



## U.S. EPA Publishes Final Definitions of Crucial Environmental Justice Terms

On September 30, 2022, the U.S. Environmental Protection Agency published final definitions of “cumulative impacts” and “cumulative impact assessment” in response to an agency-wide directive to “take steps to better serve historically marginalized communities using cumulative impact assessment.”<sup>1</sup> Cumulative impacts are defined as “the totality of the exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being and quality of life outcomes.” A cumulative impact assessment is “a process of evaluating both quantitative and qualitative data representing cumulative impacts to inform a decision.” Both definitions were published in a [final report](#) released by EPA’s Office of Research and Development (ORD).

Draft definitions of the two terms were originally published in January 2020 in an [EPA white paper on cumulative impacts](#) that provided definitions, research gaps, barriers to implementing cumulative impact research, and recommendations for advancing cumulative impact research going forward within [ORD’s FY23-26 Strategic Research Action Plans](#). Cumulative impacts were defined 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.” Cumulative impact assessment was defined as “the process of accounting for cumulative impacts in the context of problem identification and decision-making” requiring “consideration and characteristics of total exposures to both chemical and non-chemical stressors, as well as the interactions of those stressors over time across the affected population.”<sup>2</sup> The final definitions reflect feedback given to ORD by the EPA Science Advisory Board (SAB) on the white paper, and its outlined approach to addressing cumulative impacts in environmental justice (EJ) communities.<sup>3</sup>

The final definitions, and EPA’s cumulative impact research, will impact communities and regulated entities across the country. For example, in an [October 12, 2022 letter](#), EPA suggested that, by issuing air permits to two plastics facilities located close to black communities in an industrial corridor known as “cancer alley,” the Louisiana Department of Environmental Quality (LDEQ) and Department of Health (LDH) were failing to meet their civil rights obligations. Specifically, the letter raised concerns that the “methods of administering programs and activities related to air pollution control and health risk mitigation and communication . . . may have an adverse and disparate impact on Black residents who live and/or attend school” near the facilities.

1 U.S. EPA. Cumulative Impacts Research: Recommendations for EPA’s Office of Research and Development. U.S. Environmental Protection Agency, Washington, D.C., EPA/600/R-22/014a, 2022. [https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report\\_FINAL-EPA%20600-R-22-014a.pdf](https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report_FINAL-EPA%20600-R-22-014a.pdf).

2 U.S. EPA. External Review Draft, Cumulative Impacts: Recommendations for EPA’s Office of Research and Development, U.S. Environmental Protection Agency, Washington, D.C., [https://www.epa.gov/system/files/documents/2022-01/ord-cumulative-impacts-white-paper\\_externalreviewdraft-508-tagged\\_0.pdf](https://www.epa.gov/system/files/documents/2022-01/ord-cumulative-impacts-white-paper_externalreviewdraft-508-tagged_0.pdf)

3 U.S. EPA. Consultation on Cumulative Impacts Assessments. U.S. Environmental Protection Agency, Washington, D.C., [EPA-SAB-22-003, 2022](#).

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Further, EPA recommended that LDEQ and LDH conduct cumulative impact analyses for currently overdue air permit renewals, 14 Title V permits in the area, and for the “next significant [Clean Air Act] permitting action in each of the Industrial Corridor Parishes.”<sup>4</sup> The letter was issued as a result of three Title VI investigation undertaken by EPA’s Office of Environmental Justice and External Civil Rights.<sup>5</sup> And, while the letter is not an enforceable agency action, EPA’s use of its federal civil rights authority under Title VI to threaten federal financial assistance to LDEQ and LDH serves as a strong source of leverage against the state agencies.

EPA’s increased focus on cumulative impacts and EPA’s willingness to weigh in on state permitting decisions, requiring additional analysis and stakeholder input, raises additional hurdles for permit applicants. While the four corners of a permit application may not expressly cover environmental justice considerations in the form of cumulative impact assessments, permittees should be prepared for this analysis to be a critical factor for federal, state, and local permitting agencies in their permit approval decisions. If you have any questions about how cumulative impact assessments or environmental justice considerations could impact your permitting process, please contact Sean McGovern at 412-394-5439 or [smcgovern@babstcalland.com](mailto:smcgovern@babstcalland.com) or Marley Kimelman at 202-853-3464 or [mkimelman@babstcalland.com](mailto:mkimelman@babstcalland.com).

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4 U.S. EPA. Letter of Concern, EPA Complaint Nos. 01R-22-R6, 02R-22-R6, and 04R-22-R6. U.S. Environmental Protection Agency, Washington, D.C., <https://www.epa.gov/system/files/documents/2022-10/2022%2010%2012%20Final%20Letter%20LDEQ%20LDH%2001R-22-R6%2C%2002R-22-R6%2C%2004R-22-R6.pdf>.

5 <https://www.epa.gov/system/files/documents/2022-10/2022.04.06%20Acceptance%20Letter%20Recipient%20-%20LDH%20EPA%20Complaint%20No.%2002R-22-R6%20FINAL.pdf>; <https://www.afslaw.com/sites/default/files/2022-04/RE-EPA-Complaint-Nos.-01R-22-R6-and-04R-22-R6.PDF>.

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