



Environmental Policy in the Biden Administration—What it Means for Business

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ACC St. Louis CLE—August 27, 2021

Agenda



- Overview of Biden Administration's Environmental Policy Agenda
- Key Focus Areas
 - Climate Change
 - Decarbonization
 - Sustainability
 - Environmental Justice
 - ESG Reporting
 - Environmental Rulemaking

Executive Order on Tackling the Climate Crisis at Home and Abroad



1. **Foreign Policy & National Security**

- Paris Accord and Beyond

2. **Government wide approach**

- National Climate Task Force – Cabinet

3. **Procurement / Spending**

- Electric Vehicles for Agencies – Low Carbon Sources

4. **Rebuilding Infrastructure & Advancing Conservation**

- Civilian Climate Corps

5. **Revitalization of Energy Communities**

- Projects to reduce emissions from abandoned infrastructure, prevent environmental damage and repurposing idled properties

6. **Environmental Justice**



Inside the White House



- National Climate Task Force
- The Presidential Envoy for Climate
- Council on Environmental Quality
 - National Economic Council
 - Domestic Policy Council
 - National Security Council
 - Office of Management and Budget*



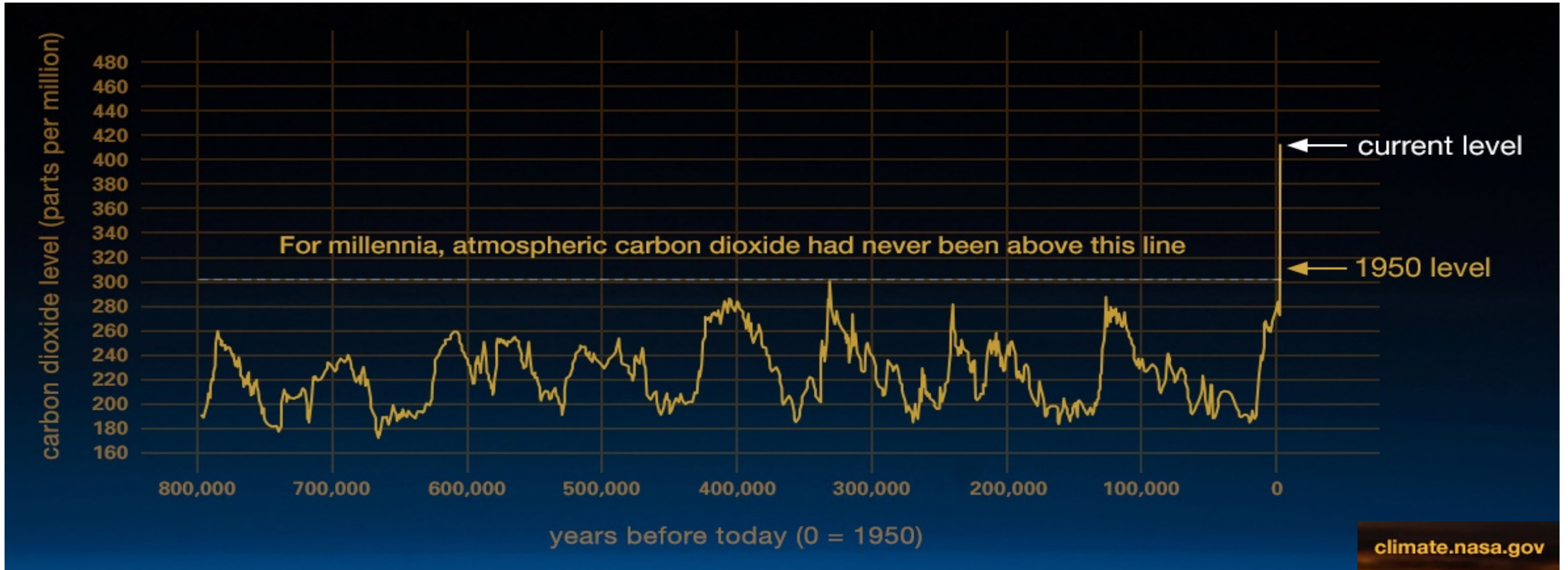
* Final arbiter to maintain consistency with Presidential policy and direction

What is Congress doing?



- 2021 Infrastructure Investment & Jobs Act -- \$1.2 trillion (bipartisan infrastructure bill)
 - Investment in environmental remediation
 - Reinstatement of Superfund Tax (\$14.4 billion)
 - Superfund Remedial Account (\$3.5 billion)
 - Brownfields Grants and Loans (\$1.2 billion)
 - Investments in Infrastructure
 - Water (\$55 billion)
 - Grants for mitigating PFAS in drinking water and wastewater systems
 - Lead service line replacement projects
 - Energy
 - Grants to create publicly accessible alternative fuel vehicle charging stations (2.5 billion)
 - Electric vehicle charging infrastructure (\$5 billion)
 - Energy and electric grid infrastructure and resiliency programs (\$65 billion)
 - EV battery manufacturing, recycling, reuse (\$6 billion)
 - Carbon Capture & Hydrogen and Nuclear (\$24 billion)
- Budget Reconciliation Bill – \$3.5 trillion
 - Clean energy, manufacturing, and transportation tax incentives
 - 45Q Carbon Capture & Sequestration Tax Credit – multiple proposals
 - Other clean energy tax credits
 - \$198 billion for clean energy development
 - Carbon polluter import fee

Climate Change – Why now?



Climate Change Risks



- Extreme Heat - Health Impacts
- Greater Storm Destruction
- Changes in Growing Season
- Coastal Flooding
- Droughts - Water Scarcity
- Human migration



Potential Impacts = Direct business losses, disruption of supply chains, insurance costs, energy costs, greater regulation, litigation, pressure to take action

Climate Change Litigation



Types of Climate Suits

1. Consumer and Investor Fraud
 - Ex: Disclosure cases
2. Extreme Weather
 - Ex: Hurricane Sandy insurance cases
3. Nuisance Law Claims
 - Ex: Suits against oil companies
4. Claims against governments
 - Ex: Failure to act through permitting
5. Constitutional & Human Rights
 - Ex. International cases under constitutional guarantees for healthy environment



Climate Change Concerns Impact ALL Industries



- Manufacturing
 - Direct emissions
- Retail
 - Supply chain/sourcing
 - Consumer pressure
- Construction
 - Green construction
 - Use of low carbon materials
- Banking
 - Sustainable finance
- Legal Services

63%

of Americans want businesses to take the lead on driving social and environmental change in the absence of government regulation.

Kendall Davis for Retail Dive; Source: Cone Communications



CLIMATE SCORES FOR VAULT 100 LAW FIRMS (2021) ¹

CLIMATE SCORE	FIRMS
A	Cooley Schulte Roth & Zabel Wilson Sonsini Goodrich & Rosati
B	Boies Schiller Flexner Drinker Biddle & Reath Fenwick & West Fish & Richardson Gunderson Dettmer Irell & Manella Littler Mendelson Mintz, Levin, Cohn, Ferris, Glovsky, & Popeo Seyfarth Shaw
C	Ballard Spahr Bryan Cave Leighton Paisner Cozen O'Connor Davis Wright Tremaine Debevoise & Plimpton Foley Hoag Fox Rothschild Fried, Frank, Harris, Shriver & Jacobson Goodwin Procter Jenner & Block Kilpatrick Townsend & Stockton Kramer Levin Naftalis & Frankel McDermott Will & Emery Proskauer Rose Sheppard, Mullin, Richter & Hampton Williams & Connolly Willkie Farr & Gallagher Winston & Strawn
D	Alston & Bird Arent Fox Blank Rome Cadwalader, Wickersham & Taft Cahill Gordon & Rendell Cleary Gottlieb Steen & Hamilton Covington & Burling Davis Polk & Wardwell Dechert Dentons DLA Piper Duane Morris Foley & Lardner Greenberg Traurig Haynes and Boone Holland & Knight Hughes Hubbard & Reed Jones Day Katten Muchin Rosenman Locke Lord Morrison & Foerster Nixon Peabody O'Melveny & Myers Paul Hastings Perkins Cole Pillsbury Winthrop Shaw Pittman Quinn Emanuel Urquhart & Sullivan Reed Smith Ropes & Gray Troutman Pepper Hamilton Sanders Venable Wachtell, Lipton, Rosen, & Katz Weil, Gotshal & Manges WilmerHale
F	Akin Cump Strauss Hauer & Feld Allen & Overy Arnold & Porter Kaye Scholer Baker & Hostetler Baker Botts Baker McKenzie Clifford Chance Cravath, Swaine, & Moore Crowell & Moring Freshfields Bruckhaus Deringer Gibson, Dunn, & Crutcher Hogan Lovells Mayer Brown McGuire Woods Milbank Morgan, Lewis & Bockius Munger, Tolles & Olson Norton Rose Fulbright Orrick Herrington & Sutcliffe Paul, Weiss, Rifkind, Wharton & Garrison Shearman & Sterling Sidley Austin Simpson Thacher & Bartlett Skadden, Arps, Slate, Meagher, & Flom

What are finance and business leaders saying?



“Tackling climate change is a collective endeavor, it means collective accountability and it’s not too late”

Christine Lagarde, President of the European Central Bank

“I believe that the pandemic has presented such an existential crisis – such a stark reminder of our fragility – that it has driven us to confront the global threat of climate change more forcefully and to consider how, like the pandemic, it will alter our lives.” *2021 Letter to CEOs*, Larry Fink, CEO, BlackRock

“PNC recognizes that environmental issues, including climate change, are impacting our business, our clients and the communities in which we operate.”

Richard Bynum, PNC Chief Corporate Responsibility Officer, Aug. 20, 2021

“Supply chains are the new frontier of sustainability. The journey products take from source to shelf will collectively shape our planet’s future.”

Carter Roberts, CEO WWF

“Investors do want to bring some consistency and comparability to climate disclosure... I look forward to staff recommendations on proposing rules regarding issuer disclosure of climate risks and human capital. I anticipate that this will be the initial steps in our broader efforts to update our disclosure regime for modern markets.”

Gary Gensler, SEC Chair, “Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee”, May 26, 2021

“We (*Bank of America*) are committed to achieving net zero greenhouse gas emissions in our financing activities, operations and supply chain before 2050.” Brian Moynihan, Chairman and CEO, Bank of America, Testimony to Senate Committee on Finance, May 26, 2021

Commitments to Decarbonization



- What is decarbonization?
 - Reduction in carbon footprint (greenhouse gas (GHG) emissions)
- 2015 Paris climate agreement
 - Cut GHG emissions 26%-28% below 2005 levels by 2025
- Biden's 2021 Earth Day announcement
 - Cut GHG emissions 50%-52% by 2030

Addressing the Climate Challenge – What Can Businesses Do?



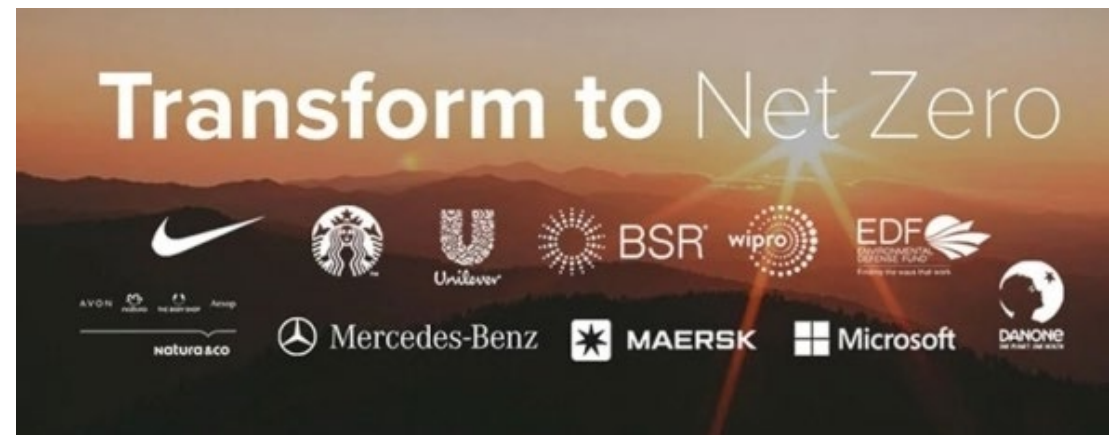
- Establish the carbon footprint baseline of your organization
- Identify achievable and reach goals that will reduce your organizations impacts on the climate
- Set a decarbonization goal:
 - Reduce greenhouse gases (GHGs) by 80% by 2035
 - Net Zero
 - Carbon Neutrality
- Establish metrics to measure progress
- Follow through:
 - Implement the actions
 - Measure the effects
 - Publicize the outcomes



Corporate Commitments to Decarbonization



- Net zero commitments
 - 1/5 of world's largest publicly listed companies
 - 20% of targets meet UN's basic criteria for credible net-zero plans
 - Estimated cost of \$6.9 trillion per year (2017-2030) (OECD)



Environmental Sustainability



- What is it?

- Environmental sustainability is about acting in a way that ensures future generations have the natural resources available to live an equal, if not better, way of life as current generations
- Responsible interaction with the environment to avoid depletion or degradation of natural resources and allow for long-term environmental quality
 - Resource Efficiency/Energy Conservation
 - Natural Resource Protection
 - Pollution Prevention



Environmental Sustainability for Business



- Why it is important?
 - Shareholder/customer demands
 - Reputational benefits
 - Employee retention
 - Financial benefits
 - Risk management

“As a company, if you ignore sustainability, you’re going to be worth less.”

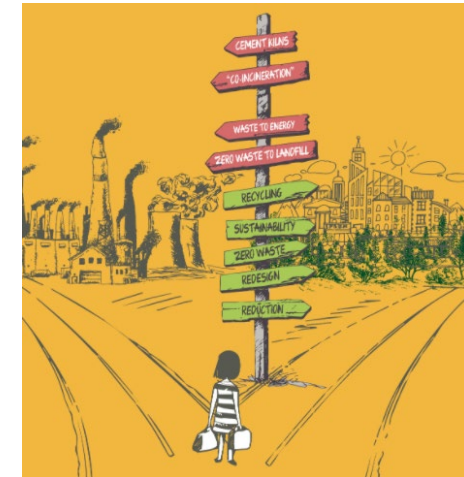
–Goldman Sachs



Environmental Sustainability as a Risk Management Tool



- Operational
 - Managing risk of operational disruptions
 - Resource scarcity
 - Permitting limitations
 - Reduction of operating costs
 - Improvements in resource management
 - Assessment of full costs of required inputs
 - Responding to supply chain demands
 - Industry/customer requirements and standards
- Social
 - Reduce reputational risks
 - Response to demand by consumers and investors
 - Recognition for innovative solutions
 - Employee retention/engagement



Environmental Sustainability as a Risk Management Tool—Regulatory/Legal



- Regulatory compliance
 - Tougher standards
 - Regulatory expansion
- Avoidance of litigation
 - Notices of violation
 - Citizen suits
- Increased focus on environmental justice
 - Impact on permitting, new development/expansion



Environmental Justice – “EJ”



- Issue: Lower income communities and communities of color disproportionately bear negative environmental impacts. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions.
- EJ seeks to address this by taking EJ factors such as race, income, national origin, age and education into account in environmental policymaking, rulemaking, enforcement, and permitting decisions
 - First Executive Order signed by President Clinton in 1994 (E.O. 12898)
 - EPA produced “Action Plans” in 2014 and 2016

Renewed Focus on EJ



- Justice40 Initiative
 - Commits to direct 40% of climate and clean energy investments to disadvantaged communities
- Enhanced Compliance, Inspections & Enforcement in EJ areas
- EJ Factors in Environmental Permitting
 - New permit applications
 - Renewing existing permits
- Community Engagement
 - More data, increased monitoring, and greater community involvement
- Interaction between EPA and States on EJ concerns
 - Preliminary Finding of Non-Compliance re: MDNR's issuance of air permit to Kinder Morgan (St. Louis)
- EJ Screening Tool (EPA)
 - Interactive maps to identify EJ areas



Environmental (ESG) Reporting



- Increasing demand for transparency and accuracy
 - Blackrock (Jan. 2021)—demand for plan to achieve net zero emissions by 2050 and adopt disclosure standards
- ESG is central to valuation and risk
 - Correlation between ESG scores and costs of capital
- Disclosure Guidance
 - 2010 Climate Change Disclosure Guidance
 - Task Force on Climate Related Financial Disclosures
 - Sustainability Accounting Standards Board
 - Global Reporting Initiative (GRI) sustainability reporting guidelines



SEC Action on ESG Disclosure



- Climate-related disclosures currently voluntary
 - Regulation S-K still applies
 - 2010 SEC Guidance
- SEC views climate and ESG matters as proper subjects for rulemaking
 - Investors increasingly view as material consideration
 - ESG performance is an indicator of financial health
- Mandatory climate risk disclosure rule likely to be proposed before end of 2021
 - Likely topics for disclosure:
 - How ESG issues are managed and incorporated into company strategy
 - GHG emissions from operations, energy use and downstream value chain
 - Financial impacts of climate change on company
 - Strategies for likely future ESG-related requirements
 - Industry specific metrics
 - Significant risk if ESG performance claims do not hold up to scrutiny



Beware of Greenwashing



- **FTC Green Guidelines (16 CFR Part 260)**
 - Guidance and direction to advertisers on benefit claims and avoiding deception
 - Avoid generalized environmental claims and images that may overstate environmental benefits
- **SEC Risk Alert on ESG Investment (April 9, 2021)**
 - Will examine investment advisers and funds to ensure accuracy in disclosing ESG investments
 - Noted unsubstantiated or potentially misleading claims
 - Disclosures should be clear, precise and verifiable
- **Climate & ESG Task Force (SEC) (March 4, 2021)**
 - Development of initiatives to identify ESG-related misconduct
 - Material gaps or misstatements in disclosure



Environmental Rulemaking



- Waters of the United States (WOTUS)
 - Current rule effective June 22, 2020
 - June 9, 2021—announcement of new rulemaking process to restore former protections and establish new WOTUS definition
- Phasedown of HFCs (Hydrofluorocarbons)
 - Proposed rulemaking to phase down the production and use of HFCs through allowance allocation and trading program
- PFAS (Per- and polyfluoroalkyl substances)
 - Proposed rulemaking to determine whether PFOA and PFOS should be regulated under CERCLA and RCRA
 - Continued efforts to monitor
- Pollution Standards for Vehicles
 - Clean Trucks Plan
 - Safer Affordable Fuel-Efficient Vehicles Rule

Questions??

