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20 State Attorneys General Push Congress to Address Environmental Justice

Advancing Environmental Justice (“EJ”) is a central pillar of the Biden Administration. Beginning with President Biden’s Executive Order “Tackling the Climate Crisis at Home and Abroad,”¹ signed during his first week in office, the Biden Administration has taken significant steps to address environmental justice in three principal areas: environmental enforcement, environmental permitting and reviews, and agencies’ use of their funding.² For example, the Environmental Protection Agency (“EPA”) has prioritized EJ in enforcement through a focused initiative and various policies.³ EPA’s Office of Enforcement and Compliance Assurance (“OECA”) even promotes its recent enforcement cases reflecting its efforts to strengthen “enforcement to help advance the protection of environmental justice communities disproportionately impacted by pollution.”⁴

Many states also are advancing environmental justice with their own initiatives. Earlier this year the California Attorney General announced the expansion of the California Department of Justice’s Bureau of Environmental Justice, which will have “11 attorneys who are solely focused on fighting environmental injustices throughout the state of California and giving a voice to frontline communities who are all too often under-resourced and overburdened.”⁵ The Massachusetts Attorney General has launched a Clean Air Initiative including air monitoring, online tip reporting, and enforcement to combat illegal idling in environmental justice communities,⁶ and the New York State Attorney General has taken legal action against property management companies to protect children from lead paint hazards in their low-income rental properties.⁷

STATE AG ENVIRONMENTAL JUSTICE DEMANDS

Earlier this month, a coalition of Democrat Attorneys General from 19 states and the District of Columbia sent a letter to Congressional leadership demanding that Congress act to address climate change and environmental justice.⁸ As the AG’s demand, Congress “must fully respond to the climate emergency,” “must prioritize environmental justice,”



and “must pass both the Infrastructure Investment and Jobs Act *and* budget legislation that provides the funding necessary to respond to the climate crisis and provide long overdue environmental justice for our most vulnerable communities.”⁹

According to the State AGs, Congress should respond to the “climate emergency” by (1) promoting clean and renewable energy, (2) investing in transportation electrification, (3) encouraging energy efficiency and conservation, (4) funding zero-emission school buses, and (5) addressing methane pollution.¹⁰ In addition to a comprehensive response to the climate emergency, Congress must make environmental justice a priority and “must reinforce and bolster the actions of both the Administration and states by prioritizing substantial further investment in environmental justice.”¹¹ The coalition urges Congress to prioritize investment in specific areas, including ensuring clean water for all, ensuring clean air for all, protecting community voice in government decisions, and “[c]onsistent with Executive Order 14,008, we urge Congress to seek to make 40% of improvements funded by the budget legislation benefit overburdened communities.”¹²

The State AGs’ EJ demands underscore the pervasive importance of EJ in all aspects of law, regulation, and social policy in the U.S. With the heightened focus on EJ by these AGs and their collective pressure on Congress, industry needs to identify and assess EJ effects across all areas of legal compliance and look to state-specific requirements and developments. While this coalition of State AGs likely will continue to pressure Congress to act to advance environmental justice, companies should expect state-level AG targeting of EJ as a new legal metric of compliance.

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King & Spalding has extensive experience defending companies on multiple fronts and executes a comprehensive strategy when responding to investigations and litigation brought by State AGs and the federal government as well as private party lawsuits. King & Spalding has one of the largest State AG practice groups and decades of experience lobbying for clients’ interests, managing investigations, litigating, and resolving State AG matters. More than 300 King & Spalding attorneys have served clients in State AG actions in all 50 states and the District of Columbia, defending them in complex litigation, qui tam actions, and investigations of business practices relating to antitrust, consumer protection, data privacy, and environmental protection. King & Spalding also has a deep bench of environmental, health and safety attorneys that represent companies in environmental justice related matters as well as in environmental investigations, litigation, and civil and criminal enforcement actions initiated by EPA, the U.S. Department of Justice, state environmental agencies, and State AGs from all 50 states, the District of Columbia, and Puerto Rico. King & Spalding also provides compliance counseling under all environmental statutes and is closely tracking the Biden Administration’s environmental justice and climate change initiatives.



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¹ See Exec. Order 14008, "Tackling the Climate Crisis at Home and Abroad," Jan. 27, 2021, <https://www.govinfo.gov/content/pkg/DCPD-202100095/pdf/DCPD-202100095.pdf>.

² See, e.g., Acting Director of the Office of Management and Budget (OMB), Chair of the White House Council on Environmental Quality (CEQ), and National Climate Advisor, "Interim Implementation Guidance for the Justice40 Initiative," July 20, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

³ See, e.g., EPA Office of Enforcement and Compliance Assurance ("OECA"), "Environmental Justice Enforcement and Compliance Assurance Initiative," <https://www.epa.gov/enforcement/environmental-justice-enforcement-and-compliance-assurance-initiative> (webpage linking enforcement policy memoranda and other materials).

⁴ *Id.* (webpage identifying "Recent Enforcement Cases Benefitting Disproportionately Impacted Communities").

⁵ See "Attorney General Bonta Announces Expansion of Bureau of Environmental Justice," Apr. 28, 2021, <https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-expansion-bureau-environmental-justice>.

⁶ See "AG Healey Settles With School Bus Company Over Unnecessary Idling at New Bedford Schools; Launches Public Information Campaign to Curb Illegal Idling," Sept. 9, 2021, <https://www.mass.gov/news/ag-healey-settles-with-school-bus-company-over-unnecessary-idling-at-new-bedford-schools-launches-public-information-campaign-to-curb-illegal-idling>.

⁷ See "Attorney General James Takes Action to Protect Children and Families from Lead Poisoning in NYC," Sept. 23, 2021, <https://ag.ny.gov/press-release/2021/attorney-general-james-takes-action-protect-children-and-families-lead-poisoning>.

⁸ See Letter from Attorneys General of New York, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and the District of Columbia to Senators Carper, Manchin, and Wyden and Representatives DeFazio, Pallone, and Neal, Sept. 14, 2021, https://ag.ny.gov/sites/default/files/multistate_lettertocongress_reconciliation_9.14.21.pdf.

⁹ See *id.* at 2 (emphasis in original).

¹⁰ See *id.* at 2-7.

¹¹ See *id.* at 7-8.

¹² *Id.* at 8-11.