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US EPA Issues Draft Strategic Plan

Emphasis on Environmental Justice and Climate Change

The EPA's draft Strategic Plan provides the key to understanding the agency's priority goals and initiatives, including Climate Change and Environmental Justice enforcement and an enhanced focus on Environmental Justice communities. In Part 1 of a series, this Client Alert provides an overview of the draft Strategic Plan and high-level observations on the first two key goals.

On October 1, 2021, the U.S. Environmental Protection Agency (“EPA” or “agency”) issued its draft [Fiscal Year 2022-2026 Strategic Plan](#).¹ The Strategic Plan communicates EPA’s vision, priorities and strategies to accomplish the agency’s mission over the next four years and combines two of the Biden Administration’s “whole-of-government” policy initiatives – Environmental Justice (“EJ”) and Climate Change. The plan emphasizes that these two overarching principles will be embedded in all EPA work.

In light of EPA’s new Strategic Plan and its cross-agency partnerships such as the recent EJ [Enforcement MOU with CalEPA](#), facilities operating in EJ areas can expect more inspections—including joint federal/state inspections—and enhanced enforcement activities. These activities are likely to dovetail with EPA’s national compliance initiatives, meaning an uptick in investigations and enforcement actions related to the Clean Air Act, Clean Water Act, CERCLA, RCRA, chemical regulation, and other federal and state environmental laws and regulations. In addition, EPA is expected to focus increased attention on EJ and Climate Change in facility permitting, NEPA analysis, and brownfields redevelopment activities.

KEY OBJECTIVES OF EPA’S DRAFT STRATEGIC PLAN

The Strategic Plan explains that EPA is renewing its commitment to the three principals articulated by its first Administrator, William Ruckelshaus, to “follow the science, follow the law, and be transparent.” In addition to those goals, EPA is adding a “fourth foundational principal: advance justice and equity,” which is now “integral . . . in carrying out EPA’s mission.”²



EPA's draft Strategic Plan states that the agency's key goals for fiscal years 2022–2026 include:

- Tackling the climate crisis – Priority plans include promoting climate change resilience and adaptation through policies, rule-making, and targeted assistance; reducing consumption of hydrofluorocarbons; reducing emissions from mobile and stationary sources; and collaborating with local and international partners to provide assistance and leadership on strategies to address climate change.
- Taking decisive action to advance Environmental Justice and civil rights – Priority plans include providing “unprecedented investments and benefits directly to communities with environmental justice concerns and by integrating equity throughout Agency programs,” and promoting an external civil rights compliance program to address the burden of pollution in vulnerable communities.
- Enforcing environmental laws and ensuring compliance – Priority plans include increasing inspections, prioritizing enforcement cases, tailoring remedies to affected communities, and increasing community engagement about enforcement cases, as well as making compliance data more publicly accessible to allow communities to understand and manage risks and focusing monitoring efforts on sources with the most potential for noncompliant emissions of greenhouse gases and other compounds that contribute to climate change.
- Improving air quality and reducing localized pollution and health impacts – Priority plans include reviewing the particulate matter and other National Ambient Air Quality Standards, integrating environmental justice considerations early in the regulatory process, and scaling up programs to address impacts of radon and indoor air quality on communities with environmental justice concerns.
- Ensuring clean and safe water for all communities – Priority plans to invest in water infrastructure and reduce exposure to contaminants, with a focus on underserved and vulnerable communities, include identifying and prioritizing replacement of lead service lines and addressing per- and polyfluoroalkyl substances (PFAS) in drinking water.
- Cleaning up and revitalizing communities – Priority plans include controlling human health risks at an additional 60 Superfund sites, remediating an additional 650 brownfields sites by September 30, 2026, completing at least 100 Superfund lead remediation projects by September 30, 2023, and promoting its National Recycling Strategy.
- Ensuring the safety of chemicals for people and the environment – Priority plans with September 30, 2026 targets include achieving a rolling annual review of at least eight High Priority Substance (HPS) Toxic Substances Control Act (TSCA) risk evaluations; completing 78 pesticide registration review cases, and considering the effects on federally threatened and endangered species for new active ingredients in 90% of pesticide registrations and 50% of pesticide registration risk assessments.

These goals are designed to implement EPA's four key strategic principles:

- Ensuring scientific integrity and science-based decision making;
- Considering the health of children and other vulnerable populations;
- Advancing EPA's organizational excellence and workforce equity; and
- Strengthening tribal, state and local partnerships and enhancing EJ engagement.

Emphasizing the importance of its new cross-agency strategy, EPA's Strategic Plan explains:

State and local governments provide the majority of on-the-ground environmental protection in this country, implementing federal environmental laws as well as their own. In Indian country EPA directly implements the majority of federal programs. . . . Environmental outcomes are best achieved through collaborative and



effective partnerships across all levels of government, successful oversight of federally delegated programs, and robust engagement with non-governmental organizations, national and community groups, industry, and the public. . . . As a result, EPA will advance durable policies to its most pressing challenges and ensure the equitable protection of all communities, including those who have historically been underserved and overburdened.³

MORE FEDERAL ENFORCEMENT IN EJ COMMUNITIES

EPA's draft Strategic Plan provides important insight into how EPA intends to implement Climate Change and EJ concepts in the enforcement arena. The Plan expresses EPA's intention to leverage its enforcement authorities to help advance the protection of communities disproportionately impacted by pollution:

EPA will focus federal enforcement resources on the most serious environmental problems where noncompliance with environmental statutes and regulations is a significant contributing factor and where federal enforcement can have a significant impact on the nation's air, water, and land. This work will include targeting and screening to prioritize inspections in communities facing substantial burdens from environmental noncompliance. . . . EPA will seek to increase inspections, prioritize enforcement cases, identify remedies with tangible benefits for impacted communities, and increase engagement with communities about enforcement cases.⁴

EPA's draft Strategic Plan sets out EPA's intention to increase its enforcement activities in the areas of safe drinking water, hazardous waste, chemical regulation, and water pollution, as well as increasing EPA's EJ scrutiny on the permitting of new and existing facilities, environmental impact analysis under NEPA,⁵ and remediation and redevelopment of sites under CERCLA and RCRA.⁶

AN EMPHASIS ON CLIMATE CHANGE IMPACTS

A key objective in EPA's draft Strategic Plan is to "accelerate resilience and adaptation to climate change impacts." The Strategic Plan states EPA's intention to "ensure its programs, policies, rulemaking processes, enforcement and compliance assurance activities, and operations consider the current and future impacts of climate change and how those impacts will disproportionately affect overburdened and underserved communities," including "[t]hrough adaptation planning and implementation activities."⁷

EPA's draft Strategic Plan states that EPA intends to "implement 19 Climate Adaptation Implementation Plans developed by EPA programs and regions to align with and advance the five priorities in the 2021 EPA Adaptation Action Plan. Program and regional plans will build on progress to date and identify actions that integrate climate adaptation into remedies, permits, infrastructure investments, enforcement and compliance assistance, grants, loans, technical assistance, and operations."⁸

This month EPA also released an extensive peer-reviewed report entitled *Climate Change and Vulnerability in the United States: A Focus on Six Impacts*. The report's Executive Summary notes: Many studies have discussed climate change impacts on socially vulnerable populations, but few have quantified disproportionate risks to socially vulnerable groups across multiple impacts and levels of global warming.⁹ The report analyzes the degree to which four socially vulnerable populations—defined based on income, educational attainment, race and ethnicity, and age—may be more exposed to the highest impacts of climate change in six categories: air quality and health; extreme temperature and health; extreme temperature and labor; coastal flooding and traffic; coastal flooding and property; and inland flooding and property.



CONCLUSION

Especially in light of the findings in EPA’s Climate Change report and the key policy goals in EPA’s draft Strategic Plan, the intersection of Climate Change and Environmental Justice is likely to be the next front for EPA’s enforcement program.

Tackling the effects of climate change in overburdened communities brings together the two key “whole-of-government” Biden Administration initiatives. It is important for practitioners and their clients to keep abreast of these fast-breaking developments, as the new emphasis and focus on EJ and Climate Change are already affecting all aspects of environmental law.

King & Spalding’s national Environmental, Health & Safety practice includes attorneys experienced with all aspects of EPA’s Strategic Plan. We look forward to providing more in-depth insights in future parts of this series. If you have questions about the Strategic Plan and its potential impacts on your company and industry, please contact the authors listed above or additional K&S team members, including Marcella Burke, Joe Eisert, Adam Sowatzka, and Doug Henderson.

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¹ EPA states that public review and comment, Congressional consultation and Tribal consultation will take place in October and November 2021. The agency anticipates issuance of the final Strategic Plan in February 2022.

² Strategic Plan at p. 4.

³ Strategic Plan at p. 89.

⁴ Strategic Plan at p. 31.

⁵ Strategic Plan at p. 23.

⁶ Strategic Plan at p. 33.

⁷ Strategic Plan at p. 14.

⁸ Strategic Plan at p. 15.

⁹ Climate Change Report at p. 4.