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EPA's Draft Strategic Plan Emphasizes Resilience and Adaption to Climate Change

This Client Alert—Part 2 of an ongoing series—provides an overview of one of EPA's key objectives in its draft Strategic Plan: Developing resilience and adaptation to climate change impacts. Other alerts in the series can be found [here](#).

On October 1, 2021, the U.S. Environmental Protection Agency published its draft Fiscal Year 2022-2026 [Strategic Plan](#). EPA's Strategic Plan lays out seven overarching Goals with corresponding Objectives to achieve each Goal. Under the first Goal, entitled "Tackle the Climate Crisis," EPA emphasizes its Objective to "Accelerate Resilience and Adaptation to Climate Change Impacts."¹ Two of EPA's important strategies to attain this Objective are to "integrate climate adaptation into EPA programs, policies, rulemaking processes, and enforcement activities" and to "partner with Tribes, states...local governments [and] environmental justice organizations."²

The EPA's emphasis on climate change adaptation and resilience will likely increase the time and cost of permitting facilities, implementing remediation plans, and constructing infrastructure to accommodate anticipated climate change impacts. The twin strategies set forth in the Strategic Plan of partnering with states and environmental justice organizations and integrating climate adaptation into EPA rulemaking and enforcement activities will also focus state and federal agency inspections, investigations, clean-up activities and enforcement on facilities near environmental justice communities and in those areas projected to be most impacted by climate change.

CLIMATE CHANGE ADAPTATION & RESILIENCE PLAN

EPA describes its adaptation and resilience objective through the lens of the "significant risks" that climate change poses to "EPA's ability to fulfill its mission."³ The draft Strategic Plan explains that "[m]ore frequent and intense extreme weather and climate-related events, as well as changes



in average climate conditions, are expected to continue to damage infrastructure, ecosystems, and social systems that provide essential benefits to communities and the nation.”⁴ EPA intends its adaptation and resilience strategies to assist in “preparing for and responding to climate-related impacts and disasters (e.g., wildfires, extreme heat, droughts, floods, sea level rise and storm surge, and melting permafrost) and ensuring that infrastructure investments increase resilience to climate change.”⁵ The use of broad, open-ended language in this regard leaves open the possibility that a wide range of industries and environmental regulation will be affected by EPA’s Strategic Plan.

As is the case throughout the entire Strategic Plan, EPA emphasizes its “whole-of-government approach” that seeks to coordinate with other federal and state agencies to achieve its objectives.⁶ Similarly, EPA repeatedly emphasizes its “particular focus on advancing environmental justice”⁷ by providing “targeted assistance” to increase resilience and strengthen adaptive capacity of environmental justice communities (i.e., communities that are “disproportionately affect[ed],” “overburdened and underserved”).⁸

EPA identifies five “priority actions” as part of its objective to accelerate resilience and adaptation to climate change impacts, with a goal of completing these actions by September 30, 2026:

1. Integrate climate adaptation into EPA programs, policies, rulemaking processes, and enforcement activities.
2. Consult and partner with Tribes, states, territories, local governments, environmental justice organizations, community groups, businesses, and other federal agencies to strengthen adaptive capacity and increase the resilience of the nation, with a particular focus on advancing environmental justice.
3. Implement measures to protect the Agency’s workforce, facilities, critical infrastructure, supply chains, and procurement processes from the risks posed by climate change.
4. Measure and evaluate performance.
5. Identify and address climate adaptation science needs.⁹

To achieve its five priority actions by September 30, 2026, EPA outlines three categories of action:

- **Integrating Climate Adaptation into EPA Programs, Policies, and Operations:** “EPA will implement 19 Climate Adaptation Implementation Plans developed by EPA programs and regions to align with and advance” the five priority actions. Building on “progress to date,” program and regional plans will “identify actions that integrate climate adaptation into remedies, permits, infrastructure investments, enforcement and compliance assistance, grants, loans, technical assistance, and operations.”¹⁰
- **Increasing Resilience of Tribes, States, and Communities:** “EPA will ensure its grants, loans, and technical assistance consider climate change to the greatest extent possible and help to empower communities across the nation and Tribes to anticipate, prepare for, adapt to, and recover from the impacts of climate change.” EPA expresses its concern that the impacts of climate change will disproportionately affect “low-income communities, children, the elderly, communities of color, Tribal communities, and indigenous people.” Thus, it plans to “actively engage with organizations representing overburdened and underserved communities, such as the National Environmental



Justice Advisory Council and the Local Government Advisory Committee, with the goal of attaining a more equitable, just, and climate-resilient future.” EPA gives an example of working with the Federal Emergency Management Agency (“FEMA”) to focus on disaster mitigation and recovery planning, particularly for environmental justice communities.¹¹

- **Climate Adaptation Literacy and Science:** “EPA will increase the climate literacy of EPA employees and Tribal, state, local, and community partners,” including an increased understanding of “projected climate-related impacts and how to use climate adaptation tools to incorporate climate adaptation into decision making.” This includes expanding EPA’s “existing climate adaptation training modules to prioritize two primary goals: (1) to increase awareness about the importance of climate adaptation and encourage all EPA staff and partners to consider the changing climate in the normal course of business; and (2) to introduce specific methods and tools for integrating climate adaptation into decision-making processes.” EPA will also support “an Agencywide approach to identify and update priority climate adaptation research needs,” including “conducting climate-related research in its labs and centers, supporting research through its grants program, conducting policy-relevant assessments, communicating research and assessment results, and delivering innovative and sustainable solutions.” Finally, EPA will establish a “central repository of information and tools related to climate adaptation,” including collaboration with other federal agencies.¹²

One noticeable element of the Strategic Plan’s focus on climate change adaptation and resilience is the need to further develop the climate change science to support EPA’s sweeping Strategic Plan objectives. Although the Strategic Plan refers to leveraging existing climate adaptation training and science, the Strategic Plan emphasizes the need to support additional research to inform EPA’s decision-making processes.

PUBLIC COMMENTS

As of the writing of this Client Alert, 119 public comments¹³ on the Strategic Plan have been posted on the Federal Register website.¹⁴ Most of the comments endorse the Strategic Plan and emphasize the need to “follow the science” and develop rigorous climate change adaptation plans that are particularly focused on environmental justice communities. Some comments, like those submitted by the Johns Hopkins Center for a Livable Future and Earthjustice, have zeroed in on industrial agriculture practices as having an outsized impact on climate change and requesting an independent assessment of agriculture’s impact on climate change.¹⁵ Others, such as the Blue Ridge Environmental Defense League, claim that natural gas, nuclear, and biomass energy sources are “false promises and blind alleys” that EPA should avoid in achieving its adaptation and resilience objective.¹⁶

However, not all comments by environmental organizations are favorable. For instance, the Center for Biological Diversity criticizes the Strategic Plan for not properly incorporating the Endangered Species Act into the plan.¹⁷ Likewise, the Environmental Defense Fund demands that EPA finalize vehicle emissions standards by 2023 and oil and gas standards by the end of 2022, instead of by 2026.¹⁸

Additional entities submitting comments, such the Petroleum Alliance of Oklahoma, request further clarification and remind EPA that “[science] should not be used to circumvent the law.” They urge that “EPA must take a common-sense rulemaking approach to climate change.” The Petroleum Alliance also stresses that EPA must consider the benefits of oil and gas production in its cost-benefit analysis and that the oil and gas industry has played a key role in reducing U.S. greenhouse gas emissions. They also request EPA to support and facilitate innovation and the use of



new technologies to reduce greenhouse gas emissions and ask EPA to avoid overlapping and duplicative regulatory requirements.¹⁹

The comments filed by the Texas Commission on Environmental Quality (“TCEQ”) ask EPA to clarify whether EPA will provide additional funding to the states “to perform new actions that may result from this Plan.” TCEQ also requests that EPA further define essential terms used in the Strategic Plan, for instance: “how equity would be defined, measured, weighed, or considered in permitting or enforcement decisions.”²⁰ Additionally, the National Federation of Independent Business (“NFIB”) asks EPA to include a provision that incorporates the importance of small businesses to the American economy and that takes into account “the differences between the needs of small businesses and those of larger businesses.”²¹

EPA anticipates finalizing its Strategic Plan and submitting it to Congress in February of 2022.

CONCLUSION

EPA’s Strategic Plan is a sweeping, aspirational policy statement that lays out EPA’s proposed plan for incorporating climate change adaptation and resilience concerns into every aspect of EPA’s activities. Although vague on specifics, EPA makes clear that a major legislative, policy and regulatory push—as well as increased efforts in permitting and enforcement—can be expected in the near future as EPA strives to implement its Strategic Plan. EPA is taking an open-ended approach to climate change impacts falling within its regulatory authority and plans to fund research into additional climate change issues, particularly in environmental justice communities, to guide its decision-making and resource allocation.

Clients should pay careful attention to emerging EPA regulations, policies, permitting decisions and enforcement actions in this area, and should begin to think proactively about how to respond to the twin policies of climate change adaptation and environmental justice in their dealings with both state and federal agencies. These key Biden Administration “whole-of-government” strategic goals are likely to increase compliance costs and enhance agency investigatory and enforcement activities, particularly in environmental justice communities and areas anticipated to be affected by climate change impacts such as rising sea level, flooding, wildfires and the increasing intensity of storms.

King & Spalding’s national Environmental, Health & Safety practice includes attorneys experienced with all aspects of EPA’s Strategic Plan, including team members who are alumni of the EPA. 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 Draft Strategic Plan at p. 14

² *Id.* at p. 15

³ *Id.* at p. 14

⁴ *Id.* at p. 16

⁵ *Id.* at p. 14

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at p. 7

⁹ *Id.* at p. 15

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at p. 16

¹³ <https://www.regulations.gov/document/EPA-HQ-OA-2021-0403-0001/comment>

¹⁴ <https://www.regulations.gov/search/comment?filter=EPA-HQ-OA-2021-0403>

¹⁵ <https://www.regulations.gov/comment/EPA-HQ-OA-2021-0403-0076>

¹⁶ <https://www.regulations.gov/comment/EPA-HQ-OA-2021-0403-0113>

¹⁷ <https://www.regulations.gov/comment/EPA-HQ-OA-2021-0403-0007>

¹⁸ <https://www.regulations.gov/comment/EPA-HQ-OA-2021-0403-0084>

¹⁹ <https://www.regulations.gov/comment/EPA-HQ-OA-2021-0403-0048>

²⁰ <https://www.regulations.gov/comment/EPA-HQ-OA-2021-0403-0096>

²¹ <https://www.regulations.gov/comment/EPA-HQ-OA-2021-0403-0006>