U.S. EPA RELEASES CUMULATIVE IMPACTS ADDENDUM TO GUIDANCE ON LEGAL TOOLS TO ADVANCE ENVIRONMENTAL JUSTICE

Date: 24 January 2023

U.S. Environment, Land, and Natural Resources Alert

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On 11 January 2023, EPA's Office of the General Counsel released the Cumulative Impacts Addendum (the Addendum). This 52-page document provides the first-ever collection of examples of environmental and other legal authorities that the EPA can use to identify and address cumulative impacts through a range of actions including permitting, cleanup, emergency response, and grants in communities with environmental justice concerns and other disadvantaged populations.

Cumulative impacts refer to the analysis, characterization, and possible quantification of the combined risks to human health or the environment from multiple agents or stressors. The Addendum builds on EPA's Legal Tools to Advance Environmental Justice (the Legal Tools) released in May 2022, which addresses a vast array of environmental statutory and regulatory regimes for the agency to ramp up its environmental justice efforts. Like the guidance, the Addendum covers regulatory mechanisms across a range of EPA programs, including air, water, waste management and emergency response, pesticides and toxics, as well as environmental review programs, and EPA's enforcement of civil rights in financial assistance programs. According to the Addendum, EPA's authority comes from federal laws including the Clean Air Act, Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act.

To give an example of what this Addendum includes, it proposes that a cumulative impacts analysis can be conducted as part of an application review for permitting programs such as New Source Review, Title V, Clean Water Action Section 404, and National Pollutant Discharge Elimination System (NPDES) permits, among others. As another example, the Addendum recommends that EPA prioritize and derive air and hazardous waste standards, as well as recommended water quality criteria, keeping cumulative impacts in mind. Whether and how the EPA utilizes these and other mechanisms to address cumulative impacts will depend on the specific statutory, regulatory, policy, scientific, and factual contexts at issue, and the resources available to the EPA.

As the EPA continues to accelerate the integration of environmental justice into policies, programs, and activities, we can expect the authorities in the Legal Tools and Addendum will be key in that endeavor. Given these developments, permitted facilities should be prepared to not only assess the impacts from their direct emissions, but also the impacts from their neighbors and surrounding community. Lawyers and policy professionals in our Environment, Land and Natural Resources and Policy practice areas are engaged on these issues and are well-positioned to provide guidance and assistance to clients on this significant development.

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