



PERSPECTIVES

CROSSCURRENTS:

Global Sustainability Divides &
ESG Compliance, Litigation Risks,
and Corporate Responsibility

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

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Preface: California Climate Disclosure Laws - Greenhouse Gas Reporting and Financial Risk Compliance Deadlines

California's efforts to increase climate transparency and accountability for companies are advancing through two major initiatives: the Corporate Greenhouse Gas Reporting Program and the Climate-Related Financial Risk Disclosure Program. Below is a summary of current guidance from the California Air Resources Board (CARB), as outlined in its July 2025 Frequently Asked Questions document.

Rulemaking Timeline and Compliance Framework

- » CARB is in the early stages of gathering information and stakeholder input for final regulations under Health & Safety Code sections 38532 and 38533. These cover greenhouse gas (GHG) emissions reporting and climate-related financial risk disclosures, respectively.
- » The regulatory process is ongoing, with multiple opportunities for public feedback, and CARB expects to complete rulemaking by the end of 2025.
- » Ultimately, CARB expects companies to submit the first required reports for Scope 1 and Scope 2 GHG emissions by January 1, 2026. Scope 3 emissions reporting will begin in 2027.

Applicability and Revenue Thresholds for ESG Compliance

- » Section 38532 applies to companies with over \$1 billion in annual revenue doing business in California. Section 38533 applies to those with over \$500 million in revenue.
- » Not all companies will be subject to both statutes; applicability depends on revenue thresholds and definitions of "doing business" in California, which are being developed based on Franchise Tax Board criteria and stakeholder input.

ESG Reporting Obligations and Key Compliance Deadlines

- » Greenhouse Gas Emissions (Section 38532):
 - o Initial reports for Scope 1 and Scope 2 emissions must be submitted in 2026, covering the previous fiscal year. Scope 3 emissions reporting begins in 2027, also for the prior fiscal year (2026).
 - o Entities must obtain third-party limited assurance for Scope 1 and 2 emissions starting in 2026, increasing to reasonable assurance in 2030.
 - o Companies that already report under other regimes may see streamlined requirements as CARB aligns with existing frameworks.
- » Climate-Related Financial Risk (Section 38533):
 - o First reports are due by January 1, 2026, and biennially thereafter.
 - o CARB will maintain a public docket for report links from December 1, 2025, to July 1, 2026, supporting transparency.

Companies should use a recognized framework (such as TCFD) to identify and report material risks to financial outcomes resulting from climate-related factors.

CARB allows flexibility in framework choice but expects disclosures to be specific, complete, and useful for investors and the public.

preliminary injunction to enjoin both Senate Bills 253 and 261 allows the program to continue, at least for now.

Good Faith Compliance, Enforcement, and Litigation Risks

» CARB's guidance does not establish new mandatory requirements but clarifies existing statutory obligations.

» Penalties for non-compliance can take into account whether companies made "good faith" efforts, such as using best available data and showing progress in compliance implementation, especially during the phase-in period.

» CARB anticipates that initial reports may use data from fiscal years 2023/2024 or 2024/2025 as companies further develop their data collection systems.

California is developing greenhouse gas and climate-risk disclosure requirements. Companies meeting the revenue and operational thresholds should review the evolving regulations, consider whether their specific circumstances justify participating in public feedback opportunities, and begin preparing for reporting and verification deadlines to meet the report submittal deadlines in 2026. CARB is trying to align with established frameworks; however, the regulatory landscape continues to evolve, and litigation related to the climate disclosure laws continues to progress. The August 13, 2025, [order](#) denying the US Chamber of Commerce's

Introduction: The Evolving Landscape of Corporate Responsibility, ESG Compliance, and Sustainability Risks

Sustainability has rapidly transformed from a niche concern into a principal element of strategic planning, regulatory compliance, and corporate reputation management. The past decade has seen an unprecedented surge in awareness of [environmental](#) and social issues, as climate change, resource scarcity, and shifting stakeholder expectations demand urgent attention. At the same time, the global consensus around how best to pursue sustainability remains elusive, with diverging approaches among governments, states, and corporations. As corporations try to straddle jurisdictions and social pressures, sustainability planning becomes even more complex.

Nowhere are these tensions more pronounced than in the differences between United States federal and state-level sustainability policies—California being a striking example—and the recent recalibration of European Union ambitions. These jurisdictional divides create complexities for multinational corporations, which must reconcile local mandates with global operations and stakeholder expectations. Layered onto this are evolving legal risks: as corporate responsibility expands to include not just environmental stewardship, but profitability, boards and executives must navigate the perilous waters of shareholder derivative litigation, particularly as practices like greenwashing and greenhushing attract scrutiny.

Our *Crosscurrents* series continues to explore the multifaceted benefits of sustainability, analyzes the contrasts between US and EU approaches, and provides commentary

on the delicate balance corporate leaders must strike between profit-generation and responsible governance. Concrete examples of greenwashing and greenhushing highlight the risks and nuances of disclosure practices in today's sustainability landscape.

Corporate Responsibility and ESG Compliance

The [definition](#) of sustained—"maintained at length without interruption or weakening"—may be the best place to start when thinking about sustainability. [Harvard Business School](#) speaks to sustainability as follows:

Sustainability in business generally addresses two main categories:

- » *The effect business has on the environment.*
- » *The effect business has on society.*

The goal of a sustainable business strategy is to make a positive impact on at least one of those areas. When companies fail to assume responsibility, the opposite can happen, leading to issues like environmental degradation, inequality, and social injustice.

Sustainable businesses consider a wide array of environmental, economic, and social factors when making business decisions. These organizations monitor the impact of their operations to ensure that short-term profits don't turn into long-term liabilities.

For businesses, there are advantages to embedding sustainability in operations:

- » **Risk Mitigation:** Companies that proactively identify and address environmental and social risks are better equipped to avoid regulatory penalties, litigation, and supply

chain disruptions. For example, robust waste management protocols can help avert fines stemming from pollution incidents, while responsible sourcing can minimize reputational harm from labor violations.

» **Operational Efficiency:** Sustainable resource management often results in more [efficient use of energy](#) and materials, leading to cost reductions and streamlined operations. Upgrading lighting, HVAC systems, and industrial processes to cleaner technologies can yield significant savings over time while reducing a company's carbon footprint.

» **Brand Loyalty and Market Differentiation:** With consumers increasingly scrutinizing the values and practices of companies, authentic sustainability commitments can foster deep loyalty and distinguish brands in crowded markets. Companies able to demonstrate genuine impact enjoy a competitive advantage, thus the rise in B Corporations.

» **Talent Attraction and Retention:** Younger generations are seeking to align their personal beliefs with their employment, and sustainability is vital for attracting and retaining top talent. Internal sustainability initiatives—such as green offices, volunteer programs, and transparent communication—enhance employee engagement and satisfaction.

» **Access to Capital:** Well, maybe, a few years ago, investors were including [Environmental, Social, and Governance \(ESG\) factors](#) in their decision-making. Recent government, social, and political changes in how ESG, now a dirty word in some circles, is received have reduced the impact. Today, access to capital is more driven by pure financial analysis, which can include the factors above.

The justification to pursue sustainability is not merely ethical or regulatory; it is a sound business strategy, essential for resilience and long-term value creation. Yet, the benefits must be weighed against the challenges introduced by complex and ever-shifting regulatory frameworks.

Federal and State ESG Compliance: California's Leadership and Corporate Implications

In the United States, sustainability policy is a confusing blend of ambition, caution, and contradiction. Historically, federal efforts often provided broad frameworks and incentives, but the real drivers of innovation and enforcement tended to be state governments, with California setting the highest bar. Political differences have influenced both federal and state policy in recent years, with red and blue states taking diametrically opposite positions.

Federal ESG and Sustainability Policy Shifts: Implications for Corporate Compliance

At the federal level, sustainability policy has evolved in fits and starts, often in response to the prevailing political climate. The Biden administration prioritized climate action, embedding renewable energy incentives, climate resilience standards, and greenhouse gas reduction goals within major legislative packages like the Inflation Reduction Act. Notably, federal agencies began developing rules for mandatory climate risk disclosures and stricter vehicle emissions standards. With the transition to the Trump administration, many of the Biden administration's programs were discontinued. The change in philosophy is reflected, as examples, in Executive Orders such as:

- » **EO 14154 – Unleashing American Energy**
 - o *Establishes a policy of fossil fuel exploration on federal lands and the continental shelf, mining of non-fuel minerals, eliminates the “EV mandate,” and general deregulation of energy and consumer*

appliances. It promotes energy exploration on federal lands, strengthens the U.S. position in mineral production, and encourages regulatory reforms to eliminate burdensome mandates and support consumer choice. The order revokes several prior climate-related EOs (13990, 13992, 14008, 14007, 14013, 14027, 14030, 14037, 14057, 14072, 14082, and 14096) and streamlines the permitting process to expedite energy project approvals. Additionally, it focuses on ensuring accurate environmental analyses and addressing national security implications related to mineral reliance.

» EO 14260 - Protecting American Energy from State Overreach

This EO tasks the AG with identifying and halting enforcement of state and local laws affecting domestic energy resources that may be unconstitutional or preempted by federal law, with a focus on those related to climate change and environmental initiatives. A report to the President detailing actions taken and recommendations for further measures is required within 60 days.

The result is a rapidly changing playing field where companies may be subject to some requirements but may see others delayed or diluted. The lack of consistency is often the most troubling because it prevents effective corporate planning.

California at the Forefront of Corporate Environmental Compliance and Sustainability

California leads the development of American sustainability policy. The state's aggressive climate goals, such as achieving carbon neutrality by 2045 and generating 100% clean electricity by 2045, are among the most ambitious in the world. California has also pioneered regulations on vehicle emissions, single-use plastics, and water conservation that far exceed federal standards.

The state's recent legislation on mandatory corporate climate disclosures compels companies to publicly report their greenhouse gas emissions, climate-related financial risks, and plans for mitigation. For businesses operating in California, compliance is not only an obligation but a spur to innovation: investments in renewable energy, energy storage, and circular economy models are increasingly necessary to maintain market access and competitiveness.

Additionally, California's leadership has ripple effects. Other states frequently adopt California standards, and corporations may choose to align their national operations with California regulations to simplify compliance and present a sustainability narrative that can be compliant in multiple jurisdictions.

Navigating Corporate Sustainability, ESG Compliance, and Regulatory Risks

Navigating the jurisdictional divide between federal and state sustainability policies demands agility and foresight. National and multinational corporations must harmonize operations to meet California's stringent requirements while avoiding overinvestment in areas where federal rules may be more lenient or absent. This challenge extends to supply chain management, data collection, and stakeholder communication, underscoring the need for robust, scalable, and adaptable sustainability infrastructure.

For some, the divide presents opportunities: those who meet California's standards are well-positioned to lead in emerging markets and showcase their sustainability credentials globally. For others, it is a source of complexity and risk, as compliance failures can trigger legal actions or loss of business. There is also risk related to shareholder expectations, below, and political exposure related to being "too green" in some cases.

Shifts in EU Sustainability Policy and ESG Compliance Challenges

While the US landscape is defined by state and federal complexity, the European Union has historically championed unified and ambitious sustainability policies. The Green Deal—envisioned as a roadmap to climate neutrality by 2050—has set the agenda for a raft of regulations on carbon pricing, sustainable agriculture, and mandatory ESG disclosures.

Yet, recent years have witnessed a retreat from some of these commitments. Multiple factors have contributed to the EU's recalibration.

Key Pressures Shaping EU ESG and Sustainability Policy Shifts

» **Economic Pressures:** The energy crisis, exacerbated by geopolitical instability and war in Ukraine, has driven up prices and exposed vulnerabilities in Europe's energy infrastructure. As households and businesses feel the pinch, policymakers have been forced to soften targets or delay implementation.

» **Political Backlash:** Farmers and industry groups have staged widespread protests against regulations on pesticides, emissions, and land use, arguing that they threaten livelihoods and competitiveness. In response, several member states have pushed for exemptions or slower rollouts.

» **Policy Reevaluation:** The EU has, in some instances, delayed or weakened regulations around agricultural chemicals, carbon pricing, and corporate disclosures. The goal is to balance sustainability ambitions with economic pragmatism and social stability. Notably, Germany, in response to its experience with its Supply Chain Act, pushed for changes in which companies were included in the new [due diligence](#) rules.

Responding to EU Regulatory Changes in Global ESG Compliance

The EU's partial retreat has reverberated beyond its borders. Multinational corporations operating in Europe must reassess risk exposure and compliance strategies, weighing the possibility of regulatory rollbacks against long-term sustainability commitments. Some companies see relief from immediate compliance burdens, while others fear that inconsistent application will erode investor confidence and invite criticism from stakeholders.

For US-based firms with EU operations, the challenge is amplified by the need to reconcile divergent standards in two of the world's largest markets. Maintaining credibility and trust in this environment requires clear, consistent communication and rigorous internal controls.

Integrating Profitability and Corporate Sustainability

As sustainability finds its place in corporate strategy, the imperative to deliver shareholder value maintains its own place as the leading focus of corporate strategy. Boards and executives must navigate a path that honors sustainability commitments while generating profit—failing which, they risk litigation from shareholders alleging mismanagement.

Shareholder Litigation Risks in Sustainability Investments

Corporate law enshrines the duty of directors and officers to act in the best interests of shareholders. When sustainability investments fail to yield significant returns, disgruntled

shareholders may launch derivative lawsuits claiming that management has failed to maximize value. The threat is particularly acute when companies overextend themselves in costly sustainability initiatives or falter in their implementation.

The legal landscape is evolving, and courts are increasingly willing to hear cases related to environmental misrepresentation, failure to disclose climate-related risks, or neglect of fiduciary duties. Robust documentation and transparent justification of sustainability programs are essential defenses against such claims.

Greenwashing and Corporate Responsibility Exposure

Greenwashing—falsely advertising products or practices as environmentally friendly—is a mounting concern. The practice exposes companies to regulatory investigation, civil litigation, and reputational damage. Agencies such as the US Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), the UK Competition and Markets Authority (CMA), and European authorities have intensified scrutiny, launching probes and issuing fines.

Consumers, too, are more sophisticated: they demand substantiated claims and punish companies that exaggerate their environmental achievements. Shareholder lawsuits alleging greenwashing are on the rise, with plaintiffs seeking compensation for losses incurred due to misleading disclosures.

The Risks of Greenhushing for Corporate Sustainability

Greenhushing, on the other hand, describes the deliberate downplaying or concealment of sustainability achievements to avoid criticism, regulatory attention, or litigation. Companies may fear that publicizing their efforts will draw scrutiny or accusations of hypocrisy,

especially if their programs are not comprehensive or fully effective.

While greenhushing may avoid short-term risk, it undermines transparency and erodes the trust of investors, consumers, and regulators. The impact is subtle but profound: firms lose opportunities for differentiation, employee engagement, and stakeholder loyalty, while exposing themselves to suspicion and missed partnerships.

Illustrative ESG Cases: Legal and Reputational Impacts of Greenwashing and Greenhushing

Real-World Greenwashing Examples

A prominent example of greenwashing unfolded in the automotive sector when a major multinational manufacturer marketed its “clean diesel” vehicles as environmentally superior, touting low emissions and compliance with strict environmental standards. Subsequent investigations revealed that the company had installed software to manipulate emissions tests, allowing vehicles to pass regulatory checks while emitting pollutants far above legal limits during real-world operation. The fallout was severe: billions of dollars in fines, criminal charges for executives, class-action lawsuits from consumers, and long-lasting reputational harm.

Other cases abound, including personal care brands labeling products as “natural” based on minimal plant-derived ingredients, or fashion retailers overstating the sustainability of supply chains. The lesson is clear: exaggerated or unsubstantiated claims can have drastic legal and financial consequences.

Greenhushing in Action

Greenhushing can be subtler but equally consequential. Consider a global apparel firm that, after investing heavily in sustainable textiles and water-reduction technologies, chose not to publicize its achievements. Executives feared that announcing their progress might invite criticism from advocacy groups if their efforts were deemed incomplete or spark legal scrutiny should discrepancies emerge under investigation. Consequently, the company's meaningful advances and significant spending remained largely invisible to consumers and investors, forgoing potential reputational gains and undermining employee pride in their workplace.

Greenhushing is also evident in sectors such as hospitality and food production, where firms implementing energy-saving measures or sourcing certified ingredients may avoid disclosure to sidestep activist backlash or regulatory oversight. Other examples are large investment houses' moves to scrub references to climate goals over "woke investing" claims and moves by bankers away from the United Nations' Net-Zero Banking Alliance.

Managing Risk and Transparency

For corporations, the quest for sustainability is a balancing act. Transparent, evidence-based disclosures are vital for regulatory compliance and stakeholder engagement, but the risks of overstatement or concealment are real. To navigate these twin hazards, boards and executives must invest in robust governance, continuous improvement, and ongoing dialogue with stakeholders.

Internal controls, data verification, and third-party assurance are increasingly standard, helping companies substantiate claims and

avoid legal exposure. Engagement with investors, employees, and communities can also build trust and resilience, positioning firms to weather policy shifts and market turbulence.

Conclusion: Driving Long-Term Value Through Strategic Sustainability

The advantages of sustainability—from risk mitigation to talent retention—are undeniable, yet the road ahead is fraught with complexity. Jurisdictional divides, from California's bold standards to the EU's shifting priorities, demand agility and vision from corporate leaders. The specter of shareholder litigation, coupled with the risks of greenwashing and greenhushing, underscores the imperative for honest, transparent, and strategic action.

Still, sustainability offers more than mere compliance or risk avoidance—it is a driver of innovation, resilience, and long-term value. By focusing on clear winners, such as programs that improve environmental compliance through reductions in waste generation, corporations can reduce overall costs and long-term liabilities. Companies that integrate sustainability principles into their business models, invest in continuous improvement, and communicate authentically will not only weather regulatory uncertainty but also emerge stronger and more profitable.

Commentary: Strategic Insights for Corporate Leadership on Sustainability

Boards and executives must adjust their

mindset, seeing sustainability not as a burden but as a catalyst for growth and differentiation. Proactive investment in research, development, and stakeholder engagement will help organizations seize new opportunities and maintain credibility in a fast-changing world.

Documentation and transparency are vital defenses against legal challenges, while ongoing monitoring of policy and market trends ensures adaptability. Ultimately, the most successful companies will treat sustainability as an essential tenet of strategy—aligning profit, purpose, and governance to secure their position in the global marketplace.

Navigating the crosscurrents of sustainability requires courage, judgment, and a commitment to continuous learning. By embracing these principles, corporations can build a future that is not only profitable but also just, resilient, and worthy of the trust placed in them by shareholders and society alike.

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