

# Katten

PRESENTATION FOR THE ENVIRONMENTAL LAW INSTITUTE

# Environmental Claims

April 24, 2026

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**Christopher Cole**

**Candace Sady**

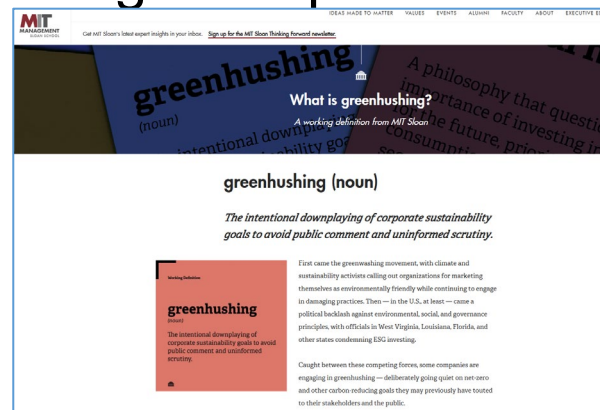
**Eric Unis**

# Agenda

- Environmental claims in the MAGA era.
- NAD Oversight of environmental claims
- Microplastics
- Recycling
- Carbon
- Recent litigation

# “Greenhushing”

- “Greenhushing” = advertisers remaining silent regarding environmental claims in order to avoid scrutiny.
- A study recently found a reduction of 17% in the number of companies issuing sustainability reports.
- Another study cited the retailer Target Corp. reduced mentions of “sustainability” from 62 times in 2024 to zero in 2025.
- Motivation? Reputational and governmental enforcement risk.
- More likely to affect large companies.



# Class action CPG greenwashing challenges are rising

- Green claims motivate consumers.
- Green claims can be ambiguous.
- Green claims can be hard for consumers to evaluate.
- There are few concrete substantiation standards.
- Anti-ESG fervor. Small/new companies less likely to have sophisticated substantiation programs.



ESG REPORTING / ESG TOOLS, SERVICES / GOVERNMENT

## Florida AG Launches Investigation into CDP, SBTi



Mark Segal

August 5, 2025

Florida Attorney General James Uthmeier announced the issuance of subpoenas to climate reporting and assessment organizations CDP and the Science Based Targets initiative (SBTi), launching an investigation into alleged potential antitrust violations and deceptive trade practices.

Referring to CDP and SBTi as a “climate cartel,” the AG said that the investigation aims to determine whether the organizations “violated state consumer protection or antitrust laws by coercing companies into disclosing proprietary data and paying for access under the guise of environmental transparency.”

# Collusion?

- *Daimler v. CARB*, 2025: Daimler sues CARB for attempting to enforce heavy duty truck emissions standards by “Clean Truck Partnership” that it contends are preempted. This was preceded by a DOJ investigation into alleged conspiracy among 4 auto manufacturers that announced agreement with CA on auto emissions standards. The investigation was “formally closed” by DOJ in Jan. 2020.
- *American Sustainable Business Council v. Hegar*, No.1:24-CV-01010-ADA (2/26/26): Austin district court grants summary judgment and enjoins enforcement of SB 13 under the 1<sup>st</sup> and 14<sup>th</sup> Amendments.
  - SB13 is TX anti-boycott legislation. It purports to prohibit covered state entities from investing in or contracting with companies that “boycott” fossil fuels and requires divestment.



**SUSTAINABILITY SHAKEDOWN: HOW A CLIMATE CARTEL OF MONEY  
MANAGERS COLLUDED TO TAKE OVER THE BOARD OF AMERICA'S LARGEST  
ENERGY COMPANY**

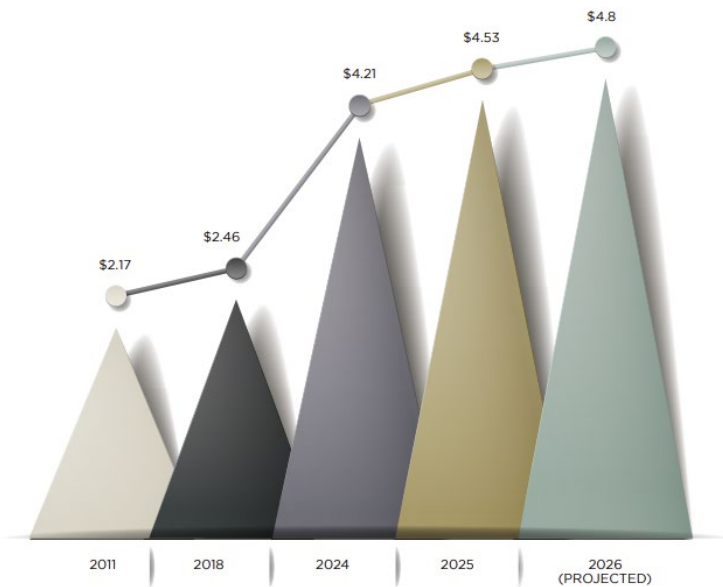
Interim Staff Report of the  
Committee on the Judiciary  
U.S. House of Representatives



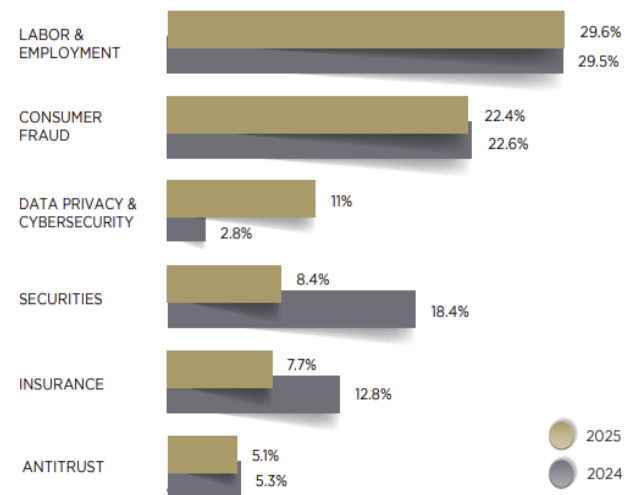
December 13, 2024

# Class Action Trends

- Consumer class action filings have been increasing for over a decade and now consume nearly 4% of overall legal spend.



Class Actions Breakdown by Type  
PERCENT OF MATTERS



Note: Chart does not add up to 100%. Excludes other responses under 5%

# **Recycling/ Recycled Content**

# Launch of new “recyclable” product

- *Gerschzon v. Colgate-Palmolive*, ND Cal. 2023
- Plaintiffs challenge Colgate’s claim to sell new recyclable toothpaste tubes: made primarily of High-Density Polyethylene (HDPE) #2 plastic.
- **Motion to Dismiss denied**
  - According to Plaintiffs, Colgate’s statements are false and misleading because, although it is theoretically possible to recycle the tubes, only a “miniscule” number of recycling facilities in California and the U.S. actually recycle them.
  - Drawing from FTC Green Guides, plaintiffs further state: “recycling facilities for the Products are not available to a substantial majority of consumers or communities in California.”
  - **Does “recyclable” mean “*can be*” recycled or “*actually is*” recycled?**

# What does “recyclable” mean?

- In *Colgate*, “Plaintiffs allege[d] that recycling facilities reject the Products because they are allegedly unable to distinguish recyclable from nonrecyclable toothpaste tubes.”
  - Under the Green Guides “a product is ‘Recyclable’ when ‘it can be collected, separated, or otherwise recovered from the waste stream through an *established* recycling program for reuse or use in manufacturing or assembling another item.’ ”
  - Manufacturer must establish that existing programs actually recycle the product, not just that it *can be* recycled.
- This requires evaluation of recycling practices where the product is sold. “Learn more” disclosures on pack deemed insufficient.

# Carbon

# Carbon credits and additionality

## REDD+

- 12-20% of all carbon emissions are driven by land use changes, primarily deforestation.
- Deforestation is proceeding at an alarming rate.
- Carbon credits can be awarded to certified projects that prevent deforestation.
- Additionality baseline? The legal and scientific counterfactual.
- REDD+ has standards, but recent studies suggest this may be an ongoing problem.



# EU: mandatory carbon market price

## EU Carbon Permits

Summary Stats Forecast Alerts [Export](#)

EU Carbon Permits rose to 74.76 EUR on April 14, 2026, up 2.99% from the previous day. Over the past month, EU Carbon Permits's price has risen 8.35%, and is up 12.95% compared to the same time last year, according to trading on a contract for difference (CFD) that tracks the benchmark market for this commodity.



# CA: CARB allocation



## Cap-and-Invest Program

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### Allowance Allocation

-- EDU & NG Supplier Allocation

-- Industrial Allocation

-- Other Allocation

Auction Information

CITSS Home Page

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Cost Containment Information

Guidance & Forms

Market Monitoring

Meetings & Workshops

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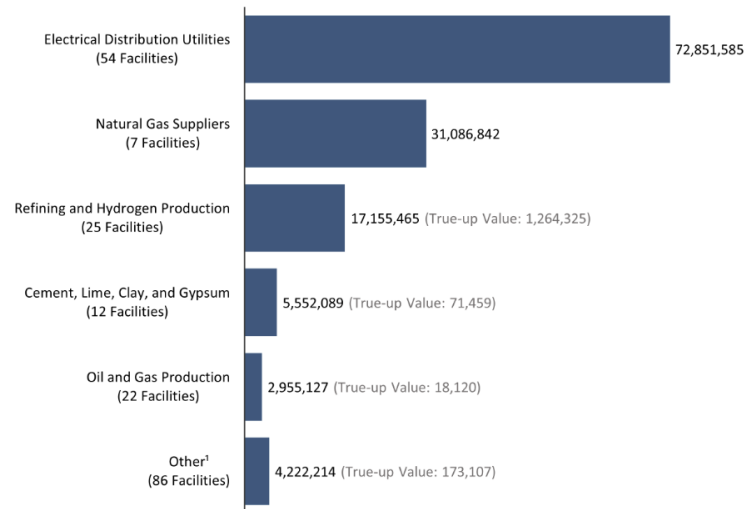
## CONTACT

## Overview

CARB distributes allowances to the Cap-and-Invest Program market through two primary mechanisms: direct allocation to regulated entities and sale at auction to all market participants. This webpage provides information about direct allocation to regulated entities, including industrial entities, electrical distribution utilities (EDUs), natural gas suppliers, and other entities.

CARB allocates allowances for a given year by October 24 of the preceding year. As depicted in the vintage 2026 allocation chart and summary table below, EDU allocation accounted for approximately 54% of the vintage 2026 total direct allocation to entities, natural gas supplier allocation accounted for approximately 23%, and industrial allocation accounted for approximately 22% of the total.

## Vintage 2026 Allowance Allocation



# Examples

# State Reporting Laws and Sustainability Reports Enable YoY Comparisons

The image is a screenshot of a web article from Packaging Dive. The page has a dark blue header with the site logo and navigation links. The main content area is white with a large, bold title and a subtitle. Below the title is a short summary, followed by publication and author information. There are social sharing icons. The article text begins with a paragraph about sustainability commitments, followed by a paragraph explaining the scope of the tracker, and ends with a sentence about future updates.

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Manufacturing Regulation Sustainability CPG Design Materials Supply Chain Technology Finance

TRACKER

## Packaging manufacturers set big sustainability goals. How are they doing?

Follow progress on reducing greenhouse gas emissions, increasing product recyclability and incorporating recycled content by major packaging companies.

Published Oct. 26, 2023 • Updated 38 minutes ago  
By [Katie Pyzyk](#), [Maria Rachaj](#) and [Cole Rosengren](#)

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Sustainability commitments have become a powerful force shaping the direction of packaging companies. Consumers, brands, investors and regulators are expected to continue driving this focus on ESG in manufacturing.

These goals cover a wide range of environmental concerns. In this tracker, Packaging Dive draws from manufacturers' annual sustainability reports to show their progress on targets related to reducing emissions and transitioning to more sustainable materials. Companies often use different language or timeframes, which limits the ability for direct comparisons, but this resource can help track their progress year over year.

The tracker will be updated as new data is released, and could potentially

# Restating prior commitments?

## Henkel announces 2030 sustainability targets

Taking lessons from 2025, the CPG adjusted mid-term targets for recycled plastic and design to be more “ambitious and realistic.” The company is also expanding innovation in coatings.

Published April 15, 2026



Maria Rachal  
Senior Editor

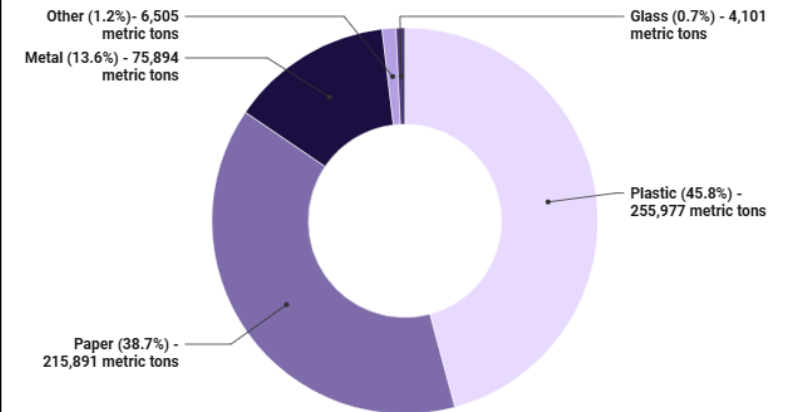
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Category	2025 target	2025 result	2030 target
Recycled content	At least <b>30%</b> share of recycled plastic for all packaging of consumer goods products	Recycled plastics: <b>28%</b>	Increase recycled plastic share in consumer packaging to at least <b>35%</b>
Recyclability	<b>100%</b> of packaging designed for recycling or reuse	Designed for recycling: <b>88%</b>	<b>100%</b> of packaging designed for recycling or reuse

### Plastic still dominates Henkel's portfolio, though packaging weights are down

Packaging material breakdown in 2025



# Packaging innovation proceeding

- Consumers increasingly seeking packages that are recyclable.
- Packages are becoming smaller and using less material.
- This has the added benefit of reducing shipping and material costs.
- Smaller packages may increase theft at brick and mortar retail, but this is becoming less relevant. Plus, other technologies are being used to combat shoplifting.
- How can manufacturer innovate when each new element requires a reassessment of recyclability?

# When is a sustainability certification not good enough?

- Certification = third-party verification.
- *Kim v. Target*, C.D. Cal. 2026. Complaint alleges that tuna marketed by Target as “sustainable” is not sustainable due to dolphin bycatch and alleged concerns with fishing methods.
  - This follows three other lawsuits, all of which have been dismissed (Walmart, ConAgra and BumbleBee Tuna), alleging essentially the same theory.
  - Use of MSC “blue tick” certification logo does no more than indicate that the product is independently certified to MSC standards. Those standards are publicly available, revised every 5 years in a public comment process.

# Litigation regarding carbon neutrality claims

- *Dib, et al. v. Apple*, N.D. Cal. 2025
- Allegation that Apple made misleading claims that three Apple watch models were carbon neutral. Apple allegedly claimed that emissions from their production were offset by projects in Kenya and China.
- Plaintiffs argue that carbon offset projects “fail to provide genuine, additional carbon reductions.”
- In its MTD, Apple argued all offsets were verified and that certifier has a buffer pool of credits to compensate for any error.
- **Dismissed.** “[I]t is not enough for a plaintiff to claim that the entire carbon offset industry is fraudulent.”
- “Plaintiffs failed to allege that the methodology underlying their work is accepted in any scientific circles, or that anyone else—scientist or otherwise—has endorsed the accuracy of their work.”
- Case on appeal.

# Litigation about sustainability and PFAS

- *Giani v. Lululemon*, S.D. FL. 2024
- Complaint alleged that Lululemon's sustainability goals, such as sourcing 100% renewable electricity and reducing emissions by 60% were misleading.
- In February 2025, the court dismissed the case, holding that: "Plaintiffs' allegations fail to tie any aspect of Lululemon's statements to the purported price premium that plaintiffs paid for Lululemon's products."
- *But*, on April 13, 2026, the TX Attorney General issued a press release accusing Lululemon of selling activewear with PFAS.
- Lululemon responds: "We require all our vendors to regularly conduct testing for restricted substances, including PFAS, by credible third-party agencies to confirm ongoing compliance."

# Litigation about net zero claims

- *Tyson Foods*, D.C. 2024
- EWG sued Tyson in D.C. Superior Court for allegedly making false claims about “smart” beef production and pledging to reach net-zero emissions by 2050 without a credible plan. The court has held that the plaintiff’s claims are plausible under the D.C. Consumer Protection Act.
- The court found that Tyson’s statements can mislead consumers, and are commercial speech, and are not protected under the First Amendment.

# Parting shots

- Climate risk; AMOC
- Water access and equity
- Microplastics
- Regenerative agriculture
- EU / Trade