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Environmental Alert

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Executive order targets state energy and environmental laws

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The EO requires the attorney general to identify and act on state laws that impair the development of domestic energy resources as potentially unconstitutional or federally preempted.



What's the impact?

- The attorney general is instructed to identify and legally challenge potentially unlawful state and local laws, regulations, and policies that interfere with domestic energy development and operations.
- Companies preparing to comply with emerging state and local energy and environmental laws face uncertainty regarding compliance expectations and related liabilities.
- Litigation challenging the validity and enforceability of state energy and environmental laws that conflict with federal energy policy is expected soon.

On April 8, 2025, President Trump issued an executive order (EO) titled "Protecting American Energy from State Overreach," directing the attorney general to identify and take action against state and local laws that might interfere with domestic energy resource development or

operations and are or may be unconstitutional, preempted by federal law, or otherwise unenforceable. Once identified, the EO requires the attorney general to intervene, prevent the identified laws from being implemented or enforced, and submit a report to President Trump within sixty days (by June 7, 2025) detailing actions taken and any further recommendations.

Key EO directives and focus on state environmental policy

This EO is one in a series of executive actions aimed at removing impediments to traditional energy resource development and allowing for the exploration, development, and use of domestic oil, natural gas, coal, hydropower, geothermal, biofuel, critical mineral, and nuclear energy resources. Additionally, while the attorney general must prioritize the review of state and local laws on climate change, environmental justice, greenhouse gas emissions, carbon taxes and penalties, and environmental, social, and governance (ESG) initiatives, the attorney general's review is not limited. Specific state approaches, noted in the EO for review, include:

- / California's Cap-and-Trade Program
- / New York and Vermont's Climate Change Superfund laws, which impose financial liability on fossil fuel companies for historical greenhouse gas emissions
- / State reviews of environmental permit applications for energy operations
- / State nuisance and tort laws that provide potential liability for climate impacts

The EO asserts that state and local laws that discriminate against out-of-state energy producers threaten an affordable and reliable domestic energy supply, and, in turn, weaken national and economic security, undermine federalism, and degrade Americans' quality of life by driving up energy costs.

State responses to the EO

New York Governor Kathy Hochul and New Mexico Governor Michelle Lujan Grisham issued a statement in response to the EO, referencing states' independent constitutional authority and indicating that their respective states will continue advancing policies to mitigate climate change and prioritize a clean energy economy. Additionally, California Governor Gavin Newsom echoed the sentiment, and noted that California will continue its efforts to reduce pollution.

EO's impact on state and local environmental laws

The EO's potential impact is uncertain but could have wide-sweeping effects. As any state or local law, regulation, policy, or practice that allegedly burdens the development and use of domestic energy resources could be scrutinized, numerous state and local laws can be incorporated into the attorney general's review or can be subject to legal challenge. Laws that are likely to be of focus during the attorney general's review include:

- / Laws placing restrictions on energy exploration and production
- / Climate-related laws and regulations imposing greenhouse gas emission penalties, taxes, or fees
- / Laws, regulations, and policies disincentivizing traditional energy development or conflict with current federal energy policies
- / Regulatory and enforcement policies promoting or working to advance environmental justice by considering factors other than environmental metrics and operational performance in connection with permits, enforcement, and regulatory approvals
- / Laws providing theories of regulatory or civil liability for greenhouse gas emissions, environmental impacts, development of fossil fuels, use of critical minerals, or energy supply operations

The EO signals a more favorable federal regulatory environment for energy producers potentially easing regulatory restrictions on energy exploration and production. However, formal processes are needed to change any current federal or state laws. For example, state laws that potentially conflict with federal energy policies, which are believed to be preempted, must be legally challenged in federal courts to be overturned. Congressional action may also be required to preempt or invalidate state or local laws.

While the full scope of laws reviewed and planned actions will not be known until the attorney general's report is issued, litigation on the legitimacy of state and local laws is expected. Environmental advocates concerned about the sufficiency of environmental protections may also challenge the EO, the attorney general's actions to comply it, and deregulation efforts at the federal and state levels.

Environmental compliance strategies

The EO's directives create significant uncertainty for companies navigating federal and state environmental compliance obligations. Companies should closely monitor developments in the jurisdictions where they operate or place products. For example, companies that do business in states with climate-related laws and regulations, such as California, New York, Washington, and Vermont, should closely monitor the status of these laws as the EO and subsequent attorney general actions could lead to changes in compliance requirements or deadlines. Companies that do work for the federal government or receive federal grants should also carefully consider how current federal policies on energy development impact their business strategies and operations.

[Nixon Peabody's Environmental team](#) is here to ensure that you clearly understand emerging and evolving environmental laws and regulations and how to navigate current or pending compliance requirements.

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