

What EPA's Environmental Justice Push Means For Cos.

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With the Biden administration's appointees now in place, environmental justice is moving to the forefront of agency action and policy. But this will come as no surprise to those paying attention to statements from the administration.

Implementing two of President Joe Biden's day-one executive orders — in which the president elevated the role of science and environmental justice in the U.S. Environmental Protection Agency's regulatory decisions — the EPA issued a directive on April 7, directing all of its regions and staff to clearly integrate environmental justice into their plans and actions.

On April 9, the White House Office of Management and Budget sent a budget request to the U.S. Senate Appropriations Committee seeking substantial initial funding for the administration's environmental justice priorities.

Given these directives, the EPA and other federal agencies will likely increase outreach to environmental justice communities — thus giving those communities more influence over federal environmental policy. Companies should track the policymaking process closely, and seek to engage with the administration as regulations are developed.

In the administration's Jan. 20 executive order, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," the president said the government "must advance environmental justice," and will:

[L]isten to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposures to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; ... and to prioritize both environmental justice and the creation of well-paying union jobs to deliver on these goals.

Biden directed the heads of all agencies to "immediately review all existing regulations, orders, guidance documents, policies and any other similar agency actions" taken during the



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Trump administration "that are or may be inconsistent with or present obstacles to the policy" goals of the new order, and "consider publishing for notice and comment a proposed rule suspending, revising or rescinding the agency action."

The administration's second Jan. 20 executive order, "Modernizing Regulatory Review," calls for "concrete suggestions on how the regulatory review process can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations." The order directs that the recommendations "take into account the distributional consequences of regulations" and "ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities."

Following up on these actions, on April 6, the White House Environmental Justice Interagency Council — led by the White House Council on Environmental Quality, and comprised of representatives from 18 federal agencies — had its first meeting. That council, and its Environmental Justice Advisory Council, are intended to provide a whole-of-government approach to addressing environmental justice in the following areas:

- Climate change mitigation, resilience and disaster management;
- Toxics, pesticides and pollution reduction in overburdened communities;
- Equitable conservation and public lands use;
- Tribal and Indigenous issues;
- The clean energy transition;
- Sustainable infrastructure, including clean water, transportation and the built environment;
- The National Environmental Policy Act, enforcement and civil rights; and
- Increasing the federal government's efforts to address current and historic environmental injustice.

Consistent with these orders and policies, on April 7, EPA Administrator Michael Regan directed all of the agency's offices to clearly integrate environmental justice considerations into their plans and actions, saying:

Too many communities whose residents are predominantly of color, Indigenous, or low-income continue to suffer from disproportionately high pollution levels and the resulting adverse health and environmental impacts. We must do better. This will be one of my top priorities as Administrator, and I expect it to be one of yours as well.

The EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies." Under Regan's directive and the Biden administration's executive orders and policies, environmental justice is now defined as a major part of the EPA's core mission of protecting human life and the environment.

This being the case, Regan is engaging in a series of roundtables to hear directly from representatives of underserved communities and environmental justice leaders about pollution burdens and the importance of EPA leadership. On April 7, he called on all EPA offices to do the following:

- Strengthen enforcement of violations of cornerstone environmental statutes and civil rights laws in communities overburdened by pollution;
- Take immediate and affirmative steps to incorporate environmental justice considerations into their work, including assessing impacts to pollution-burdened, underserved and tribal communities in regulatory development processes, and to consider regulatory options to maximize benefits to these communities;
- Take immediate and affirmative steps to improve early and more frequent engagement with pollution-burdened and underserved communities affected by agency rulemakings, permitting and enforcement decisions, and policies, and engage in regular, meaningful and robust consultation with tribal officials in the development of federal policies that have tribal implications, in keeping with Biden's memorandum on strengthening the nation-to-nation relationship with tribal nations; and
- Consistent with the administration's Justice 40 initiative, consider and prioritize direct and indirect benefits to underserved communities in the development of requests for grant applications and in making grant award decisions, to the extent allowed by law.

How these orders and directives will translate into regulations and legislation remains to be seen. But it is clear that environmental justice is now a major policy goal of the EPA and the other environmental agencies in the Biden administration.

Environmental justice will also be a focus of the Biden administration's budget request to Congress. On April 9, the OMB sent a discretionary request to Sen. Patrick Leahy, D-Vt., chairman of the Appropriations Committee.

The request noted that, as is typical in a transition year, the budget won't be available in time for the start of the Congress's annual appropriations and budget process, so the request provides the proposal for fiscal year 2022 discretionary funding, as part of the president's broader agenda. Enclosure 2 of the request provides a summary of the 2022 discretionary request for major agencies, and includes:

- \$5 million to the U.S. Department of Justice for the Environmental and Natural Resources Division to tackle environmental justice issues;
- \$936 million to the EPA toward a new Accelerating Environmental and Economic Justice Initiative, including \$100 million for a new community air quality monitoring and notification program, and an additional \$30 million to "enforce existing laws meant to protect communities from hazardous pollution and hold polluters accountable";
- \$882 million for the Superfund remedial program for the EPA "to clean up some of the Nation's most contaminated land, reduce emissions of toxic substances and greenhouse gases from existing and abandoned infrastructure, and respond to environmental emergencies, oil spills, and natural disasters"; and

- \$75 million to accelerate toxicity studies and research to inform the regulatory development of designating per- and polyfluoroalkyl substances as hazardous, and setting enforceable limits for PFAS under the Safe Drinking Water Act. This funding would also provide grants for technical assistance as state and local governments deal with PFAS contamination.

The discretionary request also provides increased funding for the EPA's brownfields program.

The new emphasis on environmental justice is likely to affect enforcement and regulation under statutes such as the Clean Air Act; the Clean Water Act; the Comprehensive Environmental Response, Compensation and Liability Act; and NEPA, among others, as well as the public notice and comment process for new regulations, federal projects, power plants and energy siting decisions.

The EPA has come under criticism by some in the past for a lack of engagement with, and notice to, low-income communities and communities of color. Under these new directives, the EPA and other federal agencies can be expected to increase their outreach to these communities, and to foster more meaningful engagement with these communities and their representatives.

This will likely lead to citizen groups having a bigger voice in federal environmental policy, regulation and enforcement, including citizen suits and NEPA litigation. Regulated companies and municipalities should therefore expect increased scrutiny of new and existing facilities; a focus on environmental justice in permitting, regulation and enforcement; a stronger voice from citizen groups and the environmental justice community; and a shift in emphasis from industrial and economic development under the last administration to clean energy, climate change, union jobs and environmental justice under the Biden administration.

Companies should closely monitor the rulemaking process, and be prepared to engage with the new administration as it reviews existing regulations and proposes new regulations and legislation to implement these environmental justice policies.

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