

3 Key Environmental Takeaways From Biden's First 30 Days

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In his first weeks in the White House, President Joe Biden signed 28 executive orders — more than were signed by any recent president in the course of his first month in office — on a range of high-profile topics, including the economy, the coronavirus pandemic and immigration.

But it is perhaps Biden's efforts on environment and climate issues that represent the most significant departure from current national policy — and, in many cases, reflect not only a complete reversal of President Donald Trump's environmental deregulatory agenda, but an intent to go even further than Biden's Democratic predecessor, President Barack Obama.

Based on the executive actions, proclamations, memoranda and letters published by Biden to date, we've identified three key takeaways relevant to environmental enforcement and policy issues from the first month of the new administration.

These sweeping changes will have meaningful impacts on a number of highly regulated industries, and will immediately affect how the nation's environmental laws are carried out.

Environmental Justice as a Focus for Enforcement

During his campaign, Biden promised that his administration would "recognize that communities of color and low-income communities have faced disproportionate harm from climate change and environmental contaminants for decades," and would "hold corporate polluters responsible" for "rampant pollution."^[1]

Seeking to deliver on that promise, the president's environmental justice initiatives started with the very structure of the U.S. Department of Justice itself. Biden directed the DOJ to consider renaming its Environmental and Natural Resources Division, or ENRD, the Environmental Justice and Natural Resources Division,^[2] and simultaneously tasked the DOJ with creating a new office to coordinate environmental justice activities among its components and U.S. Attorneys' Offices nationwide.^[3]



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Relatedly, key environmental enforcement agencies like the ENRD and the U.S. Environmental Protection Agency have been directed "to develop a comprehensive environmental justice enforcement strategy" and to "strengthen enforcement of environmental violations with disproportionate impact on underserved communities." [4]

Finally, the EPA has been tasked with creating a community notification program to monitor and provide real-time data to the public on current environmental pollution — including emissions, criteria pollutants and hazardous air pollutants — in front-line and fence line communities. [5]

Combined, these efforts have already enshrined environmental justice as a key enforcement priority for the new administration. Regulated industries can expect to see environmental justice issues at the center of enforcement actions and settlements pursued by the new administration.

Renewed and Accelerated Focus on Fighting Climate Change

In an abrupt about-face from the prior administration, Biden declared climate change a matter of national security and an essential element of U.S. foreign policy. [6] From rejoining the Paris Agreement [7] to revoking the permit for the Keystone XL pipeline, [8] the president's first acts in office mark an ambitious approach to climate change.

This fundamental shift in federal policy has been marked by a flurry of executive orders that will immediately and meaningfully affect a range of industries — including the oil, automotive, housing, construction, infrastructure and insurance industries. In terms of domestic regulatory changes, three areas are most likely to be addressed in the near term: motor vehicles, methane emissions from oil and gas production facilities, and electric generating units.

With regard to the automotive and oil and gas sectors, the template Biden is likely to follow is clear: The administration will revert to Obama-era rules, adjusted to account for the passage of time. As for electric generating units, the approach is less clear; the administration recently indicated it will not revive the Obama administration's Clean Power Plan.

To date, the new administration has taken a holistic approach, ordering the establishment of a National Climate Task Force [9] and requiring that climate change and environmental health issues be considered in all federal decision making — including agency actions taken by the prior administration. In particular, Biden directed all federal agencies to review — and where appropriate, suspend — regulations enacted in the past four years if they are not aligned with "important national objectives," including reducing greenhouse gas emissions and bolstering resilience to the impacts of climate change. [10]

In furtherance of his ambitious climate agenda, Biden also established a national goal of a carbon pollution-free electricity sector by 2035, and a net-zero-emission economy by 2050. [11] This means greater investment in renewable energy and zero-emission vehicles.

Specifically, the administration aims to double renewable energy production from offshore wind by 2030, and build out a network of electric car charging stations nationwide. According to the president, the demands for wind and solar infrastructure require a clean energy construction workforce that will, in theory, offset job losses in parts of the country reliant on the oil and natural gas sector. [12]

Leveraging the spending power of the federal government, Biden ordered the federal government to

buy zero-emission vehicles for federal, state, local and tribal government fleets.[13] He vowed to replace the U.S. government's fleet of roughly 650,000 vehicles with electric models "made ... in America ... by American workers." [14]

These actions underscore the administration's strong support for electric and hydrogen fuel cell vehicles. The automotive industry has been quick to respond, with some companies committing to achieve carbon neutrality across their fleets on an expedited timeline.[15]

Finally, with respect to the oil and natural gas sector, Biden pressed pause on all new oil and gas leases on federal lands and offshore waters, pending a comprehensive review of all existing leasing and permitting practices.[16] The administration will additionally review the royalty system for mineral and energy exploration on federal lands, and consider the potential elimination of fossil fuel subsidies.[17]

Near-Term Changes and Anticipated Future Actions

While the president's focus on environmental justice and climate change is unprecedented, many of the environmental priorities embodied in the recent executive activities are directives to undertake or consider potential future actions, rather than near-term changes.

Indeed, one of Biden's first executive acts was to identify a list of more than 100 agency actions taken by the Trump administration — including 48 actions taken by the EPA — for review and possible revocation or revision.[18] But any final agency actions resulting from this review will be months, if not years, in the future.

That said, certain of Biden's orders do call for near-term action, the effects of which are likely to be felt immediately. For example, Biden directed the heads of each administrative agency to immediately review their policies and regulations to ensure compliance with national objectives "to improve public health and protect our environment" and "reduce greenhouse gas emissions," and to submit a list of actions being considered within 30 days.[19]

The DOJ was quick to respond to this directive: On Feb. 4, the ENRD withdrew, effective immediately, nine policies promulgated by the Trump administration that limited the DOJ's enforcement discretion in environmental cases.[20]

Of note, this memorandum reversed a Trump policy prohibiting the use of supplemental environmental projects in enforcement settlements. Because such projects are frequently used in settlements as a tool to address environmental issues in low-income and minority communities, this particular action dovetails with the president's environmental justice focus in enforcement.

Other near-term environmental actions include:

- Requiring that all new purchases of vehicles by the federal government be zero-emission vehicles, as noted above;[21]
- Halting oil and gas drilling in Arctic waters and the Bering Sea, reinstating Obama's executive orders and reestablishing the Northern Bering Sea Climate Resilience Area;[22] and
- Requiring the heads of a number of executive departments to publish an interim report on the social cost of greenhouse gas emissions, accounting for their effect on net agricultural

productivity, human health, property damage from increased flood risk, and the value of ecosystem services.[23]

Of course, executive orders are not legislation. Many of Biden's executive actions — even those with near-term effects — do not by themselves effectuate a change in national law or policy.

Nevertheless, Biden has demonstrated a singular focus on environmental justice and climate change issues — a marked pivot from the previous administration, and one which is sure to drive the enforcement and interpretation of the nation's environmental laws over the coming months and years.

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[1] The Biden Plan To Secure Environmental Justice And Equitable Economic Opportunity, JoeBiden.com, <https://joebiden.com/environmental-justice-plan/> (last visited, Feb. 8, 2021).

[2] Exec. Order No. 14008, 86 Fed. Reg. 7619, 7631 (Feb. 1, 2021) (issued Jan. 27, 2021).

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.* at 7619.

[7] *Id.*

[8] Exec. Order No. 13990, 86 Fed. Reg. 7037, 7041 (Jan. 25, 2021) (issued Jan. 20, 2021).

[9] 86 Fed. Reg. at 7623.

[10] 86 Fed. Reg. at 7037.

[11] 86 Fed. Reg. at 7622, 7624.

[12] *Id.* at 7626; The Biden Plan to Build a Modern, Sustainable Infrastructure and an Equitable Clean Energy Future, JoeBiden.com, <https://joebiden.com/clean-energy/> (last visited Feb. 8, 2021).

[13] 86 Fed. Reg. at 7624.

[14] David Shepardson, Biden vows to replace U.S. government fleet with electric vehicles, Reuters (Jan. 25, 2021), <https://www.reuters.com/article/us-usa-biden-autos/biden-vows-to-replace-u-s-government-fleet-with-electric-vehicles-idUSKBN29U2LW>.

[15] Press Release, General Motors, General Motors, the Largest U.S. Automaker, Plans to be Carbon Neutral by 2040, (Jan. 28, 2021), <https://media.gm.com/media/us/en/gm/home.detail.html/content/Pages/news/us/en/2021/jan/0128-carbon.html>; Press Release, Nissan, Nissan Sets Carbon Neutral Goal for 2050, (Jan. 26, 2021), <https://global.nissannews.com/en/releases/nissan-sets-carbon-neutral-goal-for-2050>.

[16] 86 Fed. Reg. at 7624–25.

[17] *Id.* at 7625.

[18] Fact Sheet: List of Agency Actions for Review, [whitehouse.gov](https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/) (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

[19] 86 Fed. Reg. at 7037.

[20] Memorandum from Jean E. Williams, Deputy Assistant Attorney General, to Env't and Nat. Res. Div. Section Chiefs and Deputy Section Chiefs, "Withdrawal of Memoranda and Policy Documents" (Feb. 4, 2021).

[21] 86 Fed. Reg. at 7624.

[22] 86 Fed. Reg. at 7039.

[23] *Id.* at 7040.