



Biden Administration Issues Long-Anticipated Environmental Justice Executive Order

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On April 21, 2023, President Biden issued the latest in his series of Executive Orders aimed at addressing environmental justice across federal agencies and actions. Executive Order 14096, [Revitalizing Our Nation's Commitment to Environmental Justice for All](#) (the "Executive Order" or "EO 14096") comes nearly three decades after President Clinton issued the bedrock environmental justice Executive Order 12898 and continues to build on the federal government's commitment to environmental justice for all. The Executive Order reflects the recommendations from the White House Environmental Justice Advisory Council as well as the White House Environmental Justice Interagency Council. Specifically, President Biden's latest environmental justice focused Executive Order establishes a new White House Office of Environmental Justice within the Council on Environmental Quality ("CEQ") to coordinate efforts across the government, requires federal agencies to notify communities if toxic substances are released from a federal facility, and directs executive branch agencies to use data and scientific research to understand how pollution hurts people's health.

Notably, the White House issued this Executive Order on the same day that the Environmental Protection Agency released the [Environmental Justice Scorecard](#), which is the first government-wide assessment of federal agencies' efforts to advance environmental justice and will likely be a key mechanism to tracking progress under the Executive Order.

Key Executive Order Provisions

The following outlines the key issues addressed in this latest environmental justice Executive Order.

- **Sections 1 and 2** outline the Executive Order policy and relevant definitions, including creating a uniform definition of "environmental justice" for federal agencies, and expanding the definition of "Federal activities" covered by the Executive Order.
- **Section 3** reaffirms the direction to each agency to make achieving environmental justice part of its mission.
- **Section 4** provides additional requirements associated with agency Environmental Justice Strategic Plans (see previous [VNF alert](#) for more information on these plans).
- **Section 5** directs the Director of the Office of Science and Technology Policy to establish an Environmental Justice Subcommittee of the National Science and Technology Council to address the need for a coordinated federal strategy to identify and address gaps in science, data, and research related to environmental justice.
- **Section 6** seeks to ensure that the public, including members of communities with environmental justice concerns, receive timely information about releases of toxic chemicals that may affect them and health and safety measures available to address such releases; this section also *requires* federal agencies to notify communities if toxic substances are released from a federal facility.
- **Section 7** amends Executive Order 12898 to provide details on the White House Environmental Justice Interagency Council, including by outlining Interagency Council membership.
- **Section 8** establishes the White House Office of Environmental Justice within the CEQ.
- **Section 9** provides that within six months from the issuance of the Executive Order, the Chair of CEQ shall issue interim guidance, in consultation with the Interagency Council, to inform agency implementation of the Executive Order and request recommendations on the guidance from the White House Environmental Justice Advisory Council (established by Executive Order 14008).
- **Section 10** directs CEQ within one year of the date for the submission of agency Environmental Justice Strategic Plans (pursuant to section 4 of the Executive Order), and after appropriate consultation with the Interagency Council and Advisory Council, to submit a report to the President that describes the implementation of the Executive Order, includes each agency's Environmental Justice Strategic Plan, and provides recommendations for additional steps to

advance environmental justice. From the second annual report, CEQ will also include any insights gathered from each agency's Environmental Justice Assessment (required under section 4 of the Executive Order) in the report to the President.

The Executive Order is aimed at protecting overburdened communities from pollution and injustice through stronger action from federal agencies and confronts barriers to community participation in decision making. Most notably, EO 14096 provides a more expansive definition of environmental justice by incorporating "Tribal affiliation" and "disability" as protected categories. The Executive Order also inserts environmental justice into future agency actions including compliance, permitting, oversight of federal funds, and the management of federal resources and facilities by directing that it be considered in agency decision-making and other "Federal activities" to include "rulemaking, guidance, policy, program, practice, or action that affects or has the potential to affect human health and the environment."

Also of interest is what the Executive Order does *not* do. In particular, the Executive Order does not provide the anticipated additional clarity and direction on how environmental justice analyses must be completed under the National Environmental Policy Act ("NEPA"), a contentious and increasingly litigated issue. The Executive Order does specify that NEPA reviews analyze "direct, indirect, and cumulative effects of Federal actions on communities with environmental justice concerns;" consider the "best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards;" and provide "opportunities for early and meaningful involvement in the environmental review process by communities with environmental justice concerns potentially affected by a proposed action." However, the Executive Order fails to provide clarifying guidance on the appropriate geographic scope for an environmental justice assessment under NEPA or criteria for determining when there will be *disproportionately* high and *adverse effects on an environmental justice population*. *It remains to be seen whether the highly anticipated Phase 2 NEPA regulations will provide this needed clarity.*

Conclusions

Although additional clarity on certain environmental justice issues is still needed—particularly associated with environmental reviews conducted as part of NEPA—this Executive Order is an important step in building upon the Administration's ongoing efforts to advance environmental justice and equity. As the Executive Order provides, to "fulfill our Nation's promises of justice, liberty, and equality, every person must have clean air to breathe; clean water to drink; safe and healthy foods to eat; and an environment that is healthy, sustainable, climate-resilient, and free from harmful pollution and chemical exposure."

For More Information

Van Ness Feldman closely monitors and counsels clients on environmental justice impacts, regulations, funding opportunities, and legislative actions. If you would like more information please contact [Molly Lawrence](#), [Tiffany Ganthier](#), or [Rachael Lipinski](#).

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