



State Energy &
Environmental Impact Center
NYU School of Law

**STATE ATTORNEYS GENERAL:
13 MONTHS OF CRITICAL ACTIONS**
February 2018



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Message from the Executive Director

Since January 2017, state attorneys general have taken on an outsized role in advancing and defending progressive policies, regulations and values pertaining to environmental protection, the causes and impacts of a changing climate, and the development of a clean energy economy.

For the first time, this State Energy & Environmental Impact Center report documents in one place the depth, breadth and quality of their work on issues of regional and national significance. The following pages illustrate the actions attorneys general have taken – at least 80, to date – on issues like air pollution, water pollution and ocean protection, public lands, climate impacts – and much more.



State attorneys general are using every tool in their toolbox. Indeed, attorneys general possess unique power to stop unlawful actions dead in their tracks at the courthouse. In addition to filing high-profile lawsuits, attorneys general have been active in shaping positive outcomes in representing their constituents' interests on the front end of proposed legislation, rulemakings and other administrative and legislative processes.

In conjunction with the release of this report, the State Impact Center is also launching an [online hub](#) that includes relevant actions by attorneys general since January 2017, sorted in a variety of useful perspectives, including by state, by issue, and by federal agency or department. We hope this hub will serve as a valuable tool for you.

The State Impact Center is pleased to work with attorneys general who have undertaken this critical work. Anyone who believes we should take care of our environment, address the impacts of climate change, and advance a clean energy economy should be grateful for the dogged work of state attorneys general over these last 13 months.

A handwritten signature in black ink, appearing to read "David J. Hayes". The signature is fluid and cursive, with a large, stylized "H" at the end.

David J. Hayes
Executive Director
State Energy & Environmental Impact Center

13 Months of Critical Actions

State attorneys general have focused their at least 80 actions – from letters and comments to complaints and amicus briefs on the following areas: air pollution; water pollution and ocean protection; toxics; clean energy and energy efficiency; climate impacts; investigation and enforcement; federal lands and resources; scientific and ethical integrity; the federal budget; the proposed border wall; and regulatory reform.

Air Pollution

State attorneys general have taken strong action to combat air pollution that fouls our skies, hurts our health, and takes a toll on the environment. The Trump Administration has sought to roll back a number of important air pollution protections. Most notably, state attorneys general have prevented weakening core protections against greenhouse gas (GHG) emissions and smog-causing ozone emissions that are harming human health and the environment.



Combatting Climate Pollutants

The U.S. Supreme Court confirmed, in *Massachusetts v. EPA*, 549 U.S. 497 (2007), that the Clean Air Act’s broad definition of air pollutants covers greenhouse (GHG) gases which cause climate change. Courts also have confirmed that once EPA makes a so-called “endangerment finding,” and concludes that GHGs pose a danger to human health or the environment, it must take action to reduce such emissions.

In 2009, EPA issued an [endangerment finding](#) covering carbon dioxide and other GHG emissions, requiring the agency to develop a plan to reduce GHG emissions. Subsequently, in

August 2015, EPA finalized the [Clean Power Plan](#) (CPP), which restricts carbon emissions from fossil-fueled power plants – the largest source of climate pollution in the U.S. In June 2016, EPA also [finalized restrictions on methane pollution](#) from new sources in the oil and gas industry.

The Trump Administration has sought to [repeal the CPP](#) and has taken steps to [delay and avoid restricting](#) methane emissions from the oil and gas industry. State attorneys general have initiated court actions to force the Trump Administration to fulfill its legal obligations and address both of these important sources of climate pollution.

In particular, state attorneys general have been fighting the Trump Administration's efforts to roll back restrictions on harmful GHG emissions, including the Administration's proposed repeal of carbon dioxide emissions limits in the coal industry (the Clean Power Plan) and methane emissions limits in the oil gas industry (New Source Performance Standards). State attorneys general also have advocated to restrict hydrofluorocarbon emissions, a potent GHG, under the Clean Air Act.

Implementing the Clean Power Plan

EPA promulgated the Clean Power Plan in August 2015. It adopted a state-based approach for restricting carbon emissions from fossil-fueled power plants, providing states with flexibility to adopt a variety of emissions reduction strategies, based on each state's views of how it might best use its options to reduce carbon emissions from power plants. EPA Administrator Scott Pruitt, who had sued EPA to challenge the CPP when he was the Attorney General of Oklahoma, has repeatedly expressed his intent to delay implementation of the CPP and ultimately to repeal it. A coalition of state attorneys general has strongly objected to EPA's efforts to evade its obligation to implement the CPP.

Due in large part to the opposition of state attorneys general, the Clean Power Plan remains in place. In March 2017, EPA [requested](#) that the D.C. Circuit Court of Appeals, which is overseeing CPP litigation, indefinitely delay further legal proceedings regarding the CPP, pending EPA's development and implementation of a potential repeal of the CPP. State attorneys general and other litigants [opposed](#) the requested delay.

In April 2017, the court put a [temporary hold](#) on the litigation, but ordered EPA to file status reports to the court every 30 days regarding CPP activity. In March 2017, EPA Administrator Pruitt asserted that compliance schedules under the CPP were [automatically extended](#) by the Supreme Court's [stay](#) of the CPP. In August 2017, a coalition of state attorneys general sent a [letter](#) to EPA noting that the CPP remains the "law of the land" and that its compliance deadlines still remain in place.

Two months later, in October 2017, EPA issued a [proposed rule](#) that would repeal the Clean Power Plan. Two months after that, in December 2017, EPA issued an [advanced notice of proposed rulemaking](#) to solicit information from the public about a potential future rule to reduce carbon emissions from fossil-fueled power plants.

Additionally, after EPA spurned requests from a number of progressive states to hold hearings on EPA's proposed repeal, state attorneys general in [New York](#) and [Maryland](#) organized additional public hearings to ensure that their constituents' views on the proposed CPP repeal would be heard.

Most recently, in January 2018, a coalition of twelve state attorneys general, led by California Attorney General Xavier Becerra filed [comments](#) with EPA, requesting that it withdraw the proposed repeal of the CPP. The comments extensively cite statements made by Administrator Pruitt in his current role as EPA Administrator, and his former role as Oklahoma Attorney General, which demonstrate that Administrator Pruitt has made up his mind to repeal the CPP. He is not an unbiased decision-maker, as required by the Administrative Procedure Act.

Controlling Methane Emissions from the Oil and Gas Industry

In June 2016, EPA issued a [final rule](#) setting New Source Performance Standards (NSPS) for new and modified sources of methane emissions from the oil and gas industry. The Trump Administration has tried to avoid implementing the final rule's requirements. State attorneys general have turned back EPA's attempts to avoid implementing methane emissions reductions required by law. In May 2017, EPA delayed by 90 days compliance deadlines for core elements of the 2016 NSPS for the oil and gas industry. Only two weeks later, EPA initiated a [proposed rulemaking](#) to extend that delay for two years.

A coalition of environmental groups filed an [emergency motion](#) requesting that the D.C. Circuit reject the proposed 90-day stay. A group of attorneys general successfully [moved to intervene](#) and joined in the motion.

In an [opinion](#) released on July 3, 2017, the Court of Appeals rejected EPA's argument, ruling that the agency could not unilaterally put off compliance deadlines in existing rules and instead must conduct a full notice-and-comment rulemaking process before it can do so. In August 2017, a coalition of state attorneys general filed extensive [comments](#) with EPA objecting to the agency's unlawful attempt to impose the two-year delay.

EPA also has sought to delay the companion rulemaking that the Clean Air Act requires for the control of methane emissions from existing sources in the oil and gas industry. In June 2017, state attorneys general filed a [notice of intent to sue](#) EPA for failing to address methane emissions from existing oil and gas operations. This filing noted that EPA's regulation of new sources "triggered its mandatory obligation under section 111(d) of the Clean Air Act to issue guidelines for limiting methane emissions from existing sources in this category" and that EPA had unreasonably delayed proceeding with a rulemaking under section 111(d).

The attorneys general also noted that EPA had inappropriately made a "hasty withdrawal" of a related information collection request that had been issued by the prior Administration. EPA [withdrew](#) the methane information collection request "without any notice or opportunity for comment," and without providing any "rational basis" for doing so, and even though the agency already had begun to receive the requested information from oil and gas operators.

The Trump Administration also has attempted to nullify the Bureau of Land Management's (BLM) [rule](#) to reduce wasteful methane emissions in oil and gas production on public lands. State attorneys general have challenged the Administration's persistent attempts to scuttle the methane waste rule. See further details in the "Federal Lands and Resources" section.

Use of Hydrofluorocarbons in Products

Hydrofluorocarbons (HFCs) are potent GHGs that are used primarily in refrigeration and air conditioning systems. EPA and leading companies have identified the availability of safer alternatives that do not have HFCs' adverse climate effects. Following a formal rulemaking process that confirmed the feasibility of HFC substitutes, EPA prohibited the use of HFCs in certain products in a [rule](#) that was finalized in 2015.



The HFC rule was challenged in court and, in August 2017, the D.C. Circuit issued a [split decision](#) holding that EPA did not have the authority under Title VI of the Clean Air Act to stop manufacturers from using damaging HFCs in their products. A coalition of ten state attorneys general filed an [amicus brief](#) requesting that the full Court of Appeals rehear the case, given the national and international ramifications of the split decision on the Clean Air Act's authority to address this important climate change issue. In January 2018, the D.C. Circuit [denied](#) the en banc hearing request.

Staying the Course on Agreed-Upon Mileage Commitments

Air emissions from cars and trucks are a significant source of pollutants, including both carbon pollution and smog-forming pollution.

In October 2012, EPA and the Department of Transportation (DOT) concluded a joint [rulemaking](#), in cooperation with the automobile industry, that harmonized GHG emissions and fuel economy standards. Under the rule, automakers agreed to progressively raise the fuel economy of their cars to an average of 54.5 miles per gallon by 2025, nearly double the average in 2012. The higher mileage requirements are projected to eliminate as much as six billion metric tons of GHGs and save consumers more than \$1 trillion at the pump over the lifetime of the cars affected.

In January 2017, EPA completed a [mid-course review](#) and confirmed the feasibility of staying on track and meeting the higher mileage requirements. California, which has special status under the Clean Air Act to receive waivers for imposing more stringent standards, also participated in the mid-course review and endorsed EPA's conclusions. The Trump Administration has announced



its [intention](#) to reopen the review and potentially revise downward the mileage standards that the automobile industry has already committed to achieve through 2025.

In June 2017, a coalition of state attorneys general, led by Attorney General Becerra, transmitted a [letter](#) to EPA threatening legal action if EPA attempts to weaken air pollution standards set for passenger cars and light-duty trucks for model years 2022-2025.

Imposing Higher Fines for Non-Complying Automakers

In 2015, Congress required EPA to update its schedule of fines for corporate average fuel economy (CAFE) violations. In response, EPA issued an [interim final rule](#) in July 2016 that increased the penalties imposed on automakers for non-compliance with CAFE requirements. In July 2017, the Trump Administration, acting through the National Highway Traffic Safety Administration, announced an [indefinite delay](#) of the increased penalties required by the final rule.

In [September 2017](#), five state attorneys general sued the Trump Administration for delaying the imposition of the new CAFE penalties, noting that DOT's action violated both the Administrative Procedure Act and Congress's directive that agencies increase CAFE penalties.

Requiring DOT to Fulfill Its Obligation to Track Greenhouse Gas Emissions

In January 2017, DOT, through the Federal Highway Administration, [required](#) states, beginning in February 2017, to track on-road GHG emissions, set locally-appropriate performance targets, and ensure consistency in data collection. This rule is known as the GHG Measure.

The Trump Administration has repeatedly attempted to block the GHG Measure rule from coming into force. In the spring of 2017, EPA [twice delayed](#) the effective date of the rule until May 2017. The administration then [announced](#) an indefinite delay of the rule in May 2017.

In September 2017, eight attorneys general [sued](#) the Trump Administration for unlawfully delaying and suspending the effective date of on-road GHG emissions data requirements. The

lawsuit prompted DOT to immediately reverse course and begin to [implement](#) required data collection procedures.

DOT subsequently published a [notice of proposed rulemaking](#) to repeal the GHG Measure. Six attorneys general, led by Attorney General Becerra, filed [comments](#) in November 2017 opposing the proposed repeal.

Combatting Ozone

Smog Pollution: Ozone Air Quality Standards

In 2015, EPA [revised downward](#) the allowable level of ozone in America's skies from 75 to 70 parts per million. High ozone levels cause smog which, in turn, can directly exacerbate pre-existing respiratory conditions, such as asthma, and is associated with increased hospital admissions, as well as with death. Ozone is the main ingredient in smog; ozone is produced by the reaction of nitrogen oxides and volatile organic compounds in sunshine.

The Trump Administration, along with some members of Congress, have threatened to undo protective ozone levels. EPA has delayed enforcing ozone requirements under the final rule, including its obligation to identify areas of the country that do not meet ozone air quality standards (so-called "non-attainment designations"). State attorneys general have repeatedly turned back EPA's attempts to avoid complying with ozone pollution limits required by law.

Blunting Legislative Efforts to Delay Ozone Standards

In early 2017, Congress introduced a bill to delay compliance with ozone air quality standards (the Ozone Standards Implementation Act). In April 2017, a coalition of state attorneys general delivered a [joint statement](#) to Congress expressing strong opposition to the legislation. The proposed legislation has not passed.

Forcing EPA to Designate Ozone Non-Attainment Areas

The Clean Air Act requires that EPA designate areas of the country that are in "attainment" or "non-attainment" of air quality standards within two years of the issuance of new or revised standards. In the case of the 2015 ozone standards, EPA was required to issue attainment and non-attainment designations by October 1, 2017. EPA has tried to evade its legal duty to identify ozone non-attainment areas.

State attorneys general have called out EPA's failure to identify ozone non-attainment areas, and are forcing the Agency to designate such areas, as required by law.

In June 2017, EPA Administrator Pruitt [sought to roll back](#) the October 2017 deadline for identifying ozone non-attainment areas until October 2018 on the grounds that EPA needed to

collect more information to make final decisions. In August 2017, New York Attorney General Eric Schneiderman and a coalition of 16 attorneys general [sued EPA](#) for illegally delaying the designations. The next day, EPA abruptly reversed course and announced it was [withdrawing](#) the designations delay, although it remained equivocal on whether it would meet the October 1, 2017 deadline. That deadline passed without EPA making the required non-attainment designations, in violation of the Clean Air Act.

A few days later, a coalition led by state attorneys general notified EPA of its [intention to sue](#) if the agency failed to correct the violation within 60 days. In November 2017, EPA [issued designations](#) for some areas of the country, but failed to make any “non-attainment” area designations, which are the designations that trigger smog reduction measures to improve air quality and to comply with the ozone standards.

The next month, in December 2017, Attorney General Schneiderman, leading a coalition of fifteen state attorneys general, [filed a lawsuit](#) against EPA and Administrator Pruitt for failing to meet the Clean Air Act’s statutory deadline for designating areas of the country impacted by unhealthy levels of ground-level ozone (smog). That same month, a federal appeals court [ordered EPA](#) to spell out the timetable for remaining compliance decisions related to its 2015 ground-level ozone standard. A three-judge panel for the D.C. Circuit instructed agency officials to report “with precision and specificity” when EPA would issue a final rule to set remaining designations for the 70 parts per billion standard.

In January 2018, EPA [announced](#) its intention to make its non-attainment designations by April 30, 2018. It subsequently [amended](#) its announcement, noting that it would not complete non-attainment designations for certain areas in Texas until after April 2018. Over EPA opposition and in response to weakened EPA support for the 2015 ozone rule, seven attorneys general also successfully [moved to intervene](#) in July 2017 in ongoing litigation brought by industry challenging the 2015 standard.

Forcing EPA to Address Upwind Air Pollution

EPA has tried to evade its legal duty to require upwind states to reduce ozone precursors ozone-producing pollution that are damaging air quality in downwind states. State attorneys general are bringing actions under multiple provisions of the Clean Air Act to force EPA to take action against upwind states that are damaging air quality in downwind states, as required by law.

Section 126

Under Section 126 of the Clean Air Act, a downwind state can file a petition with EPA to make a finding that upwind states are contributing to its inability to comply with ozone standards. EPA is then be required to take action against those upwind states.

The attorneys general of [Maryland](#), [Delaware](#), and [Connecticut](#) have initiated legal actions under Section 126 of the Clean Air Act to force EPA to curtail unlawful upwind air pollution that is causing unhealthy levels of ozone to form in their states.

Section 110

New York Attorney General Schneiderman is forcing EPA to curtail unlawful upwind pollution under Section 110 of the Clean Air Act. Schneiderman filed in October 2017 a [notice of intent to sue](#) EPA for failing to promulgate federal plans to reduce ozone pollution from five states that contribute to ozone problems in the New York City metropolitan area by August 2017.



In January 2018, Schneiderman and Connecticut Attorney General George Jepsen filed a [suit](#) against EPA for missing the August 2017 deadline to promulgate plans to reduce pollution from the five states that contribute to ozone pollution in the New York City metropolitan area.

Section 176

Additionally, eight northeastern attorneys general, led by Schneiderman, are working to expand the Ozone Transport Region (OTR), under Section 176 of the Clean Air Act, to include nine upwind states in the group of states that have to submit state plans to EPA for controlling ozone pollutants. In November 2017, EPA [rejected](#) the states' 2013 petition to expand the OTR. In December 2017, the eight states filed a [petition for review](#) of EPA's rejection of the petition and abdication of its responsibility to enforce upwind air pollution violations with the D.C. Circuit.

Combating Truck Pollution

In October 2016, EPA [confirmed](#) that so-called “glider kits” qualify as motor vehicles that must meet new truck emissions requirements. Glider kits are new truck chassis that are equipped with refurbished diesel engines and powertrains. They generate 20 to 40 times higher emissions than



new trucks with new engines. After EPA Administrator Pruitt [met](#) with the CEO of Fitzgerald Glider Kits, EPA issued a [proposal](#) in November 2017 that would exempt gliders from air emissions requirements, based on the assertion that gliders do not qualify as motor vehicles.

In January 2018, Attorney General Becerra led a coalition of twelve states that filed comments [opposing](#) EPA's attempt to exempt gliders from new truck emissions requirements.

Water Pollution & Ocean Protection

Attorneys general are taking action to protect our nation's oceans, lakes, rivers, streams, ponds, and wetlands. They are fighting proposals to drill for oil off the country's coasts and are challenging EPA's proposed delays and potential repeals of critical ocean and water protection rules.

Protecting American Waters

In July 2015, EPA finalized a "Waters of the United States" (WOTUS) [rule](#) that clarified the scope of protections for American waters under the Clean Water Act. Among other things, the final rule confirmed that Clean Water Act protection covers wetlands and upland waters that many Americans rely upon for clean, healthy drinking water.



In February 2017, President Trump issued an [executive order](#) directing EPA and the Army Corps of Engineers to rescind or revise the WOTUS rule and the additional protections that it applies to U.S. waters. EPA and the Army Corps subsequently released an [interim rule](#) in June 2017 that proposes to scale back Clean Water Act protections.

A coalition of nine attorneys general filed [comments](#) opposing the repeal, and have vowed to sue the Administration if it moves forward with its plan to remove Clean Water Act protections from important wetlands and upland waters.

In January 2018, the Supreme Court [ruled](#) that litigation over the WOTUS rule must begin in federal district courts. That same month, EPA published a [final rule](#) to suspend the applicability date of the 2015 WOTUS rule by two years.

In February 2018, New York Attorney General Eric Schneiderman led a coalition of eleven attorneys general that has [challenged](#) the suspension rule in federal district court in New York.

Protecting Our Oceans

In January 2017, following extensive environmental review and public outreach, the Interior Department finalized a [five-year plan](#), covering the period of 2017 to 2022, that schedules

potential offshore oil and gas lease sales in the Gulf of Mexico and in a limited area offshore of Alaska. A few months later, in April 2017, [President Trump](#) ordered the Secretary of the Interior to revise the five-year plan and open up additional offshore areas to oil and gas leasing to “the maximum extent permitted by law.”

As the first step in the process of permitting offshore drilling in the Atlantic, the National Marine Fisheries Service (NMFS), in June 2017, released a [proposal](#) to authorize seismic surveys in the Atlantic Ocean. A coalition of nine state attorneys general submitted [comments](#) in July opposing the NMFS’s proposal. The comments cited a National Oceanic and Atmospheric Administration [study](#) that showed that the surveys’ air gun blasting can cause fish populations to dramatically decline during testing and that Atlantic offshore drilling could result in severe and irreparable harm to coastline and marine life.

Additionally, the attorneys general of [California](#) and [Massachusetts](#) filed comments in August in response to the Bureau of Ocean Energy Management’s (BOEM) July 2017 request for information and comments on its intent to develop a new five-year oil and gas leasing plan. Massachusetts’ comments highlighted the devastating impact that an oil spill could have on the state’s commercial fishing industry and tourism economy, while California’s comments stressed that the oil and gas industry lacks an interest in drilling off the Californian shore.

In December 2017, the Department of Interior’s Bureau of Safety and Environmental Enforcement (BSEE) released a proposed rule to weaken offshore drilling safety regulations that had been put in place after the *Deepwater Horizon* explosion and spill.



In January 2018, Maryland Attorney General Brian Frosh led a coalition of five attorneys general that submitted [comments](#) opposing the weakening of BSEE’s offshore drilling safety regulations as an unjustified reversal of needed safety updates, particularly as the Department of the Interior is simultaneously considering dramatically expanding the scope of offshore drilling.

One month after proposing to weaken safety regulations, Secretary Zinke released a [proposed replacement five-year plan](#) in January 2018 that would open up more than 90% of the U.S.’s offshore waters for oil and gas exploration and development, including oil and gas drilling up and down the Atlantic and Pacific coasts, where many state officials are on record as opposing such drilling.

Several attorneys general released [statements](#) expressing their strong opposition to expanded offshore drilling opportunities, and several are voicing their objections in public meetings that are being held in connection with the proposal.

In February 2018, North Carolina Attorney General Josh Stein led a coalition of twelve attorneys general from the Atlantic and Pacific coasts that submitted [comments](#) opposing the proposed five-year plan based on the threats that it poses to coastal-supported jobs and the states' ocean and beach resources. In the same month, Washington Attorney General Bob Ferguson sent a [letter](#) to Secretary Zinke expressing his “unequivocal opposition” to the five-year plan as it is harmful to the economy and beauty of Washington’s coastline.

Protecting the Chesapeake Bay, the Great Lakes and Other Vital Water Resources

State attorneys general are working to protect the Chesapeake Bay, the Great Lakes, and other vital water resources from environmental damage. In November 2017, the attorneys general of the District of Columbia, Maryland, and Virginia published a joint [op-ed](#) in the Washington Post objecting to proposed House legislation that would loosen Clean Water Act standards and allow increased pollutants to flow into the Chesapeake Bay. The proposed legislation has stalled.



Further, in December 2017, the attorneys general of Michigan, Minnesota, and Pennsylvania submitted [comments](#) opposing the Army Corps of Engineers’ plan. The comments requested that the Corps close a key lock to prevent the invasive Asian carp species from entering the Great Lakes and potentially damaging its ecosystem and economy. The attorneys general highlighted the Corps’ own analysis which concluded that closing the lock is the most cost effective, reliable option for stopping the spread of Asian carp.

In February 2017, attorneys general from ten states across the country [wrote](#) to U.S. Senate leaders opposing the proposed *Commercial Vessel Incidental Discharge Act*. The legislation would prevent states from limiting commercial ships’ discharge of ballast water containing non-native, invasive aquatic species that have significant ecological, health, recreational, and economic risks and impacts.

Toxics

Attorneys general are opposing EPA approval of a dangerous pesticide found in Americans' food, and the roll back of protections for first responders vulnerable to exposure to dangerous toxics.



Keeping Americans' Food Safe

In 2015, in response to a [petition](#) and the initiation of litigation by public health groups, EPA [agreed](#) that the pesticide chlorpyrifos should be banned from use on food crops because of concern about human health impacts. The pesticide is used on more than 80 food crops, including apples, strawberries, and bananas, and has been shown to negatively impact brain development and the functioning of the central nervous system.

The Ninth Circuit Court of Appeals in *Pesticide Action Network North America v. United States Environmental Protection Agency* [ordered](#) EPA to take final action on the proposed revocation by the end of 2016.

In March 2017, EPA Administrator Pruitt [reversed](#) course, denying the petition and withdrawing EPA's proposed revocation, thereby allowing the pesticide chlorpyrifos to continue being applied on food crops.

State attorneys general are challenging EPA's reversal of the continued use of the toxic pesticide chlorpyrifos on food crops. In June 2017, attorneys general from seven states [objected](#) to EPA's reversal of its 2015 proposed rule, as being unauthorized by law and in violation of two orders from the Ninth Circuit. The next month, six attorneys general filed a [motion to intervene](#) in *League of United Latin American Citizens et al. v. Pruitt*, related to *Pesticide Action Network North America*. In *League*, a similar coalition of groups is asking the court to find that EPA cannot continue to allow chlorpyrifos on food crops unless and until it makes an affirmative human safety determination. The motion to intervene was granted in December 2017.

In December 2017, the National Marine Fisheries Service released a [biological opinion](#) which concluded that chlorpyrifos is likely to jeopardize the continued existence of 38 marine species determined to be in the greatest need of federal protection under the Endangered Species Act. The biological opinion also found that chlorpyrifos is likely to adversely modify 37 out of 50 habitats designated as critical to conserving endangered species.

In February 2018, the attorneys general filed their [brief](#) in *League*, which petitioned the Ninth Circuit Court of Appeals to require that EPA finalize the 2015 rule disallowing chlorpyrifos use on food crops or, alternatively, to compel EPA to immediately respond to the states' pending objections to the reversal of the 2015 proposed rule.

Safeguarding Communities, Workers and First Responders from Chemical Accidents

In January 2017, EPA [finalized](#) the Chemical Accident Safety Rule (also known as the Accidental Release Prevention Requirements rule) under the Clean Air Act, which required more than 12,000 chemical facilities across the country to conduct "root cause" analyses and third-party audits following accidents and to analyze the use of safer technology and alternatives to prevent accidents. The rule also requires that chemical facilities adopt emergency response



procedures, including coordination with first responders so that they will not be exposed to dangerous toxics when responding to accidents at chemical facilities.

In June 2017, the Trump Administration sought to [delay](#) the effective date for the Chemical Accident Safety Rule for 20 months until February 2019.

In July 2017, eleven attorneys general filed a [petition for review](#) in the D.C.

Circuit Court of Appeals, seeking a determination by the court that EPA's attempt to delay the effective date of the Chemical Accident Safety Rule was unlawful and must be vacated. Oral argument in the case is scheduled for March 16.

Protecting Communities from Explosions

Highly flammable, highly explosive crude oil is shipped by freight rail via trains throughout the United States, passing highly populated communities and ecologically sensitive areas. These so-called “bomb trains” have been involved in several catastrophic rail accidents in recent years, including a 2013 explosion that killed 47 people in Quebec.

The Pipeline and Hazardous Material Safety Administration issued an [advanced notice of proposed rulemaking](#) in January 2017 for a vapor pressure standard for the transportation of crude oil via train cars. Vapor pressure is a key driver of oil’s explosiveness and flammability. Pre-shipment treatment of crude oil to reduce dangerous vapor pressure would significantly mitigate the possibility of uncontrollable fires and violent explosions.

State attorneys general are participating in the Pipeline and Hazardous Material Safety Administration’s rulemaking on this important issue. In May 2017, the attorneys general of six states filed [comments](#) supporting a nationwide limit on the vapor pressure of crude oil transported by rail in the United States.

Clean Energy & Energy Efficiency

State attorneys general have been instrumental in helping to preserve clean energy options for consumers by opposing proposals to establish new, additional subsidies for fossil fuel energy, pushing to open up the electricity sector to greater consumer choice, and advocating for the implementation of Department of Energy (DOE) energy efficiency standards.



Opposing Additional Subsidies for Coal

Energy Secretary Rick Perry issued a [notice of proposed rulemaking](#) in September 2017 directing the Federal Energy Regulatory Commission (FERC) to consider adopting a rule under the Federal Power Act that would require competitive interstate bulk electricity markets to subsidize coal plants. DOE sought to justify the proposed new subsidy on an argument that the availability of on-site fuel enhanced the reliability and resilience of coal as an energy source for the grid.

In October 2017, a coalition of eleven state attorneys general filed extensive [comments](#) with FERC objecting to the proposed coal subsidy as being unsupported by data and experience and damaging to the environment, particularly given the states' growing clean energy portfolios.

In January 2018, FERC issued an [order](#) that adopted the position of the state attorneys general and declined to move forward with DOE's coal subsidy proposal. As part of this order, FERC initiated a new proceeding to evaluate the resiliency of the power system and directed the regional power system operators to submit information to FERC on selected resiliency issues before it determines whether additional action on grid resiliency is necessary.

Addressing Energy Infrastructure Projects and Needs

State attorneys general are addressing energy infrastructure projects and needs in their states and regions, with an eye on promoting new, clean energy infrastructure, and carefully evaluating proposed fossil fuel-related infrastructure.

In October 2017, Massachusetts Attorney General Maura Healey initiated an [inquiry](#) after a release of a [report](#) which concluded that natural gas companies in Massachusetts and Connecticut had engaged in abusive pipeline scheduling practices that artificially constrained pipeline capacity and cost consumers \$3.6 billion between 2013 and 2016. Attorney General Healey's action followed a 2015 [report](#) commissioned by her office that determined that the region could sustainably and cost-effectively meet its energy needs without increasing natural gas pipeline capacity.

Additionally, New York Attorney General Eric Schneiderman successfully represented the New York Department of Environmental Conservation (DEC) before a [Second Circuit](#) Court of Appeals challenge to DEC's denial of a state water quality certification for the proposed natural gas Constitution Pipeline. Construction of the 100-mile pipeline would have impacted more than 250 streams and more than 80 acres of wetlands.

Implementing Energy Efficiency Standards

Under the Energy Policy and Conservation Act (EPCA), the Department of Energy is charged with developing energy efficiency standards for a wide range of consumer and commercial products. Secretary Perry has attempted to derail several DOE energy efficiency standards that were finalized prior to the change in Administration. In particular, DOE sought to delay the effective date of the final energy efficiency rule for ceiling fans. In addition, DOE failed to publish five energy efficiency rules that had also been finalized. A coalition of state attorneys general sued DOE regarding the ceiling fan energy efficiency standard and won.

In March 2017, a coalition of nine attorneys general filed a [petition](#) in the Second Circuit challenging DOE's delay of the effective date of the Energy Conservation Standard for Ceiling Fans.

After filing the lawsuit, DOE [dropped](#) its effort to delay the effective date of the energy efficiency standard and agreed to allow the final rule to go into effect.

The next month, ten attorneys general delivered a 60-day [notice of intent to sue](#) DOE for its failure for over a year to publish final energy efficiency standards for five additional products: air compressors, commercial packaged boilers, portable air conditioners, walk-in coolers and freezers and uninterruptible power supplies.



In June 2017, when DOE still had not published final energy efficiency standards in the Federal Register, the coalition of attorneys general filed a [lawsuit](#) against DOE for violating the EPCA by not publishing the standards.

In February 2018, a federal district court sided in favor of the attorneys general in ruling that DOE had violated its duties under EPCA and ordered DOE to publish the standards as final rules within 28 days.

In an unrelated matter, seven attorneys general in April 2017 filed a [motion to intervene](#) in a lawsuit in the Fourth Circuit Court of Appeals brought by the industry group the National Electrical Manufacturers Association challenging light bulb energy efficiency standards. The challenged regulations broaden the category of bulbs subject to strong efficiency standards.

Advocating for Ratepayers in Front of FERC

The Tax Cuts and Jobs Act, which reduced the federal corporate income tax rate from 35% to 21%, significantly reduced electricity utilities' tax burdens. Because regulators approve electricity utilities' rates based on their cost structures, including tax expenses, the savings garnered by utilities should be reflected in lower rates charged to electricity customers. State attorneys general alerted the Federal Energy Regulatory Commission, which oversees interstate energy rates, about the need to immediately revise utility rates downward in response to passage of the Tax Cuts and Jobs Act.

More specifically, in January 2018, a bipartisan group of attorneys general from eighteen states transmitted a [letter](#) to FERC, requesting rate adjustments that would allow consumers to receive the full economic benefit of the corporate tax reduction. FERC is actively evaluating options that will implement the state attorneys general's petition.

Climate Impacts

State attorneys general pledged that they're "still in" the Paris Climate Accord after President Trump announced the United States would pull out of the agreement. They also have urged Congress to update the Federal Flood Standard so that post-disaster federal funding finances reconstruction of infrastructure in a sustainable fashion.



Pledged to Remain in the Paris Climate Accord

In December 2015, the international community of nations endorsed the Paris Agreement and its goal of reducing greenhouse gas emissions and limiting the global temperature rise to below 2 degrees Celsius above pre-industrial levels. In June 2017, President Trump withdrew the United States from the historic Paris Climate Agreement. Nineteen state attorney generals announced they are participating in the "[We Are Still In](#)" coalition, joining forces with governors, mayors, business leaders, and universities to pledge to keep their states' commitments to abide by the principles of the Paris Agreement.

Climate Impacts & Infrastructure Spending

Following the experience of Hurricane Sandy, President Obama adopted the recommendation of the Hurricane Sandy Task Force and issued a [Federal Flood Standard](#) which required that post-

disaster infrastructure rebuilds account for climate change-related risk factors, such as increased potential levels of sea rise and storm surge.

In August 2017, President Trump summarily [withdrew](#) the Federal Flood Standard shortly before Hurricane Harvey hit Texas. As a result, federal funds spent in rebuilding Houston, Puerto Rico, fire-ravaged areas of California, etc., are no longer required to take into account climate-related risk factors.

Attorneys general from five states and the District of Columbia wrote a [letter](#) to Congressional leadership requesting reinstatement of the Federal Flood Standard. The updated standard would direct federal agencies to apply the latest scientific information on flood risks, management, and planning to any federal project rebuilds in flood or fire prone areas. The attorneys general pointed out that the updated standard would protect critical infrastructure, such as bridges and roads; save taxpayers' dollars; and ensure the safety of communities from future flooding risks.



Investigation and Enforcement Actions

Investigation and enforcement activity is a core competence and responsibility for state attorneys general. State attorneys general have fought back against partisan attempts by Congressional committees to usurp this responsibility by thwarting state-led investigations. They also have objected to the Trump Administration jettisoning important enforcement tools, including the use of settlement funds to mitigate harms associated with unlawful activity.

Opposing Attempts to Derail State Investigations

In April 2016, Massachusetts Attorney General Maura Healey and New York Attorney General Eric Schneiderman initiated an investigation into whether ExxonMobil violated state law by failing to disclose information about climate change-related risks to its business. In February 2017, the U.S. House Committee on Science, Space, and Technology issued a subpoena to Attorneys General Healey and Schneiderman requesting that they turn over privileged and protected documents relating to the state-led investigation.

Attorneys General [Healey](#) and [Schneiderman](#) objected to the subpoena and requested that the Committee withdraw its unprecedented and unlawful subpoena for documents relating to the investigation, noting that the Committee has no authority over a state law investigation of potential securities, business, and consumer fraud and that no Congressional committee in history had ever subpoenaed a sitting state attorney general. Fifteen additional attorneys general also came forward and [urged](#) the Committee to withdraw its unprecedented subpoena.

In response to the subpoena of the attorneys general, ExxonMobil brought a suit against Attorneys General Healey and Schneiderman in a federal district court in Texas that argued that the attorneys general violated ExxonMobil's right to be protected from unreasonable searches and seizures. In March 2017, Attorneys General Healey and Schneiderman prevailed in getting the federal district court judge in Texas to [transfer](#) the retaliatory lawsuit to federal district court in New York. The investigation is ongoing.

Opposing Trump Administration Mitigation Enforcement Policies

Federal and state attorneys general have frequently included environmental mitigation as an important component in [consent decrees](#) that resolve environmental violations. For example, the consent decree that resolved claims brought by federal and state governments against BP for violating federal and state environmental statutes in connection with the *Deepwater Horizon* explosion and spill included significant funding to restore the natural resources in the Gulf Coast harmed by the explosion and spill.

In June 2017, U.S. Attorney General Jefferson Sessions issued a [memorandum](#) that prohibits the United States from including provisions in settlement agreements that provide for payments to

non-governmental, third parties that are not a party to the lawsuit. The [policy](#) ambiguously states that payments that “directly” remedy harm to the environment may still be allowed.

The Trump Administration applied the new Sessions policy to remove a \$3 million mitigation component of an already agreed-upon consent decree. More specifically, the Department of Justice (DOJ) had charged Harley-Davidson for violating the Clean Air Act by selling approximately 340,000 unlawful emissions defeat devices. As part of its settlement agreement with DOJ, Harley-Davidson agreed to fund a \$3 million mitigation project to retrofit or change out high-polluting wood burning devices, thereby improving the air quality that had been harmed by the defeat devices.

In August 2017, a coalition of attorneys general from eleven states and the District of Columbia filed [comments](#) in opposition to the entry of a government-amended consent decree and its exclusion of the previously agreed-upon mitigation obligation. In December 2017, nine attorneys general filed a [notice of intent to file an amicus brief](#) in opposition to the United States’ proposed consent decree in the Harley-Davidson litigation as it is not in the public interest. The attorneys general subsequently filed their [amicus brief](#) in January 2018.

Federal Lands and Resources

Attorneys general have challenged Interior Department efforts to nullify coal, oil, and gas royalty reforms and to reduce payments owed to federal and state taxpayers; opposed Interior's removal of the moratorium on leasing new federal lands for coal development; challenged the Administration's attempt to repeal fracking rules for oil and gas drilling on public lands; objected to large fee hikes proposed by the National Park Service for the most popular National Parks; and vowed to protect National Monuments from illegal rollbacks not permitted under the Antiquities Act.



Defending BLM's Methane Waste Prevention Rule: Prohibiting the Wasting of Valuable Public Assets

The Interior Department's Bureau of Land Management (BLM) has a responsibility under the Minerals Leasing Act to ensure that private lessees engaged in oil and gas operations on public lands do not waste valuable resources and evade the payment of royalties due to the federal government for the use of publicly owned resources. In recent years, some oil and gas operators have wasted natural gas and its principal component, methane, by venting and flaring large volumes of methane that are co-produced with more valuable oil deposits. In 2016,

BLM [finalized a rule](#) that prohibits oil and gas operators from wasting gas by conducting unwarranted venting and flaring of unwanted methane.

The Trump Administration has attempted to nullify the methane waste prevention rule and allow oil and gas operators to vent and flare unwanted gas supplies, without regard to their obligation to pay royalties or protect the environment. State attorneys general have successfully challenged the Administration's persistent attempts to scuttle the methane waste rule.

The Trump Administration proposed that Congress nullify the methane waste prevention rule through a Congressional Review Act (CRA) resolution of disapproval. In February 2017, seven attorneys general sent a [letter](#) to U.S. Senate leadership urging the Senate to vote against the CRA resolution because it would cost states where the oil and gas development is taking place millions in annual royalties. Additionally, the letter noted that the methane waste prevention rule reduces potent climate change causing methane emissions. The Senate sided with state attorneys general and rejected the CRA resolution in May 2017.

Later, in June 2017, BLM published a [notice](#) that purported to postpone compliance dates set forth in the methane waste prevention rule. In July 2017, the state attorneys general of California and New Mexico [sued](#) the Interior Department, alleging that BLM had no authority to put off compliance with the final rule unless it complied with the Administrative Procedure Act (APA) and undertook and completed, a full notice-and-comment rulemaking. Four attorneys general, led by Washington Attorney General Bob Ferguson, filed an amicus brief in support of the complaint brought by California and New Mexico.

In October 2017, the United States District Court for the Northern District of California agreed with the state attorneys general, and [voided](#) the administration's postponement of compliance dates set forth under the waste prevention rule.

Subsequently, BLM reframed its suspension of the waste prevention rule's compliance requirements as a [proposed rule](#). The state attorneys general filed [comments](#) opposing the proposed rule. Taking no heed, BLM rushed through, and [finalized](#), the suspension rule in December 2017.

The state attorneys general of California and New Mexico have gone back to court, filing a [complaint](#) to overturn the final rule that purports to suspend requirements of the waste prevention rule until January 17, 2019.

In February 2018, a district court blocked the delay of the rule, saying, "The BLM's reasoning behind the suspension rule is untethered to evidence contradicting the reasons for implementing the waste prevention rule, and so plaintiffs are likely to prevail on the merits."

Closing Coal, Oil and Gas Royalty Loopholes that Cheat Taxpayers: Defending the Valuation Rule

[Independent investigators](#) have confirmed that coal operators on public lands have been evading royalty payments owed to the federal government by engaging in sham transactions with captive, affiliated companies that mask the true value of coal resources removed from public lands. By engaging in these sham transactions, coal lessees have avoided millions of dollars in payments owed to the federal government and its taxpayers who own these public resources.

The Interior Department, acting through its Office of Natural Resources Revenue (ONRR) developed a “valuation rule” that adopted common sense reforms which closed the loopholes that coal, oil and gas operators were using to avoid payments owed to the federal government. After five years of public engagement, including public workshops and an extended notice-and-comment period, the [rule](#) was finalized in July 2016.

The Trump Administration has attempted to scuttle the valuation rule and allow coal operators to continue to enter into sham transactions and avoid paying royalties owed to American taxpayers. State attorneys general have successfully challenged the Administration’s persistent attempts to scuttle the valuation rule.

In February 2017, ONRR unilaterally purported to put the valuation rule on [hold](#), noting its intent to prepare a new rulemaking to repeal the rule. In April 2017, California’s and New Mexico’s attorneys general [sued](#) the Interior Department for illegally postponing the start date of a rule that already had gone into force. Washington Attorney General Ferguson filed an amicus brief in support of California and New Mexico.



In an important [opinion](#) issued in August 2017, the Northern District of California agreed with the state attorneys general, striking down as illegal the proposed postponement of compliance with the valuation rule.

While the litigation over the postponement was proceeding, ONRR published a [proposed rule](#) in April 2017 to repeal the valuation

rule “in its entirety.” ONRR subsequently published a [final rule](#) which repealed the valuation rule “in its entirety” and reinstated preexisting royalty regulations.

California’s and New Mexico’s attorneys general filed a new [lawsuit](#) in October 2017 petitioning the court invalidate the final rule as arbitrary, capricious and unauthorized by law.

Reforming the Federal Coal Leasing Program

[Independent reviews](#) have confirmed that the federal coal leasing program suffers from a number of systemic financial and environmental defects that have short-changed American taxpayers and

harmed the environment. In January 2016, Interior Secretary Sally Jewell issued a Secretarial [order](#) that paused most new coal leasing until the Department completes a comprehensive programmatic National Environmental Policy Act (NEPA) review of the federal coal leasing program.

To support that review, the Department of the Interior undertook a public process to collect feedback on the coal program and potential reforms. A year later, in January 2017, Secretary Jewell issued a [report](#) which, based on an extensive evaluation of public comments, affirmed the need for a comprehensive programmatic NEPA review of the federal coal leasing program.

Shortly after taking office, President Trump issued a so-called “[energy independence](#)” [executive order](#) that directed the Secretary of the Interior to take all steps necessary and appropriate to amend or withdraw Secretary Jewel’s Secretarial order and to lift the so-called “moratorium” on federal coal leasing. In March 2017, Secretary Zinke issued a follow-up Secretarial [order](#) that terminated the programmatic NEPA review and restarted the coal leasing program, without addressing needed reforms.



In May 2017, four states attorneys general filed [suit](#) in the United States District Court for the District of Montana challenging Secretary Zinke’s lifting of the coal leasing moratorium and termination of the federal coal leasing program review. The suit seeks an injunction requiring the Interior Department to vacate and set aside the order and reinstitute the pause on new federal coal leasing until the Department fully analyzes the potential impacts associated with the coal leasing program.

Protecting Hydraulic Fracturing Standards for Federal Lands

In 2015, BLM finalized new [requirements](#) governing fracking activities on public lands, updating woefully out-of-date rules from the 1980s that did not reflect modern development technologies. The final rule called on BLM to inspect and validate the safety of fracking wells, required oil and gas producers to disclose chemicals used in the fracking process, and established standards for storing fluids before their approved disposal by BLM.

In July 2017, BLM proposed a [rule](#) to rescind the 2015 fracking rule. Six months later, in December 2017, BLM finalized a [rule](#) to permanently rescind the 2015 BLM fracking rule and replace it with the regulatory text that existed prior to 2015.

The following month, Attorney General Becerra filed [suit](#) against BLM for unlawfully rescinding the fracking rule. The suit seeks an order compelling BLM to reinstate the 2015

fracking rule because the rescission lacks a reasoned analysis, ignores BLM's statutory mandates, and violates the APA and NEPA.

Protecting National Monuments

The Antiquities Act of 1906 delegates authority to the President to designate as national monuments land and marine areas that contain historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest. Since 1906, sixteen presidents of both parties have designated 152 national monuments under the Act, including designations by Presidents Clinton and Obama in California, New Mexico, Oregon, Utah, and Washington that preserved millions of acres of vulnerable, but ecologically and culturally significant lands. The 152 national monuments also include several national marine monuments in the Pacific and Atlantic Oceans that were designated by both Democratic and Republican presidents.

The Trump Administration issued an [executive order](#) calling on the Department of Interior to review 27 National Monument designations made since 1996 under the Antiquities Act. The review includes a joint review with the Department of Commerce of five marine monuments. In December 2017, Interior Secretary Ryan Zinke released a [report](#) that included recommendations to the President for potential monument revisions. President Trump subsequently issued orders that purported to reduce the [Bears Ears National Monument](#) and the [Grand Staircase-Escalante National Monument](#) in Utah by approximately 80% and 50%, respectively.

State attorneys general have informed the Trump Administration that the Antiquities Act does not give Presidents the power to reduce or revoke existing National Monuments. State attorneys general have vowed to join court challenges regarding any such actions. In May 2017, Washington State Attorney General Bob Ferguson [demanded](#) that "President Trump and Secretary Zinke . . . respect the legal limits of their powers" under the Antiquities Act to reduce or revoke national monument designations. Ferguson pledged: "If President Trump attempts to harm Washington's national monuments, my office will defend them."

The next month, California Attorney General Xavier Becerra warned in a [letter](#): "Any attempt by the Trump administration to reverse decisions past presidents have made to safeguard our most treasured public lands is as unwise as it is unlawful. As the Attorney General of California, I am determined to take any and all action necessary to protect the American heritage which has become part of our monument lands."

The warnings continued in July 2017, when Oregon Attorney General Ellen Rosenblum sent a [letter](#) to Secretary Zinke stating that reducing or revoking monument designations would “exceed the President’s limited power under the Antiquities Act, threatening our national and cultural heritage... If the President attempts instead to revoke or reduce the Cascade-Siskiyou National Monument, we stand ready to take appropriate legal action.”



In December 2017, in response to President Trump’s announcement that he would significantly decrease the size of the national monuments in Utah, New Mexico Attorney General Hector Balderas [said](#): “President Trump simply has no legal authority to alter monument designations under the Antiquities Act. His drastic reduction of the Utah monuments is a direct attack on the proud natural, historical and cultural heritage of the Southwest, and it ignores critical voices of tribal leaders and local stakeholders on these lands. . . . If the President chooses to continue these attacks and comes after either Organ Mountains-Desert Peaks or Rio Grande del Norte [in New Mexico], I will fight him every step of the way.”

Ensuring Public Access to America’s National Parks

In October 2017, the National Park Service (NPS) announced it is considering [increasing fees](#) during peak season at 17 highly visited National Parks. During the five-month peak season, the per vehicle entrance fee would increase from \$25 or \$30 to \$70, while entrance fees for motorcycles, bicycles and pedestrians would more than double. In November 2017, a bipartisan group of state attorneys general from ten states and the District of Columbia submitted [comments](#) to the National Park Service opposing its proposed entrance fee hikes. The comments expressed concern that increased fees would reduce access to National Parks for groups that are already underrepresented in national park usage, including low-income communities and communities of color.

The attorneys general also noted that NPS had not offered a reasoned explanation for the proposed fee. For example, instead of increasing revenue to pay for the park system’s maintenance backlog, the fee hike might exacerbate the shortfall by lowering visitation rates and associated park revenue. Further, NPS failed to include any analysis, or supporting data, of the criteria NPS is required to consider in establishing visitor fee rates under the Federal Land Recreation Enhancement Act, including consideration of comparable fees charged by public and private sector operators and the public policy or management objectives served by the higher fees.

Scientific & Ethical Integrity

Trump Administration actions have raised a number of serious scientific and ethical integrity issues associated with climate and environmental policy that state attorneys general are challenging.

Noteworthy ethical issues identified by attorneys general include Administrator Pruitt's potential conflicts of interest stemming from his time as Oklahoma Attorney General, where he took legal and factual positions in court filings contrary to EPA's positions.

- California Attorney General Xavier Becerra filed a Freedom of Information Act (FOIA) [request](#) in April 2017 for documents relating to these apparent conflicts of interest. In August 2017, Attorney General Becerra [sued](#) EPA for failing to comply with his FOIA request.
- In May 2017, EPA [announced](#) that Administrator Pruitt had recused himself from some cases in which he had sued EPA as Oklahoma Attorney General. He did not recuse himself, however, from participating in EPA's rulemaking processes, including the Clean Power Plan rule, despite the clear conflict growing out of his prior role as Oklahoma state attorney general.

In January 2018, a coalition of twelve state attorneys general, led by Attorney General Becerra, filed an extensive, well-documented [demand](#) that EPA withdraw the proposed repeal of the Clean Power Plan because Administrator Pruitt as Oklahoma Attorney General and as EPA Administrator had prejudged the outcome of the repeal process.

Budget, Border Wall & Regulatory Reform

Opposing EPA Budget Cuts

Attorneys general opposed the Trump Administration's fiscal year 2018 [budget](#) that would dramatically cut funding for EPA's critical environmental programs. The president's 2018 budget proposed to reduce EPA's budget by 31%, the biggest cut of any federal agency.

In March 2017, attorneys general from twelve states and the District of Columbia sent a [letter](#) to U.S. House and Senate appropriators urging them to reject the president's proposed cut to EPA. In the letter, state attorneys general noted that the proposed cuts would put at risk critical state administered programs under the Clean Air Act, Clean Water Act, the Resource Conservation and Recovery Act, and the Superfund law. They also expressed concern that cutting funding for EPA would endanger the Clean Water State Revolving Loan Fund and the Drinking Water State Revolving Loan Fund, which finance essential state and municipal water and waste-related infrastructure projects.

The state attorneys general also expressed concern that the cuts would also undermine EPA's enforcement capabilities, allowing large private and federal facilities to evade environmental regulation.

In December 2017, attorneys general from eleven states and the District of Columbia sent a follow-up [letter](#) to Congressional leadership expressing their strong opposition to the "deep and damaging" proposed cuts to EPA in the U.S. House and Senate fiscal year 2018 appropriations bills. The letter also expressed opposition to anti-environmental riders in the House and Senate bills, including withdrawing the Waters of the United States [rule](#), delaying the implementation of [ozone standards](#), and blocking the Bureau of Land Management's Methane Waste Prevention [rule](#).

Border Wall Construction

In August 2017, the Department of Homeland Security (DHS) announced that it would carry out various border wall projects in San Diego County in California, including the construction of prototype walls and fences and the replacement of 14 miles of existing primary and secondary fencing.

DHS subsequently attempted to exercise Section 102 of the Illegal



Immigration Reform and Immigrant Responsibility Act, which had authorized DHS to waive environmental reviews for post-September 11th wall construction; the authority lapsed in 2018.

California Attorney General Xavier Becerra filed a [suit](#) in the United States District Court for the Southern District of California in September 2017 against the projects based on DHS's inappropriate reliance on a lapsed statute, as well as its violations of the NEPA, the Administrative Procedure Act and the Coastal Zone Management Act.

Fighting So-Called Regulatory “Reform”

State attorneys general have been active in attempts to thwart legislation that would undermine the rulemaking process that has been used to adopt critical environmental safeguards. Under the guise of regulatory reform, the Regulatory Accountability Act (RAA) was introduced in the U.S. Senate in April 2017.

In June 2017, a coalition of attorneys general from eleven states and the District of Columbia sent a [letter](#) to Senate leadership expressing their strong opposition to the RAA. In the letter, state attorneys general objected to the proposed bill's requirements that trial-type proceedings be undertaken for certain “high impact” rules. Trial-type procedures have long been recognized as an ineffective and inefficient means for promulgating regulations, such as those protecting Americans from toxic chemicals.

The attorneys general also expressed concern that the RAA's requirement that an agency adopt the “most cost-effective” rule was similar to the type of vague requirement in the Toxic Substances Control Act (“TSCA”) that the agency adopt the “least burdensome alternative” that had effectively stopped EPA from regulating chemicals under TSCA.

The proposed legislation has stalled.

State Impact Center Hub of Attorney General Activity

Through at least 80 actions of all types, state attorneys general have sought to protect their states and constituents from a wide array of potentially harmful federal decisions. For a list and details of all attorney general actions, in reverse chronological order, visit the State Impact Center's [online hub](#). Actions can also be viewed on the hub from the following perspectives:

- **Regulatory & Policy Actions**

State attorneys general have weighed in routinely on critical issues affecting their state, and in ways often more significant than lawsuits in shaping policy or regulatory outcomes. In total, they have taken 43 actions of this nature, including formal comments and letters to Congress and federal agencies and departments. For a full list and details, visit the State Impact Center's [online hub](#).

- **Litigation**

Attorneys general have filed a total of 27 lawsuits on a range of issues, employing just one of many tools at their disposal to shape policy and regulatory outcomes. For a full list and details, visit the State Impact Center's [online hub](#).

- **State-by-State**

A complete state-by-state breakdown of actions taken by attorneys general can be viewed on the State Impact Center's [online hub](#).

- **Federal Agency/Department**

While actions have involved nine different federal agencies or departments, most actions have pertained to the Environmental Protection Agency or the Department of the Interior. For a full list and details, visit the State Impact Center's [online hub](#).

Looking Ahead: Propelling a Clean Energy Economy

In addition to the actions described above, state attorneys general are poised to play a key role in promoting the clean energy transformation that is reducing climate pollution while bringing innovation, competition, jobs, and new sources of domestic clean energy into electricity markets.

Background

Many state attorneys general represent the interests of electricity consumers in state and federal regulatory and judicial proceedings that shape consumers' access to clean energy, and address the financial benefits that can flow from consumer-oriented clean energy and energy efficiency innovations. And all state attorneys general have a statutory responsibility to ensure that as electricity markets evolve, state and federal environmental and energy laws are vigorously applied and enforced, along with laws that favor open access and competition.

The electricity sector is undergoing profound, rapid change as a variety of forces upend the traditional model of a monopoly-owned and operated system of power generation, transmission and delivery to captive customers:

- Fueled by progressive state climate and energy policies, cost-competitive renewable energy resources are playing an ever-larger role in electricity markets;
- Business and residential customers are developing distributed energy resources and insisting on a meaningful role in the power system, with many of the U.S.'s largest electricity customers committing to 100% renewable energy;
- New “smart grid” technology is enabling electricity systems to operate more resiliently and with significantly less idle capacity, open up two-way power and demand-response options, and aggregate distributed energy resources.

State attorneys general are playing an important role in promoting the transformation of our clean energy economy. In particular, attorneys general are fiercely protecting state clean energy prerogatives, encouraging increased competition and customer choice, and supporting the development of a more resilient and efficient grid.

Tracking Clean Energy Reforms

The State Energy & Environmental Impact Center will be tracking the important work of state attorneys general in promoting a clean, innovative & competitive electricity system. The State Impact Center will focus, in particular, on state attorney general activity in five primary focal areas:

- Protecting and promoting state and federal clean energy policies;

- Expanding residential and business customer opportunities to procure, save, store, and generate clean energy;
- Deploying smart grid tools and new rate structures that provide the backbone for a cleaner and more innovative, resilient, and customer-driven power system;
- Investing in capital and operating infrastructure that is needed, is competitively sourced, and will not crowd out clean energy options; and
- Insuring that customers are not overpaying for electricity services.

1. Protecting and Promoting State And Federal Clean Energy Policies

The rapid transformation of the electricity sector has been fueled, in part, by state renewable energy portfolio requirements, state policies that cap greenhouse gas emissions, and state actions that promote increased electrification of the industrial and transportation sectors. State attorneys general have had direct, and on-going, involvement in these issues.

The State Impact Center will highlight state attorneys general's activities in promoting and defending progressive state clean energy programs in administrative and judicial venues. The State Impact Center also will draw attention to state and federal policies that may discourage the development of clean energy, disproportionately favor incumbent fossil fuel sources of energy, and erect anti-competitive barriers to clean energy market entrants.

2. Expanding Residential and Business Customer Opportunities To Procure, Save, Store and Generate Clean Energy

Many of the U.S.'s largest electricity buyers are asking for direct access to renewable energy, including through local distribution facilities. Additionally, residential customers and communities are looking to participate in rooftop and community solar energy production, energy efficiency and storage initiatives, and in other distributed energy opportunities.

The State Impact Center will highlight attorneys general involvement in expanding innovation and competition through customer choice and participation in the electricity system, as well as in proceedings in which utilities and regulators may be inappropriately exercising utility monopoly power to erect barriers to access and innovation.

3. Deploying Smart Grid Tools and New Rate Structures That Provide the Backbone For a Cleaner and More Innovative, Resilient, and Customer-Driven Power System

Investing in technology and data-oriented grid improvements will reduce expensive redundancies and take full advantage of new grid capabilities that are available through

enhanced data management, access to new distributed energy and energy efficiency resources, increased energy storage capacity, and the like.

Competition for new grid investments, incentive-based rate structures, and new rate design structures will more effectively align utility revenue incentives with development of flexible, resilient platforms that maximize use of all available power resources. A truly smart grid will take full advantage of customer-based energy needs and solutions, including distributed energy and energy efficiency resources -- such as community-based solar and wind resources, micro-grids, and demand-response tools.

The State Impact Center will draw attention to innovative smart grid investments and location-based, time-of-day and similar rate design reforms, as well as contrasting examples of infrastructure investments that favor incumbent energy sources and practices, as well as outmoded rate structures that perversely award incumbent utilities with cost of service rates for building non-competitively sourced infrastructure that meets yesterday's needs, and not tomorrow's opportunities.

4. Investing in Capital and Operating Infrastructure That Is Needed, Is Competitively Sourced, and Will Not Crowd Out Clean Energy Options

The power sector continues to lean hard into large, capital-intensive projects, despite the explosion of new opportunities to meet tomorrow's electricity needs. Real reform includes searching for the best clean energy solutions that take full advantage of smarter grids, smarter rate design structures, customer participation, and other climate resilient solutions.

New infrastructure projects proposed by incumbent utilities must receive careful scrutiny. As a general matter, incumbent utilities' proposals should be competitively sourced, with a variety of options considered, including non-traditional infrastructure solutions that emphasize information technology and distributed energy-enabled solutions.

Likewise, state legal and policy interests must be taken into account when proposing pipelines and other infrastructure investments that implicate state environmental reviews and clean energy policies. "Need" determinations should be based on a broad set of factors, including state interests in promoting innovation, competition, and avoiding commitments that may crowd out cleaner energy options and burden energy consumers with expensive overbuilds.

The State Impact Center will chronicle progress in competitively sourcing major new infrastructure undertakings, while also pointing out situations in which incumbent utilities or affiliates are investing in expensive infrastructure that may undercut clean energy policy goals and limit the future deployment of clean energy options.

5. Insuring Customers Are Not Overpaying for Electricity Services

In a time of rapid change in the power industry, state attorneys general play an important role in ensuring that their constituents are not overpaying for electricity services.

The State Impact Center will track the economic interests of electricity customers, particularly where utilities are engaged in anti-competitive practices or seeking to spend ratepayer funds on questionable expenditures.

A recent example of needed diligence in this regard is the impact that Congress' recent slashing of utilities' tax rates. Because tax rates have been lowered, electric utilities are now sitting on billions of dollars in accumulated funds collected from their ratepayers that will no longer be needed to pay future taxes. Utilities have a presumptive obligation to return these funds, without delay, to the ratepayer/customers who advanced them.

About the State Energy & Environmental Impact Center

The State Energy & Environmental Impact Center (State Impact Center) is a non-partisan Center at the NYU School of Law that is dedicated to helping state attorneys general fight against regulatory rollbacks and advocate for clean energy, climate change, and environmental values and protections. It was launched in August 2017 with support from Bloomberg Philanthropies.

The State Impact Center provides assistance to attorneys general in a number of ways, including:

- Providing legal assistance to interested attorneys general on specific administrative, judicial or legislative matters involving clean energy, climate change, and environmental interests of regional and national significance.
- Working with interested attorneys general to identify and hire NYU Law Fellows who serve as special assistant attorneys general in state offices, focusing on clean energy, climate, and environmental matters.
- Helping to coordinate efforts across multiple state attorney general offices and with other parties that may be aligned with their interests.
- Identifying and coordinating pro bono representation for attorneys general.
- Serving as a centralized source of information for ongoing attorneys general initiatives and helping to enhance the public's understanding of the importance of the clean energy, climate change, and environmental matters that attorneys general are pursuing.

