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Tony Gibart (foreground), executive director of Midwest Environmental Advocates, and members of his staff Caroline Griffith (from left), Peg Sheaffer and Adam Voskuil stand along the shoreline of Madison's Lake Monona. (Photo by Kevin Harnack)

Environmental justice for all

Biden administration signals early commitment to enforcing environmental laws

By **Michaela Paukner**

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On a frigid Tuesday in mid-February, Tony Gibart and members of his team at Midwest Environmental Advocates gathered for a photograph on the shores of Lake Monona, just a few blocks from the nonprofit firm's Madison office.

The setting was a fitting illustration of MEA's legal advocacy work, which concentrates on environmental protections and justice. The February polar vortex and its dangerously cold temperatures were among the most extreme instances of winter weather in years, according to meteorologists at the National Weather Service, and a result of climate change caused by humans.

President Joe Biden and his administration are redoubling their efforts to combat climate change and the disproportionate harm it

causes to marginalized communities. Biden signed a series of climate-related executive orders on Jan. 27 meant to move the U.S. from fossil fuels to clean energy.

The Biden Administration's goals include conserving 30% of U.S. lands and waters in the next 10 years, eliminating pollution from fossil fuel in the power sector by 2035 and from the overall economy by 2050, and directing agencies to help low-income and minority communities living closest to sources of pollution.

Gibart, MEA executive director, said the orders suggest a commitment to environmental justice and show where the government will stand on enforcing environmental law in the next four years.

"The fact that the Department of Justice, the attorney general and the federal government will be looking to defend and

uphold laws that address climate changes is significant, rather than oppose them or try to undermine them, as with the previous administration," Gibart said.

"That suggests environmental justice will be a priority, and they'll use enforcement actions as a way to demonstrate that priority."

— Professor Steph Tai, UW Law School

Priority on environmental justice

Environmental justice seeks to ensure all people have access to safe living conditions, regardless of their race, color, national

origin or income. President Bill Clinton first made environmental justice a priority of the Environmental Protection Agency's work in 1994, but it didn't have the significant benefit many people hoped for, said UW Law Professor Steph Tai.

Tai, who teaches courses on environmental law and environmental justice, said Biden's executive order is more forceful than Clinton's and lists concrete steps that government agencies need to take to achieve his goals. One such measure directs agencies to review the likely environmental-justice effects of their activities and report their findings. The deadlines for doing so are set as early as 2022.

"It doesn't immediately change environmental laws, although it might change environmental enforcement and policy," Tai said, "but it could actually have a strong effect on the law, depending on the results of the report."

Tai and Gibart expect the EPA and DOJ to start prioritizing environmental justice in their enforcement actions. Michael Regan, Biden's pick to lead the EPA, appears likely to be confirmed. Regan has served as the top environmental regulator in North Carolina since 2017, and he's known for cleanup actions that have helped low-income and minority communities harmed by pollution.

"That suggests environmental justice will be a priority, and they'll use enforcement actions as a way to demonstrate that priority," Tai said.

Additional options for Wisconsin

MEA works on many of the matters central to the federal government's vision of environmental justice. The firm's many causes deal with lead contamination in the city of Milwaukee's water supply and bacterial contamination of water sources from farm runoff. It has also worked with indigenous communities opposed to the construction of the Enbridge Energy's oil pipeline in northern Wisconsin.

The firm was founded to continue the work of the former Office of Public Intervener within the Wisconsin DOJ. The office provided legal representation for Wisconsinites dealing with environmental matters, but it was abolished in the mid-1990s.

"MEA was founded to try to fill that void — to make sure there was still a law firm that represented the interests of the people of Wisconsin environmental decisions," Gibart said. "The framework of environmental justice is core to how we operate."

Gibart sees MEA's work as making sure environmental laws and policies are applied fairly. He said a big part of environmental justice is in ensuring that the people who are most likely to be affected by a proposed policy have a say in its formation.

"We're at a point in time in Wisconsin where many communities across our state cannot drink their water because they have little power to get meaningful action from their legislators," Gibart said. "That is because we live in a gerrymandered state where legislators choose their constituents and not the other way around."

"The changes in the administration provide MEA ... with additional options to get redress."

— Tony Gibart, executive director of Midwest Environmental Advocates

Gibart said changes at the EPA open up new avenues for environmental justice in Wisconsin. The federal government can put pressure on the state government to spur changes. Gibart said the Wisconsin Legislature hasn't really acknowledged climate change and, over the past 10 years, has defunded parts of the Department of Natural Resources that are critical to protecting the environment.

"The changes in the administration provide MEA and, by extension, communities in Wisconsin that have been suffering from environmental harm for far too long with additional options to get redress," Gibart said.

Lessons from procedural past

Gibart and Tai are hopeful that the Biden administration will move the needle forward on combating climate change, but they acknowledge there are likely many obstacles ahead at the federal and state levels.

Tai said the Biden administration seems to be taking lessons from the long procedural history of President Barack Obama's Clean Power Plan, a 2015 policy limiting carbon emissions from U.S. power plants.

The plan encountered resistance from states and power companies when it was introduced. The Supreme Court never issued a decision on the case because President Donald Trump issued a rule essentially dismantling the plan when he came into office — a rule that was then challenged by Democratic states. A federal appellate

court rejected the Trump rule in January, but it did not reinstate the Clean Power Plan.

Tai said looking ahead, the Supreme Court will be skeptical of something similar to the Clean Power Plan coming from the Biden administration because of the court's change in composition.

"I think that will be in the minds of the Biden administration's EPA, in terms of trying to figure out how to craft something that addresses climate in the way that it proposes in the executive order," Tai said.

Tai said Biden is using methods less susceptible to litigation to advance his climate goals, including the government's purchasing power, reductions of tax breaks and various financial instruments. All these will help forestall criticisms that carbon regulation will put millions out of work.

"There's a lot of commitment to creating a climate finance plan, creating an investment plan for folks who are hardest hit by fossil fuel production," Tai said. "They're thinking ahead to that potential critique and actually putting in incentives to deal with that."

At the state level, Gibart believes Gov. Tony Evers' task force on climate change has come up with thoughtful recommendations to make climate a priority in Wisconsin. But his actions alone won't be enough to curtail the harm climate change is causing to the state and its people.

"We need to have a Legislature that prioritizes this issue and is willing to devote resources to address it," Gibart said. "That means funding for the DNR and returning the DNR to an agency that has the resources it needs."



Photo illustration by Kevin Harnack