



# Regulatory Alert

## Regulatory Insights

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### Environmental Justice: New DOJ Strategy

*Executive Orders signed by the President on the first days in office established issues related to climate change and racial equity as “immediate priorities” necessitating a whole-of-government approach. DOJ’s new Environmental Justice Enforcement Strategy responds to those directives by encouraging coordination between its own Environmental and Natural Resources and Civil Rights Divisions as well as with the EPA and other agencies (e.g., HUD, OSHA, DOE, DOI, CPSC) to reduce environmental and public health and safety concerns in “overburdened and underserved communities.” As significant regulatory attention is placed on climate-related accountability and equitable impacts across industries, and existing laws are applied to carry out enforcement actions in this regard, entities should anticipate increased potential for investigations by the DOJ and other applicable regulatory agencies and continue to update their ESG and Risk frameworks to identify and mitigate potential risks.*

The Department of Justice (DOJ or Department) [announced](#) a series of actions to “comprehensively” address environmental justice. These actions include:

- Implementation of a new Environmental Justice Enforcement Strategy
- Formation of a new DOJ Office of Environmental Justice
- Publication of an Interim Final Rule that restores the use of Supplemental Environmental Projects.

The actions respond to [Executive Order 14008](#), *Tackling the Climate Crisis at Home and Abroad*, which directs the Attorney General to “develop a comprehensive environmental justice enforcement strategy, which shall seek to provide timely remedies for systemic environmental violations and contaminations, and injury to natural resources; and ensure comprehensive attention to environmental justice throughout the Department of Justice.”

#### Environmental Justice Enforcement Strategy

DOJ states the [Environmental Justice Enforcement Strategy](#) (Strategy) is meant to serve as a roadmap for

using the Department’s civil and criminal enforcement authorities, in conjunction with the Environmental Protection Agency (EPA) and other federal partners, to advance environmental justice “in underserved communities that have been historically marginalized and overburdened, including low-income communities, communities of color, and Tribal and Indigenous communities.” The Strategy was developed by the DOJ’s Environment and Natural Resources Division (ENRD) and the EPA’s Office of Enforcement and Compliance Assurance. The Strategy rests on the following principles:

- **Prioritize cases that will reduce public health and environmental harms to overburdened and underserved communities.**
- **Make strategic use of all available legal tools to address environmental justice concerns**, including actions under traditional environmental laws in addition to civil rights laws, worker safety and consumer protection statutes, and the False Claims Act as well as settlement tools, including Supplemental Environmental Projects (SEPs). The Strategy specifically calls on ENRD, the Civil Rights Division, and other federal agencies to coordinate and



maximize synergies between environmental and civil rights enforcement.

- **Ensure meaningful engagement with impacted communities** to inform potential violations, sources of evidence, harmful impacts to individuals and communities, and potential remedies. Engagement would include general outreach and listening sessions as well as case-specific outreach plans for each case initiated under the Strategy.
- **Promote transparency regarding environmental justice enforcement efforts and their results.** DOJ intends to develop plans to track, review, and evaluate progress under the Strategy as well as provide impacted communities access to information regarding filed and concluded enforcement actions, as well as any resulting benefits of the DOJ's actions.

### Office of Environmental Justice

The new Office of Environmental Justice (OEJ) will reside within the ENRD. It will serve as “a critical resource” to coordinate the efforts of DOJ components implementing the Strategy, including convening a standing DOJ Environmental Justice Enforcement Steering Committee; facilitating community outreach; and developing protocols for assessing environmental justice impacts during investigations, tracking and communicating progress under the Strategy, and engaging with stakeholders.

### Supplemental Environmental Projects

A new [Interim Final Rule](#) restores the use of SEPs in settlement agreements “in appropriate circumstances and subject to guidelines and limitations set forth in a separate [memorandum](#) issued by the Attorney General.” DOJ notes that SEPs are “environmentally beneficial projects that a defendant has proposed and agrees to implement as part of the settlement of an enforcement action,” adding that they “further the aims of the federal environmental laws...by remedying the harms to communities most directly affected by violations of those laws.” The guidelines and limitations outlined in the

memorandum address payments to non-governmental third parties that are not parties to the underlying litigation and include requirements that:

- Settlement agreements must be defined according to the nature and scope of the specific project(s) that a defendant has agreed to fund.
- All projects must have a strong connection to the underlying violation(s) of applicable federal laws at issue and be designed to reduce the detrimental effects of the violation(s).
- DOJ and its client agencies must not recommend the selection of any particular third party to receive payments to implement any project carried out under the settlement.
- Settlements must be executed before an admission or finding of liability in favor of the United States.
- Settlements must not:
  - Be used to satisfy any statutory obligation of DOJ or any other federal agency to perform a particular activity.
  - Require payments to non-governmental third parties solely for general public educational or awareness projects; solely in the form of contributions to generalized research; or in the form of unrestricted cash donations.

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