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EARTH DAY CELEBRATION 2021



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Program Overview

April 19: The Biden Administration's 'All of Government' Approach to Environmental Policy: Climate Change, Environmental Justice, and Beyond

April 20: Regulatory and Legislative Developments in Climate Change and Renewable Energy

April 21: P-FASTen Your Seatbelts: A Look at Emerging Contaminants in 2021

April 22: Environmental Justice Under the Biden Administration

Slides and recordings at <https://www.morganlewis.com/events/earth-day-celebration-series>

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Environmental Justice Under the Biden Administration

April 22, 2021

Denise Fellers
Stephen Fitzgerald
Ella Foley Gannon

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Roadmap

**BACKGROUND &
BIDEN
ADMINISTRATION**

CERCLA

INFRASTRUCTURE



NEPA

**SUPPLEMENTAL
ENVIRONMENTAL
PROJECTS**

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Presenters



Ella Foley Gannon
Partner, San Francisco



Stephen Fitzgerald
Partner, Dallas/Houston



Denise Fellers
Partner, Los Angeles



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Background and Initial Actions of Biden Administration



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Environmental Justice

- Initial focus on the “fair” distribution of environmental benefits and burdens
- Defined by the EPA as “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”



Biden Campaign Promises Related to Environmental Justice

**BIDEN
HARRIS**

THE BIDEN PLAN TO
**SECURE ENVIRONMENTAL
JUSTICE AND
EQUITABLE ECONOMIC
OPPORTUNITY**

- “All of Government” approach to address environmental justice
- Make decisions that are driven by data and science
- Target resources in a way that is consistent with prioritization of environmental and climate justice
- Assess and address risks to communities from the next public health emergency

Initial Directives from Biden Administration

- April 7, 2021 memo directing EPA staff to “infuse equity and environmental justice principles and priorities into all EPA practices, policies, and programs”
 - Administrator Regan: “integrating environmental justice and equity into the very DNA of EPA”
- Specifically:
 - Strengthen enforcement of violations in areas that have been encumbered by pollution
 - More frequent underserved community engagement in rulemaking
 - Prioritize environmental justice in the grants process
 - Have regular and meaningful conversations with Tribal officials



National Environmental Policy Act (NEPA)

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NEPA

- Executive Order on first day directing CEQ review of Trump's changes to NEPA
- Undoing Trump ERA changes – cumulative impacts and environmental justice
- Considering new approaches
 - Detailed mapping of environmental justice areas and overburdened communities
 - Evaluation of climate change impacts on environmental justice communities
 - Identifying appropriate mitigation



Looking Forward

- Changes in NEPA could result in federal dollars being spent on clean energy projects as opposed to traditional energy projects
- Pressure on the Biden administration to consider changes to NEPA:
 - Pressure from the left to strengthen NEPA
 - Pressure from clean energy businesses to make exceptions for their projects
 - Bills circulating in Congress regarding integrating Title VI of the Civil Rights Act within NEPA
 - And bills purporting to strengthen NEPA

CERCLA

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Impact on Current NPL Sites and on the NPL Selection Process

- Current Superfund sites located near underserved communities
 - Some estimate as high as 70% are within a mile of public housing
 - Pressure from the Biden EPA to address those sites?
- Environmental justice a factor in selecting NPL sites?
- Intersection of climate change and Superfund sites
 - Reports show that many sites are threatened by natural disasters, including those near underserved communities
- Removal of sites from the NPL
 - Claims that prior administration's removal of sites have neglected communities of color
 - Environmental justice a factor in future removal from NPL?

A glass globe with a world map etched on it, resting on green grass with a bright sun in the background.

Supplemental Environmental Projects

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Change in DOJ Policy

- Supplemental Environmental Projects (SEPs) were frequently used by the Obama DOJ
 - Phased out by the Trump administration, but still frequently used by states
- In early April, the DOJ's Environment and Natural Resources Division withdrew several policy documents which disallowed SEPs in settling environmental liability
- Looking forward, SEPs with an environmental justice focus could become important negotiating tools
 - Still early to see what these types of SEPs will look like at the federal level, but states like California could provide clues



Environmental Justice & Infrastructure

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Proposed Infrastructure Bill

- Part of Biden's plan to tie together climate change and environmental justice
- Biden's plan aims to assist communities of color and underserved communities by securing infrastructure improvements
 - And to ensure that communities are environmentally safe
- Notably, the bill provides billions of dollars to replace lead water pipes



Bill as a Harbinger

- Environmental justice initiatives to receive more resources and attention
- Campaign promises → tangible policy proposals



Biography



Ella Foley Gannon

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Ella Foley Gannon represents clients before a myriad of state and federal regulatory agencies, focusing her practice on federal and state environmental laws, natural resource permitting, and land use entitlements. Recognized as one of the leading permitting and siting lawyers in California and an authority in endangered species, wetland, water quality, and water rights issues, she assists developers and landowners who undertake complex development projects, including renewable and traditional energy and transmission projects, as well as residential, commercial, industrial, and mixed-use projects. Ella currently serves as a deputy chair of Morgan Lewis's global litigation practice.

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Biography



Stephen Fitzgerald

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Stephen Fitzgerald advises clients in Texas and nationally on a broad spectrum of environmental matters by utilizing his considerable in-house experience and technical background to provide practical guidance. With his deep understanding of client values, Stephen delivers thoughtful counsel to the regulated community. He has represented clients at more than 175 environmentally impacted sites in all US Environmental Protection Agency (EPA) regions, Europe, and South America. Stephen also supports transactions and litigates environmental, toxic tort, and land use cases in state and federal trial and appellate courts.

Biography



Denise G. Fellers

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Denise G. Fellers skillfully litigates federal and state actions involving groundwater contamination, including Superfund cost recovery actions and mass toxic tort matters. Her practice includes both advice and counsel on complex regulatory issues, litigating environmental matters on both the plaintiff side (such as cost recovery and contribution claims), and defense side (defending environmental and common law claims), and compliance matters. Denise leverages her deep understanding of state and federal environmental laws in these complex cases to creatively and cost effectively manage these lengthy disputes.

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