



Environmental Justice is a Top Priority

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When environmental lobbyists are asked to discuss the topics to watch for 2021-2022, the answer almost always includes one broadly encompassing topic: Environmental Justice. While the term "Environmental Justice" or "EJ" is not new, until recently it has appeared to be more of a politically correct buzz word than a movement effecting any real and consistent changes in regulators' approaches to environmental decision-making. However, President Biden brought new life to the concept by issuing an executive order establishing a White House Environmental Justice Advisory Council ("WHEJAC") immediately upon taking office. Members of Congress followed the President's lead by proposing a new law to create and fund \$18-20 million annually over the next four years to support certain community environmental justice initiatives and research. State environmental regulatory agencies, including the South Carolina Department of Health and Environmental Control ("SC DHEC"), have taken heed of the federal movement and are also promising to ramp up their EJ programs in the coming years. Virginia has announced similar efforts.

What is Environmental Justice?

According to EPA's website, EJ is "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." As a result of the EJ definition, EPA (and other state agencies involved with the environment) are required to do two things when making regulatory permitting or enforcement decisions: treat sensitive communities fairly by not requiring them to bear a disproportionate share of negative consequences, and meaningfully involve members of these communities in those regulatory decisions.

History of Environmental Justice

EPA formed the Office of Environmental Justice ("OEJ") in 1992 to provide educational, scientific, and financial support to communities experiencing disparate impacts to health and the environment. The concept gained momentum in 1994 when President Bill Clinton signed an executive order directing each federal agency to make Environmental Justice part of its mission "by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs,

policies, and activities on minority populations and low-income populations in the United States.? Clinton?s Executive Order created deadlines for an interagency advisory council led by EPA and engaging seventeen other federal agencies to identify environmental justice communities and environmental impacts, and to form strategies to address and prevent disproportionately negative impacts to their health and surrounding environment. Biden is now bringing back this type of approach to these issues.

The 2021 WHEJAC Agenda

The WHEJAC, unlike the interagency advisory group created by Clinton, is a multi-agency group which includes representatives from the offices of the Attorney General, the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Housing and Urban Development, Interior, Labor, and Transportation and, of course, EPA. It also includes White House officials to help keep the movement on task, including the head of the White House Council on Environmental Quality, the Climate Advisor, and the Director of the Office of Science and Technology Policy. Many believe this shift is intended to, and will, ensure more accountability and real progress, to be measured by specific metrics listed in the Biden Executive Order itself.

In fact, during the WHEJAC?s first meeting in March, White House officials stressed a change in the way EJ will be promoted and tracked. In the past, EPA has taken the lead in directing EJ initiatives at the 17 other federal agencies. Some agencies have done little by way of EJ policy changes, and EPA?s attempts to lead and facilitate have been difficult and reportedly ineffective. Biden?s new WHEJAC directed the council to focus on specific tasks including:

- Updating Clinton?s 1994 Executive Order,
- Providing guidance on developing climate and economic justice screening tools,
- Strengthening enforcement for environmental violations,
- Preventing disproportionate environmental impacts on underserved communities,
- Creating community notification programs with real-time environmental pollution information, and
- Developing an environmental justice enforcement strategy with the Department of Justice to address systemic environmental violations and contamination.

These action items will directly impact the regulated community, allowing the public to review technical information in real-time, seemingly without Quality Assurance/Quality Control protective procedures in place, and mandating enhanced enforcement strategies.

SC DHEC?s Call to Action

South Carolina has been slowly enhancing its response to the Environmental Justice movement. Focus on EJ in our state began in 2004 and 2005, with attention to increased public engagement and participation, especially in EJ Communities. In 2007, the state legislature responded, passing a law creating the SC Environmental Justice Advisory Committee to study and consider the impact of certain state agencies? policies and practices in economic development and revitalization on Environment

Justice. From 2008-2017, SC DHEC had met with and provided grants and technical assistance to EJ Communities. More recently, in 2018, SC DHEC and community organizations met and published these EJ ?Guiding Principles?:

- Routine consideration of EJ Communities in decision-making,
- Proactive development and strengthening of relationships with EJ Communities by sharing information, providing technical assistance and identifying resources,
- Promoting Partnerships between EJ Communities and other stakeholders,
- Encouraging and facilitating capacity building and problem solving within EJ Communities, and
- Strengthening DHEC?s leadership with the goal of sustaining EJ within the agency.

Finally, in 2020, DHEC formed a workgroup to assess four national EJ challenges identified by EPA: (1) water, (2) lead, (3) air and (4) hazardous waste. DHEC appears to be following EPA?s lead and moving toward an approach to EJ that works parallel to the federal initiatives.

What to Expect

The demand for environmental justice reform has been growing for years and is gaining momentum due to the change in federal leadership and the push for states to keep up. For the regulated community including manufacturers, developers, or farmers, this likely will mean higher scrutiny on permitting decisions including air and indirect and direct water discharges. It also means more inspections and enforcement regarding compliance with these and other permits, as well as hazardous waste generation, management and disposal. Most of all, this means more public participation in all aspects and phases of the regulatory permitting, enforcement, and pollution cleanup processes and heightened consideration of comments received from community leaders. Those in the regulated community with the time and resources would be wise to engage community leaders themselves early in the permitting or compliance process, to allow for early identification and problem-solving of community members? concerns with environmental impacts.

Tackling the Climate Crisis at Home and Abroad, Executive Order 14008 (January 27, 2021)

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