

POLICY BRIEF

Making Polluters Pay for Climate Harms – Policies and Pushback

The Public Health Problem

Climate change—[caused by emissions of greenhouse gases such as carbon dioxide and methane released into the atmosphere from the burning of fossil fuels like oil, coal, and natural gas](#)— is one of the greatest public health challenges we face, both now and for decades to come. The risks to human health from climate-related extreme weather events are expected to increase as these events become [more frequent, longer, and more intense](#). As climate change worsens, associated health threats due to poor air quality, infectious disease, food and water insecurity, and mental health impacts, will also worsen.

It is well documented that climate change is a threat multiplier that will have more adverse impacts in some frontline communities than others. These disparate risks and health outcomes often result from discriminatory laws and policies and other racial inequities. For example, [racist housing policies such as redlining](#) have left families living in these neighborhoods more susceptible to climate disasters and harms. These areas faced infrastructure disinvestment, leaving them [5-10 degrees hotter](#) and markedly more susceptible to flooding than non-redlined neighborhoods. And when disaster does strike, [inequities worsen](#). Researchers have found that when storm damages collectively exceed \$10 billion, on average white residents gained over \$125,000, while Black and Latino residents actually lost over \$25,000—and FEMA programs can contribute to racial wealth disparities.

Actions to reduce the public health threats from climate change fall within [three general categories](#):

- *Mitigation*: actions to reduce greenhouse gas emissions can reduce the amount and rate of future climate change. These actions also have multiple health benefits, such as improved air quality.
- *Adaptation*: actions that help communities adjust to and moderate climate change induced threats and effects we experience now and anticipate in the future.
- *Resilience*: communities' ability to prepare for, respond to, and recover from climate change induced threats, hazards, and disruptions.

Making Polluters Pay: Key Concepts

Costs to keep people healthy in the face of more frequent and intense natural disasters (including storms and flooding, hurricanes, wildfires, and extreme heat events) are expected to continue to rise – well beyond the [billions of dollars the U.S. currently spends every year](#) to recover from climate related disasters. Additional funds will be needed to protect communities as [sea levels rise](#), [fresh-water resources become more stressed](#), air quality related health impacts increase; and communities deal with food insecurity, water-borne and vector-borne diseases, and mental health impacts.

Failing to prepare for these changes is neither good for public health and communities, nor cost effective. Efforts to adapt in advance and make communities more resilient now can improve the health, longevity, and survival of communities, *and* reduce costs. According to the [U.S. Chamber of Commerce](#), a \$1 investment in climate resilience and preparedness saves \$13 in recovery damage and cleanup costs and provides additional economic benefits.

As with other threats to public health, communities burdened with the high costs of protecting themselves from climate change are seeking accountability from the industry responsible for the damage. State and local governments are taking a variety of approaches to help fund the costs to keep people safe from the public health threats of climate change. [Climate attribution science](#) is providing evidence to support these accountability efforts. This science can be used to:

- ascertain the increased probability or magnitude of an extreme weather event that is the result of fossil fuel generated greenhouse gases;
- help assess future climate risks and build resilience; and
- assess the relative contribution of companies to climate change.

Some state and local governments are using this evidence to aid in the recovery of funds from the polluters that created the problem and increased the costs to protect public health. This is not the first time communities and governments have sought to hold companies that profited from harmful behavior financially responsible. A longstanding federal law is serving as a model for some state efforts to allocate costs to polluting industries. The 1980's Federal Superfund program (enacted as the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA) can require responsible parties to either clean up contamination or pay monetary damages to be used for cleaning up contaminated sites. And seeking redress for injuries that arise out of deception and other intentional actions with foreseeable harmful effects is an established strategy of public health law. For instance, [state and local governments have sought to reduce harm and recover the costs](#) expended in addressing the public health crises furthered at the hands of the tobacco and opioid industries. However, analogies between these differently situated industries are imperfect.

These efforts are commonly referred to as climate superfund laws, or Make Polluters Pay, and seek to hold large fossil fuel companies financially accountable for the impacts they [knew would result from](#) continued use of their products. On the federal level, [climate superfund laws](#) have been introduced, but not enacted, and on a more local level, some states and localities are at various stages in implementing Make Polluters Pay strategies. These efforts do face opposition by some. There are both federal and state bills and lawsuits actively opposing state efforts to hold big oil companies financially accountable for the current and anticipated costs of climate change.

STATE LITIGATION AGAINST FOSSIL FUEL COMPANIES

[Several states and cities have filed lawsuits](#) to hold fossil fuel companies financially responsible for the harms resulting from climate change. For example, the state of Minnesota filed a [lawsuit against fossil fuel companies](#) in 2020, seeking damages for the impacts of climate change on health and the environment. The legal theories underlying this lawsuit include violations of state laws related to consumer fraud, failure to warn, fraud and misrepresentation, deceptive trade practices, and false statements in advertising.

These lawsuits are at various stages, and in some cases the federal government has [filed lawsuits](#) seeking to stop this litigation. At least one state, [Utah](#), and [some members of Congress](#) have adopted or proposed legislation designed to immunize fossil fuel companies from litigation for harms caused by climate change.

STATE CLIMATE SUPERFUND LAWS AND LEGISLATION

Numerous states are now considering laws that echo the Superfund principle that polluters should help pay for climate change recovery, adaptation, and preparedness. [New York](#) and [Vermont](#) are the first two states to adopt such laws. Other state legislatures across the country have also taken an interest in Make Polluters Pay concepts and many have proposed [climate superfund laws](#).

New York and Vermont are facing [legal challenges](#) by fossil fuel companies, the federal government, and some state governments. The courts are currently reviewing legal arguments related to the validity of these laws and lawsuits.

Vermont and New York Climate Superfund Laws: A Comparison

While the New York and Vermont laws are similar in that they require the companies that emitted greenhouse gases to fund efforts to mitigate and adapt to climate change, the laws differ in important ways. Both state statutes are premised on the legal theory of [strict liability](#), which recognizes the inherently dangerous nature of a product and no outright intent to cause harm, or negligent behavior, is required. Other similarities include how the laws identify responsible parties (those parties that are responsible for the damage and must fund adaptation projects), and the types of projects to be funded by payments from fossil fuel companies—projects that can help communities adapt to and prepare for climate caused disasters and health threats.

However, the laws are different in a few important respects. They have different time periods over which they assess the damage from greenhouse gas emissions, and different methods to assess damages from fossil fuel companies. The laws also approach equity and climate justice issues differently. While both laws acknowledge these disparate impacts, they address the disparities in different ways. The Vermont law requires consultations with the most affected communities when developing the resilience implementation strategy, while the New York law mandates that at least 35% of the funds collected from responsible parties be allocated to climate change adaptive infrastructure projects in communities that are burdened by cumulative environmental pollution and other hazards, are vulnerable to the impacts of climate change, and have high concentrations of individuals with certain socioeconomic factors, including low income, high unemployment, rent burdened, low home ownership, lower educational attainment, or members of groups that have experienced discrimination based on race or ethnicity.

State Climate Superfund Laws in Vermont and New York

Enacted or adopted as of May 1, 2026

STATE	VERMONT	NEW YORK
CITATION	Vt. Stat. tit.10, Ch. 24A Climate Superfund Cost Recovery Program (Enacted 2023, effective 1/1/2024; Amended 2025, effective 6/5/2025).	N.Y. 43-B, Article 76 Climate Change Adaptation Cost Recovery Program (Enacted 2024 and Amended 2025, Effective Date December 26, 2024).
COVERED PERIOD	1995 - 2024	2000 – 2024
RESPONSIBLE PARTIES	Extracted fossil fuel or refined crude oil; and responsible for > 1 billion tons of greenhouse gas emissions during the covered period.	Extracted fossil fuel or refined crude oil; and responsible for > 1 billion tons of greenhouse gas emissions during the covered period.
COST RECOVERY AMOUNT	By 1/15/2027 State Treasurer to calculate incurred and projected costs to abate effects of covered greenhouse gas emissions on State and residents	\$75 billion
ALLOCATION METHODOLOGY	Responsible party share of cost recovery amount = responsible party's share of covered greenhouse gas emissions.	Responsible party share of cost recovery amount = responsible party's share of covered greenhouse gas emissions.
WHAT CAN BE FUNDED	Projects designed to respond to, avoid, moderate, repair or adapt to negative impacts caused by climate change, and to assist communities, households, and businesses in preparing for future climate change-driven disruptions—could include: • nature-based solutions and flood protections; • upgrading stormwater systems; • defensive upgrades to transit systems; • preparation and recovery from extreme weather events; • preventive health care programs and medical care to treat illness or injury caused by the effects of climate change; • upgrades to electrical grid; • response to toxic algae blooms and climate driven threats to forests, farms, fisheries and food systems; • energy efficient cooling systems, weatherization and energy efficiency upgrades and retrofits in public and private buildings; • safeguarding infrastructure vulnerable to flooding; and • home buyouts. Implementing climate adaptation actions identified in the State Hazard Mitigation Plan. Implementing Community Resilience and Disaster Mitigation Grant Program.	Projects designed to avoid, moderate, repair or adapt to negative impacts caused by climate change, and to assist communities, households, and businesses in preparing for future climate change-driven disruptions—could include: • nature-based solutions and coastal protection; • upgrading stormwater systems; • defensive upgrades to transit systems; • preparation and recovery from extreme weather events; • preventative health care programs and medical care to treat illness or injury caused by the effects of climate change; • upgrades to electrical grid; • response to toxic algae blooms and climate driven threats to forests, farms, fisheries and food systems; • energy efficient cooling systems, weatherization and energy efficiency upgrades and retrofits in public and private buildings; • safeguarding wastewater plants vulnerable to flooding; and • addressing urban heat island effects. Iron and steel used for climate change adaptive infrastructure projects must be produced in the U.S. Nature-based solutions should be encouraged when considering stabilization of tidal shorelines.

STATE	VERMONT	NEW YORK
IMPLEMENTATION STEPS	• Agency to adopt implementing regulations by 1/1/2028, including: ○ methods to identify responsible parties and determine shares of greenhouse gas emissions; and ○ requirements for issuing notices of cost recovery demands. • Issue cost recovery demands to responsible parties within 6 months after adoption of regulations. • Adopt Resilience Implementation Strategy, Finalized September 2025 : ○ nature-based solutions to stabilize water resources; ○ infrastructure adaptation practices; ○ early warning mechanisms and response to climate-related threats; ○ practices supporting economic and environmental sustainability in the face of changing climate conditions; and ○ criteria and procedures for identifying climate change adaptation projects to fund.	• Agency to adopt implementing regulations within 30 months of effective date of law, including: ○ methods to identify responsible parties and determine shares of greenhouse gas emissions; and ○ process for issuing cost recovery demands, accepting payments, requesting reconsideration. • Issue cost recovery demands to responsible parties by June 30th of 4th year following law's effective date. • Complete a statewide climate change adaptation and resilience plan- within 18 months of adoption of above regulations, and updated at least every three years: ○ to guide dispersal of funds; and ○ establish criteria for identifying and selecting climate change adaptive infrastructure projects to fund.
PAYMENTS	Responsible parties to pay within 6 months of receiving the demand (can be paid in annual installments: first installment 20%, 10% yearly thereafter – subject to interest and/or changes to consumer price index).	Responsible parties to pay by December 31, 4 years from date law enacted (can be paid in annual installments: first installment at least 8%, remainder paid annually within 24 years).
CLIMATE JUSTICE CONSIDERATIONS	Must consult with Environmental Justice Advisory Council when developing the Resilience Implementation Strategy; consult with representative of environmental justice focus populations; and conduct public engagement in communities with the most significant exposure to the impacts of climate change, including disadvantaged, low-income, and rural communities.	Must consult with representatives of disadvantaged communities in developing the statewide climate change adaptation and resilience plan. More than 35% (goal of 40% or more) of funded climate change adaptive infrastructure projects shall benefit disadvantaged communities, as identified by state law.
REMEDIES	Responsible parties may request reconsideration of cost recovery demand.	Responsible parties may request reconsideration of cost recovery demand.

CONCLUSION

State and local governments are facing rising costs to mitigate climate change, adopt adaptation measures, and improve community resilience to the immense human health threats of climate change. Understanding the need to implement these protective strategies now, governments are looking to hold the polluters that profit from greenhouse gas emissions and knowingly understood the dire consequences, financially accountable. This *Make Polluters Pay* strategy is being implemented via the courts and by lawmakers. Vermont's and New York's Climate Superfund Laws offer possible model frameworks, however, given significant pushback by fossil fuel companies, some state governments and the federal government, it is important to monitor how these strategies are implemented and/or respond to legal challenges. Absent funding to implement adaptive

measures and make communities more resilient, the U.S. should anticipate poorer health outcomes and rising costs for recovery.

This policy brief was developed by Betsy Lawton, Deputy Director Climate and Health. The Network promotes public health and health equity through non-partisan educational resources and technical assistance. These materials provided are provided solely for educational purposes and do not constitute legal advice. The Network's provision of these materials does not create an attorney-client relationship with you or any other person and is subject to the [Network's Disclaimer](#).

SUPPORT

Support for the Network provided by the Robert Wood Johnson Foundation. The views expressed in this document do not necessarily reflect the views of the Foundation.

