
CLIMATE X CHANGE
Revoking the Endangerment Finding
What Happens Next and How States Can Take Action
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Introduction

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State Climate Policy Network

Network of **15,000+**

- ➔ State and local elected officials
- ➔ NGO advocates
- ➔ Researchers
- ➔ State agency staffers
- ➔ Organizers and activists
- ➔ Business leaders

... working on state climate policy

www.climate-xchange.org/network

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Pro Bono Policy Assistance

We specialize in state climate policy design and analysis.
Reach out to kristen@climate-xchange.org with your requests on:

- **Example states** and **model rules** for a given policy
- **Gap analysis** of your state's climate policy landscape
- **Connections** to other actors working on similar issues

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Revoking the Endangerment Finding:
What Happens Next and How States Can Take Action

Janet McCabe
Former Deputy Administrator for the U.S. EPA

Joe Goffman
Former Assistant Administrator for the Office of Air and Radiation, U.S. EPA

Hana Vizcarra
Senior Attorney at Earthjustice

Marvin C. Brown IV
Senior Attorney at Earthjustice

Jordan Gerow
Policy & Research Director Climate XChange

Agenda

1. History and Context, and Federal Policy Implications
2. Litigation Overview and Timeline
3. State Policies to Fill the Gaps
4. Q&A

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Speakers

Janet McCabe

Former Deputy Administrator
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The Office of Air and Radiation,
U.S. EPA

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The Endangerment Finding

- What is the Endangerment Finding?
  - Brief history of the Endangerment Finding
- The EPA withdrawal of the Endangerment Finding
  - Repealed: GHG Tailpipe Emissions Standards (2024) for cars and trucks
- Impact on power sector standards and oil and gas methane standards
- Next up: DC Circuit litigation

What is the Endangerment Finding?

- A final rule USEPA Administrator Lisa Jackson signed in 2009, under Section 202(a)(1) of the federal Clean Air Act, finding that six greenhouse gases emitted by motor vehicles may “reasonably be anticipated to endanger public health and welfare.”

Endangerment Finding Led To…

- The Endangerment Finding was the legal and factual basis for EPA's subsequent regulation of greenhouse gas emissions from motor vehicles, which led to regulations for power plants, oil and gas operations and solid waste landfills.

Massachusetts v. EPA (2007)

2007: The US Supreme Court, in *Massachusetts v. EPA* ruled that:

- the plaintiffs had standing to bring the legal challenge
- “greenhouse gases fit well within the CAA's capacious definition of air pollutant.“
- EPA needed to reconsider the petition, and this time give a reasonable basis if it decided not to regulate these emissions.

Then…..

- 2009: US EPA issued the final Endangerment Finding, finding that six well-mixed greenhouse gases "in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare.”
- 2012: DC Circuit Court upheld Finding; Supreme Court declined to review. Utility Air Regulatory Group v. EPA, (DC Circuit 2012)

What Happened Next – Obama Administration

- 2010 and 2012: EPA issued greenhouse gas standards for passenger cars through MY2025
- 2011 and 2016: EPA issued GHG standards for medium and heavy duty vehicles
- 2015: US EPA issued Clean Power Plan, addressing GHG emissions from power plants burning coal, oil and natural gas
- 2016: US EPA regulated methane emissions from oil and gas operations
- 2017: US EPA found that GHGs from aircraft endanger public health and welfare
- **In each rule, US EPA updated and affirmed the 2009 Endangerment Finding**

The Endangerment Finding Withdrawal: Final Rule
Main Takeaways

- EPA completely dropped any reliance on a scientific basis
- Four bases for recission:
  - The CAA limits EPA's authority to regulate to local and regional air impacts, not global
  - EPA erred in issuing the EF as a "standalone" decision, severed from considering the contribution from or standards that would apply to motor vehicles
  - The finding is barred by the major questions doctrine
  - GHG emissions standards for new motor vehicles would have a minimal impact on global GHG levels and thus minimal impact on climate change
- Greenhouse gas emission limits for motor vehicles are deleted

Legal Basis for Endangerment Finding Rescission

- EPA does not have legal authority to find endangerment from GHGs under ξ 202(a)(1):
    - the Clean Air Act's reference to “air pollution” extends only to pollution with local or regional effects
    - new motor vehicles do not contribute to such localized air pollution because climate change harms are too attenuated from US vehicle GHG emissions
    - regulating these emissions would not meaningfully address the underlying harm
    - EPA should have addressed the air pollutants individually

The Stakes: Biden Administration Climate Regulations

- 2024: EPA updated GHG standards for light, medium and heavy-duty vehicles -- REPEALED
- 2024: EPA updated GHG rules for oil and gas industry, including existing sources – ACTION PENDING?
- 2024: EPA issued new rules reducing GHGs from fossil fired power plants – PROPOSED REPEAL/IN LIMBO

2024 Passenger Car GHG Emissions Standards Rule

- **7.3 Billion Tons of CO2 Emissions Avoided** Over Life of Program
- For Average Fleet**: 50% reduction in CO2 Emissions** Rate from MY26 Fleet
- **$13 billion in annual health benefits**, according to EPA estimates
- **$77 Billion** in estimated climate benefits
- **Consumers will save $6,000** on average over the lifetime of a model year 2032 vehicle, compared to a vehicle meeting the 2026 standards.

“Fleet Mix” – How might companies comply?

- Performance-Based GHG Standards
  - Allow companies considerable flexibility to address diverse business and marketing requirements
  - Encourage consumer choice
- Projections:
  - EVs: 30 to 56 percent for light-duty vehicles / 20 to 32 percent for medium-duty vehicles
  - ICEs: 29 percent
  - PHEVs: 13 percent
  - HEVs: 3 percent
- Particulate Filter Projections:
  - 100 percent implementation in internal combustion vehicles

Oil/Gas Methane Standards

- Oil and natural gas well sites, compressor stations, processing segments, and transmission/storage segments.
- Key **emissions sources** include completions of hydraulically fractured **wells**, **compressors, fugitive emissions, process controllers, process pumps, storage vessels, and sweetening units**.
- The 2012 NSPS focused on volatile organic compounds (VOCs), while the 2016 and 2023 NSPS expanded to include methane and VOCs, with the 2023 guidelines introducing additional requirements for certain processes.
- **Specific emissions controls are mandated** for various equipment, with some sources covered only for sulfur dioxide (SO2) or VOCs.
- **Leak detection and repair**
- **Super Emitter Program**.

O/G Benefits

- 58 million tons of methane emissions avoided from 2024 to 2038,
  - the equivalent of 1.5 billion tons of carbon dioxide
  - 80 percent relative to what they would be without the rule.
- Avoid 16 million tons of smog-forming VOCs and 590,000 tons of toxic air pollutants like benzene and toluene, from 2024 to 2038.
- Ozone reductions will prevent up to 97,000 cases of asthma symptoms and 35,000 lost school days a year.
- Save enough gas from 2024 to 2038 to heat nearly 8 million homes for the winter.
- ***Net*** climate and ozone health benefits of **$97 to $98 billion** dollars from 2024-2038 ($2019), the equivalent of **$7.3 to $7.6 billion a year**, **after accounting for the costs** of compliance and savings from recovered natural gas.

O/G - Current Status

- Modest reconsideration proposal by Biden EPA to make targeted adjustments
  - Final in OMB review
- Interim Final Rule to extend compliance deadlines
- Legal and political cross-pressures
  - 2020 Repeal of Obama methane standards nullified by Congress in 2021, including via legislative history, the arguments made to support repeal
  - Major international companies favor preserving methane standards to ensure global competitiveness

Power Plants - New Gas and Existing Coal

New combustion turbines

- New base load turbines (defined as units that are generating at least 40% of their maximum annual capacity, i.e., greater than 40% capacity factor) are subject to an initial "phase one" standard based on efficient design and operation of combined cycle turbines; and a "phase two" standard based on 90% capture of CO2 with a compliance deadline of Jan. 1, 2032.
- New intermediate load turbines (defined as units that are generating between 20 and 40% of their maximum annual capacity, i.e., 20-40% capacity factor) are subject to a standard based on efficient design and operation of simple cycle turbines.
- New low load turbines (defined as units that are generating less than 20% of their maximum annual capacity, i.e., less than 20% capacity factor) are subject to a standard based on low-emitting fuel.

Existing coal-fired EGUs

- Units that intend to operate on or after January 1, 2039 (i.e., “long-term” units) will have a numeric emission rate limit based on application of CCS with 90% capture, which they must meet on January 1, 2032.
- Units that have committed to cease operations by January 1, 2039 (i.e., “medium-term” units) will have a numeric emission rate limit based on 40% natural gas cofiring that they must meet on January 1, 2030.
- Units that demonstrate that they plan to permanently cease operation prior to January 1, 2032, will have no emission reduction obligations under the rule.

Power Plants -- Benefits

- 1.38 billion metric tons of carbon pollution overall through 2047, which is equivalent to preventing the annual emissions of 328 million gasoline cars, or to nearly an entire year of emissions from the entire U.S. electric power sector.
- Up to $370 billion in climate and public health net benefits over the next two decades.
- Climate and health benefits of this rule substantially outweigh the compliance costs. In 2035 alone, the regulatory impact analysis estimates substantial health co-benefits including:
  - Up to 1,200 avoided premature deaths
  - 870 avoided hospital and emergency room visits
  - 1,900 avoided cases of asthma onset
  - 360,000 avoided cases of asthma symptoms
  - 48,000 avoided school absence days
  - 57,000 lost workdays

Power Plants – Current Status

- Proposed Full Repeal in June 2025
  - Arguments similar to repeal of car and truck standards: GHG emissions not sufficient to be “significant” contributors to global climate change per EPA interpretation of Clean Air Act section 111
- Cross-pressures
  - Industry wants requirements (CCS and co-firing) repealed via the least-risky legal path – i,e, based on the technical record without relying on statutory interpretation (“significant”)

"Nothing Ventured Nothing Gained" – Considerations for State and Private Actors

- State clean electricity policies
- State clean transportation policies
- Legal environment on questions of federal preemption and private causes of action rendered uncertain by repeal of Endangerment Finding and GHG tailpipe emissions standards
  - "Anti-backsliding" requirements for tailpipe emissions standards changes: EVs and NOx

Speakers

Hana Vizcarra

Senior Attorney
Earthjustice

Marvin C. Brown IV

Senior Attorney
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Litigation on the Endangerment Finding

Hana Vizcarra
Marvin C. Brown IV

EARTHJUSTICE

What's Gone?

- Finding under section 202 of the Clean Air Act that GHGs endanger public health and welfare and that emissions from motor vehicles contribute to that endangerment.

- All GHG-emission standards for motor vehicles (light-duty, medium-duty, and heavy-duty) from 2012 - 2032

What Remains?

- Testing and reporting requirements for fuel-economy standards administered by NHTSA

- Warranty provisions for Renewable Energy Storage Systems (battery storage requirements for EVs and plug-in hybrids).
  - Battery monitor provisions are removed though

What the Repeal Means for Transportation Emissions:

EDF Analysis of Effect of Repeal of GHG Motor Vehicle Emission Standards Through 2055

- Particulate Matter (PM): 68,000 to 169,000 U.S. tons
- Nitrogen Oxides (NOx): 2.0 to 4.7 million U.S. tons
- Sulfur Oxides (SOx): 37,000 to 54,000 U.S. tons
- Volatile Organic Compounds (VOCs): 1.8 to 4.3 million U.S. tons
- Greenhouse Gases (GHG): 9.1 to 17.9 billion metric tons

- 33,000 to 77,000 premature deaths
- 22 to 52 million asthma attacks
- 8 to 19 million lost school and work days
- 52,000 to 122,000 hospital and emergency room visits

Who has sued EPA…so far?

26-1037

- The American Public Health Association, American Lung Association, Alliance of Nurses for a Healthy Environment, Clean Wisconsin, represented by Clean Air Task Force,
- Center for Community Action and Environmental Justice (CCAEJ), Clean Air Council, Friends of the Earth, Physicians for Social Responsibility, Rio Grande International Study Center (RGISC), and the Union of Concerned Scientists, represented by Earthjustice, and
- Center for Biological Diversity, Conservation Law Foundation, Environmental Defense Fund, Environmental Law & Policy Center, NRDC (Natural Resources Defense Council), Public Citizen, and Sierra Club

26-1038

- Elena Venner et al., represented by Our Children's Trust and Public Justice

26-1039

- Business Climate Initiative Action (ZETA)

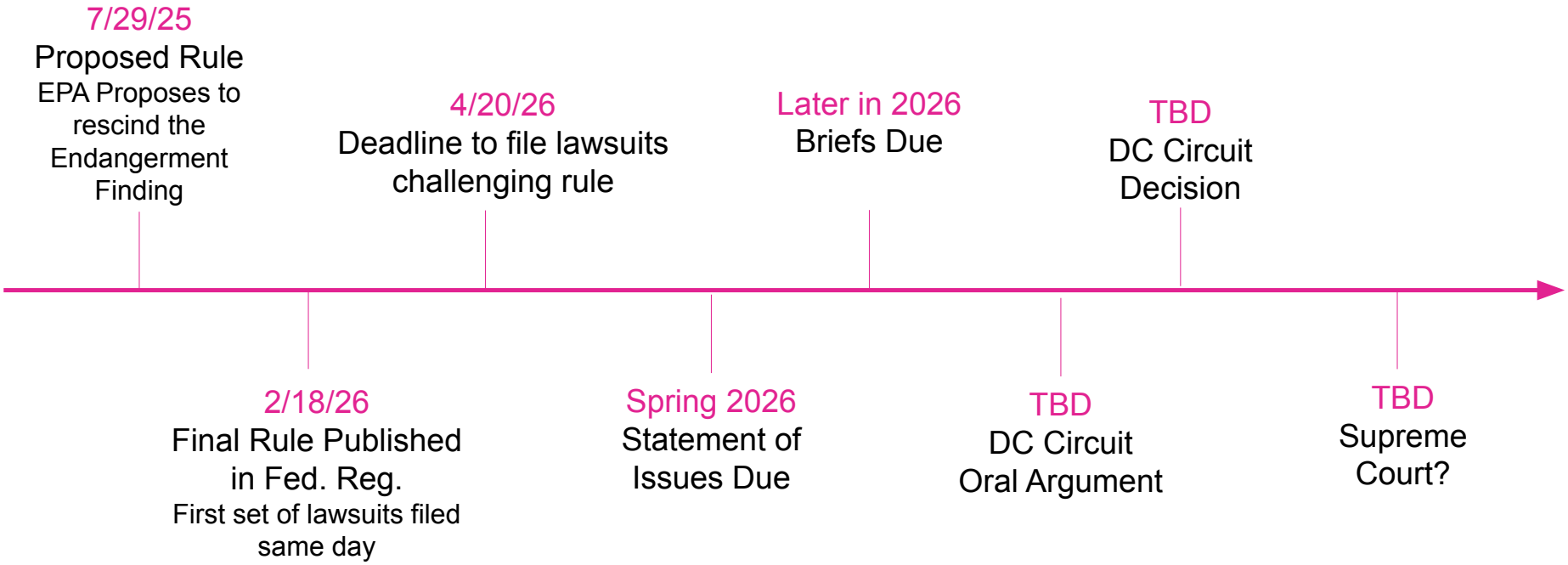
26-1043

- Metropolitan Congregations United for St. Louis, Missouri Coalition for the Environment

26-10XX

More to come….

LITIGATION TIMELINE



EARTHJUSTICE

BECAUSE THE EARTH NEEDS A GOOD LAWYER

Speaker

Jordan Gerow

Policy & Research Director

Climate XChange

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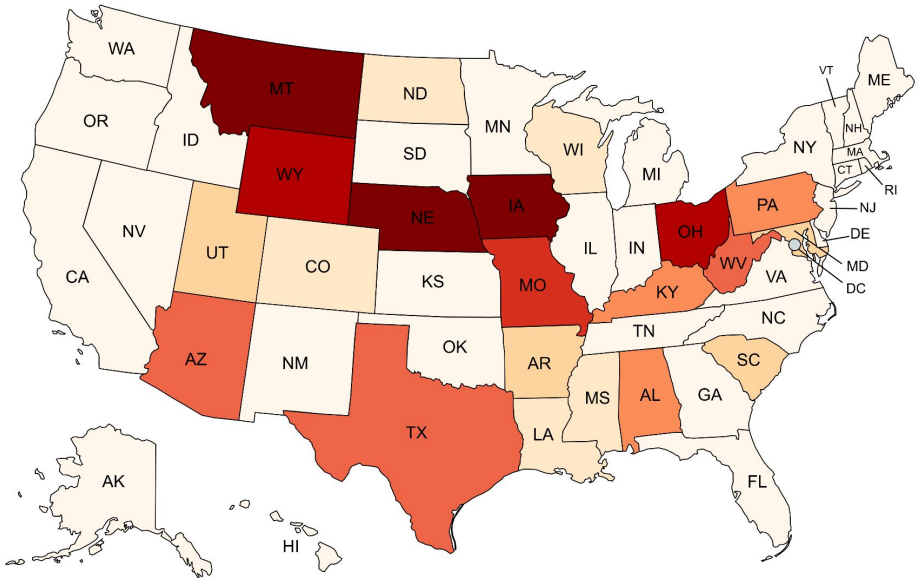
What States Can Do
Without the Endangerment Finding

- Regulate emissions from **power plants**
- Regulate methane emissions from **oil and natural gas facilities**, as well as **landfills**
- Regulate **everything-but-the-tailpipe** in the transportation sector
- Test federal preemption arguments on **Clean Cars**, **Polluters Pay**

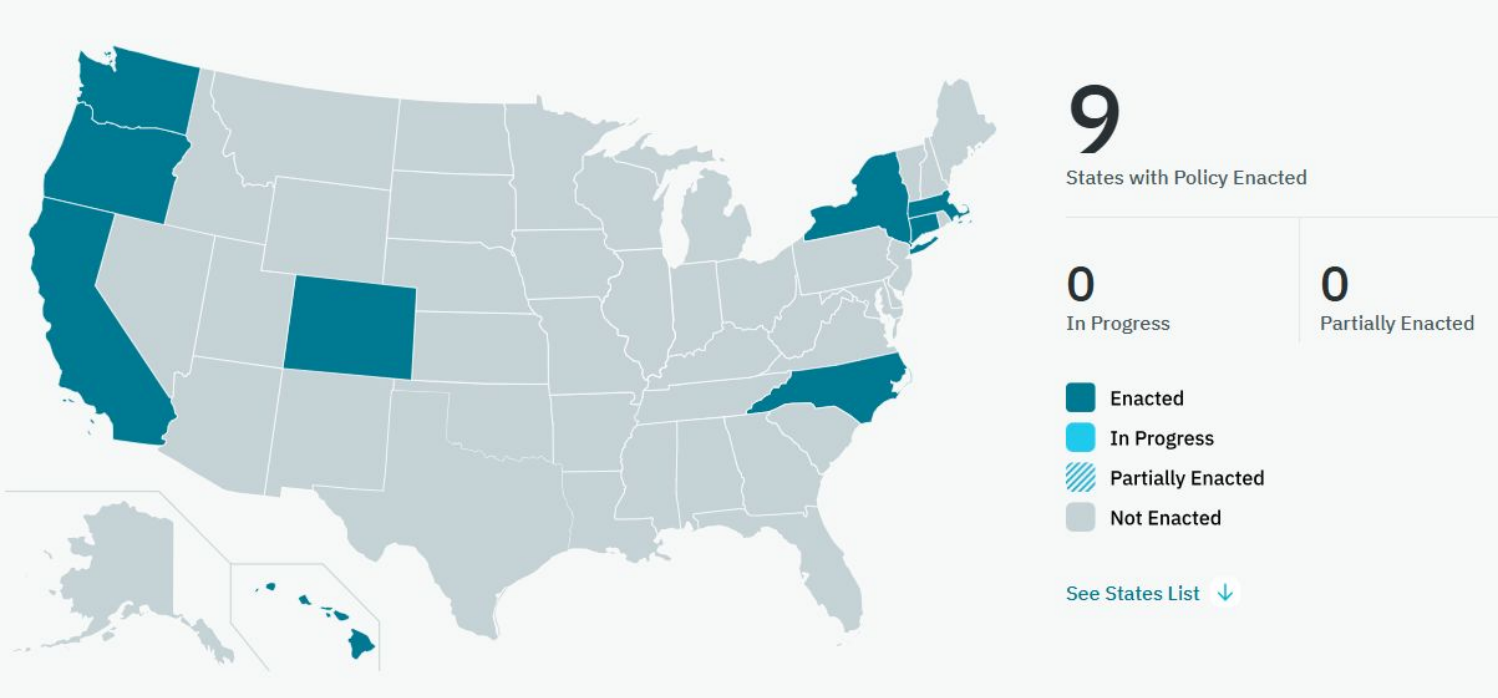
Power Plant Emissions: Where Might States Backslide the Most Without Federal Regulation?



States are color-coded based on 2050 power sector emissions saved over business-as-usual scenario in EPA's power sector modeling.

- By 2050, many states see low or even negative emissions reductions, according to regulatory impact analysis.
- A handful of states drive most of emissions reductions, particularly where long-lived coal persists.

How States Can Regulate Power Plant Emissions: **Electricity Sector GHG Emission Reduction Targets**



States with Electricity GHG Reduction Targets

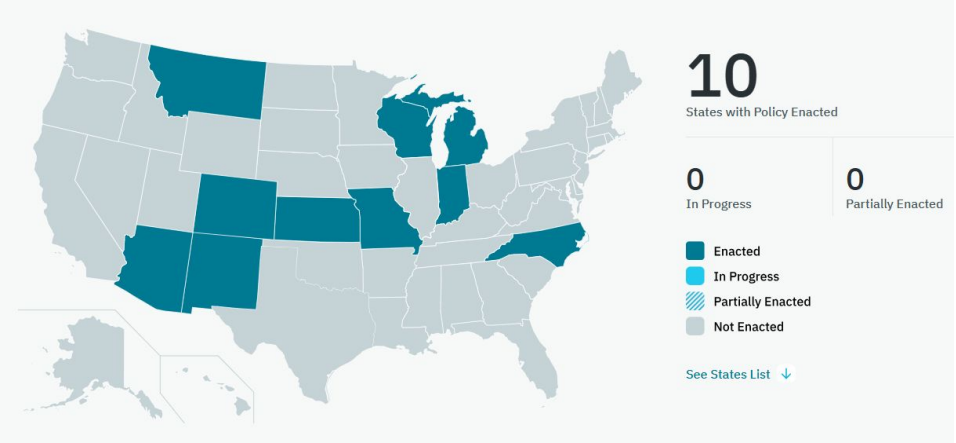
How States Can Regulate Power Plant Emissions: **Coal Phaseout and Peaker Plant Regulations**

Coal Phaseout

- **Stick Method:** Washington's Clean Energy Transformation Act (SB 5116, 2019), requires coal phaseout by 2026
- **Carrot Method:** Coal plant securitization, reinvest savings in programming that aligns with state priorities

Peaker Plant Regulations

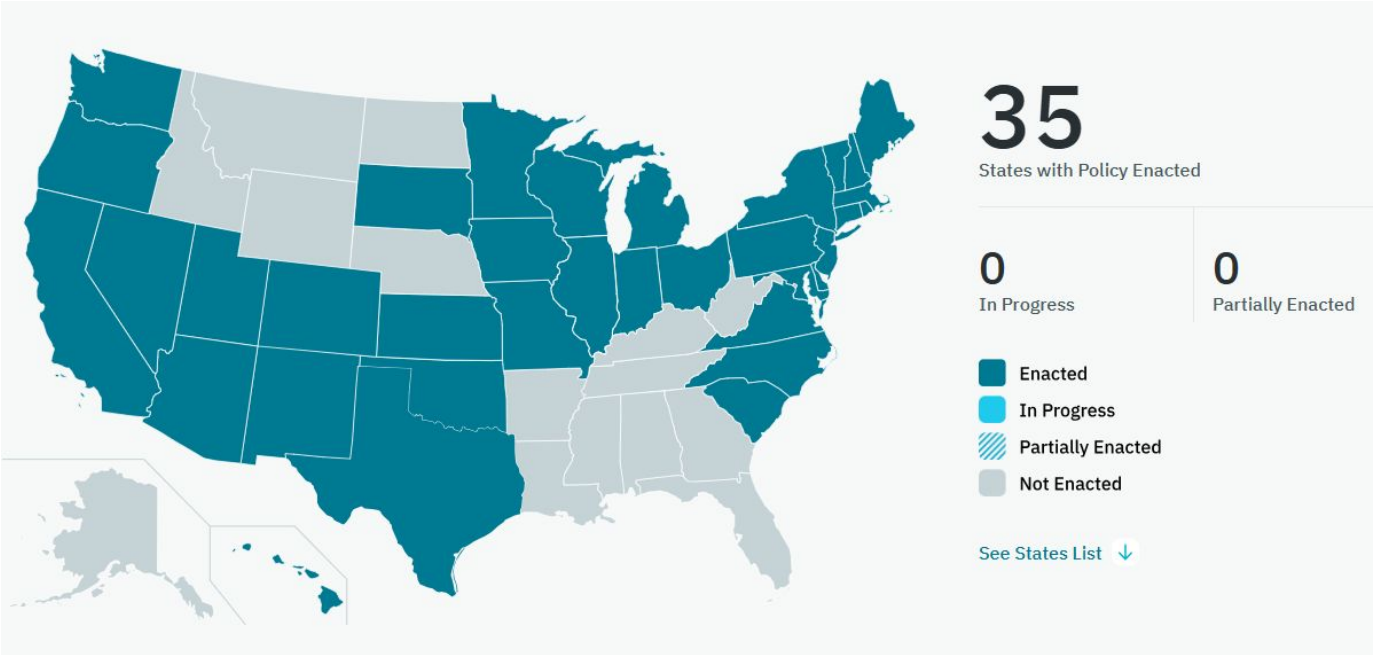
- Massachusetts' Clean Peak Standard (HB 4857, 2018): Target the **highest-emitting plants** in the sector; directs retail electricity suppliers/distributors to meet a minimum percent of sales with qualified peak resources



States with Coal Securitization Policies

How States Can Regulate Power Plant Emissions: **Renewable Portfolio/Clean Energy Standards**

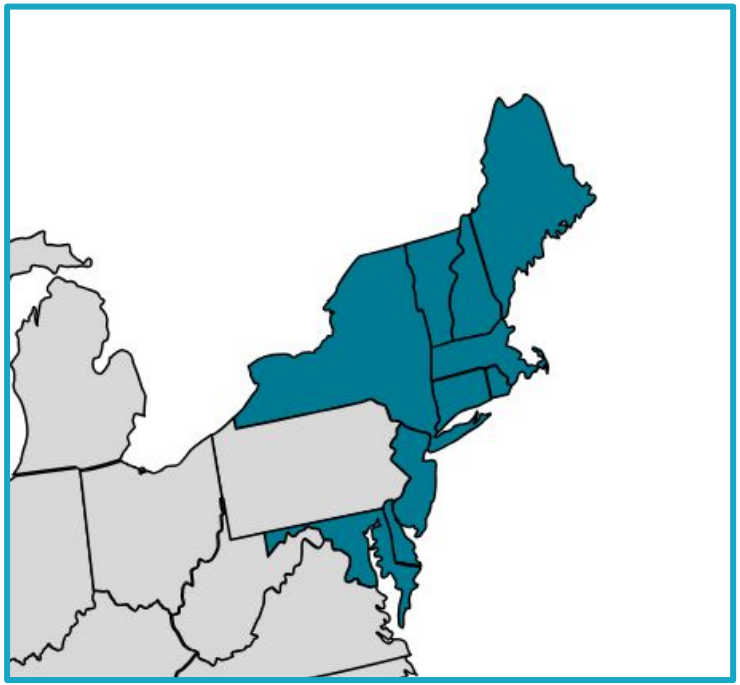
To date, 35 states have established with **varying degrees of stringency**.



States with RPS/CESs

How States Can Regulate Power Plant Emissions: **Cap-and-Trade Programs**

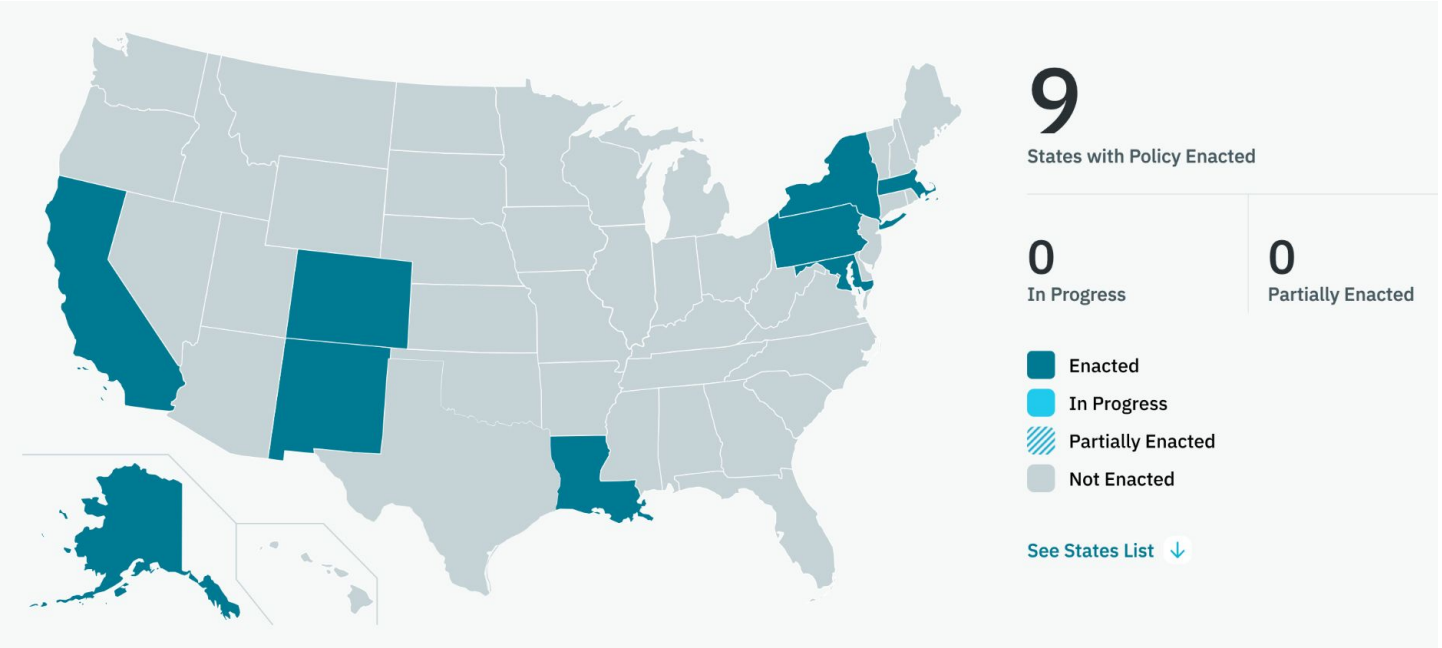
- RGGI represents a multi-state collaborative of **10 northeastern states** to reduce CO_2 emissions from power plants
- Since 2005, the ten states participating in RGGI have **cut power-sector emissions by 50 percent**, nearly 50 percent faster than the U.S. as a whole, while raising **approximately $9.7 billion to reinvest in local communities**
- States have discretion to use RGGI proceeds for programming that **aligns with political priorities**
- See also the **Western Climate Initiative,** and **PACER program** under consideration in PA.



10 States in the Regional Greenhouse Gas Initiative (RGGI)

How States Can Regulate Methane Emissions: **Target the Oil and Gas Sector**

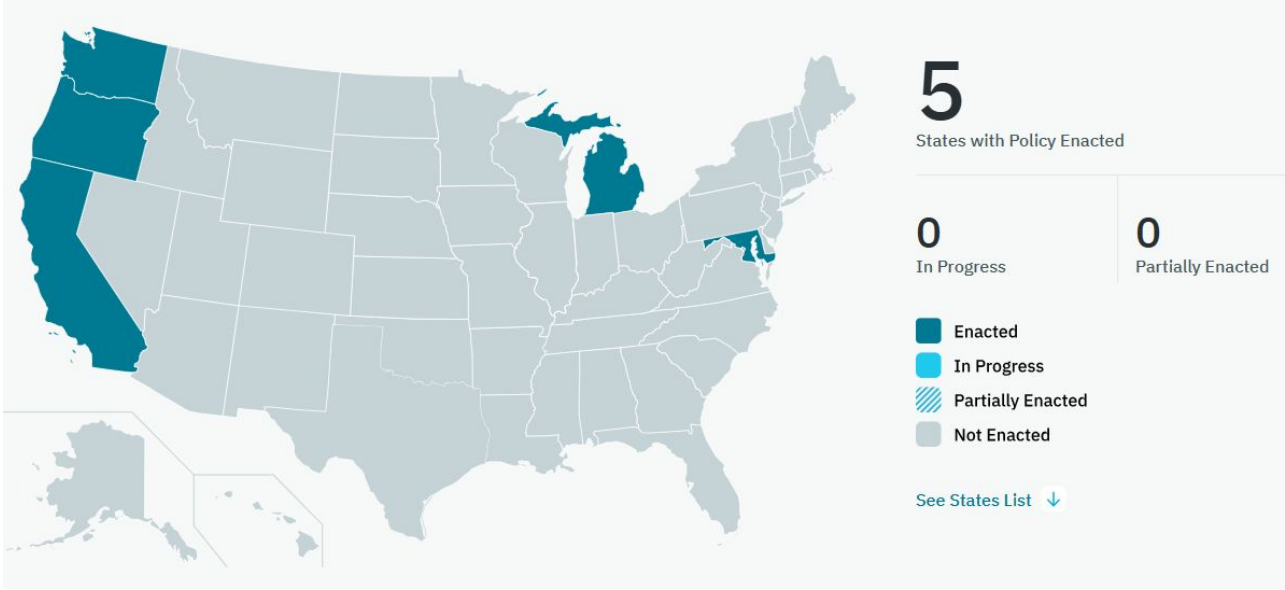
9 states have their own **methane regulations for oil and gas production and operation**



States with O&G Methane Regulations

How States Can Regulate Methane Emissions: **Target Landfills**

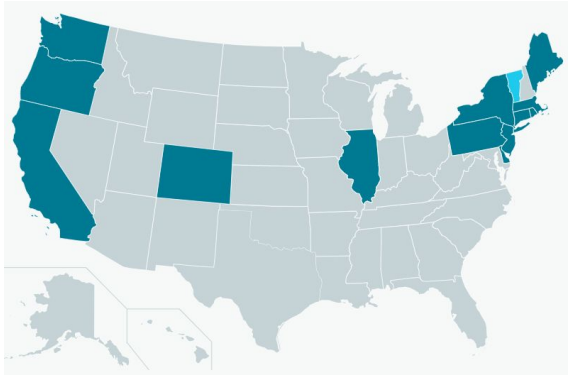
5 states have their own **methane regulations from landfills**



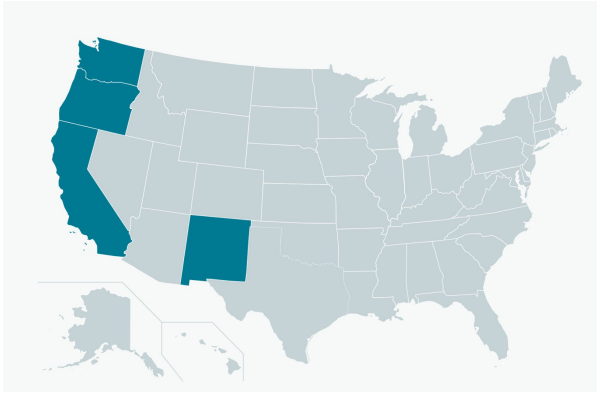
States with Landfill Methane Regulations

How States Can Decarbonize Transportation

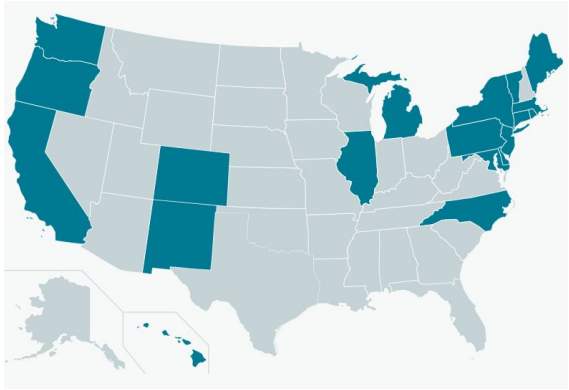
- Tax incentives and rebates for EVs and chargers
- Government procurement/Lead by Example
- Low carbon fuel standards
- Indirect source review
- See our previous webinar on state gap-filling strategies in the transportation sector!



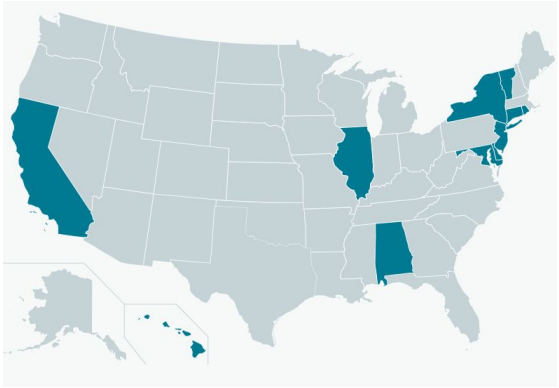
13 states offer LDV EV rebates



4 states have adopted a LCFS



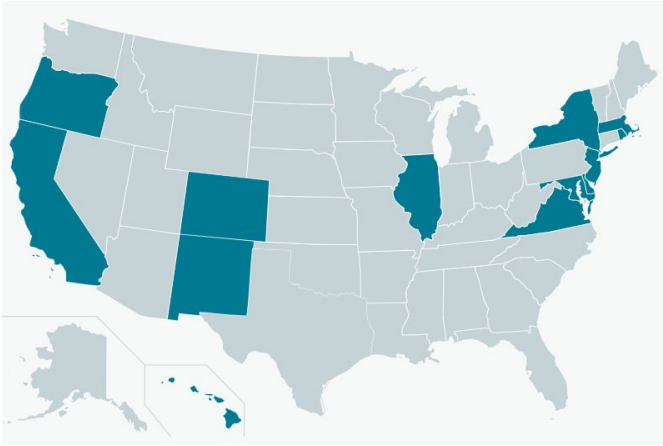
19 states have LDV/MHDV EV procurement targets and/or electric bus targets



11 states offer EVSE rebates

States Have Many Levers to Expand EV Charging

- Planning and electric regulation
  - EV charging rate design
  - PUC proceedings to build out charging infrastructure
  - State or multi-state EV planning exercises
- Funding
  - Recent investments announced in Washington, California (twice!), New York, Colorado, and more.
- Streamlined permitting for EV charging stations
  - Ex: California AB 1236 (2015) and AB 970 (2021) require cities and counties to adopt streamlined permitting procedures for EV charging stations
- EV-related building and zoning codes
  - EV-Ready Codes for New Buildings, Curbside Charging permissions



13 states have EV charging infrastructure requirements

How States Can Test Preemption Arguments Over Tailpipes and Polluter Pays Laws

- With California CAA waiver rescissions still in court, some commenters suggest California may no longer need the waiver in the first place.
    - Clean Air Act: “No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part.”
- Climate Superfund laws in New York, Vermont both tied up in court on similar federal preemption arguments.
    - Intervenor-Defendants in Vermont case already filed brief stating that “EPA’s legal reasoning in the final rule undermines Plaintiffs’ Clean Air Act preemption claims, because ‘[a]bsent the power to act, the [EPA] has no power to preempt.’”

Q&A

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Thank you for joining!

Reach out to kristen@climate-xchange.org with any additional questions!

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