

UPDATES

U.S. Department of Justice Releases Unprecedented Environmental Justice Strategy

May 12, 2022

The U.S. Department of Justice (DOJ) recently announced a [comprehensive environmental justice enforcement strategy](#) that directs the Attorney General to undertake initiatives based on four key principles. Below, we highlight those principles and the actions that the strategy outlines to accomplish its goals, including creation of a first-of-its-kind office within the Environmental and Natural Resources Division (ENRD) dedicated to environmental justice and reversal of the former administration's prohibition of supplemental environmental projects (SEPs) in DOJ settlements.

Prioritization of Environmental Justice Cases

DOJ commits to prioritize cases that will reduce public health and environmental harm to overburdened and underserved communities by taking the following actions:

- creating an Office of Environmental Justice (OEJ) within ENRD that will, among other things, convene a standing Environmental Justice Enforcement Steering Committee to coordinate DOJ offices and implement the strategy
 - Although the OEJ has authority to assist other DOJ components, develop cases pursuant to the strategy memorandum, and work with the U.S. Environmental Protection Agency (EPA) and other federal agencies to develop or enhance environmental justice assessments during investigations, it is not clear whether the OEJ will have authority to act as independent counsel; OEJ will, however, work with other federal agencies to identify those enforcement actions aligned with the strategy's goals
 - Because OEJ and its agency counterparts must prioritize those actions in accordance with the strategy, pending investigations with environmental justice components are likely to be fast-tracked and pursued more aggressively
- coordinating with EPA's Office of Enforcement and Compliance Assurance and federal agencies to address environmental alleged violations and contamination that harms overburdened and underserved communities
- developing and/or enhancing investigatory protocols to prioritize enforcement matters that are

“most likely to achieve meaningful reductions in impacts to overburdened and underserved communities”

- designating environmental justice coordinators in U.S. Attorneys’ Offices to coordinate with DOJ components on environmental, civil rights and civil alleged violations in their districts increasing tribal environmental justice efforts through U.S. Attorneys’ Offices and the Office of Tribal Justice
- strengthening coordination among federal, state, and local enforcement agencies, including use of environmental enforcement task forces

This prioritization applies to both civil and criminal cases. Because most environmental enforcement is handled by ENRD, the announcement mainly impacts that component of DOJ. However, ENRD shares environmental criminal enforcement jurisdiction with the 93 U.S. Attorney’s Office (and it also partners with those offices on civil cases in some instances). Thus, DOJ has also taken steps require each U.S. Attorney’s Office to consider outreach to environmental justice communities, identify an environmental justice coordinator and make periodic reports on environmental justice matters.

Use of Legal Tools to Address Environmental Justice Concerns

DOJ will strategically use legal tools to address environmental justice concerns by:

- pursuing timely and effective remedies to mitigate past and offset future harm, including use of SEPs, (which had been banned by the former administration but are now permitted)
 - As previewed by [Sidley](#) earlier this week, however, procedural hurdles inherent in the new SEP guidance for DOJ will be a practical impediment for certain types of SEPs that involve payments or in-kind services provided to non-governmental organizations
- coordinating with the Civil Rights Division to seek remedies under Title VI of the Civil Rights Act and other civil enforcement tools, such as the Occupational Safety and Health Act; Consumer Product Safety Act; Federal Food, Drug, and Cosmetic Act; and False Claims Act
- developing and trainings and other environmental justice materials

Meaningful Engagement With Impacted Communities

DOJ expressed that it will engage with impacted communities by:

- increasing outreach to environmental justice communities by U.S. Attorneys’ Offices and DOJ, including case-specific community outreach plans by DOJ and related agencies
 - Practically speaking, this should afford communities and companies an increased opportunity to share with DOJ their concerns and environmental justice–related efforts
- strengthening coordination with DOJ’s Community Relations Service

Transparency

DOJ expressed that it will further promote transparency regarding environmental justice enforcement efforts and their results by:

- developing performance standards to track, review, and evaluate progress

- preparing plans to communicate progress and ongoing cases, including publication of results in DOJ's annual environmental justice report
- providing strategy updates based on stakeholder engagement by OEJ

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The actions above reflect the Biden administration's intent to advance environmental justice. Although time will tell how aggressively DOJ and related federal agencies pursue these goals, companies should plan for an expeditious timeline for ongoing negotiations involving environmental justice concerns and increased investigative efforts if operating in environmental justice communities—a broad category that is as yet not precisely defined.

CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

J. Simone Jones , Partner	+1 312 853 4341, jimone.jones@sidley.com
Nicole E. Noëlliste , Senior Managing Associate	+1 202 736 8680, nnoelliste@sidley.com
Brooklyn Hildebrandt , Senior Managing Associate	+1 213 896 6007, bhildebrandt@sidley.com

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