

Vermont and New York Climate Acts are First in a Wave of Likely Climate Change Cost Recovery Laws

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On May 30, 2024, Vermont's Republican governor, Phil Scott, allowed Vermont's S 259 — also referred to as the "[Climate Superfund Act](#)" — to become law without his signature. The stated goal of this law is to mitigate the impacts of climate change.

The Climate Superfund Act establishes a new Climate Superfund Cost Recovery Program, to be administered by the Climate Action Office within Vermont's Agency of Natural Resources (Agency). The law will require "compensatory" payments from entities that the Agency deems "responsible parties" under the law. The law defines a "responsible party" as an entity (or successor in interest to an entity) that "engaged in the trade or business of extracting fossil fuel or refining crude oil," with fossil fuel including coal, petroleum products, and fuel gases, and that the Agency determines is accountable for more than 1 billion metric tons of certain greenhouse gas (GHG) emissions between January 1, 1995, and December 31, 2024.

While unclear exactly how the GHG emissions will be calculated for each entity, the new law also directs the Agency to promulgate rules necessary to implement the law's requirements that should include, but are not limited to, methodologies to identify responsible parties and calculate GHG emissions allegedly caused by each responsible party. The Climate Superfund Act goes into effect on July 1, 2024, and requires the Agency to submit a report detailing the feasibility of this program in 2025 and promulgate implementing regulations in 2026. Other states are considering similar laws.

Like its federal namesake — the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) — the Vermont Climate Superfund Act establishes strict liability for parties responsible for GHG emissions. But any similarity to CERCLA ends there, as CERCLA relates solely to contaminated waste sites. The Vermont Climate Superfund Act directs the Agency to determine the amount of the cost recovery demand for entities that "hold or held an ownership interest in a fossil fuel business during the covered period," provided that it is proportionate to the costs incurred by the state and its residents from the amount of GHGs that the responsible party purportedly emitted. To do so, the Climate Superfund Act appropriates \$300,000 for fiscal year 2025 for the "purposes of hiring consultants or third-party services to assist in the completion of the assessment required" to determine the cost to Vermont of covered GHG emissions, with the assessment due by January 15, 2025. The law then directs the cost recovery payments to go to the Climate Superfund Cost Recovery Program Fund that, in

turn, would provide funding for climate change adaption projects in the state. “Climate change adaption projects” are defined as projects “designed to respond to, avoid, moderate, repair, or adapt to negative impacts caused by climate change and to assist human and natural communities, households, and businesses in preparing for future climate-change-driven disruptions.” These include, but are not limited to, flood protection projects, upgrading stormwater drainage systems, upgrading roads, bridges, and railroads, preparing for and recovering from extreme weather events, and upgrading and retrofitting public and private buildings to mitigate the effects of heat waves and smoke from forest fires.

Neighboring New York followed on the heels of Vermont, enacting a similar statute several days later, which as of the date of this Update was still awaiting action by Democratic Gov. Kathy Hochul. The New York “[Climate Change Superfund Act](#)” would be overseen by the Department of Conservation (Department) and purports to cover GHG emissions between January 1, 2000, and December 31, 2018. Responsible parties under the bill would include “any entity (or a successor in interest to such entity described herein), which, during any part of the covered period, was engaged in the trade or business of extracting fossil fuel [including coal] or refining crude oil” and is responsible for more than 1 billion tons of covered GHG emissions, as determined by the Department. Under the Climate Change Superfund Act, the total assessment rate per year is \$3 billion over the next 25 years, with 35% to 40% of the funds going toward climate-change-adaptive infrastructure projects that directly benefit disadvantaged communities. As with the Vermont Climate Superfund Act and CERCLA Superfund liability, a responsible party would be strictly liable for a share of the cost of climate change adaptive infrastructure projects. The responsible party would also have a cost recovery demand “equal to an amount that bears the same ratio to \$75 billion as the responsible party’s applicable share of covered GHG emissions bears to the aggregate applicable shares of covered GHG emissions of all responsible parties.” If signed into law, New York’s action may be even more influential than Vermont’s as other states consider similar laws.

[California](#), [Maryland](#), and [Massachusetts](#) have all proposed legislation that would enact programs similar to the Climate Change Superfund Act in that they would require companies to pay compensation for purported GHG emissions. These proposals are similar in scope to the Vermont and New York legislation and target entities responsible for more than 1 billion metric tons of GHG emissions from 2000 to 2018 (Massachusetts) or 2000 to 2020 (California and Maryland). A similar climate change cost-recovery bill was introduced in the U.S. House of Representatives in March 2023 but has remained in committee.

Similar to Vermont’s law, the California proposal would defer to a state environmental regulator, the California Environmental Protection Agency, to determine the total costs incurred as a result of climate change and assess the cost demand for each responsible party. Meanwhile, the proposals in Massachusetts and Maryland include a predetermined total cost for climate change adaptation and mitigation. This total cost would be apportioned by the respective state environmental agency among purportedly responsible parties proportional to their GHG emissions exceeding 1 billion metric tons. The Massachusetts bill would establish a climate change superfund of \$75 billion over 25 years from profits of Massachusetts’ entities, as opposed to Maryland’s \$9 billion, though it is unclear how the authors reached these respective assessments. While progress on the proposals in California, Massachusetts, and Maryland has been slower than in Vermont, a week after the Vermont Climate Superfund Act passed, the New York Legislature passed the state Senate in a vote on June 8, 2024.

Regardless of whether the proposals are eventually enacted into law, the writing is on the wall: States will keep seeking to hold companies allegedly responsible for the effects of climate change through litigation and, now, legislation. While the Vermont and New York climate acts and similar legislation, and the ensuing state regulations, are sure to be challenged in court, fuel industry participants should pay close attention to new developments related to climate change cost-recovery laws and any other regulatory schemes focused on passing the buck to oil and gas.

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