

# Environmental Considerations for Our Region

Babst Calland's Environmental practice leaders offer insights about the challenges ahead for local businesses amidst proposed Biden-era policies on infrastructure and environmental regulation, climate change and environmental justice.



**Lisa M. Bruderly**

Chair and Shareholder,  
Environmental  
lbruderly@babstcalland.com



**Kevin J. Garber**

Shareholder,  
Environmental  
kgarber@babstcalland.com



**Sean M. McGovern**

Shareholder,  
Environmental  
smcgovern@babstcalland.com

By Daniel Bates for the *Pittsburgh Business Times*

Even before he won the election, President Joe Biden had pledged to reverse Trump-era environmental policies designed to ease the regulatory burden on business. Since then, he already has proposed a sweeping \$2 trillion-plus infrastructure improvement plan designed to shore up the nation's roads, bridges, water pipes and other infrastructure, as well as create new jobs.

Such presidential plans for environmental reform are certain to require significant – and potentially expensive – shifts in business practices in the long term, according to leading attorneys from the Environmental Practice of Pittsburgh law firm Babst Calland. As a result, the region's businesses can expect a climate of transition in the short term, mixed with potential new business opportunities, costly challenges, and delayed development.

"It was no surprise when, out of the gate, the Biden administration signaled that there were going to be a lot of regulatory changes that were significantly different from the regulatory environment of the Trump administration," said Lisa Bruderly, chair of Babst Calland's Environmental Practice. "One of his first executive orders was to task EPA and other federal agencies to look at the regulations and policies and directives of the Trump administration and determine whether any of those actions should be revoked, rescinded, or revised.

"So we are waiting to see what those actions may be," she continued. "Many of those have important environmental implications that could affect future developments – how projects are permitted, for example."

Bruderly was one of three attorney colleagues who participated recently in a discussion with the *Pittsburgh Business Times* on "Environmental Considerations for Our Region" as part of the law firm's Business Insights video series. Joining her for the regulatory discussion were attorneys Kevin Garber and Sean McGovern, both shareholders within the firm's Environmental Practice. Babst Calland is one of the Pittsburgh region's largest law firms and nationally recognized for its environmental law practice.

## Infrastructure and the environment

Driving much of the regulatory discussion, Bruderly said, is the Biden administration's proposed infrastructure improvement plan, which emphasizes not only the need for new roads and bridges, but also the desire to improve water and air quality in the face of climate change.

"If approved as proposed, the [infrastructure] plan would provide funding for a number of different traditional infrastructure types of projects – bridges, highways, public transit, airports," she said. "However, the plan itself actually goes well beyond traditional infrastructure and talks about a number of other types of improvements. This is being called a once-in-a-generation kind of effort.

"Besides traditional infrastructure," Bruderly continued, "they're planning to: eliminate all lead piping in drinking water systems; create more jobs in the renewable sector; bring high-speed broadband Internet to every American; install thousands of miles of electric transmission lines; and modernize about 10,000 bridges and 20,000 miles of highways. It's a very large undertaking that is being proposed."

While Bruderly acknowledged the need for such modernization efforts, the challenge to local businesses will be in paying for them.

"The infrastructure plan can have both good and bad effects for the region," she said. First of all, there are infrastructure projects that are needed and providing that funding will certainly be a help in getting those projects accomplished."

Bruderly was quick to point out the need for bridge and road repairs, as well as upgrades to drinking water systems and public transit, particularly based on what she described as a Biden administration report card of sorts that gave Pennsylvania a C-grade for its infrastructure conditions – one of 28 states marked with C-grades.

Of particular interest to the Pittsburgh region, Bruderly said, was that the Biden plan also calls for funding to improve inland waterways,

including locks and dams, as well as capping "orphaned" oil and gas wells and cleaning up abandoned mining properties.

## Paying a price for change

At the same time, she suggested, the additional tax burdens on the industry would be significant.

"It's [the American Jobs Plan] an interesting proposition," Bruderly said. "However, paying for these sorts of programs is obviously a concern for many folks. The Biden administration has proposed to pay for this over a 15-year period by raising the corporate tax rates from 21 percent to 28 percent. They've also proposed several other changes that will have tax implications, especially for fossil fuel industries."

## Planning amidst uncertainty

In the short term, though, the region's businesses are worried about something else.

"Regional businesses at this point care about the uncertainty of everything right now," Bruderly said, "and trying to figure out what the new regulatory changes are going to be and how to plan their projects so that they're meeting those changes when they're ready to submit their applications.

"You may have to redesign your project," said Bruderly, noting the possibility that environmental permitting criteria could change in the middle of one's project planning. "You may have to go for a different permit, which would take longer, and there could be more public scrutiny of those types of things."

"One of those regulations about which Bruderly is most concerned pertains to the definition of waters of the United States. "That definition is important because it defines the scope of regulatory jurisdiction under the Clean Water Act and actually affects 11 regulatory programs," she said.

## The 'Green New Deal' piece

Bruderly's colleague, Kevin Garber, said he's particularly concerned about the role of climate change in driving major aspects of the infrastructure plan.

"There's no doubt that the Biden administration's view of climate change and government generally is 180 degrees different from the Trump administration, and the Trump administration, of course, was more free market – less government regulation," Garber said. "Biden is the opposite of that."

Garber said he likewise acknowledges the benefits to such an infrastructure funding plan to fund roads, bridges, and water and sewer infrastructure, including upgrading small wastewater treatment plant systems.

"But then the other side of it – the big side of it – is the climate change piece, that is variously called or sometimes criticized as the 'Green New Deal' piece," Garber said.

## Climate change and technology commercialization

Garber said he does see a sizable positive potentially arise from the infrastructure plan's climatechange drivers. That is, technology commercialization.

"Several opportunities come out of the climate change component of the bill. One example would be the commercialization of research and development here in Western Pennsylvania," Garber said. "Our universities have long been looking at the commercialization of technologies, and how we can move into low-carbon energy production. We're fortunate to have the National Energy Technology Lab here in this region studying carbon capture and sequestration.

"A second example would be the electrification of transportation vehicles," he continued. "A third example might be increasing energy

storage, and a fourth example would be the further development of hydrogen fuels and the storage of hydrogen fuels. This whole area shows a lot of promise in that regard."

Said Garber of the opportunities under the premise of climate change: "So, even though the American Jobs Plan has certainly received a lot of criticism based on its reach and its expense, there certainly are pieces of it that come under the climate change umbrella, rather than the infrastructure umbrella that I think hold promise for our region to keep us as a good energy and economically vibrant region."

## The role of environmental justice

One area of environmental regulation under the Biden administration that seems to get less attention but remains a significant part of Biden's environmental policy, according to attorney Sean McGovern, another Environmental Practice colleague at Babst Calland, is the role of environmental justice when it comes to mitigating impact.

"This is a key pillar of the Biden administration's initiatives moving forward for environmental matters," McGovern said. "I have to remind myself at times that we're well into the fifth decade of environmental justice matters, but still a lot of folks don't understand quite what it means."

McGovern defined environmental justice, in accordance with the U.S. Environmental Protection Agency's definition, as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income."

In Pennsylvania, he said, "environmental justice embodies the principle that communities and populations are not disproportionately exposed to adverse environmental impacts."

As such, McGovern said, Pennsylvania has been approaching environmental justice policies and initiatives as a community issue.

"What we have seen... is that the emphasis has been on engagement with the communities that are environmental justice communities," he said. "It's a race- and income-based analysis: 30 percent or greater for minority populations, and 20 percent or greater [at or below the poverty level] from an income perspective also would qualify as an EJ community."

With Pennsylvania currently going through an evaluation of its EJ policy, our neighboring state – New Jersey – just passed a law that adds a new component that caught the attention of many who operate in this space, and that is "the ability to look at cumulative impacts in relation to a permit application on a particular EJ community and potentially decline a permit application based on those impacts," McGovern said.

Added Garber regarding the effects of environmental justice considerations on larger-scale environmental regulation in Pennsylvania: "Proposed revisions to these rules still in draft form are heavily influenced by environmental justice. They have brought a number of environmental justice principles into the regulation."

## Enforcing justice

To support environmental justice principles, local businesses can expect more aggressive enforcement at the federal level, Bruderly said.

"With the difference in the administration, there's an expectation that there's going to be more enforcement than there had been," she said, "and that enforcement likely will come with more penalties."

Overall, Garber said, local businesses need to "try to overcome that uncertainty. I think there are opportunities in the way some of these regulatory programs are headed so you just have to keep alert and watch the news every day."

McGovern concluded, "I think it's an exciting time to be an environmental lawyer."

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