Order required the Secretary of Defense to collaborate with the Secretaries of Interior and Energy to "conduct an assessment of the Department of Defense's ability to acquire and transport the energy, electricity, or fuels needed to protect the homeland and to conduct operations abroad."[44]

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[41]Memorandum from Gregory Wischer, U.S. Dep't of the Interior, *Ensuring Compliance with the Bald and Golden Eagle Protection Act and Executive Order 14315* (Aug. 4, 2025).

[42]Exec. Order No. 14,156, 90 Fed. Reg. 8433 (Jan. 20, 2025).

[43]*Id.* The Executive Order defines "energy" as "crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606 (a)(3)."

[44]*Id.* § 7.

Chapter R: PUBLIC LAND AND RESOURCES
Annual Report[1]

2025 saw several significant developments affecting public lands and resources, including: executive orders and agency actions relating to the use of public lands; policy changes regarding national monuments; changes to National Environmental Policy Act (NEPA) implementation at land-management agencies including the Bureau of Land Management (BLM); changes in federal leasing policy for renewable energy; and court decisions on state claims to federal public lands, land exchanges, executive orders, and corner-crossing.

I. EXECUTIVE ORDERS AND OTHER PRESIDENTIAL ACTIONS

In 2025, the Trump Administration made prolific use of executive orders, several of which directed federal agencies to examine or revise their policies and practices relating to federal public lands. Key executive orders and their provisions relating to public lands include:

- Executive Order 14,154 of January 20, 2025, Unleashing American Energy, set out a policy "to encourage energy exploration and production on Federal lands and waters, including on the Outer Continental Shelf," and directed the Secretaries of the Interior and Agriculture to "reassess any public lands withdrawals for potential revisions."[2] The Order also repealed several executive orders from the Biden Administration,[3] including Executive Order 14,008 of January 27, 2021, Tackling the Climate Crisis at Home and Abroad, which had directed the Secretary of the Interior to review siting and permitting processes on public lands and in offshore waters to identify steps that would encourage the production of renewable energy on public lands, and to pause new oil and natural gas leasing on public lands "pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices …."[4]
- Executive Order 14,156 of January 20, 2025, Declaring a National Energy Emergency, declared a national emergency related to energy production, and directed federal agencies "to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources, including … on Federal lands."[5]
- Executive Order 14,225 of March 1, 2025, Immediate Expansion of American Timber Production, directed the Secretaries of the Interior and Agriculture, through the director of the BLM and the Chief of the United States Forest Service (USFS), to take several

[1]This report was compiled, reviewed and edited by Ed Roggenkamp (Greenberg Traurig, LLP). The Public Lands and Resources Committee thanks the following authors for their contributions: Michael Helbing (Penn State Center for Energy Law and Policy); Josh Kaplowitz (Troutman Pepper Locke LLP); Aurora Marsh (Greenberg Traurig, LLP); Barbara Marvin; Kamran Mohiuddin (Holland & Knight LLP); Evan Neustater (Greenberg Traurig, LLP); and Ed Roggenkamp (Greenberg Traurig, LLP). Any views or opinions expressed in this report are those of the authors in their personal capacities and do not represent the views of their organizations.
[2]90 Fed. Reg. 8,353, §§ 2(a), 9(a)-(b) (Jan. 29, 2025).
[3]*Id.* § 4(a)(iii).
[4]86 Fed. Reg. 7619, §§ 207-208 (Feb. 1, 2021).
[5]"Energy" and "energy resources" are defined as "crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals," excluding solar and wind energy. 90 Fed. Reg. 8433, §§ 1, 2(a) (Jan. 29, 2025).

steps to expedite timber production on Federal public lands, including setting a target for an annual amount of timber to be offered for sale from Federal lands managed by BLM and USFS over the next four years, and considering adopting or establishing categorical exclusions under NEPA relating to timber thinning and timber salvage.[6]

- Executive Order 14,241 of March 20, 2025, Immediate Measures to Increase American Mineral Production, directed agencies to identify mineral production projects for which applications had been submitted, identify "priority projects," and take steps to expedite permits or approvals. E.O. 14,241 directed the Secretaries of the Interior, Defense, Agriculture, and Energy to identify federal lands managed by their agencies "suitable for leasing or development … for the construction and operation of private commercial mineral production enterprises" and directed the Secretary of the Interior to generate "a list of all Federal lands known to hold mineral deposits and reserves," prioritize mineral production and mining-related purposes on those lands, including by revising land use plans under the Federal Land Policy and Management Act (FLPMA[7]).[8]
- Executive Order 14,261 of April 8, 2025, Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241, directed the Chair of the NEDC to designate coal as a mineral under Executive Order 14,241, directed the Secretaries of the Interior, Agriculture, and Energy to identify coal resources and reserves on federal lands and take steps to enable mining of those resources, and directed the Secretaries of the Interior and Agriculture to "prioritize coal leasing and related activities … as the primary land use for the public lands identified with coal resources … and expedite coal leasing in these areas."[9]
- Executive Order 14,315 of July 7, 2025, Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources, directed the Secretary of the Interior to "review regulations, guidance, policies, and practices under the Department of the Interior's [DOI's] jurisdiction to determine whether any provide preferential treatment to wind and solar facilities in comparison to dispatchable energy sources," and to make revisions "to eliminate any such preferences for wind and solar facilities."[10]
- On January 20, 2025, President Trump issued a Presidential Memorandum (the "Wind Memo") temporarily withdrawing all areas of the Outer Continental Shelf (OCS) from wind energy leasing under section 2 of the Outer Continental Shelf Lands Act (OCSLA) and prohibiting new or renewed wind energy leases on the OCS. The Wind Memo also directed the Secretary of the Interior to review existing offshore wind energy leases and consider terminating or amending them, and directed DOE, DOI, the Department of Agriculture (USDA) and the Environmental Protection Agency to decline to issue any new or renewed approvals, rights of way, permits, leases, or loans for onshore and offshore wind projects, "pending the completion of a comprehensive assessment and review of Federal wind leasing and permitting practices."[11]

[6] 90 Fed. Reg. 11,366, §§ 2, 3 (Mar. 6, 2025).
[7] 43 U.S.C. §§ 1701-1787.
[8] 90 Fed. Reg. 13,673, §§ 3, 5(a)-(b) (Mar. 25, 2025). The Order defined "mineral" as "a critical mineral, as defined by 30 U.S.C. § 1606(a)(3), as well as uranium, copper, potash, gold, and any other element, compound or material as determined by the Chair of the National Energy Dominance Council (NEDC)." *Id.* § 2(a). The NEDC was established by Exec. Order No. 14,213, 90 Fed. Reg. 9,945 (Feb. 20, 2025), with the Secretary of the Interior as its chair.
[9] 90 Fed. Reg. 15,517, §§ 3, 4(a), 5(a) (Apr. 14, 2025).
[10] 90 Fed. Reg. 30,821, § 4 (July 10, 2025).
[11] Presidential Mem., Temporary Withdrawal of All Areas on the Outer Continental Shelf From Offshore Wind Energy Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8,363 (Jan. 29, 2025).

2025 also saw several executive actions on national monuments. Under the Antiquities Act of 1906, the "President may, in [his] discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" on federal land to be national monuments.[12] On January 7, 2025, President Biden declared the Chuckwalla and Sáttítla Highlands National Monuments,[13] which together with other national monuments and protected lands form the Moab-to-Mojave Conservation Corridor, the largest connected network of protected lands in the continental United States. Both monuments emphasize tribal co-stewardship and cultural preservation, safeguarding lands significant to Native American tribes. The Trump administration quickly signaled interest in revising these designations. On February 3, the Secretary of Interior directed agency officials to (among other things) "review and, as appropriate, revise all withdrawn public lands, consistent with existing law, including 54 U.S.C. § 320301 [Antiquities Act] and 43 U.S.C. § 1714 [FLPMA]."[14] In May 2025, the Department of Justice (DOJ) issued an opinion "examin[ing] whether the [Antiquities] Act permits the President to revoke President Biden's proclamations creating the Chuckwalla and the Sáttítla Highlands National Monuments," and concluded that the Antiquities Act permits a president to revoke or alter prior national monument declarations, "including by eliminating a previously reserved national monument." The opinion reversed a 1938 Attorney General's Opinion which stated that monuments could be reduced but not eliminated.[15] The May 2025 DOJ opinion may foreshadow future efforts to revise or revoke national monument designations, as when the first Trump administration reduced the size of the Bears Ears and Grand Staircase-Escalante National Monuments in 2017.[16] However, as of the end of 2025, no national monument designations have been modified or revoked.

II. Legislative Developments

A. OBBBA and Public Lands

The One Big Beautiful Bill Act (OBBBA), signed into law on July 4, 2025, contains provisions affecting public lands management and requiring agencies to offer leases for natural resource extraction.[17] Section 50203 directs DOI to make at least 4 million additional acres available for coal leasing within 90 days of enactment.[18] The OBBBA also directs the Secretary of Interior to immediately resume quarterly onshore oil and gas lease sales and conduct a minimum of four oil and gas lease sales in nine western states, reduces royalty rates to pre-Inflation Reduction Act levels, and requires at least 30 offshore lease

[12] 54 U.S.C. § 320301(a).
[13] Proclamation No. 10,881, Establishment of the Chuckwalla National Monument, 90 Fed. Reg. 6,715 (Jan. 17, 2025); Proclamation No. 10,882, Establishment of the Sáttítla Highlands National Monument, 90 Fed. Reg. 6,727 (Jan. 17, 2025).
[14] U.S. Dep't of the Interior, Secretarial Order No. 3418, Unleashing American Energy § 4(c) (Feb. 3, 2025).
[15] *Revocation of Prior Monument Designations*, 49 Op. O.L.C. __, 2, 26 (May 27, 2025); *id.* at 42-43 (discussing *Proposed Abolishment of Castle Pinckney National Monument*, 39 Op. Att'y Gen. 185 (1938)).
[16] Proclamation No. 9,681, Modifying the Bears Ears National Monument, 82 Fed. Reg. 58,501 (Dec. 8, 2017); Proclamation No. 9,682, Modifying the Grand Staircase-Escalante National Monument, 82 Fed. Reg. 58,089 (Dec. 8, 2017).
[17] One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025).
[18] *Id.* § 50203.

sales in the Gulf of Mexico through 2040.[19] Section 50105 directs the Secretary of Interior to resume oil and gas lease sales in the National Petroleum Reserve in Alaska under a June 2020 final environmental impact statement (EIS) and a December 2020 Record of Decision, with no fewer than five lease sales consisting of no less than 4,000,000 acres in each sale over the next ten years, with the first lease sale to be made within one year and additional sales no later than every two years.[20] Section 50301 requires annual timber lease sales that increase by a minimum of 250,000,000 board-feet each fiscal year from 2026 through 2034, including annual timber sales on BLM land that increase by a minimum of 20,000,000 board-feet each fiscal year from 2026 through 2034.[21] The OBBBA also revised fees for wind and solar facilities on public lands, directing portions of those funds to the State and county or counties in which the facilities are located.[22]

B. Congressional Review Act Resolutions

On December 11, 2025, President Trump signed five Congressional Review Act joint resolutions relating to public lands, all of which disapproved Records of Decision (RODs) and resource management plan (RMP) amendments that restricted natural resource extraction on BLM lands. H.J. Res. 104 repealed a ROD and RMP amendment in Montana that made no federal coal available for leasing and made approximately 1.75 million acres unavailable for future coal leasing;[23] H.J. Res. 105 repealed a ROD and RMP amendment in North Dakota that limited oil and gas development in some areas and limited new coal leasing to within four miles of existing mines;[24] H.J. Res. 106 repealed a ROD and RMP amendment that designated approximately 3.6 million acres in Alaska as areas of critical environmental concern or research natural areas;[25] H.J. Res. 130 repealed a ROD and RMP amendment in Wyoming that had offered no federal coal for future leasing;[26] and H.J. Res. 131 repealed a December 2024 ROD that had been the basis for a January 2025 oil and gas lease sale in the Coastal Plain of the Alaska National Wildlife Refuge, which received no bids in part due to environmental protections based on the 2024 ROD.[27]

III. ADMINISTRATIVE AGENCY DEVELOPMENTS

"[A]pproximately 640 million acres of surface land are managed by the federal government, accounting for nearly 28% of the 2.3 billion acres of land (excluding inland waters) in the 50 states and District of Columbia." Four agencies manage 95% of those lands: BLM, within DOI, which manages 244 million acres of public lands and 713 million acres of subsurface mineral estate; USFS, within USDA, which manages 193 million acres of National Forest; U.S. Fish and Wildlife Service (USFWS), within DOI, which manages 89 million acres as part of the National Wildlife Refuge System; and the National Park Service (NPS), within DOI, which manages 80 million acres in the National Park System.[28]

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[19] *See id.* §§ 50101-50102.
[20] *Id.* § 50105.
[21] *Id.* § 50301.
[22] *Id.* §§ 50302–50303.
[23] Pub. L. No. 119-48, 139 Stat. 697 (2025).
[24] Pub. L. No. 119-49, 139 Stat. 698 (2025).
[25] Pub. L. No. 119-50, 139 Stat. 699 (2025).
[26] Pub. L. No. 119-51, 139 Stat. 700 (2025).
[27] Pub. L. No. 119-52, 139 Stat. 701 (2025); *see also* CONGR. RSCH. SERV., *Arctic Nat'l Wildlife Refuge: An Overview* (updated Apr. 25, 2025) (discussing leasing history).
[28] Congr. Rsch. Serv., *The Federal Land Management Agencies*, IF10585, at 1-2 (updated Oct. 7, 2024).

A. Revisions to NEPA Implementation Rules

Executive Order 14,154 revoked the Carter-era Executive Order 11,991,[29] which directed the Council on Environmental Quality (CEQ) to issue regulations interpreting NEPA and directed other federal agencies to follow those regulations. Executive Order 14,154 directed CEQ to propose rescinding its regulations and provide agencies with non-binding guidance on interpreting NEPA.[30] CEQ repealed its NEPA regulations effective April 11, 2025.[31] Subsequently, several executive agencies repealed their own NEPA interpretation regulations and issued non-binding guidance on their NEPA processes.

DOI and USDA fundamentally restructured their NEPA implementation in 2025 by rescinding long-standing NEPA regulations and implementing revised procedures. On July 3, DOI published an interim final rule rescinding most of its NEPA regulations at 43 C.F.R. Part 46,[32] relocating procedural requirements to a non-binding handbook.[33] DOI justified this shift based on the Supreme Court's characterization of NEPA as a "purely procedural statute" in *Seven Cnty. Infrastructure Coal.*[34] and on CEQ's rescission of its NEPA regulations. USDA published a parallel interim final rule on the same date, rescinding USFS-specific NEPA regulations in 36 C.F.R. part 220 and consolidating department-wide NEPA procedures in 7 C.F.R. part 1b.[35] DOI's revised procedures (to be applied by BLM, USFWS, and NPS) and USDA's revised procedures (to be applied by USFS) each limit opportunities for public comment, make publication of draft EISs discretionary, and narrow the scope of required effects analysis. Both agencies retain regulations governing emergency procedures, categorical exclusions, and applicant-prepared NEPA documents.

In April 2025, DOI invoked President Trump's declaration of a national energy emergency under Executive Order 14,156[36] to establish emergency procedures intended to expedite environmental review under NEPA for fossil fuel and critical mineral projects. Under these "alternative arrangements" for NEPA compliance, environmental assessments may be completed within 14 days and EISs within 28 days—a dramatic acceleration from typical timelines of one to two years.[37] DOI also expressed its intent to use established emergency procedures for compliance with the NHPA (36 C.F.R. § 800.12(a)),[38] and the Endangered Species Act (ESA) (50 C.F.R. § 402.05(a)).[39] The Velvet-Wood uranium mine

[29] Exec. Order No. 11,991, 42 Fed. Reg. 26,967, 26,967-68 (May 24, 1977).
[30] Exec. Order No. 14,154, §§ 5(a)-(b), 90 Fed. Reg. 8,353, 8,355 (Jan. 30, 2025).
[31] Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10,610 (Feb. 25, 2025).
[32] National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 29,498 (July 3, 2025) (interim final rule).
[33] U.S. DEP'T OF THE INTERIOR, *Handbook of National Environmental Policy Act Implementing Procedures*, 516 DM 1 (2025).
[34] Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. 168, 173 (2025).
[35] *See* National Environmental Policy Act, 90 Fed. Reg. 29,632 (July 3, 2025) (interim final rule).
[36] Exec. Order No. 14,156, 90 Fed. Reg. 8,433, 8,434 (Jan. 20, 2025).
[37] Press Release, U.S. Dep't of the Interior, Department of the Interior Implements Emergency Permitting Procedures to Strengthen Domestic Energy Supply (Apr. 23, 2025).
[38] U.S. Dep't of the Interior, *Emergency Procedures for Section 106 Compliance* (Apr. 23, 2025).
[39] U.S. Dep't of the Interior, *Alternative Procedures for Informal Section 7 Consultation* (Apr. 23, 2025).

in San Juan County, Utah became the first project reviewed under these expedited procedures. On May 23, 2025, the Bureau of Land Management approved the environmental assessment for Anfield Energy's proposal to reopen the former mine within the 14-day timeframe.[40] Construction at the Velvet-Wood mine, which had previously closed in 1984, commenced in November 2025, despite protests from environmental groups and tribal organizations.[41]

B. Revisions to Agency Management of Public Lands: Proposed Repeal of 2024 BLM Public Lands Rule, Agency Changes to Policies on Leasing of Public Lands

1. Proposed Rescission of Public Lands Rule

In September 2025, BLM proposed to rescind the 2024 Public Lands Rule, formally known as the Conservation and Landscape Health Rule.[42] Under FLPMA, BLM must manage federal public lands under the principle of multiple use and sustained yield, and is required to "develop, maintain, and, when appropriate, revise land use plans," known as resource management plans (RMPs) that regulate its management of public lands.[43] BLM had issued the Public Lands Rule effective June 10, 2024, with the stated intent "to advance the BLM's multiple use and sustained yield mission by prioritizing the health and resilience of ecosystems across public lands."[44] Among other things, the Public Lands Rule: (1) amended Part 1610 RMP rules for designation of areas of critical environmental concern[45] and (2) created a new subpart for "Ecosystem Resilience."[46] The Ecosystem Resilience rules defined "conservation," and the preamble to the Public Lands Rule stated that "conservation is a use on par with other uses and responds to the direction inherent in FLPMA's multiple use and sustained yield mandate to manage public lands for resilience and future productivity and to mitigate resource impacts."[47]

BLM's proposed rescission of the Public Lands Rule states that the Rule is unnecessary and violates FLPMA's principles of multiple use and sustained yield, because conservation is not a "use" under the statute and because the Rule would allow BLM to withdraw public lands from productive use without following FLPMA's procedural requirements. The proposed rescission would revert BLM's regulations governing BLM's designation and management of Areas of Critical Environmental Concern to the previous version, repeal 43 CFR subpart 6103, and repeal other regulatory changes in the Public Lands Rule.[48]

In addition to the proposed repeal of the Public Lands Rule, BLM and other agencies have revised their policies and procedures relating to the uses of federal public lands, with significant consequences for both conservation and natural resource development. Developments relating to specific uses are discussed below; more detail may

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[40] Press Release, U.S. Dep't of the Interior, Interior Department Approves Utah Uranium-Vanadium Mine to Strengthen U.S. Mineral Security (May 23, 2025).

[41] Andrew Christiansen, Velvet-Wood Uranium Mine Construction Begins, THE TIMES-INDEPENDENT (Moab, UT), Nov. 7, 2025.

[42] Rescission of Conservation and Landscape Health Rule, 90 Fed. Reg. 43,990 (Sept. 11, 2025).

[43] 43 U.S.C. §§ 1712(a), 1732(a); *see also* 43 C.F.R. §§ 1610.1-1610.8 (2023).

[44] *See* Conservation and Landscape Health, 89 Fed. Reg. 40308 (May 9, 2024).

[45] 43 C.F.R. § 1610.7-2.

[46] 43 C.F.R. § 6101.2 (2023).

[47] *Conservation and Landscape Health*, 89 Fed. Reg. at 40,308

[48] Rescission of Conservation and Landscape Health Rule, 90 Fed. Reg. 43,990, 43,991-92.

be found in Year in Review chapters on specific uses such as mining, oil and gas, and renewable energy.

2. Policy Changes Relating to Solar and Wind Development on Public Lands

Public lands hold significant potential for renewable energy development. The National Renewable Energy Laboratory (NREL) estimates that 44 million acres of public land are suitable for solar and 43 million acres are suitable for wind energy development, but only 3% of operating solar, land-based wind, and geothermal capacity are on federal lands.[49] In 2025, federal land management agencies made several policy changes disfavoring renewable energy. USDA issued a Secretary's Memorandum in March that focused largely on supporting critical minerals development and oil and gas production, but also ordered the Director of the USFS to review its policies to ensure that "unless required by law … [they] do not bias government or private-sector decision making in favor of renewable energy projects as compared to oil, gas, or other mineral resource projects."[50] In August, another USDA Secretary's Memorandum directed USFS to "incorporate land use efficiency metrics into the screening of applications for power generation on National Forest System lands" and "prioritize[]" "[p]rojects that demonstrate higher land-use efficiency," "expressed as megawatts (MW) or nameplate capacity (MW) per acre."[51] This metric disadvantages renewable energy development, because wind and solar projects typically require a larger footprint than conventional energy generation.

DOI made several changes to the approval process for wind and solar projects on public lands. In July, DOI responded to Executive Orders 14,315 and 14,156 and the Wind Memo by requiring "all decisions, actions, consultations, and other undertakings … related to wind and solar energy facilities" on public lands to undergo review by several levels of political appointees, including the Secretary of the Interior.[52] An August Secretarial Order directed DOI agencies to follow the same land-use efficiency principle as USFS, and states that "the use of Federal lands for *any* wind and solar projects" may not be consistent with FLPMA, OCSLA, and NEPA "given … their disproportionate land use …." The Order directs DOI to "only permit those energy projects that are the most appropriate land use …."[53] This suggests that solar and wind projects on DOI-managed lands, and rights-of-way for transmission lines connecting projects sited on private land, are unlikely to receive DOI approval. Shortly after the Order, Nevada's governor expressed concern with the impact of these policies on the state's energy generation needs, noting that 80% of Nevada's land is federally managed and that solar projects on BLM land within the state had been delayed.[54]

DOI also took several actions disfavoring offshore wind development in federal waters managed by the Bureau of Ocean Energy Management (BOEM). On May 1, the DOI Solicitor's Office reinstated a 2020 M-Opinion interpreting OCSLA to allow BOEM to disapprove offshore wind projects if they cause more than *"de minimis"* interference

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[49]Trieu Mai et al., *Land of Opportunity: Potential for Renewable Energy on Federal Lands* (Jan. 2025).

[50]S*ee* Memorandum from Off. of the Sec'y of U.S. Dep't Agric. (Mar. 19, 2025).

[51]Memorandum from Off. Of the Sec'y of U.S. Dep't Agric. (Aug. 21, 2025).

[52]*See* Memorandum of Gregory Wischer, Deputy Chief of Staff of the Off. of Sec'y of U.S. Dep't Int. to Assist. Sec'ys, Bureau and Off. Heads (July 15, 2025).

[53]U.S. Dep't of the Interior, Secretarial Order No. 3438 (Aug. 1, 2025) (emphasis in original).

[54]*See* Letter from Joe Lombardo, Governor of Nev., to Doug Burgum, Sec'y of the Interior (Aug. 4, 2025); Memorandum from Acting Solicitor, U.S. Dep't of the Interior, Off. of the Solicitor, to the Sec'y of the Interior (May 1, 2025).

with other ocean uses.[55] On April 16, BOEM issued a "stop work" order halting construction of Empire Wind 1, a project offshore of New York;[56] BOEM lifted the Empire Wind stop-work order on May 19. BOEM issued another stop-work order on August 22 to Revolution Wind, a project under construction offshore of Rhode Island.[57] Revolution Wind's developer, Orsted, filed suit and obtained a preliminary injunction to lift the stop-work order on September 22, 2025.[58] Between September and December, DOJ filed motions in citizen suits challenging BOEM approvals of four offshore wind projects, seeking to voluntarily remand (and in one instance vacate) the projects' approvals in order to "re-review" them and make "new decisions"[59] based on the May 1 M-Opinion. As of December 31, one court has indicated that it will not grant a remand,[60] while another has allowed the remand to go forward.[61] And on December 22, BOEM announced that it was immediately suspending the leases for all five offshore wind projects under construction, citing purported "national security risks" due to radar interference identified "in recently completed classified reports" by DOD.[62]

3. Timber Sales and Leasing for Coal and Geothermal Production on Public Lands

On April 3, 2025, in response to Executive Order 14225, the Secretary of Agriculture issued Memorandum 1078-006 documenting an "Emergency Situation Determination" under the Infrastructure Investment and Jobs Act. The Secretary determined that over 112 million acres of USFS land (out of approximately 193 million acres in total) are in an emergency situation caused by either wildfire or insect and disease risk; as a result, the Forest Service is authorized to allow the commercial or noncommercial harvest of several categories of trees deemed to help address the emergency status of those

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[55] Memorandum from Acting Solicitor, U.S. Dep't of the Interior, Off. of the Solicitor, to the Sec'y of the Interior (May 1, 2025).
[56] *See* Letter from Walter Cruickshank, Acting Dir., Bureau of Ocean Energy Mgmt., to Matthew Brotmann, Sec'y, Empire Offshore Wind LLC (Apr. 16, 2025).
[57] Letter from Matthew Giacona, Acting Dir., Bureau of Ocean Energy Mgmt., to Rob Keiser, Head of Asset Mgmt., Ørsted N. Am. Inc. (Aug. 22, 2025).
[58] Revolution Wind, LLC v. Burgum, No. 1:25-cv-02999-RCL, 2026 U.S. Dist. LEXIS 9369, at *2 (D.D.C. Jan. 12, 2026).
[59] Fed. Defs.' Mot. & Mem. in Support of Voluntary Remand with Vacatur & to Dismiss at 7–10, Mayor & City Council of Ocean City v. U.S. Dep't of the Interior, 24-cv-03111 (D. Md. filed Sep. 12, 2025); Fed. Defs.' Mot. & Mem. in Supp. of Voluntary Remand & Stay at 6–9, Town & Cnty. of Nantucket v. Burgum, No. 25-cv-00906 (D.D.C. filed Sep. 18, 2025); Save Long Beach Island, Inc. v. U.S. Dep't of Com., No. 25-cv-02211 [ECF No. 13] (D.D.C. Sept. 26, 2025); ACK for Whales, Inc. v. U.S. Dep't of Com., No. 25-cv-1678-JW, ECF No. 18 (D.D.C. Dec. 2, 2025).
[60] Mayor & City Council of Ocean City v. U.S. Dep't of Interior, No. SAG-24-3111, 2025 WL 1827963, at *10 (D. Md. July 2, 2025).
[61] Town & Cnty. of Nantucket v. Burgum, No. 1:25-cv-00906, 2025 WL 3120419, at *2 (D.D.C. Nov. 4, 2025).
[62] *See* Press Release, U.S. Dep't of the Interior, Trump Administration Protects U.S. National Security by Pausing Offshore Wind Leases (Dec. 22, 2025).

lands.[63] Conservation groups have initiated lawsuits to challenge recent timber approvals, including lawsuits that have challenged the government's use of emergency powers.[64]

Following the passage of the OBBBA, DOI identified approximately 13.1 million acres of federal lands available for lease effective October 2, 2025.[65] As of December 4, 2025, the Department of the Interior announced that lease sales and expansions were underway, representing hundreds of millions of tons of coal,[66] but a number of lease auctions have failed to result in a sale due to inadequate bids.[67]

BLM holds competitive sales of leases that allow lessees to explore for and develop geothermal resources on federal land; these leases can be extended if production is established.[68] This year, several lease sales have broken records for the total amount of bids, the price per acre, or the number of parcels receiving winning bids, suggesting a growing interest in geothermal development on federal land. The sales included an April 9 BLM lease sale for 14 parcels of federal land in Utah totaling nearly 51,000 acres,[69] a July 10 geothermal lease sale on 5,235 acres of federal land in Oregon,[70] and an October 21 lease sale of over 375,000 acres of federal land in Nevada, which received bids for eighty-six of the 113 parcels offered, resulting in a total of $9.44 million in bid revenue – setting a record for geothermal lease bids in Nevada.[71]

IV. Judicial Developments

A. *Supreme Court Orders*

In August 2024, the State of Utah sought to invoke the Supreme Court's original jurisdiction to obtain a judgment directing the United States to begin disposition of approximately 18.5 million acres of unappropriated federal lands within Utah managed by BLM. (Utah described "unappropriated" federal land as land not reserved by Congress or the president for specific purposes, such as National Parks or National Forests, and not retained by the federal government to carry out enumerated powers, such as military installations.) Utah's proposed complaint argued that the United States' indefinite retention and management of unappropriated land via FLPMA exceeds Congress's authority under Article IV's Property Clause. Utah therefore requested a judgment declaring that the United

[63] Memorandum from Off. of the Sec'y, U.S. Dep't of Agric. (Apr. 3, 2025).

[64] *See*, *e.g.*, Laura Lundquist, *Groups Challenge Third USFS Logging Project over Lynx*, Missoula Current (Nov. 26, 2025); *Lawsuit Challenges Forest Service's 'Emergency' Logging in Northern California Forest*, Active NorCal (Dec. 2, 2025); Jon Haber, *Federal Lands Litigation – Update through November 30, 2025*, The Smokey Wire (Dec. 4, 2025).

[65] Implementing Section 50203 of the One Big Beautiful Bill Act, 90 Fed. Reg. 47,813 (Oct. 2, 2025).

[66] Press Release, U.S. Dep't of the Interior, Interior Unleashes Am. Coal Power in Bold Move to Advance Trump Admin. Priorities (last updated Dec. 4, 2025).

[67] Matthew Brown, *US Rejects Bid to Lease Coal from Public Lands in Utah as Sales in Western States Fall Flat*, Associated Press (last updated Oct. 16, 2025).

[68] Press Release, Bureau of Land Mgmt., BLM to Hold October 2025 Geothermal Lease Sale in Nevada (Aug. 22, 2025).

[69] Alexander Richter, *BLM Geothermal Lease Sale in Sets New Record for Highest Revenue per Acre*, Think GeoEnergy (Apr. 11, 2025).

[70] Carlo Cariaga, *Two Parcels in Oregon Leased Following BLM Geothermal Lease Sale*, Think GeoEnergy (Aug. 4, 2025).

[71] Carlo Cariaga, *BLM Nevada Geothermal Lease Sale Nets over USD 9 Million in Bids on 86 Parcels*, Think GeoEnergy (Oct. 23, 2025).

States' "policy and practice of indefinitely retaining its unappropriated lands in Utah over Utah's objection" and provisions of FLPMA implementing that policy are unconstitutional, and ordering the United States to begin disposing of its unappropriated federal lands within Utah.[72] On January 13, the Supreme Court denied Utah's petition without comment.[73]

The Supreme Court also denied a petition for certiorari by Apache Stronghold, who sought to block a land transfer in the Tonto National Forest including Oak Flat, also known as Chi'chil Bildagoteel, a Native American sacred site in Arizona, for the proposed Revolution Copper mine that would result in destruction of the site via land subsidence.[74]

B. Lower Court Decisions

1. Land Exchanges

In two other lawsuits relating to Oak Flat, plaintiffs including the San Carlos Apache Tribe and the Arizona Mining Reform Coalition sought to block or delay the land transfer at Oak Flat on other grounds, including a NEPA challenge to the USFS's revised EIS issued in June. In August, the Ninth Circuit granted an emergency injunction and paused the transfer of Oak Flat pending a decision on the merits.[75]

Another case involving a federal land exchange was *National Wildlife Refuge Association v. Rural Utilities Service*, which considered an exchange of 19 acres of USFWS land within the Upper Mississippi River National Wildlife and Fish Refuge (Refuge) needed to allow the Cardinal-Hickory Transmission Line to cross the Mississippi River for 35.69 acres of private land adjacent to the Refuge. The utilities proposing the Cardinal-Hickory line also proposed to remove another transmission line nearby and restore approximately 28 acres within the Refuge occupied by that line. The plaintiffs claimed that the proposed land exchange violated the National Wildlife Refuge System Improvement Act of 1997 (Refuge Act[76]), the Comprehensive Conservation Plan for the Refuge (CCP), and NEPA.[77]

After finding that the case was still justiciable despite the fact that the land exchange had gone forward and the transmission line was complete, the Court accepted USFWS's conclusion that the Refuge Act did not require a determination that the transmission line was a "compatible" use within the Refuge because, following the land exchange, the land on which the line would be constructed was no longer Refuge land and therefore the Refuge Act's compatibility requirement would not apply. Instead, the Court accepted the defendants' argument that the section of the Refuge Act requiring a compatibility determination was separate from the provision of the law governing "land exchanges," which only requires USFWS to determine whether a land exchange is "suitable." While the Court noted its "sympath[y] to [the] plaintiffs' argument" that this would create a loophole in the Refuge Act allowing incompatible uses to take place via a land exchange,[78] it also rejected the plaintiffs' claims that USFWS's suitability

[72] Mot. for Leave to File Bill of Compl. & Br. in Supp. at 18–28, Utah v. United States of Am. (Aug. 20, 2024) (discussing, inter alia, U.S. Const. art. IV § 3, cl. 2).
[73] Order Denying Lv. to File, Utah v. United States, 160 Orig., 604 U.S. __ (Jan. 13, 2025).
[74] Order Denying Cert., Apache Stronghold v. United States, No. 24-291, 605 U.S. __ (May 27, 2025).
[75] Order, Arizona Mining Reform Coal. v. U.S. Forest Serv., No. 25-5185, San Carlos Apache Tribe v. U.S. Forest Serv., No. 25-5189 (consol.) (Aug. 18, 2025).
[76] 16 U.S.C. §§ 668dd-ee.
[77] No. 3:24-cv-00139, 2025 WL 2719976, *5-6, 8, 10-12 (W.D. Wis. Sept. 24, 2025)
[78] *Id.* at *10–12 (citing, inter alia, 16 U.S.C. § 668dd(d) & (b)(3)).

determination and NEPA analysis were arbitrary and capricious, and upheld USFWS's finding that the land exchange was consistent with the CCP.[79]

2. Challenges to Executive Orders and Agency Implementation

Several lawsuits have been filed challenging the administration's executive orders and their implementation, with varying results. In *New York v. Trump*, the federal district court for the District of Massachusetts vacated orders from several federal agencies implementing the Wind Memo's order to institute a moratorium on permitting and approvals for wind energy projects, including those on federal lands. In response to a lawsuit by seventeen states and the District of Columbia, the Court determined that the states had standing to sue and that the permitting moratoria were final agency actions subject to review under the Administrative Procedure Act (APA). The Court then declared those actions unlawful in light of several laws relating to wind energy permitting that either contain fixed deadlines applicable to permit processing or require the agencies to act promptly on permit applications, and because the APA itself requires expeditious agency proceedings.[80]

However, in *Lighthiser v. Trump*, the federal district court for the District of Montana dismissed a group of youth plaintiffs' challenge to Executive Orders 14,154, 14,156, and 14,261. The youths had alleged that the executive orders and the agency actions they contemplated were unconstitutional and *ultra vires* because they would result in greater emissions of greenhouse gases and threats due to climate change. While the Court found that the plaintiffs had presented "overwhelming evidence that climate change is affecting them now in concrete ways, and that these effects will imminently worsen as a result of the Challenged E[xecutive] O[rder]s," it also determined that the plaintiffs could not establish redressability and lacked Article III standing, and therefore dismissed their case.[81]

3. National Historic Preservation Act

In *Tohono O'odham Nation v. United States Department of the Interior*, the Ninth Circuit reversed and remanded the grant of a motion to dismiss claims under section 106 of the National Historic Preservation Act ("NHPA"),[82] holding that DOI violated the NHPA by issuing Limited Notices to Proceed for the SunZia transmission line without properly consulting with the Native American plaintiffs on the identification of the San Pedro Valley as a Traditional Cultural Place, a term used by NPS to refer to a place eligible for listing on the National Register of Historic Places because of its association with traditional cultural beliefs, customs, or practices, as allegedly required by BLM's Programmatic Agreement.[83]

4. Corner Crossing on Public Lands

The case of *Iron Bar Holdings, LLC v. Cape* applied precedent from the 19th and 20th centuries to determine that corner-crossing from one section of "checkerboard" public lands to another was permitted under the 1885 Unlawful Inclosures Act, which preempted Wyoming property law that would otherwise consider the minimal intrusion into the

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[79] *Id.* at *14-21.
[80] 790 F. Supp. 3d 8 (D. Mass. 2025).
[81] No. CV 25-54-BU-DLC, 2025 WL 2930569, (D. Mont. Oct. 15, 2025) at *3, 6, 10-11.
[82] 52 U.S.C. § 306108.
[83] 138 F.4th 1189, 1193-94 (9th Cir. 2025).

airspace of private lands in the checkerboard during corner crossing to be a civil trespass.[84] *Iron Bar Holdings* first discussed the history of land ownership in some areas of the western United States, which was created by "a checkerboard land-grant scheme" intended to encourage construction of the transcontinental railroad, whereby

> Congress created a 10-mile corridor extending in both directions from the railroad's proposed route (… later … extended to 20 miles). Surveyors then platted this corridor into 6-mile by 6-mile squares called 'townships.' Each township was then subdivided into 36 one-square mile (640 acre) 'sections,' which were numbered 1-36 (beginning in the northeastern-most section and snaking west). … Congress … granted the odd-numbered squares to railroad companies corresponding to each mile of track they laid. … Congress retained the even-numbered squares for the federal government.[85]

This created the "checkerboard" of public and private landownership that persists in some areas of the western United States to this day. It also created conflicts between landowners and those who wished to use public lands for purposes such as grazing livestock on what was at the time the open range, and resulted in private landowners illegally fencing public lands or gaining exclusive control of water sources to prevent others from using public lands within their holdings. In order to prevent the unlawful appropriation and "absorption and ownership of vast tracts of our public domain" by the owners of adjacent private lands, "Congress passed the Unlawful Inclosures Act of 1885 [UIA]."[86] *Iron Bar Holdings* examined the text of the UIA and summarized it as "provid[ing] that any inclosure of public land is prohibited, and no one may completely prevent or obstruct another from peacefully entering or freely passing over or through public lands."[87]

The dispute in *Iron Bar Holdings* arose between the owner of a ranch spanning 50 square miles (Iron Bar), within which "are 27 federal and state public parcels" most of which are "completely enclosed by Iron Bar's private land" "[e]xcept for the points where the public corners touch," and elk hunters who, while hunting on public lands in 2020 and 2021, used a GPS tool to navigate to the point where corners of public parcels touch, then "'corner-crossed' and stepped directly from the corner of one public parcel to the corner of the other" within Iron Bar's holdings. Iron Bar's employees confronted the hunters and contacted law enforcement, who initially did not issue a warning or citation. In 2021, Iron Bar's manager contacted a local prosecutor who agreed to prosecute the hunters for criminal trespass. The hunters were acquitted at a jury trial, but Iron Bar sued them for civil trespass.[88]

After finding that the hunters' actions were a civil trespass under Wyoming property law, which enables property owners to exclude intrusions into the airspace over their land, the Tenth Circuit – relying on case law including an 1897 Supreme Court decision interpreting the UIA – determined that "checkerboard landowners cannot maintain a barrier that has the effect of fully enclosing public lands and preventing complete access for a lawful purpose," and that doing so is a nuisance under federal law, and the UIA applies to 'all inclosures of any public land," not just those done through fencing.[89] Thus, the UIA

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[84]31 F.4th 1153 (10th Cir. 2025), cert. denied, __ S. Ct. __, 2025 WL 2949573 (2025).
[85]*Id.* at 1158-59.
[86]*Id.* at 1160 (citing 43 U.S.C. § 1061 *et seq.*).
[87]*Id.* at 1167 (citing 43 U.S.C. §§ 1063, 1066).
[88]*Id.* at 1160-64.
[89]*Iron Bar Holdings*, 31 F.4th at 1168–74 (citing, inter alia, Camfield v. United States, 167 U.S. 518 (1897)).

preempts state property law, and corner-crossing without physically touching private land is permitted.

Chapter S: SCIENCE AND TECHNOLOGY
2025 Annual Report[1]

I. THE NEW "GOLD STANDARD" FOR SCIENCE—BEWARE OF ISOLATED RIGOR

A. *Trump's Executive Order Restoring "Gold Standard" Science*

President Trump issued Executive Order 14303 entitled "Restoring Gold Standard Science."[2] The Executive Order directed that the Office of Science and Technology Policy issue guidance for federal agencies on scientific rigor, including nine standards for science conducted in a manner that yields "reproducible" results; "transparent" results; "communicative of error and uncertainty"; "collaborative and interdisciplinary"; "skeptical of its findings and assumptions"; "structured for falsifiability of hypotheses"; "subject to unbiased peer review"; "accepting of negative results as positive outcomes"; and "without conflicts of interest."[3]

In June 2025, the Director of the Office of Science and Technology Policy issued a memorandum to federal agencies providing further details on these nine standards and directing that each agency report back to his office within 60 days of the actions that agency was taking to implement the nine standards.[4] EPA responded in August 2025 by rescinding a 2025 policy related to scientific integrity and reinstating an earlier 2012 version of that policy.[5] The 2012 EPA policy is now EPA's formal standards for scientific inquiry at the agency.[6]

Scott Alexander, a psychiatrist and part-time philosopher, described the problem with this ostensible demand for scientific rigor in his 2014 essay entitled: "Beware Isolated Demands for Rigor."[7] Alexander starts his analysis with defining the problem of "when someone chooses to apply philosophical rigor selectively", particularly in a way that benefits the initiator of that purported rigorous standard to the disadvantage of others.[8] Alexander applies this same theory to demands for scientific rigor, providing the example of a Science Czar who worries about publication bias and limited correlation studies to reject an economic study but then, on the basis of a random study of six isolated restaurants in Podunk, Ohio, reaches his own contrary conclusion without further ado. As Alexander

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[1] By: Norman A. Dupont, Cody S. Parker, Chelsea Nielsen, Jessica Hardee, Axel Berky, and Khushi Desai. Mr. Dupont and Mr. Parker are attorneys with Aleshire & Wynder LLP in Los Angeles. Ms. Nielsen is an attorney with Paul Hastings LLP in San Francisco. Ms. Jessica Hardee is an attorney with the Southern Environmental Law Center in Chapel Hill. Dr. Axel Berky is a scientist with Geosyntec Consultants, Inc. in Durham. Ms. Desai is a scientist at Geosyntec in San Francisco.

[2] Exec. Order No. 14303, Restoring Gold Standard Science, 90 Fed. Reg. 22,601 (May 29, 2025).

[3] *Id.* at 22,602 (Sec. 3(a) of Executive Order).

[4] Michael J. Kratsios, Memorandum for the Heads of Exec. Dep'ts & Agencies, Agency Guidance for Implementing Gold Standard Science in the Conduct & Mgmt. of Scientific Activities (June 23, 2025).

[5] ENV'T PROT. AGENCY, OFF. OF INSPECTOR GEN., *Scientific Integrity and Misconduct Issues: Scientific Integrity at the EPA* (last updated Oct. 21, 2025).

[6] ENV'T PROT. AGENCY, *Scientific Integrity Policy for Transparent & Objective Science* (last visited Apr. 13, 2026).

[7] S. Alexander, *Beware Isolated Demands for Rigor*, SLATE STAR CODEX (Aug. 14, 2014).

[8] *Id.* at I. ("Philosophical rigor, usually a virtue, has been debased to an isolated demand for rigor in cases where it benefits Heraclitus"). *Id.*

concludes, in this case "All his [Science Czar's] knowledge of standards of scientific rigor are going not towards bettering science, but toward worsening science."[9]

B. EPA's Isolated Demand for Rigor in Climate Science and the Endangerment Finding

Scott Alexander's essay and concern about isolated or one-sided demands for scientific rigor is vividly illustrated by the EPA Administrator's August 2025 announcement of a complete revisiting of the science supporting the agency's prior Endangerment Finding concerning greenhouse gas (GHG) emissions. EPA Administrator Zeldin announced his decision (subject to review and comment) to rescind the Endangerment Finding and all resulting GHG emissions standards for mobile sources (motor vehicles).[10] In doing so, Administrator Zeldin stated that he reviewed "available information" including a report by a separate agency, the U.S. Department of Energy's newly-constituted Climate Working Group, that was, per the Administrator, only available in draft at the time he reviewed it.[11] According to critics, the Climate Working Group of five scientists was formed in secret and in violation of the Federal Advisory Committee Act.[12] The head of DOE, Chris Wright, announced the disbandment of this short-lived group in early September 2025—it's "critical report" apparently done.

Nonetheless, Administrator Zeldin choose to rely upon a draft version of this DOE report while subjecting other reports by the United Nations Panel on Climate Change (IPCC) to the "transparency and reliability requirements" of the President's Executive Order 14303.[13] The Administrator, whose own background consists of being a former Army officer and a New York state and later federal (House of Representatives) politician, also implicitly chastised the IPCC for only reviewing other scientific literature, but not conducting its own independent research on climate issues.[14] Like Alexander's hypothetical Science Czar, however, the Administrator did not mention that his preferred group from DOE, the Climate Working Group, also failed to conduct its own independent research on climate issues. Echoing Alexander's hypothetical Science Czar, Administrator Zeldin issued a unilateral demand for rigor in science; one not matched in his own announcement of proposed rulemaking.[15]

B. The Lawsuit by EDF and the Union for Concerned Scientists Requesting Transparency for DOE's Climate Working Group that EPA relies upon

In *Environmental Defense Fund, Inc. v. Wright*, plaintiffs challenge the formation and use of the "Climate Working Group" convened by the Department of Energy under Secretary Christopher Wright. The Working Group recently released a report, which the EPA under Administrator Lee Zeldin is relying on to justify rolling back the 2009

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[9] *Id.* at III.
[10] Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36,288 (Aug. 1, 2025) (to be codified at pts. 85, 86, 600, 1036, 1037, and 1039).
[11] 90 Fed. Reg. at 36,292 & 36,292 n.10. *See also* U.S. Dep't of Energy, *A Critical Review of Impacts of Greenhouse Gas Emissions on the U.S. Climate* (July 23, 2025).
[12] *See* UNION OF CONCERNED SCIENTISTS, *Comments on Proposed Rule for Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards* (Sept. 22, 2025).
[13] 90 Fed. Reg. at 36,292 & 36,292 n.14.
[14] *Id*. at 36,292 & 36,292 n.12.
[15] *See* N. Dupont, *All that Glistens Is Not Gold': The 'gold standard' for science and EPA's disregard of it*, ABA TRENDS (Jan. 30, 2026).

Endangerment Finding supporting federal greenhouse gas regulations.[16] Plaintiffs allege the group operated in secrecy, included members skeptical of mainstream climate science, and produced a report containing misrepresentations of scientific data.[17] They argue this violates the Federal Advisory Committee Act (FACA), which requires transparency and balanced membership in advisory groups.[18] The complaint seeks to prevent reliance on the report and to ensure compliance with FACA, asserting that EPA's actions based on the secret report are unlawful.[19]

Plaintiffs moved for preliminary injunction due to "their inability to make informed comments regarding the Climate Working Group to the EPA during the comment period."[20] However, the United States District Court for the District of Massachusetts denied the preliminary injunction because it determined that the alleged injury was not irreparable because Plaintiffs can receive this information during the ongoing litigation and can thus make an informed comment prior to the comment period's end.[21] Moreover, the court noted that Plaintiffs were able to submit comments on the validity of the Group's report.[22]

However, the court granted the Plaintiffs' motion for summary judgment on the issue of whether the Climate Working Group was subject to FACA. In opposition of the motion, defendants argued that the group was "exempt from FACA because it was 'assembled to exchange facts or information with a Federal official.'"[23] The court retorted that such a suggestion "borders on sophistry."[24] The Court cited the report itself, which demonstrated that the report clearly provided "advice or recommendations" for a renewed approach to climate policy.[25]

II. KEY PFAS DEVELOPMENTS

In 2025, EPA narrowed PFAS regulation under the Safe Drinking Water Act while expanding reporting and oversight under the Toxic Substances Control Act.

A. Updates to Federal Drinking Water Standards for PFAS

On April 26, 2024, EPA established national primary drinking water standards for six PFAS under the Safe Drinking Water Act (SDWA).[26] In May 2025, the EPA announced that the agency would be proposing only to keep the drinking water standards for the two most widely regulated PFAS compounds: PFOA and PFOS. The agency intends to propose rescinding the regulations for PFHxS, PFNA, HFPO-DA (i.e., GenX), PFBS, and the associated Hazard Index mixture.[27] EPA also plans to reconsider the regulatory

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[16]800 F. Supp 3d 284, 286-7 (D. Mass. 2025).
[17]Complaint, *Mohave County v. U.S. Bureau of Reclamation*, No. 3:22-cv-08246 ¶¶ 3-5 (D. Ariz. Dec. 30, 2022).
[18]*See* 800 F. Supp 3d at 288.
[19]*Mohave County*, Complaint ¶ 5.
[20]*Envtl. Def. Fund, Inc.,* 800 F.Supp.3d at 287.
[21]*Id*.
[22]*Id*.
[23]*Id.* at 288 (quoting 41 C.F.R. § 102-3.40(e)).
[24]*Id.* at 288 (quoting 41 C.F.R. § 102-3.40(e)).
[25]*Id.* (citing 5 U.S.C. § 1001(2)(A)).
[26]PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32,532 (Apr. 26, 2024) (to be codified at 40 C.F.R. pts. 141, 142).
[27]Press Release, Envtl. Prot. Agency, EPA Announces it will keep maximum contaminant levels for PFOA, PFOS (May 14, 2025).

determinations for those PFAS, meaning the agency will reconsider whether the substances should be regulated under the SDWA.[28]

EPA plans to set the maximum contaminant levels (MCLs) for both PFOA and PFOS to 4.0 parts per trillion (ppt), consistent with the 2024 Rule.[29] MCLs are set as close as possible to the maximum contaminant level goal, which is zero for PFOA and PFOS. The MCL for PFOA and PFOS is the lowest level that is feasible for effective implementation given current quantitative limitations.[30] Improved quantification of PFOA and PFOS may or may not result in lower MCLs as MCLs are not solely health-based but also consider costs and benefits of implementation.[31]

1. Regulatory Responses and Implementation Challenges

Some states and local agencies have also adopted their own water quality guidelines, creating a patchwork of regulatory limits for PFAS.[32] Several agencies in Florida, Michigan, Minnesota, Wisconsin, and California have promulgated their own surface water criteria.[33] These criteria for PFOA and PFOS vary by over five orders of magnitude due to differences in exposure assumptions as well as toxicity and bioaccumulation data interpretation.[34] Some criteria fall below analytical detections limits and ambient background concentrations due to these uncertainties, underscoring the difficulty of defining consistent, health-based water criteria for PFOA and PFOS.[35]

There are important practical implications of regulating PFAS at or below their detection limit.[36] The first is the ubiquitous nature of PFAS, making it potentially difficult to delineate site-specific PFAS from ambient background concentrations.[37] Potential cross-contamination during sampling and analysis also can incorrectly indicate a presence of PFAS.[38]

Secondly, because toxicological data for PFOA and PFOS are still evolving, regulatory risk assessments typically apply highly conservative exposure assumptions, resulting in extremely low screening criteria.[39] Under this framework, even very low

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[28] *Id*.
[29] 89 Fed. Reg. at 32,532.
[30] Office of Water, Envtl. Prot. Agency, PFAS National Primary Drinking Water Regulations 10 (Apr. 23, 2024).
[31] *Id.* at 6.
[32] Betsy Ruffle et al., *U.S. and International Per- and Polyfluoroalkyl Substances Surface Water Quality Criteria: A Review of the Status, Challenges, and Implications for Use in Chemical Management and Risk Assessment*, 20 INTEGRATED ENV'TAL ASSESSMENT & MGMT., 36, 37 (Apr. 12, 2023).
[33] *Id*
[34] *Id*
[35] *Id.* at 38.
[36] *Id.* at 53; Syazwani Mohd Asharuddin et al., *Recent Advancement and Understanding on the "Forever Chemicals," PFAS in Drinking Water*, 237 WATER AIR & SOIL POLLUTION art. 66, at 1, 2 (2026).
[37] B. Güzel*, Recent Advancements on Per- and Polyfluoroalkyl Substances (PFAS) in the Environment for Human Health: A Comprehensive Review,* An International Journal of Environmental Pollution, 236 Water, Air, & Soil Pollution (2025).
[38] INTERSTATE TECH. & REGUL. COUNCIL, PFAS – Per- and Polyfluoroalkyl Substances § 11.1.6 (Field QC Samples) (last updated January 2026).
[39] Janet Anderson et al., Grouping of PFAS for Human Health Risk Assessment: Findings from an Independent Panel of Experts, 134 REGUL. TOXICOL. & PHARMACOL. art. 105226, at 1, 8 (2022).

measurable concentrations may be treated as posing unacceptable risks.[40] Consequently, risk estimates at these low concentrations may overestimate true health risks.[41]

Lastly, the cost of achieving such low detection limits is high for laboratories and may be prohibitively expensive for utilities, public water systems, and other stakeholders.[42]

2. Extension of Compliance Deadline

In May 2025, EPA announced plans to extend the compliance period for meeting the PFOS and PFOA MCLs. Under the current 2024 Rule, public water systems (PWS) have until April 26, 2029 to meet the MCLs for the six PFAS, which was itself an extension of the requirement set out in the SDWA.[43] EPA now plans to finalize a rule in the spring of 2026 that would give PWS until 2031 to make improvements to meet the MCLs.[44]

B. PFAS Developments Under the Toxic Substances Control Act

On January 6, 2025, EPA finalized the rule adding nine additional PFAS compounds to the Toxic Release Inventory (TRI) list.[45] This list includes:

- Ammonium perfluorodecanoate (PFDA NH4) (3108–42–7)
- Sodium perfluorodecanoate (PFDA-Na) (3830–45–3)
- Perfluoro-3-methoxypropanoic acid (377–73–1)
- Fluorotelomer sulfonate acid (27619–97–2)
- Fluorotelomer sulfonate anion (425670–75–3)
- Fluorotelomer sulfonate potassium salt (59587–38–1)
- Fluorotelomer sulfonate ammonium salt (59587–39–2)
- Fluorotelomer sulfonate sodium salt (27619–94–9)
- Fluorinated acetic acid derivatives (3030471–22–5)[46]

Facilities must begin reporting releases of these substances starting with Reporting Year 2025, with reports due by July 1, 2026.[47] In October 2025, EPA further expanded the list to include Perfluorohexanesulfonic Acid (PFHxS) following a toxicological review.[48] The addition became effective on January 6, 2026, and facility reports are due by July 1, 2027.[49]

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[40] *Id.* at 7.
[41] *Id.* at 8.
[42] Hector Medina & Carson Farmer, Current Challenges in Monitoring Low Contaminant Levels of Per- and Polyfluoroalkyl Substances in Water Matrices in the Field, 12 TOXICS 8, at 1, 7 (2024).
[43] PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32532, 32633 (April 26, 2024) (codified at 40 C.F.R. pts. 141, 142).
[44] EPA Announces it will keep maximum contaminant levels for PFOA, PFOS, *supra* note 26.
[45] Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to Toxics Release Inventory (TRI) Beginning with Reporting Year 2025, 90 Fed. Reg. 573 (Jan. 6, 2025) (to be codified at 40 C.F.R. pt. 372).
[46] *Id.* at 574.
[47] *Id.*
[48] ENV'T PROT. AGENCY, *EPA Adds Additional PFAS to the Toxic Release Inventory*. (Oct. 7, 2025).
[49] *Id.*

In October 2023, EPA finalized a rule implementing the PFAS reporting and recordkeeping requirements under section 8(a)(7) of the Toxic Substances Control Act. [50] The rule requires manufacturers and importers of PFAS, including importers of articles (i.e., manufactured items such as finished goods or components), to submit a one-time report to EPA covering PFAS manufactured or imported at any time since January 1, 2011.[51]

In 2024, EPA issued additional final actions related to implementation of the reporting program. These included a rule delaying the start of the reporting period and a separate rule addressing PFAS inventory status.[52] The latter designates certain PFAS as inactive on the TSCA Inventory and establishes a significant new use rule requiring EPA notification and review before those substances may reenter commerce.[53]

On May 13, 2025, EPA announced an interim final rule that further extended the reporting period. [54] Most manufacturers have until October 13, 2026 to make their submissions.[55] "[S]mall manufacturers reporting exclusively as article importers" have a later deadline of April 13, 2027.[56]

On November 13, 2025, EPA published a proposed rule to modify the PFAS reporting and recordkeeping requirements under TSCA. [57] The proposed rule would establish four limited exceptions to the reporting and recordkeeping obligations. First, the proposal would exempt reporting for PFAS present in *de minimis* amounts in mixtures or articles (concentrations less than 0.1%). [58] Second, PFAS imported as part of an article would generally be excluded from the scope of reportable activities. Third, PFAS generated solely as byproducts of manufacturing processes in small quantities would be exempt. [59] Finally, PFAS manufactured in small quantities exclusively for research and development purposes would no longer be subject to reporting.[60]

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[50]Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, 88 Fed. Reg. 70,516 (Oct. 11, 2023) (codified at 40 C.F.R. pt. 705).

[51]*Id.*

[52]Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Change to Submission Period, 89 Fed. Reg. 72,336 (Sept. 5, 2024) (codified at C.F.R. pt. 705).

[53]Per- and Poly-Fluoroalkyl Chemical Substances Designated as Inactive on the TSCA Inventory; Significant New Use Rule, 89 Fed. Reg. 1,822 (Jan. 11, 2024) (codified at C.F.F. pts. 9, 71).

[54] Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Change to Submission Period, 90 Fed. Reg. 20,236 (May 13, 2025) (to be codified pt. 705).

[55]*Id.*

[56]*Id.*

[57]Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Revision to Regulation, 90 Fed. Reg. 50,923 (Nov. 13, 2025) (to be codified C.F.R. pt. 705).

[58]*Id.* at 50,926.

[59]*Id.* at 50,928.

[60]*Id.* at 50,930.

C. Grappling with PFAS Science in Litigation and Recent Settlements

Given ongoing uncertainty surrounding PFAS science, courts have increasingly relied on structured case-management tools to address complex scientific disputes.[61] For example, in the Aqueous Film-Forming Foams (AFFF) multidistrict litigation pending in the United States District Court for the District of South Carolina, Judge Richard Gergel issued a case management order establishing procedures for a court-directed "Science Day."[62]

As part of that order, the parties were required to identify and exchange peer-reviewed scientific literature.[63] They were also required to present expert overviews addressing alleged causal relationships between AFFF exposure and specific disease outcomes.[64] These types of science days are non-evidentiary but still shape PFAS litigation, influencing discovery, expert development, and settlement.

There were several major PFAS settlements in 2025. In July 2025, manufacturing company DuPont entered into a $25 million settlement agreement stemming from a class-action lawsuit.[65] The lawsuit emerged from the discovery of PFOA contamination in the public drinking water supply and in private wells in the Village of Hoosick Falls, New York.[66] The settlement includes exposure compensation funding as well as long-term medical monitoring for exposed individuals.[67]

In August 2025, chemical manufacturing companies DuPont, Chemours, and Corteva agreed to a roughly $2 billion settlement with the state of New Jersey.[68] The settlement centered on four manufacturing facilities in the state that discharged PFAS.[69] As a result of the settlement, the companies are required to provide up to $875 million in a compensation fund.[70] The compensation fund is intended to be used to remediate New Jersey's natural resources and support projects that address PFAS pollution in the state.[71]

Taken together, these developments reflect an unsettled regulatory landscape, with PFAS oversight expanding through reporting and litigation while drinking water standards remain in flux.

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61 *See generally* In re Aqueous Film-Forming Foams Prods. Liab. Litig., 765 F. Supp. 3d 1379 (J.P.M.L. 2024) (recognizing the complexity of PFAS-related scientific issues in managing consolidated proceedings).
62 Second Amended Case Management Order No. 28, In re Aqueous Film-Forming Foams Prods. Liab. Litig., MDL No. 2873 (D.S.C. May 15, 2024).
63 *Id.*
64 *Id.*
65 ENV'T HEALTH NEWS, DuPont to pay $25 million in PFAS water contamination case in Hoosick Falls (July 11, 2025).
66 *Id.*
67 VERITA, Hoosick Falls PFOA Settlement Website (last visited Apr. 13, 2026).
68 N.J. DEP'T OF ENV'T PROT., DuPont/Chemours PFAS Settlement (last visited Apr. 13, 2026).
69 *Id.*
70 *Id.*
71 *Id.*

Chapter T: SUPERFUND AND COST RECOVERY
2025 Annual Report[1]

I. SUPERFUND: ADMINISTRATIVE AND REGULATORY DEVELOPMENTS

A. Congressional

Congress did not amend the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)[2] in 2025.

B. EPA Rulemaking

The Environmental Protection Agency (EPA) added three sites to the National Priorities List (NPL),[3] while deleting one site and partially deleting three sites.[4] EPA also proposed deleting one site.[5]

On September 17, 2025, EPA announced that it would retain the final rule entitled "Designation of Perfluorooctanoic Acid (PFOA) and "Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances," effective July 8, 2024.[6] On the same date, the U.S. Department of Justice (DOJ) submitted a court filing on behalf of EPA in *Chamber of Commerce of the United States, et al. v. EPA*,[7] a case filed to challenge the rule, stating that "EPA has decided to keep the rule in place" and moving the Court to lift the abeyance granted pending new EPA leadership's review of the rule.

II. SUPERFUND: JUDICIAL DEVELOPMENTS

A. Elements of Liability

1. Hazardous Substance Definition, Petroleum Exclusion

In *Harris Investment Holdings, LLC v. BFJ of USA, LLC*,[8] plaintiff's CERCLA claims were barred by the petroleum exception to the definition of hazardous substances where plaintiff's evidence of chromium in the release consisted of opinion expert testimony proffered without citation to factual evidence and after the expert opinion deadline. Despite numerous underground storage tanks having been present on Defendant's adjoining property, containing kerosene heating oil, used oil, gasoline, and diesel oil, Plaintiff

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[1]This chapter was authored by Amanda Neidert Kesler Miles & Stockbridge, P.C., Baltimore, MD; Van Hilderbrand Honigman LLP, Washington, D.C.; John Barkett, Shook Hardy & Bacon, LLP, Miami, FL. This chapter reviews significant 2025 CERCLA decisions and developments. The views expressed are the authors own and not necessarily those of their firms or clients.

[2]42 U.S.C. §§ 9601-9675.

[3]National Priorities List, 90 Fed. Reg. 29,491 (July 3, 2025) (to be codified at 40 C.F.R. pt. 300).

[4]National Priorities List, 90 Fed. Reg. 11,218 (Mar. 5, 2025) (to be codified at 40 C.F.R. pt. 300).

[5]National Priorities List, 90 Fed. Reg. 43,988 (Sept. 11, 2025) (to be codified at 40 C.F.R. pt. 300).

[6]Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 89 Fed. Reg. 39,124 (May 8, 2024) (to be codified at 40 CFR pt. 302).

[7]No. 24-1193 (D.C. Cir. Nov. 4, 2024).

[8]No. 1:23-CV-851, 2025 WL 1348500, (M.D.N.C. May 8, 2025).

produced no evidence that substances other than unadulterated petroleum products were released.[9]

2. Pleading Requirements

The court in *Jefferson Park Associates, L.P. v. Qualitrol Co. LLC*[10] denied a motion for judgment on the pleadings on plaintiff's CERCLA claim. In an amended complaint, plaintiff alleged:

> that it created a proposed work plan, dated July 25, 2018, with a proposal for additional soil borings, monitoring wells, and sampling to assess the extent of the contamination, prepared comments in response to the Remedial Alternative Assessment Report] on October 5, 2020, prepared comments on the draft [Remedial Action Work Plan on July 16, 2021, and drafted objections to the issuance of a Certificate of Completion on December 19, 2023.

Plaintiff further alleged that the response costs it incurred "have been consistent with the National Contingency Plan."[11] The district court held that these allegations sufficed to state a Section 107 claim for necessary response costs consistent with the NCP.[12]

In *1001 Newark Ave. Associates, LLC v. General Spray Drying Services, Inc.*,[13] plaintiff sought to recover environmental cleanup costs under Section 107 of CERCLA, alleging contamination at its property in Elizabeth, New Jersey, primarily by per- and polyfluoroalkyl substances (PFAS). Defendants filed a motion to dismiss the complaint for failure to state a claim. The court granted the motion without prejudice. The United States District Court for the District of New Jersey held that plaintiff failed to adequately plead a cause of action for compensable response costs where groundwater investigation costs were incurred in anticipation of future litigation against defendant rather than to gather data for a response action.[14]

In *United States v. ISP Environmental Services Inc.*,[15] the U.S. sought to recover past and future unreimbursed costs under CERCLA related to the cleanup of hazardous substances at the LCP Chemicals, Inc. Superfund Site in Linden, New Jersey. The site was originally owned by General Aniline & Film Corporation (GAF), which had operated a chlor-alkali manufacturing plant producing chemicals like chlorine and sodium hydroxide and discharging mercury-laden waste. The U.S. alleged Defendants were liable under CERCLA as they owned or operated the site during the disposal of hazardous substances.[16] Defendant G-I Holdings filed a counterclaim, asserting the U.S. should be responsible for releases of hazardous substances from 1942 to 1965, as it allegedly began ownership and operation of the site under the Trading with the Enemy Act during World War II.[17] This opinion addressed the United States' motion to amend its answer to G-I Holdings'

[9] *Id* at *5-7.
[10] No. 6:24-CV-06439, 2025 U.S. Dist. LEXIS 185929 (W.D.N.Y. Sept. 22, 2025).
[11] *Id*. at *19-20 (record citations and internal quotation marks omitted).
[12] *Id*. at *20.
[13] No. CV 25-00728, 2025 WL 2837666 (D.N.J. Oct. 7, 2025).
[14] *Id*. at *3.
[15] No. CV 22-4344, 2025 WL 262187 (D.N.J. Sept. 11, 2025).
[16] *Id.* at *1.
[17] *Id.* at *2.

Counterclaim to reflect information reviewed in discovery. The United States District Court for the District of New Jersey granted the motion because the U.S. was not unduly delayed in bringing its motion and there was no "undue prejudice" to G-I Holdings.[18]

In *United States v. Government of Guam*,[19] the United States District Court for the District of Guam granted the Defendant Government's motion to bring claims against the Receiver, Gershman, Brickner & Bratton (GBB), in a related case concerning the closure of the Ordot Dump.[20] Defendant alleged faulty closure design and construction, leading to increased leachate volumes and costs.[21] The court had previously appointed GBB as a federal receiver to enforce a Consent Decree for the closure of the Dump and the construction of a new landfill, because Defendant had failed to meet certain deadlines.[22] GBB claimed immunity but the court decided that it was premature to determine immunity.[23] The court further held that Defendant's allegations stated a claim against GBB under CERCLA and for breach of fiduciary duty and negligence.[24]

B. Liability of Particular Parties

1. Owners and Operators

In *California Department of Toxic Substances Control v. Jim Dobbas, Inc.*,[25] Plaintiffs, the California Department of Toxic Substances Control and the Toxic Substances Control Account sought partial summary judgment under CERCLA against Collins & Aikman Products, LLC to recover costs for responding to the release of hazardous chemicals at a former wood treatment site in Elmira, California.[26] Collins & Aikman Products was liable as a site owner.[27] The district court granted Plaintiffs' motion for partial summary judgment, finding that Plaintiffs established a prima facie case of joint and several liability for response costs, and Collins & Aikman Products failed to satisfy its obligation of disproving causation.[28]

2. Generators, Transporters, Arrangers

The latest opinion in *Emhart Indus., Inc. v. New England Container Company*.[29] addressed arranger liability of suppliers of drums to a drum reconditioning facility. The main issue in contention was whether, with respect to three defendants, there was an "intent to dispose" of hazardous substances by virtue of the conveyance to the reconditioner of drums containing residual material. With respect to the first party, BASF as a successor to Ciba-Geigy, BASF argued that it had an economic incentive to salvage the materials in its drums before sending the drums to defendant, NECC. It argued further that Ciba-Geigy sold drums to NECC to make money, not to dispose of hazardous waste, and that selling

[18] *Id.* at *4-5.
[19] No. CV 02-00022, 2025 WL 1886152 (D. Guam July 9, 2025).
[20] *Id.* at *1.
[21] *Id.* at *5.
[22] *Id.* at *1.
[23] *Id.* at *4-11.
[24] *Gov' of Guam*, 2025 WL 1886152, at *11-13.
[25] No. 2:14-CV-595, 2025 WL 2495617 (E.D. Cal. Aug. 29, 2025).
[26] *Id.* at *1.
[27] *Id.*
[28] *Id.* at *2-5.
[29] Nos. 06-218, 11-023, 2025 U.S. Dist. LEXIS 176871 (D. R.I. Sept. 8, 2025).

drums to NECC freed up space in Ciba-Geigy's buildings.[30] The United States District Court for the District of Rhode Island acknowledged Ciba-Geigy "had commercial economic incentives to engage with NECC, but that was not its sole intent."[31] Inherent in this relationship:

> is Ciba-Geigy's understanding that it could not reuse its used drums due to the risk of cross-contamination but could safely use the reconditioned drums from NECC. Consequently, regardless of whether Ciba-Geigy received its same used drums back after reconditioning, it trusted that NECC's reconditioning process resulted in like-new drums, reusable without the risk of cross-contamination. By purchasing reconditioned drums from NECC, Ciba-Geigy expected that NECC would consistently recondition every drum, including Ciba-Geigy's own, unless the drum was in too poor of condition to recondition. If there was any risk that NECC's reconditioned drums contained hazardous residuals, Ciba-Geigy would not have chosen to purchase them. Thus, by sending drums that previously contained hazardous substances to NECC and then purchasing reconditioned drums from NECC, Ciba-Geigy intended to dispose of the hazardous residuals in its drums.[32]

The court then found "the evidence sufficient that, given the state of environmental regulations during the relevant time period and the common understanding of how drum reconditioning worked, Ciba-Geigy had to have intended that at least a portion of the hazardous residuals sent to NECC would be disposed into the environment."[33] The court recognized that Ciba-Geigy tried to minimize the residuals sent to NECC but stated that while this effort did not absolve it of responsibility, it may be considered in the allocation phase of the case.[34] The court followed similar logic in finding that defendant Sequa's predecessor, Warwick Chemical, had an intent to dispose. "There were economic incentives for Warwick Chemical to extract as much raw material or customer-returned product from its drums as reasonably possible. But those economic incentives do not preclude an intent to dispose. When Warwick Chemical tilted or rinsed out its drums (likely with water) into the batch, it was acting in accord with its economic incentives. But Warwick Chemical did not take the further step of cleaning its used drums. Following the same logic as for Ciba-Geigy, the Court finds Warwick Chemical intended for NECC to dispose of the residual hazardous substances that it could not itself extract for use in its manufacturing process."[35] Finally, the court reached the same conclusion with respect to defendant Teknor. Teknor argued that its intent was to sell empty drums to NECC. But the court reached a different conclusion finding that Teknor intended to dispose of hazardous substances given the nature of drum reconditioning at the time and holding its drainage efforts could be considered in allocation.[36]

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[30] *Id*. at *247-48.
[31] *Id*. at *248.
[32] *Id*. at *249-50 (record citations and internal quotation marks omitted).
[33] Emhart Indus., Inc., 2025 U.S. Dist. LEXIS 176871 at *250-51.
[34] *Id*. at *251.
[35] *Id*. at *255 (citation omitted).
[36] *Id*. at 258.

3. Parent/Shareholder and Successors

In United States v. McCord Corporation,[37] the United States District Court for the District of New Hampshire granted summary judgment in favor of plaintiff, holding successive parent companies, McCord Maine and Ex-Cell-O, liable as operators for cleanup costs at an automotive parts manufacturing plant owned and operated by a subsidiary. The court found that the parent company's Facilities Manager and Safety Director, who was originally hired by the subsidiary, but began working for the parent and was promoted, as well as another employee who oversaw environmental audits, played an "active, sustained, detailed, authoritative and effective" role in the subsidiary's wastewater disposal decision-making and ongoing environmental compliance, including wastewater treatment options that contributed to groundwater contamination. Specifically, the parent's employees played an authoritative role in environmental compliance and operations relating to wastewater, frequently visited the plant, conducted environmental audits, took samples and conducted inspections, provided input on wastewater issues, attended meetings to develop solutions for wastewater pollution concerns, had approval authority over expansion of the septic system contributing to groundwater contamination, were involved in Clean Water Act compliance at the plant by starting programs for monitoring and reduction, were part of the decision to segregate solid and liquid waste, and were involved in permitting efforts.[38] Such activities were held to be "well beyond" those of typical corporate parent oversight and the parent.[39]

In Hobart Corp. v. Dayton Power and Light Co., the United States District Court for the District of Ohio rejected Plaintiff's motion for partial summary judgment on the successorship of defendant ConAgra to McCall Corporation.[40] Referred to as Old McCall, in 1968, prior to the enactment of CERCLA, Old McCall entered a merger agreement with two other companies that, through later transactions, became ConAgra. The 1968 merger agreement required Old McCall to set up a new corporation, New McCall, to which would be transferred Old McCall's "assets and liabilities." ConAgra argued Section 9607(e)(1), which provides that no indemnification or conveyance shall be effective to transfer liability for a hazardous substance release, does not apply to an agreement predating CERCLA. The court agreed. It held that CERCLA's retroactive application applies to environmental damage not to the statutory text of subsection (e)(1). However, it denied summary judgment because there was an issue of fact over whether Old McCall effectively made the transfer of its liabilities to New McCall.[41]

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[37] 774 F. Supp.3d 422 (D. NH 2025).
[38] *Id.* at 437-440.
[39] *Id* .at 445-446.
[40] No. 3:13-CV-115, 2025 WL 1115471 at *5 (S.D. Ohio, Apr. 15. 2025).
[41] *Id*. at *3-4.

C. Private Cost Recovery

1. Contribution (113) v. Cost Recovery (107)

In *Next Millennium Realty LLC v. Utility Manufacturing Co., Inc.,*[42] plaintiffs sought cost recovery and contribution under CERCLA §§ 107(a) and 113(f)(1) and the Declaratory Judgment Act due to contamination at the New Cassel/Hicksville Groundwater Contamination Superfund Site, which includes the New Cassel Industrial Area (NCIA). Plaintiffs alleged that the defendants were current or former owners/operators of properties within the NCIA and were responsible for the contamination.[43] The United States District Court for the Eastern District of New York addressed defendants' motion for judgment on the pleadings. The court held that plaintiffs could not pursue a contribution claim under section 113(f)(1) because a unilateral administrative order does not qualify as a "civil action." However, the court allowed plaintiffs to proceed with their cost recovery claim under section 107(a), as the response costs were not incurred under a court or administrative order that would give rise only to a contribution claim under section 113(f).[44] The court also dismissed plaintiffs' claim for declaratory judgment under the Declaratory Judgment Act but allowed the declaratory judgment claims under CERCLA to proceed.[45]

2. Settlements

In *Arizona v. Tucson Electric Power Company*.,[46] the United States District Court for the District of Arizona determined a consent decree resolving TEP's owner liability at the Broadway Patano Landfill was substantively and procedurally fair, reasonable, and consistent with CERCLA. TEP agreed to pay $90,713.08. There were three site cost estimates, ranging from $25.2 to $29.7 million. TEP's payment was based on a site cost of $31,377,751.64. The State did not explain these varying figures, but the court was not bothered by that fact. "The State does not explain this discrepancy in its Motion, but the Court finds this settlement amount reasonable based upon its independent review of the record and the scientific and economic analyses therein." The court also noted that "[t]o the extent the settlement amount was based on an increased amount of projected costs associated with hazardous waste cleanup, the Court also affords some deference to ADEQ's judgment on the costs of cleanup."[47]

In *Pac. Res. Assocs. LLC v. Cleaners*,[48] the United States District Court for the District of California found that a private party settlement was fair, reasonable, adequate, and consistent with the purposes of CERCLA.[49] In so doing, the court found that "(1) counsel is experienced in similar litigation; (2) settlement was reached through arm's length negotiations; and (3) investigation and discovery are sufficient to allow counsel and the court to act intelligently[,] triggering a presumption of fairness."[50] The court also barred future actions for contribution against the settling party "to the extent permissible by law."[51]

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[42]No. 22-CV-02529, 2025 WL 2689701 (E.D.N.Y. Sept. 20, 2025).
[43]*Id.* at *1.
[44]*Id.* at *2-9.
[45]*Id.* at *10.
[46]No. CV-25-00059, 2025 U.S. Dist. LEXIS 103874 (D. Ariz. June 2, 2025).
[47]*Id*. at *5.
[48]No. 3:20-cv-00234, 2025 U.S. Dist. LEXIS 76693, at *29 (S.D. Cal. Apr. 21, 2025).
[49]*Id*. at *29.
[50]*Id*. at *29 (internal quotation marks and citation omitted).
[51]*Id*. at *30.

In approving settlements in a CERCLA contribution action, the United States District Court for the District of Nevada in [Sunset Com. LLC v. Bayer Cropscience, Inc.][52] decided to apply contribution protection under the Uniform Comparative Fault Act, meaning that the non-settling defendants' potential liability to Sunset was reduced by the settling defendants' equitable share and not by the amounts paid under the settlement. The court adopted UCFA because it was "favored" in the Ninth Circuit; furthered settlement since a dollar amount did not have to be determined upon settlement; eliminated the need for a good faith hearing; and prevented culpable settlors from escaping liability.[53] The bar order was broad. It barred "all federal, state, and common law claims against the Settling Defendants for contribution, indemnity, or other relief arising from a non-settling defendant's or other third party's liability to Sunset."[54]

Allocation in the context of the substantive fairness of a settlement agreement with the United States only had to be superficially considered where all of the defendants settled. *United States v. EMR (USA Holdings), Inc.*.:[55]

> The settlement amount, $900,000, represents a reasonable compromise in light of the Government's past costs and the costs of litigation. The Consent Decree does not disclose the precise allocation amounts per Defendant, but that does not suggest unfairness under the circumstances here. Again, the fact that all twelve named Defendants have agreed to the settlement--and that none have objected--strongly supports a finding of substantive fairness.[56]

The settlement amount, representing 60% of the Government's response costs, was reasonable because it "represents a meaningful and substantial reimbursement, given the risks inherent in litigation, the challenges of proving liability and apportionment among multiple PRPs, and the likelihood that further pursuit of costs would result in delay, uncertainty, and additional expense."[57] The United States District Court for the District of New Jersey also noted "this amount warrants deference because it reflects the informed judgment of the EPA, which--as the lead enforcement agency under CERCLA--is in the best position to shape adequate settlements involving environmental cost recovery."[58] Procedural fairness and fidelity to CERCLA was not contested, making the court's endorsement of both easy.[59]

BASF v. APC Investment Company. involved the Omega Chemical Superfund Site in California.[60] Omega Chemical Corporation had recycled solvents and refrigerants from 1976 to 1991 and releases from drums, tanks, and pipes caused soil and groundwater contamination. Plaintiffs had resolved their liability to the United States and the California Department of Toxic Substances Control (DTSC) in a 2017 consent decree and brought the action against neighboring property owners or operators, alleging that they contributed to the groundwater plume. Plaintiffs' past and future costs were estimated to be $226.3 million, with previous settlements reducing this amount to $178.5 million.[61] Approval of a settlement with, and payment of $475,000 by, the "PMC Defendants" was before the

[52]No. 2:23-cv-02081, 2025 U.S. Dist. LEXIS 216981 (D. Nev. Nov. 3, 2025).
[53]*Id*. at *10-11.
[54]*Id*. at *11-12.
[55]No. 1:24-cv-09545, 2025 U.S. Dist. LEXIS 122434 (D.N.J. June 27, 2025)
[56]*Id*. at *8-9.
[57]*Id*. at 11.
[58]*Id*.
[59]*Id*. at *8, *12-13.
[60]No. CV 14-6456, 2025 U.S. Dist. LEXIS 80462, at *8 (C.D. Cal. Apr. 25, 2025).
[61]*Id*. at *8-9.

United States District Court for the Central District of California. The proposed settlement would bar cost recovery, contribution, and indemnity claims as well as any cause of action based on comparative fault or arising out of alleged negligence of the PMC Defendants.[62] The bar order would be entered under Cal. Civ. Proc. Code sections 877, 877.6.[63] The court acknowledged that a bar order had to protect the rights of non-settling parties and stated that "in this context, a private settlement is presumed fair where: '(1) counsel is experienced in similar litigation; (2) settlement was reached through arm's-length negotiations; and (3) investigation and discovery are sufficient to allow counsel and the court to act intelligently.'"[64] The court further explained that determining whether a settlement was reached in good faith and whether a bar order is proper, "federal courts in California have borrowed the substantive criteria" in *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.*[65] The burden of proof is on the party opposing the motion to approve the settlement, who must show the settlement is "'so far out of the ballpark in relation to'" the *Tech-Bilt* factors.[66] The court applied a good faith presumption to the settlement because the settlement was reached with the assistance of an "experienced environmental mediator and after lengthy and contentious negotiations," and after years of discovery.[67] As for the payment amount, the court recognized it was lower than the $1 million to $7 million paid by other settling parties, but agreed with plaintiffs that there were fewer response costs attributable to the PMC Property because (1) wells being installed would not capture contaminants migrating from the PMC Property, (2) the PMC Property was located outside of the boundaries of the operable unit (OU) in issue, and (3) other settlements were based in part on "robust historical data" and EPA Notice letters, both of which were absent with respect to the PMC Property. The court explained the plaintiffs' allocation approach. They assigned a 30% share to the Omega Property and allocated the remaining 70% among 14 remaining properties, assigning a 7% share each to properties associated with a Notice Letter and a long history of releases without timely remediation.[68] A second group of properties received a 5.6% share each, where they were sent Notice Letters but these properties were "slightly less significant contributors qualitatively due to shorter operational period[s] or less documentation of releases."[69] The final group of properties received a 3.5% share each, where there was "less available data on releases but with clear

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[62]*Id*. at *12-13.
[63]Section 877 provides that a court's determination of good faith settlement "shall discharge the party to whom it is given from all liability for any contribution to any other parties." § 877(b). Section 877.6 provides that "[a] determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." § 877.6(c).
[64]BASF*,* 2025 U.S. Dist. LEXIS 80462, at *14 (citing *Cooper Drum Cooperating Parties Grp.*, 2020 U.S. Dist. LEXIS 87319, at *4 (C.D. Cal. May 13, 2020)).
[65]*Id.* at 499. (citing Tech-Bilt, Inc. v. Woodward-Clyde & Assoc, 38 Cal.3d 488 (1985)) (Those criteria are (1) an approximation of plaintiff's total recovery and the settler's proportionate liability; (2) the amount paid in settlement; (3) a recognition that a settler should pay less in settlement than he would if he were found liable after trial; (4) the allocation of settlement proceeds; (5) the financial conditions and insurance policy limits of settling defendants; and (6) evidence of collusion, fraud or tortious conduct aimed to injure the interests of nonsettling defendants.)
[66]*Id*. at *15 (citing Tech-Bilt, 38 Cal.3d at 499-500).
[67]*Id*. at *16.
[68]*Id*. at *17-19.
[69]BASF*,* 2025 U.S. Dist. LEXIS 80462, at *19 (record citation and quotation marks omitted).

evidence of chemical use of EPA-identified contaminants of concern and some evidence of poor housekeeping or releases."[70] To place the properties in each group, plaintiffs considered:

> (a) the length and timeframe of operations; (b) evidence of releases, violations, or poor housekeeping of chemicals; (c) the extent of investigation and quality of data on soil or groundwater contamination; (d) the timing of source control; (e) progress made on completing source control; and (f) cooperation with regulatory authorities on source control and requested CERCLA participation.[71]

The PMC Property fell within the lowest percentage group which was assigned $5 million as a group. Because of these equitable considerations, the location of the PMC Property, and the presence of other parties in this group, plaintiffs were willing to accept $450,000 in settlement. The court was "satisfied that the Settlement is within a reasonable range of its proportional exposure, even if it falls below other settlements Plaintiffs have reached in this case."[72] No other defendant would be left "holding the bag" since plaintiffs were pursuing settlements with all remaining defendants using the same settlement approach.[73] Additionally, the court noted that "the settlement is less than what PMC Defendants would ultimately pay after trial." Thus, the court held that the first three *Tech-Bilt* factors were satisfied. As for the allocation-of-settlement-money factor, all of the settlement proceeds were being used to fund the remedial action.[74] The remaining factors were neutral or favored a good faith settlement determination because "PMC Defendants' insurance and financial condition does not appear to have been a factor in the Settlement, and there is no evidence of collusion, fraud or tortious conduct."[75] Finally, no party objected to the bar order which was "nearly identical" to other bar orders in the case. While the terms of the bar order were broad, the court noted that:

> the proposed bar order is also proscribed, in that it bars those claims only as to the 'Matters Addressed,' as that term is defined in the OU-2 Consent Decree. That is, if another party wants to assert a truly independent claim against PMC or Ferro, the bar order would not foreclose such claim. The asserted claim would be barred only to the extent that it relates to Matters Addressed in the OU-2 Consent Decree.[76]

Thus, it, too, was approved.

In another settlement approved by a California district court, the United States District Court for the Central District of California in *City of Torrance v. Hi-Shear Corporation*.[77] approved a CERCLA settlement in which the "SBL Parties and DCH will each pay $200,000 to the City" to address the contamination in issue. Settlers were third-party defendants. Hi-Shear opposed the settlements, arguing that settlers were paying too little.[78] Another party (Middletown) opposed only issuance of a bar order unless the

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[70] *Id. (*record citation in quotation marks omitted).
[71] *Id*. at *19-20 (record citation omitted).
[72] *Id*. at *20.
[73] *Id*. at *20-21.
[74] BASF*,* 2025 U.S. Dist. LEXIS 80462, at *21.
[75] *Id*. at *21-22.
[76] *Id*. at *26.
[77] No. 2:17-cv-07732, 2025 U.S. Dist. LEXIS 113785 (C.D. Calif. May 23, 2025).
[78] *Id*. at *3, 6.

settlement was clarified to require funds to be used to address contamination at only the portion of the property which "Third-Party Defendants used."[79] The court presumed fairness because experienced counsel were involved, there were arm's length negotiations, and there was sufficient discovery to allow counsel and the court to "act intelligently."[80] Reasonableness existed because the settlement "minimizes prejudice" to non-settling defendants by approximating the settlers' liability and applying the Uniform Comparative Fault Act (UCFA). The settlement was consistent with CERCLA's goals since the settlement funds would be used to clean and assess contamination.[81] Applying the *Tech-Bilt* factors, the court explained that total remediation costs were expected to be $33.3 million and, at $400,000, settlers were paying 1.2% of this cost. However, because the liability evidence was weak or potentially insufficient, the funds would be used for remediation, and there was no insurance coverage available to settlers, the court held that the settlement satisfied *Tech-Bilt*'s factors.[82] The bar order was approved because the court applied UCFA to the settlement, meaning that the City would bear the equitable share of the settlers should the matter proceed to trial.

Objecting parties in *Maxim L. Props. v. Moyer Products*.[83] argued that the United States District Court for the Northern District of California should reject a CERCLA settlement because it lacked "proportionality"—the settling parties were paying too little in relation to their liability.[84] Evaluating the settlement under the factors set forth in *Tech-Bilt, Inc. v. Woodward-Clyde & Association*, the district court disagreed. Estimates of remediation costs ranged between $1.32 million and $2.4 million based on approval by the DTSC of a corrective measures study (CMS) and other additional remedial measures beyond the CMS. The non-settling parties argued that the DTSC had "verbally" backed away from the approved CMS but the court found that the DTSC had not rescinded its prior approval "or stated that it plans to" and that there was no evidence presented that the future costs were expected to be "drastically different" from the estimates.[85] One settling party (Moyer) had already paid $1.5 million to develop the CMS (with generator parties paying the balance). Moyer also agreed to pay $1.7 million toward the settlement, with the money going into a qualified settlement fund (QSF) managed by DTSC which would then manage implementation of the remedial action in return for which the settling parties would be released from potential claims by DTSC (even though DTSC was not a party). Plaintiff was relieved of any further remedial responsibilities and was entitled to seek reimbursement of up to $160,000 from the QSF for costs related to corrective action. Subtracting $160,000 from $1.7 million, the court said that Moyer was covering 64% of the high end of the remediation cost estimate ($2.4 million).[86] The non-settling parties argued that Moyer was liable for all of the contamination at the site. The court found, however, that while there was evidence "suggesting Moyer may have caused the majority of the contamination," there was also evidence of "contributory fault by the other dozens of" generators.[87] Citing the statement in *Tech-Bilt* that a "settlor should pay less in settlement than he would if he were found liable after trial," 38 Cal. 3d at 489, the court

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[79]*Id*. at *6-7.
[80]*Id*. at *9-10 (quoting City of San Diego v. Nat'l Steel & Shipbuilding Co., 2014 U.S. Dist. LEXIS 94948, 2014 WL 3489282, at *12 (S.D. Cal. July 10, 2014) (citing Linney v. Cellular Alaska P'ship, 1997 U.S. Dist. LEXIS 24300, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997), aff'd 151 F.3d 1234 (9th Cir. 1998)).
[81]*Id*. at * 10-13.
[82]Torrance, 2025 U.S. Dist. LEXIS 113785, at *13-18.
[83]No. 12-cv-00449, 2025 U.S. Dist. LEXIS 83600 (N.D. Calif. May 1, 2025).
[84]*Id*. at *20.
[85]*Id*. at *22-23.
[86]*Id*. at *20-21, *23-24.
[87]*Id*. at *24.

held that it was not "out of the ballpark" that Moyer's contribution should be 50% of the CMS cost and 64% of the total remediation cost. Non-settling parties also argued that the agreement was "illusory" because plaintiff provided no consideration for the release it and its affiliates received from DTSC. But the court explained that plaintiff brought the lawsuit which generated the funds for the QSF to be used for remediation and the agreement ends costly litigation so that viewed "holistically and in context," the agreement "is far from illusory."[88] The court also noted that plaintiff was never an owner of the site and "may not be liable under CERCLA," and while an affiliate (American Drilling) was currently operating on the site, no claims had ever been asserted against it and there was no evidence it contributed to the contamination at the site or acted without due care. "As such, even if American Drilling theoretically might have some potential liability, its liability in proportion to the other responsible parties appears to be very low or non-existent."[89] The court also determined that the allocation of settlement proceeds was fair as the option to allow plaintiff to recover $160,000 from the QSF represented "only" 9% of the total settlement amount and the remaining 91% would "benefit the other responsible parties" by "lessening . . . what they would otherwise have to contribute." Looking at other "relevant *Tech-Bilt* factors"—financial condition of the settling parties and the existence of collusion—the court said it was undisputed that Moyer was a dissolved corporation with no assets and that insurance monies were the source of funding the QSF and once paid would "would likely exhaust" Moyer's coverage.[90] As for collusion, the argument was that the generators would be the only remaining entities to implement remedial action. The court was not impressed. "The Generators collectively paid for 50% of the cost of the CMS, a significant contribution that likely would not have been made if they had minimal liability. The record supports that the Generators share some significant responsibility for the contamination." The court also "determined that the release of claims against American Drilling is reasonably proportional to its apparently minimal potential liability. As such, the Agreement does not suggest collusion or bad faith."[91] The court also noted that there were no public comments against the settlement, "not even by the Non-Settling Parties."[92] Finally, the court held that the settlement satisfied CERCLA's goals despite the argument that the settlement did not identify any entity to implement the remediation and this would lead to protracted litigation among or with the generators regarding responsibility for the remediation. The court was unpersuaded by the "dire" predictions of the non-settling parties:

> [T]he Agreement does identify a party to be responsible for the remediation and proper expenditure of funds: DTSC. The Non-Settling Parties do not argue that DTSC is incapable of doing so. They merely assert that DTSC is likely to delegate the task to someone else, and the Non-Settling Parties believe they should not have to be that someone else.[93]

The court also noted that given the dozens of generators, DTSC would likely be able "to enforce a remediation action" against parties other than Moyer and plaintiff and that with the Agreement there will be funds to cover most and possibly all of the remediation costs, thus advancing CERLA's objectives.[94]

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[88] *Maxim L Props.*, No. 12-cv-00449, at*24-27.
[89] *Id*. at *27-29.
[90] *Id*. at *30.
[91] *Id*. at *32.
[92] *Id*. at *33.
[93] *Maxim L Props.*, No. 12-cv-00449, at*34-35 (record citation omitted).
[94] *Id*. at *36-37.

Paddock Enters., LLC v. United States[95] involved approval of a settlement related to a former paper mill that was located on what became the Cuyahoga Valley National Park. Cleanup costs were estimated to be about $46.3 million.[96] After two years of litigation, and numerous mediation sessions, the parties reached a settlement under which Paddock would pay $33 million to resolve its potential successor liability and the United States would pay Paddock $16.5 million to resolve its contribution liability as the current owner of the site.[97] Procedural fairness was easily demonstrated.[98] The court also found substantive fairness for the following reasons: (1) "the financial burden of cleaning up Jaite Mill will be shared between Paddock and the United States"; (2) the property was acquired by the United States at a discounted purchase price; (3) the United States failed to timely remediate the site; and (4) both parties supported the settlement.[99] While the settlement amount "*might* be less than the estimated $46.3 million cleanup costs," the court explained that the settlement "covers a large portion (over 70%) of expended and projected costs." And there were numerous contested legal issues avoided by the settlement. "The Court would need to determine whether Paddock is liable as a corporate successor, whether pollution occurred at the site during certain periods, whether the cleanup plans are consistent with applicable law, and how costs should be equitably allocated in light of numerous factors."[100]

D. *Allocation and Indemnification*

In *Barclay Lofts LLC v. PPG Indus.*,[101] the court considered Rule 59(e) motions to alter an allocation judgment. On its cost recovery claim, Barclay had proved it had incurred past response costs totaling $1,167,755.35. However, in considering PPG's contribution counterclaim, the United States District Court for the Eastern District of Wisconsin found Barclay had been "fully compensated" for these costs because it received a $1.5 million reduction in the purchase price of the properties in issue and the evidence established that the reduction was "directly related to the scope of contamination." The district court also considered $550,000 Barclay received in settlement from another entity (Hydrite).[102] In seeking reconsideration, Barclay argued future response costs were estimated to be $6,700,000 to $24,000,000 and that it would never achieve a double recovery (referring to its past costs) because "there is no evidence that Barclay will ever be able to sell" the properties for a profit. It also argued that the Hydrite settlement monies were allocated to many different past costs, including ones found unrecoverable by the court, such as attorneys' fees. The court held that Barclay failed to show "manifest error" as is required under Rule 59(e):

> I considered the fact that of the past costs Barclay already incurred that were recoverable under CERCLA, it had already recovered an amount exceeding those costs through the substantial discount it received on the Properties and the settlement funds. Barclay does not contend that either of these factors are legally improper to consider in the equitable allocation. That Barclay disagrees with the analysis is not a basis to alter the judgment.[103]

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[95]No. 5:22-cv-1558, 2025 U.S. Dist. LEXIS 135155 (N.D. Ohio July 16, 2025).
[96]*Id*. at *3-4.
[97]*Id*. at *6-7.
[98]*Id*. at *8-9.
[99]*Paddock Enters.,* 2025 U.S. Dist. LEXIS 135155, at 10-11.
[100]*Id*. at *12.
[101]No. 20-CV-1694, 2025 U.S. Dist. LEXIS 14616 (E.D. Wis. Jan. 28, 2025).
[102]*Id*. at *6-7.
[103]*Id*. at *7.

After finding that defendant (Paddock) was liable under Section 107(a) to plaintiff (Old Gate) and that Old Gate was liable under Section 113(f)(1) to Paddock, the United States District Court for the District of Connecticut in *Old Gate Partners, LLC v. Paddock Enters., LLC*,[104] utilized the Gore and *Torres* factors to allocate to (a) Old Gate, 5% of past response costs and 5% of future response costs necessary to remediate the property in issue to an industrial or commercial standard (as opposed to a residential standard) and (b) Paddock, 95% of these same costs.[105] Under the Gore factors, there was no reliable evidence to allocate costs based on the volume of hazardous substances released on the property. The court did consider that Paddock (and its predecessor, O-I) occupied or owned the property for 11 years while Old Gate had been an owner for 8 years, although the court said that it did not regard "time" as a "very significant factor" here.[106] What doomed Paddock was its level of culpability. There was "ample evidence to show that O-I economically benefited from its use of the hazardous materials at issue." The court explained that O-I used 1,1,1-trichloroethane and perchloroethylene "to clean its hydraulic molding machines, and it used an algaecide containing arsenic to ensure the operation of its cooling towers." The court added that:

> O-I should have been aware that it was introducing hazardous materials during its operation of the site. Multiple environmental reports discuss the presence of significant staining throughout the property, some of which was waste oil that likely contained hazardous substances, and yet there is no evidence that O-I made significant changes to its operation in order to prevent this staining.

In contrast, there was "some release of hazardous materials" by Old Gate but it was "minor" compared to O-I. The court also noted that Old Gate "is attempting to remediate the property after years of neglect," and "Old Gate did not operate a facility on the property for its benefit."[107] As for the "benefit" factor, the court recognized that "any benefit of cleanup will redound exclusively to Old Gate," but "balanced against that is public policy which seeks to encourage purchase of these contaminated properties that leads to cleanup."[108] There was evidence that buyers would be interested in the property if it was remediated. O-I benefitted from its occupancy since it operated a business for 11 years. However, there was no evidence of how profitable the business was, so the court weighed the benefit factor "primarily against Old Gate."[109] Under the *Torres* factors, ability to pay was "not a factor." As for culpability, the court repeated that O-I was responsible "for nearly all of the contamination on the site."[110] While Old Gate had delayed clean up, "taking only a few steps to prevent the continued contamination," O-I, in its 11 years on the property, "continuously created almost all of the contamination at the property." And returning to "benefit," the court said that the record was not "great" on the "likely value of the property as remediated" and it is "uncertain this is a benefit Old Gate has realized, and it will realize for some time."[111] Because Old Gate may "seek to remediate the property to a residential standard," the court reviewed expert testimony that the property was zoned

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[104]No. 3:18-CV-01657, 2025 U.S. Dist. LEXIS 173241 (D. Conn. Sept. 5, 2025).
[105]*Id*. at *53-54.
[106]*Id*. at *47.
[107]*Id*. at *49.
[108]Old Gate Partners, 2025 U.S. Dist. LEXIS 173241, at 49-50.
[109]*Id*. at *50.
[110]*Id*.
[111]*Id*. at *51.

only for commercial and industrial use and held it would be inequitable to require Paddock to pay for response costs incurred to remediate to a residential standard.[112]

Premcor Refining Group Inc. v. Apex Oil Company, Inc.[113] involved a discovery dispute over the relevance of insurance recoveries by the "BP Defendants" to potential allocation arguments of Premcor. Premcor argued that courts consider prior settlements as an equitable allocation factor so that if the BP Defendants collected insurance proceeds to address contamination at the site in issue (a refinery), but only Premcor has addressed the contamination, the insurance settlements the BP defendants received "should be allocated to Premcor to defray the cleanup costs."[114] Hence, it said, it was entitled to production of insurance files on the settlements. The United States District Court for the Southern District of Illinois agreed that the "insurance files regarding settlements related to the Refinery are relevant and material to the issues in the litigation" and ordered them produced.[115]

In *Courtland Co., Inc. v. Union Carbide Corporation*,[116] the United States Court of Appeals for the Fifth Circuit affirmed an allocation between Courtland and Union Carbide relating to groundwater contamination at the Courtland property. Union Carbide was found responsible for Courtland's response costs of $27,142.50 for a preliminary groundwater investigation conducted for Courtland.[117] The district court rejected Union Carbide's counterclaim of $199,942.52 but then granted Union Carbide contribution of 25% of $27,142.50 on its counterclaim. Courtland challenged this finding on appeal but lost. "'[B]oth historic uses of and ongoing industrial operations at the Courtland Property [were] contributing sources to its groundwater contamination' and "Courtland's contribution to the contamination provided a solid basis to equitably allocate costs."[118]

In *Douglas Development Corporation v. Clarios, LLC*,[119] the United States District Court for the District of Delaware granted a motion to dismiss CERCLA claims of a buyer because of the following indemnity in the parties agreement: "Buyer agrees . . . to indemnify and hold seller harmless from all liabilities, claims, demands, liens, costs and expenses (including reasonable attorney's fees) arising from any government order or government request that buyer . . . may receive . . . which requires either party to investigate, remove, dispose of, and/or remediate hazardous substances existing on the property."[120]

E. Defenses

1. Necessary and Consistent with NCP

In *Moreland Properties LLC v. Goodyear Tire & Rubber Company*,[121] the United States Court of Appeals for the Ninth Circuit denied plaintiff's petition for rehearing *en banc* and affirmed the district court's judgment for the defendant following a bench trial. First, the court held that the response was properly characterized as a remedial action and not a removal action where (1) there was no evidence that the concentrations of arsenic or toxaphene in the soils on a vacant undeveloped lot required immediate action to address a time sensitive public health threat or presented a risk to groundwater; and (2) the soil

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[112]Old Gate Partners, 2025 U.S. Dist. LEXIS 173241, at 52-53.
[113]No. 3:17-CV-00738, 2025 U.S. Dist. LEXIS 193624 (S.D. Ill. Sept. 30, 2025).
[114]*Id*. at *17-18.
[115]*Id*. at *18-19.
[116]2025 U.S. App. LEXIS 25903 (4th Cir. Sep. 11 2025).
[117]*Id*. at *8-9.
[118]*Id*. at *10.
[119]No. 24-1323 , 2025 U.S. Dist. LEXIS 178798 (D. Del. Sept. 12, 2025).
[120]*Id*. at *11-12.
[121]No. 24-2451, 2025 WL 2452372 (9th Cir. 2025).

excavation response, which reduced arsenic and toxaphene concentrations below the state residential standard was comprehensive and permanent. Second, because plaintiff did not conduct a feasibility study or analyze remedial alternatives prior to conducting the response as required for remedial actions, the remediation was inconsistent with the NCP and plaintiff was barred from recovery.[122]

2. Statutes of Limitation

In *Georgia-Pacific Consumer Products LP v. NCR Corporation*,[123] the United States Court of Appeals for the Sixth Circuit vacated a declaratory judgment in favor of Georgia-Pacific because the statute of limitations had run on Georgia-Pacific's claim. Here is the chronology. In 1998, a judgment against Georgia-Pacific and others was entered in a Section 107 action, resulting in a declaration of liability for PCB contamination at the Kalamazoo River Superfund Site. In 2010, Georgia-Pacific sued NCR Corporation, International Paper Company, and Weyerhaeuser Company under both Section 107(a) and Section 113(f) of CERCLA. They were found liable, but in an earlier appeal brought only by International Paper and Weyerhaeuser, the Sixth Circuit held that the 1998 judgment triggered the three-year limitations period for contribution actions under Section 113(f).[124] On remand, the district court vacated its original judgment but still entered a judgment declaring that Georgia-Pacific, International Paper, and Weyerhaeuser were liable for future response costs at the Site. International Paper and Weyerhaeuser again appealed. In an attempt to salvage the judgment, Georgia-Pacific offered an interpretation of Section113(g)(2) that the Sixth Circuit called "meritless."[125] The Court of Appeals repeated its holding in *Hobart Corp. v. Waste Management of Ohio, Inc.*[126] that a party subject to a judgment of cleanup costs cannot bring a Section 107 cost-recovery action, and Georgia-Pacific was such a party as to costs within the scope of the 1998 judgment. And because it could not proceed with a Section 107(a) claim, "it cannot obtain declaratory relief under that claim either." The court did emphasize that Georgia-Pacific's claims outside of the 1998 judgment were unaffected by the court's holding.[127]

In *ELG Utica Alloys, Inc. v. Niagara Mohawk Power Corporation*,[128] ELG remediated a portion of a former scrap metal recycling facility in 2007 by excavating and disposing of 715 tons of contaminated soils and 6,951 gallons of contaminated groundwater. In 2012, the New York Department of Environmental Conservation (DEC) notified ELG that it was a responsible party at a separate portion of the facility (the "Universal Waste" site), a nearby river, and an associated wetland. In 2015, ELG signed a consent order with the DEC and thereafter removed 13,393 tons of soil at the Universal Waste site. In 2016, ELG filed a contribution action to recover response costs it incurred at the "Universal Waste" portion of the facility. The United States District Court for the Northern District of New York held the action was time-barred.[129] The United States Court of Appeals for the Second Circuit affirmed. It held that (1) there was a single facility, even though different portions of it were remediated; (2) the 2007 and the 2015 response actions were remedial actions, not removal actions because they did not address an immediate threat or an emergency; and (3) the 2007 work was consistent with a permanent remedy so

[122]*Id*. at *6-8.
[123]136 F.4th 690, 693-697 (6th Cir. 2025).
[124]*Georgia-Pacific I*, 32 F.4th 534, 548 (6th 2022).
[125]*Id*. at 696.
[126]758 F.3d 757 (6th Cir. 2014).
[127]*Id*. at 776.
[128]144 F.4th 360 (2d Cir. 2025).
[129]*Id*. at 366.

that there was a single remediation at the facility.[130] Thus, the limitations period commenced in 2007, making a suit filed in 2016 untimely.

Atlantic Richfield Co. v. NL Industries[131] arose out of a mine leak of sulfuric acid into a river. Plaintiff built sludge ponds to contain the leak, but the leaks continued. In 2011, EPA ordered Atlantic Richfield to build water treatment systems. Thereafter, in 2020, Atlantic Richfield sued NL Industries, Inc and NL Environmental Management Services (jointly, NL) for cost recovery. In 2021, Atlantic Richfield settled with EPA, agreeing to continue the cleanup and pay EPA $400,000. After the settlement, Atlantic Richfield amended its complaint to seek contribution.[132] NL obtain a summary judgment on limitations grounds with respect to Atlantic Richfield's cleanup costs; it did not challenge the contribution claim with respect to the $400,000 paid to EPA. The United States Court of Appeals for the Tenth Circuit first determined that its decision in *Sun Co. v. Browning-Ferris, Inc.*[133] had, in effect, been overruled by the United States Supreme Court. In *Browning-Ferris*, the Tenth Circuit had held that a contribution action was a subset of a cost recovery claim, rather than a distinct claim, for purposes of determining the applicable limitations period under CERCLA.[134] However, in *Cooper Industries, Inc. v. Aviall Services, Inc.,*[135] the Supreme Court held that remedies for contribution and cost recovery are "clearly distinct."[136] With *Browning Ferris* no longer viable, the court had to decide what limitations period to apply. It explained that Section 113(f)(3)(B) did not expressly apply because Atlantic Richfield's settlement with EPA was not a *de minimis* settlement and Atlantic Richfield's cleanup costs were not costs covered by Section 113(f)(3)(B). Nonetheless, the court held that the three-year limitations period in Section 113(f)(3)(B) was the most closely analogous statute of limitations.[137] Because the administrative settlement occurred in 2021, and Atlantic Richfield sought contribution in 2022, the action was timely and the order of the district court was reversed.[138]

3. Other Defenses and Challenges

In *City of Hammond v. ASARCO Master, Inc.*,[139] the United States District Court for the Northern District of Indiana held the City of Hammond and the City of Whiting's CERCLA claims related to lead contamination of their communities caused by Defendant's smelting facility were barred by a bankruptcy bar order. The court applied the Seventh Circuit's test that a creditor should know of a contingent CERCLA claim for purposes of bankruptcy when "the potential claimant can tie the bankruptcy debtor to a known release of hazardous substance which [the] potential claimant knows will lead to CERCLA response costs."[140] Despite the Cities' contention they did not know of the contamination until soil samples in 2016 confirmed lead contamination in the neighborhoods, the court held that the Cities had constructive knowledge of the contamination prior to the bankruptcy based on historical reports from local residents of health issues from facility releases, complaints of discharges damaging roofs and causing coughing and sneezing,

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[130] *Id*. at 370-71.
[131] 132 F.4th 1220 (10th Cir. 2025).
[132] *Id*. at 1223.
[133] 124 F.3d 1187 (10th Cir. 1997).
[134] *Id*. at 1193-94.
[135] 543 U.S. 157, 163 n.3 (2004).
[136] *Id*. at 1225-26.
[137] 132 F.4th 1220, 1228-29 (10th Cir. 2025).
[138] *Id*. at 1229.
[139] No. 2:24-CV-96, 2025 WL 901557 (N.D. Ind. Mar. 25, 2025).
[140] *Id*. at *22, *See* Ninth Ave. Remedial Grp. v. Allis-Chalmers Corp., 195 B.R. 716 (N.D. Ind. 1996) (internal quotation omitted).

public comments by a city councilman and health inspector on alleged contamination activity, a local church complaint, a local newspaper article, and an EPA consent decree, which stated that facility operations generated dust, including hazardous lead waste and sludge from secondary smelting. Accordingly, the court held the Cities knew they had an environmental claim prior to Defendant's bankruptcy, and had sufficient notice of the bankruptcy and bar date yet failed to raise their claims. [141]

In *In re Weiand Automotive, Inc*.,[142] the Mehrabian Family Trust (MFT) filed claims under CERCLA and California state law against Weiand Automotive, a reorganized debtor, in the United States District Court for the Central District of California.[143] The United States Bankruptcy Court for the District of Delaware determined that the CERCLA claims asserted in the California district court did not accrue prepetition because MFT incurred costs to prepare letters detailing the contamination for the purpose of securing a lease or purchase of the site rather than response costs to further cleanup or the remediation process. Therefore, the CERCLA claims were not discharged and were allowed to proceed.[144] However, California state law claims accrued prepetition and were discharged by the confirmation order entered on June 7, 2010, as MFT was deemed an unknown creditor entitled only to publication notice, which was adequately provided through USA Today.[145]

In *Dutch Girl Plaza LLC, et al. v. Marathon Petroleum Corporation, et al*.,[146] plaintiffs owned a property used as an eco-friendly dry-cleaning facility and planned to develop it into a mixed-use residential and commercial site. Plaintiffs alleged that contamination from an adjacent gas station, owned by the defendants, had migrated onto their property, posing health risks and potentially hindering development.[147] The plaintiffs filed multiple claims, including violations under CERCLA, California's Carpenter-Presley-Tanner Hazardous Substances Act (HSAA), trespass, public and private nuisance, negligence per se, equitable indemnity, and Proposition 65.[148] The defendants moved to dismiss the case, arguing various defenses, including the petroleum exclusion under CERCLA and HSAA, statute of limitations, and failure to state a claim.[149] The United States District Court for the Northern District of California granted the motion to dismiss in part, dismissing several claims, including the CERCLA and HSAA violations, but allowing others, such as continuing trespass and nuisance, to proceed.[150] Specifically, the court held that plaintiff only alleged a release of waste oil and failed to plead the presence of any specific contaminants to bring the case outside CERCLA's petroleum exclusion. In addition, the complaint alleged "remediation" activities consistent with a remedial action beginning more than six years prior to filing the complaint, resulting in the claim barred by the statute of limitations.[151] The plaintiffs were granted leave to amend their complaint to address the deficiencies identified by the court.[152]

[141]Id. at *35-7.
[142]No. 09-13338, 2025 WL 2808955 (Bankr. D. Del. Oct. 2, 2025).
[143]*Id*. at *1.
[144]*Id*. at *7-10.
[145]*Id*. at *5, 7, 11-13.
[146]No. 25-CV-01390, 2025 WL 2830249 (N.D. Cal. Oct. 6, 2025).
[147]*Id*. at *1-3.
[148]*Id*. at *3-4.
[149]*Id*. at *5, 7-9.
[150]*Dutch Girl Plaza LLC*, 2025 WL 2830249, at *27.
[151]Id. at *11-12.
[152]*Id*. at *27.

F. Recoverable Response Costs (Including Attorney's Fees)

In *California Department of Toxic Substances Control v. FHL Finance Group*,[153] the United States District Court for the Central District of California having earlier found FHL liable, granted summary judgment to the DTSC for response costs at a dry-cleaning facility on defendant's property. Supported by affidavit testimony, the costs covered by the judgment were $2,104,281.27 in direct costs incurred for response activities at the Site, which included $318,942.44 in payroll and $1,785,338.83 in contract costs, $1,752.55 in "other direct costs," $24.28 in "other" travel related costs, and $547,249.62 in "indirect costs." The affiant also accounted for $2,236.75 in adjustments to DTSC's total response costs and for $5,500 in settlement payments made by another person.[154] The indirect costs were calculated in accordance with the State Administrative Manual using cost principles established by a U.S. Office of Management and Budget Circular. DTSC also paid the California Department of Justice $277,194.95 to prosecute the case. The State calculated prejudgment interest ($204,585.48) from the date each invoice was sent to defendant.[155] The court determined that all of these costs were recoverable, properly documented, and in compliance with the National Contingency Plan.[156]

G. Miscellaneous

In *Hobart Corporation v. Dayton Power and Light Company*,[157] plaintiffs sought contribution for response costs incurred at the South Dayton Dump and Landfill Site under CERCLA Section 113 and a theory of unjust enrichment.[158] The case was presented through multiple complaints and involved claims stemming from an Administrative Settlement and Order on Consent with EPA for a removal action (2013 ASAOC) and another for the Remedial Investigation/Feasibility Study for Operable Units 1 and 2 (2016 ASAOC). On defendant's motion to dismiss plaintiff's declaratory judgment count for response cost liability under the 2016 ASAOC, the United States District Court for the Southern District of Ohio sustained in part and overruled in part, allowing plaintiffs to pursue declaratory judgment related to future RI/FS costs under the 2016 ASAOC but not for future remediation costs.[159] The Court found that plaintiffs could not seek declaratory judgment under CERCLA Section 113(g) as it requires a claim under CERCLA Section 107, which Plaintiffs did not have. As to plaintiff's claim for declaratory judgment under the Declaratory Judgment Act, the court denied declaratory judgment as to future remediation costs after the 2016 ASAOC for the RI/FS, but took no action as to the portion of the claim seeking declaratory judgment for future costs incurred under the 2016 ASAOC because those claims were not challenged.[160]

In *Town of Oyster Bay, New York v. Northrop Grumman Systems Corporation*,[161] Town of Oyster Bay filed a motion to compel Northrop to answer certain interrogatories and produce documents related to Northrop's counterclaim for contribution under CERCLA.[162] The Town sought information about Northrop's chemical purchase records, handling of freons, volatile organic compounds (VOCs), including trichloroethylene

[153] No. 8:19-cv-02370-, 2025 U.S. Dist. LEXIS 140217, at 12 (C.D. Cal. June 30, 2025).
[154] *Id*. at *2-3 (record citations omitted).
[155] *Id*. at *3-4.
[156] *Id*. at *10-12.
[157] No. 3:13-CV-115, 2025 WL 3171057 (S.D. Ohio Nov. 13, 2025).
[158] *Id*. at *73-4.
[159] *Id*. at *74-5.
[160] *Id* at 91.
[161] No. 05-CV-1945, 2025 WL 2108541 (E.D. N.Y. July 28, 2025).
[162] *Id*. at *10.

(TCE), and documents from a lawsuit between Northrop and its insurers, all related to a facility operated within the Town.[163] The United States District Court for the Eastern District of New York looked to two sets of factors courts often used to determine allocation under CERCLA, the Gore and *Torres* factors, to evaluate relevance and granted Plaintiff's motion in part, directing Defendant to produce documents related to VOCs disposed of adjacent to the Bethpage Community Park, within the area remediated under two interim remedial measures (IRMs).[164] The motion was otherwise denied, with leave to refile concerning documents currently sealed in related litigation.[165]

III. Natural Resource Damages

In *United States v. ACG Industries LLC*,[166] the district court approved a natural resource damage (NRD) consent decree over objections by intervenors. Federal, State, and several Indian tribes (Trustees) completed a NRD assessment of the Willamette River which included a habitat equivalency analysis (HEA).[167] The Trustees measured injuries from 12 contaminants in river sediments by considering the number of impacted sediments in acres, the percentage of ecological service loss (severity), how long the environment suffered (duration), and when the ecological services were first lost (timing). The result was 4,130 Discounted Service Acre Years (DSAYs). The Trustees then assigned the DSAYs to potentially responsible parties (PRPs) by considering the injuries attributable to releases of hazardous substances from each property in the "Assessment Area" based on a review of documents identifying activities that resulted in releases of hazardous substances at a property. The Trustees then verified that there was a pathway to the river from the property, contaminants associated with the activities on the property were found in the river sediments, and those sediments were in sufficiently close proximity to the property or an outfall from the property. "The amount of assigned liability (in DSAYs) depended on the estimated injury to natural resources (in DSAYs) caused by contaminants in the sediment footprint and whether other properties and facilities also contributed contaminants to that footprint."[168] For most hazardous substances there was a "footprint" that could be linked to the upland property. For hazardous substances without a clear footprint, the Trustees divided responsibility among the properties that were known to have released such substances. The Trustees assigned 97% of the contaminated sediment footprints to properties near or adjacent to the Assessment Area and allocated DSAYs to each property and then to each PRP. The Trustees shared their allocations with each PRP and following receipt of responses from the PRPs, made minor revisions to the allocations. The settlement before the court then followed. The settlement allocated 471.389 DSAYs, or about 11.4% of the total DSAYs for the Assessment Area. The court explained that about 70% of the pollution to the Willamette River was caused by four chemicals, and defendants were allocated 12.8 DSAYs each for three of the four chemicals. Defendants were also allocated 151 DSAYs for a fifth contaminant, polynuclear aromatic hydrocarbons.[169] There was a Cash-out Consent Decree and a Restoration Credit Consent Decree. In the former, defendants purchased DSAYs at a value of $70,500/DSAY and the Trustees could spend

[163] *Id* at 12.
[164] *Id*. at *14-5
[165] *Town of Oyster Bay*, 2025 WL 2108541, at *24.
[166] No. 3:23-cv-1603, 2025 U.S. Dist. LEXIS 208843 (D. Or. Oct. 23, 2025)
[167] An HEA is a method of converting the ecological services provided by a habitat into a currency called "discounted service acre year," or DSAY. One DSAY represents the ecological services provided by an acre of a given habitat over the course of a year. *Id*. at *11-2.
[168] *Id*. at *15.
[169] *Id*. at *17.

the proceeds as they saw fit. In the Restoration Credit Consent Decree, defendants purchased DSAY credits which could be used to fund one of four restoration projects.[170] There were also certain cash payments made by defendants under each decree. The total value of the claims resolved by the decree was about $36.2 million.[171] The United States District Court for the District of Oregon held the Trustees provided sufficient detail to allow the court to decide that the Trustees' methodology was fair, reasonable, and consistent with CERCLA.[172] There was also procedural fairness because the Trustees engaged with the defendants on the merits of the allocations and the negotiation process was open to the public.[173] Regarding substantive fairness, the court held that the decrees benefitted the Trustees "*more* than is appropriate" for defendants' comparative fault:[174]

> Trustees estimate that Defendants are liable for 11.4% of damage to the Willamette. According to the HEA, the Willamette has total damages of 4,130 DSAYs, with each DSAY worth $70,500. Thus, proportional to their collective fault, Defendants (allocated roughly 471 DSAYs) owe about $33.2 million. But the value of the Consent Decrees is *higher*, at approximately $36 million, because Defendants are paying approximately $3 million of Trustees' costs to assess Natural Resource Damages. . . .The Consent Decrees also carry with them the classic benefit of settlement: that Trustees avoid the risk of litigation with Defendants and minimize the cost of later damages.[175]

Elaborating on substantive fairness, the court explained:

(1) "[A] rough comparison of the DSAY allocation demonstrates that, as a general principle, the more polluting a Defendant did, the more DSAYs Trustees required that Defendant to purchase."[176]
(2) [T]here is not and should not be a perfect correlation between the number of polluting activities and the number of DSAYs purchased. As Trustees explained, the allocation process weighed when Defendants owned each property, when Defendants polluting took place, and the severity of the ecological injury caused by the pollution. The Court nonetheless notes the rough correlation between the number of DSAYs and the number of polluting activities to demonstrate with its own "comparative analysis" that Trustees' model generally tracks comparative fault.[177]
(3) [T]he record supports that Trustees' HEA and DSAYs methodology is roughly correlated with some acceptable measure of comparative fault. First, the record establishes that the HEA and DSAY allocation is an acceptable measure of comparative fault. Various federal regulations, agency guidance documents, and peer-reviewed literature recognize HEA as a measure of comparative fault, and HEA has been used as the basis for several high-profile ecological NRDA settlements. Second, the record establishes that the HEA survey and DSAY allocation performed here was correlated to comparative fault. The HEA determined "the share of the total injuries attributable to hazardous substances

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[170] *ACG Indus.*, 2025 U.S. Dist. LEXIS 208843, at 19–20.
[171] *Id*. at *22.
[172] *Id*. at *24-26.
[173] *Id*. at *26-27.
[174] *ACG Indus.*, 2025 U.S. Dist. LEXIS 208843, at 23 (emphasis in original).
[175] *Id*. at *23-24 (emphasis in original).
[176] *Id.* at *28.
[177] *Id*. at 30.

released from each property along the Assessment Area," then Trustees determined which PRP owned or operated which properties or facilities in the Assessment Area and compared the "[c]ontaminants associated with activities at Defendants' properties . . . with contaminant footprints in Willamette River sediments in the Assessment Area."[178]

Trustees also explained why they chose the HEA and the DSAY allocation method for settlement purposes—doing so allowed Trustees to measure the value of habitat restoration and the value of building new habitats. Because of that "plausible explanation," the choice of HEA was entitled to deference.[179]

On interlocutory review, the United States Court of Appeals for the Ninth Circuit in *Confederated Tribes of the Colville Reservation v. Teck Cominco Metals Ltd* held that interim lost uses of natural resources that have a "cultural component" are not as a matter of law excluded from recoverable natural resource damages. [180] The Tribe sought damages for their member's lost use of injured benthic organisms and injured fish with elevated mercury levels stemming from contamination of the Upper Columbia River with hazardous substances from a lead-zinc smelter located in Canada. The Ninth Circuit reasoned that CERCLA directed the assessment of natural resource damages to take into consideration factors including but not limited to replacement value, use value and the ability of the resource to recover and stated that the measures are not limited to restoration or replacement costs.[181] Accordingly, the court held that the Tribe's interim lost use was not excluded just because the value was informed by cultural perspectives or because the resources have cultural uses, thereby reversing summary judgment against the Tribe and remanding the case for a trial to determine if the claimed damages could be proven.[182]

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[178]*CG Indus*., 2025 U.S. Dist. LEXIS 208843, at *13-14 (record citations omitted).
[179]*Id*. at *32.
[180]153 F.4th 947, 951 (9th Cir. 2025).
[181]*Id*. at 954-956.
[182]*Id*. at 957.

Chapter U: WASTE AND RESOURCE RECOVERY
2025 Annual Report[1]

I. Resource Conservation & Recovery Act Updates

A. Administrative Updates

1. EPA, Residential Soil Lead Directive for CERCLA Sites and RCRA Hazardous Waste Cleanup Facilities

On October 16, 2025, EPA's Office of Land and Emergency Management (OLEM) issued a directive updating guidance and adopting new standards for remediation of lead contaminated soil on certain residential properties.[2] The directive supersedes the Updated Soil Lead Guidance issued in January 2024 for sites listed under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) Corrective Action Facilities.[3]

The directive establishes new regulatory benchmarks including:

- A regional removal management level (RML) of 600 parts per million (ppm) for lead in residential soil replaces the previous RML of 200 ppm. RMLs are screening tools used to prioritize and define areas that may pose the greatest threat to human health.
- A RSL of 200 parts per million for lead in residential soil replaces the previous RSL of 200 ppm for lead or 100 ppm if an additional source of lead is identified (such as lead water service lines or lead-based paint). The directive notes that the previous RSLs were below background lead concentrations in some areas.
- A target children's blood lead level (BLL) of 5 micrograms per deciliter (µg/dL) to determine preliminary remediation goals, to replace a lead level of 3.5 µg/dL as the 95th percentile target BLL.

The directive includes a plan to facilitate cleanups, including issuing a roadmap for CERCLA response action decision making, and establishing a National Center of Excellence for CERCLA Residential Lead Cleanups. The proposed Center will "establish best management practices across all phases of characterization and cleanup."[4]

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[1]Author credit to Louise Dyble, Hanson Bridgett LLP, San Francisco, California; and Emily Jones, Director, Energy & Environment Policy, Alliance for Automotive Innovation.
[2]Env't Prot. Agency, Off. of Land & Emergency Mgmt., Residential Lead Directive for CERCLA Sites and RCRA Hazardous Waste Cleanup Program Facilities (Oct. 16, 2025) (directive from John W. Busterud, Assistant Administrator, to Regional Administrators).
[3]Env't Prot. Agency, Off. Of Land & Emergency Mgmt., Updated Residential Soil Lead Guidance For CERCLA Sites And RCRA Corrective Action Facilities (Jan. 17, 2024) (memorandum to Regional Administrators, Regions 1–10).
[4]*Id.*

2. Updates to the RCRA Hazardous Waste Regulations and Related Technical Corrections - Permitting Updates Rule

A Final Rule[5] revising hazardous waste generator regulations went into effect on March 21, 2025 following a 60-day regulatory freeze to allow review by the new presidential administration.[6] This action finalized technical corrections to the 2016 Hazardous Waste Generator Improvements Rule, the 2019 Hazardous Waste Pharmaceuticals Rule, and the 2018 Vacatur of the Definition of Solid Waste Rule.[7]

3. Notice: Listing of Specific PFAS as Hazardous Constituents

The Spring 2025 federal unified agenda issued on September 4, 2025, included an anticipated final rule listing nine per- and polyfluoroalkyl substances (PFAS), their salts and their structural isomers, as hazardous constituents under RCRA.[8] The proposed rule was issued on February 8, 2024, with public comments due by April 8, 2024.[9] Public comments will inform the final rule, projected to be issued in April 2026.[10]

4. Notice: Information Collection: Revisions to the RCRA Definition of Solid Waste and Expanded Public Participation under RCRA.

On December 11, 2025 EPA solicited public comments on a proposed information collection request (ICR) to the Office of Management and Budget (OMB) to inform "Revisions to the RCRA Definition of Solid Waste".[11] Specifically, EPA requested comments on aspects of the current definition of Solid Waste, which was most recently revised following a vacatur by the U.S. Court of Appeals for the District of Columbia in 2018.[12]

Also on December 11, 2025, EPA solicited public comments regarding a proposed IRC on expanded public participation under RCRA.[13]

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[5]Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, 90 Fed. Reg. 99,727 (Dec. 11, 2024) (to be codified at 40 C.F.R. pts. 261, 262, 266).

[6]Delay of Effective Date for 2 Final Regulations Published by the Environmental Protection Agency Between December 11, 2024, and January 6, 2025, 90 Fed. Reg. 9010 (Feb. 5, 2025) (to be codified at 40 C.F.R. pts. 261, 262, 266, 372).

[7]*Id.*; *see* 90 Fed. Reg. at 99,727.

[8]REGINFO, *Listing of Specific PFAS as Hazardous Constituents*, RIN 2050-AH26 (Apr. 2025).

[9]Listing of Specific PFAS as Hazardous Constituents, 89 Fed. Reg. 8606 (Feb. 8, 2024) (to be codified at 40 C.F.R. pts. 261, 271).

[10] *Id.*; RIN No. 2050-AH26, *supra* note 7.

[11]Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Revisions to the RCRA Definition of Solid Waste, 90 Fed. Reg. 57,464 (Dec. 11, 2025).

[12]See *Am. Petroleum Inst. v. Env't Prot. Agency*, 862 F.3d 50, 75 (D.C. Cir. 2017), *as modified on reh'g*, 883 F.3d 918 (D.C. Cir. 2018); Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule, 83 Fed. Reg. 24,664 (May 30, 2018) (to codified at 40 C.F.R. pts. 260, 261).

[13]Comment Request Notice for a Proposed Information Collection Request on RCRA Expanded Public Participation, 90 Fed. Reg. 57,466 (Dec. 11, 2025).

The Paperwork Reduction Act[14] requires agencies to consider public comments in evaluating the necessity, practical utility and burden imposed by the ICR, the validity of proposed methodology and assumptions, and ways to enhance the quality, utility, and clarity of information to be collected.

The deadline for comments on revisions to the RCRA definition of solid waste and on expanded public participation under RCRA is Feb. 9, 2026.[15]

B. Judicial Updates

1. Prutehi Litekyan: Save Ritidian v. United States Dep't of Airforce

In *Prutehi Litekyan: Save Ritidian v. United States Department of Air Force*, a three-judge panel of the United States Court of Appeals for the Ninth Circuit considered whether a nonprofit environmental organization has standing to challenge the Air Force's failure to conduct environmental review under the National Environmental Policy Act (NEPA) and requirements for environmental review prior to an application for RCRA hazardous waste management permits.[16] A majority of the panel sided with the plaintiffs, reversing the lower court's decision to grant a motion to dismiss based, *inter alia*, on a lack of jurisdiction.[17]

Prutehi Litekyan: Save Ritidian, a nonprofit organization dedicated to protecting natural and cultural resources in Guam, challenged the Air Force's decision to dispose of hazardous waste munitions on Tarague Beach through open burning and detonation. This disposal method, according to plaintiffs, could result in land, air and water contamination, and could negatively impact sensitive wildlife including the endangered green sea turtle and migratory birds.[18]

Plaintiffs alleged that that the Air Force violated NEPA by failing to conduct an environmental assessment or to issue an environmental impact statement before submitting a RCRA permit renewal application for disposal operations with the Guam Environmental Protection Agency.[19]

In reversing the United States District Court for the District of Guam, the Ninth Circuit adopted three holdings. First, it held that the plaintiffs did have Article III standing because there was no "hard look" at alternatives to the disposal method, resulting in an injury that was "fairly traceable" to Air Force actions.[20] Second, the court held the Air Force's decision to proceed without an environmental assessment or environmental impact statement as required by NEPA constituted final agency action subject to judicial review, applying a two-pronged test adopted by the United State States Supreme Court in *Bennett v. Spear*.[21] Third, the court addressed the application of NEPA to RCRA permitting by an operational agency, holding that

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[14] 44 U.S.C. § 3501 *et seq*.

[15] 90 Fed. Reg. at 57,464; 90 Fed. Reg. at 57,466.

[16] 128 F.4th 1089, 1099 (9th Cir. 2025)

[17] *Id.* at 1099, 1105.

[18] *Id.* at 1099, 1103-04.

[19] *Id.* at 1104-05.

[20] *Id.* at 1106-07.

[21] *Id*. at 1107-13 (citing *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) ("[T]wo conditions must be satisfied for agency action to be 'final': First, the action must mark the 'consummation' of the agency's decisionmaking process — it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow'" (internal citations omitted)).

NEPA redundancy exemptions generally apply only to agencies "engaged primarily in an examination of environmental questions" that have responsibility for environmental review stemming from their organic statutes, and rejecting the argument that RCRA review requirements made NEPA review superfluous.[22]

Judge VanDyke dissented, arguing that the majority misapplied *Bennett*, not only in finding that there had been a final agency action, but also in ignoring the requirement that there be a "determination of legal rights or obligations" due to that final action prior to judicial review.[23]

The Air Force submitted a Petition for a Writ of Certiorari to the United States Supreme Court on November 14, 2025, requesting review of holdings related to standing and NEPA permitting requirements under RCRA.[24]

2. Tennessee Riverkeeper v. Waste Connections of Tennessee, Inc.

The United States District Court for the Middle District of Tennessee dismissed without prejudice a citizen suit alleging violations of the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA) in *Tennessee Riverkeeper v. Waste Connections of Tennessee*.[25] The court found that the plaintiffs failed to state a claim when they alleged that per- and polyfluoroalkyl substances (PFAS) were present in discharges from a private landfill to a nearby river.[26]

Plaintiffs alleged that laboratory testing of discolored water that was captured from a "seep or spring on the banks of the river" revealed the presence of contaminants.[27] They also alleged that "the violations complained of have not ceased, and are ongoing".[28] However, because the plaintiffs' allegations were based on tests of a single water sample, the court found that they did not support a good faith allegation of ongoing or intermittent violations, as required by both statutes.[29]

3. In re: Center for Biological Diversity et al.

On March 10, 2025, the Center for Biological Diversity filed a Petition for a Writ of Mandamus in the United States Court of Appeals for District Of Columbia, requesting that EPA be ordered to adopt regulations of fertilizer production wastes, including phosphogypsum and process wastewater, as hazardous wastes under RCRA Subtitle C.[30] The court issued an order holding the case in abeyance through February 4, 2026 to allow for continued negotiations.

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[22] *Id.* at 1113-20.
[23] *Id.* at 1120-33.
[24] Petition for a Writ of Certiorari, *Dep't of the Air Force. v. Prutehi Guahan*, No. 25-579 (U.S. Nov. 14, 2025).
[25] 769 F. Supp. 3d 784 (M.D. Tenn. 2025).
[26] *Id.* at 796.
[27] *Id*. at 786.
[28] *Id.* at 787.
[29] *Id.* at 792-94.
[30] Petition for Writ of Mandamus, *In re Ctr. for Biological Diversity*, No. 25-1087 (D.C. Cir. Mar. 10, 2025); 42 U.S.C. § 6903(5).

A. Administrative Updates

1. Notice: Improving Recycling and Management of Renewable Energy Wastes: Universal Waste Regulations for Solar Panels and Lithium Batteries

The Spring 2025 federal unified regulatory agenda includes an anticipated 2026 rule addressing end-of-life solar panel and lithium battery management and recycling.[31] The proposal originated with a November 2021 petition by a coalition of electric power industry associations requesting a universal waste management program for photovoltaic solar panels.[32]

Planned revisions to universal waste regulations are intended to establish standards specially tailored for lithium batteries and a practical system for handling discarded solar panels.[33] Agency goals include easing regulatory burdens on solar panel waste generators, promoting solar panel collection and recycling, encouraging municipal and commercial programs to reduce the quantity of waste going to municipal landfills, and improving safety standards and reducing fires from mismanaged end-of-life lithium batteries.[34]

2. State Extended Producer Responsibility Programs

Companies qualifying as "producers" of packaging, paper products and/or single-use food ware (generally defined to include manufacturers, brand owners and retailers) faced Extended Producer Responsibility (EPR) compliance deadlines in 2025. EPR programs vary from state to state but are similar in their intent, which is to shift responsibility and costs associated with end-of-life management of products or packaging to businesses in order to promote recycling and product design changes that minimize environmental and community impacts.

- Colorado's EPR regulations required regulated entities to submit 2024 data on sales of covered materials by July 31, 2025, with limited exemptions based on annual revenue or material weight thresholds.[35]
- Oregon's producer responsibility organization (PRO) submitted its producer responsibility plan on March 31, 2024, which officially went into effect on July 1, 2025.[36] Review of proposed plan updates and agency rules continued throughout the year.[37]

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[31] Federal Unified Agenda of Regulatory and Deregulatory Actions, RIN No. 2050-AH32.

[32] Letter from Am. Clean Power et al. to Michael Regan, Adm'r, U.S. Env't Prot. Agency (Nov. 19, 2021) (on file with author).

[33] REGINFO*, Improving Recycling and Management of Renewable Energy Wastes: Universal Waste Regulations for Solar Panels and Lithium Batteries*, RIN 2050-AH32 (Apr. 2024)

[34] *Id.*

[35] Colo. Rev. Stat. § 25-17-705; COLO. DEP'T OF PUB. HEALTH & ENV'T, *Producer Responsibility Program* (last visited Apr. 29, 2026).

[36] S.B. 582, 82d Leg. Assemb., Reg. Sess. §§ 59-60 (Or. 2021).

[37] OR. DEP'T OF ENV'T QUALITY, *Plastic Pollution and Recycling Modernization Act* (last visited Apr. 29, 2026).

- Minnesota established an EPR advisory board and designated a PRO on January 1, 2025.[38] Businesses qualifying as producers were required to register with the designated PRO by July 1, 2025.[39]
- The California Department of Resources, Recycling and Recovery (CalRecycle) missed a March 8, 2025 statutory deadline for adopting regulations to implement the state's EPR program.[40] CalRecycle issued revised regulations and initiated a new public notice and comment period on August 22, 2025.[41]
- Maine legislation revising its EPR program to more closely resemble other state programs was signed into law on June 20, 2025.[42]
- Washington State enacted legislation creating an EPR program on May 17, 2025.[43]

Additional information on state EPR programs is available through the Circular Action Alliance, which has been designated as a Producer Responsibility Organization (PRO) managing compliance and implementation for California, Colorado, Maryland, Minnesota and Oregon.[44]

A. Judicial Updates

1. *National Association of Wholesaler-Distributors v. Feldon, et al*., Case No. 3:25-cv-01334 (D. Ore.)

An industry group challenged the Oregon EPR program on July 30, 2025 in the United States District Court for the District of Oregon, claiming that it imposes "unreasonable, arbitrary, and crushing burdens, including on wholesalers and distributors" and violates the Commerce Clause and due process rights of regulated entities under the U.S. Constitution.[45] The Court issued a preliminary injunction prohibiting enforcement of the programs against the plaintiff and its members on February 6, 2026.

[38] Minn. Stat. §§ 115A.1443–.1444
[39] Minn. Stat. § 115A.1448.
[40] Maria Rachal, *Newsom Sends California Back to the Drawing Board on EPR Implementation*, PACKAGING DIVE (Mar. 10, 2025).
[41] Cal. Pub. Res. Code § 42060(a); CALRECYCLE, *SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations* (last visited Apr. 29, 2026).
[42] An Act to Improve Recycling by Updating the Stewardship Program for Packaging, L.D. 1541, 132d Leg., 1st Reg. Sess. (Me. 2025).
[43] ESSB 5284, 68th Leg., Reg. Sess. (Wash. 2025); Wash. Rev. Code § 70A.208.
[44] Circular Action Alliance, *About Circular Action Alliance* (last visited Apr. 29, 2026).
[45] First Amended Complaint, *Nat'l Ass'n of Wholesaler-Distribs. v. Or. Dep't of Env't Quality*, No. 3:23-cv-01334 (D. Or. Oct. 27, 2025).

II. COAL COMBUSTION RESIDUALS UPDATE

A. Administrative Updates

1. Proposed Rule: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; CCR Management Unit Deadline Extension Rule.

On July 22, 2025, EPA published a direct final rule to extend compliance deadlines for Coal Combustion Residual Management Units.[46] Because direct final rules may be issued only for non-controversial changes, the agency included a statement that it would withdraw the direct final rule if any adverse comments were submitted. Separately, on the same day, EPA published a proposed rule that would result in the same deadline extensions, but that would initiate a public comment period.[47]

The direct final rule and the proposed rule would change the same deadlines. They would extend the groundwater monitoring compliance deadline under Section 257.90 by 15 months to August 8, 2029. They would also extend the deadline for submitting both required parts of Facility Evaluation Reports under Section 257.75, which were previously due on February 9, 2026 (for submission of available information collection and evaluation) and February 9, 2026 (for addressing data and information gaps through a physical evaluation of the facility) to February 8, 2027. EPA has identified 119 facilities that may be affected by the proposed rule.[48]

Because adverse comments were submitted, the agency withdrew the July 22, 2025 direct final rule on September 4, 2025.[49] An extended comment period on the July 22, 2025 proposed rule closed on September 15, 2025.[50]

2. Proposed Rule: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Extension of an Alternative Closure Requirement Deadline.

On November 28, 2025, EPA issued a proposed rule extending the compliance deadline for closure of unlined CCR surface impoundments larger than 40 acres used by electric utilities from October 17, 2028 to October 17, 2031.[51] This extension allows coal-fired steam generating units at these facilities to continue to operate, with

[46] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; CCR Management Unit Deadline Extension Rule, 90 Fed. Reg. 34,358 (July 22, 2025) (to be codified 40 C.F.R. pt. 257).
[47] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; CCR Management Unit Deadline Extension Rule90 Fed. Reg. 34,409 (July 22, 2025) (to be codified 40 C.F.R. pt. 257).
[48] 90 Fed. Reg. at 34,361-64.
[49] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; CCR Management Unit Deadline Extension Rule; Withdrawal of Direct Final Rule, 90 Fed. Reg. 42,708 (Sept. 4, 2025) (to be codified 40 C.F.R. pt. 257).
[50] 90 Fed. Reg. at 42,711 (Sept. 4, 2025).
[51] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Extension of an Alternative Closure Requirement Deadline, 90 Fed. Reg. 54,611 (Nov. 28, 2025) (to be codified 40 C.F.R. pt. 257).

the purpose of supporting grid reliability.[52] EPA has identified 13 units at 11 facilities that may be affected by this proposed rule.[53]

[52] *Id.*
[53] *Id.*

Chapter V: WATER QUALITY AND WETLANDS
2025 Annual Report[1]

I. JUDICIAL

A. CWA Section 303 – Water Quality Standards (WQS)

In *City and County of San Francisco v. EPA*,[2] the United States Supreme Court addressed the scope of the Environmental Protection Agency's (EPA) authority under section 301 and section 303 of the CWA when incorporating WQS into NPDES permits. The dispute centered on two narrative "end-result" provisions in San Francisco's 2019 permit renewal that prohibited any discharge contributing to a violation of applicable WQS or constituting pollution or nuisance under state law. The Ninth Circuit upheld the permit, but the Supreme Court reversed. Relying on the statutory structure of Section 303 and the function of the CWA's permit shield, the Court held that section 301(b)(1)(C) does not authorize EPA to require permittees to guarantee attainment of downstream water quality standards through open-ended receiving-water prohibitions and instead obligates the agency to translate WQS into specific, enforceable permit conditions. The decision thus requires EPA and state permitting authorities to express Section 303 WQS in permits as concrete requirements rather than generalized ambient "end-result" limitations.

In *Lower Salford Township Authority v. EPA*,[3] several Pennsylvania municipalities challenged EPA's 2008 total maximum daily load (TMDL) for total phosphorus in the Indian Creek watershed, arguing, among other things, that EPA unlawfully revised the state's narrative WQS. Plaintiffs contended that "existing [WQS] require the nutrient endpoint to be based solely on dissolved oxygen levels associated with excessive algae growth."[4] By relying on macroinvertebrate health, EPA had unlawfully deviated from this standard. The United States District Court for the Eastern District of Pennsylvania rejected these arguments and granted summary judgment to EPA. It explained that Pennsylvania's narrative nutrient WQS built in flexibility, and EPA's consideration of macroinvertebrate health, which is a factor in and correlated with dissolved oxygen levels, did not amount to an unlawful revision of state WQS.

In *San Francisco Baykeeper v. City of Sunnyvale*,[5] the United States District Court for the Northern District of California denied the Cities of Sunnyvale's and Mountain View's motion for reconsideration of an earlier summary judgment ruling that found violations of their NPDES permit and held that Stevens Creek and Calabazas Creek are waters of the United States. On the first issue, the Cities argued that trial testimony showed

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[1]This report was compiled and edited by Matthew C. Brewer of Sidley Austin LLP (Sidley), Washington, D.C., Tyler Burgess of Arnold & Porter Kaye Scholer LLP (Arnold & Porter), Washington, D.C., and Logan Glasenapp of von Briesen & Roper, s.c., Milwaukee, WI. Contributing authors for this report were: Matthew C. Brewer, Caleb Bowers of Sidley, Los Angeles, CA; Leena Dai of Sidley, Washington, D.C.; Lauren DeCarlo of Sidley, Chicago, IL; Logan Glasenapp; Abigail Kuchnir of Sidley, Chicago, IL; Jampa Lhasawa of Arnold & Porter, Washington, D.C.; Megan S. Meadows of Law Office of Jennifer F. Novak, Rancho Palos Verdes, CA; and Jillian Williams of Arnold & Porter, Washington, D.C. This report summarizes significant developments, legislation, and decisions regarding the Clean Water Act (CWA) from January 2025 through December 2025; however, it does not purport to summarize all developments, legislation, and decisions.
[2]604 U.S. 334 (2025).
[3]No. 11-cv-6489, 2025 WL 1332039 (E.D. Pa. May 7, 2025).
[4]*Id.* at *5.
[5]No. 20-cv-00824, 2025 WL 2052303 (N.D. Cal. July 22, 2025).

a mid-2019 change in applicable WQS—the California "Bacteria Provisions"—that undermined Baykeeper's evidence of permit violations. The court disagreed, explaining that state-adopted criteria are not applicable CWA standards under section 303(c) until approved by EPA, and EPA did not approve the Bacteria Provisions until March 22, 2019. Because all sampling at issue pre-dated that approval, the earlier WQS controlled.

In *West Virginia Rivers Coalition, Inc. v. Chemours Company FC*,[6] the United States District Court for the Southern District of West Virginia granted a preliminary injunction requiring Chemours Company FC, LLC (Chemours) to comply with the effluent limits in its West Virginia NPDES permit after finding continuous discharges of HFPO-DA—a PFAS compound—into the Ohio River at levels far exceeding applicable water-quality-based effluent limitations (WQBELs). The court emphasized that those WQBELs implement West Virginia's EPA-approved section 303(c) WQS, which incorporate narrative human-health criteria requiring pollutant-specific limits necessary to achieve designated uses. Because the state established HFPO-DA limits based on health-protective values and Chemours stipulated to exceedances, the court held that plaintiffs demonstrated a clear likelihood of success on the merits. The court also found irreparable harm to the plaintiffs' members and to downstream users, reasoning that each unlawful discharge of a bioaccumulative pollutant constitutes a discrete injury to protected uses. Concluding that the balance of equities and the public interest favored injunctive relief, the court ordered Chemours to take whatever measures are necessary to meet its effluent limits.

B. CWA Section 309 – Enforcement

In *United States v. Wynja Feedlot, Inc.*,[7] EPA entered into a consent decree[8] with Wynja Feedlot, Inc. (Wynja), a company headquartered in Orange City, Iowa, that operates a large concentrated animal feeding operation in northwest Iowa. The consent decree resolved allegations that Wynja violated section 301 of the Clean Water Act by discharging pollutants from a point source into a water of the United States without a National Pollutant Discharge Elimination System (NPDES) permit. The settlement requires Wynja to pay a $20,000 civil penalty and apply for an NPDES permit, construct a lined containment basin to contain process wastewater, and sample a drainage area for pollutants.

In *Lower Susquehanna Riverkeeper Association v. Hanover Foods Corporation*,[9] EPA entered into a consent decree[10] with Hanover Foods Corporation (Hanover Foods), a company headquartered in Hanover, Pennsylvania, that produces a variety of canned, frozen, and snack food products. The consent decree resolved allegations that Hanover Foods violated the conditions and limitations of its NPDES permit "on over 600 occasions since November 2016, including violations of effluent limits, other discharge limitations, and operation and maintenance requirements."[11] The settlement requires Hanover Foods to pay a $1.15 million civil penalty and to take a series of actions to address the alleged violations, including upgrades to the wastewater treatment facility, closely monitoring compliance with its NPDES permit, reporting any violations, identifying root causes of the violations, and taking corrective actions.

[6] 793 F. Supp. 3d 790 (S.D. W. Va. 2025).
[7] Complaint, No. 25CV04066, 2025 WL 3727104 (N.D. Iowa Nov. 17, 2025).
[8] Consent Decree, *Wynja*, 25-CV-4066, 2026 WL 188033 (N.D. Iowa Jan. 8, 2026).
[9] United States' Notice of Lodging of Consent Decree, No. 21-cv-01600 (M.D. Pa. Nov. 18, 2025).
[10] Consent Decree, *Hanover Foods*, No. 21-cv-01600 (M.D. Pa. Nov. 18, 2025).
[11] *Id.* at 1.

In *Waterkeeper Alliance v. EPA*,[12] a coalition of environmental organizations challenged EPA's biennial review of effluent limitations guidelines and standards (ELGs) under CWA section 304(m) and the Administrative Procedure Act (APA), arguing that EPA improperly declined to revise ELGs for seven industrial categories.[13] The United States Court of Appeals for the Ninth Circuit agreed with the plaintiffs, holding that EPA acted arbitrarily and capriciously in violation of the APA. Although the court agreed that EPA retains discretion in how to prioritize and conduct its review of ELGs and whether to revise them, that discretion must be exercised through reasoned decision making, consistent with the CWA. If EPA chooses not to revise an "outdated" ELG, it "must nonetheless offer a reasoned justification for declining to do so."[14] Here, the court determined EPA did not provide such a justification.

The court first concluded that EPA's screening approach for determining which ELGs to revise (the "Category Ranking Analysis") failed to consider several important factors. Under the Category Ranking Analysis, EPA "looked solely at the amount of pollution contributed by each" source, and then selected only "the most highly ranked categories for further analysis."[15] The court explained that by not considering advances in pollution control technology and failing to grapple with how much additional pollution reduction *could be* achieved through updated technology-based limits, EPA lacked a rational basis for concluding that revision of the ELGs at issue was unwarranted in light of the CWA's technology forcing scheme.

The court also held that EPA's review process for ELG updates was deficient because it ignored pretreatment sources (i.e., indirect dischargers that emit pollutants into publicly owned treatment works ("POTWs") (rather than directly into waterways) and that are subject to pretreatment standards under Section 307(b)). EPA's Category Ranking Analysis relied exclusively on data from direct dischargers without explanation of why that approach was reasonable, and the court determined it was not. As the court explained, "[t]he fact that EPA did not consider pollution from indirect dischargers casts substantial doubt on the ability of the Category Ranking Analysis to carry out its stated purpose of 'prioritiz[ing] revisions on the basis of where they will do the most good.'"[16]

The court explained that EPA's review process failed to consider a comprehensive range of pollutants (e.g., nutrient pollution and other "unregulated pollutants" were not considered). With respect to plastics molding and forming, the only one of the seven categories that made it past the Category Ranking Analysis step, the court concluded that EPA's decision not to revise the ELG was independently arbitrary and capricious. The court noted that although the agency identified evidence suggesting that existing limits were far less stringent than needed to address discharges from stormwater runoff for this category, it offered no meaningful explanation for declining to revise the ELG. Because EPA failed to provide a reasoned explanation connecting the record evidence to its decision not to revise the ELGs, the court remanded for EPA to either reconsider its decision or to supply a fuller, legally adequate explanation for not revising the ELGs.

[12]140 F.4th 1193 (9th Cir. 2025).
[13]Petroleum Refining; Organic Chemicals, Plastics, and Synthetic Fibers Manufacturing; Inorganic Chemical Manufacturing; Fertilizer Manufacturing; Pesticide Chemical Manufacturing; Plastics Molding and Forming Facilities; and Nonferrous Metals Manufacturing. *Id.* at 1204.
[14]*Id.* at 1217.
[15]*Id.*
[16]*Id.* at 1221 (second alteration in original).

Litigation concerning the section 401 implementing regulations has largely paused. In 2020, the Trump administration narrowed states' and tribes' authority to impose conditions and deny certifications under section 401.[17] In 2023, the Biden administration replaced that rule with a revised regulation reaffirming the central role of states and tribes in the certification process.[18] Both rulemakings sparked litigation, which has stalled since 2024. A challenge to EPA's 2020 section 401 certification rule in the Northern District of California was dismissed as moot after EPA promulgated the 2023 rule.[19] Challenges brought by several states to the 2023 rule in the Western District of Louisiana fared no better at the preliminary stage, as the court declined a request for a preliminary injunction.[20] Early in 2025, however, the court held the case in abeyance to allow the second Trump administration time to determine its position and the litigation has remained on hold since then.[21] The current administration has not proposed further amendments, but it has issued guidance indicating that it interprets section 401 narrowly, as discussed below.

In *Village of Morrisville v. FERC*, the United States Court of Appeals for the District of Columbia further clarified when a state waives its section 401 certification authority by failing to act within one year.[22] Interpreting *Hoopa Valley Tribe v. FERC*,[23] the court found that Vermont had not waived its certification authority because there was no mutual agreement between the state and the applicant to delay.[24] The case concerned a renewed permit for a hydroelectric dam, for which the applicant, the Village of Morrisville, had withdrawn and resubmitted its water-quality certification request twice to allow more time to address the state's concerns, and Vermont eventually issued a section 401 certification with conditions. After unsuccessfully challenging those conditions in state court, the applicant argued to the Federal Energy Regulatory Commission (FERC) that Vermont had waived its certification by orchestrating a withdrawal-and-resubmittal scheme. FERC rejected the waiver claim, finding that the extra time was sought unilaterally by the applicant and not at the state's behest. The D.C. Circuit upheld FERC's determination, taking a narrow view of what constitutes a coordinated scheme under *Hoopa Valley*. The court found no evidence of a mutual agreement between the state and applicant to circumvent the one-year deadline—Vermont's mere awareness or passive assent to the withdrawals did not amount to a "deliberate idleness" or scheme to delay.

Nevada Irrigation District v. FERC[25] provides another example of a court declining to find that a state waived its certification authority. This case involved two California hydropower projects (the Yuba-Bear and Drum-Spaulding projects) where the State Water Resources Control Board had repeatedly allowed the applicants to withdraw and refile their section 401 requests when they ran out of time to complete environmental review required under the California Environmental Quality Act (CEQA). FERC initially found a waiver for one project (Yuba-Bear) due to what it viewed as a coordinated withdrawal-and-

[17] Clean Water Act Section 401 Certification Rule, 85 Fed. Reg. 42,210 (July 13, 2020) (codified at 40 C.F.R. pt. 121).
[18] Clean Water Act Section 401 Water Quality Certification Improvement Rule, 88 Fed. Reg. 66,558 (Sept. 27, 2023) (codified at 40 C.F.R. pts. 121-22, 124).
[19] *In re* Clean Water Act Rulemaking, Nos. C 20-04636, C 20-04869, C 20-06137 (consolidated), 2024 U.S. Dist. LEXIS 12812 (N.D. Cal. Jan. 24, 2024).
[20] *Louisiana v. EPA*, No. 23-CV-01714, 2024 WL 994651 (W.D. La. Mar. 7, 2024).
[21] Order Granting Second Motion to Hold Matter in Abeyance, *Louisiana*, No. 23-CV-01714 (W.D. La. May 14, 2025).
[22] 136 F.4th 1117 (D.C. Cir. 2025).
[23] 913 F.3d 1099 (D.C. Cir. 2019).
[24] *Village of Morrisville*, 136 F.4th at 1126-27.
[25] No. 23-1342, 2025 WL 1905118 (D.C. Cir. July 10, 2025).

resubmittal scheme, but the United States Court of Appeals for the Ninth Circuit vacated that FERC order in 2022, ruling that the evidence did not support a finding of coordination as the withdrawals were applicant-driven and not an attempt by the state to evade the one-year deadline. On remand, and in the parallel proceeding involving Drum-Spaulding, FERC ultimately concluded that California had not waived its section 401 authority, aligning its approach with the Ninth Circuit's decision. On appeal, the United States Court of Appeals for the District of Columbia agreed with FERC and denied the waiver claims. The court held that the licensee's claim of coordination did not rise to the standard set in *Hoopa Valley*, which the court (quoting its recent decision in *Village of Morrisville*) stated was "a very narrow decision flowing from a fairly egregious set of facts" including a written agreement explicitly committing both the state and the developer to a postponement scheme.[26] No such agreement existed in this case. These recent cases (*Village of Morrisville* and *Nevada Irrigation District*) demonstrate a narrow construction of the waiver concept, generally maintaining states' certification power unless there is clear evidence of a coordinated delay scheme.

In *Sierra Club v. Tennessee Department of Environment and Conservation*[27] (TDEC) and *Appalachian Voices v. United States Army Corps of Engineers*,[28] the United States Court of Appeals for the Sixth Circuit rejected related challenges to approvals for Tennessee Gas Pipeline Company's proposed 32-mile Cumberland Pipeline in Tennessee. In *Sierra Club*, the court denied the petition for review challenging TDEC's issuance of a section 401 water quality certification and related aquatic-resource authorization, holding that TDEC adequately evaluated the project's anticipated water-quality impacts and did not act arbitrarily or capriciously. In *Appalachian Voices*, the court likewise denied the petition for review challenging the Corps' section 404 permit, concluding that "[t]he Corps adequately assessed TGP's permit application and reasonably explained its Pipeline-related decision making with respect to open-cut trenching alternatives, rock removal methodology, the scope of TDEC's § 401 water quality certification, potential impacts on suspended particulates and turbidity, and the cumulative effects of the Pipeline's waterbody crossings."[29] The court also upheld the Corps' reliance on TDEC's section 401 certification as conclusive as to compliance with applicable effluent limitations and water-quality standards.[30] Judge Thapar dissented in *Sierra Club* on jurisdictional grounds, reiterating his view from the court's October 2024 stay decision that the Sixth Circuit lacked statutory subject-matter jurisdiction to review TDEC's certification decision; he noted that, if the court had jurisdiction, he would join the majority's merits analysis.[31]

Ohio ex rel. Yost v. Rover Pipeline, LLC[32] presented a different section 401 waiver issue than the coordination cases discussed above: when the one-year review period begins if a state treats the initial certification request as incomplete. Ohio sought civil penalties and other relief for alleged discharges of drilling fluids and stormwater during construction of an interstate natural-gas pipeline. Rover first requested section 401 certification in November 2015; Ohio later deemed the request incomplete and ultimately issued certification in February 2017 after Rover submitted a revised request. In 2022, the

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[26] *Id*. at *4.
[27] 133 F.4th 661 (6th Cir. 2025).
[28] 134 F.4th 410 (6th Cir. 2025).
[29] *Id.* at 423.
[30] *Sierra Club*, 133 F.4th at 673-74.
[31] *Id.* at 678 (Thapar, J., dissenting) (citing *Sierra Club v. Tenn. Dep't of Environment & Conservation*, Nos. 23-3682, 24-3831, 2024 WL 4472048, at *5-8 (6th Cir. Oct. 11, 2024) (Thapar, J., dissenting)).
[32] 146 S. Ct. 94 (2025), *denying cert. to State ex rel. Yost v. Rover Pipeline, LLC*, 255 N.E.3d 709 (Ohio Ct. App. 2024). *See* Petition for Writ of Certiorari, *Ohio ex rel. Yost*, No. 24-1120 (U.S. Apr. 25, 2025).

Supreme Court of Ohio held that the one-year period began with the initial request, not when Ohio deemed the request complete, and that Ohio had therefore waived its ability to participate in the section 401 certification process.[33] The court emphasized, however, that waiver did not categorically bar all state enforcement, but extended only to issues related to the section 401 certification, and remanded for the trial court to determine whether Ohio's claims fell outside the "contours" of that certification. On remand, the Ohio Court of Appeals affirmed dismissal on the ground that the Natural Gas Act preempted Ohio's remaining claims arising from FERC-authorized pipeline construction.[34] The Supreme Court of Ohio declined discretionary review in January 2025,[35] and the U.S. Supreme Court denied certiorari on October 6, 2025.[36]

E. CWA Section 402 – National Pollutant Discharge Elimination System (NPDES)

In *Pacific Coast Federation of Fishermen's Associations v. Nickels*,[37] fishing industry organizations and environmental groups challenged the Grassland Bypass Project's irrigated agriculture exemption from the NPDES program. The Grassland Bypass Project is an expansive drainage system in California's Central Valley that collects water used for irrigation and transports the resulting return flow into the Mud Slough wetland. Under CWA section 402(l)(1), EPA does not require NPDES permits for "discharges composed entirely of return flows from irrigated agriculture."[38] Plaintiffs initially filed suit in 2011, alleging that defendants "violated the CWA by discharging pollutants unrelated to irrigated agriculture into navigable waters without an NPDES permit."[39] The United States District Court for the Eastern District of California granted partial summary judgment to the defendants, and the United States Court of Appeals for the Ninth Circuit reversed in part. On remand, the district court partially granted defendants' summary judgment motion. On the subsequent appeal, the Ninth Circuit considered whether the irrigated agriculture exemption under section 402(l)(1) applies to the Grassland Bypass Project, where return flows commingle with nonpoint source pollution and other diffuse inputs rather than with additional point source discharges from non-irrigation activities.[40] The court held that the exemption applies so long as return flows do not contain additional point source discharges from activities unrelated to crop production, and the Grassland Bypass Project fell within the exemption. The court based its conclusion on three factors. First, the plaintiffs' theory that the exemption applies only when pollutants originate entirely from irrigated agriculture was not supported by the statutory text. Second, the plaintiffs' reading was inconsistent with the purpose and structure of the CWA. Third, any alternative reading would render the exemption meaningless.[41]

F. CWA Section 404 – Wetlands, including Waters of the United States (WOTUS)

In *Glynn Environmental Coalition, Inc. v. Sea Island Acquisition, LLC*,[42] environmental organizations and an individual plaintiff brought a citizen suit under the CWA alleging that the defendant unlawfully filled a 0.49-acre wetland on St. Simons

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[33] 167 Ohio St.3d 223, 2022-Ohio-766.
[34] 2024-Ohio-4769 (Ohio Ct. App. Sept. 27, 2024).
[35] Case No. 2024-1603 (Ohio Jan. 28, 2025) (declining jurisdiction).
[36] 146 S. Ct. 94 (2025) (mem.).
[37] 150 F.4th 1260 (9th Cir. 2025).
[38] *Id.* at 1264 (quoting 33 U.S.C. § 1342(l)(1)).
[39] *Pac. Coast Fed'n of Fishermen's Ass'ns*, 150 F.4th at 1269.
[40] *Id*. at 1264.
[41] *Id.* at 1271-73.
[42] 146 F.4th 1080 (11th Cir. 2025).

Island, Georgia, under Nationwide Permit 39 (NWP 39).[43] The Army Corps had issued a preliminary jurisdictional determination indicating that the parcel "*may* be waters of the United States" and verified coverage under NWP 39, but Sea Island later filled the wetland and sodded the area rather than building the commercial structure described in its request.[44] On remand from an earlier appeal, the district court dismissed under Rule 12(b)(6) and the United States Court of Appeals for the Eleventh Circuit affirmed. The court first held that Sea Island had not waived—or been judicially estopped from asserting—a jurisdictional defense under *Sackett v. EPA*,[45] merely by accepting NWP 39 coverage based on a preliminary jurisdictional determination, explaining that the waiver language applied only to Corps enforcement of the permit authorization, not to citizen suits.[46] Turning to the merits, the court applied *Sackett*'s requirement that wetlands fall within the CWA only if they have a "continuous surface connection" rendering them "'indistinguishable' from a neighboring water of the United States."[47] The court held that plaintiffs failed to plausibly allege jurisdiction because the pleadings and maps showed the 0.49-acre wetland separated from Dunbar Creek and adjacent marsh by uplands and roads, with only culverts and pipes that "might sometimes connect" the areas. The panel summarized that the wetland was not a WOTUS, despite its proximity to Dunbar Creek, because there was no "continuous surface connection" between the two.[48] Chief Judge Pryor, who wrote the majority opinion, also wrote separately to add that, in his view, Sea Island could not have waived its jurisdictional challenge because the CWA does not authorize citizen suits to enforce section 404 permits; such enforcement is reserved to the government.[49]

In *Indigenous Peoples of the Coastal Bend v. U.S. Army Corps of Engineers*,[50] the United States Court of Appeals for the Fifth Circuit affirmed summary judgment for the Corps and the terminal owner and upheld a section 404 permit (and associated Rivers and Harbors Act section 10 authorization) and NEPA finding of no significant impact (FONSI) authorizing dredging and related discharges to expand the Ingleside crude export terminal on the Corpus Christi Ship Channel. Two tribal organizations and a coastal community group challenged the Corps' Environmental Assessment (EA), FONSI, and public-interest review under NEPA, the CWA, and the APA, arguing that the agency failed to take a "hard look" at impacts to seagrasses and wetlands, cumulative effects, climate change, and public health and safety, and that an Environmental Impact Statement (EIS) was required. The court held that plaintiffs' arguments premised on "increased vessel traffic" (including oil-spill risk and light, air, and noise effects) were forfeited because they were not raised during the notice-and-comment period and were not preserved on appeal. On the remaining issues, the court concluded that the EA reasonably limited its effects analysis to consequences proximately caused by the permitted dredging and construction, adequately disclosed impacts and mitigation, and supported the FONSI.[51] Applying the Corps' NEPA regulations and relying in part on *Atchafalaya Basinkeeper v. U.S. Army Corps of Engineers*,[52] the panel accepted scoping that aligned the effects analysis with the scope of the permitted activity, upheld the cumulative-effects analysis in light of compensatory mitigation and consistency with watershed-restoration efforts, and held that the EA's climate-change discussion—finding negligible construction-related greenhouse gas

[43]*Id.* at 1082-84.
[44]*Id.* at 1083-84 (emphasis added).
[45]598 U.S. 651 (2023).
[46]*Glynn Envtl. Coal.*, 146 F.4th at 1086-87.
[47]*Id.* at 1088-89 (quoting *Sackett*, 598 U.S. at 678).
[48]*Glynn Envtl. Coal.*, 146 F.4th at 1089-90.
[49]*Id.* at 1095 (Pryor, C.J., concurring).
[50]132 F.4th 872 (5th Cir. 2025).
[51]*Id.* at 879-80, 883, 885-86.
[52]894 F.3d 692 (5th Cir. 2018).

emissions and de minimis aquatic carbon effects and weighing them against project benefits—satisfied NEPA's "hard look" requirement.[53] The court likewise sustained the CWA public-interest review, emphasizing that the regulations do not require granular cost-benefit quantification and that the Corps expressly balanced reasonably foreseeable detriments against project benefits, and it rejected claims that an EIS was required based on controversy, unique geographic characteristics, uncertainty, related actions, or public health and safety, noting that the EA addressed each factor and that many contrary arguments depended on the forfeited vessel-traffic theory.[54]

Beyond the aforementioned cases, federal courts are actively considering several section 404-related challenges, including Florida's state-assumed section 404 program,[55] and federal enforcement, among other issues.

In *Center for Biological Diversity v. Zeldin*,[56] Florida and EPA sought reversal of the district court's vacatur of EPA's approval of Florida's dredge-and-fill program. Florida assumed administration of the federal section 404 program in 2020, becoming the first state in decades, and one of only three nationwide, to take over primary permitting authority from the Corps. Plaintiffs challenged EPA's approval of the program on the ground that the approval violated the Endangered Species Act (ESA) because EPA relied on an unlawful programmatic biological opinion. The district court agreed, holding that the ESA requires federal, not state, analysis of listed species impacts and vacating the programmatic biological opinion relied upon by EPA.[57] The D.C. Circuit affirmed the decision in March of 2026. This decision will be discussed in the 2026-2027 Year in Review.

In *South River Watershed Alliance, Inc. v. City of Atlanta*,[58] environmental groups challenged the City's construction of a police training complex—commonly referred to as "Cop City"—alleging that the project caused sediment discharges into Intrenchment Creek, a tributary of the South River, in violation of the Clean Water Act. After the United States District Court for the Northern District of Georgia denied plaintiffs' request for a preliminary injunction and later entered judgment for the City and the Atlanta Police Foundation, the parties reached an amended settlement in April 2025.[59]

In *United States v. Savannah Land Holdings, LLC*,[60] DOJ alleged violations of a section 404 permit at a 2,230-acre residential development, including failure to comply with a Programmatic Agreement addressing protection of cultural resources such as Native American artifacts, human remains, and funerary items.[61] Based on the complaint, the government requests that the United States District Court for the Southern District of Georgia: (1) enjoin further development that could violate the section 404 permit or disturb wetlands or cultural resources; require Savannah Land Holdings to adopt protective measures for cultural resources and comply with the Programmatic Agreement; (2) order corrective actions to remediate past harm and properly manage affected cultural materials; impose civil penalties for the alleged permit violations; and (3) grant any additional relief

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53 *Indigenous Peoples of the Coastal Bend*, 132 F.4th at 887-88.
54 *Id*. at 886-87, 891-92.
55 *See* State 404 Program, FLA. DEP'T OF ENVTL. PROT. (July 16, 2024).
56 No. 24-5101, 2026 U.S. App. LEXIS 8900 (D.C. Cir. Mar. 27, 2026) (not to be confused with Ctr. for Biological Diversity v. Zeldin, No. 25-1168 (D.C. Cir. filed Aug. 7, 2025), a separate Clean Air Act challenge to oil and gas sector regulations).
57 *See* Ctr. for Biological Diversity v. Regan, 734 F. Supp. 3d 1 (D.D.C. 2024), *aff'd sub nom.* Ctr. for Biological Diversity v. Zeldin, 2026 U.S. App. LEXIS 8900.
58 No. 23-CV-03416, 2024 U.S. Dist. LEXIS 249940 (N.D. Ga. Aug. 30, 2024).
59 *See* Order, *S. River Watershed All.*, No. 23-cv-3416 (N.D. Ga. Apr. 1, 2025), ECF No. 63 (approving amended settlement); Chart Riggall, Atlanta Settles Enviro Group's Suit Over 'Cop City' Site, LAW360 (Apr. 1, 2025).
60 Complaint, No. 25-cv-00003 (S.D. Ga. Jan. 3, 2025), ECF No. 1.
61 *Id.* at ¶¶ 1-3, 22.

needed to ensure compliance and prevent further harm.[62] The proceedings have been temporarily stayed to allow for settlement discussions, but litigation is expected to resume if a settlement is not reached.

Finally, in *South Carolina Coastal Conservation League v. United States Army Corps of Engineers*,[63] conservation groups challenged the Corps' section 404 permit and associated NEPA review for the Cainhoy Plantation development near Charleston, South Carolina, which involved filling approximately 180 acres of wetlands.[64] The plaintiffs argued that the Corps' EA and public-interest review: (1) undervalued the ecological importance of the wetlands complex (including its flood-attenuation and habitat functions); (2) failed to rigorously evaluate less-damaging alternatives that would avoid high-value wetlands; and (3) did not adequately consider climate-change and environmental-justice impacts.[65] The United States District Court for the District of South Carolina granted summary judgment to the Corps and the developer, holding that the EA and public interest review adequately considered reasonable alternatives, cumulative impacts, and mitigation measures; that the Corps reasonably identified the least environmentally damaging practicable alternative under the section 404(b)(1) Guidelines; and that its treatment of sea-level rise and storm-surge risk satisfied NEPA and the Corps' public-interest regulations.[66] The plaintiffs have appealed to the United States Court of Appeals for the Fourth Circuit, where briefing on the merits is underway.

G. CWA Section 505 – Citizen Suits

In *Tennessee Riverkeeper, Inc. v. Waste Connections of Tennessee, Inc.*,[67] a non-profit corporation filed suit against a company conducting landfill operations on property adjacent to a Water of the United States. Plaintiff claimed the buried materials served as a point source causing discharges of per- and polyfluoroalkyl substances (PFAS). Defendant moved to dismiss on the grounds that plaintiff lacked standing and had alleged wholly past violations. The United States District Court for the Middle District of Tennessee noted that several details in the complaint did not provide sufficient clarification, including where the alleged discharges were occurring. Plaintiff alleged that it observed discolored water discharging from the property, and that one of three samples taken ten months before the complaint was filed contained PFAS. The court's analysis focused on whether standing was conferred based on a good faith allegation of continuous or intermittent violations, noting the proof to establish an ongoing violation at trial is higher than for jurisdictional purposes. The court noted that while a defendant does not need to be in violation at the time the complaint is filed, there must be a good faith assertion of facts showing a continuous or recurring violation. A plaintiff's good-faith belief is never sufficient, so while the plaintiff might believe the discolored water contained PFAS, the complaint did not assert facts sufficient to support that inference.[68] This case also addresses Justice Scalia's concurrence in *Gwaltney of Smithfield v. Chesapeake Bay Foundation*,[69] which suggests that a violation may be ongoing or likely to recur where no remedial measures clearly eliminate the cause of the violation. The court explained that this case was dissimilar, that Justice Scalia's concurrence did not support plaintiff's position, and it

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[62]*Id.* at ¶¶ 3, 31-33, p. 10.
[63]No. 2:22-cv-2727-RMG (D.S.C.), 2025 WL 1476517 (D.S.C. May 22, 2025), *appeal docketed*, No. 25-1797 (4th Cir. July 15, 2025).
[64]*Id.* at *2, 8.
[65]*Id.* at *8, 13-14, 16.
[66]*Id.* at *9-10, 12, 14-16, 20-21.
[67]769 F. Supp. 3d 784 (M.D. Tenn. 2025).
[68]*Id*. at 792-93.
[69]484 U.S. 49 (1987).

rejected the view that a bare allegation of a lack of remedial measures is sufficient to support an inference of ongoing violation. The court granted the motion to dismiss, finding that plaintiff alleged a wholly past violation and therefore did not need to address defendant's standing arguments.[70]

Similarly, in *Wai Ola Alliance v. United States Department of the Navy*,[71] the parties were before the United States District Court for the District of Hawaii on a motion for partial summary judgment, with the Navy arguing that plaintiffs had not shown an ongoing discharge or a likelihood that a discharge would recur, and that plaintiffs lacked standing to sue based solely on self-reported, past violations. The Navy's petroleum storage and conveyance system includes pipes that extend to a water of the United States and has a history of recurring problems and violations. The Navy addressed a 2020 fuel leak with repairs, installing booms, and collecting spilled oil. Plaintiffs argued that the facility's history of spills and poor maintenance showed that violations were likely to recur, while the Navy sought to dismiss certain claims, contending that once the cessation of an ongoing violation is absolutely clear, the citizen suit becomes moot. The court found that plaintiffs presented evidence sufficient to establish standing for several members. For example, one member uses water from the aquifer allegedly affected by the petroleum spills, and he experienced fear that his family was drinking contaminated water.[72] The court also referenced Justice Scalia's concurrence in *Gwaltney*, explaining that the Navy's potential future conduct was too speculative to support plaintiffs' request for partial summary judgment on an ongoing-violation theory. However, while the court found standing, plaintiffs based their motion for partial summary judgment on violations that occurred prior to filing their complaint, and on violations from a location that had been emptied and was now inactive. The court ruled that plaintiffs had not shown a reasonable likelihood that the self-reported violations from that specific location would occur in the future.[73]

In *Chattahoochee Riverkeeper, Inc. v. City of Atlanta*,[74] the City moved to dismiss the action or, in the alternative, stay the case. The City argued the allegations were based on wholly past discharge violations and the CWA's diligent prosecution bar prevented the lawsuit. Plaintiff, an environmental advocacy group, alleged violations of both effluent limits and non-numeric permit conditions at the City's wastewater treatment plant. The United States District Court for the Northern District of Georgia rejected defendant's reliance on *Gwaltney*, explaining that citizen-plaintiffs do not need to prove ongoing noncompliance at the pleading stage; plaintiffs need only to make good-faith allegations of permit violations that were ongoing or intermittent when the suit is filed. The court stated that defendant's challenge is, instead, properly raised at the summary judgment stage, noting the importance of reviewing a complete record. Concurrent with the litigation, the City was finalizing a consent decree with a state environmental agency based on the wastewater treatment plant's operations, and argued the diligent prosecution bar applied. The court disagreed, explaining that the diligent prosecution bar (which only applies to civil penalties, not injunctive relief) does not automatically apply when a citizen suit is filed based on the same violations that a state is also suing for.[75] Instead, it applies only when the state law's penalty assessment, public participation and judicial review provisions are each roughly comparable to corresponding provisions in the CWA. For example, in this case, there were differences in the public participation provisions of the CWA and the state statute, with the state statute having more limited rights. The court also discussed the involuntary mootness doctrine, explaining that when a defendant comes into compliance

[70]*Tenn. Riverkeeper v. Waste Connections of Tenn., Inc.*, 769 F. Supp. 3d at 793-94.
[71]Civ. No. 22-00272, 2025 U.S. Dist. LEXIS 147552 (D. Haw. July 31, 2025).
[72]*Id.* at *17-18.
[73]*Id*. at *26-31, 33.
[74]765 F. Supp. 3d 1309 (N.D. Ga. 2025).
[75]*Id*. at 1320-21.

because of regulatory oversight, post-complaint compliance does not moot a CWA citizen suit plaintiff's ability to seek penalties for violations that were alleged and occurred in the past.[76] Entering into a consent decree is a voluntary action; therefore there is no involuntary mootness after taking what is in fact a voluntary action and penalties are still available. The court noted that Eleventh Circuit law was settled that, in CWA cases, post-complaint compliance does not moot a claim for civil penalties, so long as there were good-faith allegations of violations when the complaint was filed.

In *Cebollero-Bertrán v. Puerto Rico Aqueduct and Sewer Authority*,[77] the citizen suit was brought by an individual homeowner and the court addressed standing and mootness in ruling on motions in limine and for summary judgment. In 2015, four years before Ms. Cebollero-Bertrán filed suit, EPA sued the defendant, a public corporation providing water and sewer services for Puerto Rico, under the CWA and obtained a court-ordered consent decree. Despite that consent decree, Ms. Cebollero-Bertrán alleged that sewage discharges continued to flow onto her property. After the complaint was filed, Ms. Cebollero-Bertrán moved to New Jersey due to her husband's relocation to a military base, but she remained the owner of the property at issue. The United States District Court for the District of Puerto Rico analyzed both prudential and constitutional standing. Prudential standing addresses who may invoke a cause of action, including limits on asserting third-party rights, "generalized grievances," and whether the plaintiff falls within the statute's "zone of interests." The court acknowledged that the CWA imposes no categorical restrictions on individual citizens bringing a suit, but looked to confirm that she resided in the affected area at the time the complaint was filed. The court explained that a plaintiff is not required to remain in an area impacted by health threats, so long as standing existed when the complaint was filed. There is no requirement for ongoing harm, and defendant did not make it "absolutely clear" that future overflows would not occur.[78] Defendant also argued that the consent decree governed the resolution of the alleged violations and that the diligent prosecution bar made the lawsuit inappropriate. The court disagreed, noting that a consent decree does not provide for civil penalties for future violations, so the plaintiff's requested relief was not redundant. Ultimately, however, the court ruled that, because plaintiff moved with no "credible intent to return," the case was moot as the personal interest must remain throughout the litigation.[79] Plaintiff's argument that she had lost enjoyment of the property due to defendant's violations was unavailing because the personal interest tied to her physical presence was severed. The court clarified that this ruling was specific to the facts of this case, and does not suggest that a plaintiff must currently reside in an affected area to bring a CWA suit.

In *Potomac Riverkeeper, Inc. v. Virginia Electric and Power Company*,[80] plaintiffs were non-profit organizations dedicated to protecting waterways, wild places and the natural environment. Defendant was a subsidiary of Dominion Energy, Inc. The United States District Court for the Northern District of West Virginia addressed motions for summary judgment brought by both plaintiffs and defendant. At issue were violations related to Mount Storm Lake, created in 1963 as a cooling pond for a power station. The lake itself is not a WOTUS, but the spillways from Mount Storm Lake lead to Stony River, a tributary of a WOTUS. The Permit requires that temperature differences at Outlet 001 below the spillway be kept within specified limits. Plaintiffs' standing witness stated that he no longer planned fishing trips based on the violations because elevated temperatures harmed fish health and reduced his enjoyment of fishing. With respect to plaintiffs' Article III standing, the court ruled there was a genuine issue of material fact with respect to

[76]*Id*. at 1317-20.
[77]No. 19-cv-01412, 2025 U.S. Dist. LEXIS 147452 (D.P.R. July 30, 2025).
[78]*Id*. at *2-3, 19-23, 51-61.
[79]*Id*. at *34-35, 39, 58-60, 63-64, 70.
[80]Civil No. 21-CV-23, 2025 U.S. Dist. LEXIS 156233 (N.D. W. Va. Aug. 13, 2025).

redressability for the temperature violations. The court also ruled that plaintiffs failed to establish injury-in-fact or redressability with regard to the alleged reporting violations. The court noted that complete redressability is not required, a favorable decision must alleviate an injury on some level. Here, whether the violations actually led to fewer fish downstream was contested. As to the reporting violations, the court ruled that not planning a fishing trip was not the type of injury Congress contemplated by requiring permittees to draft and submit discharge monitoring reports every month.[81] Additionally, nothing in those reports would be useful in planning a fishing trip; therefore, the element of redressability was lacking. Based on these findings, plaintiffs lacked standing to challenge the reporting violations.

In *Oregon Natural Desert Association v. Meink*,[82] the court denied a motion to dismiss for lack of standing and failure to state a claim. Plaintiff, an environmental organization brought its CWA citizen suit against the Air Force and its Secretary alleging illegal discharge of pollutants into a WOTUS from their training exercises which involved dropping canisters from aircraft. The United States District Court for the District of Oregon held that members of the group had standing because they feared pollutants from those training exercises were degrading the waterways. While the training area was vast, it included protected waterways.[83] Allegations of injury over large areas may be sufficient at the pleading stage if plaintiffs allege negative impacts in smaller areas that are representative of the larger area. The court recognized that plaintiffs' allegations that they feared pollution of waterways were not too intangible. Concerns of illegal discharge are sufficient to establish a concrete injury, a standard that the court noted serves the purpose of the CWA to prevent degradation before it happens. In this case, the plaintiffs also alleged that pollutants from canisters entered WOTUS, specifying several waterways. However, plaintiff's informational injury theory was not sufficiently supported by defendant's failure to obtain an NPDES permit. There is no injury if there is no permit.[84] The CWA requires disclosure of information during and after the permit application process, such as monitoring and reporting information, but doesn't impose those informational requirements until then.

The court in *Coastal Environment Rights Foundation v. Naples Restaurant Group, LLC*[85] also addressed mootness in the context of a restaurant's annual fireworks displays in Alamitos Bay. Plaintiffs alleged that defendant, a restaurant group, violated the CWA by setting off a malfunctioning firework during its New Year's Eve celebration that discharged debris into the bay without an NPDES permit. At the time the complaint was filed, however, there was no requirement for defendant to have an NPDES permit for its displays. During the litigation, the Los Angeles Region of the Regional Water Quality Control Board adopted a general permit requirement for public fireworks displays, and the restaurant submitted a notice of intent and obtained coverage under that permit. On appeal, the United States Court of Appeals for the Ninth Circuit held that issuance of the permit mooted plaintiffs' claims for declaratory and injunctive relief and, addressing a circuit split, adopted the view that civil penalty claims are also moot when it is "absolutely clear that the alleged violation could not reasonably be expected to recur."[86] The court further held that a request for attorneys' fees cannot preserve jurisdiction over an otherwise moot case.

[81] *Id*. at *1-4, 8-9, 14, 16.
[82] 797 F. Supp. 3d 1192 (D. Or. 2025).
[83] *Id*. at 1200-01.
[84] *Id*. at 1202.
[85] 158 F.4th 1052 (9th Cir. 2025).
[86] *Id*. at 1062 (citing Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 193 (2000)).

A. CWA Section 303 – Water Quality Standards (WQS)

A pair of pending bills in the House of Representatives, the Water Quality Standards Attainability (WQSAA) Act[87] and the Promoting Efficient Review for Modern Infrastructure Today (PERMIT) Act,[88] would expand state obligations when conducting triennial reviews of WQS. As part of that package, the WQSAA Act would amend CWA section 303(c) to require states to hold public hearings to reevaluate WQS applicable to waters receiving discharges from municipal combined sewer systems, including for the purpose of assessing whether combined sewer overflow controls remain cost-effective. It would further amend section 303(c)(2)(A) to mandate that states consider the cost and commercial availability of treatment technologies that point sources may need to achieve compliance with applicable standards. In addition, the bill would add a subsection to section 304(a) directing EPA, when developing or revising water quality criteria, to take into account the cost and commercial availability of treatment technologies needed to meet section 303 WQS.

Another bill pending in the House of Representatives, titled the Confidence in Clean Water Permits Act,[89] would codify the Supreme Court's holding regarding the relationship between WQS and permit conditions in *San Francisco v. EPA*. The bill would amend section 402 of the CWA to clarify the scope of the Act's "permit shield" and the way WQBELs tied to section 303 WQS may be expressed in NPDES permits. The bill would revise section 402(k) to specify that compliance with permit conditions constitutes compliance not only for pollutants with explicit effluent limits, but also for pollutants identified through indicator parameters, disclosed during the permit application process, or associated with identified waste streams or operations. It would also add a new section 402(t) requiring that any WQBEL included to achieve section 303 WQS be written in a form that (1) specifies the pollutant to which it applies and (2) clearly describes how compliance may be achieved, either through a numerical limit or a narrative description of required actions or practices, thus avoiding the kind of vague ambient "end-result" provisions struck down in *San Francisco v. EPA.*

EPA published a final rule[90] revising WQS for the mainstem Delaware River, including new aquatic-life designated uses and dissolved oxygen criteria for Zones 3, 4, and the upper portion of Zone 5, all located within the tidal Delaware estuary. EPA concluded that the existing Delaware River Basin Commission–derived aquatic life uses for New Jersey and Pennsylvania did not include the propagation component of the section 101(a)(2) goal. The final rule upgrades those uses to "protection and propagation of resident and migratory aquatic life" and establishes corresponding dissolved oxygen criteria, developed from site-specific data and a cohort model for Atlantic Sturgeon. EPA adopted seasonal criteria addressing spawning, larval development, and overwintering, with oxygen saturation thresholds designed to ensure the growth and survival of oxygen-sensitive species.

[87]H.R. 3934, 119th Cong. (2025).
[88]H.R. 3898, 119th Cong. (2025).
[89]H.R. 3897, 119th Cong. (2025).
[90]Water Quality Standards to Protect Aquatic Life in the Delaware River, 90 Fed. Reg. 46,483 (Sept. 29, 2025) (to be codified at 40 C.F.R. pt. 131).

B. CWA Section 303(d) – Total Maximum Daily Loads (TMDLs)

On January 14, 2025, EPA's Office of Wetlands, Oceans and Watersheds issued its 2026 Integrated Reporting Memorandum[91] to provide national direction for how states, territories, and authorized tribes should prepare their section 303(d) impaired waters lists for the 2026 cycle. The guidance clarifies and provides suggested methodology for how jurisdictions should assess attainment of water-quality standards, identify waters not meeting those standards, and determine when a water must be placed on the impaired-waters list. For example, the memorandum encourages jurisdictions to use and clearly document multiple lines of evidence (such as biological, chemical, and physical data) when deciding whether a waterbody is attaining its applicable criteria and should be listed as impaired. This memorandum is EPA's recommended approach, but it is not legally binding, and the states, territories, and tribes retain discretion to adopt different approaches.

C. CWA Section 401 – Water Quality Certification

EPA published a memo dated May 21, 2025, setting out its view that section 401 grants a "specific and limited" role to states and tribes in the permitting process and discouraging states from interpreting section 401 broadly.[92] In key part, the memo states that "CWA Section 401 is limited to addressing only water quality-related impacts. Similarly, the regulations do not authorize a certification condition based on generalized concerns about water quality untethered to noncompliance with a specific applicable water quality requirement or requirements."[93]

Through the memo, EPA instructs states and tribes to confine their evaluations of proposed projects closely to CWA standards and to avoid assessing impacts the project may have on other concerns such as "air quality, traffic, noise, project preference, or economic impacts that have no direct connection to water quality." The memo further implies that the administration may challenge denials of certifications based on such grounds: "If a certifying authority imposes certification conditions or denies certification for a reason or reasons such as these, then that certification decision would not comply with CWA Section 401 or the EPA's regulations."[94] This guidance thus narrows the practical scope of section 401 reviews at the same time that courts are tightening the conditions under which states may lose certification authority through waiver.

D. CWA Section 404 – Wetlands, including Waters of the United States (WOTUS)

EPA's Clean Water Act Section 404 Tribal and State Assumption Program Final Rule,[95] which went into effect on January 17, 2025, substantially revises the regulatory framework governing state and tribal assumption of the federal dredge-and-fill program under section 404(g). The rule modernizes application and review procedures, strengthens EPA's oversight authority, and clarifies the respective roles of states, tribes, and federal agencies when an assumed program is in place. It also updates the criteria for program approval, particularly regarding enforcement capacity, compliance monitoring, and intergovernmental coordination, and establishes new mechanisms through which EPA may reconsider, revoke, or require corrective actions for assumed programs. Because these

[91]Memorandum from Brian Frazer, Dir. of Off. of Wetlands, Oceans, and Watersheds, EPA, to Water Div. Dirs., Regions 1-10 (Jan. 14, 2025).
[92]Memorandum from Peggy S. Browne, Acting Assistant Adm'r, Off. of Water, EPA (May 21, 2025).
[93]*Id.*
[94]*Id.*
[95]89 Fed. Reg. 103,454 (Dec. 18, 2024) (codified at 40 C.F.R. pts. 123-24, 232-33).

changes directly affect states evaluating whether to seek section 404(g) authority and tribes considering program development, the rule remained a central point of attention throughout 2025.[96]

On March 12, 2025, EPA and the Corps issued a "Memorandum to the Field Concerning the Proper Implementation of 'Continuous Surface Connection' Under Waters of the United States under the Clean Water Act,"[97] providing post-*Sackett* direction for jurisdictional determinations involving wetlands. The memorandum instructs field staff to evaluate hydrologic indicators such as persistent inundation, surface water contiguity during ordinary hydrologic conditions, and observable flow paths, and addresses how intermittent or seasonal connections and human-made barriers (e.g., berms, culverts, and ditches) should be considered when assessing whether a wetland is "indistinguishable" from an adjacent water. Emphasizing consistency with *Sackett v. EPA*, the agencies caution that neither subsurface connectivity nor ecological functional relationships alone are sufficient to establish jurisdiction and stress the need for documentation of visually apparent or otherwise demonstrable surface connections.[98]

In June, the Corps' Proposal to Reissue and Modify Nationwide Permits[99] sought comment on updates to the Nationwide Permit (NWP) program affecting linear infrastructure, energy projects, residential and commercial development, and compensatory mitigation requirements. The proposal includes revisions to NWP 12 (oil and gas pipeline activities), NWP 14 (linear transportation projects), and NWP 51 (land-based renewable energy), along with adjustments to pre-construction notification thresholds and regional conditions intended to improve consistency with the *Sackett* jurisdictional framework. The Corps also proposed modifications to mitigation standards, including expanded use of watershed-scale planning and clarification of when permittees must provide compensatory mitigation for temporary or secondary impacts. The rulemaking reflects the Corps' effort to recalibrate the NWP program in light of narrowed federal jurisdiction and evolving infrastructure demands.[100]

Most recently, on November 20, 2025, EPA and the Corps published Updated Definition of "Waters of the United States,"[101] a proposed rule to revise the regulatory definition of "waters of the United States." The proposal seeks to codify a jurisdictional framework consistent with *Sackett* by focusing on traditional navigable waters, relatively permanent tributaries, impoundments, and certain adjacent wetlands that maintain a continuous surface connection to those waters.[102] It would, for the first time, define several terms historically addressed through case law or guidance, including "relatively permanent," "tributary," "continuous surface connection," "ditch," "prior converted cropland," and "waste treatment system."[103] It would also remove "interstate waters" as a standalone jurisdictional category and add an express exclusion for groundwater.[104] The proposal would also clarify that the term "relatively permanent" waters includes both perennial tributaries and streams that flow continuously during a typical wet season, introducing an explicit seasonal context to the jurisdictional analysis that has not previously appeared in the regulatory text. Comments were due on January 5, 2026. If finalized, the rule would narrow the scope of waters subject to federal section 404 permitting, as many ephemeral channels and wetlands without a continuous surface connection likely would be

[96] *See id.*
[97] Memorandum from EPA & U.S. Army Corps of Eng'rs (Mar. 12, 2025).
[98] *Id*.
[99] 90 Fed. Reg. 26,100 (June 18, 2025) (to be codified at 33 C.F.R. ch. II).
[100] *Id.*
[101] 90 Fed. Reg. 52,498 (Nov. 20, 2025) (to be codified at 33 C.F.R. pt. 328).
[102] *Id.* at 52,499, 52,501.
[103] *Id.* at 52,499.
[104] *Id.*

excluded. The agencies also note that states and tribes may choose to regulate waters excluded under the proposal—potentially increasing regional variation in dredge-and-fill requirements—and that defining core concepts such as "relatively permanent" and "continuous surface connection" may shift future disputes toward site-specific hydrologic evaluation and administrative-record development.[105]

III. ADMINISTRATIVE

A. CWA Section 404 – Wetlands, including Waters of the United States (WOTUS)

In July 2025, the White House released America's AI Action Plan,[106] which highlights the environmental permitting challenges posed by rapid expansion of AI-related data-center infrastructure. As relevant here, the Plan specifically recommends that federal agencies "[e]xplore the need for a nationwide Clean Water Act Section 404 permit for data centers," noting that the siting and construction of large-scale facilities often intersect with wetlands and other aquatic resources protected under the CWA.[107] The Plan frames a potential nationwide section 404 permit as a means of harmonizing federal wetlands protections with escalating national demand for digital-infrastructure capacity.[108]

Then, in Executive Order 14,318, "Accelerating Federal Permitting of Data Center Infrastructure,"[109] President Trump directed federal agencies, including EPA, to expedite environmental reviews and approvals for data-center projects by "developing or modifying regulations" under major federal environmental statutes, such as the Clean Air Act, the CWA, and CERCLA.[110] The Executive Order frames data-center buildout as a national priority and instructs agencies to streamline or update permitting frameworks that frequently apply to such developments, including CWA section 404 approvals where data-center construction implicates wetlands or other jurisdictional waters.

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[105] *See generally* 90 Fed. Reg. at 52,498.
[106] EXEC. OFF. OF THE PRESIDENT, WINNING THE RACE: AMERICA'S AI ACTION PLAN (July 2025).
[107] *Id.* at 14.
[108] *Id.*
[109] Exec. Order No. 14,318, 90 Fed. Reg. 35,385, 35,386–87 (July 25, 2025).
[110] *Id.* at 35,387.

CHAPTER W: WATER RESOURCES
2025 Annual Report[1]

I. STATE OF ALASKA

A. *Judicial Developments*

1. State Court

a. *Orutsararmuit Native Council, et al. v. Boyle, et al.*

In 2021, the Department of Natural Resources (DNR) approved 12 water use permits under the statutory criteria in the Water Use Act that were requested by Donlin Gold LLC (Donlin) for the Donlin mine prospect.[2] The Donlin mine is located on lands owned by Alaska Native Corporations (ANCs) in the Kuskokwim River watershed.[3] Under the Water Use Act, DNR considered the "economic, public health, and environmental effects of the water appropriations," DNR determined that it was in the public interest to approve the permits.[4] Several Alaska Native tribes appealed the permits to the Commissioner, arguing that the DNR violated "article VIII of the Alaska Constitution by 'failing to consider the effects of the proposed mine as a whole.'"[5] The Commissioner denied the appeal, the tribes then filed in Superior Court, where the court affirmed the DNR's decision.[6] The tribes appealed the Superior Court decision, and the Alaska Supreme Court rejected the argument that DNR "violated article VIII of the Alaska Constitution by declining to consider the cumulative impacts of the entire Donlin mine"[7] The Supreme Court held that DNR is required to "take a 'hard look' at all factors material and relevant to the public interest" when determining the use of state resources, but the Court determined these requirements do not extend to "the extraction of privately owned minerals on private land."[8] The lands in question for the Donlin Mine are "privately" owned by ANCs and thus DNR was not required to condition "permits on an analysis of the cumulative impacts of the mining itself."[9]

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[1]George R. Lyle is a shareholder of Guess & Rudd P.C. and concentrates his practice in the areas of oil and gas, natural resources, and environmental law. Bree Mucha is an associate of Guess & Rudd P.C., whose practice focuses primarily on civil litigation, business law, oil and gas, and natural resources. Arizona review is submitted by Alexandra M. Arboleda, Kyle R. Stenseth, and Sean F. Krieg, Gammage & Burnham, PLC, Phoenix, Arizona. Nevada review is submitted by Karen Peterson, Esq. and Keith Ketola, Esq., Allison MacKenzie, Ltd., Carson City, Nevada and Justin Townsend, Esq. Associate Region Counsel, DR Horton, Reno, Nevada.
[2]Orutsararmiut Native Council v. Boyle, 579 P.3d 434, 439 (Alaska 2025).
[3]*Id*. at 436.
[4]*Id.* at *439.*
[5]*Id*.
[6]*Id*. At 439–40.
[7]*Orutsararmiut Native Council*, 579 P.3d at *451.*
[8]*Id.* at 449.
[9]*Id.* at 451.

2. Federal Court

a. *United States of America and Kuskokwim River Inter-Tribal Fish Commission, et al., v. State of Alaska, et al.*

In 2021 and 2022, the Federal Subsistence Board closed sections of the Kuskokwim River to non-subsistence uses.[10] However, around the same time, Alaska issued their own conflicting orders on non-subsistence uses on the Kuskokwim River.[11] The United States (U.S.) sued Alaska seeking declaratory judgment and injunctive relief to preclude Alaska from taking actions that interfere with the U.S.'s efforts to implement rural subsistence priority under ANILCA.[12] In 2024, the United States District Court of Alaska granted summary judgment to the U.S. and entered a permanent injunction against Alaska.[13] Alaska appealed to the Ninth Circuit, with the argument that the *Katie John* Trilogy cases, which established that "public lands" includes navigable waters under Title VII of ANICLA, is irreconcilable with the more recent *Sturgeon* II case where the court considered the meaning of "public lands", as used in Title I of ANILCA, and declined to interpret the term to include navigable waters.[14] The Ninth Circuit held that Title I and Title VIII of ANILCA "can be reasonably harmonized on the ground that the distinct context and statutory objective of Title VIII call for an interpretation of 'public lands' that includes navigable waters, where subsistence fishing 'has traditionally taken place.'"[15] The Court found that subsistence priority was intended to "apply to the waters and to the fish populations that rural subsistence users have *traditionally* fished and depended upon within conservation system units," which include navigable waters.[16] Since the Kuskokwim River has traditionally been used by subsistence communities, it is public land and can be subject to rural subsistence priority.[17] The Ninth Circuit affirmed the United States District Court of Alaska decision.[18] Alaska filed a petition for certiorari on September 17, 2025.[19]

B. *Alaska Regulatory Developments/Administrative Code Updates*

1. 18 AAC 80.621

On March 10, 2025, the Department of Environmental Conservation ("DEC") adopted regulations in 18 AAC 80. The regulations propose allowing a limited alternative to filtration for water systems. These regulations were adopted in the Alaska Administrative Code Register 254, in July 2025.[20]

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[10]United States v. Alaska, 151 F.4th 1124, 1135 (9th Cir. 2025).
[11]*Id.*
[12]*Id.* at 1135–36.
[13]*Id.* at 1136.
[14]*Id.* at 1127, 1136.
[15]*Alaska*, 151 F.4th at 1128.
[16]*Id.* at 1139.
[17]*Id.* at 1140.
[18]*Id.* at 1144.
[19]*Petition for Certiorari, September 17, 2025.*
[20]AAC Register 254, July 2025.

A. Judicial Developments

1. Federal Court

Colorado River transfer NEPA litigation

In December 2022, several on-river Western Arizona municipal corporations sued the United States Bureau of Reclamation over its approval of the Town of Queen Creek's severance and transfer of 4th Priority Colorado River Water.21 The plaintiffs challenged Reclamation's issuance of a finding of no significant impact (FONSI) due to the transfer's alleged impacts to on-river communities. The plaintiffs succeeded in having the FONSI deemed inadequate, but an August 2024 District Court order allowed the FONSI to remain in place while Reclamation prepares an Environmental Impact Statement (EIS) for the transfer.[22] Reclamation published notice of its intent to prepare the EIS on September 15, 2025.23 The EIS could lead to further litigation, which may inform how Reclamation approaches future transfers.

2. State Court

Fondomonte nuisance litigation

In groundwater basins that are not Active Management Areas or Irrigation Non-Expansion Areas, groundwater use is largely unregulated and subject to a 'reasonable use doctrine.' The Arizona Attorney General has brought a civil suit against Fondomonte Arizona, LLC, a large Saudi-backed farming operation, over allegedly excessive groundwater use under the reasonable use doctrine.[24] The AG claims that Fondomonte's withdrawals should be enjoined as a public nuisance.

HBACA groundwater model litigation

The Home Builders Association of Central Arizona (HBACA) is an industry group of large homebuilders. HBACA is suing the Arizona Department of Water Resources (ADWR) over its recent Phoenix AMA groundwater model, alleging that ADWR has exceeded its statutory authority in determining it can no longer issue Certificates of Assured Water Supply for new development using groundwater withdrawn in the AMA.

Center for Biological Diversity groundwater litigation

The San Pedro Riparian National Conservation Area (SPRNCA) is a 55,000-acre riparian area with federally reserved surface and groundwater rights. Those reserved rights were quantified by August 24, 2023, and December 12, 2024, General Stream Adjudication rulings in Maricopa County Superior Court. In 2025, the Center for Biological Diversity

[21]Mohave County v. U.S. Bureau of Reclamation, No. 3:22-cv-08246-PCT-MTL, 2024 WL 706962 (D. Ariz. Feb. 21, 2024).
[22]Mohave County v. U.S. Bureau of Reclamation, No. 3:22-cv-08246 (D. Ariz. Dec. 30, 2022).
[23]Notice of Intent to Prepare an Environmental Impact Statement for the GSC Farm–Queen Creek Water Transfer Project, 90 Fed. Reg. 44,394 (Sept. 15, 2025).
[24]State of Arizona v. Fondomonte Arizona, LLC, No. CV2024-035721 (Maricopa Cty. Super. Ct., Apr. 9, 2025).

filed four lawsuits against ADWR, alleging that ADWR has failed to adequately monitor groundwater conditions in the Upper San Pedro River Basin to protect SPRNCA's federally reserved rights.[25]

General Stream Adjudication

Arizona's long-running stream adjudications continue in the Superior Courts with a special master presiding over contested cases.[26] Special Master Zendri considered several significant legal issues in 2025. These issues include the permissible bases of right for stock ponds, about which she concluded that a stock pond claim under A.R.S. section 45-273 (the Stockpond Registration Act of 1977) cannot serve as a basis of right for a *de minimis* stock pond—contrary to previous Special Master's Reports in the San Pedro, Siver Creek, and Little Colorado Basins.[27] Special Master Zendri also considered what quantum of evidence is necessary to establish a pre-1919 surface water right, how the doctrine of forfeiture applies to such a right, and the legal ramifications of changing a point of diversion from a ditch to a well. A decision on these issues is expected early in 2026.

Contested cases regarding subflow zone delineation in the Verde River Watershed and development of a subflow model in the San Pedro River Watershed also progressed during 2025. Notable developments in the Verde Watershed include the Special Master's proposed procedures to summarily adjudicate *de minimis* water uses, which were adopted by the Superior Court with minor modifications in December 2025.[28] And in the San Pedro Watershed, the Special Master established a committee of technical experts to assist ADWR with revising the Upper San Pedro Groundwater Basin Groundwater Flow Model.[29] This committee met several times throughout the year and is expected to continue its work into 2026.

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[25]Ctr. for Biological Diversity v. Hobbs, No. CV2024-016330 (Ariz. Super. Ct. filed Sept. 16, 2024). *See also* Ctr. for Biological Diversity v. Hobbs, No. 1 CA-CV 25-0386, 2026 WL 1,113,756 (Ariz. Ct. App. Div. One Apr. 24, 2026); Ctr. for Biological Diversity v. Ariz. Dep't of Water Res., No. CV2025-021564 (Ariz. Super. Ct., Maricopa Cnty., June 19, 2025); Ctr. for Biological Diversity v. Ariz. Dep't of Water Res., No. CV2025-027159 (Ariz. Super. Ct., Maricopa Cnty., Aug. 4, 2025); Home Builders Ass'n of Cent. Ariz. v. Ariz. Dep't of Water Res., No. CV2025-002623 (Ariz. Super. Ct., Maricopa Cnty., Jan. 22, 2025).

[26]*See generally,* MARICOPA CNTY. SUPERIOR CT., Arizona General Stream Adjudication(last visited June 5, 2026)

[27]Special Master's Notice of Decision & Order, In re the General Adjudication of All Rights to Use Water in the Gila River System & Source, No. W1-11-001511 (Ariz. Super. Ct. Sept. 16, 2025).

[28]Order Approving the Special Master's Report Concerning Summary Adjudication Proceedings in the Verde River Watershed, In re the General Adjudication of All Rights to Use Water in the Gila River System & Source, No. W1-00-000106 (Ariz. Super. Ct. Dec. 9, 2025).

[29]Order Establishing the Groundwater Flow Model Technical Committee, In re the General Adjudication of All Rights to Use Water in the Gila River System & Source, No. W1-103 (Ariz. Super. Ct. Mar. 24, 2025).

B. *Legislative Developments*

Reintroduction of the Northeastern Arizona Indian Water Rights Settlement Act

In November 2024, Arizona Governor Katie Hobbs signed the Northeastern Arizona Indian Water Rights Settlement Agreement, concluding decades of negotiations and litigation, settling outstanding tribal claims to the Colorado River, Little Colorado River, and other surface and groundwater in northern Arizona.[30] In addition to settling these outstanding claims, the Agreement includes provisions to fund regional water infrastructure projects, facilitate system conservation in Lake Powell, and authorize the Navajo Nation and Hopi Tribe to lease their high-priority Colorado River water rights to other entities within Arizona.[31] The Agreement must be approved by Congress before being implemented. Bills to approve the Agreement were first introduced in both the U.S. House and Senate in 2024, but neither bill received a vote.[32] Parallel bills were reintroduced in 2025 but have yet to receive a vote.

The following bills were enacted in 2025. Senate Bill 1611 creates a new "ag-to-urban" program for relinquishing an irrigation grandfathered groundwater right (IGFR) to demonstrate an Assured Water Supply for developing new subdivisions.[33] The law imposes guardrails to ensure that the relinquishment of the IGFR will result in groundwater savings. The first ag-to-urban relinquishment application (and its related Certificate of Assured Water Supply) was approved by ADWR in December 2025.

Arizona's state budget allocates $3 million for possible interstate litigation related to the Colorado River.[34] State leaders remain committed to Colorado River negotiations but believe that the litigation funding is necessary to protect Arizona's interests.[35]

C. *Administrative Developments*

Publication of the Bureau of Reclamation's Alternatives Report for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Several critical Colorado River operation and management agreements are set to expire at the end of 2026, including the 2007 Interim Guidelines and the 2019 Drought Contingency Plans. Accordingly, the Department of the Interior and the Bureau of Reclamation initiated a NEPA process to assess the reasonably foreseeable environmental effects that could result from the adoption of replacement agreements. In January 2025, Reclamation published its Alternatives Report, describing five anticipated alternatives it will consider in a forthcoming draft environmental impact statement.[36] Notably, this report did not consider an alternative under which the Lower Basin States invoke the 1922 Colorado River Compact's delivery provisions in court. This omission is significant because Reclamation's alternatives provide the backdrop against which the post-2026

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[30] Settling parties include the Navajo Nation, Hopi Tribe, San Juan Southern Paiute Tribe, Department of the Interior, State of Arizona, and numerous State of Arizona Agencies, municipalities, and utilities, as well as several other public and private entities.
[31] *See* S. 953, 119th Cong. §§ 6, 7, and 13 (2025).
[32] H.R. 8940, 118th Cong. (2024); S. 4633, 118th Cong. (2024).
[33] S.B. 1611, 57th Leg., 1st Reg. Sess. (Ariz. 2025).
[34] S.B. 1735, 57th Leg., 1st Reg. Sess. (Ariz. 2025).
[35] *See generally*, Press Release, Ariz. Dep't of Water Res., Governor's Executive Budget Proposal Includes Funding for Key ADWR Initiatives (Jan. 16, 2025)
[36] U.S. DEP'T OF THE INTERIOR, BUREAU OF RECLAMATION, *Alternatives Report Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead*.

management framework is being negotiated by the Colorado River Basin States. These negotiations are currently ongoing.[37]

Alternative Pathway to Designation

In the Phoenix and Pinal Active Management Areas, ADWR has released hydrologic models that it says preclude it from issuing further Assured Water Supply determinations based on groundwater. In response to this, ADWR adopted new rules that create an Alternative Pathway to Designation (ADAWS). The rules allow water providers to obtain an ADAWS, which is based in part on groundwater, if the provider commits to obtaining alternative water resources and reducing their groundwater reliance over time. The ADAWS rules were adopted on November 25, 2024.[38] ADWR issued the first ADAWS approval to EPCOR, a private water company.[39] HBACA is currently suing ADWR over the ADAWS rules, alleging that the ADAWS rules exceed ADWR's statutory authority.[40]

Harquahala Transportation Approvals

State law generally prohibits withdrawing groundwater from outside of an Active Management Area for use within an AMA, with limited exceptions.[41] Certain groundwater basins have been set aside as "transportation basins'" which specifically allow for groundwater to be withdrawn and transported to AMAs by qualifying entities on certain terms. The Harquahala basin is one of these transportation basins.[42] The transportation basin legislation was enacted in 1991, but ADWR did not issue the first transportation approvals until July 2025, when it approved applications submitted by the Town of Queen Creek and the City of Buckeye.[43] The approvals are a step in the regulatory process for the buyers. To begin receiving wet water, the buyers must also: (i) construct and manage the physical infrastructure necessary to transport the water; (ii) obtain approvals to introduce the Harquahala water into the Central Arizona Project (CAP) canal; and (iii) obtain a "wheeling agreement" to transport the water through the CAP canal. New and proposed Active Management Areas. The 1980 Groundwater Management Act designated certain groundwater basins as initial Active Management Areas (AMA) or Irrigation Non-Expansion Areas (INA). State law allows for unregulated basins to become subsequent AMAs by a voter petition or if designated by the Director of ADWR.[44] The Douglas AMA was designated by voter petition in December 2022,[45] and the Willcox AMA was designated by the Director of ADWR on January 1, 2025.[46] On October 27, 2025, ADWR issued an order to initiate AMA-designation proceedings for the Ranegras Plain basin, with a decision on the designation expected to occur in early 2026.

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[37] *See* Press Release, Ariz. Dep't of Water Res. The current status of Colorado River negotiations: A statement from the seven Colorado River Basin States, the Department of the Interior, and the Bureau of Reclamation (Nov. 12, 2025).
[38] *See* ARIZ. DEP'T OF WATER RES., *Notice of Final Rulemaking* (Nov. 25, 2024).
[39] *See* ARIZ. DEP'T OF WATER RES., *ADAWS opens door to water providers securing Assured Water Supply designations* (Oct. 8, 2025).
[40] Home Builders Ass'n of Cent. Ariz. v. Ariz. Dep't of Water Res., No. CV2025-008701 (Ariz. Super. Ct., Maricopa Cnty. Mar. 10, 2025).
[41] ARIZ. REV. STAT. ANN. § 45-554 (2025).
[42] *Id.*
[43] *See generally* Ariz. Dep't of Water Res., *Statement on the Determination of Transportation of Groundwater from Harquahala Basin*, ADWR (July 18, 2025).
[44] ARIZ. REV. STAT. ANN. §§ 45-412, 45-415 (2025).
[45] *See generally* ARIZ. DEP'T OF WATER RES., *Douglas AMA* (last visited Apr. 29, 2026).
[46] *Id.*

CAGRD Plan of Operation

The Central Arizona Groundwater Replenishment District (CAGRD) replenishes groundwater in Active Management Areas to offset withdrawals by its member lands and service areas. Every 10 years, CAGRD is required to submit a Plan of Operation for approval by the Director of ADWR, which outlines plans to meet the expected replenishment obligations.[47] CAGRD's latest plan of operation was approved on December 22, 2025.[48]

III. STATE OF DELAWARE

A. Legislative

On September 19, 2025, Governor Matt Meyer signed Senate Bill 72 (SB72) into law. This act amends several provisions of Title 16 of the Delaware Code relating to public drinking water systems. More specifically, SB72 directs the Delaware Division of Public Health (DDPH) to, "make available online to the public,"[49] the levels of forever chemicals, also known as PFAS, in public drinking water systems. Further, SB72 sets maximum containment levels (MCL) for several forever chemicals;[50] Water utility companies in Delaware are required to notify public drinking water system users if PFAS concentrations exceed any of these MCLs.[51] SB72's dual monitoring and reporting requirements reflect a broader state trend towards enhancing transparency and prioritizing public notice with respect to drinking water quality.

IV. STATE OF MASSACHUSETTS

A. Administrative

On April 8, 2025, the Massachusetts Department of Environmental Protection (MassDEP) published its Final 2025 Intended Use Plan ("IUP") for the Drinking Water State Revolving Fund (DWSRF).[52] Under the 2025 IUP, approximately $699 million in loans, grants, and set-asides has been offered to support water quality and infrastructure

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47 ARIZ. REV. STAT. ANN. § 45-576.03 (2025).
48 CENT. ARIZ. GROUNDWATER REPLENISHMENT DIST., *Plan of Operation and Mid-Plan Reviews* (last visited Apr. 29, 2026).
49 S.B. 72, 153d Gen. Assemb., Reg. Sess. § 3001R (Del. 2025–2026).
50 *Id.* at § 3002R (3)(a)-(f) ("'Maximum contaminant level' or 'MCL' means the legal threshold limit on the amount of a substance that is allowed in a public water drinking system. [Except as provided under paragraph (3)b. of this section,] [t]he MCLs for the PFAS regulated under this chapter are as follows: 1. For PFOA, an MCL of 4.0 PPT. 2. For PFOS, an MCL of 4.0 PPT. 3. PFHxS, an MCL of 10 PPT. 4. For PFNA, an MCL of 10 PPT. 5. For HFPO-DA, commonly known as GenX chemicals, an MCL of 10 PPT. 6. For mixtures containing two or more of PFHxS, PFNA, HFPO-DA, or PFBS, a Hazard Index MCL of 1.").
51 *Id.* at § 3001R.
52 "The DWSRF is a joint federal-state financing program that provides subsidized loans and grants to protect public health, safeguard the drinking water supply, and improve the infrastructure systems in the Commonwealth." MASSACHUSETTS DEP'T OF ENV'T PROT., *Final 2025 Intended Use Plan for the Drinking Water State Revolving Fund* 2 (Apr. 8, 2025)

projects across the state.[53] Massachusetts plans to allocate these funds towards 13 new construction projects, 20 ongoing projects, and emergency reserves related to drinking water quality in the state.[54] The DWSRF Project Priority List[55] delineates the specific monetary allocations among these projects, many of which concern PFAS treatment, replacing lead-lined piping in existing drinking water systems, and improving drinking water quality in disadvantaged communities. The 2025 final IUD and the projects set to receive much-needed funding reflect Massachusetts' ongoing efforts to enhance statewide water treatment, address concerns over aging infrastructure, and its commitment to environmental justice.

V. STATE OF MICHIGAN

A. Judicial

In December 2022, Attorney General Dana Nessel filed suit in the Circuit Court for the 31st Judicial Circuit, St. Clair County,[56]on behalf of the State and the People of the State of Michigan[57] against defendant paper manufacturer Domtar Industries, Inc.[58] alleging that the company was responsible for the transport, disposal, and release of PFAS substances from paper sludge at the composting site Techni-Comp Environmental.[59] The suit was brought to recover damages arising from response and remedial costs incurred by the State.[60]

Nearly two and a half years later, on June 20, 2025, the Circuit Court for the 31st Judicial Circuit entered a Consent Decree[61] delineating the terms of the settlement agreement reached between the parties. More specifically, defendants Domtar Industries, Inc. and Techni-Comp (Composting Specialists), Inc. are: (1) ordered to submit a Response Activity Plan for removing approximately 75,000 cubic yards of paper sludge from the site;[62](2) required to conduct a sediment investigation in the ditch, drain, and creek on the site to determine the extent of PFAS-contamination in surface waters,[63] and (3) must submit a draft restrictive covenant to the State to limit the site to non-residential land use and restrict the use of groundwater to prevent future exposure.[64] Moreover, defendants must pay $300,000 to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) for future response activity costs that the State may incur as well as approximately $1.15 million in costs associated with the State's past response and oversight activities and its attorneys' fees.[65]

The case was an enforcement action to protect the public and State's natural resources from PFAS contamination.[66] The Water Resources Protection section of

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[53] *Id.*
[54] *Id.* at 11.
[55] *Id.* at 35-37.
[56] *See generally* Pl.'s Compl., Nessel v. Domtar Indus., LLC, No. 22-002604-NZ (Mich. Cir. Ct. Dec. 16, 2025).
[57] *Id.* at ¶ 1.
[58] *Id.* at ¶ 15.
[59] *Id.* at ¶ 1.
[60] *Id.* at ¶ 2.
[61] *See* Nessel v. Domtar Indus., LLC, No. 22-002604-NZ (Mich. Cir. Ct. June 20, 2025).
[62] *Id.* at 11.
[63] *Id.* at 12.
[64] *Id.* at 13-14.
[65] *Id.* at 29-30.
[66] ATT'Y GEN. PRESS, *Attorney General Nessel Announces Settlement to Clean Up PFAS-Contaminated Materials in St. Clair County* (June 25, 2025).

Michigan's Natural Resources and the Environmental Protection Act (NREPA) provided the State a claim arising from the release of PFAS contamination into State waters.[67]

VI. STATE OF NEW JERSEY

A. Judicial

In 2025, The New Jersey Department of Environmental Protection (NJDEP), Commissioner of the NJDEP, and Administrator of the New Jersey Spill Compensation Fund obtained two major settlement agreements against 3M Company (3M), E.I. du Pont de Nemours and Company, and other DuPont entities (DuPont) for injuries to State waters and other natural resources arising from PFAS contamination. The May 12, 2025, 3M settlement, totaling $450 million in damages awards, was the largest statewide PFAS settlement in New Jersey history[68] only to be surpassed by the $850 million DuPont settlement in August 2025.[69]

The settlements arise from the case *New Jersey Department of Environmental Protection v. E.I. du Pont de Nemours and Company*.[70] Forgoing the complex procedural history spanning multiple lawsuits, NJDEP, among other plaintiffs, filed a complaint against 3M, DuPont, and DuPont subsidiaries in the Superior Court of the State of New Jersey.[71] The complaint alleges that defendants "designed, manufactured, marketed, and sold certain PFAS [and] … PFAS-Containing products, that were … spilled, or disposed of" resulting in statewide PFAS contamination.[72] Under major state and federal regulations including, but not limited to, the Spill Compensation and Control Act ("SCCA") the Water Pollution Control Act (WPCA) and the Safe Drinking Water Act ("SDWA"), Plaintiffs sought to recover costs arising from the State's response and remedial activities, injuries to State waters and other natural resources, and punitive damages.[73]

1. 3M Judicial Consent Order

The $450 million in damages 3M is required to pay can be allocated to three categories: (1) natural resources damages,[74] PFAS Contamination Abatement Funding, and

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[67]Nessel, No. 22-002604 at 1.
[68]Press Release, Matthew J. Platkin, Att'y Gen., AG Platkin and DEP Commissioner LaTourette Announce Historic Settlement of Up to $450 Million with 3M for Statewide PFAS Contamination (May 13, 2025).
[69]*See* Press Release, Att'y Gen., Matthew J. Platkin, AG Platkin, AG Platkin, DEP Commissioner LaTourette: Landmark Settlement with DuPont Valued at Over $2 Billion25).
[70]Judicial Consent Order as to Defendant 3M Company, N.J. Dep't of Env't. Prot. v. E.I. du Pont de Nemours & Co., No. 19-cv-14758, at 3 (D.N.J. May 12, 2025).
[71]*Id.* at 2.
[72]*Id.*
[73]*Id.* at 3.
[74]"Natural Resource Damages' means all Claims arising from … PFAS Contamination or Discharge of PFAS for any injury to any Natural Resource under the Spill Act, the WPCA, the APCA, the SWMA, the BCSRA, CERCLA, or any other State or federal statute, regulation, order, or common law." *Id*. at pg. 19; *see also id.* ("'Natural Resources' … means all land, vegetation, biota, fish, shellfish, wildlife and the habitats of each, all Waters Of The State, Drinking Water Supplies, the air, and other such resources owned

(3) costs arising from litigation, including attorneys' fees and costs.[75] The Abatement Funding section directs the NJDEP to set aside a portion of the damages award to fund several different State efforts to reduce PFAS concentrations. These projects, among other initiatives, include supporting the clean-up and removal of PFAS contamination, assisting in the installation and maintenance of community drinking water systems and treatment works, conducting potable well testing and even public education efforts.[76] Notably, 3M's payment towards these abatement projects fully satisfies its remediation obligations.[77]

2. DuPont Judicial Consent Order

There are key differences between the 3M Judicial Consent Order (JCO) and the DuPont JCO. The $875 million in damages are similarly allocated to natural resources damages, PFAS abatement funding, and costs arising from litigation, including attorneys' fees and costs.[78] In contrast to the 3M JCO, payments towards abatement projects do not relieve any of the defendants from their remediation obligations. Due in part to the complexity of corporate restructuring and the risk or defaulting, the DuPont JCO focuses on delineating who is responsible for each of the contaminated sites at issue in the case.[79] Further, the Court goes to great lengths to ensure that remediation obligations continue and are fully completed by developing a complex web of conditions that trigger in the event any of the defendants fail to perform remediation activities at their designated site.[80]

The 2024 Water Resources Committee Report[81] featured the case *In re Proposed Construction of Compressor Station (CS327)*,[82] where the Supreme Court of New Jersey (SCNJ) addressed a question of statutory interpretation regarding the permitting exemption framework of the Highlands Water Protection and Planning Act (Highlands Act).[83] The language at issue provides that public utility projects are exempt from regulation under the Highlands Act if they qualify as:

> [R]outine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act.[84]

The Superior Court of New Jersey Appellate Division (Appellate Division) originally held that the term "routine" must be narrowly construed so that it applies to each activity listed in this provision; this determination served as the basis for the Court's

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by, managed by, held in trust by, under the jurisdiction of, or otherwise controlled by the State.")

[75]Draft Judicial Consent Order as to Defendant 3M Company at 45-46, N.J. Dep't of Env't. Prot. v. E.I. du Pont de Nemours & Co., No. 19-cv-14758 (D.N.J. July 12, 2025).
[76]*Id.* at 56-59.
[77]*Id.* at 66.
[78]Draft Judicial Consent Order as to Defendants E.I. du Pont de Nemours and Company, et al., N.J. Dep't of Env't Prot. v. E.I. du Pont de Nemours & Co., Nos. 19-cv-14758, 19-cv-14765, 19-cv-14766, 19-cv-14767 (D.N.J. Sept. 2, 2025), at 44–46.
[79]*Id.* at 53-55.
[80]*Id.* at 71-73.
[81]Hayley McBryan & Todd D. Ommen, Chapter V: Water Resources, in ABA SECTION OF ENV'T, ENERGY & RES., The Year in Review 2024 V-24 (2025).
[82]318 A.3d 658 (N.J. 2024); N.J. STAT. ANN. §§ 13:20-1 to -35 (2024).
[83]*In re CS327*, 318 A.3d at 316-17.
[84]*Id.* at 317 (quoting N.J. REV. STAT. § 13:20-28(a)(11)).

decision to vacate the NJDEP's Highlands Applicability Determination (HAD).[85] Conversely, the SCNJ held that the term "routine" only applies to "maintenance and operations" activities but does not modify the other listed activities based on the plain language of the Highlands Act.[86] Therefore, the Appellate Division's decision was vacated and the NJDEP's HAD was reinstated.[87]

Following the SCNJ's 2024 decision, this matter was remanded to the Appellate Division to determine whether the NJDEP erred in issuing the HAD finding that Tennessee Gas Pipeline Company, LLC's (Tennessee Gas) compressor station upgrades qualify for an exemption and that the project was consistent with the goals and purposes of the Highlands Act.[88] On June 27, 2025, the Appellate Division affirmed the NJDEP's HAD holding that there is nothing arbitrary, capricious, or unreasonable regarding NJDEP's determinations and, as such, all of the appellants' challenges to the HAD were rejected.[89] Since the SCNJ had previously ruled that the Tennessee Gas project qualifies for exemption, the crux of the Appellate Division's decision was whether the activity is consistent with the Highlands Act.[90] The SCNJ's guidance with respect to this question is rooted in the language provided in the Highlands Act; more specifically, all activities undertaken must be committed to effectuating the Act's environmentally protective purpose, "*while also providing every conceivable opportunity for appropriate economic growth and development*. . . ."[91] The Appellate Division ultimately held that evidence on the record clearly illustrates that the NJDEP's HAD is aligned with the balanced approach provided by the SCNJ's guidance. A brief summary of the Appellate Division's reasoning is as follows: firstly, while the project is located in a preservation area, the record reflects that the location of the project is in an area that has historically been used for commercial purposes and was already disturbed and not a functioning water source.[92] Further, the record illustrated that NJDEC adequately reviewed all of Tennessee Gas' efforts to minimize the project's environmental impacts and engaged with public comments such that there was no failure to uphold its public notice and comment obligations.[93]

The 2024 SCNJ decision and the 2025 Appellate Division decision, in conjunction, may positively and negatively impact water resources going forward. On one hand, both decisions serve as strong precedent for future Courts and other public utilities companies on how the Highlands Act is properly complied with. More specifically, these decisions help clarify the language of the Act which will help public utilities companies better comply with the Act and will help future Courts efficiently resolve future disputes arising from permitting issues. However, both decisions broaden permitting exemptions. By not requiring all activities to be routine, the SCNJ has opened the door for public utilities companies to propose new activities that in the past required a permit. Moreover, the Appellate Division's discussion of allowing activities to proceed based on the historical use of land, irrespective of potential efforts to remediate the water resources in these areas, may negatively impact individual or group efforts to prevent damages to water resources through the Highlands Act.

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[85] *Id.* at 320 (citing In re Proposed Constr. of Compressor Station (CS327), 302 A.3d 82, 92-93 (N.J. Super. Ct. App. Div. 2023)).
[86] *Id.* at 331-32.
[87] *Id.* at 332.
[88] *In re* Proposed Constr. of Compressor Station CS327, No. A-3616-20, 2025 N.J. Super. Unpub. LEXIS 1189 (N.J. Super. Ct. App. Div. June 27, 2025) (per curium).
[89] *Id.* at *2.
[90] *Id.*
[91] *Id.* at *9 (quoting N.J. REV. STAT. § 13:20-2).
[92] *Id.* at *14-15.
[93] *Id.* at *15-17.

B. Administrative

On February 3, 2025, the New Jersey Department of Environmental Protection (NJDEP) promulgated amendments to its Ground Water Quality Standards (N.J.A.C. 7:9C), which serve to protect ambient ground water quality through the establishment of standards for ground water pollutants.[94] There are several key changes from NJDEP's amendments. Firstly, the acceptable levels of pollution in ground water has been updated for 64 chemical compounds out of the 73 that are regulated for Class II-A groundwater,[95] of which have a potential use for drinking water. The maximum contaminant level (MCL) for 50 of the 64 chemical substances has been lowered, becoming more stringent, whereas the remaining 12 chemical substances have become less stringent.[96] NJDEP has also amended the default values for body weight and drinking water consumption rate to be consistent with the United States Environmental Protection Agency's (USEPA) 2015 Final Updated Ambient Water Quality Criteria for the Protection of Human Health (80 F.R 36,986).[97] Finally, NJDEP has amended its Remediation Standards at 7:26D-7.2(b) to reflect the updates made to N.J.A.C. 7:9C-1.7(c).[98]

VII. STATE OF NEW YORK

A. Judicial

On November 13, 2025, The United States District Court for the Northern District of New York entered an order granting preliminary approval of a class settlement in the case *Baker v. E.I. DuPont De Nemours & Co.*[99]

This class action lawsuit was originally filed in 2016 when plaintiffs, citizens of Hoosick Falls, New York, were made aware that perflurooctanoic acid (PFOA) was present in the village's municipal water system.[100] Plaintiffs alleged that, as a result of defendants contaminating the village's drinking water system with PFOA, they were subjected to numerous health issues.[101] Moreover, the PFOA contamination was also alleged to have caused the devaluation of plaintiffs' property.[102]

The class settlement agreement, dated October 16, 2025, will require defendants to not only make a one-time payment of $22 million but also pay plaintiffs $1 million annually until five years after the effective date of the one-time payment.[103] The $27 million in damages awarded to the plaintiffs will then be distributed to class members according to their settlement class designation.[104]

[94]N.J. ADMIN. CODE 7:9C-1.1(a) (2025).
[95]57 N.J. Reg. 234(a) (Feb. 3, 2025).
[96]*Id.*
[97]*Id.*
[98]*Id.*
[99]Order Granting Preliminary Approval of Class Settlement, No. 16-CV-917 (N.D.N.Y. Nov. 13, 2025) ECF No. 574.
[100]Baker v. Saint-Gobain Performance Plastics Corp., Civ. Nos. 16-CV-0220, 16-CV-0292, 16-CV-034, 16-CV-0476, 2016 WL 4028974, at *1–2 (N.D.N.Y. July 27, 2016).
[101]*Id.* at *1.
[102]*Id.* at *2.
[103]Class Settlement Agreement at 9, Baker v. E.I. DuPont de Nemours & Co., Civ. No. 16-CV-917 (N.D.N.Y. Oct. 20, 2025) ECF No. 572-3.
[104]*Id.* at 8, 10-11.

B. Administrative

Amendments to the New York State Department of Environmental Conservation's (NYSDEC) freshwater wetlands regulations became effective on January 1, 2025, repealing the Freshwater Wetlands Maps and Classification regulation in its entirety and replacing it with the new Freshwater Wetlands Jurisdiction and Classification regulation (6 NYCRR Part 664).[105] The adopted changes significantly expand NYSDEC's jurisdiction over State wetlands and overhauls the procedure for making jurisdictional determinations. More specifically, the new regulation not only reduces the minimum size threshold for determining wetland jurisdiction, but also provides that a State wetland may fall under NYSDEC jurisdiction, irrespective of its size, if it meets at least one of the 11 newly established criteria for wetlands of "[u]nusual [i]mportance."[106] Further, the new regulations expand the regulated "adjacent area" of certain wetlands that are particularly sensitive to human activity.[107] Finally, the new regulation now provides that, "[a]ny person wishing to obtain a jurisdictional determination as to whether a parcel . . . contain[s] State jurisdiction freshwater wetlands, or regulated adjacent areas, may submit a formal jurisdictional determination request . . . ."[108]

Similar to other States, this overhaul of 6 NYCRR Part 644 is likely a response to the 2023 United States Supreme Court decision in *Sackett v. EPA*[109] and NYSDEC's goal is to ensure that State wetlands that were previously protected under federal jurisdiction continue to be protected. By expanding its jurisdictional reach, NYSDEC has ensured that developers, municipalities, and other similar groups do not escape from permitting requirements. Moreover, by expanding its jurisdiction over State wetlands, NYSDEC has taken a step towards making statewide permitting procedures consistent and uniform.

VIII. State Of Idaho

A. Judicial

In City of Idaho Falls v. Idaho Department of Water Resources, the Idaho Supreme Court dismissed the Cities' appeal after holding that they failed to invoke the Court's jurisdiction because they appealed the wrong order issued by the Director of the Idaho Department of Water Resources (IDWR).[110] Because appellate courts may grant relief only from the order being appealed, the Court held that it lacked jurisdiction to consider the merits of the Cities' evidentiary-standard arguments since they failed to appeal the operative order governing the methodology in the ongoing Eastern Snake Plain Aquifer (ESPA) delivery call proceedings.[111]

B. Legislative

Senate Bill 1083[112] revises Idaho's definition of "domestic purposes" and clarifies when a water user may rely on the domestic exemption instead of obtaining a water right

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[105] N.Y. State Dep't of Envtl. Conservation, Revised Regulatory Impact Statement: 6 NYCRR Part 644, Freshwater Wetlands Jurisdiction and Classification (2024); N.Y. Comp. Codes R. & Regs. tit. 6 §§ 664.1-.11.
[106] N.Y. State Dep't of Envtl. Conservation, *supra* note 100, at 7-12.
[107] *Id.* at 13.
[108] *Id.* at 15.
[109] 598 U.S. 651 (2023).
[110] No. 52102, 2025 WL 3771308, at *5 (Idaho Dec. 31, 2025).
[111] *Id.* at *4–5.
[112] S. 1083, 68th Leg., 1st Reg. Sess. (Idaho 2025) (enacted).

permit. It affirms that the exemption applies to water uses for homes, camps, public campgrounds, livestock, and up to ½ acre of irrigation if total use does not exceed 13,000 gallons per day, and it expands the definition to include any other purpose using no more than 2.8 acre-feet per year. The act specifies that mobile home or RV parks, multi-unit housing, commercial or mixed-use developments, and certain statutorily defined subdivisions do not qualify for the domestic exemption unless they meet the 2.8 acre-feet limit—meaning these uses typically require water right permits. It clarifies that in certain areas of the state where the Director of IDWR has declared there to be limited water supplies, exempt domestic uses may be developed on multiple, separately owned parcels served by a common well, but only for in-home water use. It prohibits the stacking of multiple domestic exemptions in all other circumstances, meaning the domestic exemption is no longer available for outdoor irrigation in subdivisions in those areas designated as having limited water supplies. Developers in these limited water supply areas now either need to get water from an existing surface water system or must go through the normal water right process to be able to irrigate outside a home.

Senate Concurrent Resolution 110[113] expressed legislative support for the November 15, 2024 Settlement Agreement between the members of the Surface Water Coalition and Ground Water Districts along the Eastern Snake Plain. The Resolution also expresses support for the ongoing efforts of the State of Idaho to address water supply challenges along the Eastern Snake Plain and supports the Idaho Water Resource Board's efforts to increase aquifer recharge goals from 250,000 acre-feet to 350,000 acre-feet on an average annual basis.

C. Administrative

In July of 2025, IDWR issued a curtailment order in the ongoing ESPA delivery call proceedings.[114] Based on the material injury to senior surface water users in the 2025 irrigation season, IDWR ordered all ground water users junior to October 11, 1900—the earliest ground water curtailment date in Idaho history—to cease pumping unless the junior user was participating in an IDWR-approved mitigation plan. This curtailment date captured nearly all ground water use on the Eastern Snake Plain. Most ground water users are currently covered under an approved mitigation plan, so they were able to continue to divert. But there were over seven hundred water users not covered by an approved mitigation plan. These water users were subject to curtailment.

IX. State Of Michigan

A. Judicial

In *Enbridge Energy, Limited Partnership v. Whitmer*,[115] the Western District Court granted summary judgment in favor of the Plaintiff oil pipeline company against the state of Michigan. The state of Michigan was seeking to shut down a portion of Enbridge's Line 5 pipeline, which runs for 645 miles from Wisconsin, through Michigan, and into Canada. Enbridge successfully argued that the state's legal authority to shut down the pipeline, including the public trust doctrine, is preempted by federal pipeline law.

The legal dispute is over four miles of Line 5 that run beneath the Straits of Mackinac—the strip of water between Michigan's Lower and Upper Peninsula that connects Lake Michigan and Lake Huron. In 1953, Michigan granted Enbridge an

[113] S. Con. Res. 110, 68th Leg., 1st Reg. Sess. (Idaho 2025).
[114] Final Order Curtailing Ground Water Rights Junior to Oct. 11, 1900, A&B Irrigation Dist., No. CM-DC-2010-001 (Idaho Dep't of Water Res. July 25, 2025).
[115] No. 20-cv-1141, 2025 U.S. Dist. LEXIS 265981 (W.D. Mich. Dec.17, 2025).

easement for its pipeline under the Straits of Mackinac. The easement has no end date but does have numerous conditions and bases for termination. In 1977, Canda and the United States entered into the [Agreement Concerning Transit Pipelines](), which provides that "[a]ny dispute between the Parties . . . shall . . . be settled by negotiation" and if that fails, then by "arbitration at the request of either Party."[116] In 1992, Congress passed the [Pipeline Safety Act]() preempting state standards: "State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation."[117] In 2020, Michigan Governor Gretchen Whitmer notified Enbridge that it was terminating the 1953 Easement for violating the public trust and not exercising due care. Canada challenged Michigan's actions as a violation of the 1977 Treaty between the United States and Canada.

Enbridge filed suit seeking declaratory and injunctive relief that the state's action is preempted by federal law. Both the United States and Canada filed in support of Enbridge's preemption position. The court concluded that the federal Pipeline Safety Act of 1992 expressly preempts the state's attempt to shut down Line 5. The court held that the state's application of the public trust doctrine to Line 5 operates as an unlawfully preempted pipeline safety regulation. The court further held that Michigan's order to shut down the Straits pipeline would also be preempted under the doctrine of field preemption because it has already disturbed foreign relations. The court declared the state's actions unlawful and enjoined the state from enforcing the lease termination. The state of Michigan has filed a timely appeal of the District Court's opinion and order to the Sixth Circuit Court of Appeals.

X. State Of Montana

A. Judicial

Montana's Water Use Act requires a permit for any new appropriation of water, with few exceptions.[118] "Appropriate" means to "to divert, impound, or withdraw" water for beneficial use.[119] The Act also prohibits the waste of water.[120] Waste is defined in part as the "application of water to anything but a beneficial use."[121] In *Montana Trout Unlimited v. Montana Department of Natural Resources and Conservation*,[122] the Court held that pumping groundwater to dewater a mine is neither the beneficial use of water requiring a permit nor the waste of water.

Montana Trout Unlimited arose out of a proposal by a mining company called Tintina Montana, Inc. to build and operate a new underground mine known as the Black Butte Copper Project. The mine will be located in the upper portion of the Smith River drainage, an area of Montana popular for river recreation and also the location of irrigated agriculture operations. As part of the mining process, Tintina must pump groundwater out of the mine. Tintina plans to store the extracted water and later reinfiltrate it into ground.

The mine will be located in a basin closed to new groundwater permits. However, the Department of Natural Resources and Conservation (DNRC) took the position that Tintina does not need a water use permit because the proposed dewatering is not a beneficial use of water, so the dewatering process can proceed without being affected by the basin closure. Additionally, the Water Use Act exempts from the waste "disposal of

[116]Agreement Concerning Transit Pipelines art. IX, Can.-U.S., Jan. 28, 1977, 1086 U.N.T.S. 344.
[117]49 U.S.C. § 60104(c).
[118]MONT. CODE ANN. § 85-2-302(1).
[119]*Id.* at § 85-2-102(1)(a).
[120]*Id*. at § 85-2-505.
[121]*Id.* at § 85-2-102(27).
[122]561 P.3d 995 (2025).

ground water without further beneficial use that must be . . . removed from a mine to permit mining operations or to preserve the mine in good condition."[123] DNRC and Tintina took the position this provision exempts the proposed mine dewatering from the waste prohibition.

Trout Unlimited and others challenged DNRC's interpretation through an administrative process followed by an appeal to state district court. After receiving adverse rulings, Trout Unlimited appealed, arguing Tintina intended to use water by pumping groundwater from the mine, which either required a permit or otherwise must be waste. Trout Unlimited also argued that the Montana Constitution protects water use by requiring that the legislature provide for the administration, control and regulation of water rights.[124] The Court rejected these arguments, in large measure because Tintina's disposal of water produced from the mine was subject to environmental permitting overseen by the Montana Department of Environmental Quality. The Court concluded DNRC only regulates water rights, but not the regulation of the water itself.[125]

Two justices dissented on the basis that the decision creates a large loophole that allows certain water use to go unregulated, which has the practical effect of interfering with the rights of senior appropriators.

Although *Montana Trout Unlimited* was the Montana Supreme Court's only significant water rights decision in 2025, the Ninth Circuit Court of Appeals also issued a ruling in a long-running dispute over whether owners and operators of private hydropower projects must pay rent to the State of Montana for use of riverbeds owned by the State. In *State of Montana v. Talen Montana LLC*,[126] the Court upheld a federal district court's factual determination that only one segment of several segments of the Missouri River was navigable for purposes of determining whether the State took title at statehood.

Montana v. Talen has been in litigation since 2003. In 2008, a state district court awarded Montana $41 million in rent. The Montana Supreme Court affirmed.[127] The United States Supreme Court reversed, holding that the state courts applied an incorrect rule to determine whether the state actually owned all the riverbeds it claimed.[128] The case was remanded to the district court for factual determinations based on the test articulated by the Supreme Court, which requires that navigability for title be litigated on a segment-by-segment basis.

The federal court conducted a fact-intensive ten-day trial.[129] The court analyzed the disputed rivers into numerous "reaches" to comply with the Supreme Court's segment-by-segment directive. The court then made navigability determinations for each of these reaches. The court concluded all but one of the reaches failed the navigability for title test, which meant Montana does not own the riverbeds in these reaches, thereby precluding its ability to charge rent for their use for all but the one segment, which applies to only one project. The Ninth Circuit upheld the district court's determination.

B. Legislative

Montana's biennial legislature met in 2025 and considered several bills that were the product of a stakeholder engagement process coordinated by DNRC regarding water resource management. [130]The legislation included a new process to integrate provisional

[123]MONT. CODE ANN. § 85-2-505(1)(c).
[124]Mont. Const. art. IX, § 3(4).
[125]Mont. Trout Unlimited, 2025 MT 1, ¶ 37, 420 Mont. 85, 561 P.3d 995.
[126]130 F.4th 675 (9th Cir. 2025).
[127]PPL Mont. v. State, 2010 MT 64, 355 Mont. 402, 229 P.3d 421.
[128]PPL Mont., LLC v. Montana, 565 U.S. 576, 132 S.Ct. 1215, 182 L.Ed. 77.
[129]Mont. v. Talen Mont., LLC, 574 F. Supp. 3d 795 (D. Mont. 2021).
[130] Mont. Dep't of Nat. Res. & Conservation, Comprehensive Water Review Stakeholder Working Group Overview (2024).

permits for post-1973 water use with final decrees issued by the Water Court;[131] authorization for the temporary leasing of water rights;[132] the reinstatement of a provision allowing water owners to remove their water right from the "adverse effect" analysis DNRC conducts for new water permit applications;[133] and legislation simplifying the water use change process for certain uses such as replacement wells, municipal water use areas, and new stock water tanks.[134] Although the Legislature considered several bills addressing Montana's ongoing disputes over exempt groundwater bills, none were adopted.

XI. STATE OF NEVADA

A. Judicial

1. Federal

In *Baker Ranches, Inc v. Haaland*,[135] originally filed in state court and removed to federal court, Plaintiffs sought to enjoin the federal government Defendants from certain actions allegedly diverting the Baker and Lehman Creeks in violation of a state court water rights decree. The federal district remanded the case under the prior exclusive jurisdiction doctrine. Defendants appealed, and the Ninth Circuit Court of Appeals vacated the remand order and remanded for the federal district court to consider whether the United States waived its sovereign immunity in the first instance. On remand, Plaintiffs and Defendants filed two competing motions: Defendants filed a motion to dismiss, and Plaintiffs filed a motion to remand. The federal district court determined the United States had not waived its sovereign immunity under the McCarran Amendment relative to the claims in the case and granted the Defendants' motion to dismiss and denied the motion to remand. An appeal has been filed in the Ninth Circuit Court of Appeals.[136] The case has been fully briefed and is awaiting oral argument scheduling.

2. State

Sullivan v. Baker Ranches, Inc.[137]

A holder of decreed water rights, Baker Ranches, Inc., requested that the State Engineer investigate an alleged violation of its rights by the National Park Service. Baker Ranches argued that the NPS denied it permission to remove obstructions from Baker Creek and that the NPS allowed unknown persons to construct rock dams in the creek channel. The State Engineer began an investigation in 2019; however, in 2021, the State Engineer determined that all investigations would be held in abeyance until related federal litigation concluded and notified Baker Ranches via letter. Baker Ranches petitioned in state district court for judicial review or a writ of mandamus, and the district court determined that judicial review was available and ordered the State Engineer to complete the investigation. The Supreme Court vacated the district court's order and held that the State Engineer's action was not final agency action subject to judicial review because the

[131] H.B. 441, 68th Leg., Reg. Sess. (Mont. 2025) (enacted as 2025 Mont. Laws ch. 453).
[132] S.B. 178, 68th Leg., Reg. Sess. (Mont. 2025) (enacted as 2025 Mont. Laws ch. 347).
[133] S.B. 190, 68th Leg., Reg. Sess. (Mont. 2025) (enacted as 2025 Mont. Laws ch. 171).
[134] H.B. 432, 68th Leg., Reg. Sess. (Mont. 2025) (enacted as 2025 Mont. Laws ch. 679).
[135] No. 3:21-CV-00150-GMN-CSD, 2024 WL 3927263, at 1 (D. Nev. Aug. 23, 2024) (order dismissing case).
[136] Baker Ranches, Inc. v. Haaland, No. 24-15765 (9th Cir. Sept. 19, 2024) (notice of appeal).
[137] 573 P.3d 1240 (Nev. 2025).

letter to Baker Ranches "was not a final written decision on the matter" and implied that the State Engineer would resolve the alleged violation in the future.

Virgin Valley Water District v. Paradise Canyon, LLC.[138]

In 2011, Virgin Valley Water District, a public water utility, entered into a lease agreement with Paradise Canyon, LLC to provide water to Paradise Canyon for the irrigation of a golf club. At renewal of the lease in 2020, the VVWD notified Paradise Canyon of its intent to increase the rental rate per share of water. Paradise Canyon filed suit, alleging that the rate increase was a breach of the lease agreement. The trial court entered judgment and awarded damages to Paradise Canyon. On appeal, the Supreme Court reversed in part, holding that Paradise Canyon's entitlement to the 2011 rate ceased at renewal of the lease and that the VVWD subsequently enjoyed "sole and absolute discretion" to determine the rental rate.

On remand from the Nevada Supreme Court of petitions for judicial review of State Engineer Order 1309, which delineated the Lower White River Flow System Hydrographic Basin as a single hydrographic basin to include seven former separate hydrographic basins or portions as sub-basins and found that the maximum quantity of groundwater that may be pumped from the Lower White River Flow System (LWRFS) Hydrographic Basin on an average annual basis cannot exceed 8,000 acre-feet annually, the 8th Judicial District Court upheld the State Engineer's delineation of the LWRFS as supported by substantial evidence and his finding of an 8,000 afa maximum quantity.[139] The district court found that the State Engineer's findings regarding quantity were supported by substantial evidence due, in part, to the fact that expert reports and testimony regarding pumping in the LWRFS ranged from "no safe pumping" to as much as 30,630 afa.

B. Legislative

Assembly Bill 26, effective May 28, 2025, updates dam safety statutes.[140]

Assembly Bill 104, effective July 1, 2025, prohibits the drilling of new domestic wells in Las Vegas if a property is within 1,250 feet of a service line of a public entity engaged in furnishing water.[141]

Assembly Bill 132, effective October 1, 2025, increases the maximum capacity of a guzzler from 20,000 gallons to 40,000 gallons and increases the maximum pipe length for a guzzler from ¼ mile to ½ mile.[142]

Senate Bill 108, effective July 1, 2025, raises the balance for triggering a discretionary request for channel clearance from the State General Fund's Contingency Account from $250,000 to $500.000.[143]

Assembly Bill 104 and Senate Bill 36 established the Nevada Voluntary Water Rights Retirement Program under the Nevada Conservation and Recreation Program, managed by the Department Director to protect natural resources, address groundwater decline, and resolve conflicts with existing rights or domestic wells in certain basins. A state fund was created to purchase or accept donations of decreed or certificated groundwater rights for permanent retirement. Currently, the Program has no dedicated

[138] 567 P.3d 962 (Nev. 2025).
[139] Sullivan v. Lincoln Cnty. Water Dist., 140 Nev. Adv. Op. No. 4 (2024).
[140] A.B. 26, 83d Leg. (Nev. 2025) (revising provisions relating to dams).
[141] A.B. 104, 83d Leg., ch. 226, 2025 Nev. Stat. (revising provisions relating to water).
[142] A.B. 132, 83d Leg., ch. 71, 2025 Nev. Stat. (revising provisions relating to water).
[143] S.B. 108, 83d Leg. (Nev. 2025).

funding. The Program takes effect on July 1, 2025, and sunsets on June 30, 2035.[144]

C. Nevada State Engineer Orders

The State Engineer issued orders in three basins in 2025 that applications to appropriate additional ground water in the basins would be denied by the State Engineer because each basin was over appropriated. [145]

Order 1338 also provided that applications to change existing rights in the Amargosa Desert Hydrographic Basin (230) will be processed subject to NRS Chapters 533 and 534 and evaluated using the United States Geological Survey Death Valley Regional Flow System numerical groundwater model. The model will be used to evaluate impacts on existing water right holders and to determine if there will be no net increase in water level declines at Devils Hole over a subsequent 50-year period.[146]

Order 1341 issued by the State Engineer requires that all owners of underground water rights (with certain exceptions) in the East Walker Area Hydrographic Basin (09-109) within Lyon and Mineral Counties, Nevada shall submit a report of installation of a totalizing meter form within 60 days of the date of the Order and requires that monthly records must be kept of the amount of water pumped from the wells subject to Order 1341 and the records submitted monthly to the Division of Water Resources.[147]

XII. STATE OF WASHINGTON

A. Judicial

No published Court of Appeals or Supreme Court Decisions in 2025.

Superior Court (pending)

The State of Washington filed an action in Whatcom County Superior Court in May of 2024 to adjudicate the ground and surface waters of the northwest portion of Washington State, known as Water Resource Inventory Area 1 (WRIA 1).[148] An adjudication is the determination of the rights to use either ground water or surface water within the state, filed with the Superior Court in the County in which the water flows.[149]

The Superior Court approved the summons and commencement of the action in January 2025, setting the claim filing date to May 1, 2026.[150] Between 15,000 to 20,000 water users are expected to file claims, and many of those claimants will file multiple claims.[151] The State commenced service by certified mail in mid-March of 2025; however, only partial service could be completed by certified mail, necessitating

[144]S.B. 36, 83d Leg. (Nev. 2025) (creating the Nevada Voluntary Water Rights Retirement Program).
[145]*See* Order 1338 for Amargosa Desert Hydrographic Basin (230), Nye County, Nevada; Order 1339 for Red Rock Valley Hydrographic Basin (099), Washoe County, Nevada; and Order 1340 for the East Walker Area Hydrographic Basin (09-109) within Lyon and Mineral Counties, Nevada.
[146]Nev. State Eng'r Order No. 1338 (Nev. Div. of Water Res. May 6, 2025).
[147]Nev. State Eng'r Order No. 1341 (Nev. Div. of Water Res. 2025).
[148]*Id.*
[149]Wash. Rev. Code §§ 90.03.110, 90.44.220 (2025).
[150]Order Approving Summons and Commencing Action, *In re Determination of Rights to the Use of Ground and Surface Waters of Water Resource Inventory Area 1 (WRIA 1)*, No. 24-2-80000-37 (Wash. Super. Ct., Whatcom Cnty. Jan. 7, 2025).
[151]WASH. DEP'T OF ECOLOGY, *Let's Talk About Adjudication* (Jan. 7, 2026),

additional service eVorts, which are still pending. Contemporaneously with the start of service, the Court stayed the litigation for all purposes other than the filing of claims, a stay that has been extended several times.[152]

B. Legislative

SSB 5212[153] permits claimants with otherwise undocumented water use to file a claim in the WRIA 1 Adjudication Proceeding[154]. This change in statute allows claimants with long-standing water use, whether or not they have state-issued water rights or preexisting precode claims filed under RCW 90.14, to participate in the WRIA 1 Adjudication Proceeding.

C. Administrative

Washington's Department of Ecology issued its first large-scale Curtailment Order in the Yakima Basin on October 2, 2025.[155] The order required all water rights with priority dates prior to 1855 to stop diverting water through the end of the irrigation season (October 31), for the benefit of senior water rights and aquatic life.[156] This is the first curtailment order of its kind in this basin, following entry of the Final Decree in the Matter of Determination of the Rights to the Use of Surface Waters of the Yakima River Drainage Basin, No. 77-2-01484-5 (Final Decree), dated May 2019.

In connection with its ongoing drought designations in various portions of the state, Ecology adopted an Emergency Drought Funding Rule (Ch 173-167 Wash. Admin. Code) on December 5, 2025, to address water supply deficits through April 4, 2026.[157] This rule is the second extension of a rule originally adopted in April 2025.[158] The rule provides access to the Drought Response Grant Fund, which allows eligible public entities to apply for funds to alleviate drought-related hardships.[159]

XIII. STATE OF WYOMING

A. Legislative

In Senate File 80, the Wyoming Legislature amended Wyoming Statute sections 41-3-401(a) and 41-3-402(a), which govern abandonment of water rights.[160] The amendment expands the categories of appropriators who may apply for additional time to

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[152]Order of Stay re Motions and Similar Actions Pending Adoption of Rules of Procedure (Mar. 20, 2025); Administrative Order Extending Stay and Scheduling Orders (July 31, 2025); Administrative Order (Oct. 13, 2025); Administrative Order (Nov. 21, 2025); Administrative Order Extending Stay of Motions Practice with Limited Procedure for Seeking Leave of Court (Dec. 15, 2025), all in *In re Determination of Rights to the Use of Ground and Surface Waters of Water Resource Inventory Area 1 (WRIA 1)*, No. 24-2-80000-37 (Wash. Super. Ct., Whatcom Cnty.).
[153]2025 Wash. Laws ch. 318.
[154]*In re Determination of Rights to the Use of Ground and Surface Waters of Water Resource Inventory Area 1 (WRIA 1)*, No. 24-2-80000-37 (Wash. Super. Ct., Whatcom Cnty. filed May 1, 2024) (WRIA 1 Adjudication Proceeding).
[155]WASH. DEP'T OF ECOLOGY, *Curtailment Order* (Oct. 2, 2025),
[156]*Id.*
[157]WASH. DEP'T OF ECOLOGY, *Order CR-103E* (Dec. 5, 2025).
[158]WASH. DEP'T OF ECOLOGY, *Order CR-103E* (April 8, 2025).
[159]*Id.*
[160]S.F. 0080, 68th Leg., Gen. Sess. (Wyo. 2025), enacted as 2025 Wyo. Sess. Laws 23

use or reactivate their water rights before those rights are considered abandoned. The revised statute now extends this opportunity to "the owner of a lawful dam or diversion system as defined in W.S. 41-3-307 under which appropriated water becomes unused due to necessary repairs or replacement."[161] Under this amendment, these additional appropriators may apply to the Board of Control for an extension of time, of up to five years, to resume or reactivate their water use, thereby avoiding abandonment. This extension is in addition to Wyoming's existing statutory five-year nonuse threshold for abandonment.

In Senate File 43, the Wyoming legislature amended Wyoming State Statute Section 41-3-110(a), which governs acquisition of temporary water rights.[162] The amendment increased the duration in which one may use another appropriator's water rights from two to five years.

Previously, Wyoming law limited temporary water use rights to specific purposes. Under the amendment, a temporary water right may now be acquired for any "temporary beneficial purpose."[163] However, the state engineer "shall not approve a temporary transfer if it injuriously affects the water rights of other appropriators."[164] Before the five-year transfer period expires, and upon the applicant's request, the state engineer may "renew temporary transfers for successive periods," with each renewal not exceeding five years and with a cumulative maximum of ten years.[165] Finally, after any temporary transfer of an irrigation water right expires, the right must be used for its "permitted purpose for a period of time equal to not less than fifty percent (50%) of the period" for which it was temporarily transferred before it becomes eligible for another temporary use transfer.[166]

The Wyoming Legislature passed two omnibus water bills; Senate File 82 appropriates money for water reconnaissance and feasibility studies. Specifically, this law authorizes Level I reconnaissance studies for new development and rehabilitation and Level II feasibility studies for dams and reservoirs.[167] Its companion bill, House Bill 117, funds and authorizes the construction of water planning projects.[168] These projects include cloud seeding in the Wind River and Sierra Madre Mountain ranges, water transmission and storage, and rehabilitation projects.[169]

B. *Administrative*

The Wyoming State Engineer issued a First Modified Breach Order for the LaPrele Dam on January 24, 2025,[170] thus superseding the original LaPrele Dam Breach Order issued on November 1, 2024.[171] In the Modified Order, the State Engineer approved LaPrele's Irrigation District's two modification requests: (1) to breach the LaPrele Dam to a final elevation of 5403.3 feet by April 1, 2025 and then remove the remaining portions of the dam by May 1, 2025 and (2) allow the completion of the breaching process in four

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[161] *Id.*
[162] S.F. 0043, 68th Leg., Gen. Sess. (Wyo. 2025), enacted as 2025 Wyo. Sess. Laws 134.
[163] *Id.*
[164] *Id.* at 41-3-110(a).
[165] *Id.*
[166] *Id.*
[167] S.F. 0082, 68th Leg., Gen. Sess. (Wyo. 2025), enacted as 2025 Wyo. Sess. Laws 56.
[168] H.B. 0117, 68th Leg., Gen. Sess. (Wyo. 2025), enacted as 2025 Wyo. Sess. Laws 111.
[169] *Id.* at 99-3-3003 (vii)(c).
[170] Letter from Brandon Gebhart, P.E., Wyo. State Eng'r, to LaPrele Irrigation Dist. (Jan. 24, 2025).
[171] Letter from Brandon Gebhart, P.E., Wyo. State Eng'r, to LaPrele Irrigation Dist. (Nov. 1, 2024).

phases.[172]

On June 16, 2025, the State Engineer issued an emergency policy allowing stock water appropriators to change the place of use without a permit or temporary use agreement.[173] This policy was due to "very dry conditions" and is in effect through the end of 2025.[174] A change in place of use must still be approved by the Water Division Superintendent.

[172]Gebhart, *supra* note 160.
[173]Letter from Brandon Gebhart, P.E., Wyo. State Eng'r, to Division Superintendents (June 16, 2025).
[174]*Id.*

Chapter X: CONSTITUTIONAL LAW
2025 Annual Report[1]

I. Supreme Court Decisions in 2024 Term

The United States Supreme Court's October 2024 term rendered decisions in five cases of significant interest to environmental, energy and natural resource practitioners, many with constitutional implications. Those decisions covered Article III standing under the Clean Air Act and to challenge Nuclear Regulatory Commission decisions, venue for challenging the Environmental Protection Agency's (EPA) action under the Clean Air Act, and judicial deference in NEPA cases.

A. Article III Standing to Challenge California's Clean Cars Regulations – Diamond Alternative Energy

In a 7-2 decision, the Supreme Court provided additional clarity regarding the redressability requirement of Article III standing. Article III standing requires every plaintiff to demonstrate that there is (1) an injury in fact, (2) causation, and (3) redressability. In this case, the Court decided whether Petitioners, who are entities that produce or sell liquid fuels and raw materials used to produce liquid fuels, have Article III standing to challenge the EPA's approval of California's Advanced Clean Cars II vehicle emissions regulations. The regulations require automakers to manufacture more electric vehicles and fewer gasoline-powered vehicles.

Writing for the majority, Justice Kavanaugh explained that the injury, causation, and redressability elements of standing were satisfied.[2] The regulations' explicit purpose is to decrease liquid fuel consumption, and invalidating the regulations would likely result in increased fuel sales, even if only marginally. Thus, a favorable decision on the merits would provide at least some of the relief the petitioners sought, which is increased fuel sales. The Court rejected arguments from California and the EPA that automakers would not revert to producing more gasoline-powered vehicles if the regulations were struck down. It cited commonsense economic principles and record evidence—including statements from California, the EPA, and automakers themselves—that the regulations continue to shape the market. The Court also declined to require plaintiffs to provide expert affidavits or direct evidence from automakers, holding that a predictable chain of events and market realities suffice to establish standing.[3]

B. Proper Venue for Challenging EPA Denials of Small Refinery Exemption Petitions —EPA v. Calumet Shreveport Refining, LLC

EPA v. Calumet Shreveport Refining provided a framework for determining proper venue for judicial review of EPA action on Clean Air Act (CAA) petitions under 42 U.S.C. section 7607(b)(1).[4] In contrast to *Oklahoma v. EPA*[5] (discussed below), the Court in this case held that challenges to the EPA's denials of small refinery exemption petitions under the CAA's Renewable Fuel Standard program must be brought in the United States Court

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[1]By: Norman A. Dupont, John R. Jacus and Erin M. Gust. Mr. Dupont is an attorney with Aleshire & Wynder LLP, practicing in its Los Angeles office. Mr. Jacus is a partner with Davis, Graham & Stubbs LLP in its Denver office, and Ms. Gust is an Associate with First & Fourteenth PLLC, also in Denver.
[2]Diamond Alt. Energy, L.L.C. v. EPA, 606 U.S. 100, 101 (2025).
[3]*Id.* at 120-24.
[4]605 U.S. 627 (2025); 42 U.S.C. § 7607(b)(1).
[5]605 U.S. 609, 610 (2025).

of Appeals for the District of Columbia, not regional circuits.[6] *Calumet* centered on the CAA's venue provision that distinguishes between "nationally applicable" EPA actions, which are reviewable only in the D.C. Circuit, and "locally or regionally applicable" actions, which are generally reviewed in regional circuits unless they are "based on a determination of nationwide scope or effect."

There is a two-part test to assess venue under Section 7607(b)(1). First, a court must identify a distinct action at issue. If the action is nationally applicable, then the case belongs in the D.C. Circuit. If it is not nationally applicable, a court moves to the second prong of the test to determine whether the "nationwide scope or effect" exemption applies.[7]

The Court explained that even though each denial of a refinery's exemption petition is a locally or regionally applicable action, these denials were fundamentally based on EPA's nationwide interpretations and economic theories.[8] Its reading of "disproportionate economic hardship" and its renewable identification number (RIN) credit passthrough theory apply uniformly across the country. The EPA's core justifications for denying the exemptions—its statutory interpretation and economic analysis—were determinations of nationwide scope or effect, forming the primary basis for the agency's actions.[9] In sum, the Court reversed the United States Court of Appeals for the Fifth Circuit, explaining that the EPA's denials were locally or regionally applicable actions that fall within the "nationwide scope or effect" exemption, making the D.C. Circuit the proper venue.[10]

C. Proper Venue for Challenging EPA Disapprovals of SIPs —Oklahoma v. EPA

Applying the framework from *Calumet*, summarized above and issued on the same day, the Court held the EPA's disapprovals of Oklahoma and Utah's state implementation plans ("SIPs") under the CAA are "locally or regionally applicable actions" and must be reviewed in the appropriate regional circuit courts, not the United States Court of Appeals for the District of Columbia.[11] Each SIP disapproval is a discrete action tied to a specific state, and the CAA's venue provision, 42 U.S.C. section 7607(b)(1), channels such challenges to regional circuits unless the action is "nationally applicable" or "based on a determination of nationwide scope or effect." The relevant "action" is defined by the statutory provision under which the EPA acts, not by how the agency chooses to package its decisions. The Court rejected the EPA's argument that aggregating multiple SIP disapprovals into a single omnibus rule or applying a uniform analytical framework transforms these state-specific actions into nationally applicable ones.[12]

The Court explained further why the "nationwide scope or effect" exception did not apply in this case. Even though the EPA made some determinations of nationwide scope, such as using a consistent framework and certain analytical thresholds, these were not the primary drivers of the SIP disapprovals. Instead, the EPA's decisions were based on "intensely factual" and state-specific analyses, with each state's SIP evaluated on its own merits and unique circumstances.[13] The Court concluded that because the disapprovals rested predominantly on individualized, factual determinations rather than a broad, nationwide policy, the challenges properly belong in the regional circuits. This case and *Calumet* provide goalposts for practitioners and courts to determine proper venue under CAA Section 7607(b)(1).

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[6] *See* EPA v. Calumet Shreveport Refin., L.L.C., 605 U.S. 627 (2025).
[7] *Id.* at 628.
[8] *Id.* at 627-29.
[9] *Id.* at 628-29.
[10] *Id.* at 647.
[11] *Oklahoma*, 605 U.S. at 609.
[12] Id. at 610.
[13] *Id.* at 623-24.

D. *Eligibility to Seek Judicial Review of Nuclear Regulatory Commission Licensing--* *Nuclear Regulatory Commission v. Texas*

In NRC v. Texas, 605 U.S. 665 (2025), the United States Supreme Court considered a classic administrative law issue of initial standing in an administrative proceeding in reviewing of the Nuclear Regulatory Commission's ("Commission") grant of a license to construct an interim storage facility for spent nuclear fuel in west Texas.[14] In September 2021, the Commission granted Interim Storage Partners (ISP) a license to build and operate a proposed storage facility. The State of Texas and Fasken Land and Minerals (Fasken) each submitted comments to the Commission, including comments on a Draft Environmental Impact Statement (DEIS), during the licensing proceeding, and Fasken also sought to intervene in the proceeding but was denied intervenor party status. Following the Commission's grant of a license to ISP, Texas and Fasken sought review of the Commission's licensing decision in the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit vacated ISP's license, and the Supreme Court granted the Commission's petition for certiorari (together with ISP in Case No. 23-1312) to review that vacatur. A 6-3 majority of the United States Supreme Court held that because Texas and Fasken were not parties to the Commission's licensing proceeding, they were not eligible to obtain judicial review of its decision.[15]

The Court's review centered on the text of the Administrative Orders Review Act of 1950, commonly known as the Hobbs Act, which specifies that only a "party aggrieved" by a licensing order of the Commission may seek judicial review.[16] Texas and Fasken argued that they qualify as parties because they participated in the licensing proceeding by submitting comments on the DEIS and, in Fasken's case, by attempting to intervene. The Court disagreed, noting the text of the Atomic Energy Act indicates one must be the license applicant or successfully intervene in order to obtain party status in a Commission licensing proceeding.[17]

Fasken contended that it could maintain this suit because it satisfied the statutory criteria for intervention under the Atomic Energy Act and because the Commission erroneously denied its intervention petition. Fasken also argued that the Commission's intervention regulations set a higher bar for intervention than the Atomic Energy Act contemplates. But the Court again disagreed, noting that Fasken did not raise the legality of the Commission's intervention ruling to the United States Court of Appeals for the District of Columbia; rather, it challenged how the Commission applied its regulations in this case.[18] And after the D.C. Circuit rejected Fasken's arguments and upheld the Commission's denial of Fasken's petition to intervene, Fasken did not seek *en banc* review in the D.C. Circuit or *certiorari* in the Supreme Court. Thus, the Court reasoned, the decision on intervention was final and Fasken could not use a new Hobbs Act suit to collaterally attack the D.C. Circuit's prior ruling on intervention.[19]The Court also rejected Texas and Fasken's alternative argument that they need not be parties to challenge *ultra vires* agency action. Because *ultra vires* review could easily circumvent judicial-review statutes, the Court's precedents strictly limit non-statutory *ultra vires* review. Texas's and Fasken's *ultra vires* claims fell short because (1) they essentially dressed up a typical statutory authority argument as an *ultra vires* claim, and (2) *ultra vires* review is unavailable where a statutory

[14]*See* NRC v. Texas, 605 U.S. 665 (2025).
[15]*Id. at* 690–91.
[16]*Id.* at 669.
[17]*Id.* at 674-90.
[18]*Id.* at 679–80.
[19]*NRC*, 605 U.S. at 678-80.

review scheme provides aggrieved persons with an adequate opportunity for judicial review.[20] The Court reversed and remanded the Fifth Circuit's decision.[21]

E. *Judicial Deference to Lead Agency Evaluations of Environmental Impacts -- Seven County Infrastructure Coalition v. Eagle County*

This case concerns the degree of judicial deference required in National Environmental Policy Act (NEPA) cases and whether environmental impacts separate in time and place from the major federal action being evaluated must be considered by the lead agency.[22] In 2020, the Seven County Infrastructure Coalition applied to the U.S. Surface Transportation Board ("Board") for approval of an 88-mile railroad line connecting Utah's oil-rich Uinta Basin to the national freight rail network, to facilitate transport of crude oil to refineries along the Gulf Coast.[23] The Board prepared a 3,600-page environmental impact statement ("EIS") that analyzed numerous impacts of the railway's construction and operation.[24] The EIS noted, but did not fully analyze, the potential environmental effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil. The Board subsequently approved the railroad line, concluding that the project's transportation and economic benefits outweighed its environmental impacts.[25]

Petitions challenging the Board's action were filed in the United States Court of Appeals for District of Columbia by a Colorado county and several environmental organizations. The D.C. Circuit found "numerous NEPA violations arising from the EIS" and held that the Board impermissibly limited its analysis of the environmental effects from upstream oil drilling and downstream oil refining projects. It concluded that those effects were reasonably foreseeable impacts that should have been analyzed more extensively. "Based on the deficiencies it found, the D.C. Circuit vacated both the EIS and the Board's final approval order."[26]

On certiorari, a 6-3 majority of the United States Supreme Court held that the D.C. Circuit failed to afford the Board the substantial judicial deference required in NEPA cases and incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway project at issue.[27] The Court's analysis began with the observation that as a purely procedural statute, NEPA "does not mandate particular results, but simply prescribes the necessary process"[28] for an agency's environmental review of a project. The Court then noted how some federal courts reviewing NEPA cases had assumed an aggressive role in policing agency compliance with NEPA and have not applied NEPA with the judicial deference demanded by the statutory text and the Court's precedents. The Court then stated that when a party argues that an agency action is arbitrary and capricious due to an alleged deficiency in an EIS, the "only role for a court" is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project.[29] The

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[20]*Id.* at 680-83.
[21]*Id.* at 690.
[22]Seven Cnty. Infrastructure Coal. v. Eagle Cnty., 605 U.S. 168 (2025).
[23]*Id.* at 173
[24]*Id.*
[25]*Id.* at 176 (2025).
[26]*Id.* at 168; Eagle Cnty. v. Surface Transp. Bd., 82 F.4th 1152 (D.C. Cir. 2023).
[27]*Seven Cnty. Infrastructure Coal.,* 605 U.S. at 168-70.
[28]*Id.* at 169 (quoting *R*obertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989)).
[29]*Id.* at 169 (quoting *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227 (1980)).

adequacy of an EIS is relevant only to the question of whether an agency reasonably explained its final decision, and judicial deference in NEPA cases extends to an agency's determination of what details are relevant in an EIS.[30] Courts should therefore defer to agencies' discretionary decisions about where to draw the line when considering indirect environmental effects and whether to analyze effects from other projects separate in time or place.

The Court more specifically held that the Board's determination that its EIS need not evaluate possible environmental effects from upstream and downstream projects separate from the Uinta Basin Railway complied with NEPA's procedural requirements, particularly NEPA's textually mandated focus on the "proposed action" under agency review.[31] And the Court emphasized that just because a project might foreseeably lead to the construction or increased use of a separate project does not mean the reviewing agency must consider that separate project's environmental effects, especially when those separate projects fall outside the lead agency's regulatory authority. The Court reversed and remanded the D.C. Circuit's decision.

II. SUPREME COURT CASES PENDING IN 2025 TERM

There are five environmental, energy, and natural resources cases to be addressed by the United States Supreme Court in its October 2025 Term with constitutional implications —two merits cases and three seeking a grant of certiorari—. The merits cases concern federal officer removal jurisdiction and whether the 30-day time limit for removal of cases to federal court can be judicially excused. The certiorari petitions all address federal preemption issues: FIFRA preemption of state tort liability, federal preemption of state tort liability for nuclear incidents, and federal preemption of state climate-change litigation.

A. Federal Officer Removal Jurisdiction – Chevron USA Inc. v. Plaquemines Parish

The United States Supreme Court granted certiorari in this case concerning federal officer removal jurisdiction. The petition presented two questions: 1. whether a causal-nexus or contractual direction test survives the 2011 amendment to the federal-officer removal statute, and 2. whether a federal contractor can remove to federal court when sued for oil-production activities undertaken to fulfill a federal oil-refinement contract.

Petitioners are oil companies trying to remove a series of lawsuits brought by Louisiana coastal parishes alleging environmental violations of the State and Local Coastal Resources Management Act of 1978 (Act).[32] Petitioners argue that their World War II–era crude oil production and refining activities were conducted under federal government contracts and directives, thus justifying removing the cases to federal court under the federal-officer removal statute., 28 U.S.C. section 1442(a)(1).[33] The United States Court of Appeals for the Fifth Circuit panel divided over whether the petitioners' production of crude oil during World War II was related to their contractual requirement to refine crude oil into avgas. The central issue is the proper interpretation of the statute's "relating to" language, added in a 2011 amendment. Petitioners argue that this amendment broadened the statute to allow removal whenever the challenged conduct is connected to or associated with acts performed under federal direction, not just when there is a direct causal link or

[30] *Id.* at 180-82.
[31] *Id.* at 186-91.
[32] *Id.* at 2.
[33] Petition for Writ of Certiorari, Chevron U.S.A. Inc. v. Plaquemines Parish, No. 24-813 (U.S. Jan. 29, 2025); 28 U.S.C. § 1442(a)(1).

explicit federal directive.[34] They contend that their wartime oil production was closely tied to fulfilling federal contracts and thus lawsuits pertaining to that wartime oil production should be heard in federal court.

B. *Judicial Discretion to Excuse the 30-day Time Limit for Removal – Enbridge Energy, LP v. Nessel*

The United States Supreme Court granted *certiorari* in this case to decide whether district courts have the authority to excuse the 30-day procedural time limit for removal pursuant to 28 U.S.C. section 1446(b)(1).[35]

The procedural posture is critical to this case. The dispute arose when Michigan sought to address risks from Enbridge's pipelines crossing state-owned submerged lands. Two actions are at play: 1. the attorney general sued Enbridge in 2019 on state law claims, and 2. the governor later issued and enforced a 2020 easement revocation. Enbridge removed the governor's case to federal court, which the governor later dismissed. Following the dismissal, Enbridge sought to remove the attorney general's case after the 30-day deadline to remove had passed. The district court allowed the late removal based on "exceptional circumstances." The United States Court of Appeals for the Sixth Circuit reversed, holding the 28 U.S.C. section 1446(b)(1) 30-day removal deadline is mandatory.[36]

Enbridge argues that section 1446(b)(1)'s 30-day removal limit is a non-jurisdictional claims-processing rule subject to equitable tolling because nothing in the statute's text or structure forecloses tolling. Further, exceptional federal interests justified excusing the late removal to keep related disputes in one federal forum. Alternatively, Enbridge asserts that removability first became ascertainable with the federal court's denial of remand in the parallel gubernatorial case, making its notice timely under section 1446(b)(3)'s "other paper" provision.[37] Michigan contends section 1446(b)(1)'s 30-day removal period is a mandatory claims-processing rule and that removal statutes should be strictly construed to respect state sovereignty. The statute's text, structure, and history show Congress set a firm clock and specified exceptions, leaving no room for implied tolling.[38] Even if tolling were possible, Enbridge was not diligent and faced no extraordinary obstacle, having raised preemption early in state court and previously removing a virtually identical case.

C. *Federal Preemption of State Tort Liability for Nuclear Incidents – Cotter Corporation v. Mazzochio*

Petitioners Cotter Corporation and Commonwealth Edison Company challenge an United States Court of Appeals for the Eighth Circuit decision holding that state standards of care, rather than federal nuclear safety regulations, govern liability in "public liability actions" under the Price-Anderson Act (PAA).[39] The dispute stems from allegations that the companies' mishandling of radioactive waste materials from Manhattan Project operations in the 1960s and 1970s contaminated Coldwater Creek in Missouri, causing

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[34] *Id.* at 34.

[35] Petition for Writ of Certiorari, Enbridge Energy, LP. V. Nessel, No. 24-783 (U.S. Jan. 23, 2025 ; 28 U.S.C. § 1446(b)(1).

[36] Nessel v. Enbridge Energy, LP, 104 F.4th 958, 971 (6th Cir. 2024).

[37] *See* Petition for Writ of Certiorari, Enbridge Energy, LP v. Nessel, No. 24-783 (U.S. Jan. 13, 2025).

[38] Resp't Br. in Opp'n, Enbridge Energy, LP v. Nessel, No. 24-783 (U.S. Apr. 29, 2025).

[39] Petition for Writ of Certiorari, Cotter Corp. v. Mazzocchio, No. 24-1001 (U.S. Mar. 10, 2025).

cancer in nearby residents. Respondents Nikki Steiner Mazzocchio and Angela Steiner Kraus, sisters who both developed multiple myeloma, filed suit raising claims of negligence, negligence per se, strict liability, and civil conspiracy. The district court denied petitioners' motion to dismiss, rejecting their argument that federal nuclear dosage regulations provide the exclusive standard of care in PAA cases, and certified the question for interlocutory appeal.[40] The Eighth Circuit affirmed, holding that the PAA's text directs courts to apply "the substantive rules for decision" derived "from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section."[41] 42 U.S.C. § 2210.

Finding nothing in section 2210 that addresses standards of care or mentions federal dosage regulations, the court concluded that Missouri tort law governs. In doing so, the Eighth Circuit expressly acknowledged it was "tak[ing] a path different from [its] sister circuits," creating what petitioners characterize as a 5-1 circuit split on whether federal law preempts state standards of care in nuclear incident litigation.

Petitioners argue that federal nuclear safety regulations must provide the exclusive standard of care because Congress has occupied the entire field of nuclear safety regulation, preempting any state regulation—including common law tort standards—that would effectively impose safety requirements on handlers of radioactive materials.[42] They contend that while the PAA directs courts to apply "the law of the State," federal preemption means that "federal law is 'the law of the State'" where nuclear safety is concerned. Petitioners also emphasize that five circuits—the Third, Sixth, Seventh, Ninth, and Eleventh—have held that federal nuclear safety regulations provide the standard of care in PAA actions, making this case an ideal vehicle to resolve the acknowledged split of authority.

The Court requested the Solicitor General file an amicus brief addressing whether *certiorari* should be granted, often a signal that the Court believes the case may warrant its review.

D. FIFRA Preemption of State Failure-to-Warn Claims—Monsanto Co. v. Durnell

This case concerns whether the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempts state-law failure-to-warn claims against pesticide manufacturers when the EPA has repeatedly approved product labels without the warnings state law would require. The case arises from a Missouri jury verdict awarding $1.25 million in compensatory damages to John L. Durnell, who alleged that his non-Hodgkin lymphoma was caused by decades of exposure to Monsanto’s glyphosate-based herbicide, Roundup. Durnell prevailed solely on a strict liability failure-to-warn theory, with the jury finding for Monsanto on design defect and negligence claims. On appeal, the Missouri Court of Appeals affirmed, holding that Durnell’s claim was not preempted by FIFRA because Missouri’s failure-to-warn standard paralleled the federal misbranding prohibition and did not impose requirements “in addition to or different from” those under federal law.[43]

Monsanto’s petition for certiorari frames the case as the latest and most consequential front in a deepening circuit split over FIFRA preemption. The company argues that EPA’s long-standing scientific determination that glyphosate is not carcinogenic, and its consistent approval of Roundup labels without a cancer warning,

[40] Mazzocchio v. Cotter Corp., No. 4:22-cv-292-MTS, 2023 WL 5831960 (E.D. Mo. Sept. 8, 2023).
[41] Mazzocchio v. Cotter Corp., 120 F.4th 565, 569 (8th Cir. 2024).
[42] Petition for Writ of Certiorari, Cotter Corp. v. Mazzocchio, No. 24-1001 (U.S. Mar. 10, 2025).
[43] Durnell v. Monsanto Co., 707 S.W.3d 828, 835 (Mo. Ct. App. 2025).

preclude states from imposing tort liability for the absence of such a warning.[44] Monsanto contends that under FIFRA, once EPA has approved a label, manufacturers cannot unilaterally alter it to add warnings, and that state-law verdicts requiring additional warnings create a patchwork of inconsistent labeling obligations, undermining the uniformity Congress sought to achieve. The petition highlights a direct conflict between the Third Circuit and the Ninth and Eleventh Circuits, as well as several state appellate courts, which have allowed similar failure-to-warn claims to proceed. Monsanto warns that the proliferation of such claims—over 60,000 are pending nationwide—threatens the continued availability of glyphosate products and could have sweeping consequences for American agriculture.

The Court requested the Solicitor General file an amicus brief addressing whether *certiorari* should be granted.[45]

E. Federal Preemption of State Tort Claims for Climate Change Damages—Suncor Energy (U.S.A.) Inc., v. Board of County Commisoners of Boulder County

This petition raises federal preemption issues in the context of a climate-change action brought by the County Commissioners of Boulder County, Colorado.[46] Petitioners, which are energy companies, seek review of a Colorado Supreme Court decision, holding that federal law did not bar state-law claims related to the alleged damages caused by the effects of interstate and international greenhouse gas emissions. The Colorado Supreme Court ruled on a preliminary motion to dismiss the entire action, holding that state tort law could regulate interstate greenhouse gas emissions.

Petitioners contend that only federal law can govern claims about interstate and international pollution, given the need for national uniformity and the implications for U.S. foreign policy. They argue that the Clean Air Act, which displaced federal common law remedies for interstate pollution, does not authorize state-law claims except for those based on the law of the state where the pollution originates. Their petition highlights a growing split among courts, with some (like the Second Circuit) holding that federal law preempts these state claims, while others (like the Colorado and Hawaii Supreme Courts) allow them to proceed, risking a patchwork of inconsistent state standards for global climate issues.

[44]Petition for Writ of Certiorari, Monsanto v. Durnell, No. 24-1068 (U.S. Apr. 4, 2025).
[45]Monsanto Co. v. Durnell, 145 S. Ct. 2841, 2841 (2025).
[46]Suncor Energy (U.S.A.) Inc. v. Bd. of Cnty. Comm’rs of Boulder Cnty., No. 25-170 (U.S. Oct. 21, 2025) (cert. granted).

Chapter Y: ENVIRONMENTAL JUSTICE
2025 Annual Report[1]

I. Introduction

This chapter summarizes environmental justice developments at the federal and state levels, in the courts, and within the ABA in 2025. The ABA 2024 Year in Review reported on significant legal developments in this area, describing the supportive frameworks provided by Biden-era federal executive orders and the launch of myriad "tools and strategies to address inequities experienced in environmental justice communities and communities throughout the country."[2] In the absence of a federal environmental justice statute, many advances under the Biden and past administrations were created pursuant to discretionary executive authority, while other initiatives have relied on agency interpretation of statutory authorization. Since 1994, Clinton Executive Order 12898,[3] *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, has provided continuity in establishing environmental justice as federal policy.

The 2025 Year in Review details a sea change in federal treatment of environmental justice and the communities most impacted by environmental and climate harms. Initiated by executive orders issued in its first days, the Trump Administration put an end to thirty years of environmental justice as a policy of the federal government – rolling back both foundational and recent executive orders and eliminating longstanding and new administrative infrastructure and programs. The cascading effects have included major shifts in policy and enforcement priorities, significant reductions in force, and the loss of billions of dollars in funding dedicated to projects intended to benefit communities with environmental and climate justice concerns. 2025 also saw the dismantling of civil rights protections with immediate impacts on environmental justice enforcement. In the face of a shifting federal landscape, advocates and state policymakers continued to advance environmental justice through state legislation and in the courts.

II. Day One and Two Executive Orders Undo Environmental Justice as Federal Policy

In his first days in office, President Trump issued several executive orders reversing federal environmental justice policy and directing agencies to end all environmental justice and equity protections and initiatives.

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[1]This report was authored by Amy Laura Cahn, Special Assistant Attorney General in the Energy and Environment Bureau of the Massachusetts Office of the Attorney General, and Lawrence Kaleb Pittman *in his personal capacity*, a Trial Attorney in DOJ – Environment & Natural Resources Division, and edited deftly by the student editors at the University of Tulsa College of Law. The views expressed in this article are the authors' and do not represent the official position of the Massachusetts Attorney General or of any agency or official of the Commonwealth of Massachusetts on any matter discussed.The views expressed in this article are the author's and do not represent the official position of the Massachusetts Attorney General or of any agency or official of the Commonwealth of Massachusetts on any matter discussed.
[2]Amy Laura Cahn et al., *2024 Environmental Justice Committee Report*, ABA Environment, Energy, and Resources Law: The Year in Review 2024 (June 20, 2025).
[3]Exec. Order No. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 16, 1994).

Issued on day one of the new administration, Executive Order 14148, *Initial Rescissions of Harmful Executive Orders and Actions*,[4] rescinded a series of Biden Administration executive orders aimed at bolstering racial equity and support for disadvantaged communities, including Executive Order 13985,[5] Executive Order 13990,[6] and Executive Order 14008.[7] Executive Order 13985 established government-wide initiatives to advance racial equity and support for underserved communities. Executive Order 13990 formalized the Biden Administration's Day one commitment to environmental justice. And Executive Order 14008 launched the Justice40 Initiative, aimed at ensuring at least forty percent of federal climate and infrastructure investments go directly to communities most affected by poverty and pollution, as identified by the new Climate & Economic Justice Screening Tool (CEJST) (Executive Order 14008 also created the White House Environmental Justice Advisory Council (WHEJAC) to advise senior administration officials on how to best harmonize environmental justice priorities across all federal agencies.[8]

Executive Order 14148 also rescinded Executive Order 14096,[9] *Revitalizing Our Nation's Commitment to Environmental Justice for All*, which affirmed the restoration and protection of a healthy environment as a "a matter of justice and a fundamental duty that the Federal Government must uphold on behalf of all people." Informed by the WHEJAC, Executive Order 14096 ushered in a "whole-of-government approach" to environmental justice, requiring all federal agencies to create and publish an environmental justice strategic plan.

Finally, on day one, Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*,[10] terminated "to the maximum extent allowed by law, . . . all 'environmental justice' offices and positions" and all equity-related actions, initiatives, programs, grants, and contracts."

On day two, President Trump issued Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*.[11] Executive Order 14173 rescinded the foundational 1994 Clinton Executive Order 12898, thus purporting to end environmental justice as a policy of the federal government.

The follow-on effects of these early rescissions began immediately. By the close of Inauguration Day, all federal agencies had either deleted their environmental justice strategic plans or replaced them with policies rejecting environmental justice principles.[12] By January 23, 2025, the Department of Energy had put staffers from its Office of Energy

[4]Exec. Order No. 14148, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 28, 2025).
[5]Exec. Order No. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 25, 2021).
[6]Exec. Order No. 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021).
[7]Exec. Order No. 14008, Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7619 (Feb. 1, 2021).
[8]CLIMATE & ECON. JUST. SCREENING TOOL, *Explore the Map* (last visited May 11, 2026).
[9]Exec. Order No. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 Fed. Reg. 25251 (Apr. 21, 2023).
[10]Exec. Order No. 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing, 90 Fed. Reg. 8339 (Jan. 29, 2025).
[11]Exec. Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633 (Jan. 31, 2025).
[12]Harvard Law School Energy & Environmental Law Program, *Agencies Removed Environmental Justice Strategic Plans,* FED. ENVTL. JUST. TRACKER (Jan. 20, 2025).

Justice and Equity on leave and the office's website was deleted.[13] In less than two weeks, the Transportation and Energy Secretaries ordered purges of prior orders, directives, guidance, notices, and funding agreements on environmental justice; racial equity; diversity, equity, and inclusion; climate justice; and the Justice40 Initiative.[14] The rescission of Executive Order 14008 also triggered the dissolution of the WHEJAC and disabling of the CEJST screening tool.

On February 5, 2025, Attorney General Pam Bondi rescinded the Department of Justice's Comprehensive Environmental Justice Enforcement Strategy along with all "memoranda, guidance or similar directive" implementing the Biden Administration's "environmental justice' agenda."[15] The same day, Attorney General Bondi ordered the closure of DOJ's Office of Environmental Justice, established in 2022 as part of the Environment and Natural Resources Division to "support environmental justice investigations and litigation and facilitate outreach by the department to communities with environmental justice concerns."[16]

On February 11, 2025, EPA placed 171 staffers working "in Diversity, Equity, Inclusion, and Accessibility and Environmental Justice on administrative leave."[17] Administrator Zeldin fully terminated the "Environmental Justice and Diversity, Equity, and Inclusion arms of the agency" on March 12, including most of EPA's Office of Environmental Justice and External Civil Rights (OEJECR) and the Environmental Justice Divisions within all EPA regional offices.[18] Established in 2022, OEJECR elevated environmental justice and civil rights enforcement on par with EPA's other major offices and administered the agency's $3 billion Environmental and Climate Justice Block Grant program.

Also on March 12, 2025, Jeffrey A. Hall, Acting Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance, issued a memo directing that

> [p]ursuant to the President's Executive Orders, environmental justice considerations shall no longer inform EPA's enforcement and compliance assurance work."[19] The memo ordered that, unless required by law, "[i]n all enforcement and compliance assurance activities—from targeting, information requests, and case initiation to the assessment of penalties and enforcement of orders— no consideration may be given to whether those affected by potential violations or those in the vicinity of facilities or other sources of pollution constitute minority or low-income populations.[20]

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[13]Annie Snider, DOE energy justice staffers put on leave under Trump's DEI order, POLITICO PRO (Jan. 23, 2025).
[14]Memorandum from Sec'y of U.S. Dep't of Transp. to Sec'y Officers and Heads of Operating Admins. (Jan. 29, 2025); Memorandum from Dir. of Cont. and Fin. Assistance Pol'y Div., Off. of Pol'y Off. of Acquisition Mgmt.to HCAs, Procurement Dirs., and Contracting Officers (Jan. 23, 2025).
[15]Memorandum from Att'y Gen. to Dep't Emps. (Feb. 5, 2025).
[16]Memorandum from Att'y Gen. to Heads of Dep't Components, U.S. Att'ys (May 5, 2022).
[17]Press Release, Envt'l Prot. Agency, EPA Places 171 DEIA and Environmental Justice Employees on Administrative Leave (Feb. 11, 2025).
[18]Press Release, Envt'l Prot. Agency, EPA Terminates Biden's Environmental Justice, DEI Arms of Agency (Mar. 12, 2025).
[19]Memorandum from Jeffrey A. Hall, Acting Assistant Adm'r to Regional Adm'rs and Deputy Regional Adm'rs, Regional Couns. And Deputies, Regional ECAD Dirs. And Deputies, Regional SEMD Dirs. And Deputies, OECA Off. Dirs. And Deputies, and OCEFT Special Agents (Mar. 12, 2025).
[20]*Id.*

The memo also narrowed EPA's National Enforcement Compliance Initiatives (NECI), directing that the initiatives would no longer focus on methane emissions from oil and gas facilities or enforcement and compliance or in communities "already highly burdened with pollution impacts", and enforcement that would unduly burden or significantly disrupt energy production would require advance approval. The memo also announced that EPA's EJScreen tool (archived version here) had been taken offline and could no longer be "used for any enforcement or compliance activity."[21]

In February 2025, the White House Council of Environmental Quality (CEQ) published an interim final rule[22] concluding that CEQ lacks legal authority to issue binding regulations under the National Environmental Policy Act and removing all of the agency's preceding NEPA regulations, including the 2024 Phase II rule which had codified environmental justice and Tribal priorities.[23] That same month, CEQ issued guidance to federal agencies omitting environmental justice considerations and narrowing the scope of agencies' NEPA analyses.[24] Several federal agencies have separately issued new "alternative arrangements" to fast-track permitting for priority energy projects.[25]

And in March 2025, the EPA "quietly abolished" the National Environmental Justice Advisory Council, established by the Clinton Administration in 1993.[26]

III. Termination of Environmental Justice Funding and Responsive Litigation

As detailed in the 2023 and 2024 Years in Review, the passage of the Inflation Reduction Act (IRA) and Infrastructure Investment and Jobs Act (IIJA) along with the establishment of the Justice40 Initiative, fueled unprecedented funding to disadvantaged communities in general and environmental and climate justice programs and projects specifically. President Trump's day one Executive Order 14154,[27] *Unleashing American Energy*, immediately paused disbursement of funds appropriated through the IRA and IIJA, while Executive Order 14151 ordered the termination of "all equity-related" grants and contracts.[28] Within days, the Office of Management and Budget issued a memo directing agencies to pause disbursement of funds under the IRA and IIJA.[29]

Federal agencies responded immediately, resulting in unprecedented disruptions in funding, including of grants and contracts previously approved and obligated. Agencies froze funding, issued stop work orders, changed grant terms and conditions, and ultimately began eviscerating grant programs across the federal government – many explicitly

[21] *Id.*
[22] Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610 (Feb. 25, 2025) (to be codified 40 C.F.R. pts. 1500–1508).
[23] National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442 (May 1, 2024) (final rule).
[24] Memorandum from Katherine R. Scarlett to Fed. Dep't and Agency Heads (Feb. 19, 2025).
[25] *See* Dep't of the Interior, *Alternative Arrangements for NEPA Compliance* (2025).
[26] Sean Reilly & Kevin Bogardus, *EPA Scraps Clinton-Era Environmental Justice Panel*, E&E News (May 23, 2025); Gen. Servs. Admin., *National Environmental Justice Advisory Council*, FACADATABASE.gov (last visited Apr. 4, 2026).
[27] Exec. Order No. 14154, Unleashing American Energy,90 Fed. Reg. 8353, 8357 (Jan. 29, 2025).
[28] Exec. Order No. 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing, 90 Fed. Reg. 8339, 8339 (Jan. 29, 2025).
[29] Memorandum from Matthew J. Vaeth, Acting Dir., Off. of Mgmt. & Budget to Dep't and Agency Heads (Jan. 21, 2025).

designed to benefit historically disadvantaged communities and communities with environmental justice concerns.

Between February and May, 2025, EPA gutted the entire Environmental and Climate Justice Block Grant program established by Congress, which appropriated $3 billion under the IRA and Clean Air Act for grants and technical support "to help historically disadvantaged communities come up with local solutions to improve resilience in the face of worsening climate shocks and environmental degradation."[30] EPA terminated over 350 grants to local community groups and nonprofits, academic institutions, and state, tribal, and local governments under five distinct programs**.** Terminated grants under EPA's $2 billion Environmental Justice Community Change Grants Program ranged from a $14 million grant to install wastewater treatment systems throughout seventeen Alabama counties to a $20 million grant to conduct asbestos and lead remediation and support energy security for the Native Village of Tyonek, Alaska, to millions of dollars in air quality monitors and remediation of indoor air pollutants throughout the country. The shuttered Environmental Justice Thriving Communities Grantmaking Program was poised to re-grant an additional $600 million to small, resource-constrained community-based organizations.

Passage of H.R. 1 (also known as the One Bill Beautiful Bill Act) on July 4 further fueled grant terminations. The appropriations statute repealed the authorization to administer certain IRA grant programs and rescinded unobligated funds under many more, spurring federal agencies to unlawfully claw back even already-obligated funds. H.R. 1 rescinded $423 million to accelerate the replacement of internal combustion engine heavy-duty vehicles, including school buses, with zero-emission vehicles; $340 million to address reduction in diesel and methane emissions; $138 million to support green and resilient retrofits for multifamily housing; and $14 million to address air pollution in schools.[31] Following the passage of H.R. 1, DOT clawed back $2.4 billion in unobligated funds under the Neighborhood Access and Equity Grant Program, a $3 billion Federal Highway Administration IRA grant program designed to improve connectivity, transportation access, and air quality in historically disadvantaged neighborhoods.[32] H.R. 1 also repealed authorization for the Greenhouse Gas Reduction Fund, including Solar for All – established to expand access to solar energy for low-income and historically disadvantaged communities and projected to provide energy savings for an estimated 900,000 households – and rescinded $19 million in unobligated administrative funds. But while the $7 billion appropriated for Solar for All had already been awarded and implementation was underway, EPA terminated the $7 billion dollar program.[33]

Public and private entities have fought funding disruptions and grant terminations in the courts. Two separate coalitions of states and nonprofits challenged the government-wide funding freeze, obtaining preliminary relief and permanent injunctions that restored funding, including for IRA and IIJA programs.[34]

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[30]Nina Lakhani**,** *First-of-a-Kind U.S. Class-Action Lawsuit Would Force EPA to Reinstate $3bn Climate Program*, THE GUARDIAN (Aug. 5, 2025).
[31]Pub. L. No. 119-21, §§ 30002 (Green and Resilient Multifamily Housing), 60001 (Clean Heavy-Duty Vehicles), 60003 (Diesel Emissions), 60004 (Air Pollution), 60005 (Air Pollution in Schools), 60012 (Methane Emissions), 60016 (Environmental Justice Block Grants) (2025).
[32]Jeff Davis, *Reconciliation Law Kills Most, but Not All, Neighborhood Access Grants*, ENO CTR. FOR TRANSP. (July 22, 2025).
[33]Julia Simon & Jeff Brady, *EPA Plans to End a Program That Makes Solar Power Available to Low-Income Americans*, NPR (Aug. 8, 2025).
[34]New York v. Trump, 769 F. Supp. 3d 119, 146-47 (D.R.I. 2025); Woonasquatucket River Watershed Council v. U.S. Dep't of Agric., 778 F. Supp. 3d 440 (D.R.I. 2025).

In Sustainability Institute v. Trump, six municipalities and eleven nonprofits filed suit against the U.S. Department of Agriculture, EPA, and DOT for freezing funds for critical programs, ranging from farmers debt assistance and farmland acquisition to water quality management and energy efficient affordable housing.[35] In Green & Healthy Homes Initiative, Inc. v. EPA, three nonprofit organizations challenged EPA's terminations of their $60 million Thriving Communities Grantmaking Program grants.[36] And in Appalachian Voices v. EPA, a coalition of 15 nonprofits, one Tribe, and seven local governments filed a class action lawsuit challenging the mass termination of EPA's entire Environmental and Climate Justice Grant program on behalf of hundreds of grantees.[37] Several lawsuits have also been filed to challenge the termination of the Solar for All grants, including cases initiated by the largest single grantee, Harris County, Texas; a set of subgrantees, and a multistate coalition, which has filed litigation in both the Western District of Washington and the Court of Federal Claims.[38]

Funding cases have challenged agency actions as unlawful under the Administrative Procedure Act and unconstitutional violations of separation of powers principles. Litigation remains in flux as courts contend with recent decisions by the U.S. Supreme Court regarding jurisdiction over grant terminations.[39]

IV. Environmental Justice Rollbacks in Regulatory Actions

Throughout 2025, EPA initiated a series of regulatory rollbacks and changes in policy that threaten to increase greenhouse gas emissions and co-pollutants and pose serious environmental, climate, economic, and health risks, stemming from increased greenhouse gas emissions and co-pollutants,[40] which will likely be felt acutely by communities with environmental justice concerns.[41]

In June 2025, EPA proposed to repeal all greenhouse gas emissions standards for the power sector under Section 111 of the Clean Air Act (CAA), eliminating standards for carbon pollution,[42] and to repeal amendments to the 2024 Mercury and Air Toxics Standards (MATS),[43] weakening standards for mercury and other toxic air pollutants from coal- and oil-fired power plants. The carbon pollution standards require carbon pollution reductions from coal and gas-fired power plants, while the 2024 MATS rule set stricter limits on hazardous air pollutants like mercury, fine particulate matter, and other heavy metals. Both regulations include significant co-benefits, including reductions in particulate

[35] 165 F.4th 817, 821 (4th Cir. 2026).
[36] 788 F. Supp. 3d 676, 682, 685 (D. Md. 2025).
[37] No. 25-1982 (RJL) 2025 U.S. Dist. LEXIS 169472, at *7 (D.D.C. 2025).
[38] Complaint at ¶ 1, Md. Clean Energy Ctr. v. EPA, No. 1:25-cv-01738 (Ct. Fed. Cl. Oct. 15, 2025); Arizona v. EPA, No. 2:25-cv-2015 (W.D. Wash. Oct. 16, 2025); Harris Cnty. v. EPA, No. 1:25-cv-3646 (D.D.C. Oct. 13, 2025); R.I. AFL-CIO v. U.S. EPA, No. 1:25-cv-0510 (D.R.I. Oct. 6, 2025).
[39] Nat'l Insts. of Health v. Am. Pub. Health Ass'n, 145 S. Ct. 2658, 2660 (2025); Dep't of Educ. v. California, 604 U.S. 650, 651 (2025) (per curiam).
[40] Inst. for Pol'y Integrity, *Tracking the Damages of Regulatory Rollbacks* (Feb. 13. 2026).
[41] Envt'l. Prot. Agency, Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts 4 (Sept. 2021).
[42] Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25752, 25754 (June 17, 2025).
[43] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, 90 Fed. Reg. 25535, 25537 (June 17, 2025).

matter. In April 2025, Trump exempted 68 coal-fired power plants from complying with the 2024 MATS rule.[44]

In July, EPA proposed to revoke the 2009 Greenhouse Gas endangerment finding.[45] After the 2007 United States Supreme Court decision in *Massachusetts v. EPA*, EPA issued a finding under Section 202(a) of the Clean Air Act that the human-caused emissions of greenhouse gases endanger public health and welfare. Specifically, the endangerment finding described dangers to health and welfare posed by six greenhouse gases commonly emitted from cars, trucks, and powerplants. The finding is the legal precursor to EPA regulating emissions from these sources. In the same action, EPA also proposed to rescind all vehicle greenhouse gas emissions standards for light-duty, medium-duty, and heavy-duty vehicles. The public comment period for the proposal closed September 22, 2025, and EPA finalized the proposal on February 13, 2026.

In support of the 2009 endangerment finding and subsequent rulemakings to regulate greenhouse gas emissions from various sources, EPA concluded that "vulnerable subpopulations face serious health risks as a result of climate change" and experience disproportionate exposure to co-pollutants from transportation and fossil fuel production – based on income, race/ethnicity, age, disability, and Indigenous status.[46]

In January 2026, EPA unveiled a proposal to revoke part of the Good Neighbor Plan. The Good Neighbor Plan, finalized in 2023 but stayed by the United States Supreme Court in 2024,[47] was designed to significantly reduce smog pollution from fossil fuel power plants and industrial sources by addressing interstate transport of air pollution that affects downwind states' ability to attain and maintain National Ambient Air Quality Standards (NAAQS). The Good Neighbor provision of the Clean Air Act requires each state in its State Implementation Plan (SIP) to prohibit emissions that will significantly contribute to unhealthy levels of pollution in downwind states and requires EPA to protect people in downwind states if upwind states fail to meet these obligations. As with the above-mentioned deregulatory activities, increases in air pollutants raise environmental justice concerns.[48]

In December 2025, EPA's Office of Enforcement and Compliance Assurance issued a memo "Reinforcing a 'Compliance First' Orientation for Compliance Assurance and Civil Enforcement Activities"--purporting to prioritize efficiency, economy, and speed in achieving environmental compliance.[49] The memo requires all enforcement staff to prioritize "compliance assistance" activities over enforcement, a heightening the standard for a finding of violation and putting constraints on injunctive relief. The memo also promotes "voluntary compliance" by regulated entities through "self-reporting and voluntary audits." Notably, the memo creates a new mechanism for regulated entities to immediately elevate any concerns "about how EPA has applied a statute or regulation" to

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[44] ENVT'L. PROT. AGENCY, *Regulatory Relief for Certain Stationary Sources to Promote American Energy* (Apr. 8, 2025).

[45] Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36288, 36288 (Aug. 1, 2025).

[46] Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 18886, 18890 (Apr. 24, 2009); *see* COMMENTS OF THE ATTORNEYS GENERAL OF CALIFORNIA ET AL. ON THE PROPOSED RECONSIDERATION OF 2009 ENDANGERMENT FINDING AND GREENHOUSE GAS VEHICLE STANDARDS: VEHICLES COMMENT, EPA-HQ-OAR-2025-0194 8-12 (September 22, 2025).

[47] Carrie Jenks, Luca Greco & Sara Dewey, *The Supreme Court Pauses the Good Neighbor Plan*, HARV. ENV'T & ENERGY L. PROGRAM (July 2, 2024).

[48] ENVT'L PROT. AGENCY, *Cross-State Air Pollution*, (Jan. 28, 2026).

[49] Memorandum from Graig J. Pritzlaff, Acting Assistant Adm'r, Off. of Enf't and Compliance Assurance to OECA Off. of Dirs. and Deputies, et al. (Dec. 5, 2025).

national leadership. Moreover, while the memo emphasizes partnership with states as co-regulators and communication and collaboration "between the agency, states, Tribes, and regulated entities", the memo does not mention those impacted by violations of environmental laws. Finally, the memo directs that use of mitigation and injunctive relief in settlements will require Assistant Administrator approval and places a moratorium on the use of Supplementary Environmental Projects–constraining and eliminating tools used to ensure that communities impacted by violations of environmental laws benefit from settlement agreements.

In January 2026, the New York Times reported EPA plans to stop calculating the health benefits of reducing air pollution, instead calculating only the cost to industry when setting pollution limits.[50] Under this direction the EPA would stop counting the health benefits of curbing air pollutants such as fine particulate matter and ozone, potentially making it easier to repeal limits on these pollutants from major industrial facilities. In May, the White House ordered agencies to stop considering the "social cost of carbon," directing agencies to no longer monetize the economic, environmental, and health damages caused by carbon emissions in cost-benefit analyses, except when explicitly required by law.[51] Eliminating consideration of health impacts from its benefit-cost calculation has broad implications for EPA's stated mission "to protect human health and the environment," including for vulnerable populations and overburdened communities.

V. Environmental Justice and Civil Rights

In 2025, the federal government also reversed course on efforts to use civil rights tools to address the disproportionate burdens borne by communities with environmental justice concerns, relying consistently on expansive interpretations of the Supreme Court's decisions in *Students for Fair Admission v. Harvard*[52] and *Parents Involved v. Seattle School Dist.*[53]

Executive Order 14281,[54] *Restoring Equality of Opportunity and Meritocracy*, signed on April 23, 2025, established "the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible." Several agencies have initiated rulemakings–often through direct final rules or final rules–to rescind decades-old disparate impact regulations under Title VI of the Civil Rights Act of 1964 and the Fair Housing Act.[55] Agencies including DOJ, HUD, and DOT have track records of leveraging civil rights tools–including disparate impact liability–to address environmental injustice. Recissions by agencies like the Department of Homeland Security, which houses the Federal Emergency Management Agency, and the Department of Energy also have potential environmental justice impacts.

Agencies, such as DOJ and HUD, have begun to abandon civil rights enforcement in environmental justice matters, following the rescission of internal guidance and strategic

[50]Maxine Joselow, *E.P.A. to Stop Considering Lives Saved When Setting Rules on Air Pollution*, N.Y. Times (Jan. 12, 2026).
[51]Memorandum from Jeffery Bossert Clark, Sr., Acting Adm'r, Off. of Info. And Regul. Affs. To Regul. Pol'y Officers (May 5, 2025).
[52]600 U.S. 181 (2023).
[53]Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007).
[54]Exec. Order No. 14281, 90 Fed. Reg. 17537, 17537 (Apr. 28, 2025).
[55]*See, e.g.*, *Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions)*, 90 Fed. Reg. 20777 (May 16, 2025); *Rescinding Portions of Department of Justice Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281*, 90 Fed. Reg. 57141 (Dec. 10, 2025); *HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*, 91 Fed. Reg. 1475 (Jan. 14, 2026).

plans, as well as Executive Order 14281. In April 2025, DOJ terminated a 2023 resolution agreement with the Alabama Department of Public Health and the Lowndes County Health Department intended to address violations of Title VI.[56] The original investigation generated a preliminary finding of race-based discrimination due to patterns of inaction and neglect that denied a majority Black community access to basic sanitation services–and penalized residents who could not afford them. DOJ has now withdrawn from a similar agreement with the city of Houston, Texas, meant to curb the impacts of illegal dumping–including "discarded tires, bags of trash, rotting carcasses, infected soils and contaminated groundwater" in Black and Latino neighborhoods.[57]

In July 2025, an investigation revealed that HUD intended to shut down "seven major investigations and cases concerning alleged housing discrimination and segregation, including some where the agency already found civil rights violations[.]"[58] These cases included an investigation resulting in findings that the Texas General Land Office had intentionally discriminated against Black and Latino residents of Harris County in allocating funds to mitigate storm and flood risk following Hurricane Harvey and high-profile investigations into siting and permitting disputes in Chicago, Illinois; Flint, Michigan; and Corpus Christi, Texas.

Despite the dismantling of EPA's Office of Environmental Justice and External Civil Rights, EPA has maintained a small Office of Civil Rights, though it has not accepted jurisdiction over a civil rights complaint in 2025.[59]

Finally, the Trump Administration has reversed decades-old policies on language access–long understood to be protected under Title VI and core to facilitating meaningful access to public processes. On March 1, 2025, the administration issued Executive Order 14224,[60] designating English as the official language of the United States and rescinding Executive Order 13166,[61] which directed agencies to improve access to federally conducted programs and activities by people with limited English proficiency. DOJ has now issued guidance recasting the department's longstanding interpretation of Title VI and directing agencies to consider English-only services, ramp down multilingual services, and redirect funds towards English proficiency and assimilation.

VI. Environmental Justice at the State Level

In the face of federal environmental and environmental justice rollbacks, states across the country continue to work with local communities to establish environmental justice frameworks.

New York's Environmental Justice siting law went into effect in 2025, requiring the consideration of impacts and existing burdens in disadvantaged communities in certain environmental decision-making.[62] The law requires lead agencies under New York's Environmental Quality Review Act to consider whether an action may cause or increase a

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[56] Press Release, U.S. Dep't of Justice, Department of Justice Terminates Environmental Justice Settlement Agreement, Advancing President Trump's Mandate to End Illegal DEI and Environmental Justice Policies (Apr. 11, 2025).

[57] Press Release, U.S. Dep't of Just., Justice Department Announces Agreement in Environmental Justice Investigation of Illegal Dumping in the City of Houston (June 6, 2023).

[58] Jesse Coburn, *Trump Administration Prepares to Drop Seven Major Housing Discrimination Cases*, ProPublica (July 18, 2025).

[59] EPA, *External Civil Rights Docket* (Mar. 20, 2026).

[60] Exec. Order No. 14224, 90 Fed. Reg. 11363, 11363 (Mar. 6, 2025).

[61] Exec. Order. No. 13166, 65 Fed. Reg. 50121, 50121 (Aug. 16, 2000).

[62] N.Y. Dep't of Envtl. Conservation, *The Environmental Justice Sitting Law* (last visited Mar. 27, 2026).

disproportionate pollution burden on a disadvantaged community (DAC) when determining the significance of a proposed project, and evaluate whether the proposed action causes or increases any disproportionate pollution burden in a DAC where an environmental impact statement is required.

In Minnesota, the Minnesota Pollution Control Agency (MPAC) advanced the implementation of its 2023 law to remedy disproportionate exposure to pollutants in the Twin Cities metro region.[63] The 2023 cumulative impacts law defines environmental justice areas and requires the pollution control agency to issue rules to address the cumulative impacts of pollution during permitting processes. In February, MPAC held mid-point hearings to define "environmental justice areas" and established that facilities within a mile of these areas must undergo cumulative impact analyses starting in 2026. Also in 2025, Minnesota released a draft Cumulative Impacts – Mapping online tool comparing 26 environmental and public health stressors for a specific census tract to county and statewide averages.

Michigan and Vermont are among several states advancing environmental justice legislation. A Vermont bill sought to add regional planning commissions to the entities required to comply with the Vermont Environmental Justice State Law.[64] In Michigan, two bills (Senate Bill 479 and House Bill 4742) were introduced to address the Department of Environment, Great Lakes and Energy's process for evaluating air pollution. The bills would require the state to consider the cumulative impacts of multiple pollutant types and social and economic factors that put communities at greater risk of harm. The bills would also expand public participation in environmental permitting.

In fall 2025, Massachusetts Energy Facilities Siting Board initiated rulemaking to implement a new Intervenor Support Grant Program and create a framework for cumulative impacts analysis in energy siting – both pursuant to the 2024 Massachusetts Climate Act.[65] Parallel to the regulatory process, the Massachusetts Office of Environmental Justice & Equity released Standards and Guidelines for Cumulative Impact Analysis, accompanied by a new draft MassEnviroScreen mapping tool. In December, the Massachusetts Office of the Attorney General released the first $425,000 in grants from the state's new Environmental Justice Fund, which supports community-based projects addressing environmental harms in disadvantaged communities and is funded through civil penalties.

In July, a coalition of 13 State Attorneys General from California, Massachusetts, and New York, joined by the Attorneys General of Arizona, Connecticut, Delaware, Hawaii, Illinois, Maryland, Minnesota, New Mexico, Oregon, Rhode Island, and Vermont, issued guidance to affirm the importance and legality of efforts to advance environmental justice. This guidance helps to serve as a "legal shield" for local governments continuing EJ work despite federal policy shifts, as the guidance highlights federal environmental laws, the United States Constitution and federal civil rights law, and the First Amendment support environmental justice practices and programs.

Lastly, many former members of the White House Environmental Justice Advisory Council have come together as a "People's Environmental Justice Advisory Council" to maintain a public record and "elevate environmental justice solutions back onto the national stage." The PEJAC has embarked on a series of "Peoples' Hearings" designed to "help lay the groundwork for policies and movements that support clean lands and waters, healthy communities, just economies, and vibrant cultures."[66] In 2025, the PEJAC held Peoples' Hearings in Greensboro, North Carolina; Tucson, Arizona; and Pittsburgh, Pennsylvania.

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[63]Minn. Pollution Control Agency, *Cumulative Impacts Rulemaking* (2026).
[64]H.328, 2025-26 Leg., Reg. Sess. (Vt. 2025).
[65]Mass. Energy Facilities Siting Bd., *EFSB 25-10 – Proposed Rulemaking*, MASS.GOV (Mar. 20, 2026).
[66]TOUR STOPS, National People's Hearing Tour (last visited Apr. 24, 2026).

While policy shifts impacted federal enforcement on environmental justice, most environmental justice-related litigation in 2025 addressed the legality and application of state laws and regulations.

On March 7, 2025, DOJ, on behalf of EPA, dismissed a lawsuit against Denka Performance Elastomer LLC concerning its neoprene manufacturing facility in LaPlace, Louisiana, to "deliver[] on President Trump's mandate to end radical DEI programs" consistent with Executive Order 14151.[67] " The chloroprene emissions from the Denka facility have contributed to cancer risks in St. John the Baptist Parish, Louisiana, which has the highest cancer risk in the nation. In May, the Denka facility suspended its production following years of community-led litigation and pressure from EPA under prior leadership.[68]

On January 22, 2025, the California Attorney General sued the City of Tulare, California, challenging the city's Zoning Ordinance Update, which allows cold-storage and other facilities to be permitted "by-right" in light and heavy industrial zones without environmental review or mitigation measures to address health and environmental impacts. The Attorney General argued the by-right permitting allowed by the Zoning Ordinance violates the California Environmental Quality Act (CEQA), as does its failure to account for health impacts and mitigate all significant environmental impacts as required by laws.[69] On February 20, 2026, the California Superior Court of Tulare County found the update to be in violation of CEQA and directed the City to nullify approval of the Zoning Ordinance Update and fully comply with the requirements of CEQA prior to any future zoning approvals.

In October, the North Carolina Supreme Court struck down three environmental protections in the state's general animal-waste permits, which the Court determined should have been subjected to the state's rulemaking process.[70] The disputed permit conditions required hog, cattle, and poultry farms using "lagoon-and-spray field systems" to engage in groundwater monitoring, soil testing for phosphorous loss, and annual reporting. The challenged conditions came out of a 2019 settlement agreement stemming from a federal civil rights complaint filed by the North Carolina Environmental Justice Network and other advocacy groups.

On January 5, 2026, the Superior Court of New Jersey – Appellate Division, upheld the legality of New Jersey's Environmental Justice Law, N.J.S.A. 13:1D-157 et seq., and its implementing regulations, N.J.A.C. 7:1C.[71] Together, the law and regulations create a framework for the New Jersey Department of Environmental Protection (NJDEP) to evaluate cumulative environmental and public health impacts of proposed permits to create, renew, or expand industrial facilities or activities in overburdened communities. This framework requires NJDEP to deny a permit when a facility would disproportionately impact such a community–unless the facility would "serve a compelling public interest in

[67]Press Release, U.S. Dep't of Justice, Justice Department Dismisses Suit Against Denka, Delivering on President Trump's Mandate to End Radical DEI Programs (Mar. 7, 2025).
[68]Oliver Laughland, *Louisiana: Controversial Denka Plant Suspends Production After Dire Losses*, GUARDIAN (May 13, 2025).
[69]Press Release, Cal. Dep't of Justice, In Major Win for Matheny Tract Residents, Attorney General Bonta Secures Final Ruling, Ensures City of Tulare Complies with CEQA in Its Zoning Ordinance Update (Feb. 20, 2026).
[70]N.C. Dep't of Envtl. Quality v. N.C. Farm Bureau Fed'n, Inc., 921 S.E.2d 121, 130 (N.C. Ct. App. 2025).
[71]In re N.J. Dep't of Envtl. Prots., No. A-2936-22, 2026 WL 20879, at *3 (N.J. Super. Ct. App. Div. Jan. 5, 2026).

the community where it is located." The court rejected the challenge brought by the scrap recycling industry and labor organizations, determining that NJDEP did not exceed statutory authority in interpreting and implementing the law and that NJDEP's "decision not to include economic factors in the definition of compelling public interest [was] not arbitrary or capricious." [decision at 29][72] The ruling solidified NJDEP's implementation of the most stringent environmental justice permitting frameworks in the country.

On January 23, 2026, the Michigan Attorney General filed a federal antitrust lawsuit against BP, Chevron, Exxon Mobil, Shell and the American Petroleum Institute alleging the companies acted as a cartel in an unlawful conspiracy blocking meaningful competition from renewable energy in Michigan's transportation and primary energy markets to reap illegal windfall profits.[73] The attorney general alleged this resulted in Michigan residents suffering high home and transportation energy costs, remaining locked into transportation and energy markets that rely on dated technologies, suppressing cost-efficient energy sources, eliminating consumer choice and worsening Michigan's energy affordability crisis.

On February 9, 2026, the U.S. District Court for the Eastern District of Louisiana rejected a motion to dismiss in *Inclusive Louisiana et al v. St. James Parish et al.*, where community groups including Inclusive Louisiana, Mount Triumph Baptist Church, and RISE St. James, alleged land use practices by St. James Parish run afoul of the Thirteenth Amendment, the Fourteenth Amendment, the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), and the Louisiana Constitution.[74] The community groups alleged the Parish has maintained a discriminatory, unequal, and injurious zoning and land use system that deprives the Plaintiffs' members of their rights. The Court wrote, "Plaintiffs have traced the parish's current land use patterns directly to slavery and the plantation system," and "[t]he extensive history of land use decisions that Plaintiffs recount in their thoroughly researched complaint, when taken as true, may very well represent one of those rare cases in which 'a clear pattern, unexplainable on grounds other than race,' provides sufficient evidence of discriminatory intent."[75] The case will now move to discovery.
On February 5, 2026 a coalition of community groups including RISE St. James, Healthy Gulf, and the Sierra Club filed a lawsuit against the Louisiana Department of Environmental Quality.[76] The suit challenged the state's decision to grant a fourth extension to the Formosa Plastics' manufacturing facility proposed for St. James Parish, Louisiana, arguing that the extension relies on outdated analyses and fails to account for more stringent federal air quality standards for particulate matter implemented in 2024.[77]

On February 13, 2026 the NAACP, SELC, and Earthjustice filed a Notice of Intent to sue against Elon Musk's X.AI Corp. for past and ongoing violations of the federal Clean Air Act at the Gas Turbines Power Plant located in Southaven Mississippi that powers the AI's Colossus II Data Center.[78]

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[72]*Id*. at *11.
[73]Michigan v. BP P.L.C., No. 26-cv-00254 (W.D. Mich. Jan. 23, 2026).
[74]Inclusive Louisiana v. St. James Parish, No. 23-987, 2026 WL 352793, at *2 (E.D. La. Feb. 9, 2026).
[75]*Id.* at *6.
[76]Press Release, Earthjustice, Groups Sue Over Formosa Plastics' Permit Extensions (Feb. 5, 2026).
[77]*Id.*
[78]Dara Kerr, *Elon Musk's xAI Faces Second Lawsuit over Toxic Pollutants from Datacenter*, THE GUARDIAN (Feb. 13, 2026).

In 2021 the ABA House of Delegates adopted Resolution 513, which committed the ABA to advancing environmental justice principles and considerations in its programs, policies, and activities, with the ABA Board of Governors concurrently establishing the "Environmental Justice Task Force" (EJTF) to lead implementation efforts. Since then, the ABA and the Section on Environment, Energy, and Resources (SEER), along with the Section on Civil Rights and Social Justice (CRSJ), have continued to take steps to advance environmental justice.

While federal guidance has changed over time, our organization continues to prioritize achieving just outcomes for impacted communities. In October 2025, CRSJ hosted a program focused on national environmental justice issues experienced throughout the country. The Environmental Justice Taskforce hosted a discussion in January 2026 as part of a three-part series examining how the federal government implements environmental justice policies, balancing community health concerns with economic vitality, property rights, and federal–state–local roles. And this February saw a reprise of the 2024 Environmental Justice Symposium, with the 2026 programming focused on recent changes in the field and adaptations by practitioners. Many field experts provided commentary on the substantive policy shifts in the environmental justice space over the last year, with hundreds of attorneys in attendance.

The American Bar Association looks forward to continuing to provide meaningful educational content on environmental justice for its members and the public, across practice areas.

Chapter Z: ETHICS AND THE PROFESSION
2025 Annual Report[1]

I. KEY DEVELOPMENTS IN ETHICAL AND PROFESSIONAL RESPONSIBILITY OBLIGATIONS FOR ENVIRONMENTAL AND ENERGY LAWYERS

2025 proved to be a year filled with technological advancements and ethical quandaries. This *Year in Review* article explores these developments and their implications for the professional responsibility of lawyers practicing environmental and energy law, including the ethical risks and professional responsibilities arising from the use of artificial intelligence, increased scrutiny of sustainability and environmental, social, and governance (ESG) reporting, and the unique challenges of representing and interacting with governmental entities. This article also briefly discusses the ABA ethics opinions issued in 2025.

II. NAVIGATING THE ETHICAL CONSIDERATIONS OF AI IN ENVIRONMENTAL LAW

Artificial Intelligence (AI) continues to be an evolving concern for legal practitioners. Generative AI tools surged into common use for research, drafting, due diligence, and predictive modeling. As these tools have become more efficient and responsive; their use has accelerated not only across private practice but throughout the federal government. These tools are now reportedly being used by a number of federal agencies including the Department of Interior (DOI), the Department of Energy (DOE), and the Environmental Protection Agency (EPA), and numerous others. Federal agencies are incorporating AI into a wide range of uses, including environmental review, data analysis and internal workflow optimization.[2] The likelihood of the inevitable ubiquity of these tools, however, has only heightened the need for legal practitioners to be aware of how to safely and ethically integrate them into their practice.[3]

A. Responsibilities of Environmental/Energy Lawyers When Using AI

Beyond the use of Generative AI in litigation and transactions, this technology is being used by environmental consultants to analyze data. Notably, as outlined in "America's AI Action Plan," released by the White House in July 2025, AI is being integrated into implementation of the National Environmental Policy Act (NEPA), the federal law which requires federal agencies to assess the environmental impacts of their proposed actions.[4] As federal agencies review increasingly "complex projects," they are finding that "traditional tools of environmental impact assessment ("EIA") are straining under the

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[2] For example, the Federal Bureau of Investigation is exploring the use of AI in triaging and prioritizing the high volume of data it collects in its investigations. *See* FED. BUREAU OF INVESTIGATION, Artificial Intelligence (last visited Apr. 15, 2026).

[3]Multiple ethics committees have issued opinions that articulate duties for attorneys' use of AI. *See, e.g.,* State Bar of Tex. Prof'l Ethics Comm., Op. 705 (2025); Am. Bar Ass'n Comm. on Ethics and Prof'l Responsibility, Report (2024-2025); Or. State Bar, Formal Op. 2025-205 (2025).

[4]THE WHITE HOUSE, *Winning the Race: America's AI Action Plan* (July 2025),

weight of technical and informational demands."[5] While advocates of the technology suggest that AI can assist with processing massive data sets, modeling ecological outcomes and predicting long-term impacts, there are concerns about explainability and accountability regarding the technology's algorithms.[6] NEPA's process is rooted in transparency, and the "black box" of artificial intelligence seems counterintuitive to that principle. Additionally, critics have expressed concerns that the "delegation of critical analytic judgments to AI systems" may disrupt "long-standing doctrines of judicial review, particularly the "hard look standard" that courts have relied on to evaluate whether agencies complied with NEPA's procedural mandates." [7]

DOE has rolled out the tool, Permit AI, to begin implementing these changes to the permitting process.[8] Permit AI was built by Pacific Northwest National Laboratory (PNNL)[9], and encompasses a suite of tools including SearchNEPA, EngageNEPA, and CommentNEPA.[10] The AI Action Plan indicates that this is only the beginning of the federal government's exploration of these tools and more activity is on the horizon. The DOI and the Department of Transportation ("DOT") are both testing out AI tools for habitat mapping, transportation risk modeling, and pipeline integrity assessments.[11] Similarly, the United States Department of Agriculture (USDA) utilizes AI to assess crop health, detect land-use challenges and to support wildfire risk forecasting.[12]

EPA is also incorporating AI into its work, including exploring its use to sort and categorize public comments.[13] While the agency claims that the use of AI technology in this capacity "remains in line with the public notice and comment requirements of the Administrative Procedure Act," its use carries inherent risk.[14] Although EPA acknowledges that "human supervision and input are still required throughout" the comment process, reliance on AI to identify substantive comments raises the possibility that the technology may exclude comments that a human reviewer wouldn't have.[15] The agency is also utilizing these tools in the enforcement context, where it is experimenting with AI tools assisting with prioritizing inspections and identifying anomalies in emissions or waste handling reports.[16] As federal agencies integrate AI into their processes, government lawyers, like private practitioners, remain responsible for adhering to their ethical responsibilities, including supervision, confidentiality, candor and competent use of AI systems.

Generative AI tools also continue to produce "hallucinations" or fabricated responses that appear to be rooted in facts but are not directly supported by any existing sources. It is

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[5]Tuoya Saren, *Using AI in NEPA Review: Legal Challenges and Judicial Scrutiny*, ENV'T L. INST. (Dec. 2025).
[6]*Id*. Explainability is a term of art with respect to artificial intelligence. Specifically, it refers to the degree to which AI systems' internal workings, and outputs can be understood and explained to humans.
[7]*See Using AI in NEPA Review: Legal Challenges and Judicial Scrutiny, supra* n. 5.
[8]PAC. NW. NAT'L LAB., *Clearing the Path for Critical Infrastructure* (last visited Apr. 15, 2026).
[9] Pacific Northwest National Laboratory is managed and operated by Battelle for the Department of Energy.
[10]*Id*.
[11]U.S. DEP'T OF THE INTERIOR, Artificial Intelligence (AI) (last visited Apr. 15, 2026).
[12]U.S. DEP'T OF AGRIC., Fiscal Year 2025-2026 AI Strategy (last visited Apr. 15, 2026).
[13]ENVTL. PROT. AGENCY, Commenting on EPA Dockets (last visited Mar. 30, 2026).
[14]*Id*.
[15]*Id*.
[16]ENVTL. PROT. AGENCY, *AI tools used in EPA's Systematic Review Process* (last updated Aug. 11, 2025).

imperative that practitioners remain diligent in reviewing all outputs by these tools, even if they are transmitted via an environmental consultant. American Bar Association Model Rules of Professional Conduct ("ABA Model Rules") 5.1[17] and 5.3[18] obligate senior practitioners to oversee the work of junior lawyers and non-lawyer support team members. All practitioners are responsible for their reliance on AI generated materials and must review them for legal and factual accuracy.

ABA Model Rule 1.1 obligates legal practitioners to "provide competent representation to a client."[19] In addition to legal knowledge, competent representation requires "skill, thoroughness and preparation."[20] When dealing with AI, this includes a thorough review of outputs. Model Rule 5.3 also requires legal practitioners to review the work of nonlawyers retained or employed to assist in legal matters.[21] Environmental lawyers have an ethical obligation to review the work of environmental consultants, including outputs produced by AI, to ensure they comply with the professional obligations of legal practitioners. Ethical concerns also implicate the duty of candor to tribunals and agencies (Model Rule 3.3)[22] and the duty of truthfulness in statements to others (Model Rule 4.1)[23]. Environmental and energy lawyers must now act as informed reviewers, and their role is to ensure that its use enhances the accuracy and transparency of environmental decision making.

Confidentiality and data security are integral in the relationship between legal practitioners, clients, and consultants. Inserting client data into these AI platforms exposes information to "machine learning" systems, and the threat of being used by the software in its perpetual evolution. Pursuant to ABA Model Rules of Professional Conduct lawyers owe their clients a duty of confidentiality, stating that "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent," or if "the disclosure is impliedly authorized in order to carry out the representation."[24] ABA Model Rule 1.6(c) further states that "[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."[25] Reliance on AI in this context may lead to misinterpretations of scientific data, a concern for legal practitioners and environmental consultants alike. Environmental submissions frequently include sensitive site data, proprietary engineering information, and specific information relating to the location of resources. Under Model Rule 1.6, lawyers must take reasonable steps to protect disclosure of confidential information.[26]

III. Identifying Greenwashing and Ethical Risks in Sustainability Reporting

Across the globe, companies measure and report their ESG metrics. Reporting this data allows organizations to maintain accountability and comply with applicable sustainability laws.[27] It is important that this information is accurate, as ESG reports "can impact a company's reputation, bottom line, and ability to attract and retain top talent."[28] Failure to

[17]Model Rules of Pro. Conduct r. 5.1 (Am. Bar Ass'n, 2019) [hereinafter MPRC].
[18]*Id*. r. 5.3.
[19]*Id*. r. 1.1.
[20]*Id.*
[21]MPRC, *supra* note 18, at r. 5.3.
[22]MPRC r. 3.3.
[23]*Id*. r. 4.1.
[24]*Id*. r. 1.6(a).
[25]*Id.*
[26]*Id*.
[27]Salesforce, What Is ESG Reporting? A Complete Guide (last visited Apr. 15, 2026).
[28]*Id*.

provide accurate data can lead to greenwashing, or the conveyance of "misleading or unproven claims about the positive environmental impact of a company's product."[29]

In 2025, at least twenty brands were called out for engaging in greenwashing.[30] Multinational corporations including Air New Zealand, Shell, BP, Unilever, Volvo, and Coca-Cola set ambitious net zero targets to attract investors but later weakened or delayed their sustainability targets.[31] These instances of greenwashing also included misuse of carbon credits, and omission of sustainability targets from risk assessments.[32] While greenwashing lawsuits generally focus on the client, legal practitioners may face risks as well. Legal practitioners, such as in-house lawyers, are often involved in ensuring companies comply with ESG obligations.[33] Companies are under increasing pressure from regulators to disclose climate-related risks and opportunities, meaning they are "incentivized to make ESG-related claims to stay competitive."[34] The operational changes necessary to adhere to some of these requirements often impact the bottom line, reducing profits for organizations. As a result, regulators are "stepping in to address false or exaggerated claims that misdirect investment and customer spending."[35]

Environmental and energy lawyers counseling on ESG disclosures must navigate a number of Model Rules. Model Rule 4.1 prohibits legal practitioners from knowingly making false statements of material fact or law or failing to disclose materials facts to a third person when representing a client.[36] Aiding clients in the misrepresentation of their sustainability practices to comply with ESG targets constitutes a direct violation of professional obligations. Model Rule 1.2(d) also explicitly forbids legal practitioners from counseling clients to engage in conduct that the lawyer knows is criminal or fraudulent.[37] Model Rule 8.4(c) prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation which would include advising clients to engage in or defend greenwashing practices.[38]

To remain compliant with their ethical obligations, legal practitioners should ensure that their client company's claims in ESG reporting are accurate and verifiable. Legal practitioners can oversee due diligence processes and fact check the information provided by ESG teams and other consultants. Model Rule 1.2(d) indicates that legal practitioners should discuss the legal consequences of any proposed course of conduct to allow counsel to assist in identifying a path forward that falls within the scope of relevant law.[39]

IV. Ethical Rules for Attorneys Representing and Communicating with Governmental Agencies

Communications between private counsel and government attorneys or between lawyers and unrepresented agency personnel, implicate Model Rules 4.2 and Model Rule 4.3. Rule 4.2 prohibits communicating about the subject of representation with a person

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[29]KPMG, Sustainability claims under scrutiny: What marketers must know about greenwashing regulations (Jul. 10, 2025).
[30]Robin Hicks, *20 brands called out for greenwashing in 2025, Eco-Business* (Dec. 11, 2025).
[31]*Id*.
[32]*Id*.
[33]Thomson Reuters, Why ESG Is Important to In-House Lawyers: The Critical Role of "Environmental" in ESG, (Aug. 20, 2024).
[34]Legal 500, What Greenwashing Risks Mean for the Legal Profession (Feb. 5, 2025).
[35]*Id*.
[36]MPRC r. 4.1.
[37]*Id*. r. 1.2.
[38]*Id*. r. 8.4.
[39]S*upra* note 27, at r. 1.2(d).

the lawyer knows to be represented by counsel without consent.[40] This also applies when agencies are represented by in-house or outside counsel in contested environmental matters. Legal practitioners should be diligent in their adherence to Model Rules pertaining to interacting with parties, both those represented by counsel and those unrepresented. Those seeking to communicate with government personnel regarding litigation, disputes, or existing violations should coordinate outreach through counsel.[41] Model Rules 4.3 governs communications with unrepresented parties highlighting the need for clarity about the role of counsel.[42]

While the idea of representing a governmental entity may seem like it imposes a different set of rules, a legal practitioner's obligations and ethical responsibilities remain the same as they would for any other client.[43] Legal practitioners must work diligently and provide honest representation to all clients and have no less ethical responsibility, simply because their client is a governmental entity. Legal practitioners remain officers of the court and/or legal system and must use their discretion to reject directives by government clients if they feel they conflict with ethical obligations. Model Rule 3.3, for example, requires candor toward the tribunal and prohibits legal practitioners from making false statements of fact or law to a tribunal, or failing to correct previously made false statements of material fact or law.[44] Model Rule 4.1's mandate that legal practitioners, including government lawyers, provide truthful statements to others is also relevant in this context.[45] Legal practitioners must balance their obligations to their client with their mandate to comply with the rules of ethics.

V. ABA Ethics Opinions

The ABA issued ethics opinions 514, 515, 516, 517, 518 and 519. These opinions are general in nature, but they may be of interest to environmental, energy, and resource law practitioners.

A. A Lawyer's Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization's Constituents[46]

Formal Opinion 514 discusses the interplay between Model Rules 1.1, 1.4 and 2.1 as they pertain to the presentation of advice to client organizations. In-house or outside counsel may be required to advise the organization when its actions pose a legal risk to the organization's constituents. Constituents may misperceive the legal practitioner's role in providing counsel to the organization and believe they can rely personally on the lawyer's advice. The Opinion emphasizes that Rules 4.1, 4.3, and 1.13(f) require legal practitioners to dispel any misunderstandings about their role.

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[40]MPRC 4.2.
[41]*Id*.
[42]*Id*.
[43]NYC Bar Ass'n Comm. on Pro. & Jud. Ethics, Formal Op. 2025-1 (2025).
[44]MPRC r. 3.3.
[45]Government lawyers must remain mindful of their ethical obligations and exercise professional judgment when providing advice or zealously advocating for their clients in connection with governmental policies and actions. *See*, e.g., See, e.g., Memorandum from Pamela Jo Bondi, Att'y Gen., to the Dep't of Just., General Policy Regarding Zealous Advocacy on Behalf of the United States (Feb. 5, 2025).
[46]ABA Comm. on Ethics & Prof'l Resp., Formal Op. 514 (2025).

B. A Lawyer's Discretion to Report When a Client Commits a Crime Against the Lawyer or Against Someone Associated with, or Related to, the Lawyer[47]

Formal Opinion 515 explains an exception to Model Rule 1.6 which permits a legal practitioner to disclose information to the appropriate authorities if a client or prospective client committed a crime against them. This exception to the confidentiality rule also extends to those associated or related to the legal practitioner who are also victims or witnesses to the client's crime. The opinion emphasizes that the duty of confidentiality does not force lawyers to remain silent when faced with criminal conduct that is directed towards them or those connected to them.

C. Terminating a Client Representation Under MRPC 1.16(b)(1): What "Material Adverse Effects" Prevent Permissive Withdrawal?[48]

Formal Opinion 516 clarifies Rule 1.16(b)(1) and a legal practitioner's authority to voluntarily end or seek to end an ongoing relationship if that "withdrawal can be accomplished without material adverse effect on the interests of the client." A material adverse effect is one that would result in significant harm to the forward progress of the client's matter, significant increase in the cost of the matter, or significant harm to the client's ability to achieve the legal objectives that the lawyer previously agreed to pursue in the representation. Model Rule. 1.16(b)(1) does not apply any relevance to the motivation for withdrawal, as the focus is on the impact on the client.

D. Discrimination in the Jury Selection Process[49]

Formal Opinion 517 explains that it is not "legitimate advocacy" for a legal practitioner to exercise a peremptory challenge when they know or reasonably should have known that their challenge constituted unlawful discrimination in the jury selection process pursuant to Model Rule 8.4(g). The opinion emphasizes that discriminatory jury selection constitutes professional misconduct, even where it may otherwise be characterized as zealous representation. Legal practitioners must adhere to their ethical obligations at every stage of litigation and bias, whether explicit or implicit, cannot drive their decision making.

E. A Lawyer's Duties to Avoid Misleading Communications When Acting as a Third-Party Neutral Mediator[50]

Formal Opinion 518 discusses Model Rule 2.4 and a legal practitioner's duty when assisting two or more individuals who are not clients to reach a resolution of a dispute. This role is referred to as a "third-party neutral," and in these instances, legal practitioners must inform both parties that the practitioners do not represent them and must take reasonable steps to ensure that unrepresented parties understand the distinction between neutrality and advocacy. The opinion highlights that unlike lawyers representing clients in negotiations, third-party neutrals are not afforded leeway to engage in exaggeration or hyperbole. Even when taking a neutral role, legal practitioners remain bound by Model Rule 8.4(c) which prohibits any dishonesty, fraud, deceit, or misrepresentation.

[47] *Id.*
[48] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 516 (Apr. 2, 2025).
[49] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 517 (Jul. 9, 2025).
[50] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 518 (Oct. 15, 2025).

F. *Disclosure of Information Relating to the Representation in a Motion to Withdraw From a Representation*[51]

Formal Opinion 519 explains the ethical limitations of disclosure to the tribunal when a legal practitioner withdraws from a representation. Rule 1.16(a) does not permit the disclosure of any information that is not "impliedly authorized to carry out the representation." The opinion underscores that confidentiality obligations under Rule 1.6 remain paramount, even where withdrawal is mandatory. A court order may permit disclosures that would otherwise be prohibited by the duty of confidentiality. However, these disclosures must be strictly limited to the extent reasonably necessary to comply with the order and made through protective measures.

VI. Conclusion

Environmental and energy lawyers must continue to keep abreast of evolving ethics guidance and reinforce the profession's commitment to uphold ethical standards and ensure transparency, and integrity in the practice. Whether navigating ethical challenges from dealing with AI tools or addressing the risks of greenwashing, legal practitioners must remain diligent in their compliance with professional responsibility. Legal practitioners remain on the front lines of upholding public trust in the profession and must ensure all efforts to protect their clients are rooted in sound decision-making.

[51]ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 519 (Dec. 3, 2025).