

**MAY 2, 2023**

For more information,  
contact:

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

Nikesh Jindal  
+1 202 383 8933  
[njindal@kslaw.com](mailto:njindal@kslaw.com)

Michael R. Leslie  
+1 213 218 4014  
[mleslie@kslaw.com](mailto:mleslie@kslaw.com)

Cynthia Stroman  
+1 202 626 2381  
[cstroman@kslaw.com](mailto:cstroman@kslaw.com)

---

### King & Spalding

Houston, TX  
1100 Louisiana  
Suite 4100  
Houston, TX 77002  
Tel: +1 213 443 4355

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

## New Executive Order Doubles Down on Environmental Justice Focus and Brings New Concerns for Business

---

President Biden issued an [Executive Order](#) on April 21, 2023 titled “Revitalizing Our Nation’s Commitment to Environmental Justice for All” (the “EO”). The EO continues the Administration’s emphasis on environmental justice by creating a new White House Office of Environmental Justice and directing each federal agency to make environmental justice part of its mission.

### WHOLE OF GOVERNMENT APPROACH

The White House is leading from the front on its environmental justice efforts, timing the publication of the EO to coincide with the announcement of several other environmental justice initiatives, including the Council on Environmental Quality’s (“CEQ”) publication of an [Environmental Justice Scorecard](#), a government-wide assessment of federal agencies’ efforts to advance environmental justice.

The EO creates a new White House Office of Environmental Justice in the CEQ, led by a new Federal Chief Environmental Justice Officer to be appointed by the president. The Chief EJ Officer will coordinate the development of policy to advance environmental justice and the EO directs all agencies to cooperate in the endeavor. The EO also adds additional members to the White House Environmental Justice Interagency Council, which consists of the Secretaries of Defense, State, Interior, Energy, the Attorney General, and several others. It directs the Council to facilitate interagency collaboration on EJ programs and activities.

Relatedly, the EO directs all federal agencies to make achieving environmental justice part of their missions. This requirement is not new. In fact, the first Executive Order on environmental justice, [EO 12898](#) dating back to 1994, requires the same. But the new EO goes further and directs agencies to publish an Environmental Justice Strategic Plan within 18 months and update it every four years; publicly report to the Chair of



the CEQ within two years about the plan's effectiveness; create performance metrics on achieving the EO's goals; and, critically, dedicate staff and funding to environmental justice activities.

The EO also directs agencies to conduct environmental reviews under the National Environmental Policy Act ("NEPA") in a manner that "analyzes direct, indirect, and cumulative effects of Federal actions on" environmental justice communities, "considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards[,] and provides opportunities for meaningful engagement of environmental justice communities in the NEPA process. In addition, the EO requires EPA to assess agencies' efforts in mitigating disproportionate impacts on environmental justice communities in carrying out its responsibility to review NEPA Environmental Impact Statements under Clean Air Act Section 309. Notably, CEQ is responsible for ensuring federal agencies comply with NEPA. The EO's creation of the Office of Environmental Justice within CEQ, and the requirement that agencies report their environmental justice plans' effectiveness to CEQ, strongly suggests that NEPA may play an increasingly large role in the Administration's environmental justice efforts.

In addition, the EO forms a new Environmental Justice Subcommittee of the Office of Science and Technology Policy ("OSTP") to implement a coordinated federal strategy to identify and address gaps in environmental justice data and publish and update a Research Plan with the Interagency Council.

#### CUMULATIVE IMPACTS

The Executive Order stresses the importance of addressing cumulative impacts, or the combined effects of environmental and non-environmental stressors. For example, the EO introduces a new definition of environmental justice, which is broader than the EPA's and expressly incorporates protection from disproportionate adverse health and environmental effects and risks relating to cumulative impacts of environmental and other burdens. It also directs agencies to analyze the cumulative effects of federal actions on environmental justice communities. Indeed, the EO references cumulative impacts or effects nine times. However, for all of its emphasis on the issue, the EO does not provide any specific guidance on measuring or addressing such impacts. Instead, it directs the newly formed Environmental Justice Subcommittee of the OSTP to provide recommendations to agencies for analyzing cumulative impacts and directs agencies to gather data and develop research and tools to analyze cumulative impacts and improve the consideration of environmental justice in decision-making.

#### TRANSPARENCY AND MEANINGFUL ENGAGEMENT

In keeping with the Administration's efforts over the last two years, the EO repeatedly directs agencies to take steps to enable environmental justice communities to meaningfully engage on EJ issues. For example, the EO requires agencies to publicly report their environmental justice progress and directs the EPA to publish an internet-based whole-of-government clearinghouse of environmental justice material, including information on the government's environmental justice activities and technical assistance, tools, and resources to help environmental justice communities meaningfully engage. The EO also pays particular attention to elevating requirements for notifying communities of chemical releases under the Emergency Planning and Community Right-to-Know Act.

#### KEY TAKE AWAYS FOR BUSINESS

**Increased focus on environmental justice across federal agencies.** EPA has led the Administration's environmental justice efforts thus far. But the EO's directive for all federal agencies to dedicate staff to environmental justice, and to develop plans and metrics to assess progress, suggests that other federal agencies will prioritize EJ going forward. As noted above, that focus likely will manifest itself, in part, through heightened scrutiny on environmental justice in agency NEPA reviews. Thus, regulated entities may have to undertake comprehensive



environmental justice analyses to obtain permits and other approvals from a growing list of agencies and may face an increase in enforcement actions relating to alleged environmental justice and civil rights impacts stemming from their operations. Time will tell if the empowerment of White House personnel to coordinate across agencies will bring some cohesiveness or consistency to the various agencies' approaches to environmental justice.

**Cumulative Impacts.** While the EO does not provide specific guidance on cumulative impacts, future guidance and regulations, including under NEPA, are likely to have a major impact on companies operating in heavily industrialized environmental justice communities. The EO's references to impacts "already experienced" and the inclusion of "reissuance of licenses and permits" in the list of relevant activities subject to EJ attention signals the need for businesses to look not only forward but also in the "rear view mirror" when making business plans. Companies should stay informed about developments on cumulative impact and disparate impacts analyses and work with counsel to provide input to federal agencies via public comment to proposed rulemaking or agency guidance as agencies formulate their policies and rules on these issues.

**Increasing risk for disputes.** The availability of increasing amounts of environmental justice-related information, in conjunction with information from environmental justice screening tools available today, may increase the risk of permit application challenges, government enforcement actions, and citizen lawsuits as communities, non-profits, and individuals attempt to use such data to bolster their arguments regarding alleged risks and adverse impacts attributable to particular facilities.

Indeed, environmental non-governmental organizations ("eNGOs") are increasingly raising environmental justice related concerns in legal challenges to various projects requiring permits or other forms of governmental approval, and the new EO and other government initiatives may provide additional fodder for these lawsuits. Notably, industrial projects of all types—including clean and renewable energy projects that seek to lower overall carbon emissions but may be situated in close proximity to environmental justice communities with some attendant impacts—may be targeted for opposition by eNGOs.

In addition, Congress allocated over \$3 billion in environmental justice grant funding in the so-called Inflation Reduction Act ("IRA") for EPA to distribute through 2026. While large, that amount is only a fraction of the [approximately \\$60 billion in funding](#) dedicated to a wide variety of projects and programs addressing environmental justice issues that other agencies will have a hand in distributing. The funding to community groups and eNGOs will assist them in monitoring environmental impacts, training them to effectively assert environmental justice issues, and likely empower them to mount more environmental justice challenges to permits and operations.

King & Spalding attorneys are currently advising clients across multiple 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.



**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 1,300 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	

---