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For more information,  
contact:

Michael Leslie  
+1 213 218 4013  
[mleslie@kslaw.com](mailto:mleslie@kslaw.com)

Granta Nakayama  
+1 202 626 3733  
[gnakayama@kslaw.com](mailto:gnakayama@kslaw.com)

Megan Nishikawa  
+1 415 318 1267  
[mnishikawa@kslaw.com](mailto:mnishikawa@kslaw.com)

Erich Almonte  
+1 713 276 7378  
[ealmonte@kslaw.com](mailto:ealmonte@kslaw.com)

### King & Spalding

Los Angeles  
633 West Fifth Street  
Suite 1600  
Los Angeles, CA 90071  
Tel: +1 213 443 4355

Houston  
1100 Louisiana Street  
Suite 4100  
Houston, Texas 77002-5213  
Tel: +1 713 751 3200

## US EPA Releases Guidance on Legal Tools to Advance Environmental Justice

On May 26, 2022, the Environmental Protection Agency's Office of the General Counsel released *EPA Legal Tools to Advance Environmental Justice* ("*EJ Legal Tools*"). The document builds on and updates EPA's 2011 *Plan EJ 2014: Legal Tools*. Nearly double in length and featuring a new chapter on civil rights laws, the May 2022 *EJ Legal Tools* provides EPA and its tribal, state, and local partners a compilation of legal authorities for advancing environmental justice. *EJ Legal Tools* addresses virtually every environmental statutory and regulatory regime, as well as civil rights statutes. Although EPA characterizes the document as "one tool, albeit an important one, in EPA's toolkit for promoting environmental justice and equity," when coupled with recently issued enforcement guidance by EPA and the Department of Justice prioritizing enforcement actions in the environmental justice arena, *EJ Legal Tools* evinces an intention to significantly ramp up environmental justice activities in all aspects of environmental law.

In the report, EPA does not prescribe specific actions, but instead catalogs and explains environmental and civil rights legal authorities that EPA and its partners can use to address environmental concerns in traditionally underserved areas.

### ENVIRONMENTAL STATUTES AND REGULATIONS COVERED BY EJ LEGAL TOOLS

*EJ Legal Tools* covers the gamut of environmental statutes and regulations, including:

- Air Programs
  - Clean Air Act
  - Radon Gas and Indoor Air Quality Research Act of 1986
- Water Programs
  - Clean Water Act
  - Water Resources Reform and Development Act of 2014
  - Water Infrastructure Finance and Innovation Act
  - Safe Drinking Water Act



- America’s Water Infrastructure Act of 2018
- Water Infrastructure Improvement for the Nation Act
- Marine Protection, Research, and Sanctuaries Act
- Solid Waste, Superfund and Emergency Response Programs
  - Resource Conservation and Recovery Act
  - Comprehensive Environmental Response, Compensation, and Liability Act
  - Emergency Planning and Community Right to Know Act
- Pesticides and Toxics Programs
  - Federal Insecticide, Fungicide, and Rodenticide Act
  - Federal Food, Drug, and Cosmetic Act
  - Pollution Prevention Act of 1990
  - Toxic Substances Control Act
- Environmental Review Programs
  - National Environmental Policy Act
  - Clean Air Act Section 309

Along with these environmental statutes and their respective regulations, *EJ Legal Tools* discusses legal authorities to support environmental justice in Tribal Programs and Grants, Assistance Agreements, and Procurement programs, as well as EPA’s enforcement of Civil Rights in Federal Assistance Programs.

#### MECHANISMS TO ADVANCE ENVIRONMENTAL JUSTICE

*EJ Legal Tools* addresses several mechanisms by which EPA and its partners can use the above-referenced legal authorities to advance environmental justice, including in rulemaking, permitting, the administration of EPA grants, and Freedom of Information Act responses. One area to watch, particularly in relation to permitting, is EPA’s emphasis on the cumulative impacts on environmental justice communities of multiple pollutants, exposure pathways, and even non-pollutant stressors like poverty, educational attainment, and language barriers.

*EJ Legal Tools* also referenced four [memoranda](#) issued in 2021 concerning environmental justice in civil regulatory, criminal, and cleanup enforcement programs, as well as stakeholder engagement and cooperative federalism. This suggests that EPA has citizen suits or state attorney general enforcement in mind as part of its comprehensive strategy to emphasize environmental justice. And earlier in May, Attorney General Merrick Garland issued a memorandum concerning DOJ’s [Actions to Advance Environmental Justice](#), announcing enhanced efforts “to secure environmental justice for all Americans.” At the same time, Associate Attorney Vanita Gupta issued a memorandum outlining the Department’s [Comprehensive Environmental Justice Enforcement Strategy](#), which “provides a roadmap for using the Justice Department’s civil and criminal enforcement authorities, working with EPA and other federal partners, to advance environmental justice.” DOJ’s focus on environmental justice enforcement dovetails with EPA’s comprehensive discussion of environmental statutes in *EJ Legal Tools*, and likely presages a meaningful ramp-up in civil and criminal environmental justice actions and an increased emphasis on environmental justice in permitting, environmental review and citizen suits.



## CORPORATE ACTION NEEDED IN RESPONSE TO *EJ LEGAL TOOLS*

Through *EJ Legal Tools*, EPA introduces environmental justice considerations into a wide range of commercial activities across a wide range of industries. For example, companies will need to conduct an environmental justice risk assessment as part of mergers, acquisitions, and asset purchases, as well as construction and expansion projects. Environmental justice will become an important part of permitting, as well as environmental analysis under NEPA and state analogues. EPA will likely scrutinize the regulatory compliance of warehouses, refineries, factories, chemical plants, and agricultural facilities in environmental justice communities. And environmental litigation of all kinds likely will include environmental justice claims. Given the breadth and depth of the authorities discussed in *EJ Legal Tools*, companies would do well to study the report and seek legal assistance in identifying and assessing environmental justice risks in their operations and business plans proactively, prior to anticipated permit renewals, litigation, or transactional activity.

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