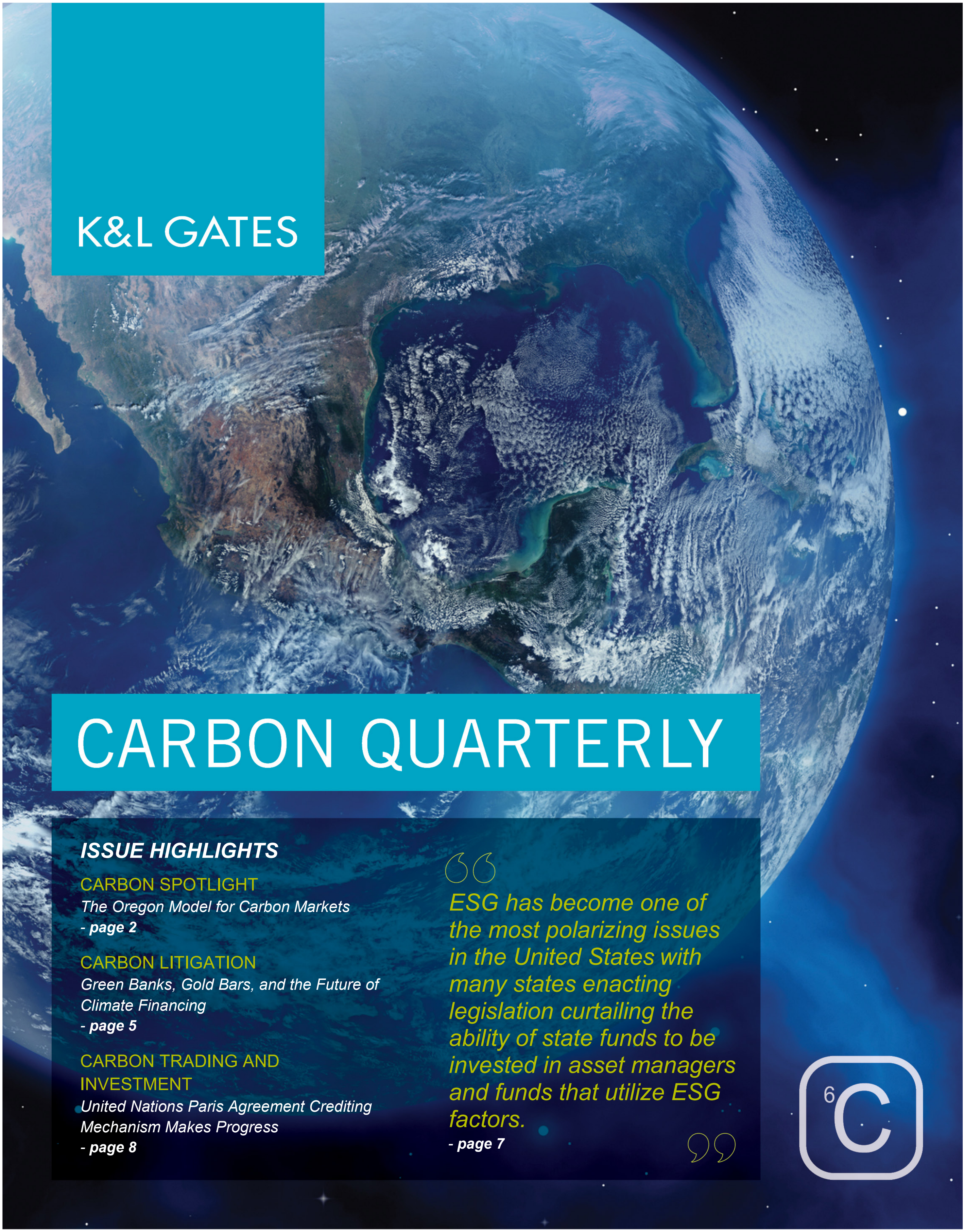

K&L GATES

CARBON QUARTERLY

ISSUE HIGHLIGHTS

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What's Inside

No matter your views on climate change policy, there is no avoiding an increasing focus on carbon regulation, resiliency planning, and energy efficiency at nearly every level of government and business. Changes in carbon—and, more broadly, greenhouse gas—policies have the potential to broadly impact our lives and livelihoods.

Covering developments in carbon policy, law, and innovation, *Carbon Quarterly* is produced by our Carbon Solutions group—a collaboration of our lawyers in the Asset Management and Investment Funds; Corporate; Energy, Infrastructure, and Resources; Real Estate; and Policy and Regulatory practices.

Carbon Spotlight

The Oregon Model for Carbon Markets

Oregon adopted a new approach in climate policy with the recent launch of its statewide carbon market. As only the third state to implement such a system, Oregon's approach provides a valuable case study for other states seeking to reduce carbon emissions.[1] What sets Oregon apart is the way it established its market—circumventing the legislature through executive action. While this method has drawn both praise and criticism, it offers a potential pathway for other states struggling with legislative gridlock.

The Oregon Model: Regulatory Action Over Legislation

Launched in January 2025, Oregon's Environmental Quality Commission reinstated and updated the Climate Protection Program, the state's emissions trading system, after a court ruling had previously struck it down.[2] Instead of relying on new laws, Oregon's carbon market was implemented through the state's existing environmental regulatory framework.[3]

Other states such as Pennsylvania, Maryland, and Vermont are considering similar moves as climate advocates push for state-level action amid federal rollbacks under President Donald Trump's administration.[4]

How the Oregon Carbon Market Works

Oregon's carbon market differs significantly from those in California and Washington, both in scope and funding structure. Oregon's program is narrowly focused on 34 oil and natural gas fuel suppliers and 40 industrial facilities, collectively referred to as "covered entities."[5] The latter group benefits from a three-year waiver from some regulatory requirements, providing time for adjustment.[6]

Each covered entity receives an annual emissions cap.[7] Those that exceed their limit must compensate by purchasing carbon credits from other covered entities or funding in-state greenhouse gas reduction projects, referred to as "CCI credits" in the regulation (see the following paragraph).[8] However, these projects can offset only a portion of the excess emissions, ensuring direct emissions reductions remain the primary mechanism for compliance.[9]

Unlike California and Washington state, Oregon's program does not collect funds from covered entities to finance climate-related state projects.[10] Instead, Oregon approves third-party organizations as Community Climate Investment (CCI) entities who are eligible to receive funds from covered entities in exchange for CCI credits that may be used to offset a portion of the covered entities' emissions.[11] CCI entities then use these funds for eligible projects that reduce greenhouse gas emissions in Oregon, including emissions from transportation, building usage, and industrial processes.[12] At least 15% of CCI funds must be spent on eligible projects that benefit federally recognized tribes and tribal communities in Oregon.[13]

Legal and Political Challenges

Oregon businesses successfully blocked a similar regulatory effort under former Governor Kate Brown (D) in 2021, when a court ruled the state failed to comply with public disclosure requirements.[14] Although the ruling did not address whether the state overstepped its authority, it set a precedent that businesses may leverage in future challenges.[15]

The current program is already facing resistance from industry groups. Erik Lukens, spokesperson for Oregon Business & Industry, has warned that the market could impose substantial costs on businesses and consumers, arguing that "energy, goods, and services for Oregonians will become significantly more expensive."[16] Given these concerns, litigation against the new regulation appears likely.

However, by targeting a limited number of high-emission sectors, Oregon's program sidesteps broader economic disruptions that might provoke stronger political pushback. Other states may use Oregon's model to create more politically viable carbon markets.

Broader Implications for US Climate Policy

Oregon's experience underscores the broader political and legal challenges facing carbon markets in the United States. Even in states with strong climate commitments, opposition from industry groups and political actors can stymie progress. However, the persistence of state-led initiatives suggests that innovative policy pathways—whether through regulation, ballot measures, or executive action—will remain a crucial strategy in advancing climate action at the state level.

For example, Pennsylvania Governor Josh Shapiro (D) is carefully navigating the legal landscape as he considers a carbon market. His administration has opted to wait for a state Supreme Court decision on the government's regulatory authority before moving forward.[17]

Similarly, Washington state successfully defended its carbon market against a ballot measure backed by Republican donors in 2024.[18] California also overcame a challenge to its cap-and-trade program in 2010 when a fossil fuel-backed measure sought to delay its implementation.[19]

Conclusion

Oregon's carbon market offers a model for states seeking to implement climate policy in the face of legislative inaction or roadblocks. While its regulatory approach carries legal risks, it may be a pragmatic solution for governors committed to reducing emissions.

Carbon Policy

Ruled Out of Bounds—US House Republicans Seek to Roll Back CFTC Guidance Using the CRA

On 20 February 2025, House Majority Leader Steve Scalise (R-LA) released a list of federal agency rulemakings that the House Republicans are prioritizing as potential targets for the Congressional Review Act (CRA), a tool used by Congress to nullify federal agency rulemaking.[20] The list takes aim at multiple rules promulgated by the Environmental Protection Agency (EPA) and Department of Energy concerning energy conservation and greenhouse gas emissions reductions, including California's long-held Clean Air Act waiver that allows California to preempt federal car and truck air emissions standards.[21]

One target for the CRA is the Commodity Futures Trading Commission's (CFTC) guidance regarding the listing for trading of voluntary carbon credit (VCC) derivative contracts (the VCC Guidance), which is nonbinding guidance rather than a formal rulemaking.[22] The CRA allows Congress to act on a joint resolution of disapproval that, if passed, prohibits the targeted rule from taking effect (including retroactively).[23] The CRA also provides that a rule may not be issued in "substantially the same form" as the disapproved rule unless it is specifically authorized by a subsequent law.[24] As such, the CRA is a powerful tool for Congress, particularly when both houses are majority-controlled by one party. The CRA, however, has never before been used to nullify nonbinding guidance issued by federal agencies.[25]

The VCC Guidance provides that VCC derivative contracts must be reviewed and evaluated in the same manner as other derivatives contracts by designated contract markets (DCMs).[26] DCMs were already required to do this, but the VCC Guidance enumerates certain criteria that DCMs should consider when performing these evaluations.[27] The VCC Guidance did go through a formal notice and public comment period, similar to a formal rulemaking, but the criteria are not legally binding on any nonagency parties and only represent what the CFTC views (or viewed at that time) as best practices for DCMs to follow when evaluating VCC derivative contracts under their existing obligations.[28] As a result, it is a question as to whether the VCC Guidance constitutes a "rule" for CRA purposes. Importantly, Rep. Scalise calls the VCC Guidance a "rule" and states that it "establishes a voluntary market to buy and sell 'carbon credits' to offset emissions."[29] The VCC Guidance does not, however, establish such a voluntary market, which has existed for decades and is a global market not regulated by any one particular country or agency.[30] The practical effect of rescinding the VCC Guidance is unclear, since there are no binding obligations on nonagency parties, but it surely would not be to dismantle the international voluntary carbon market.

It remains to be seen how many of the rules on Rep. Scalise's list will be nullified through the CRA. As of the end of the first quarter of 2025, President Trump has signed into law two CRA resolutions targeting rules issued by the Bureau of Ocean Energy Management and the EPA.[31]

Brazil Adopts Regulatory Framework for Offshore Wind

Brazilian Federal Law 15,097/2025, passed into law on 10 January 2025, creates a legal framework for the Brazilian government to grant rights to use designated offshore areas for power generation in Brazil.[32] The law aims to attract investments in renewable energy, particularly offshore wind power, and related infrastructure projects. This law follows Brazil's pledge at the 2024 United Nations Climate Change Conference (COP29) to reduce emissions by 67% from 2005 levels by 2035.[33]

Although Brazil currently lacks significant offshore wind production due to its traditional reliance on hydroelectric power, and more recently onshore wind and solar energy, the country possesses some of the world's best offshore wind resources.[34] According to a July 2024 report prepared by the World Bank, these resources have a technical potential of over 1,200 gigawatts (GW), which includes 480 GW from fixed foundation potential (in waters less than 70 meters (m) deep) and 748 GW from floating foundation potential (in waters ranging from 70 m to 1,000 m deep).[35] Despite already having many energy options, Brazil is seeking to develop offshore wind at scale as part of a long-term strategy for meeting the country's energy needs while also achieving goals related to climate mitigation, energy security, electricity affordability, and economic development.[36]

Under such law, the Brazilian federal government may grant rights to private companies to exploit offshore areas, called "prisms" in the law, for electricity generation purposes through two methods: (i) *Permanent Offer*, whereby the government designates the prisms based on requests and preliminary studies presented by the interested parties themselves and grants the right via direct contracting ("authorization" regime); and (ii) *Planned Offer*, whereby the government designates the prisms based on its own plan and grants the right via a competitive bidding process ("concession" regime).[37]

Delineation of prisms is subject to certain restrictions. Unless technical compatibility exists between the activities, prisms to be granted to participants for power generation purposes cannot intersect with one another, with blocks allotted for production of oil, natural gas, and other fluid hydrocarbons, navigation routes, and environmentally protected areas, among other areas and uses.[38]

Participants must meet technical, economic, financial, and legal qualifications, and grantees will need to conduct development and feasibility studies, such as a preliminary area study and a socio-environmental impact assessment.[39] The operation of offshore power generation activities will also require a license from Brazil's National Electric Energy Agency (ANEEL). Environmental studies, monitoring, and conservation measures will also be required throughout each project's life cycle.[40] Information collected through these activities will be part of a publicly accessible Brazilian offshore energy inventory database, EPE WEBMAP.[41]

Additionally, all offshore generation project grants must include decommissioning provisions, ensuring that sites are recovered to a state as close as possible to their original condition after the project's life cycle ends.[42]

Certain aspects of the law still depend on regulations to be issued by the federal government, such as the mechanism to assess potential conflicts of a prism with preexisting activities, qualification requirements of participants, the creation of carbon credit trading rights for offshore energy projects, and the integration of projects with the national electricity grid. Regulations will be issued by the National Energy Policy Council, which will also define complementary guidelines, while the Ministry of Mines and Energy and ANEEL will be responsible for monitoring and implementing such rules.

Law 15,097/2025 is a major step forward for offshore renewable energy in Brazil, providing a clear legal framework to attract investment while balancing economic growth, environmental protection, and energy security. The law encourages public-private partnerships, ensures revenue sharing with local governments, and promotes job creation and industrial development.

Carbon Dioxide Pipelines Encounter Legislative Resistance in North Dakota and South Dakota With Differing Outcomes

Carbon capture and storage (CCS) developers have turned to eminent domain to secure rights to land necessary for pipeline development. In many states, utility and gas developers are often deemed to be "common carriers" and are thus granted the right by statute to exercise eminent domain over private lands for certain enumerated purposes related to the development of permitted projects.[43] However, the use of eminent domain by CCS developers has been subject to court and legislative challenges in several states, including North Dakota and South Dakota, each of which reached differing outcomes.

On 6 March 2025, South Dakota passed into law legislation expressly prohibiting the use of eminent domain for the acquisition of land rights necessary to construct carbon dioxide pipelines.[44] South Dakota Codified Laws Chapter 49-7 provides that "[a]ll pipelines holding themselves out to the general public as engaged in the business of transporting commodities for hire by pipeline are common carriers" and that such common carriers are permitted to "exercise the right of eminent domain in acquiring right-of-way as prescribed by states."[45] Carbon pipeline developers sought clarification from South Dakota courts as to whether a carbon pipeline would qualify as a common carrier under this statute.[46] However, the South Dakota legislature took the decision into their own hands pursuant to the newly enacted South Dakota House Bill 1052, such that no person may exercise the "right of eminent domain to acquire right-of-way for, construct, or operate a pipeline for the preponderant purpose of transporting carbon dioxide."[47] As a result, CCS developers seeking to operate pipelines in South Dakota will instead be required to reach voluntary agreements with private landowners in order to move forward pipeline projects requiring private land.

House Bill 1052 was enacted amidst Summit Carbon Solutions' (Summit) planned development of a carbon pipeline spanning five Midwest states, intended to bring carbon to an underground storage location in North Dakota, a project with an estimated total cost of US$9 billion.[48] Approximately 495 miles (796 kilometers) of the pipeline was initially planned to cross South Dakota.[49] As a result of House Bill 1052, the Summit project's future remains in jeopardy, as Summit has requested a pause on its scheduled proceedings for its South Dakota pipeline permit.[50] Meanwhile House Bill 1052 was viewed as an important victory for South Dakotan landowners opposed to Summit's project, which will now force Summit back to the negotiating table with private landowners in the state.[51]

Faced with similar pressures from landowners, South Dakota's neighbor to the north declined to adopt limitations on carbon pipeline developers' access to common carrier rights to eminent domain. North Dakota statutes expressly include carbon dioxide pipeline operators as common carriers, including rights of eminent domain.[52] The North Dakota legislature considered three separate bills, each of which would have revoked carbon pipelines from common carrier status.[53] However, in February 2025, all three bills failed to receive the necessary support to pass into law, further cementing pipeline developers' right to exercise eminent domain in North Dakota.[54]

The differing outcomes between the neighboring states highlight the ongoing uncertainty that exists in connection with the development of CCS projects.

Carbon Litigation

Green Banks, Gold Bars, and the Future of Climate Financing

EPA Administrator Lee Zeldin announced his effort to reclaim US$20 billion from the Greenhouse Gas Reduction Fund (GGRF) on 12 February 2025. This decision, rooted in the agency's stated concerns regarding fund allocation and oversight, carries profound policy implications for the nation's climate strategy.

Background of the GGRF

Established under the 2022 Inflation Reduction Act, the GGRF was designed to support clean energy projects, particularly in underserved communities.[55] Its primary objective is to create "Green Banks" to finance initiatives that reduce air pollution and greenhouse gas emissions, aligning with broader goals of environmental justice and sustainable development.[56] Green Banks fill funding gaps and finance projects that would otherwise fail to get off the ground because they take too long to become profitable or carry greater risk due to novel uses of technology.[57] The Green Banks selected for GGRF funding are meant to provide senior and subordinate loans, loan purchases, equity investments, and credit enhancement to qualifying programs.[58] Because it is a loan program, the funds would be available to use and reuse over the life of the program.[59]

In July 2023, the EPA launched a grant competition, called the National Clean Investment Fund, to allocate GGRF funds to nonprofit Green Banks that would be responsible for selecting and financing eligible projects.[60] Following a review process, the EPA selected Climate United Fund, Coalition for Green Capital, and Power Forward Communities, Inc. (the Selected Green Banks) as grant recipients in April 2024.[61] The EPA worked with the Selected Green Banks to finalize terms and workplans, with the EPA releasing its final Notice of Award in December 2024.[62] The EPA selected Citibank to serve as the financial agent, responsible for disbursing funds to the Selected Green Banks when requested to meet obligations incurred under the agreements.[63]

The terms of the agreement required the Selected Green Banks to submit quarterly, semi-annual, and annual reports to the EPA "describing program performance . . . supported with qualitative discussions and quantitative metrics[.]"[64] Additionally, the parties entered into a financial agent relationship that permits the EPA to view in real time expenditures by the Selected Green Banks for the purposes of transparent oversight.[65] The final terms of the agreements between the EPA, the Selected Green Banks, and Citibank, including the financial agent relationship, were finalized on 13 January 2025, just one week before President Trump's inauguration.[66]

Concerns Leading to the Funding Clawback

EPA Administrator Zeldin's decision to retract the US$20 billion stems from allegations of mismanagement during the fund's allocation in the final days of the Biden administration. A Project Veritas video of a Biden administration official tasked with implementing the GGRF admitted to a change in mindset after the election to get billions of dollars out the door as quickly as possible.[67] The official compared it to throwing "gold bars off the Titanic."[68] Zeldin alleges that substantial sums were directed to newly established climate nonprofit organizations with minimal oversight, raising questions about the propriety and efficacy of these allocations.[69] Zeldin further alleges conflicts of interest based on connections between members of the boards of the Selected Green Banks and members of the Obama and Biden administrations.[70]

In response to these concerns, the EPA initiated an inspector general investigation into the fund's management, citing potential conflicts of interest, waste, and fraud.[71] This move led to the freezing of funds, disrupting access for the Selected Green Banks to their allocated funds.[72]

On 8 March 2025, Climate United Fund filed a lawsuit against the EPA for breach of contract, violations of due process, and Administrative Procedure Act violations.[73] Shortly after, the other two Selected Green Banks filed their own lawsuits.[74] All three were subsequently consolidated under the Climate United Fund's case.[75] The Selected Green Banks argued that the EPA failed to follow the termination procedures required by the terms of the agreements and US law and moved for a temporary restraining order (TRO).[76] The day before a hearing on the TRO, the EPA provided notices of termination to all three Selected Green Banks, stating termination was required "based on substantial concerns regarding program integrity, the award process, programmatic fraud, waste, and abuse, and misalignment with the Agency's priorities, which collectively undermine the fundamental goals and statutory objectives of the award."[77] The termination letters are the first procedural step required before the grant can be terminated.[78]

The US District Court for the District of Columbia granted a TRO on 20 March 2025 preventing the EPA from clawing back the funds or giving effect to the termination letters.[79] On 16 April 2025, after finding the Selected Green Banks were likely to succeed on the merits, the district court granted a preliminary injunction that would allow the Selected Green Banks to access funds for expenses properly incurred in accordance with the terms of the GGRF agreements.[80] On the same day, the D.C. Circuit Court of Appeals granted an partial administrative stay to prevent the Selected Green Banks from accessing funds until the court had considered defendants' appeal of the preliminary injunction.[81]

Policy Implications for Carbon Reduction Programs

The immediate effect of the funding clawback effort is the stalling or cancellation of numerous clean energy initiatives. Beyond impacts to the Selected Green Banks, organizations that were slated to receive significant loans now face financial uncertainty. This jeopardizes projects aimed at promoting solar energy, electric vehicles, energy-efficient housing, and more.[82] Climate United Fund has already committed US$31.8 million to finance 18 solar projects in rural Arkansas—the largest deployment of solar power in Arkansas history and expected to save US$120 million in energy costs over the project's lifetime.[83] It also developed an affordable leasing option for electric trucks for use at the Ports of Los Angeles and Long Beach—what would be the largest purchase of domestically manufactured battery electric trucks in US history and was expected to be expanded nationally.[84] Power Forward Communities, Inc. committed

US$539 million to provide affordable housing and lower utility bills, including construction or renovations, to multifamily projects in Maryland, Michigan, Texas, and Virginia.[85]

Whether some of these projects will be able to proceed while litigation is ongoing will be determined by a successful challenge to the preliminary injunction.

Fun(d) in the Sun—Climate Change Superfund Laws Challenged in Court

On 26 December 2024, New York Governor Kathy Hochul (D) signed the Climate Change Superfund Act (S.2129/A.3351), which calls for the use of a polluter-pays model exemplified by existing federal and state superfund laws, such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to collect US$75 billion over 25 years for climate change adaptation.[86] The law seeks the monies primarily from large oil and gas companies.[87] New York spent US$2.7 billion in taxpayer funding for climate-related infrastructure repairs and resilience projects, and additionally, the US Army Corps of Engineers estimated a cost of US$52 billion to upgrade the New York Harbor for protection against the effects of climate change.[88]

The Climate Change Superfund Act has received numerous legal challenges since its passage. On 6 February 2025, 22 Republican attorneys general, led by West Virigina's attorney general and joined by industry groups, including the West Virginia Coal Association and the Gas and Oil Association of West Virginia, sued New York in federal court over the new law.[89] The lawsuit asserts that the Climate Change Superfund Act is unconstitutional and preempted by federal law, and it seeks an injunction from the act's enforcement.[90] The arguments mirror those raised by the US Chamber of Commerce and the American Petroleum Institute (API) in their suit filed in December 2024 against Vermont's own Climate Superfund Act, which was the first of its kind in the United States.[91]

On 28 February 2025, New York Governor Hochul signed an amendment to the Climate Change Superfund Act which would: (i) extend the covered emissions period from 2000–2018 to 2000–2024, (ii) narrow the definition of "covered greenhouse gas emissions," (iii) modify liability and payment provisions for minority interest holders and responsible parties, (iv) authorize the New York State Department of Environmental Conservation (DEC) to require entities to provide historical information about past practices to enable liability determinations, (v) establish a process for responsible parties to file a request for reconsideration of cost recovery demands with the DEC, and (vi) give the DEC additional time to promulgate final regulations (by June 2027 rather than December 2026).[92] The US Chamber of Commerce and API filed a separate lawsuit against New York on the same day the amendment was signed, alleging the same causes of action as the 6 February 2025 lawsuit.[93]

The foundation for the Vermont and New York climate superfund laws arose from the work of law professor, Rachel Rothschild, who wrote a memorandum outlining the legal justification for using CERCLA as a model.[94] Rothschild is now being targeted by a conservative group with ties to the fossil fuel industry and the Trump administration called "Government Accountability and Oversight."[95] The group has sued and requested private emails between Rothschild and the Rockefeller Family Fund, a philanthropy that has advocated against oil companies and helped spur the creation of the climate superfund laws.[96]

The stakes of these ongoing litigations are high, as the climate superfund model could soon be adopted by as many as six more states this year.[97] The climate superfund laws were most recently targeted in President Trump's Executive Order on 8 April 2025 titled, "Protecting American Energy From State Overreach."[98] The Executive Order aims to "unleash" American energy by removing state imposed legal restrictions and climate change policies, and directs the US Attorney General to identify and bring cases against all state and local laws and regulations purporting to address, among other things, greenhouse gas emissions.[99] Additionally, the Executive Order specifically calls out California, New York, and Vermont, and generally any funds created to collect carbon penalties or carbon taxes.[100]

ESG on the No-Fly List—American Airlines Found Liable in ESG Retirement Plan Investing Case

In a 10 January 2025 ruling, the US District Court for the Northern District of Texas found that American Airlines was liable for breaching its fiduciary duty by employing BlackRock to manage the majority of its US$26 billion retirement plan, due to BlackRock's environmental, social, and governance (ESG) investment focus.[101] The case revolved around a class-action suit led by an American Airlines pilot who asserted that the company violated the Employee Retirement Income Security Act of 1974 (ERISA)—the federal law governing private retirement plans—by allegedly failing to seek the greatest possible returns for its employees.[102]

In a 70-page opinion, Judge Reed O'Connor stated that American Airlines violated its fiduciary duty of loyalty to "act solely" in the best interest of plan participants and that its actions harmed the financial interests of participants in light of BlackRock's "ESG activism," which "considers or pursues a non-pecuniary interest as an end itself rather than as a means to some financial end."[103] The opinion made only one reference to the US Department of Labor (DOL)—the agency tasked with promulgating rules under ERISA—regarding a warning issued in 2020 to plan sponsors and fiduciaries that "ESG cannot stand *on its own* as satisfaction of fiduciary duty."[104] Judge O'Connor's opinion failed to mention the pertinent 2022 DOL ERISA rule, which currently holds that ERISA does *not* preclude plan fiduciaries from considering climate change and other ESG factors when they select retirement investments and exercise shareholder rights, such as proxy voting.[105] Importantly, the case itself was not about ESG investing, as none of the funds the American Airlines retirement plan invested in were actually ESG funds.[106] Rather, the ruling is solely focused on BlackRock's proxy voting practices and alleged pro-ESG shareholder engagement.[107]

The ruling may have far-reaching effects for asset management companies that incorporate ESG considerations into their decision-making. ESG has become one of the most polarizing issues in the United States, with many states enacting legislation curtailing the ability of state funds to be invested in asset managers and funds that utilize ESG factors.[108] For example, in North Carolina, House Bill 750, which was vetoed by Governor Josh Stein (D) but overridden by the North Carolina State Legislature, requires the state treasurer to only consider pecuniary factors, which are specifically defined to exclude ESG factors unless those considerations present material economic risks or opportunities.[109] Florida, on the other hand, has established a bright-line rule prohibiting ESG considerations, even if they have a material impact on financial risk and return.[110]

Judge O'Connor's decision concluded that American Airlines breached its fiduciary duty of loyalty but not its duty of prudence.[111] He deferred ruling on losses and remedies; that portion of the litigation remains ongoing.[112] K&L Gates will be actively tracking further developments in this case, and an update will be provided in the next edition of the *Carbon Quarterly*.

Carbon Trading and Investment

United Nations Paris Agreement Crediting Mechanism Makes Progress

The United Nations continues its work in developing and launching a United Nations-backed global carbon credit market as authorized under Article 6.4 of the Paris Climate Agreement, referred to as the Paris Agreement Crediting Mechanism (PACM). In November 2024, countries at the COP29 climate summit approved carbon credit quality standards necessary to launch the PACM.[113] The approval at COP29 was a key step toward full implementation of the PACM. The United Nations Supervisory Body (the Supervisory Body) tasked with supervising the PACM is now working with a goal to fully operationalize the PACM in 2025, pursuant to the standards approved at COP29.[114] The Supervisory Body has also accredited its first independent auditor (referred to as Designated Operational Entities or DOEs), which will be tasked with validating and verifying projects as meeting the quality standards—tasks instrumental to the operation of the PACM.[115]

Washington, California, and Québec Continue Work Toward a Carbon Market Linkage Agreement

Washington state continues to push forward with the linkage of its state-run carbon market with the California-Québec carbon market. As described in ***Carbon Quarterly*, Volume 8,** in March 2024, Washington enacted S.B.6058, which paved the way for a potential linkage agreement between the Washington cap-and-invest carbon market established under the Washington Climate Commitment Act and the already linked cap-and-invest carbon markets operated in California and Québec.[116] If a linkage is achieved between the three markets, carbon allowances issued by each government could be used by businesses in any of the three jurisdictions to cover their emissions.[117] On 23 September 2024, Washington, California, and Québec issued a joint-statement acknowledging further work to be conducted by each jurisdiction to continue advancing towards a linkage agreement.[118] To facilitate a potential linkage, Washington is currently engaged in a rulemaking process to align its program regulations with California and Québec, while California and Québec are considering amendments to their own programs to ensure that linkage with Washington meets the requirements of the California program.[119] Washington sought public comments to the potential linkage agreement, which initial comment period ended 31 March 2025.[120] The parties hope to reach a linkage agreement by 2026, with the linked markets aimed to open in 2026 and 2027.[121]

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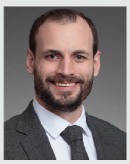

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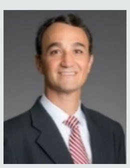

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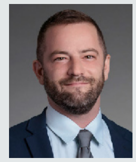

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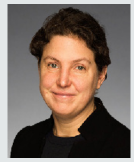

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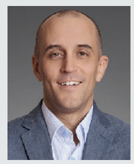

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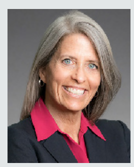

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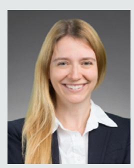

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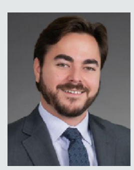

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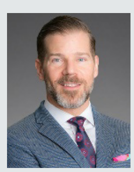

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[25] *Id.* The CRA defines a "rule" to include "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency," and it therefore may encompass agency actions such as policy statements and guidance documents. Id. However, the CRA provides an exception to the definition of "rule" for "any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties," and the Government Accountability Office has opined that "interim steps" that "break no new ground and leave the world as [they] found it" are not "rules" for CRA purposes. Id.
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