

## The Biden Administration's Climate Change and Environmental Justice Agenda

By Kenneth J. Warren | *The Legal Intelligencer*

On Oct. 1, the U.S. Environmental Protection Agency (EPA) released its draft strategic plan (plan) for fiscal years 2022-2026. The plan sets forth the EPA's priorities for protecting human health and the environment through various principles, goals and strategies. Public comment on the plan may be submitted to the EPA on or before Nov. 12.

The plan in part incorporates goals that have long been agency priorities. For example, ensuring clean and healthy air, clean and safe water, and chemical safety are core EPA functions routinely included in any EPA planning list. Likewise, the goal of enforcing environmental laws and ensuring compliance is a standard agency goal, albeit enforced with differing levels of commitment depending on the approach of the administration in office. And every administration has pursued some high-profile enforcement targets to demonstrate its law enforcement bona fides.

Yet the top two goals of the plan distinguish it from its predecessors. The EPA's first performance goal is, "tackle the climate crisis." This focus on a climate "crisis" is a vast departure from the rhetoric of the previous administration that downplayed the impact of increasing concentrations of greenhouse gases, at times labeling climate change a hoax. The plan attributes changes in global and regional climate patterns to human sources and seeks to mitigate climate impacts by reducing greenhouse gas emissions.

The second goal identified in the plan is, "take decisive action to advance environmental justice and civil rights." Although prior administrations acknowledged the need to protect disadvantaged and vulnerable populations from

the impacts of pollution, the vigor and methods in which this goal will be pursued distinguish the approach of the Biden administration from those of its predecessors. If on-the-ground pollution reduction in environmental justice communities results from the EPA's efforts, long-lasting benefits to vulnerable populations may result. Because understanding the EPA's approach requires a more detailed description of these two goals and their implementation, we discuss each in turn.

## **Climate Change**

Due to rising sea levels, severe weather events and other impacts from climate change, the plan proposes "bold steps" to reduce greenhouse gas emissions and increase capacity to adapt. Concluding that human activities resulting in greenhouse gas emissions are driving climate change, the EPA intends to regulate sectors with the largest greenhouse gas emissions. Transportation sources including light-duty, medium-duty and heavy-duty vehicles; electric-production sources including electric utility generating units; and oil and gas industry sources including facilities and equipment leaking or emitting methane, are targeted for regulation. In addition, the EPA will seek to reduce emissions of particulate matter in the form of black carbon from wood-burning appliances and small particulate matter (known as PM<sub>2.5</sub>), and require a phase down of the production and consumption of hydrofluorocarbons (HFCs), which are used in coolants and other applications.

The plan recognizes the relationship between its climate change and environmental justice goals. Climate change disproportionately affects vulnerable populations with few resources to adapt. Reducing greenhouse gas emissions and improving infrastructure is thus particularly beneficial to disadvantaged communities. These dual goals will be pursued during the EPA's exercise of its authority under the National Environmental Policy Act (NEPA) and Clean Air Act

Section 309 to review environmental impact statements that other federal agencies prepare. During its review, the EPA will ensure that agencies planning major federal actions examine the impacts of climate change, including effects on disadvantaged communities, and identify measures to avoid or mitigate these impacts. The EPA will also seek to integrate climate adaptation and environmental justice into remedies, permits, investments, grants and other EPA activities.

### **Environmental Justice**

The EPA recognizes that due to health challenges and lack of resources, environmental justice communities are vulnerable to the effects of climate change, pollution and other stressors they encounter. Our nation's civil rights and environmental legacy, the lack of capacity in many communities to meaningfully participate in EPA decision-making and the long-term frustration of disadvantaged communities with the lack of on-the-ground environmental and health improvements require a coordinated application of regulation, enforcement and government resources to overcome. The plan advances environmental justice by seeking to reduce pollution and improve public health and quality of life outcomes in disadvantaged communities.

The plan underscores the importance of addressing drinking water safety, childhood blood levels and asthma and air toxics. It also recognizes that impacts often do not occur in isolation; the plan emphasizes the need to better understand cumulative impacts and cumulative risks affecting vulnerable populations.

The environmental justice goal in the plan builds on actions the Biden administration has taken to date. In Executive Order 14008, which addressed both climate and environmental justice issues, the president established a goal that at least 40% of federal investments in clean energy, environmental remediation and certain other activities go to disadvantaged communities. And in a recent message

from EPA Administrator Michael S. Regan to EPA employees, the administration directed all EPA offices to strengthen enforcement in communities overburdened by pollution, include environmental justice considerations in their regulatory work, improve engagement with underserved communities affected by agency rulemaking, and prioritize benefits to underserved communities in grant awards. And the EPA will foster capacity building that has long been recognized as important for obtaining meaningful community participation.

Implementation of the plan will face serious challenges. The plan articulates four principles to guide the EPA: follow the science, follow the law, be transparent, and advance justice and equity. These principles, and the EPA's goals, may at times conflict with each other and with stakeholder interests. Successful stakeholder partnerships are vital to achieving the plan's goals.

## **Partnerships**

The plan contemplates use of community-driven partnerships. And involvement of state environmental agencies is anticipated in light of their authority to implement delegated permitting programs. The degree to which the EPA will include business and industry, academia, and others in its partnerships is less clear.

From the community's perspective, the siting and operation of multiple facilities results in health disparities that must be addressed. But a simple solution relying on EPA action alone does not exist. Companies emitting pollutants may be in compliance with their environmental permits which ordinarily do not consider the emissions and discharges from other facilities in close proximity. The absence of developed models to scientifically assess the cumulative impacts of multiple pollutants from multiple sources restricts the EPA's ability to address cumulative impacts using sound science. And the focus of environmental statutes on limiting

discharges and emissions of pollutants at times fails to address many of the stressors causing the health problems animating the community's concerns. The civil rights laws may also be of only limited utility absent proof that a protected class is disparately impacted by the action at issue.

From the perspective of the business and industry, many companies value their environmental compliance, their reputation and their role in the community. They desire clear rules with predictable outcomes, and support regulations only when they are grounded in sound science. Businesses question use of citizen-collected data, reliance on demographic tools such as EJ Screen for purposes beyond screening functions, and cumulative impact assessments conducted without scientific rigor. In their view, while enforcement may be appropriate for serious violations causing environmental harm, where no violations, or only technical or recordkeeping violations exist, the EPA should resolve community concerns by dialogue with all stakeholders, including business.

All stakeholders can make meaningful contributions to achieving the plan's goals. The most progress will be made where the EPA brings all stakeholders together to create improved conditions for all communities, including those with vulnerable populations.

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