

# EPA Struggles To Put Environmental Justice Vows Into Action

By **Juan Carlos Rodriguez**

Law360 (September 11, 2020, 4:13 PM EDT) -- The Trump administration has pursued contradictory approaches to environmental justice since 2017, publicly embracing the idea and touting progress such as cleaning up Superfund sites even as it proposes defunding an office focused on the issue and implements a deregulatory agenda that advocates say hurts vulnerable communities.

As the administration stares down the end of its first term, the U.S. Environmental Protection Agency says it is committed to environmental justice and hasn't walked back from a four-year strategic plan dubbed **EJ 2020** that set lofty goals for the agency.

But advocates say the administration's actions don't match its words and that environmental justice has been deprioritized since the Obama administration. Federal watchdogs have also found that the EPA has fallen short of meeting environmental justice goals.

EPA officials ended what had been a regular practice of meeting with some advocates to discuss environmental justice initiatives and offer help. The EPA's civil rights office has been accused of failing to respond to racial discrimination complaints regarding pollution problems in a timely way, and the Trump administration has rolled back substantive environmental protection regulations.

"We've seen, again and again, the administration is promulgating rules that are really important to disproportionately burdened communities but are being adopted with minimal opportunities for public engagement," said Patrice Simms, vice president for healthy communities at Earthjustice.

Environmental justice is intended to address the disproportionate human health and environmental impacts communities of color and low-income communities routinely suffer from polluting facilities because they're more likely to be near industrial sites. The movement is working to correct the disparity even though local zoning rules and lack of clear state or federal guidance make it hard to change the status quo.

The EJ 2020 plan, released at the end of the Obama administration, laid out three environmental justice goals for the EPA to work on: focus on EJ in rulemaking, permitting, compliance and enforcement, and science; work more on the issue with state and local governments, federal agencies, local communities, and tribes and Indigenous peoples; and demonstrate progress on "significant national environmental justice challenges," which include disparities in exposure to lead and hazardous waste sites and the quality of local air and drinking water.

The two EPA administrators who have served President Donald Trump, Scott Pruitt and Andrew Wheeler, both publicly affirmed the agency's commitment to environmental justice work and cited the agency's success in assuring the cleanup of Superfund sites across the country as part of the evidence of that. A report issued in June by the Shriver Center on Poverty Law and Earthjustice said that 70% of Superfund sites are located within one mile of federally subsidized housing.

"EPA works day in and day out to provide clean air, water and land, with a particular focus on environmental justice," Wheeler said in a June statement issued in connection with an announcement about new community grants.

But the message has been muddled by other actions.

In 2017 and 2018, the White House proposed that Congress completely eliminate the roughly \$6.7 million budget for the EPA Office of Environmental Justice, and in 2019 and 2020 proposed reducing it to about \$2 million.

Both Pruitt and Wheeler appeared before congressional budget committees to defend the reductions, which also would have cut the entire agency's budget by roughly 25% to 30% each year. Congress went its own way and maintained the budgets for both the EPA and the EJ Office.

Kerene Tayloe, director of legislative affairs at WE ACT for Environmental Justice, said one of the most noticeable changes has been the steep drop in direct conversations the EPA has with organizations like hers. During the Obama era, groups routinely met with administrators and other EJ "champions" at the agency, which increased organizations' access to information and improved their ability to effectively advocate for the cause, she said.

"In comparison, with this administration, I've not been to the EPA at all other than running by it on my morning jog on the [National] Mall," Tayloe said.

The anecdote reflects the experience of several other EJ advocates, who all said the administration seems to have failed to make any forward progress on institutionalizing environmental justice concerns at the agency and across the federal government, especially with regard to rulemaking.

Several EPA and Department of the Interior rules have rolled back pollution control standards set during the Obama administration, from carbon dioxide emissions from existing power plants to automobile greenhouse gas emissions. Other rules have limited the scope of the EPA's enforcement under the Clean Water Act or reversed the legal underpinning for an important mercury and air toxics emissions rule. And still others have addressed pesticide use in ways that could negatively impact agricultural workers.

These actions show how the lack of community engagement and perceived favoritism towards easing regulatory burdens and conceding agency power converge to create worse outcomes for EJ communities, said Simms of Earthjustice. Public hearings on rules that might have been held across the country have been replaced with D.C.-only hearings, he said.

"Those kinds of things take the communities that have the most at stake in an issue out of the conversation," he said.

The EPA responded that under its Action Development Process, rule writers must address an executive order on environmental justice in all "statutory and executive order review" sections of preambles.

But too often, that's just a box that gets checked in a rule rather than a substantive analysis, according to Marianne Engelman Lado, director of the Environmental Justice Clinic at Vermont Law School.

"They just dismiss it time and time again, and that's grossly falling down on the job," Engelman Lado said.

The EPA Office of the Inspector General and the U.S. Government Accountability Office have found that the EPA has fallen short of meeting environmental justice goals in other ways.

"Environmental justice implementation and oversight remain a significant management challenge for the agency's ability to adequately protect human health," the OIG said in a July report.

A specific criticism made by the OIG is that the EPA's environmental justice annual progress reports fail to clearly address the performance measures laid out in the EJ 2020 strategic plan, which the OIG said makes it difficult for the agency or those observing it to track progress.

And the OIG said the EPA must coordinate more with its internal program offices and regional offices to ensure consistent practices across the agency.

Both the OIG and GAO also said the agency needs to take a more active leadership role across the federal government. Under a 1994 presidential executive order, the EPA is responsible for leading an interagency working group that now includes 17 federal agencies and White House offices.

In its response to the GAO's December report, the EPA agreed it could do more along those lines, but the EPA didn't directly respond to a question about how it's doing that. The agency denied Law360's requests to interview the leader of its Office of Environmental Justice.

The agency did say that its work on Superfund sites, its update of the agency's rule regulating lead content in drinking water — adopted in the wake of the lead-tainted drinking water crisis in Flint, Michigan — and other actions are proof that it continues to make progress.

"The agency is also improving air quality in urban areas and financing critical investments to improve drinking water infrastructure," EPA spokesperson Molly Block said.

Block cited a grant program created in response to the COVID-19 pandemic that is intended to "address the needs of communities disproportionately affected by the crisis."

"EPA, recognizing environmental, public health and economic outcomes are intertwined, is prioritizing resources for projects in opportunity zones," she said, referring to economically distressed communities where investments may be eligible for tax breaks.

Another sore spot for advocates is the performance of the EPA External Civil Rights Compliance Office, or ECRCO. The office handles complaints filed under Title VI of the Civil Rights Act, which prohibits discrimination under any program or activity receiving federal financial aid, and community groups have used the complaints as another way to attempt to force changes in their areas. But they've rarely succeeded.

The U.S. Commission on Civil Rights has **criticized the office** in the past, and in 2018 a California federal judge sided with green groups that alleged the EPA failed to respond to their racial discrimination complaints in a timely way.

The EPA's strategic plans in 2014 and 2020 identified the handling of civil rights complaints as an area that needed improvement, according to Lisa Garcia, associate assistant administrator for OEJ during the Obama administration. Those plans called for the agency to incorporate more disparate-impact analyses into its decision-making process when deciding what to do with complaints — work that did get underway in the Obama era, said Garcia, who is now director of the Fix climate solutions program at Grist, an online environmental magazine.

"My understanding is no one's doing that work anymore," Garcia said.

The EPA countered that the civil rights office has made big improvements during the Trump administration, clearing a backlog of complaints and other matters.

"Moving forward, we have implemented stringent accountability measures for all of our processes, and they have yielded results: while in FY 2017 we issued jurisdictional decisions within the required 20-days in only 12% of our complaints, we are currently meeting this requirement in 100% percent of our complaints," ECRCO Director Lilian Sotolongo Dorka said in a statement.

The EPA attributed the improved rate to measures such as "tracking critical process points that provide guidelines for achieving timely and effective processing of complaints within regulatory timeframes and engaging in informal resolution that occurs promptly and without undue delay."

Since former President Bill Clinton's executive order putting the EPA in charge of an interagency working group, the federal government has struggled to implement the plan in a comprehensive way that effectively addresses the pollution problems in EJ communities, and much depends on how a particular administration prioritizes the issue.

Congress has not directly tackled the matter, although Sen. Kamala Harris, D-Calif., the Democratic vice presidential nominee, and other lawmakers recently made headlines by introducing just such a

bill, which would require the consideration of cumulative impacts when considering projects' permit applications, codify the 1994 order and amend the Civil Rights Act to prohibit discrimination based on disparate impacts.

Taylor of WE ACT for Environmental Justice said that congressional action is probably needed for there to be the kind of progress that can make a difference to EJ communities.

"We are at the point where we understand that if we really want to empower and give environmental justice advocates the legal protection that they need, the legislation needs to be there," she said.

--Editing by Jill Coffey.