



# State and Local Government Lawsuits Targeting Energy Manufacturers Could Backfire on Taxpayers

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## Key Takeaways

- Several state and local governments are suing energy companies for their alleged role in climate change, seeking to impose hefty fines that they plan to spend on environmental resilience and mitigation projects.
- Another goal of the lawsuits is to increase the cost of energy. However, higher energy and transportation costs would directly increase prices for many goods, products, commodities, and services throughout the economy.
- There are billions of dollars in unspent federal funds designated for environmental mitigation efforts. Focusing on using existing federal funds would be a more prudent approach than lawsuits.

State and local governments are currently embroiled in legal battles against (mostly) American energy producing companies, despite recent court rulings casting doubt on the validity of these cases. This pursuit not only drains the time and resources of taxpayer-funded state, county, and municipal attorney offices nationwide but also threatens to harm taxpayers in the long run.

State and local governments are seeking monetary damages against energy producing companies for climate change under public nuisance and consumer protection laws. The Manufacturers' Accountability Project [tracks 30 such lawsuits](#) as of April 1, 2024. The legal merits of the cases are in doubt given a unanimous 2011 Supreme Court [decision](#) in *American Electric Power Co., Inc. v. Connecticut* that the Clean Air Act made this a policy issue for federal regulators rather than a liability issue in the legal system.

The primary aim of these lawsuits is to impose significant fines on energy producers to pay for climate change mitigation projects. For example, Hawaii is [planning](#) to direct the proceeds for “building seawalls and raising buildings to buying flood-prone properties and restoring beaches and dunes.”

However, a considerable portion of the fines would end up as contingency fees lining the pockets of lawyers rather than providing funding for environmental mitigation efforts. Meanwhile, as the lawsuits drag on, a large pot of federal funding explicitly set-aside for states and localities to use for mitigation and resilience efforts around the country remains unspent.

In April 2023, the Supreme Court denied requests from the energy companies to review whether the climate change cases should proceed in federal court. Instead, the lower courts' decisions to remand the cases to state courts were upheld. It remains uncertain how these cases will progress within the state court systems, but if the rulings go the way of the plaintiffs, it would do direct harm to taxpayers and the economy. Prices for oil and gas would jump. Notably, this would also make it even more expensive to refill the Strategic Petroleum Reserve. After a series of [bipartisan budget deals sold off the nation's emergency reserve of oil](#), followed up by additional drawdowns authorized by the Biden administration, the stockpile is [down to its lowest levels since the 1980s](#). Instead of a 90-day capacity, the current inventory would only supply oil and gas for two to three weeks.

The lead counsel of a case in Colorado [admitted in a media interview](#) that one of the goals of these lawsuits is to “raise the price of the products” made by the energy companies. But higher energy and transportation costs would directly increase prices for many goods, products, commodities, and services throughout the economy. There are thousands of petroleum-based products, including paint, nylon, synthetic rubber, plastic, latex gloves, bandages, adhesives, and disinfectants. The impacts would be very regressive on purchasing power and employment opportunities. Governments, which purchase many of these products for their own operations, would feel the pinch as well, and taxpayers would have to share the pain.

If the goal here is to obtain funding for environmental mitigation efforts, there are better alternatives to do so that would not impose severe economic harm. Congress has already provided billions of dollars dedicated for remediation efforts that remain unspent.

The bipartisan Infrastructure Investment and Jobs Act (IIJA) of 2021 provided a total of \$525 billion in new spending, including for resiliency and environmental mitigation. While some of the programmatic funding is available for crosscutting purposes, NTUF identified IIJA programs solely dedicated to resilience and mitigation with total funding of \$41.8 billion.

One estimate by lobbying firm BGR Group identifies [\\$22.6 billion](#) in funds across several departments and agencies, excluding the funds provided for cybersecurity, the Superfund (whose spending is guided by the [National Priorities List](#)), and some smaller one-time increases that were already allotted. NTUF identified additional spending in IIJA that provided \$10.5 billion to the Department of Energy for grid resilience and \$8.7 billion to the Department of Transportation for resilience projects. NTUF looked up all of these programs in their respective federal websites and also in [USASpending.gov](#), the official database for tracking taxpayer dollars through grants and

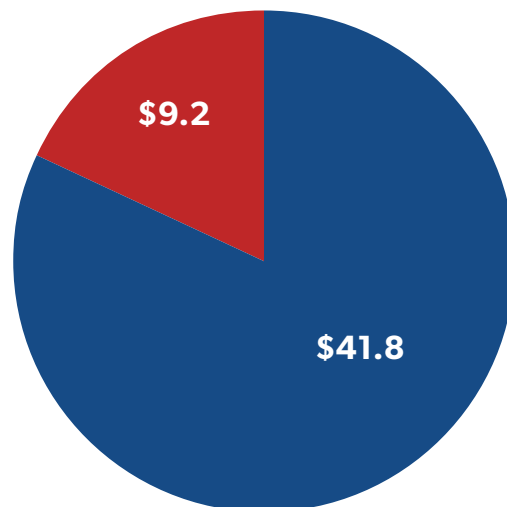
awards. As of April 4, 2024, only \$9.2 billion of this funding has been obligated, and only \$224 million has been spent.

<b>Infrastructure Investment and Jobs Act (IIJA) Authorizations, Obligations, and Outlays for Environmental Resilience and Mitigation</b>				
<b>Agency</b>	<b>Program</b>	<b>Authorization</b>	<b>IIJA Supplemental Obligations</b>	<b>IIJA Supplemental Outlays</b>
<b>Army Corps of Engineers</b>	Infrastructure	\$7,000,000,000	\$0	\$0
<b>Department of Energy</b>	Grid Resilience and Innovation Partnerships (GRIP) Program	\$10,500,000,000	\$3,465,637,878	N/A
<b>Department of Energy</b>	Power Purchase and Transmission Activities	\$500,000,000	\$0	\$0
<b>Department of the Interior</b>	U.S. Bureau of Reclamation (USBR) Aging Infrastructure Account: for water infrastructure projects	\$3,200,000,000	\$0	\$0
<b>Department of the Interior</b>	Bureau of Indian Affairs Tribal Climate Resilience	\$216,000,000	\$165,619,451	\$7,445,519
<b>Department of the Interior</b>	Wildfire Management	\$1,538,000,000	\$318,235,444	\$49,831,844
<b>Environmental Protection Agency</b>	Critical Mineral and Battery Recycling	\$150,000,000	\$28,137,161	\$255,787
<b>Environmental Protection Agency</b>	Pollution Prevention Program	\$100,000,000	\$41,756,326	\$9,725,500
<b>Environmental Protection Agency</b>	Brownfields Programs	\$1,500,000,000	\$110,703,164	\$19,837,229
<b>Federal Emergency Management Agency</b>	Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act	\$500,000,000	\$475,432,341	\$23,519,986
<b>Federal Emergency Management Agency</b>	Flood Mitigation Assistance Program	\$3,500,000,000	\$25,435,117	\$205,080
<b>Federal Emergency Management Agency</b>	Building Resilient Infrastructure and Communities (BRIC) Program	\$1,000,000,000	\$160,503,778	\$102,532,930
<b>National Oceanic and Atmospheric Administration</b>	National Coastal Resilience Fund	\$492,000,000	\$47,714,400	\$1,761,596
<b>National Oceanic and Atmospheric Administration</b>	Community-Based Restoration Project	\$491,000,000	\$37,784,367	\$4,848,053
<b>National Oceanic and Atmospheric Administration</b>	National Weather Service - Flood and Inundation Mapping and Forecasting	\$492,000,000	\$4,113,433	\$6,510

<b>National Oceanic and Atmospheric Administration</b>	Marine Debris Program	\$200,000,000	\$12,911,564	\$19,387
<b>National Oceanic and Atmospheric Administration</b>	High-Performance Computing for Research Purpose	\$80,000,000	\$912,000	\$0
<b>National Oceanic and Atmospheric Administration</b>	Fire Weather Testbed Programs	\$100,000,000	\$0	\$0
<b>U.S. Department of Agriculture</b>	Drought Contingency Plan Funding	\$100,000,000	\$8,696,600	\$3,500,000
<b>U.S. Department of Agriculture</b>	Natural Resources Conservation Service Watershed Programs	\$918,000,000	\$419,002	\$0
<b>U.S. Department of Health and Human Services</b>	Low-Income Housing Energy Assistance Program (LIHEAP)	\$500,000,000	\$0	\$0
<b>U.S. Department of Transportation</b>	Promoting Resilient Operations for Transformative, Efficient, and Cost-saving Transportation (PROTECT) Program	\$8,700,000,000	\$4,300,000,000	N/A
<b>Total</b>		<b>\$41,777,000,000</b>	<b>\$9,204,012,027</b>	<b>\$223,489,422</b>

**Infrastructure Investment and Jobs Act (IIJA) Authorization and Obligation Totals for Environmental Resilience and Mitigation (in Billions)**

■ Authorizations ■ Obligated Funds



While sound grant administration demands award and oversight processes that can take time, this does not seem to be the sole reason behind such a long obligation period. Tapping into these funds would be a better way of addressing the problems that ostensibly lead to the lawsuits against energy manufacturers. Congress has no doubt provided additional related environmental remediation and mitigation programs elsewhere across the vast and overlapping array of federal programs.

Additionally, the findings in the table above show that Congress and the Government Accountability Office (GAO) should track the IJJA spending and make sure that federal agencies are reporting data to [USASpending.gov](https://www.usaspending.gov) in a timely manner to ensure transparency. The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 required the GAO to regularly track the amount of outlays and showing how much remained unspent. Some unspent obligations were eventually repealed in several recent laws to prevent wasteful spending long-after the emergency funds were provided.

Congress could also look into the administration's efforts to take sole credit for the bipartisan IJJA, which was the result of years of efforts and negotiations by lawmakers. The Office of Management and Budget in the White House has issued [signage directives](#) for IJJA-related projects to specify that they are "Funded by President Joe Biden's Bipartisan Infrastructure Law," in essence using taxpayer dollars as ads.

In conclusion, the ongoing legal battles between state and local governments and energy-producing companies, though ostensibly aimed at addressing climate change, threaten dire consequences for taxpayers and the economy at large. If successful, these lawsuits could lead to inflated oil and gas prices, disproportionately burdening low-income workers and hampering economic growth. Moreover, a significant portion of any fines may end up as contingency fees for lawyers rather than funding environmental mitigation efforts. Instead of pursuing these uncertain and potentially harmful avenues, tapping into existing federal funding designated for environmental resilience and mitigation would offer a more prudent approach. If used properly, resilience funding could [achieve savings over the long-term](#). However, taxpayers know that throwing excessive federal largesse on the table rarely seems to satisfy some local governments, or the interest groups egging them on. If they can double-dip they will try, and everyone loses as a result.



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