

Speaker 1:

Welcome to CleanLaw, from the Environmental and Energy Law Program at Harvard Law School. In this CleanLaw Quick Take, EELP Sara Dewey and Abby Husselbee discuss recent developments in corporate climate disclosure. Since the profusion of voluntary corporate net-zero targets set in the early 2020s, the policy landscape shaping disclosure requirements on corporate greenhouse gas emissions, climate-related risks, and more has been in flux. Abby and Sara talk about recent developments, including the Salata Institute's new Corporate Climate Targets Database, and what they'll be watching for in the US and the EU, as California's climate disclosure requirements take effect. We hope you enjoy this episode.

Abby Husselbee:

I'm Abby Husselbee, an attorney with EELP, and I'm joined today by my colleague Sara Dewey, associate director of EELP. We work together on EELP's corporate climate risk portfolio, and today we'll be discussing what we're seeing in climate-related risk disclosure given recent developments in California and the EU. And we'll also be discussing the launch of the Salata Institute's Corporate Climate Targets Database, a joint project of our team, the Harvard Kennedy School, and the Harvard Business School.

I'm looking forward to discussing this transitional time for corporate climate disclosure, so Sara, to start out, can you provide a bit of context for the current moment in climate disclosure?

Sara Dewey:

Absolutely, Abby. We find ourselves in an interesting moment more than half a decade since the profusion of net-zero commitments made by corporations around 2020. The current US administration has been dismantling federal climate policy, and some companies are walking away from or significantly weakening their corporate climate targets. Others are continuing to make progress, but more quietly, which is a phenomenon known as green hushing. During the Biden administration, the Securities and Exchange Commission finalized a climate risk disclosure rule that would've required public companies to report information about their climate risks and greenhouse gas emissions, and proponents of the rule, including many in the investor community, argued that it would provide important information to the markets and enable investors to better assess risk. The rule faced a raft of litigation, which we can talk about later on, and the SEC decided to pause the rule during the litigation, so it was never actually implemented.

The Trump administration wanted to put an end to the rule. It first tried to get the court to reject the rule on the merits, which was highly unusual given that the administration was no longer defending it. And when the court declined to do so, the commission released a proposed rescission in May 2026. There's also a very recent development that gives us a window into what the SEC is doing in this space, which we can talk about more. But last week, the SEC released a report following its investigation of Climate Action 100, which is an investor initiative to push the world's largest corporate greenhouse gas emitters to act on climate change, and its role in the ExxonMobil board election in 2021. The SEC declined to bring an enforcement action, but it warned that coordinated investor engagement could trigger SEC scrutiny.

So, we're at this moment where the SEC is stepping back from requiring companies to disclose climate-related information, which investors say will make it hard to access needed information. And it's also signaled that it will closely watch investors who coordinate over climate action.

Abby Husselbee:

Well, I'm excited to come back to this update later in the episode, but first I thought we could talk a little bit about what disclosure is and why it can be valuable. Many CleanLaw listeners may be really steeped

in environmental or climate policy, but corporate regulation introduces this whole additional world of policies and acronyms. So, without getting into the specifics of any one jurisdiction, can you talk a bit about what climate disclosure regulation is and why investors might want it?

Sara Dewey:

Yes. Disclosure requirements can serve a range of benefits for the investor community and other stakeholders. For example, by giving investors decision useful, comparable information about climate-related financial risks that companies face, which investors have long called for, or providing information about emissions trajectories over time and across sectors, which is useful for investors, the market, and other stakeholders. And as you said, the specifics of climate disclosure policies vary. They may require companies to disclose information about a variety of conditions, including climate-related financial risks, transition risks, physical risks that the company is facing related to climate, greenhouse gas emissions, climate-related impacts, and climate-related opportunities. So, while these policies look different, it's important to note that disclosure policies are not regulations that require companies to reduce emissions or manage climate-related risks or take other affirmative steps to manage greenhouse gas emissions, this is really just about disclosure.

And right now we have a mix of companies providing different pieces of information and in different forms, and this piecemeal approach can be labor-intensive for companies and difficult for investors and others trying to track down information. The picture is further complicated by the Trump administration eliminating reporting under the EPA Greenhouse Gas Reporting Program, an inventory of emissions reporting from large emitters in many sectors of the economy. So, this information is getting harder to come by and we're reliant on fragmented voluntary reporting to a large extent.

I think that point brings us to the project that we've been working on, which you mentioned at the top, it's a project with a team of faculty and researchers at the law school, the Harvard Kennedy School, and the Harvard Business School that captures some of this climate target and emissions data for thousands of companies. And it really fills in the data gap in an important way in the absence of more comprehensive federal reporting requirements. Abby, can you talk a little bit about the database you helped launch at New York Climate Week?

Abby Husselbee:

Absolutely. As part of the Salata Institute's Corporate Climate Targets Project, last month, our colleagues at the Harvard Kennedy School and the Harvard Business School released a publicly available database that tracks voluntary climate commitments, meaning companies that have set a forward-looking commitment to reduce greenhouse gas emissions over time. The database runs from 2000 to 2024 and tracks Russell 3000 companies. And where they're available, it looks at emissions trends, and it's this really wonderful tool that allows us to compare companies across industries, across states, and over time. So, the database gives us a way to see what companies are saying about their climate ambitions. And at ELP, I think we're really interested in connecting those commitments to the legal and policy environment in which companies operate. So, to support that, here at the law school, we've been building complimentary databases and legal analyses of state climate and clean energy policies.

And our goal is to understand how those policies accelerate or support or hinder what companies are saying and doing. We want to identify legally durable policy designs that drive emissions reductions and transparency about those reductions. So, right now we have a sense that regulation is one factor among many that companies consider when making and implementing a commitment. But they also look to stakeholders, investors, customers, employees, sector norms, competitive pressure... And so, when a company sets a target, it might be getting ahead of a regulation it expects, or responding to regulation

that's already in place, or acting completely independently of policy to satisfy a stakeholder or a combination of stakeholder drivers.

So, by tracking commitments over time, it allows us to assess the drivers for those commitments. Does a policy enable a company to announce an emission reduction target or does a target help create momentum for policymakers to act? Do commitments turn into transition plans that enable companies to achieve actual emissions reductions? And if so, what are the factors that affect the timing of achieving those targets? And importantly for right now, how do companies react to policy uncertainty or instability? Those are all important questions for us to answer, and the database will allow us to compare the state climate and clean energy policy records that we've already collected with corporate commitments over time. That will help us understand whether and how state policies relate to corporate targets and potentially whether changes in policy are associated with changes in corporate ambition.

So, if you want to hear more about this project, EELP's faculty director, Jody Freeman, recently recorded a CleanLaw episode with other principal investigators, Joe Aldy and Mike Toffel, which dives into the process of creating the database and its uses in more detail.

Sara Dewey:

Thanks, Abby, that's an interesting set of questions to explore. And I think ultimately the database will help us move beyond looking at isolated statements to consider the relationship between policy, corporate commitments, and implementation, and it will give us a better basis for understanding which theories of change are playing out and hopefully help inform more effective policies in the future. And this is where consistent disclosure requirements become important. These policies can give us a way of looking beyond the announcement, and ask what risks the company sees, what it's doing about them.

I'll mention a little bit more about the SEC's 2024 rule, which was an attempt to establish a federal baseline for climate-related information in public company reporting. It would have required publicly traded companies to report on material climate risks, the financial effects from climate-related events, and for certain large companies, some information on emissions from scope one and scope two.

Immediately after the SEC finalized the rule, industry groups, states and environmental groups challenged the rule, and they raised legal arguments focused on statutory authority, the First Amendment and major questions doctrine, and the agency paused the rule before it took effect.

Under the Trump administration, the proposed rescission of the rule makes the legal argument that the agency lacks statutory authority to implement the rule, as well as policy arguments related to the cost of implementation. At the same time, we mentioned earlier that there've been some very recent actions the SEC has taken that suggest the direction they're going. Abby, can you talk a bit more about this recent development?

Abby Husselbee:

Yeah, happy to. So, on October 7th, 2026, the SEC released a report on the Climate Action 100+, or CA 100+, which is a coalition of investors focused on engaging corporations to take appropriate action on climate change. In 2021, some members of the CA 100+ were involved in efforts related to the ExxonMobil board election. Last week, the SEC released a report with the findings of their investigation. The SEC did not make an enforcement action or find that any particular investor violated the law, but it does warn investors about the need for disclosure and potential consequences in the future. Sara, I'm wondering if you have thoughts about what consequences this might have.

Sara Dewey:

Yeah, absolutely. Even though the SEC didn't bring an action or explicitly prohibit investor coordination, it stated that it had concerns about the kind of activities described in the report. So, I think it's a warning about how investors coordinate engagement with issuers on particular topics like climate action. And we'll be watching to see whether this has a chilling effect on coordination around collective climate engagement, and it certainly reflects new SEC priorities.

Abby Husselbee:

Yeah. So, moving back from that federal backdrop, let's now move to talk a little bit about California. So, with the SEC stepping back from climate disclosure, California is becoming an important US test case. So, California passed two laws related to climate disclosure in 2023, the first is a bill called SB 253. It requires large companies doing business in California to report their scope one, two, and three greenhouse gas emissions. This law applies to public or private companies, which is a bit different from SEC rules, and may pull in some companies not regularly in the practice of disclosure.

Reporting for scope one and two emissions, which means emissions that are either produced directly by the company or emissions from purchased energy, is set to begin in November 2026. This is an extension from the original August 2026 deadline, so reporting should begin soon, although industry has recently asked the court to delay reporting, citing potential compliance costs and the threat of sanctions. Then the second bill in California is known as SB 261, and it applies to large companies doing business in California.

And this one requires reporting on climate-related financial risks and opportunities. For this bill, the one on risk reporting, the enforcement timeline has been affected by the litigation, and CARB has agreed not to enforce the deadline while that appeal proceeds. So, Sara, do you want to talk a little bit about that litigation?

Sara Dewey:

Absolutely. Industry groups challenge these California laws that Abby, you just described, and the Ninth Circuit paused enforcement, as you said, of the climate risk disclosure law while the case proceeds. So, reporting is not required for now, but some companies are submitting their reports on a voluntary basis. The legal question at issue is related to First Amendment concerns. As the Chamber of Commerce contends, is this corporate disclosure compelled speech about a controversial topic, climate change, that runs afoul of the First Amendment? Or as the state argues, a run-of-the-mill business risk disclosure that does not trigger First Amendment concerns?

The oral argument was held in January 2026, so we could see a decision soon, possibly before the November compliance date, but as you mentioned, industry challenges are also asking for the reporting deadline to be pushed. Interestingly, while the litigation is ongoing, we have seen many companies voluntarily submitting climate risk reports, and while these early filers are self-selected and perhaps a more motivated group, some because they've already reported in other jurisdictions, like the EU, or some because they're trying to prepare and build this reporting capacity within their companies, we've looked at these early filings and identified some trends.

First, in terms of what companies are reporting, many are using the Task Force for Climate-Related Financial Disclosure Framework, or TCFD, to discuss physical and transition risks, including some risks that are specific to their work in California. Companies also identified risks from shifts in law and policy, so transition risks, including decarbonization requirements in California and other jurisdictions, increased reporting requirements, and companies also noted the higher utility costs from energy and water stress, and changing insurance conditions as a risk at a time when some insurers have pulled back their coverage in California. We see some relatively smaller and private companies reporting for the first

time. In the first group of companies that we looked at, over 300 companies had voluntarily reported, and about two thirds of them were private companies and a third public. And about half of the companies appeared to be reporting on their climate risks for the first time.

So, that suggests this law is eliciting disclosure from companies that have not publicly reported before. We'll continue to watch these trends as we see requirements take effect and a more comprehensive list of companies reports under the regulation.

Abby Husselbee:

Before we move beyond the US, it might be worth noting that there are also other states that are considering proposals. So, New York has an active climate disclosure bill advancing, and we've seen bills in Illinois, Washington, and Colorado, we've also seen some states taking on sector-specific approaches. So, a number of states require insurance companies to disclose climate-related risks, including Illinois, which passed a bill earlier this year that requires large insurance companies to participate in the National Association of Insurance Commissioners Climate Risk Disclosure Survey.

So, these developments raise the question of whether we see state-by-state piecemeal reporting, which could be inefficient and burdensome for some companies, and may create incentive for a federal standard that is interoperable with the state reporting down the line.

Sara Dewey:

That's right. And in addition to the possibility of additional state-level reporting, some US companies will also have to report in the EU under the Corporate Sustainability Reporting Directive, or CSRD. I'll just briefly mention that the EU framework is broader than the rules we've seen in the US in that it looks at a range of environmental, social, and governance factors. So, this covers climate, pollution, and biodiversity, but also issues like human rights, working conditions, and governance. And it also adopts a double materiality approach, which requires companies to consider both the impacts of climate change on the company and the company's impacts on the environment.

It's generally more prescriptive and granular in terms of what companies have to report, and while the EU did narrow some reporting requirements and delay deadlines recently, the overall reporting scheme is moving forward. This creates a natural experiment of sorts with companies reporting in both the EU and California. Abby, can you talk a little bit about what you'll be watching for?

Abby Husselbee:

So, I think given the relative simplicity of California's design, which requires disclosure of climate risks and greenhouse gas emissions, compared to the very detailed disclosure requirements in the EU, we'll be watching to see which elicits the most complete reporting over time. And these developments, along with insights from our newly launched database, can help inform policy design for future US disclosure, legislation, or future US disclosure regulation.

Sara Dewey:

Well, thanks, Abby, there's a lot in flux in this space, so we hope listeners will keep an eye on EELP's website for updates on all these moving pieces.

Abby Husselbee:

Thanks.