

**JANUARY 18, 2023**

For more information,
contact:

Ilana Saltzbar
+1 202 626 3745
isaltzbar@kslaw.com

Michael R. Leslie
+1 213 218 4014
mleslie@kslaw.com

Les Oakes
+1 404 572 3314
loakes@kslaw.com

Arlene Hennessey
+1 713 262 7391
ahennessey@kslaw.com

Erich Almonte
+1 713 276 7378
ealmonte@kslaw.com

King & Spalding

Washington, D.C.
1700 Pennsylvania Avenue,
NW
Suite 900
Washington, D.C. 20006
Tel: +1 202 737 0500

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

EPA Releases a Cumulative Impacts Addendum to its Environmental Justice Tool Kit

On January 11, 2023, EPA's Office of the General Counsel released a [Cumulative Impacts Addendum](#) ("Addendum") to its May 2022 publication [Legal Tools To Advance Environmental Justice](#), continuing to signal its focus on cumulative impacts analysis directed toward communities with environmental justice concerns.

The Addendum reiterates the definition of "cumulative impacts," developed by EPA's Office of Research and Development, which acknowledges chemical as well as non-chemical stressors (e.g., economy, community, home, school, demographics, safety) on public health and welfare.¹ As noted by EPA, cumulative impacts characterize the "potential state of vulnerability or resilience" of "individuals, geographically defined communities, or definable population groups."²

Since the early days of his tenure, EPA Administrator Michael Regan has been working with legal advisors regarding EPA's tools to address cumulative impacts. Years in the making, the Addendum compiles legal authorities and provides analysis and examples that EPA can use to address cumulative impacts on a statutory and program basis. The Addendum includes separate chapters on Clean Air Act, Clean Water Act, Resource Conservation & Recovery Act, Oil Pollution Act, Comprehensive Environmental Response, Compensation & Liability Act, pesticide and toxics programs,³ environmental review programs,⁴ as well as civil rights programs.

Given the breadth of programs covered, EPA notes that the Addendum is not static, exhaustive, or comprehensive, nor does it prescribe when or how to address cumulative impacts. Rather, EPA says the Addendum is only intended to be a reference guide for EPA attorneys who are "examining the scope of the Agency's authority to address cumulative impacts in specific scenarios."⁵ It is EPA's intention that the Addendum foster dialogue between EPA decision-makers and its state, tribal, and local partners to address considerations related to cumulative impacts.⁶ EPA further qualified the Addendum by noting that it lacks legal effect;⁷ its



application is subject to resource constraints;⁸ and certain of the authorities may involve novel legal interpretations not yet subject to judicial review.⁹

The Addendum is not EPA's final pronouncement on cumulative impacts, but it is a significant step in what we expect to be an evolving set of EPA regulatory interpretations to address cumulative impacts in various exposure scenarios (e.g., air emissions, spills, etc.) affecting environmental justice communities. Indeed, the Addendum comes on the heels of recent EPA publications and forward-looking announcements demonstrating its commitment that cumulative impacts analysis be a priority consideration in the agency's approach and actions in service of environmental justice. In December 2022, EPA's Office of Air & Radiation released [guidance](#) outlining eight principles for including cumulative impacts and other environmental justice considerations in Clean Air Act permitting. Also in December 2022, EPA published its [call for nominations](#) of scientific and technical experts to peer review two draft documents related to cumulative risk analysis under the Toxic Substance Control Act. Expected by September 2023, as stated in its [Equity Action Plan](#), EPA plans to release a cumulative impacts framework regarding civil rights law compliance. Also expected in 2023, EPA's Office of Environmental Justice and External Civil Rights [plans to release guidance](#) that will consider cumulative impacts in programs, policies, and activities to avoid discriminatory effects.

CONCLUSION

As EPA decision-makers, its partners, and the regulated community grapple with the contours of the agency's authority and ramifications of cumulative impacts analysis on wide-ranging programs under EPA's purview, companies would do well to keep informed on the latest cumulative impacts guidance, look for opportunities to meaningfully participate at the state and federal levels in changes to permitting programs to incorporate cumulative impacts considerations, and seek legal assistance in identifying and assessing environmental justice concerns in their operations and business plans proactively, prior to anticipated permit renewals, litigation, or transactional activity.

King & Spalding attorneys are currently advising clients across several different industries on environmental justice related lawsuits, regulatory compliance, and enforcement matters. We can assist companies through the environmental justice and civil rights assessment and permitting process, and help clients respond effectively to litigation and government enforcement actions should they arise.

King & Spalding is hosting an in-person roundtable discussion on the increasingly complex and important topic of environmental justice in Houston, Texas in late January. Our discussion will include a plenary session along with panels on the trends related to environmental justice considerations in litigation, permitting and transactions/project finance. For more information, please contact us [here](#).



ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 23 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.

In some jurisdictions, this may be considered “Attorney Advertising.” View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
ATLANTA	CHICAGO	GENEVA	MIAMI	RIYADH	TOKYO
AUSTIN	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
BRUSSELS	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	

¹ EPA, Cumulative Impacts: Research Recommendations for EPA’s Office of Research and Development (Sept. 2022), EPA/600/R-22/014a, at 4, available at <https://www.epa.gov/healthresearch/cumulative-impacts-research> (defining “cumulative impacts” as “the totality of exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes”).

² EPA, EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum (Jan. 2023), Pub. No.: 360R22002, at 2, available at <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf> (hereinafter “Addendum”).

³ E.g., Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

⁴ E.g., National Environmental Policy Act (NEPA).

⁵ Addendum at 1.

⁶ *Id.* at 4.

⁷ *Id.* at cover page.

⁸ *Id.* at 4.

⁹ *Id.* (certain legal authorities “may involve interpretive issues or call for further analysis and consideration of other legal issues.”).