

Recycling Old Tricks: State AGs Probe Plastics Industry Collusion in Latest ESG Probe

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November 12, 2025

This month, the attorneys general of Florida, Texas, Iowa, Nebraska, and Montana sent letters to various environmental groups expressing “collective concern” about potentially anti-competitive recycling practices. The letters, sent to the [Consumer Goods Forum](#), the [Green Blue Institute](#) and the [U.S. Plastics Pact](#), vary slightly depending on the recipient, but make the same general allegations.

First, the states identify certain environmental goals that the environmental groups set for their respective members (e.g., general collaborative efforts to reduce plastics use or specific targets to reduce plastic packaging by a certain percentage by benchmark years). The states note that these goals aim to ensure “stakeholders ... artificially change the output and quality of their goods and services in a uniform manner,” in possible violation of antitrust laws.

Second, the states allege that the environmental groups “coordinate[] collective action” to achieve the identified targets and “reduce plastics.” The states express concern with the groups’ insistence on making “urgent” or “transform[ative]” systemwide change.

The states contend that these actions may constitute a group boycott to reduce the output and quality of goods and services involving plastics, in potential violation of the Sherman Act and state UDAP laws. They claim that “intentions,” including “environmental goals” do not excuse anticompetitive constraints because they distort the competitive marketplace nonetheless.

In addition to antitrust allegations, the states note that the groups may violate consumer protection laws because they mislead their members, who in turn mislead consumers, about the viability and benefits of the groups’ goals.

The letters conclude by requesting that the environmental groups “provide a response to these concerns” that includes the legal basis for why the group is not violating these laws and all supporting documents.

The AGs’ letters highlight that states remain focused on ESG issues, particularly where environmental groups — and their members — set environmental-related targets or goals. For example, states [previously sued](#) BlackRock, State Street, and Vanguard for [allegedly](#) conspiring to reduce coal output (vis-à-vis their involvement in an environmental group called the Net Zero Asset Managers Initiative), as well as allegedly misleading investors by pursuing ESG investing strategies. Similarly, 19 Republican state AGs issued CIDs to six major US banks for allegedly reducing the output of coal through their involvement in the Net Zero Banking Alliance. States also remain focused on DEI issues, with [11 Republican states sending letters](#) earlier this year relating to potential antitrust violations stemming from companies’ use of “race- and sex-based quotas.”

These letters also serve as a reminder that participation in a trade association “does not shield joint

activities from antitrust scrutiny,” as the FTC points out in its [“Spotlight on Trade Associations”](#) guidance.