

## What To Know About Biden's Enviro Justice Executive Order

By **Juan Carlos Rodriguez**

*Law360 (April 21, 2023, 8:49 PM EDT)* -- President Joe Biden's new executive order on environmental justice could provide more muscular leadership from the White House on the issue and foster closer communication and more consistent policies across federal agencies.

Biden signed an order Friday that he said is aimed at helping communities that are suffering from increased health risks and environmental degradation from disproportionate impacts of pollution. Environmental justice was a campaign issue for him in 2020, and his administration has already taken several steps to elevate those issues in federal policymaking and permitting.

"Our ambition is action," Biden said at Friday's signing ceremony. "And yes, we will include communities that have been denied basic security, basic dignity that comes from clean air, having clean air, clean water, clean energy jobs and environmental justice."

Here's what you need to know about Biden's new environmental justice executive order.

### **New Leadership and Coordination**

Under Biden's order, "each agency should make achieving environmental justice part of its mission." The order spells out that agencies must address, through various means, disproportionate and adverse human health and environmental effects — including the risks and hazards of federal activities — on communities with environmental justice concerns.

"Environmental justice will become the responsibility of every single federal agency," Biden said. "That means every federal agency must take into account environmental and health impacts on communities and work to prevent those negative impacts. Environmental justice will be the mission of the entire government, woven directly into how we work with state, local, tribal and territorial governments."

The order also creates the White House Office of Environmental Justice within the Council on Environmental Quality. It also directs each member of the White House Environmental Justice Interagency Council, which is composed of agencies including the Department of Defense, Environmental Protection Agency, Department of the Interior and Department of Health and Human Services, to designate an "environmental justice officer."

Those officers will coordinate with the Office of Environmental Justice and lead agency planning and implementation of environmental justice initiatives, the order said.

Stacey Sublett Halliday, a principal at Beveridge & Diamond PC, said the new White House office could serve as a unifying force for the interagency council members.

"The agencies talk to each other through the council, but ultimately, they're developing their own methodologies for their own specific purposes and for their agency's missions and scope," Halliday said. "It could be helpful to have some unifying conversations about what the expectations are holistically."

### **Part of a Bigger Push**

The changes envisioned under Biden's order won't materialize immediately, but Monty Cooper, counsel at Crowell & Moring LLP, said the new office could quickly bring some new staffers to the Council on Environmental Quality.

"That was a real issue with some folks in the environmental justice community, that there weren't more dedicated staff focused on these issues within the White House," Cooper said. "And so one has to think that there will be additional staff or certainly priorities shifting for staff members to focus more on EJ."

And with the billions of dollars dedicated to initiatives that feature an environmental justice component, he said it's likely that infrastructure projects that start to enter the federal permitting process may see an increased need to complete more in-depth environmental justice analyses to satisfy the Council on Environmental Quality and other agencies like the EPA.

Some of that funding will help communities better monitor pollution in their own environments, and there will be a dramatic increase in information that's available to community members, regulated entities and government regulators, Cooper said. With agencies paying closer attention to environmental justice issues, more data could help flesh out policies and influence decisions in new ways, he said.

And Halliday noted that the term "environmental justice" is more broadly defined in Biden's order than it has been at the EPA, which has been the dominant policymaker on that front to this point.

### **A Focus on Cumulative Impacts**

Biden's order mentioned cumulative impacts eight times, indicating his administration will continue to study and attempt to act when a community suffers from multiple sources of pollution that are legally permitted individually but create higher health and environmental risks when analyzed as a whole.

"This is an order that directs federal agencies to address gaps in science and technology," Biden said. "For example, there's a lot we still don't know about the quality of people's wastewater or the air they're breathing. There's still a lot we don't know about the cumulative impacts of pollution on people's health. We need to learn more so we can serve those communities better and help the world overall."

The president said that because communities that experience environmental justice issues are often low-income and harmed by racism, the cumulative impacts of exposure to pollution further disadvantage them. But exactly what the federal government can do about cumulative effects has never been fully explored or answered.

Halliday of Beveridge & Diamond said the problem with bringing cumulative impacts into the permitting process has been that there's not much agreement on how to measure those effects.

"It's there mentioned in NEPA practice," she said, referring to the National Environmental Policy Act. "But I think fundamentally understanding how you would practically implement and assess and measure cumulative impacts in the permitting context — that's not really clear, and I think the guidance is deliberately vague to make sure that it's case specific and that agencies have discretion."

So the executive order's recognition that there should be a major focus on cumulative impacts shows the White House is thinking holistically about industrial density and existing vulnerabilities and burdens, and could lead to clearer policies about how to consider them, she said.

--Editing by Jill Coffey and Kelly Duncan.