



The State Energy &
Environmental Impact Center
NYU School of Law

The Proof is in the Policies

2021 Wins



December, 2021

“As attorneys general, it’s our job to be on the front line – combatting the climate crisis, protecting our environment, and advancing environmental justice. During the Trump Administration, we worked together to stand up against efforts to gut critical environmental laws. Now, our job is to make sure that we restore these vital protections and protect our most vulnerable communities. We look forward to continuing to work with the Biden Administration to advance our clean energy economy and to preserve the environment for our people and for future generations.”

— **Massachusetts Attorney General Maura Healey**

“With a remarkable 83 percent win-rate over the Trump administration’s harmful and dangerous policies against public health and the environment, attorneys general across the country are on the frontlines protecting our communities. From the air we breathe, to the water we drink, to the food we consume and more, we have been unwavering in our fight to protect and strengthen our nation’s health, safety, and environmental laws. I remain committed to working with my colleagues throughout the nation to support the safety and wellbeing of all our communities.”

— **New York Attorney General Letitia James**

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The end of 2021 remained busy with agency and congressional actions and developments; this report reflects actions and developments through December 10, 2021, with the exception of Figure 1, which contains data through November 30, 2021.

This report does not necessarily reflect the views of NYU School of Law.

Executive Summary

After four years of suing the Trump administration, in 2021, many different coalitions of state attorneys general (AGs) have kept up the pressure in court while also turning to agency advocacy to push for strong and protective federal energy and environmental policies. They are already making significant progress. Take state-level water quality standards. These standards protect some of the country's biggest rivers, beloved fishing waters in places like North Carolina, and the Sierra Nevada and Appalachia headwaters. The standards allow states to act quickly when a hog farm's waste lagoon overflows and to enforce state policies when a dam is being re-licensed. And the standards help control sedimentation and protect threatened salmon, among many other uses. But during the Trump administration, the states' ability to enforce their water quality standards was one of the many environmental protections that were rolled back. After President Biden's inauguration, the Environmental Protection Agency (EPA) announced it was reconsidering the rollback, but the agency balked in court and resisted a court order vacating it. A 21-state coalition was concerned that projects would be permitted while EPA reconsidered, risking irreversible harm, and pushed for vacatur. This October, a federal district court agreed with the coalition and vacated the Trump-era rule over EPA's opposition.¹ This was a win for clean water and all those who rely on it.

But that win was only one example among many. In 2021, beyond court, regulatory processes have been moving fast, leading to changes on many fronts, which are responsive to concerns expressed by AGs. Many advocates have contributed to bringing about these changes. AGs in particular have played a key role in building strong records while also pushing for policies that will address inequitable pollution burdens. This report highlights examples of energy and environmental policy gains in areas where multiple AG coalitions have been active, pushing the federal government to improve rules that have an impact on states and their people. It is far from a complete account of every single action and policy shift. But these highlights help make clear that policy changes addressing the concerns of many AGs have been occurring in many areas.

Climate change: At EPA, after congressional advocacy and lawsuits brought by a large coalition of AGs, there is a proposal to cut carbon emissions from vehicles to the tune of 2,200 million metric tons and methane emissions to the tune of 2.7 million metric tons. Another proposed rule will remove 41 million tons of methane emissions from the oil and gas industry between 2023 and 2035, and a final rule will cut hydrofluorocarbons 85% by 2036.

Air pollution: EPA in 2022 is required to approve or disapprove upwind states' plans for tackling smog pollution following a consent decree New York Attorney General Letitia James and other downwind states in the northeast negotiated. Once EPA acts on those plans, new limits in upwind states will help downwind states hit their smog reduction targets. And, after pressure from a California-led coalition, EPA is improving its process for analyzing restrictions on particulate matter emissions.

Clean energy: Massachusetts Attorney General Maura Healey pushed the Vineyard Wind offshore wind project to get back on track, which will in turn help meet the state's clean energy targets starting in 2023.² Mid-Atlantic AGs – Maryland, Delaware, and New Jersey – worked to ensure capacity auctions are held under rules favorable to states with clean energy plans beginning in 2022.³

Energy efficiency: Coalitions led by California Attorney General Rob Bonta and New York Attorney General James supported efforts to reinstate lightbulb efficiency standards and the Department of Energy's Process Rule. Just the lightbulb rule will save the planet millions of metric tons of greenhouse gas emissions and consumers billions of dollars when the rules are finalized in the coming year.⁴

Fossil fuel infrastructure: The Keystone XL pipeline and the Jordan Cove Liquefied Natural Gas export terminal will not move forward due in part to opposition to the fossil fuel projects led by the AGs of California and Oregon, respectively.

Clean water: After court and regulatory pressure from several states, EPA is considering an interpretation of its Clean Water Act jurisdiction which will be more protective than a definition advanced by the prior administration. In addition, after opposition from AGs and others, EPA adjusted its interpretation of groundwater protection under the Supreme Court's *County of Maui v. Hawai'i Wildlife Fund* case in a way that removed a harmful factor adopted under the prior administration. And AGs helped convince the Army Corps of Engineers to conduct a full environmental review of the proposed Formosa petrochemical plant under the Clean Water Act, which remains ongoing.⁵

Public lands: The AGs of California, New Mexico, New York, and Washington succeeded in convincing the Department of the Interior to lift an agency order that would have prohibited the Biden administration from pausing the federal coal leasing program. Also, following Washington Attorney General Bob Ferguson and other states filing an amicus brief, Grand Staircase-Escalante and Bears Ears National Monuments will not be shrunk as former President Trump announced.

Safety and toxics: The New York AG and eight others fought first at EPA and then the courts to secure an order that requires EPA to issue – which it now has – a rule banning the use of the harmful pesticide chlorpyrifos on food. Likewise, California and Massachusetts teamed up to lead an 11-state coalition to obtain a settlement with EPA which requires the agency to adopt a final rule by December 2022 to collect data on asbestos and asbestos-containing articles.

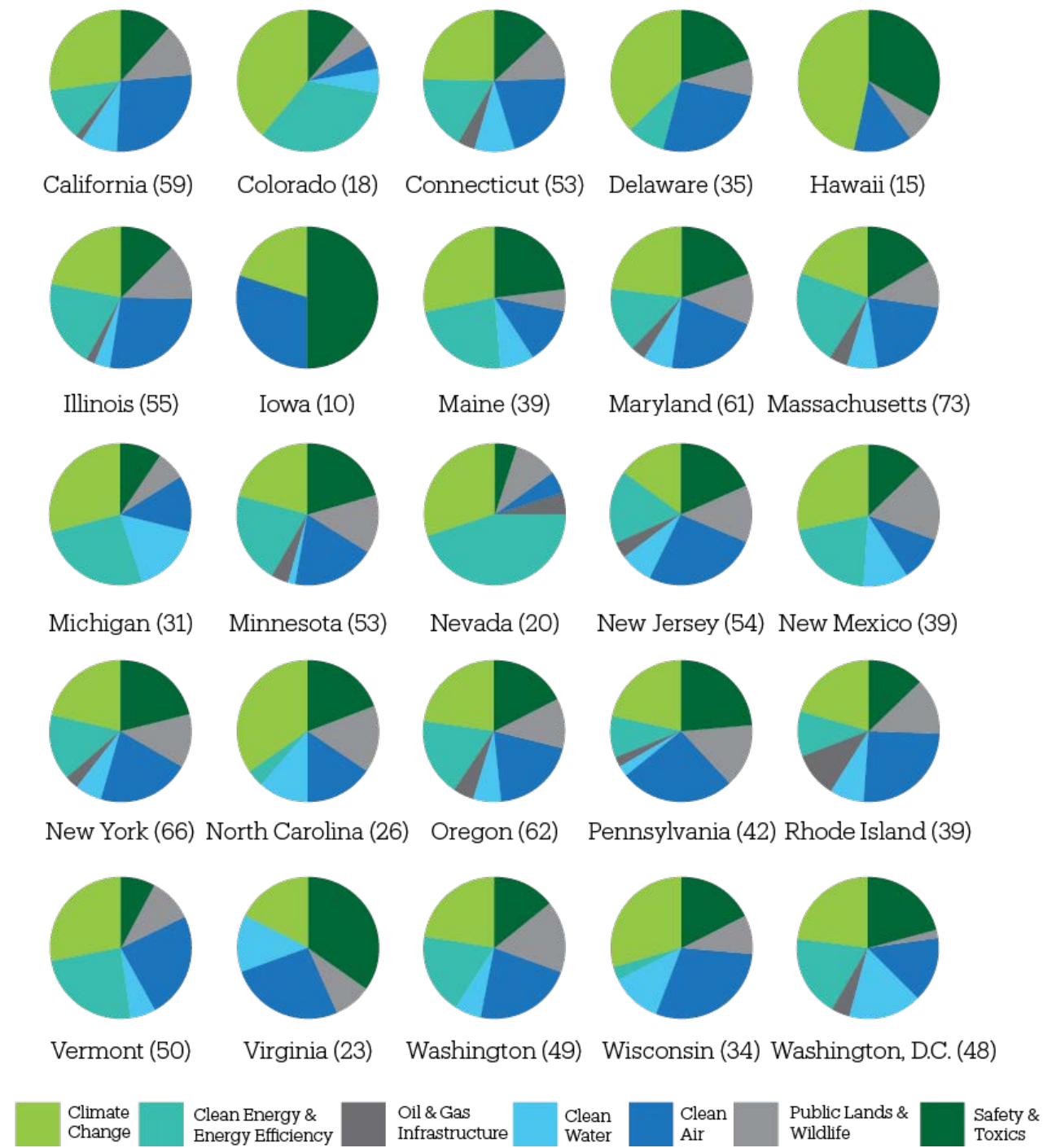
Wildlife: Migratory birds will receive more protection under their namesake statute, the Migratory Bird Treaty Act, than under the previous administration. The Department of the Interior dropped an appeal of a decision vacating an unlawful interpretation of the Act and scrapped a similar rule that allowed incidental taking of protected birds, after a New York-led coalition challenged both the unlawful interpretation and the Department’s new rule. And endangered species will be better protected under the Endangered Species Act after the AGs of California and Massachusetts challenged in court two rules that weakened protections provided by the statute. Regulations to rescind the rules have been proposed.

Environmental justice and other cross-cutting issues: AGs have raised important environmental justice implications in advocating for stronger air and water pollution control rules. This spring, New York AG James and four other AGs helped convince the Army Corps of Engineers to prepare a more detailed analysis of the environmental impact of a proposed petrochemical complex in Cancer Alley, an area that is over 85% Black and suffers from a high rate of health challenges. The new review remains pending. Cross-cutting rules saw changes as well. After then-California Attorney General Xavier Becerra led a 23-state lawsuit suing the Council on Environmental Quality, the agency has unveiled a proposal to eliminate some of the most harmful changes to the National Environmental Policy Act implementing regulations that were contained in a July 2020 rule. The proposal would improve federal environmental reviews. On another front, the so-called Secret Science Rule will no longer constrain EPA as it seeks to promulgate regulations protective of human health and the environment in part because a New York-led coalition of states sued the agency to ditch the rule.

* * *

The fight for strong federal environmental and energy policies continues, even as the Biden administration has declined to pursue ambitious policies on occasion. The aviation industry, which accounts for three percent of U.S. greenhouse gas emissions,⁶ is an example of this dynamic. In January 2021, prior to the Biden inauguration, EPA ignored concerns raised by AGs⁷ and finalized a rule that does not require aircraft in development to lower their emissions profile.⁸ Then-California AG Becerra and 12 other attorneys general filed a petition for review challenging the final rule.⁹ Despite a White House statement that the administration would seek ways to lower greenhouse gas emissions from the industry,¹⁰ EPA recently announced that it would not rewrite the Trump-era emissions rules.¹¹ The lawsuit will thus proceed. Both in court and at agencies, states will continue to push for strong environmental protections.

Figure 1. AG Actions by State — 2021



The Center’s AG Actions Database tracks actions of regional and national significance taken by state attorneys general to advance clean energy, climate, and environmental laws and policies. Figure 1 depicts the breakdown of state actions by issue area for states with 10 or more total actions in the Center’s database from January 1, 2021 through November 30, 2021. The total number of actions is listed in parenthesis next to each state. Please note, the database filters actions into more specific categories than the ones represented in Figure 1, and many state actions span multiple categories, so the actions were categorized into the issue that they align most closely with. While the Center strives to be thorough in recording state actions in the database, we cannot guarantee that every action is represented here.

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Introduction

Environmental protection, clean energy development, and environmental justice policies are on the agenda for the current federal administration.¹² But even with an administration interested in strengthening protections and clean energy growth, the process is not automatic or even easy. It requires a robust record at the agency level, which can be defended in court. Without a strong advocate in the room, whether at the regulatory stage or in court, positive results are far from guaranteed. States and attorneys general (AGs) are a key voice on policies that will affect people and their health and welfare across the country.

After spending the prior four years in court – where, as detailed in the Appendix, they racked up an 83% win rate – state AGs interested in strong environmental policy spent 2021 pushing for and obtaining major regulatory wins that have led to stronger public health and the environmental protections which also promote environmental and climate justice. Across eight issue areas – climate action, clean air, clean energy, clean water, public lands, safety and toxics, wildlife, and environmental justice and regulatory policy – many different coalitions of AGs have set a path for stronger environmental protection going forward.

Major Court and Policy Wins

Climate

Many AGs have been leaders on climate – advocating for U.S. leadership in responding to the climate crisis at the state, federal, and international levels.¹³ In 2021, the Environmental Protection Agency (EPA) began to act under its Clean Air Act obligation to cut greenhouse gas emissions from a wide range of sources; other climate action was taken at various levels of government, including the United States rejoining the Paris Agreement.

EPA Action

Following the Supreme Court’s 2007 decision in *Massachusetts v. EPA*¹⁴ and the agency’s subsequent 2009 determination that greenhouse gases are a threat to public health and the environment,¹⁵ EPA has been obligated to reduce harmful greenhouse gas emissions under the Clean Air Act. The work of attorneys general to ensure that EPA fulfills this responsibility by regulating emissions from vehicles, the oil and gas industry, refrigerants, and other sectors has seen exciting results.

Clean Cars

Multiple groups of attorneys general have spent 2021 fighting to take climate polluting vehicles off the nation’s roads. In 2019, then-California Attorney General Xavier Becerra led 24 AGs in urging EPA to reconsider its decision to withdraw California’s authority to set stronger greenhouse gas standards for vehicles sold in the state.¹⁶ In April 2021, EPA announced it was reconsidering its determination to withdraw California’s Clean Air Act authority to adopt

more stringent vehicle standards.¹⁷ In July, new California Attorney General Rob Bonta filed comments along with 21 other AGs in EPA’s reconsideration proceeding, reiterating that EPA lacked the authority to withdraw California’s authority.¹⁸ Reversing course on this issue will allow California and other states who decide to follow the California standards to slash vehicle-associated greenhouse gas emissions in the coming years.¹⁹

Attorneys general opposed the proposed rollback of the Clean Car Standards in 2018 as “a wholesale abdication” of EPA’s obligation under the Clean Air Act to reduce greenhouse gas emissions that threaten public health and the environment²⁰ and challenged the lawfulness of the final version of the rollback rule.²¹ In August 2021, EPA proposed strengthening the federal Clean Car Standards to cut more than 2,200 million metric tons of carbon emissions and 2.7 million metric tons of methane emissions.²² In September, California AG Bonta led 22 states in filing comments to “strongly support increasing the stringency of EPA’s greenhouse gas . . . emission standards”²³ in EPA’s revisions to its Clean Car Standards.²⁴ The multistate coalition argued in their comments that more stringent standards were necessary to meet environmental justice goals and protect residents, and that the short- and long-term impacts of laxer standards are “magnified” in communities that are disproportionately burdened from other sources of emissions.²⁵ The improved vehicle standards, once adopted, will help reduce climate pollutants from model year 2023 through 2026 vehicles.²⁶

As 2020 closed out and the calendar turned to 2021, AGs objected to the National Highway Traffic Safety Administration’s (NHTSA) latest attempt to delay a congressionally-mandated adjustment to the penalty vehicle-makers pay for violating fuel economy standards. For a third time in four years, the New York Office of Attorney General and environmental organizations warned that such a step was unsupported by the statute – and that issuing the rule without a comment opportunity was unlawful.²⁷ Two prior attempts, a suspension and then a repeal, were previously struck down in the U.S. Court of Appeals for the Second Circuit.²⁸

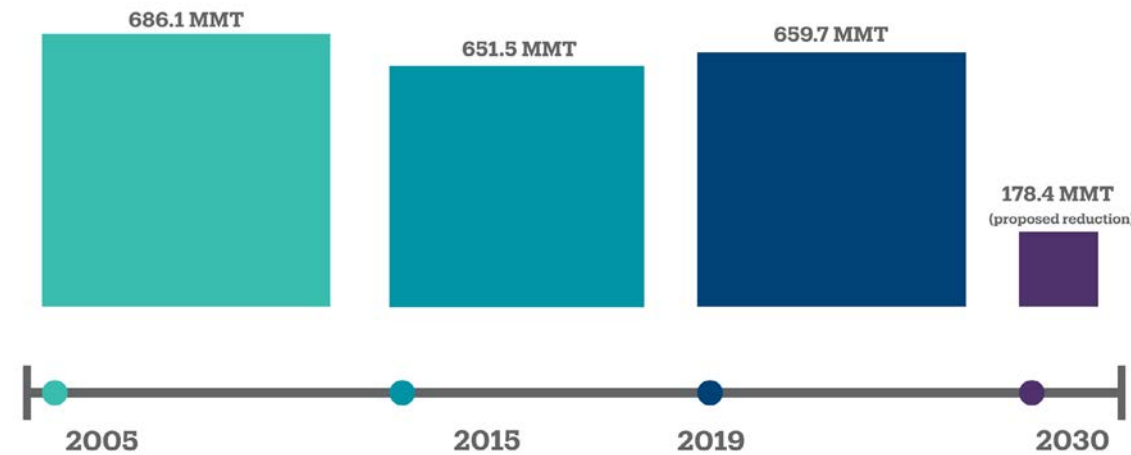
In the new year, after NHTSA had ignored these concerns and promulgated an interim final rule again putting off the adjustment,²⁹ 15 states led by New York Attorney General Letitia James returned to court to challenge the lawfulness of the interim rule.³⁰ In August 2021, NHTSA cited the New York Office of Attorney General letter, other state-led comments, and the February 2021 lawsuit in announcing it was reconsidering the interim final rule and invited comments on its action.³¹ The following month, California AG Bonta and New York AG James led 13 AGs in filing comments in support of reinstating the penalty.³² Taking that step would, going forward, provide better deterrence for automakers that may seek to violate fuel economy standards.

Methane Emissions

A coalition of attorneys general also insisted that EPA act to reduce methane – a short-lived, but potent greenhouse gas with a warming potential that is magnitudes higher than carbon dioxide³³ – from the oil and gas industry. In September 2020, EPA published a final rule³⁴ that eliminated its responsibility to reduce methane emissions from the entire industry – both existing and new sources – that account for approximately three percent of U.S. greenhouse gas emissions.³⁵ After challenging the September 2020 rule in court,³⁶ New York AG James led 21 AGs in pushing Congress to use the Congressional Review Act to repeal the rule.³⁷ The AGs argued that the risks to health and property from climate change “are often most severe in low-income communities and communities of color.”³⁸ Congress passed the resolution and the president signed it in June 2021.³⁹

Just a few months later, EPA, acting on the path that the AGs helped clear, issued a proposed rule to reduce methane emissions from the oil and gas industry.⁴⁰ The proposal is anticipated to cut methane emissions 74% from 2005 levels by 2030 and save 41 million tons of methane emissions between 2023 and 2035.⁴¹

Figure 2. Methane Emissions and Projected Reduction

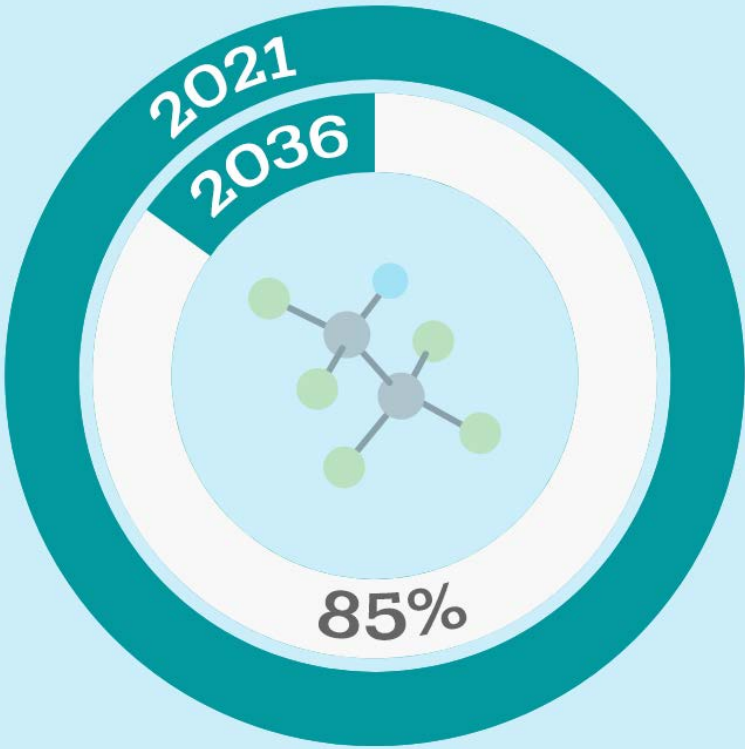


Source: [Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2019, EPA](#)

HFC Phasedown

Hydrofluorocarbons (HFC), a potent greenhouse gas used to cool products,⁴² has been a target of states. A coalition of AGs submitted testimony in support of legislation to phase down HFC emissions over 15 years.⁴³ In 2020, Congress then passed the American Innovation and Manufacturing (AIM) Act, which requires a 15-year phase-out period.⁴⁴ After that, Massachusetts Attorney General Maura Healey and California Attorney General Bonta marshalled 14 AGs in submitting comments on EPA’s proposal to fulfill its obligation under the statute to slash HFCs.⁴⁵ The AGs supported EPA’s proposed rule as a faithful implementation of the AIM Act’s “aggressive phasedown,” which will also protect the climate and create jobs.⁴⁶ In October 2021, EPA issued a final version of the rule as the first step in cutting HFC emissions 85% by 2036.⁴⁷

Figure 3. Reduction of HFC Emissions from EPA October 2021 Rule



Source: [EPA Final Rule - Phasedown of Hydrofluorocarbons](#)

Other Climate Action

Attorneys general have also secured climate victories outside of EPA-issued rules to reduce climate pollutants. These wins have included the reinstatement of the Federal Flood Standard, the United States rejoining the Paris Agreement, and the dropping of a challenge to a state climate program.

Federal Flood Standard

A coalition of attorneys general helped secure the reinstatement of the Federal Flood Standard in 2021. The Standard requires that rebuilds of infrastructure that is damaged or destroyed following a natural disaster account for climate-change risks.⁴⁸ In 2017, it was withdrawn by executive order.⁴⁹ At that point, six AGs led by the New York AG promptly wrote to Congress, urging it to enact a Federal Flood Standard in the wake of three destructive hurricanes that fall – Harvey, Irma, and Maria – to require “risk-reduction and resiliency measures” for federal projects in flood prone areas.⁵⁰ Congress failed to act. However, in May 2021, President Biden issued an executive order that reinstated the Standard, helping to ensure, as the AGs requested, that the federal government build back wiser from disasters in the climate age.⁵¹

Rejoining Paris Agreement

In 2015, nearly all of the Earth’s countries came together to adopt the Paris Agreement, a treaty to limit global temperature rise since the pre-industrial age to “well below 2°C,” if not 1.5°C.⁵² Parties to the Agreement develop nationally determined contributions (NDCs) to reach the global temperature goal⁵³ and work together to reduce greenhouse gas emissions, encourage decarbonization and electrification of the economy, and maximize the society-wide benefits of clean energy.⁵⁴ In 2017, President Trump announced his intent – it is a three year process – to withdraw the United States from the Paris Agreement.⁵⁵

Within days of President Trump’s announcement, 19 AGs pledged their continued support for the Paris Agreement and a commitment to help reduce greenhouse gas emissions.⁵⁶ On his first day in office in January 2021, President Biden had the United States rejoin the Paris Agreement.⁵⁷ As a result, the United States will participate in global efforts to keep global temperature rise to at most 2°C. In November 2021, the United States participated in the UN Climate Change Conference and agreed to end financing abroad for fossil fuel infrastructure while also reaching an agreement with China on climate action.⁵⁸

California Climate Program

California’s greenhouse gas emissions limitation program has been linked with the Canadian province of Quebec’s similar program since 2014.⁵⁹ The linkage of the two programs allows regulated parties in both jurisdictions to cost-effectively reduce greenhouse gas emissions.⁶⁰ Despite the program’s benefits, the Trump administration in 2019 sued California, alleging that the linkage violated the Treaty Clause, Compact Clause, and the Foreign Affairs Doctrine of the Constitution.⁶¹

Then-California AG Becerra spent the first half of 2020 filing motions for summary judgment to throw out the federal government’s complaint⁶² and Oregon Attorney General Ellen Rosenblum led 14 states in filing amicus briefs in support of California’s motions.⁶³ In a series of 2020 orders, a California federal district court sided with the AGs in finding that the linkage

agreement with Quebec is neither a “treaty” nor a “compact” under the Constitution⁶⁴ and that the agreement is not barred by preemption under the Foreign Affairs Doctrine.⁶⁵ In April 2021, the Biden administration dropped the appeal of the lower court’s decision.⁶⁶

Clean Air

In 2021, AGs notched a series of victories that will help ensure cleaner air and protect human health from the dangers of exposure to ozone and particulate matter. Emissions from industrial facilities, power plants, and motor vehicles contribute to ozone pollution.⁶⁷ Ozone pollution causes smog, which can lead to asthma and other adverse health effects.⁶⁸ Particulate matter is emitted from many sources, including construction sites, unpaved roads, smokestacks and fires.⁶⁹ It is also a mixture of solid particles and liquid droplets, such as dust, dirt, or smoke.⁷⁰ Once inhaled, particulate matter can enter lungs and the bloodstream causing a host of health problems: heart disease, asthma, and respiratory illnesses, such as chronic obstructive pulmonary disease.⁷¹

Ozone Pollution

In January 2021, New York AG James led a coalition of five northeastern states in filing a complaint against EPA in federal district court to act by a “date certain” on upwind states’ plans for reducing ozone emissions that drift hundreds of miles into downwind states.⁷² Suing under the Clean Air Act’s Good Neighbor Provision, the AGs argued that EPA had failed to approve or disapprove upwind states’ State Implementation Plans (SIPs) within the statutorily required timeline.⁷³ Because the pollution travels across state borders, the AGs explained that approving compliant SIPs or disapproving non-compliant SIPs – which triggers EPA’s obligation to promulgate backstop Federal Implementation Plans and thus emission limits – was needed so that the downwind states could achieve their ozone target.⁷⁴ In addition, the AGs stressed the environmental justice implications of EPA’s failure to act by explaining that “[p]eople of color and those living below the federal poverty standard disproportionately bear the consequences of ozone pollution.”⁷⁵

In November 2021, after public comment, the states and EPA filed a proposed consent decree with the court, which requires the agency to approve or disapprove the upwind states’ plans by April 30, 2022.⁷⁶ The consent decree was approved by the court that same month.⁷⁷

Particulate Matter

In November 2019, then-California AG Becerra led AGs in raising concerns about the process EPA employed to develop its draft Policy Assessment for particulate matter.⁷⁸ Notably, in discussing the health hazards of exposure to particulate matter, the AGs stressed that “studies consistently show environmental justice communities continue to be exposed to and are disproportionately impacted by health-harming levels of PM.”⁷⁹ The draft Policy Assessment was not reviewed by the Clean Air Scientific Advisory Committee Particulate Matter Review Panel.⁸⁰ The draft Policy Assessment is used to determine whether to strengthen particulate matter air quality standards.⁸¹ In October 2021, responding to the concerns of the AGs, EPA released a revised draft Policy Assessment, which will be reviewed by the Review Panel.⁸²

Clean Energy, Energy Efficiency, and Energy Projects

Cleaning the country’s energy supply is a critical part of the response to the climate crisis because the power sector is the second largest sectorial source of climate pollutants.⁸³ Attorneys general have been leaders in the work to decarbonize the power sector by supporting state clean energy goals, including advocating for offshore wind projects and opposing energy market rules that punish state clean energy programs; advocating for greater public engagement; promoting energy efficiency standards to cut emissions and save money; and fighting the development of fossil fuel infrastructure.

State Clean Energy Goals

Many states have adopted clean energy programs that require an increasing percentage of a state’s energy portfolio to come from clean or renewable sources.⁸⁴ Key to states hitting their clean energy goals is often specific renewable projects – such as the Vineyard Wind project off the coast of Massachusetts – and ensuring that state-supported clean energy programs can fairly compete in wholesale electricity markets. In 2021, state AGs have been instrumental in ensuring that states can meet their clean energy goals by removing procedural barriers to the build out of Vineyard Wind and to the participation of clean energy in the PJM mid-Atlantic regional electricity market.

Vineyard Wind

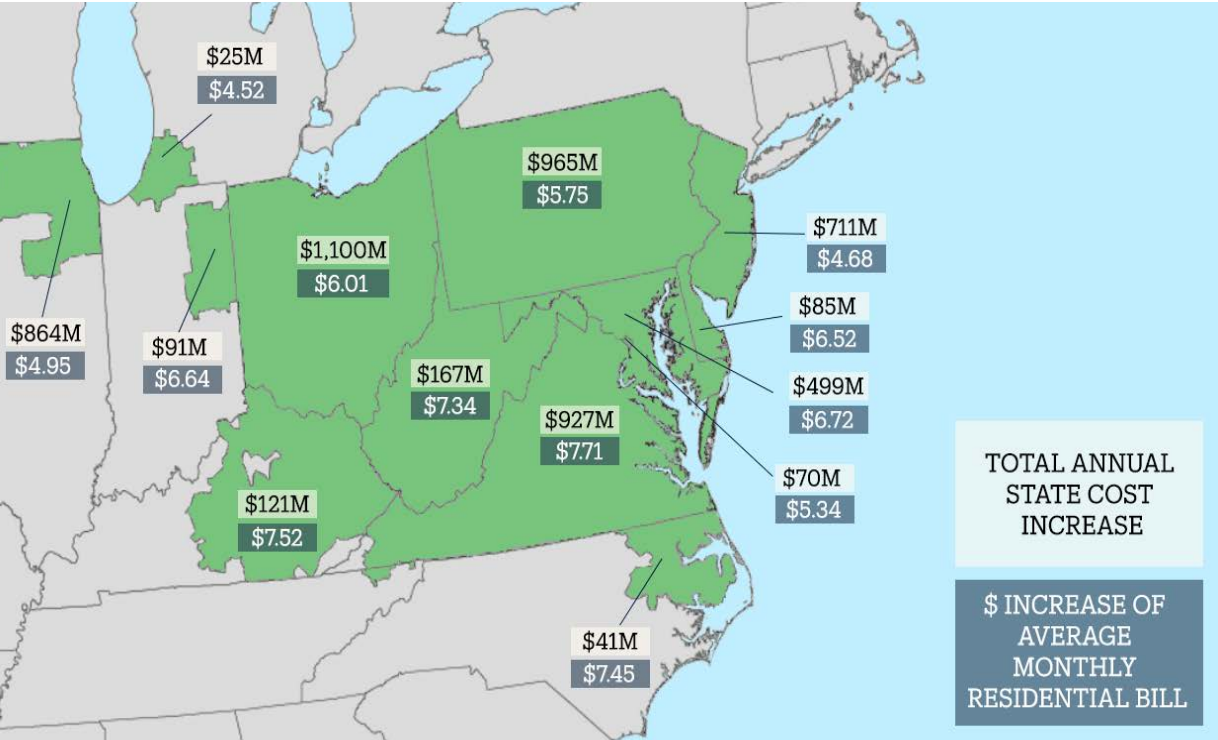
In July 2020, Massachusetts AG Healey explained in comments to the Bureau of Ocean Energy Management (BOEM) that the 800-MW Vineyard Wind offshore wind energy facility “is an important component of Massachusetts’ clean energy future that is expected to provide substantial energy cost-savings to ratepayers.”⁸⁵ At the time BOEM had prepared a draft Environmental Impact Statement and then announced that its Record of Decision would be delayed while it prepared a Supplement to the draft. AG Healey urged BOEM to complete “robust, comprehensive environmental reviews,” stay on schedule, and issue the Record of Decision no later than December 18, 2020.⁸⁶ AG Healey also discussed the importance of the project’s reduction in pollution, explaining that “energy and industrial facilities are heavily concentrated in low-income communities and communities of color” and these communities face disproportionate impacts of air pollution.⁸⁷ The comments also pointed out how the environmental factors that have “exacerbated the unequal impact of the COVID-19 pandemic on these communities could be minimized through investment in and development of clean energy generation.”⁸⁸ But on December 16, BOEM issued a notice that it was terminating the environmental review process for the project.⁸⁹ Early in the Biden administration, that decision was reversed, the project’s robust environmental review was finalized as AG Healey had urged, and the project is now back on track, with the Record of Decision issued in May 2021.⁹⁰ In November 2021, the project held a groundbreaking ceremony,⁹¹ and construction is expected to be completed by 2023.

Clean Energy in PJM Markets

A coalition of state AGs in the mid-Atlantic regional transmission organization, PJM, have pushed to protect consumers and state clean energy goals in the face of a market rule that was designed to restrict the participation of clean energy resources in PJM’s capacity market, known as the expanded minimum offer price rule (MOPR).⁹² The rule would have increased costs for consumers and stood in the way of decarbonizing the grid.⁹³ The capacity market operates as a forward auction to ensure that resources will be available in the future to meet the region’s needs. As Maryland Attorney General Brian Frosh, Delaware Attorney General Kathleen Jennings, and then-New Jersey Attorney General Gurbir Grewal wrote: the Federal Energy Regulatory Commission (FERC) “tipped the scales governing PJM’s capacity market to direct payments away from new clean energy resources and instead towards the owners of existing, primarily fossil fuel fired, power plants.”⁹⁴

As legal challenges were brought, states explored alternatives to participating in the PJM capacity market.⁹⁵ In response, PJM began to reverse course. Working with its stakeholders, PJM initiated a process to reform the problematic expanded MOPR – in a way that would better accommodate state clean energy policies.⁹⁶ In August 2021, PJM filed the new MOPR proposal with FERC.⁹⁷ In September 2021, PJM’s proposal went into effect by operation of law.⁹⁸ Section 205 of the Federal Power Act states that a filing made under section 205 will go into effect 60 days after it is made “[u]nless the Commission otherwise orders.”⁹⁹ In this case, two FERC commissioners would have rejected the filing¹⁰⁰ and two would have accepted it¹⁰¹; down a commissioner and thus absent a tie-breaking vote, the filing went into effect.

Figure 4. Cost Impact of Expanded PJM MOPR



Source: Image - [PJM](#); Data - [Consumer Impacts of FERC Interference with State Policies, Grid Strategies](#)

Several parties, including the PJM Power Providers Group¹⁰² and the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio,¹⁰³ have sought rehearing to challenge FERC’s inaction, arguing that the new MOPR is not just and reasonable. On the other side, the New Jersey Board of Public Utilities and Acting-New Jersey Attorney General Andrew Bruck argued that FERC should have accepted the new MOPR because it meets the statutory standard of just and reasonable and not unduly discriminatory.¹⁰⁴ After the rehearing requests were deemed denied,¹⁰⁵ the PJM Power Providers Group¹⁰⁶ and the Electric Power Supply Association¹⁰⁷ filed petitions for review in the U.S. Court of Appeals for the Third Circuit challenging the new MOPR. However, clean energy advocates are hopeful that its harmful effects are firmly in the rearview mirror and are moving on to address other issues in PJM’s capacity market.¹⁰⁸

Office of Public Participation

FERC has been working to establish its Office of Public Participation this year. Prompted by a directive in the omnibus appropriations bill at the end of 2020, FERC undertook a proceeding to set up the office, which has actually been included in federal law since 1978.¹⁰⁹ Massachusetts AG Healey led a coalition of nine attorneys general in comments advising on the structure and practices of the office.¹¹⁰ They pointed to numerous state programs that work to increase public awareness around energy issues and urged FERC to engage with equity and environmental justice concerns around the clean energy transition.¹¹¹ A representative from AG Healey’s office also participated in a FERC hearing to gather information about the office, pointing out how FERC might increase its public engagement across its different types of proceedings.¹¹² In June, FERC established the office, setting up a framework that was consistent with much of what the AGs had suggested.¹¹³

Energy Efficiency

The Department of Energy (DOE) develops energy efficiency standards for consumer and commercial products under the Energy Policy and Conservation Act (EPCA). These standards produce substantial savings. The national standards program through 2016 was estimated to save 71 quadrillion British thermal units of energy (quads) by 2020 and nearly 142 quads through 2030.¹¹⁴ The associated savings to consumers is estimated to be over \$1 trillion by 2020 and over \$2 trillion by 2030.¹¹⁵ The Trump administration attempted to use procedural devices to make it more difficult to establish strong standards. In 2021, AGs successfully advocated for a robust energy efficiency program to curb emissions and save consumers money, as well as for DOE to follow the law.

Dishwashers, Clothes Washers, and Dryers

In fall 2020, DOE published two final rules that established new product classes for shorter-cycle dishwashers, clothes washers, and clothes dryers, which would be exempt from current energy and water efficiency standards.¹¹⁶ Attorneys general had opposed the proposals, arguing, among other things, that the actions were not supported, and violated EPCA as well as the National Environmental Policy Act (NEPA).¹¹⁷ In December 2020 and January 2021, then-California AG Becerra led a coalition of 15 AGs in petitions for review of each rule.¹¹⁸ In August 2021, DOE issued a proposal to revoke these two earlier rules and revert to the product classes as they stood before these two rules, which conserve water and energy, decreasing emissions.¹¹⁹

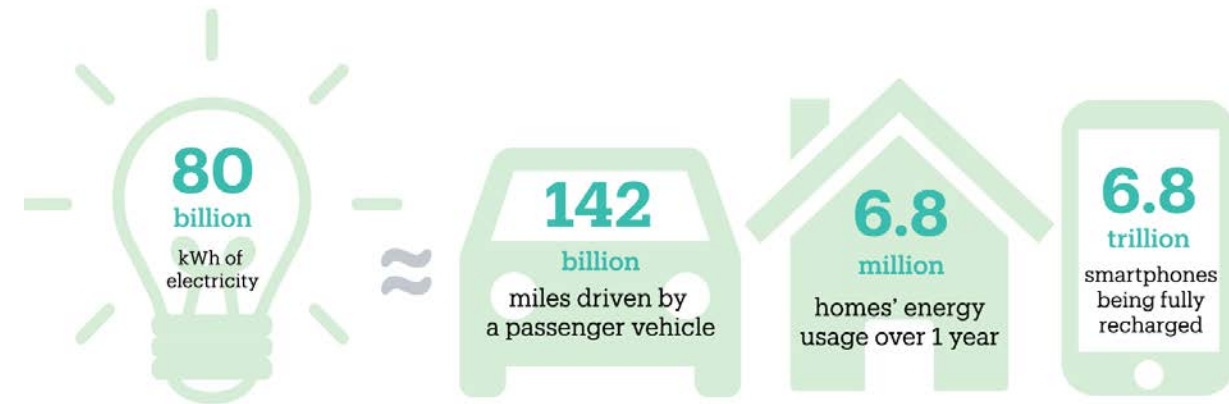
Furnaces and Water Heaters

In response to an October 2018 petition for rulemaking from the gas industry,¹²⁰ DOE proposed and eventually finalized on January 15, 2021 an interpretative rule that certain technologies in residential gas furnaces and commercial hot water heaters are “performance characteristics” under EPCA.¹²¹ This interpretation would prevent DOE from adopting an energy efficiency standard that would result in the commercial unavailability of these technologies in furnaces and water heaters. New York AG James led coalitions in several sets of comments opposing this move, arguing that calling these technologies “performance characteristics” went against prior DOE conclusions and the energy costs associated with doing so.¹²² Attorney General James led a coalition of 12 states and the City of New York in a petition for review of the final rule.¹²³ In August 2021, DOE proposed to return to its prior, long-standing interpretation that the technologies in question are not performance characteristics.¹²⁴

Lightbulbs

In February 2019, DOE proposed to revise the definitions for “general service lamp,” “general service incandescent lamp,” and some other terms in a way that would have the effect of excluding approximately half of lightbulbs used in common lamp sockets from strengthened efficiency standards.¹²⁵ Then-California AG Becerra led a coalition of 16 AGs in opposing the change as inconsistent with EPCA’s anti-backsliding provision and in violation of the Administrative Procedure Act.¹²⁶ DOE nonetheless finalized the rule¹²⁷ – excluding billions of consumer lightbulb products from stronger efficiency standards – and then-AG Becerra and New York AG James led a coalition in filing a petition for review.¹²⁸ In August 2021, DOE proposed to revert to earlier definitions,¹²⁹ which AGs supported, calling the change “long overdue.”¹³⁰ The AGs had argued that these earlier definitions will conserve approximately 80 billion kWh of electricity annually, with an associated savings equal to nearly \$100 per household per year, by 2025.¹³¹

Figure 5. Estimated Energy Savings of Restored Definition of General Service Incandescent Lamps Annually by 2025



Sources: [California et al., Comments on Energy Conservation Standards for General Service Lamps 2 \(May 3, 2019\)](#); [EPA Greenhouse Gas Equivalencies Calculator](#)

Process Rule

In addition to stalling or reversing efficiency progress for specific products, DOE also tried to undercut efficiency standards through process revisions. In February 2019, DOE proposed to revise the 1996 Process Rule that guides DOE in establishing new or revised standards for consumer products.¹³² As a coalition of 15 AGs led by then-California AG Becerra insisted, the proposed revisions would create obstacles to timely meeting EPCA’s requirements.¹³³ DOE largely ignored the AGs’ concerns and finalized the rule in January 2020,¹³⁴ and the AGs challenged the final rule in court.¹³⁵ In April and July 2021, DOE proposed revisions consistent with its longstanding administration of the Process Rule.¹³⁶ DOE recently issued a final rule addressing its April 2021 proposal,¹³⁷ a big step towards removing obstacles to updating its energy efficiency standards.

Oil and Gas Infrastructure

Attorneys general have worked to ensure that local, state, and federal laws are enforced for oil and gas infrastructure projects and that these projects are needed, have undergone robust environmental reviews, and are overall in the public interest. Recently, developers have cancelled some projects in the face of this legal and regulatory scrutiny.¹³⁸

Portland Pipe Line Corp.

The City of South Portland, Maine has a 2014 zoning ordinance, the Clear Skies Ordinance, that prohibits the export and bulk loading of crude oil. Portland Pipe Line Corporation planned to reverse the flow through an existing pipeline in order to transport crude oil from its facility

in Canada to South Portland, and load it onto tankers. In order to make that possible, the company challenged the City’s ordinance in 2015.¹³⁹ The district court rejected the company’s arguments.¹⁴⁰ On appeal, Massachusetts AG Healey led a coalition of 14 AGs in support of South Portland’s exercise of its authority, explaining that they had a “strong interest” in ensuring that state and local governments could exercise their authority to “address local threats to public health, welfare, and the environment.”¹⁴¹ Portland Pipe Line Corporation ultimately dropped its challenge, following multiple court losses, announcing that it would no longer seek to reverse the flow of the pipeline.¹⁴²

Jordan Cove LNG

In March 2020, FERC issued orders authorizing the construction and operation of the Jordan Cove liquefied natural gas (LNG) terminal in Oregon and the Pacific Connector Pipeline to carry gas to the terminal.¹⁴³ These authorizations were conditioned on the projects securing state approvals under the Clean Water Act and the Coastal Zone Management Act. Oregon argued on appeal that FERC should not have granted such conditional authorization and that FERC violated NEPA in failing to consider adverse effects on wetlands and the project’s contribution to climate change.¹⁴⁴ In April 2021, the developer paused its work to assess recent state permit denials.¹⁴⁵ Litigation proceeded, though, and oral argument was held at the end of October. Several days later, the court remanded the record to FERC to consider whether to impose a stay on the authorization of the pipeline in light of the developer’s reassessment of the project.¹⁴⁶ The case remains pending before FERC, where FERC has requested briefing, but in December 2021, Jordan Cove requested that FERC vacate the authorizations for the project, which would moot the stay question.¹⁴⁷

Keystone XL Pipeline

The Keystone XL Pipeline was a proposed expansion to an existing system to transport crude oil from Alberta, Canada and the Bakken shale formation in Montana to Nebraska. It would cross nearly 1,000 bodies of water and raised significant concerns about adverse effects on water quality, habitat, and endangered species. Tribes, landowners, and environmentalists had opposed the project for years. In July 2019, environmental groups filed suit challenging the project – specifically, the Army Corps of Engineers’ reissuance of Nationwide Permit 12.¹⁴⁸ Then-California AG Becerra led a coalition of 12 AGs in an amicus brief in December 2020, arguing that the reauthorization of the Permit violated the Endangered Species Act.¹⁴⁹ In January 2021, the Biden administration revoked a construction permit, and later the project developer announced cancellation of the project.¹⁵⁰

Clean Water

The Clean Water Act regulates the discharge of pollutants into protected “waters of the United States.”¹⁵¹ The statute prohibits the unpermitted direct discharge of pollutants from a “point source” into “waters of the United States.”¹⁵² Under Section 401 of the Clean Water Act, federally-permitted projects that may discharge into navigable waters must get a certification from the relevant state that the project meets state water quality standards.¹⁵³ In 2021, the states achieved many victories as they worked to see the Clean Water Act protect the country’s water resources by advocating for an extensive definition of “waters of the United States,” urging EPA to reverse an agency interpretation of a direct discharge from a point source, and suing to safeguard states’ ability to fully exercise their Clean Water Act Section 401 authority.

Clean Water Act Jurisdiction

State AGs have advocated for an interpretation of the statute’s scope that provides protections for bodies of water that play important roles in watershed health. In July 2015, EPA’s Clean Water Rule clarified what wetlands and bodies of water are subject to Clean Water Act protections, largely conforming to decades of policy.¹⁵⁴

In 2017, EPA and the Army Corps of Engineers undertook efforts to rescind or revise that rule and limit the scope of the Clean Water Act. A coalition of state AGs consistently opposed those efforts.¹⁵⁵ New York AG James led a multistate coalition in opposing the proposed rollbacks as antagonistic to the Clean Water Act’s protective objectives, reducing protections for a number of important water resources.¹⁵⁶ Nonetheless, in October 2019, EPA repealed the 2015 rule.¹⁵⁷ In 2020, EPA revised the definition further, vastly restricting protections for wetlands and tributaries.¹⁵⁸ Washington AG Bob Ferguson reacted to the rule by bringing attention to the fact that the impacts of eliminating Clean Water Act protections for many bodies of water “will be felt disproportionately by those already struggling with access to clean water.”¹⁵⁹ Multiple AGs and environmental organizations sued.¹⁶⁰

In August and September 2021, two separate courts vacated EPA’s 2020 definition.¹⁶¹ In December 2021, EPA and the Department of the Army released a proposed rule that would revise the definition of WOTUS to reflect the agencies’ pre-2015 interpretation of the term.¹⁶² EPA and the Army Corps of Engineers have said they will begin another rulemaking.¹⁶³

Groundwater Permitting

In the case *County of Maui v. Hawai’i Wildlife Fund*, the Supreme Court decided that discharges from a “point source” through groundwater to navigable waters are regulated under the Clean Water Act where the discharge is the “functional equivalent” of a direct discharge from the point source into navigable waters.¹⁶⁴ EPA on January 14, 2021 issued guidance implementing *County of Maui*, which, as a multistate coalition of AGs led by Maryland AG Frosh and other opponents argued, added a factor inconsistent with the Court’s decision that was also “harmful as a policy matter.”¹⁶⁵ In September 2021, EPA rescinded the guidance document, noting that the additional factor “skewed the ‘functional equivalent’ analysis in a way that could

reduce the number of discharges requiring a National Pollution Discharge Elimination System (NPDES) permit.”¹⁶⁶ While EPA is considering next steps, it is returning to its past practice of determining when a discharge from a point source through groundwater requires a Clean Water Act permit.¹⁶⁷

Clean Water Act Permits and Environmental Justice

In 2021, AGs helped convince the Army Corps of Engineers to undertake a full environmental review of the proposed Formosa Plastics petrochemical complex in St. James Parish, Louisiana. The complex is proposed to be located in the region often referred to as “Cancer Alley” due to the concentrated number of industrial facilities that spew cancer-causing pollutants in predominately Black and low-income neighborhoods.¹⁶⁸ In January 2020, a coalition of environmental justice organizations filed a lawsuit in the U.S. District Court for D.C. challenging the Clean Water Act Section 404 permit authorizing dredge and fill activities needed to construct the proposed complex.¹⁶⁹ In November 2020, the Army Corps of Engineers announced it was suspending and reevaluating the permits granted to Formosa.¹⁷⁰ In May 2021, a coalition of five AGs led by New York AG James submitted comments urging the Corps to broaden the scope of its reevaluation to include the environmental justice and climate implications of issuing the permit.¹⁷¹ The AGs argued that the Formosa plant would be built in a community that is over 85% Black and suffers from a disproportionately high rate of health problems including cancer, asthma, and heart disease.¹⁷² The coalition stressed the importance of preparing an environmental impact statement in order to properly analyze the extent of the significant environmental and health impacts of the complex – and in August, the Corps announced it would prepare an environmental impact statement to do just that.¹⁷³

State Water Quality Certification Rule

In July 2020, EPA finalized a rule severely limiting state authority under Section 401 of the Clean Water Act.¹⁷⁴ The rule imposed a strict time limit on state review and restricted what states may consider in their review. Then-California Attorney General Becerra, Washington Attorney General Bob Ferguson, and New York Attorney General James led a coalition of 21 AGs in a challenge to the July 2020 rule.¹⁷⁵

In June 2021, EPA issued a notice of intent to reconsider its earlier rule, raising, among other issues, the timing and scope of state review.¹⁷⁶ The agency then moved to remand the rule without vacatur.¹⁷⁷ Washington AG Ferguson and California AG Bonta led a coalition in opposing EPA’s request to remand without vacatur, asserting that remand would prejudice the states because the 2020 certification rule eliminates critical environmental protections.¹⁷⁸ In October 2021, the court vacated and remanded the rule to EPA.¹⁷⁹ The court started its analysis of whether or not to vacate the rule with what AGs had “asserted . . . [was] the most glaring deficiency in the current certification rule:” the scope restriction.¹⁸⁰ The court proceeded to vacate the rule, putting EPA’s previous water quality certification rule in place while EPA works on a new rule.¹⁸¹

North Carolina and the Bynum Hydroelectric Project

In addition to the Section 401 rulemaking, AGs are also active in defending state exercise of 401 authority in individual cases. In its orders issuing a license to operate and maintain the Bynum Hydroelectric Project, FERC had found that North Carolina, the relevant state, waived its authority to issue a water quality certification.¹⁸² Although North Carolina did issue the certification, it included several conditions in order to comply with state water quality standards, which FERC declined to include based on its evaluation of when the statutory review period concluded. North Carolina Attorney General Josh Stein and the North Carolina Department of Environmental Quality appealed.¹⁸³ Washington AG Ferguson led a multistate coalition in an amicus brief in support of North Carolina.¹⁸⁴ In July 2021, the Fourth Circuit agreed with the states, finding “that FERC’s key factual findings underpinning its waiver determination are not supported by substantial evidence.”¹⁸⁵ The court directed FERC to include the state’s water quality conditions in its license order.

Public Lands

The nation’s public lands represent our shared natural and cultural heritage. Throughout 2021, AGs achieved protections for public lands in several cases. The wins have included the withdrawal of a rule that would have prevented a fair rate of return for Americans for mining conducted on public lands and revoking an order that would have prohibited adoption of a moratorium on coal mining on federal lands. States also helped fully restore the Grand Staircase-Escalante and Bears Ears National Monuments out west and secure the preparation of a more robust Supplemental Environmental Impact Statement for an oil and gas leasing program in Alaska’s Coastal Plain.

Mining Valuation Rule

In November 2020, then-California Attorney General Becerra and New Mexico Attorney General Hector Balderas opposed the Department of the Interior’s proposal to gut a 2016 rule that had reformed the valuation procedures applied to royalties charged for mining on public land.¹⁸⁶ The two AGs had previously won two lawsuits against Interior’s prior attempts to suspend and then delay the 2016 reform.¹⁸⁷ The comments argued that the new rollback violated the Administrative Procedure Act and that it would have resulted in a loss of \$42 million in royalties for the states, while the federal government would face an additional \$2 million in administrative costs.¹⁸⁸ The AGs argued that the agency had failed to provide any reasoned explanation for the rule and that it failed to consider how the rule change would have had the opposite effect of the stated intent of the original rule.¹⁸⁹ Following the comments by the AGs and others, in September 2021, Interior published a final rule withdrawing the Trump administration’s rule citing procedural issues, unjustified changes to valuations, and flawed economic analysis.¹⁹⁰

Coal Moratorium

In 2017, then-AG Becerra of California, joined by the AGs of New Mexico, New York, and Washington, filed suit to challenge the Trump administration’s decision to resume the federal coal leasing program without conducting any new environmental review.¹⁹¹ After a 2019 decision finding that the proposed action was a “major federal action” requiring NEPA review,¹⁹² the Trump administration conducted an environmental review and moved forward with the planned coal leasing program.¹⁹³ The coalition filed a supplemental complaint in 2020, challenging the adequacy of the environmental review and arguing that the program may not be in the public interest or guarantee fair market value for the resources to the public.¹⁹⁴ The coalition highlighted that the review only analyzed four out of 300 existing leases and considered only a limited number of environmental issues posed by those leases.¹⁹⁵ It emphasized the serious negative impacts of climate change, caused by burning coal, on the challenging states and the negative environmental impacts of coal transportation on disproportionately impacted communities.¹⁹⁶ In April 2021, the Department of the Interior revoked the Secretarial Order which had allowed the coal leasing program to resume.¹⁹⁷ The revoking Order highlighted the need to preserve the environment, protect disproportionately impacted communities, and reduce greenhouse gas emissions.¹⁹⁸

National Monuments

A coalition of 11 AGs, led by Washington AG Ferguson filed an amicus brief in federal district in 2018, supporting a suit challenging the Trump administration’s decisions drastically shrinking the Grand Staircase-Escalante and Bears Ears National Monuments.¹⁹⁹ The AGs argued the proposed reductions overstepped the President’s authority, unbalanced the relationship between states and the federal government regarding management of federal lands, and were contrary to the basic purposes of the Antiquities Act, which empowers presidents to preserve national monuments.²⁰⁰ The AGs highlighted the risks posed to the unprotected lands by fossil fuel and mineral development, as well as the environmental, historical, and cultural importance of the monument lands.²⁰¹ In October 2021, the Biden administration announced that it had restored protection for three national monuments, including the Grand Staircase-Escalante and Bears Ears National Monuments.²⁰² In its announcement, the administration emphasized the environmental, historical, and cultural importance of the monuments.²⁰³

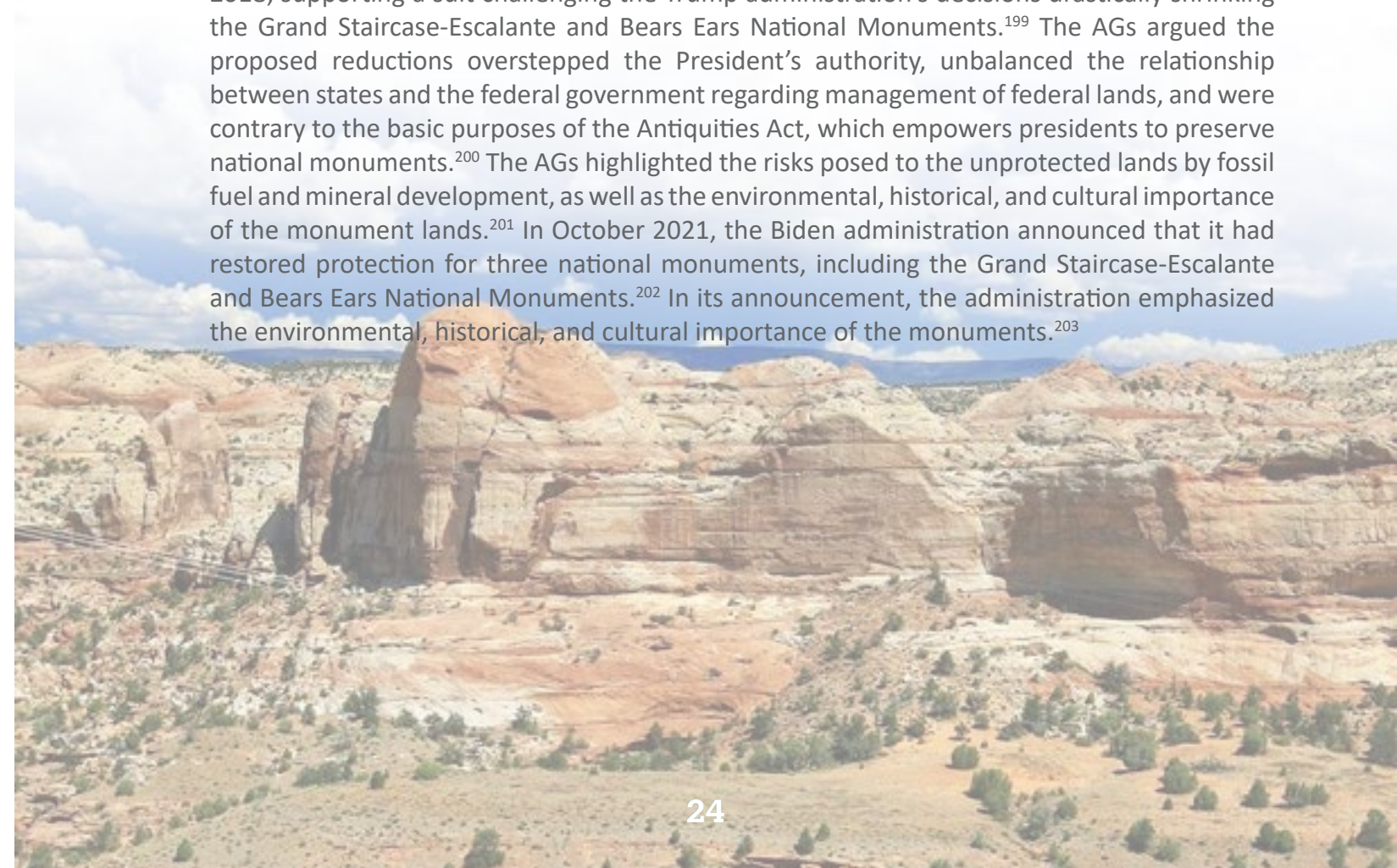
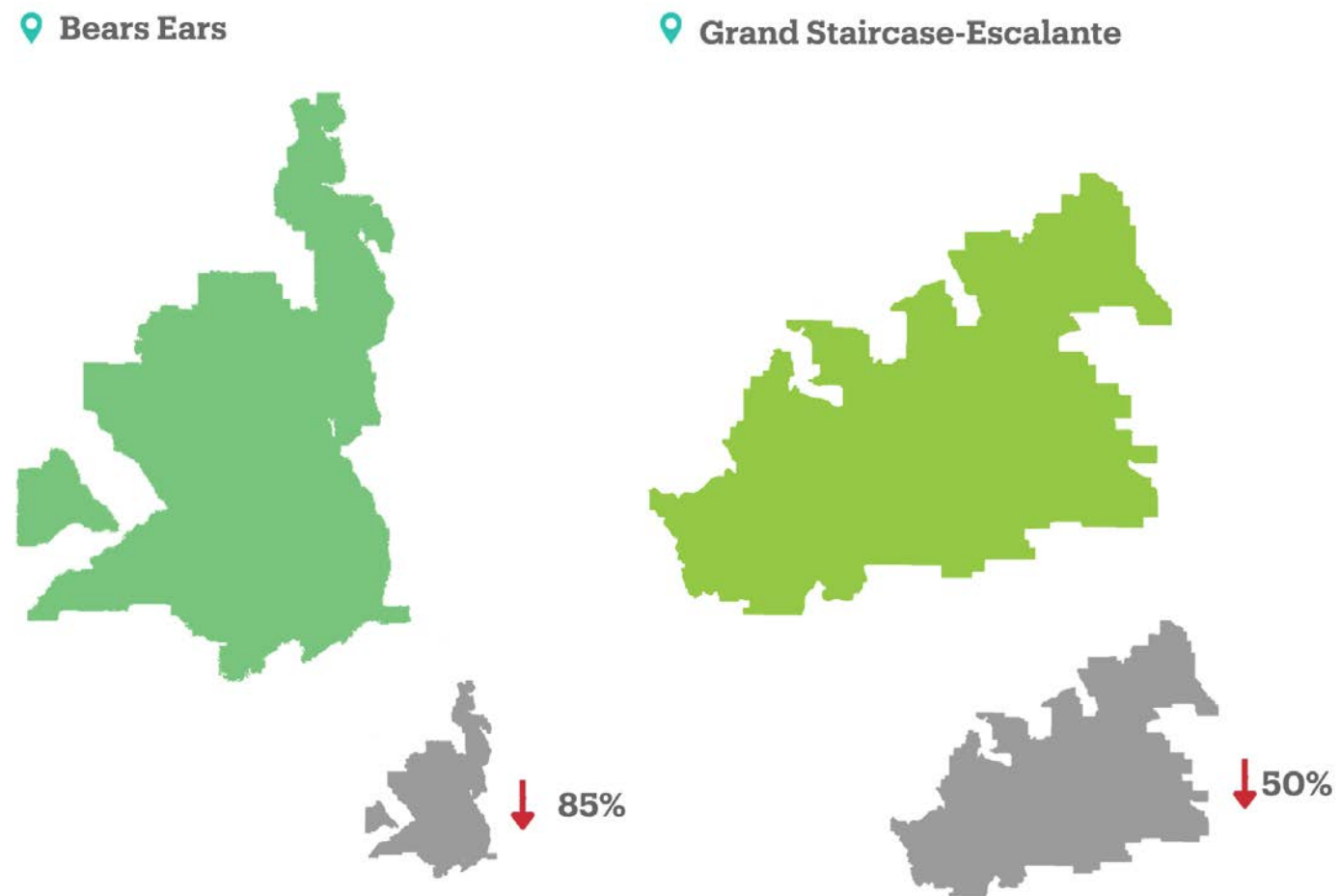


Figure 6. Proposed Reduction of National Monuments



This figure depicts the proposed reduction of the size of national monuments.
Source: [Multi-State Amicus Brief Hopi Tribe v. Trump \(November 19, 2018\)](#)

Alaska's Coastal Plain

In 2019, a coalition of 16 AGs led by Washington AG Ferguson and Massachusetts AG Healey opposed²⁰⁴ the Bureau of Land Management's (BLM) proposal to begin an oil and gas leasing program on the Coastal Plain of the Arctic National Wildlife Refuge (ANWR).²⁰⁵ The coalition argued that the Coastal Plain is the most biologically productive part of the Refuge, that species including caribou, polar bears, and migratory birds rely on the Plain, and that Alaska Native communities also rely on the Plain for subsistence.²⁰⁶ In June 2021, the Secretary of the Interior issued Secretary's Order 3401, which instituted a temporary halt to leasing in ANWR.²⁰⁷ Following the temporary halt, BLM began the process of preparing a Supplemental Environmental Impact Statement regarding leasing in ANWR in August 2021.²⁰⁸ BLM stated that the EIS would analyze impacts on caribou, polar bears, migratory birds, and subsistence uses by Alaska Native communities,²⁰⁹ factors the AGs' comments had emphasized.

Safety and Toxics

State AGs have been key to efforts to crack down on toxic pesticides in our food, to begin requiring the collection of data on other toxins, and to remove cancer-causing forever chemicals from our water supply, as well as to keep the transport of dangerous substances by rail out of neighborhoods.

Chlorpyrifos

In 2019, six AGs led by New York AG James filed a suit that challenged EPA's failure to revoke food contamination threshold levels (tolerances) for the pesticide chlorpyrifos under the Federal Food, Drug, and Cosmetic Act (FFDCA).²¹⁰ Chlorpyrifos is an agricultural pesticide that negatively affects the nervous system and developing brain. In 2012, between 5 million and 8 million pounds of the pesticide were applied to U.S. food crops.²¹¹ Multiple studies found that exposure to levels below the "safe" tolerance levels EPA had previously set could still increase the risk that exposed children could suffer from developmental delays, lower IQ and academic performance, and brain damage.²¹² And EPA itself found that there was no safe level of the dangerous pesticide.²¹³ EPA was presented with a petition to revoke the tolerances as early as 2007, but it failed to act on the petition for years, and then it denied the petition in 2017 in spite of ever-increasing evidence of the pesticide's negative effects.²¹⁴

The coalition of AGs filed administrative objections to the 2017 order denying the rulemaking petition, arguing EPA had no authority to maintain the tolerances without finding that the levels were safe.²¹⁵ In 2019, EPA denied the objections.²¹⁶ Following EPA's denial, two lawsuits were filed and consolidated challenging EPA's failure to revoke the tolerances.²¹⁷ The coalition argued that under the FFDCA – which mandates that tolerances for pesticides may only be left in place if EPA determines the tolerance is safe – EPA must act to revoke the tolerances which had been shown to be unsafe.²¹⁸ In April 2021, the Ninth Circuit Court of Appeals required EPA to issue a final rule on chlorpyrifos tolerances by August 2021.²¹⁹ In August 2021, in light of the overwhelming scientific evidence and consistent pressure for agency action by the coalition of AGs and others, EPA revoked all food tolerances for chlorpyrifos.²²⁰

Asbestos

In 2019, then-California AG Becerra and Massachusetts AG Healey led a coalition of 11 AGs in filing suit for declaratory and injunctive relief against EPA – arguing that the agency wrongfully denied the states' petition for rulemaking requiring additional reporting of information regarding asbestos and articles containing asbestos under Section 21 of the Toxic Substances Control Act.²²¹ The coalition emphasized that "[a]sbestos is one of the chemicals most harmful to human health in existence and is the known cause of several lung diseases that kill thousands of Americans every year," and that the petitioned-for rule would have allowed for the collection of previously uncollected data that would account for the majority of asbestos/asbestos-containing articles in the United States.²²² That case was consolidated with another case asserting similar claims²²³ and the court granted summary judgment to the plaintiffs.²²⁴ After EPA moved to alter the judgment, the parties reached a settlement agreement in June 2021.²²⁵ Under the terms of the settlement agreement, EPA agreed to promulgate a final rule

requiring the collection of the information on asbestos/asbestos-containing articles that the coalition had sought within 18 months of the effective date of the agreement.²²⁶

PFAS

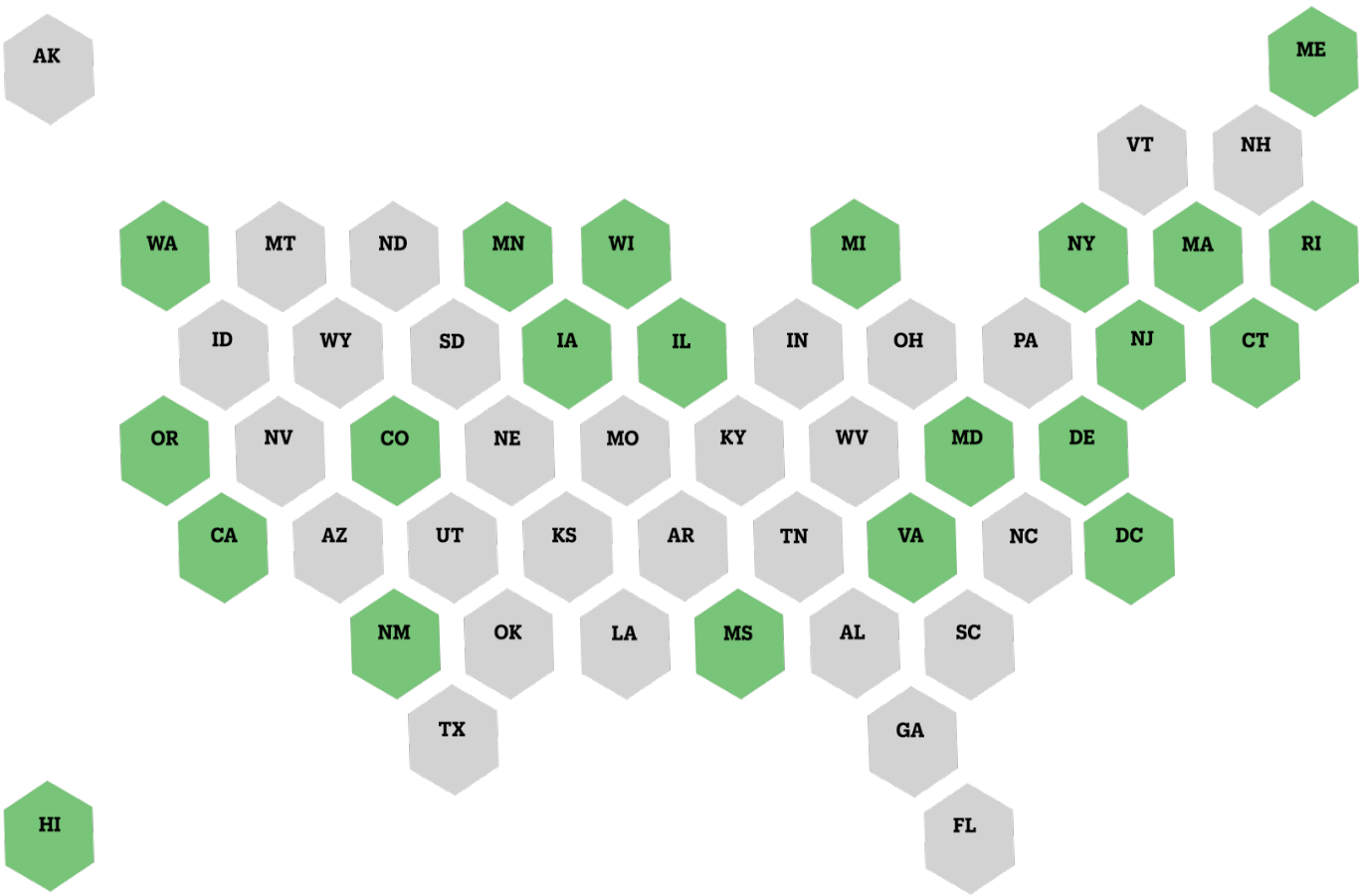
As scientific studies have continued to highlight the harmful health effects of per- and polyfluoroalkyl substances (PFAS) on the human body, AGs have pushed for greater regulation and strong federal action to minimize the harms from these chemicals. Two particularly common PFAS chemicals, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), are used in nonstick cookware, water- and wrinkle-resistant clothes, food packaging and firefighting foam.²²⁷ One study found both chemicals in more than 98% of tested human blood samples.²²⁸ The chemicals can cause certain cancers, liver tissue damage, and negative immune and thyroid effects.²²⁹

In light of these risks, a coalition of state AGs submitted letters to Congress seeking hazardous substance designation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for PFAS, phaseouts of the use of PFAS-containing firefighting foam at federal facilities, and increased monitoring and testing for the chemicals.²³⁰ The AGs specifically stressed the need to “focus on environmental justice and other disadvantaged communities,” when funding remediation of PFAS contamination in public water systems as public water providers may not have funding to do this work and raising rates to cover clean-up costs can present challenges to customers.²³¹

In April 2019, EPA released Draft Interim Recommendations to address groundwater contaminated by PFOA and PFOS.²³² A coalition of state AGs led by then-California AG Becerra submitted comments.²³³ The coalition comments argued that the proposed screening levels for contamination were much too high to be protective, that the recommendations should address more PFAS than just PFOA and PFOS, and that PFAS should be designated as hazardous substances under CERCLA.²³⁴

In October 2021, EPA released a Strategic Roadmap outlining its planned approach to regulating PFAS.²³⁵ The agency highlighted three central directives: investing in research, restricting further PFAS pollution, and broadening and accelerating remediation efforts.²³⁶ Efforts that fall under these directives include those highlighted by the AG coalition’s comments: publishing a national primary drinking water regulation for PFOA and PFOS, publishing a national PFAS testing strategy, designating PFOA and PFOS as hazardous substances under CERCLA, and examining whether and how to regulate other PFAS beyond PFOA and PFOS.²³⁷

Figure 7. AG Involvement in PFAS Actions



This map depicts the AGs participating in the PFAS actions described in this section.

LNG by Rail

In October 2019, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposed to allow for the bulk transport of LNG by rail in tank cars.²³⁸ Maryland AG Frosh and New York AG James led a coalition of 16 AGs opposing the proposal, citing the risk of catastrophic accidents, which poses risks to communities and first responders, as well as noting the failure to consider the environmental and climate impacts of the proposal.²³⁹ AG Frosh and AG James led a coalition of 15 AGs in a lawsuit over the final rule.²⁴⁰ AG Frosh noted that “[s]hips carrying LNG have been characterized as floating bombs . . . Rolling tank cars filled with LNG through our neighborhoods are vastly more dangerous.”²⁴¹ The rule was flagged early on for review by the Biden administration,²⁴² and in November 2021, PHMSA proposed to suspend the authorization of LNG transport by rail.²⁴³

Wildlife

Attorneys general have worked hard to protect wildlife species from extinction, including opposing efforts to weaken the Endangered Species Act (ESA) and Migratory Bird Treaty Act (MBTA).

Migratory Bird Treaty Act

The most significant outcome AGs achieved in 2021 on wildlife issues were assurances that the Migratory Bird Treaty Act – a 1918 statute prohibiting, unless authorized, “by any means or in any manner” the pursuing, hunting, taking, capturing, or killing of migratory birds²⁴⁴ – would continue to prohibit the incidental take of migratory birds.

In 2017, the Department of the Interior issued an interpretation of the Act that concluded it did not prohibit the incidental taking of migratory birds protected under the statute.²⁴⁵ For example, oil pit owners that leave the pits uncovered, unintentionally killing an estimated 750,000 birds annually, would avoid liability under the 2017 interpretation of the MBTA.²⁴⁶ Then-New York Attorney General Barbara Underwood gathered eight states to challenge the Department’s legal opinion as contrary to the text and purpose of the statute.²⁴⁷ In August 2020, a federal district court judge in New York agreed with the states in vacating the new interpretation, finding it to be in “direct conflict” of the Act’s “clear language” and that it “runs counter to the purpose of the MBTA to protect migratory bird populations.”²⁴⁸

Interior appealed the decision to the Second Circuit²⁴⁹ and, on January 7, 2021, finalized a new rule adopting the flawed interpretation again.²⁵⁰ Both of these efforts would be short-lived given the presidential transition. First, in February 2021, Interior dropped its appeal of the states’ lower court victory.²⁵¹ Second, in October, Interior issued a final rule revoking the 2017 interpretation on the grounds that the interpretation did not, as AGs insisted, “reflect the best reading of the MBTA’s text, purpose, and history.”²⁵² The new rule reinstates the long-standing interpretation of the Migratory Bird Treaty Act as prohibiting the incidental take of migratory birds,²⁵³ providing essential protections to the more than 1,000 bird species subject to the MBTA.²⁵⁴

Endangered Species Act

The ESA prohibits the killing or harming of species that have been listed as endangered or threatened based on the best scientific and commercial data available.²⁵⁵ In December 2020, the U.S. Fish & Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) finalized two rules that weakened ESA protections by amending the critical habitat designation and the definition of habitat under the ESA.²⁵⁶ In January 2021, then-California AG Becerra and Massachusetts AG Healey led a coalition of AGs in filing a lawsuit challenging the lawfulness of the two rules.²⁵⁷ In October 2021, FWS and NMFS acknowledged the flaws in the December 2020 rules in issuing proposals to rescind the rules,²⁵⁸ a move that a coalition of AGs led by California AG Bonta, Maryland AG Frosh, and Massachusetts AG Healey supported in their comments to the Services.²⁵⁹

Cross-Cutting Issues: Environmental Justice and Other Federal Regulatory Policies

There are several cross-cutting issues that have the potential to affect multiple substantive areas. Environmental justice, for example, is a consideration that has been at the core of many of the advocacy efforts this past year. In addition, several rules issued by the prior administration had the potential to affect many of the substantive protections described above. Federal regulatory policy involves the procedural and cost-and-benefit accounting rules agencies use when undertaking environmental, energy, and climate regulation and projects. In 2021, AGs worked to ensure that proposed rules accurately capture the health benefits associated with the proposals and consider the full breadth of scientific and health studies in developing the rules. Further, AGs succeeded in helping to roll back changes to NEPA implementing regulations that constrained environmental reviews of federal projects and changes to federal programs.

Environmental Justice

Environmental justice refers to the disproportionately high burden of environmental and public health harms placed on communities of color and low-income communities. To focus on environmental justice is to work to ensure that all people have the right to live in a healthful and safe environment. Environmental justice necessitates the fair treatment and inclusion of all communities, in particular communities of color and low-income communities, in the formation and enforcement of environmental laws and policies.

Environmental justice considerations have played a key role in many AG actions. Attorneys general have worked hard to promote environmental justice, including establishing sections devoted to carrying out environmental justice work²⁶⁰ and bringing lawsuits to enforce environmental statutes in historically disadvantaged communities.²⁶¹ In their advocacy at agencies and court this year, they have also stressed the disproportionate impact of lax standards in the context of vehicle emissions,²⁶² climate change pollution,²⁶³ ozone pollution,²⁶⁴ particulate matter,²⁶⁵ and many other regulations and policies.²⁶⁶

A coalition of AGs also stressed the importance of assessing and fully considering the disproportionate impact that the proposed Formosa Plastics petrochemical complex in St. James Parish, Louisiana would have on the neighboring communities when they filed a letter with the Army Corps demanding a full environmental impact analysis of the facility.²⁶⁷ This letter joined in the call for a stricter environmental review that environmental justice groups had been raising for years.²⁶⁸ The AG coalition’s letter helped bring about a significant victory when the agency committed to undertake a renewed environmental review of the facility.²⁶⁹

Clean Air Act Cost-Benefit Analysis

In 2020, the Trump administration finalized a Cost-Benefit Analysis (CBA) rule governing Clean Air Act regulations that heavily emphasized the costs of regulations and downplayed their benefits.²⁷⁰ It required EPA to prepare a CBA for all significant proposed and final Clean Air Act regulations, established new requirements for the methods used to calculate risk, and required EPA to emphasize the uncertainty of the proposed benefits of any rule.²⁷¹ The rule also made it harder to justify new Clean Air Act rules aimed at protecting human health and potentially exposed the agency to additional lawsuits if it failed to follow the rule's requirements.²⁷²

New York AG James led a coalition of AGs in comments opposing the rule at the proposal stage, arguing that the agency should not “proceed any further with the [p]roposal until it analyzes the [p]roposal’s significant environmental justice implications and provides the public with an opportunity to comment on EPA’s analysis.”²⁷³ Attorney General James then led a coalition of 18 AGs in a 2021 suit challenging the final rule before the D.C. Circuit,²⁷⁴ which was then held in abeyance²⁷⁵ after President Biden issued an executive order requiring EPA to re-examine the rule.²⁷⁶ In May 2021, the Biden administration issued an interim final rule rescinding the Trump administration rule on the grounds that there was no rational basis for the rule’s requirements in light of ongoing rigorous Cost-Benefit Analysis procedures in place for EPA.²⁷⁷

Secret Science Rule

EPA published in January 2021 a rule (commonly called the “Secret Science Rule”) governing the science the agency was permitted to rely on in issuing future regulations.²⁷⁸ The rule would have undermined the EPA’s ability to rely upon scientific studies if, as is common, the underlying dose-response data are not publicly available because they contain confidential patient information.²⁷⁹ The Environmental Defense Fund (EDF) filed suit against EPA in Montana²⁸⁰ and New York AG James led a coalition of state AGs in filing suit against EPA in New York.²⁸¹ Both suits highlighted the negative impacts of the rule and argued EPA lacked authority to implement the rule.²⁸² The AGs also noted how the rule would allow EPA to avoid considering environmental justice issues in promulgating regulations, interfering with the states’ own efforts to address disparities.²⁸³ The state coalition complaint emphasized that EPA needs the epidemiological studies with dose-response data to establish its regulations protecting people’s health and safety and there are ways to verify these studies without having to publicly disclose sensitive data.²⁸⁴

The Montana court decided in favor of EDF and vacated the rule in February 2021.²⁸⁵ This led to a stipulation and consent order for a stay in the New York case to allow EPA to address the vacatur.²⁸⁶ EPA then released a notice in the Federal Register implementing the vacatur on June 2, 2021, allowing the agency to continue to rely upon the scientific information it needs to make informed regulatory decisions.²⁸⁷

National Environmental Policy Act Implementation

In July 2020, the Council on Environmental Quality (CEQ) published its final National

Environmental Policy Act implementing regulations that severely limited the list of federal actions required to comply with NEPA, narrowed agencies’ obligations to consider environmental impacts, made the public participation process ineffective, and restricted the judicial reviewability of agency actions that violate NEPA.²⁸⁸ A coalition of 23 AGs led by then-California AG Becerra filed suit against CEQ, seeking review of the new regulations under the Administrative Procedure Act.²⁸⁹ The complaint explained that “NEPA is a success story of government transparency, meaningful public participation, informed decision making, and environmental and public health protection,” and that it “prioritizes careful, informed decision making.”²⁹⁰ The coalition argued that CEQ had failed to provide a rational justification for the 2020 rules, gutting the regulations, and that the agency lacked authority to issue the regulations.²⁹¹ The AGs also explained how the rules ignored environmental justice impacts and failed to justify departing from longstanding CEQ policy that “environmental justice impacts should be thoroughly analyzed through the NEPA process.”²⁹²

In October 2021, CEQ issued a proposed rule outlining revisions to the rules, eliminating many of the most harmful changes in the July 2020 rule.²⁹³ The proposal stated:²⁹⁴

[i]t is CEQ’s view that the 2020 NEPA Regulations may have the effect of limiting the scope of NEPA analysis, with negative repercussions for environmental protection and environmental quality, including in critical areas such as climate change and environmental justice. . . . Some changes introduced by the 2020 NEPA Regulations also may not support science-based decision making.

The deadline to comment on this proposal was November 22, 2021 and CEQ received nearly 34,000 comments on the proposal.²⁹⁵ Included among these comments were comments from 19 AGs that praised the proposal for “making CEQ’s regulations a floor and not a ceiling for other federal agencies’ NEPA regulations,” but urged CEQ to issue another rule to address remaining harms from the July 2020 rule.²⁹⁶ In light of CEQ’s ongoing revisions, in October 2021 the lawsuit brought by the AGs was stayed until March 4, 2022.

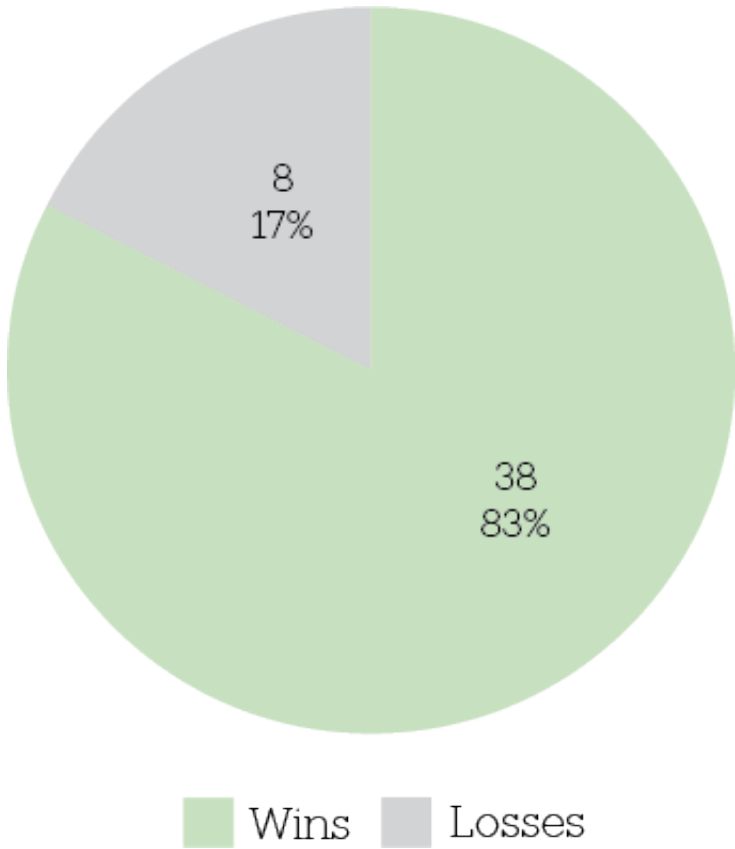
Conclusion

During the Trump administration, state attorneys general interested in pushing strong clean energy and climate policies held the line against attacks on air, water, food, communities, natural resources, and wildlife. As the Appendix to this report shows, by challenging unlawful rules in court, those AGs racked up an impressive win rate in court of 83% on environmental, energy, and climate litigation.²⁹⁷ Four reports the State Impact Center released over the course of 2018 through early 2021 highlighted the work of states on pushing back on rollbacks during the Trump era.²⁹⁸

Now in 2021, states have secured many more policy wins and also some court wins, setting a strong foundation for action in 2022 and beyond that will clean the air, water, and energy supply; protect historically disadvantaged communities, public lands, food, and wildlife; cut climate pollutants; and develop better environmental review processes. The environment, climate, and public health will be better protected because of this work by AGs.

Appendix

Figure 8. AG Win Rate in the Trump Era
January 2017 to January 2021



This chart collects all cases involving energy, natural resources, or the environment in which state attorneys general participated as plaintiffs, intervenors, or amici opposing Trump administration policies, through January 2021. Cases are coded as wins if the court found for the attorneys general, or the Trump administration withdrew the rule after the suit was filed. The chart includes cases where decisions were issued before January 20, 2021, when President Joe Biden was inaugurated and his administration took over the defense of the pending challenges to Trump-era rules.²⁹⁹

#	Case Name	Description	AG Involvement
Outcome: AG Win AG Loss			
1.	New York v. Perry, No. 17-918 (2d Cir.); Nat. Res. Def. Council v. Perry, No. 17-916 (2d Cir.)	Rule challenged: DOE’s delay of conservation standards for ceiling fans Result: Agency announced the rule would come into effect	Multistate coalition, led by NY, filed suit consolidated with NGO suit
2.	Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017)	Rule challenged: EPA’s delay of a rule limiting methane leaks at oil and gas facilities Result: Vacated for lack of statutory authority	Multistate coalition, led by MA, participated as intervenors in support of petitioner Clean Air Council
3.	New York v. U.S. Evtl. Prot. Agency, No. 17-01185 (D.C. Cir.); Am. Lung Ass’n v. U.S. Evtl. Prot. Agency, No. 17-1172 (D.C. Cir.)	Rule challenged: EPA’s delay of a rule restricting harmful ozone pollution Result: Agency withdrew the delay	Multistate coalition, led by NY, filed suit consolidated with NGO suit
4.	Becerra v. U.S. Dep’t of Interior, 276 F. Supp. 3d 953 (N.D. Cal. 2017)	Rule challenged: DOI’s delay of reforms of the procedures governing royalties Result: Vacated for failure to comply with notice and comment requirements and lack of statutory authority	CA and NM filed suit
5.	California v. U.S. Dep’t of Transp., 17-05439 (N.D. Cal.); Clean Air Carolina v. U.S. Dep’t of Transp., No. 17- 5779 (S.D.N.Y.)	Rule challenged: FHWA’s delay of the greenhouse gas measurement rule Result: Agency withdrew the delay	Multistate coalition, led by CA, filed suit
6.	California v. U.S. Bureau of Land Mgmt., 277 F. Supp. 3d 1106 (N.D. Cal. 2017), appeal dropped (9th Cir. No. 17–17456)	Rule challenged: BLM’s delay of the Waste Prevention Rule Result: Vacated for failure to comply with notice and comment requirements and reasoned explanation requirement	CA and NM filed suit marked as related with tribal and NGO suit
7.	California v. U.S. Bureau of Land Mgmt., 286 F. Supp. 3d 1054 (N.D. Cal. 2018), appeal dropped (9th Cir. No. 18-15711)	Rule challenged: BLM’s second delay of the Waste Prevention Rule Result: Enjoined for failure to comply with the reasoned explanation requirement	CA and NM filed suit
8.	In re Ozone Designation Litigation, 286 F. Supp. 3d 1082 (N.D. Cal. 2018)	Rule challenged: EPA’s delay in completing a step in the implementation of new ozone emissions rules Result: Granted plaintiffs’ motion for summary judgment in light of EPA’s failure to meet the statutory deadline and deadline set for EPA to issue designations	Multistate coalition, led by CA and NY, filed suit marked as related with NGO suit

#	Case Name	Description	AG Involvement
Outcome: AG Win AG Loss			
9.	Nat. Res. Def. Council, Inc. v. Nat’l Highway Traffic Safety Administration, 894 F.3d 95 (2d Cir. 2018)	Rule challenged: NHTSA’s delay of its 2016 rule adjusting penalties for violations of fuel economy standards Result: Vacated for failure to comply with notice and comment requirements and lack of statutory authority	Multistate coalition, led by NY and CA, filed suit consolidated with NGO suit
10.	New York v. Pruitt, No. 18-406, 2018 WL 2976018 (S.D.N.Y. June 12, 2018)	Rule challenged: EPA’s failure to meet the original statutory deadlines for the 2008 Ozone National Ambient Air Quality Standards Result: Order setting deadlines for EPA to issue Federal Implementation Plans	NY and CT filed suit
11.	New York v. Pruitt, No. 18-04739 (S.D.N.Y.)	Rule challenged: EPA’s delay of release of training materials for farmers exposed to poisonous pesticides Result: EPA published the training materials	NY, CA, and MD filed suit
12.	Envtl. Def. Fund v. U.S. Env’tl. Prot. Agency, No. 18-1190 (D.C. Cir.); California v. U.S. Env’tl. Prot. Agency, No. 18-1192 (D.C. Cir.)	Rule challenged: EPA’s memorandum promising nonenforcement of a 2016 rule limiting glider truck emissions Result: EPA withdrew the memorandum	Multistate coalition, led by CA and NJ, filed suit consolidated with NGO suit
13.	Air All. Houston v. U.S. Env’tl. Prot. Agency, 906 F.3d 1049 (D.C. Cir. 2018)	Rule challenged: EPA’s rule delaying the effective date of the Chemical Disaster Rule Result: Rule vacated as arbitrary and capricious for failure to provide a reasoned explanation	Multistate coalition, led by NY, filed suit consolidated with NGO suit
14.	Puget Soundkeeper All. v. Wheeler, No. C15-1342, 2018 WL 6169196 (W.D. Wa. Nov. 26, 2018)	Rule challenged: EPA’s rule suspending a 2015 rule expanding the definition of “waters of the United States” Result: Rule vacated for violation of notice and comment requirements	NY filed suit regarding the same rule in separate court. New York v. Pruitt No. 18-0130 (S.D.N.Y.) (dismissed as moot)
15.	City of Council Bluffs, Iowa v. U.S. Dep’t of Interior, 368 F. Supp. 3d 1276 (S.D. Iowa 2019), aff’d 11 F.4th 852 (8th Cir. 2021)	Rule challenged: National Indian Gaming Commission conclusion that the Ponca Tribe of Nebraska was permitted to conduct gaming activities Result: Decision largely upheld, though the court found that the Commission unreasonably failed to consider a purported verbal agreement between the Tribe and the state of Iowa and remanded the matter to the agency to address that issue	IA and NE participated as intervenor-plaintiff appellants

#	Case Name	Description	AG Involvement
Outcome: AG Win AG Loss			
16.	California v. U.S. Dep’t of Interior, 381 F. Supp. 3d 1153 (N.D. Cal. 2019)	Rule challenged: DOI’s repeal of the rule reforming the procedures governing royalties Result: Vacated for violation of notice and comment requirements and failure to adequately explain decision under the Administrative Procedure Act	CA and NM filed suit
17.	Citizens for Clean Energy v. U.S. Dep’t of Interior, 384 F. Supp. 3d 1264 (D. Mont. 2019)	Rule challenged: DOI’s decision lifting moratorium on coal leasing program Result: Remanded to agency for failure to examine the environmental consequences of the decision as required under the National Environmental Policy Act	Multistate coalition, led by CA, filed suit
18.	League of United Latin Am. Citizens v. Wheeler, 922 F.3d 443 (9th Cir. 2019)	Rule challenged: EPA’s reversal of the conclusion that the pesticide chlorpyrifos should be restricted violated the Federal Food, Drug, and Cosmetic Act Result: Order directing EPA to make a final decision on petitioner’s objections within 90 days of the order	Multistate coalition led by NY, MD, VT, WA, MA, CA, and HI intervened in support of petitioner LULAC
19.	New York v. U.S. Env’tl. Prot. Agency, 921 F.3d 257 (D.C. Cir. 2019)	Rule challenged: EPA’s decision denying states’ petition seeking expansion of Ozone Transport Region to include 8 additional upwind states Result: Decision upheld, finding EPA had not abused its discretion in denying petition	Multistate coalition, led by NY, filed suit
20.	California v. U.S. Env’tl. Prot. Agency , 385 F. Supp. 3d 903 (N.D. Cal. 2019)	Rule challenged: EPA’s delay in implementing methane emissions rule for landfills Result: Court order directing EPA to implement the rule	Multistate coalition, led by CA, filed suit
21.	New York v. U.S. Env’tl. Prot. Agency, 781 Fed. Appx. 4 (D.C. Cir. 2019)	Rule challenged: EPA’s rule closing out 2008 Ozone standard compliance period and imposing no further reduction requirements on upwind states Result: Vacated for reliance on improper statutory interpretation	Multistate coalition, led by NY, filed suit
22.	Nat. Res. Def. Council v. Perry, 940 F.3d 1072 (9th Cir. 2019)	Rule challenged: DOE’s refusal to publish new energy-conservation standards Result: Order requiring publication of rules in light of violation of the Energy Policy and Conservation Act’s error-correction rule	Multistate coalition, led by CA and NY, filed suit consolidated with NGO suit

#	Case Name	Description	AG Involvement
Outcome: AG Win AG Loss			
23.	California v. U.S. Env'tl. Prot. Agency, 940 F.3d 1342 (D.C. Cir. 2019)	Rule challenged: EPA's withdrawal of the mid-term evaluation for emissions standards for model year 2022 to 2025 motor vehicles Result: Suit dismissed, finding withdrawal was not a judicially reviewable final agency action	Multistate coalition, led by CA, filed suit
24.	New Jersey v. Wheeler, No. 19-cv-3247 (D.D.C.)	Rule challenged: EPA's delay in making findings of failure to submit upwind Good Neighbor State Implementation Plans for 2015 Ozone National Ambient Air Quality Standards Result: Voluntarily dismissed after EPA made requested findings	NJ, CT, and NY filed suit
25.	Sierra Club v. Trump, 977 F.3d 853 (9th Cir. 2020); certiorari granted and judgment vacated in light of changed circumstances (Biden v. Sierra Club, 142 S. Ct. 56 (2021))	Rule challenged: Agencies' use of National Emergencies Act funds to build physical barriers on the Southern US border Result: Enjoined in light of failure to satisfy "the mandatory conditions set by Congress" for using the funds	Multistate coalition, led by CA, filed suit consolidated with NGO suit
26.	California v. U.S. Bureau of Land Mgmt., 2020 U.S. Dist. LEXIS 53958 (N.D. Cal. 2020), appeal filed (9th Cir. 20-16157)	Rule challenged: BLM's rule repealing fracking regulations on federal and Indian lands Result: Rule upheld as not arbitrary and capricious	CA filed suit marked as related with NGO suit
27.	Nat. Res. Def. Council v. Wheeler, 955 F.3d 68 (D.C. Cir. 2020)	Rule challenged: EPA's rule eliminating restrictions on the use of hydrofluorocarbons Result: Vacated for failure to comply with notice and comment requirements	Multistate coalition suit, led by NY, filed suit consolidated with NGO suit
28.	Physicians for Soc. Responsibility v. Wheeler, 956 F.3d 634 (D.C. Cir. 2020)	Rule challenged: EPA's directive prohibiting grant recipients from serving on advisory committees Result: District court decision dismissing complaint overturned and EPA found to have failed to comply with the reasoned explanation requirement	Multistate coalition, led by WA, filed amicus brief in support of petitioners

#	Case Name	Description	AG Involvement
Outcome: AG Win AG Loss			
29.	Maryland v. U.S. Env'tl. Prot. Agency, 958 F.3d 1185 (D.C. Cir. 2020)	Rule challenged: EPA's rejection of a petition from Maryland seeking tighter pollution limits on coal-fired power plants in upwind states Result: Rule remanded to the agency after finding that EPA failed to adequately explain its decision regarding non-catalytic controls	MD and DE filed suit, with NY and NJ participating as petitioner-intervenors in support of MD and DE
30.	Nat. Res. Def. Council v. U.S. Env'tl. Prot. Agency, 961 F.3d 160 (2d Cir. 2020)	Rule challenged: EPA's rule exempting from reporting requirements certain importers of mercury-containing components Result: Rule partially vacated as unlawful under the Toxic Substances Control Act	VT filed suit consolidated with NGO suit
31.	California v. Wheeler, 467 F. Supp. 3d 864 (N.D. Cal. 2020)	Rule challenged: EPA's rule narrowing the definition of "waters of the United States" Result: Rule upheld; preliminary injunction denied	Multistate coalition, led by CA, filed suit
32.	Colorado v. U.S. Env'tl. Prot. Agency, 445 F. Supp. 3d 1295 (D. Colo. 2020), rev'd 989 F.3d 874 (10th Cir. 2021).	Rule challenged: EPA's rule narrowing the definition of "waters of the United States" Result: Enjoined in Colorado only * On appeal the district court's injunction was reversed and vacated, after January 20, 2021. Colorado v. U.S. Env'tl. Prot. Agency, 989 F.3d 874 (10th Cir. 2021).	CO filed suit
33.	California v. Trump, 963 F.3d 926 (9th Cir. 2020)	Rule challenged: Executive officials' use of Department of Defense Appropriations Act funds to construct physical barriers on US' southern border with Mexico Result: Held that Pres. Trump and officials were not authorized to divert funds for construction of the barrier	CA and NM filed suit
34.	New York v. U.S. Env'tl. Prot. Agency, No. 20-3714 (S.D.N.Y.)	Rule challenged: EPA's policy of non-enforcement for monitoring and reporting requirements due to COVID-19 Result: EPA withdrew guidance after being sued for failing to comply with the Administrative Procedure Act's notice and comment requirements, acting outside of the agency's statutory authority, and failing to provide a reasoned explanation	Multistate coalition, led by NY, filed suit

#	Case Name	Description	AG Involvement
Outcome: AG Win AG Loss			
35.	Clean Wisconsin v. U.S. Env'tl. Prot. Agency, 964 F.3d 1145 (D.C. Cir. 2020)	Rule challenged: EPA's attainment designations for National Ambient Air Quality Standards for ground-level ozone Result: Certain designations overturned, and others upheld, for violating the requirement for reasoned decisionmaking	IL filed suit consolidated with suits by NGOs, and municipal governments, and multistate coalition led by NY participated as amici curiae in support of petitioners
36.	New York v. U.S. Env'tl. Prot. Agency, 964 F.3d 1214 (D.C. Cir. 2020)	Rule challenged: EPA's decision denying NY petition arguing that power plants in nearby states were violating Good Neighbor Provision of Clean Air Act Result: Vacated as arbitrary and capricious	NY and NJ filed suit filed
37.	California v. Bernhardt, 472 F. Supp. 3d 573 (N.D. Cal 2020), appeal filed and in mediation (9th Cir. 20-16793)	Rule challenged: DOI's rule rescinding Waste Prevention Rule Result: Vacated for not satisfying agency obligations under the Mineral Leasing Act and National Environmental Policy Act, not providing a reasoned explanation for the rescission, and violating notice and comment requirements under the Administrative Procedure Act	CA and NM filed suit consolidated with NGO suit
38.	New Jersey v. Wheeler, 475 F. Supp. 3d 308 (S.D.N.Y. 2020)	Rule challenged: EPA's failure to promulgate FIPs for 2008 Ozone standards to ensure compliance with Clean Air Act Good Neighbor requirements Result: Court set deadline for EPA to issue rulemaking to satisfy its nondiscretionary duty	Multistate coalition, led by NJ, filed suit
39.	Nat. Res. Def. Council v. U.S. Dep't of Interior, 478 F. Supp. 3d 469 (S.D.N.Y. 2020)	Rule challenged: DOI's guidance allowing incidental killing of birds under the Migratory Bird Treaty Act of 1918 Result: Vacated for adopting a new interpretation that was contrary to the purpose of the Act.	Multistate coalition, led by NY, filed suit marked as related with NGO suit
40.	Northwest Env'tl. Def. Ctr. v. U.S. Army Corps of Eng'rs, 479 F. Supp. 3d 1003 (D. Or. 2020); appeal filed (9th Cir. 21-35918)	Rule challenged: Army Corps and NMFS failure to reinstate consultation after Corps failed to implement mitigation measures to protect salmonid species in operation of dams in the Willamette River basin Result: Summary judgment granted, finding that agencies violated the Endangered Species Act and Administrative Procedure Act by failing to reinstate consultation	OR participated as amicus

#	Case Name	Description	AG Involvement
Outcome: AG Win AG Loss			
41.	New York v. Nat'l Highway Traffic Safety Admin., 974 F.3d 87 (2d. Cir. 2020)	Rule challenged: NHTSA's rule reducing penalties on auto-makers for violating fuel-economy standards Result: Vacated as unauthorized under the 2015 Federal Civil Penalties Inflation Adjustment Act Improvements Act	Multistate coalition, led by NY, filed suit consolidated with NGO suit
42.	S.F. Baykeeper v. U.S. Env'tl. Prot. Agency, 492 F. Supp. 3d 1030 (N.D. Cal. 2020)	Rule challenged: EPA's determination that salt ponds near San Francisco Bay were not jurisdictional waters under the Clean Water Act Result: Vacated because agency based its determination on findings that were contrary to law and had failed to follow its own regulations	CA filed suit consolidated with NGO suit
43.	California v. Wheeler, No. 20-1357 (D.C. Cir. Oct. 27, 2020)	Rule challenged: EPA's rule repealing certain regulations of emissions from new oil and gas facilities Result: Stay denied and motion for summary vacatur denied	Multistate coalition, led by CA, filed suit, consolidated with NGO suit
44.	Asbestos Disease Awareness Org. v. Wheeler, 508 F. Supp. 3d 707 (N.D. Cal. 2020)	Rule challenged: EPA's denial petition for rules requiring additional reporting on asbestos-related health risks Result: Summary judgment granted on the ground that denial was arbitrary and capricious, agency had not considered all of the relevant factors and that failure to collect reasonably available information was contrary to the agency's obligations under the statute	Multistate coalition, led by CA and MA, filed suit consolidated with NGO suit
45.	Texas v. U.S. Env'tl. Prot. Agency, 983 F.3d 826 (5th Cir. 2020)	Rule challenged: EPA's designation of Bexar County Texas as in nonattainment and designation of three neighboring counties as in attainment of 2015 Ozone National Ambient Air Quality Standards Result: Court upheld EPA designation	TX filed suit, consolidated with NGO suit
46.	Am. Lung Ass'n v. U.S. Env'tl. Prot. Agency, 985 F.3d 914 (D.C. Cir. 2021), cert. granted No. 20-1530 (U.S.S.C Oct. 29, 2021)	Rule challenged: EPA's Affordable Clean Energy rule, the replacement to the Clean Power Plan Result: Vacated for misinterpretation of Clean Air Act	Multistate coalition, led by NY, filed suit consolidated with NGO suits

¹ In re Clean Water Act Rulemaking, No. 20-4869, 2021 WL 4924844 (N.D. Cal. Oct. 21, 2021).

² Press Release, Vineyard Wind, Vineyard Wind Receives Record of Decision for First in the Nation Commercial Scale Off-shore Wind Project (May 11, 2021), <https://www.vineyardwind.com/press-releases/2021/5/11/vineyard-wind-receives-record-of-decision>.

³ See *FERC Approves New Capacity Auction Date, Pre-Auction Deadlines*, PJM INSIDE LINES (Oct. 26, 2021), <https://inside-lines.pjm.com/ferc-approves-new-capacity-auction-date-pre-auction-deadlines/>.

⁴ New York et al., Comment Letter on Definitions for General Service Lamps 1 (Oct. 18, 2021) [hereinafter New York Comment Letter on Definitions for General Service Lamps].

⁵ See David J. Mitchell, *Massive Louisiana Plastics Plant Faces 2+ Year Delay for Tougher Environmental Review*, THE ADVOCATE (Nov. 1, 2021), https://www.theadvocate.com/baton_rouge/news/article_c58e7f22-3997-11ec-909f-9bdd7461a90c.html.

⁶ Jeff Overton, *The Growth in Greenhouse Gas Emissions from Commercial Aviation (2019)*, ENV’T AND ENERGY SCI. INST. (Oct. 17, 2019), <https://www.eesi.org/papers/view/fact-sheet-the-growth-in-greenhouse-gas-emissions-from-commercial-aviation>.

⁷ California et al., Comment Letter on Proposed Rulemaking on the Control of Air Pollution from Airplanes and Airplane Engines: Greenhouse Gas Emission Standards and Test Procedures (Oct. 19, 2020).

⁸ Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures, 86 Fed. Reg. 2136 (Jan. 11, 2021) (to be codified at 40 C.F.R. pts. 87 and 1030).

⁹ Petition for Review, California v. U.S. Env’t Prot. Agency, No. 21-1018 (D.C. Cir. Jan. 15, 2021).

¹⁰ Fact Sheet, The White House, Biden Administration Advances the Future of Sustainable Fuels in American Aviation (Sept. 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/09/fact-sheet-biden-administration-advances-the-future-of-sustainable-fuels-in-american-aviation/>.

¹¹ David Shepardson, *U.S. EPA Will Not Rewrite Airplane Emissions Rules Finalized Under Trump*, REUTERS (Nov. 15, 2021), <https://www.reuters.com/business/environment/us-epa-will-not-rewrite-airplane-emissions-rules-finalized-under-trump-2021-11-15/>.

¹² Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 20, 2021) [hereinafter Exec. Order No. 13,990]; Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

¹³ See NYU LAW STATE ENERGY & ENV’T IMPACT CTR., FULL COURT PRESS: HOW STATE ATTORNEYS GENERAL GUARDED AGAINST THE TRUMP ADMINISTRATION’S ANTI-REGULATORY AGENDA (2021), <https://www.law.nyu.edu/sites/default/files/FullCourtPress-StateImpactCenter.pdf> [hereinafter FULL COURT PRESS]; NYU LAW STATE ENERGY & ENV’T IMPACT CTR., FOLLOW THE LEADERS: STATES SET PATH TO ACCELERATE U.S. PROGRESS ON CLIMATE (2021), https://www.law.nyu.edu/sites/default/files/FollowTheLeaders-StateImpactCenter_1.pdf.

¹⁴ Massachusetts v. U.S. Env’t Prot. Agency, 549 U.S. 497 (2007).

¹⁵ 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).

¹⁶ Petition for Review, California v. Wheeler, No. 19-1239 (D.C. Cir. Nov. 15, 2019).

¹⁷ California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption, 86 Fed. Reg. 22,421 (Apr. 28, 2021).

¹⁸ California et al., Comment Letter on California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption 2 (July 6, 2021).

¹⁹ Hampden T. Macbeth, *Think Globally, Act Locally and Globally: Western States Respond to the Climate Crisis*, AM. CONSTITUTION SOC’Y EXPERT F. (Oct. 26, 2021), <https://www.acslaw.org/expertforum/think-globally-act-locally-and-globally-western-states-respond-to-the-climate-crisis/>.

²⁰ California et al., Comment Letter on Proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks 3 (Oct. 26, 2018).

²¹ Petition for Review, California v. Wheeler, No. 20-1167 (D.C. Cir. May 27, 2020).

²² California et al., Comment Letter on Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards 19 (Sept. 27, 2021) [hereinafter California Light-Duty Vehicle Comment Letter].

²³ *Id.* at 1.

²⁴ Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 43,726 (proposed Aug. 10, 2021) (to be codified at 40 C.F.R. pts. 86 and 600) [hereinafter Light-Duty Vehicle Greenhouse Gas Emissions Standards].

²⁵ California Light-Duty Vehicle Comment Letter, *supra* note 22, at 13.

²⁶ Light-Duty Vehicle Greenhouse Gas Emissions Standards, *supra* note 24, at 43,726.

²⁷ Steven C. Wu et al., Letter on Corporate Average Fuel Economy (CAFE) Civil Penalties (Dec. 18, 2020).

²⁸ Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin., No. 17-2780 (L) (2d Cir. Apr. 23, 2018); New York v. Nat’l

Highway Traffic Safety Admin., No.19-2395-ag (L) (2d Cir. Aug. 31, 2020).

²⁹ Interim Final Rule; Request for Comments; Response to Petition for Rulemaking, 86 Fed. Reg. 3016 (Jan. 14, 2021) (to be codified at 49 C.F.R. pt. 578).

³⁰ Petition for Review, New York v. Nat’l Highway Traffic Safety Admin., No. 21-0339 (2d Cir. Feb. 16, 2021).

³¹ Civil Penalties Supplemental Notice of Proposed Rulemaking, 86 Fed. Reg. 46,811, 46,814-15 (proposed Aug. 20, 2021) (to be codified at 49 C.F.R. pt. 578).

³² California et al., Comment Letter on Civil Penalties Supplemental Notice of Proposed Rulemaking (Sept. 20, 2021).

³³ *Short-lived Climate Pollutants*, CTR. FOR CLIMATE AND ENERGY SOLS. <https://www.c2es.org/content/short-lived-climate-pollutants/#:~:text=Despite%20their%20short%20atmospheric%20lifetimes,Earth%20faster%20than%20carbon%20dioxide> (last visited Dec. 2, 2021).

³⁴ Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 85 Fed. Reg. 57,018 (Sept. 14, 2020) (to be codified at 40 C.F.R. pt. 60).

³⁵ *Overview of Greenhouse Gases*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases> (last visited Dec. 2, 2021).

³⁶ Petition for Review, California v. Wheeler, No. 20-1357 (D.C. Cir. Sept. 14, 2020).

³⁷ New York et al., Letter to Congressional Leadership on Senate Joint Resolution 14/House Joint Resolution 34 – Disapproval of Environmental Protection Agency Rule Rescinding Methane Regulation (Apr. 26, 2021) [hereinafter New York Letter on Methane Regulation].

³⁸ *Id.* at 2.

³⁹ S.J.Res. 14, 117th Cong. (2021).

⁴⁰ Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 Fed. Reg. 63,110 (proposed Nov. 15, 2021) (to be codified at 40 C.F.R. pt. 60).

⁴¹ News Release, U.S. Env’t Prot. Agency, U.S. to Sharply Cut Methane Pollution that Threatens the Climate and Public Health (Nov. 2, 2021), <https://www.epa.gov/newsreleases/us-sharply-cut-methane-pollution-threatens-climate-and-public-health>.

⁴² *Hydrofluorocarbons (HFC)*, CLIMATE & CLEAN AIR COAL., <https://www.ccacoalition.org/en/slcp/hydrofluorocarbons-hfcs> (last visited Dec. 2, 2021).

⁴³ New York et al., Written Testimony on S. 2754, American Innovation and Manufacturing Act of 2019 (Apr. 8, 2020), https://oag.ca.gov/system/files/attachments/press-docs/AGs%20Testimony%20on%20S.2754_AIM%20ACT_4.8.20_FINAL.pdf.

⁴⁴ Pub. L. 116-260, § 103 (2020).

⁴⁵ Massachusetts et al., Comment Letter on Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program under the American Innovation and Manufacturing Act (July 1, 2021).

⁴⁶ *Id.* at 1, 5.

⁴⁷ Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act, 86 Fed. Reg. 55,116, 55,116 (Oct. 5, 2021) (to be codified at 40 C.F.R. pts. 9 and 84).

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If a case was reversed on appeal after January 20, 2021, that ultimate result is reflected in the chart.

