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# Reflections and Briefing on the Biden-Harris Executive Order on EJ



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On April 21, 2023, President Biden signed the Executive Order on Environmental Justice entitled, *Revitalizing Our Nation's Commitment to Environmental Justice for All*. He was surrounded by members of the White House Environmental Justice Council, representing environmental justice leaders from around the country. Some of these leaders were present at the 1994 signing of the first Executive Order (EO) 12892 on Environmental Justice (EJ) signed by President Clinton. The decades since that first EO was signed have

demonstrated the power of the EJ movement to advance a national agenda.

In attendance were several EJ leaders that are long-time collaborators of the Tishman Center such as Chris Tandazo, and Dr. Nicky Sheats from the New Jersey Environmental Justice Alliance. Dr. Sheats also serves on the Whitehouse EJ Advisory Council and is the director of the Urban Environment Center at Kean University. Also notable was the presence of EJ leaders from the Tishman Center's EJ Movement Fellows program, including Jade Begay, the VP of Policy at NDN Collective, Maria Lopez-Nunez, Deputy Director of Ironbound Community Corp, and Miya Yoshitani, the former ED of APEN. Miya was among the EJ leaders present at the original EJ EO 12898 signing in 1994.

At the commemoration of Earth Day at Vice President Kamala Harris' residence the day before, the Vice-President spoke about the current momentum to advance environmental justice and respond to climate change. She welcomed a diverse coalition of participants from Native and Tribal leaders, youth climate activists, social media influencers, traditional environmentalists, climate and

## energy funders, and environmental justice leaders.

The next day, on the eve of Earth Day, in the Rose Garden of the White House, Environmental Justice leaders celebrated the signing of the EO that recommits the federal government to centering environmental justice communities and elevates the centrality of environmental justice politics on our national political landscape. It was no coincidence that the EO was signed on the heels of President Biden's re-election announcement. It also comes at a time when there are critical debates around the dangerous possibilities of a new round of investments that would entrench fossil fuel infrastructure and deepen harm to sacrifice zones (communities faced with disproportionate levels of pollution and industrial facilities) as the climate crisis worsens. The opening up of new oil and gas leases, tax subsidies, and federal policies promoting risky approaches like carbon capture utilization and sequestration threaten to move us further from environmental justice and a just transition, and heap additional, disproportionate pollution burdens on communities serving as sacrifice zones for our economy.

So why celebrate the signing of the Executive Order? The question is not without merit. EJ communities across the country continue to struggle for clean air, clean water, access to sanitation, and clean, accessible energy. The executive order, in many ways, is a recognition that our federal government has failed to address the systems driving these unjust conditions. But the EO goes beyond the politics of recognition - it holds up to the light our government's central role in going beyond the stalemate in Congress - to use all of its resources and muster all of its executive powers to dismantle the environmental injustices it has known and detailed over these many decades. This is in fact what opponents on the right have always understood and used strategically to their advantage - wielding the power of the executive office as a bully pulpit and extension of its mandate to move their priorities. The EJ movement has seized this window of political opportunity to move not just an Environmental Justice narrative - but a practical set of asks in the form of accountability, investments, and institutional power. Even while EJ leaders celebrated the signing, they were simultaneously raising objections to the continued push for false solutions in the Inflation Reduction Act.

Reflecting on the three decades since President Clinton signed Executive Order 12898, there is much to celebrate and still much to do. Environmental justice is no longer an afterthought in environmental policy-making. The debates now are no longer about whether there is even evidence of the existence of environmental racism or injustice. A product of the EJ movement's success has been the ascendancy and centrality of EJ evident from local to global discussions of environmental and climate issues. But it is critical to remember that EJ frontline and fenceline communities remain the heart of this movement. They were present on that stage with Biden and gave the moment its moral force and compass. While the EO was not a major legal win or large policy advancement in and of itself, it still marked an important milestone, one that was the product of hard-fought victories and perseverance in the face of seemingly insurmountable odds. EJ communities and concerns were buried, shunned, ridiculed, and derided for far too long. It's fitting and well-deserved to take a minute to bask in the sun at the White House and celebrate our communities, at least for a brief moment.

*Image courtesy of Politico*

So what exactly does the Executive Order include? The EO includes several significant advances in the federal government's approach to environmental justice since the 1990s. First, the EO expands on the definitions and root causes of environmental injustice beginning in the preamble and then throughout the document. While the definition of environmental justice remains unchanged, the explanation of terms embedded in the definition reveals more about what we appreciate today with respect to EJ. For example, the preamble describes, *“Communities with environmental justice concerns face entrenched disparities that are often the legacy of racial discrimination and segregation, redlining, exclusionary*

*land use decisions or patterns.*

*These decisions and patterns may include the placement of polluting industries, hazardous waste sites, and landfills in locations that cause cumulative impacts to the public health of communities and the routing of highways and other transportation corridors in ways that divide neighborhoods.*” There is a recognition of the importance of racist land use and housing practices that contributed to the disparate impacts felt by communities of Color. Centering race prominently in the conversation about environmental justice issues.

There is also significant attention paid to cumulative impacts throughout the EO, and in particular in the instructions to federal agencies to go beyond their business-as-usual approach to addressing these concerns. For example, Section 3.1 directs federal agencies to: “*...identify, analyze, and address disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns.*”

While the EO does not grant any additional legal authorities or new mechanisms to implement a

cumulative impacts approach, it sends a signal to federal agencies to maximize their existing authority to address cumulative impacts. This consideration goes beyond a directive to study the problem: (Section 3.vi) “....consider adopting or requiring measures to avoid, minimize, or mitigate disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities on communities with environmental justice concerns, to the maximum extent practicable, and to address any contribution of such Federal activities to adverse effects — including cumulative impacts of environmental and other burdens — already experienced by such communities.” Additionally, Section 3.xvi.b.i, specifically directs the EPA under section 309 of the Clean Air Act, 42 U.S.C. 7609, to *assess whether each agency analyzes and avoids or mitigates disproportionate human health and environmental effects on communities with environmental justice concerns*. Despite these directives, it will remain a challenge to implement strong regulatory decision-making with respect to cumulative impacts in permitting absent a legal mandate like the one embodied in the [EJ For All Act](#), reintroduced in Congress for the last several years.

The EO adds consideration of climate change and climate resilience to the list of critical and compounding effects that impact EJ communities. In 1994, there was no mention of climate change in EO 12898. This EO focuses on directing federal agencies to address climate change. For example in Section 3.iv, agencies are directed to: “*...identify, analyze, and address barriers related to Federal activities that impair the ability of communities with environmental justice concerns to receive equitable access to human health or environmental benefits, including benefits related to natural disaster recovery and climate mitigation, adaptation, and resilience.*”

Another innovation relative to the 1994 EO 12898, is the emphasis on job creation and equitable access to economic opportunities for EJ communities. This emphasis includes the prioritization of workforce development and training as well as coordination with unions to ensure there is an inclusive and equitable approach to economic development in EJ communities. Section 3.(v) states: “*...evaluate relevant legal authorities and, as available and appropriate, take steps to provide, in consultation with unions and employers, opportunities for workforce training and to support the creation of high-quality and*

*well-paying jobs, including union jobs, for people who are part of communities with environmental justice concerns"*

Perhaps one of the most impactful aspects of the EO is how it targets investments and institutional functions (funding, enforcement, oversight, strategic planning, research, and development, etc.) for Environmental Justice. The EO also significantly expands and creates new infrastructures across multiple federal agencies, including the highest levels of the executive office, to improve accountability and the institutionalization of environmental justice. For example, it creates the White House Office of Environmental Justice within CEQ headed by a Federal Chief Environmental Justice Officer, who shall be appointed by the President.

Of course, all of these mandates are only as strong as the Administration in office, thus some, if not many of these provisions are subject to change or elimination once there is an administration change. If the Biden administration can begin implementation of the EO quickly and if it has a second term in office, the likelihood of institutionalizing these changes and making a greater impact increases.



The following includes a few highlights from the EO:

- Sec. 3. Government-Wide Approach to Environmental Justice
  - Directs agencies to address cumulative impacts
  
- Sec.4. Environmental Justice Strategic Plans
  - Directs federal agencies to prepare Environmental Justice Strategic Plans within 18 months, to be updated every 4 years. Progress

on the implementation of these strategic plans will be tracked by the EJ scorecard, “ (Sec.4.f) *The Environmental Justice Scorecard established under section 223(d) of Executive Order 14008 shall address agency progress toward achieving the goals outlined in this order and shall include, among other items, a section on agencies’ Environmental Justice Strategic Plans and Environmental Justice Assessments.*

- Sec.5. Research, Data Collection, and Analysis to Advance Environmental Justice.
  - In Sec. 5.a. Directs the Director of the Office of Science and Technology Policy (OSTP) to establish an Environmental Justice Subcommittee of the National Science and Technology Council
  - Environmental Justice Subcommittee and the Interagency Council will hold an annual summit on the connection of science, data, and research with policy and

## action on environmental justice.

- They will also prepare, and update biennially, an Environmental Justice Science, Data, and Research Plan. These plans will include a host of data and science recommendations including proposals for:  
(Sec 5.6.f) *analyzing cumulative impacts (including risks) from multiple sources, pollutants or chemicals, and exposure pathways, and accounting for non-chemical stressors and current and anticipated climate change;*

- Sec. 6. Community Notification on Toxic Chemical Releases.

- This section details how federal agencies will share information about releases of toxic chemicals that may affect EJ communities and the health and safety measures available to address such releases. This section delineates how each agency will report on EPCRA in particular.

- Sec. 7. White House Environmental Justice Interagency Council.
  - This section lists all the federal agencies and the roles and responsibilities of these agencies with respect to the EJ Interagency Council. One of the key additions to this section is the designation by each agency of an Environmental Justice Officer within the agency with the authority to represent the agency
  - The section also establishes a Clearinghouse that is public, internet-based and includes culturally and linguistically appropriate and accessible materials related to environmental justice



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