

UN Climate Report Expected to Drive U.S. Regulation, Litigation

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- Report expected to form 'rational basis' for regulation
- Agencies expected to use findings to curtail fossil fuels

The dire picture of the global climate crisis depicted in Monday's United Nations scientific report is widely expected to permeate U.S. energy and environmental regulations, as well as litigation challenging them.

The findings of the [Intergovernmental Panel on Climate Change](#) also will play a role in supporting climate liability lawsuits against oil and gas companies and determine the trajectory of the federal oil leasing program, lawyers say.

"It's an eagerly-awaited report," said Jamie Auslander, a natural resources lawyer and principal at Beveridge & Diamond PC in Washington.

IPCC reports and work have been cited in more than 50 state and federal court opinions over the last 15 years, including the groundbreaking 2007 Supreme Court ruling in [Massachusetts v. EPA](#), which cleared the way for the Environmental Protection Agency to regulate greenhouse gases.

Monday's report "could be quite relevant if any of the lawsuits brought by cities and states against fossil fuel companies survive the threshold legal issues and reach the merits," said Michael Gerrard, faculty director of the Sabin Center for Climate Change Law at Columbia University.

New York City, Baltimore, Rhode Island, and other jurisdictions have pushed a variety of legal arguments, including claims that oil companies have violated state-level public nuisance and product liability law by misleading the public about the leading role of fossil fuel combustion in climate change.

'Rational Basis'

The [report estimates](#) that human-caused climate change is on track to warm the globe beyond the goals of the Paris climate agreement, and the window of time to curb the warming is quickly closing.

The IPCC says that human-caused climate change driven by burning fossil fuels will continue bringing unprecedented heat, flooding, wildfires, rising seas and other catastrophes across the globe for years to come.

The panel's work is expected to form part of the scientific "rational basis" for numerous federal regulations affecting greenhouse gas emissions, Auslander said. Those include updated National Environmental Policy Act regulations, oil and gas leasing decisions and royalty rates, and Biden administration efforts to establish a social cost of carbon, he said.

Courts have required federal agencies to show a rational basis for regulations to prove they are not arbitrary and capricious, Auslander said.

Though the report is likely to be cited often in litigation, its biggest imprint will be on establishing a social cost of carbon, said Richard Revesz, a law professor and director of the Institute for Policy Integrity at NYU.

"That's the building block used to justify the stringency of regulation across many, many agencies," he said.

'Gold Standard'

The panel's reports are routinely cited in federal environmental reviews, including [the one](#) that led the Trump administration to open Alaska's Arctic National Wildlife Refuge to oil drilling.

Another Interior [review](#) citing the IPCC was part of Interior's approval of ConocoPhillip's Willow oil project in Alaska. The review showed that the company would need to use chillers to keep thawing permafrost frozen around its drilling rigs to avoid damage.

IPCC climate reports carry special weight with courts because the panel is a body of scientists from all over the globe organized by the UN to summarize and explain the science of climate change to policymakers and the public.

Courts see the the panel’s work as the “gold standard” for objective scientific analysis of the causes and effects of global warming, Gerrard said.

Justification for Regulation

The report will be used to justify emissions standards for power plants, motor vehicles, and other emissions sources, said Pat Parenteau, a professor at the Vermont Law School.

It also will be used to scale back oil and gas development onshore and offshore, he said.

The report’s grim picture of climate change will give federal agencies more “leeway” to deny oil and gas permits and promote other actions cutting emissions, Auslander said.

IPCC’s new data also may help the Interior Department justify federal oil and gas leasing as part of its review of its oil and gas leasing program, he said.

An interim report on the leasing program was expected early this summer but Interior has delayed its release. Interior Communications Director Melissa Schwartz declined to comment Friday.

Industry Skepticism

Lawyers representing fossil fuels producers said they’re uncertain how the report will be used.

The IPCC’s report could bolster defenses of regulations cutting emissions and used against energy companies, said John C. Martin, a partner at Holland & Hart LLP in Jackson, Wyo.

“I’ve certainly seen prior reports cited against our clients,” Martin said. “I certainly see them cited in affidavits and what-not.”

The fossil fuels industry and its attorneys for years have sought to discredit the IPCC by accusing its scientists of promoting a biased agenda against oil, gas, and coal. The global scientific consensus has been that those fuels are the primary cause of global warming.

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