U.S. Department of Justice

Office of the Associate Attorney General

Associate Attorney General *Washington, D.C. 20530*

May 5, 2022

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS
UNITED STATES ATTORNEYS

FROM: THE ASSOCIATE ATTORNEY GENERAL

SUBJECT: COMPREHENSIVE ENVIRONMENTAL JUSTICE ENFORCEMENT STRATEGY

I. Introduction

In Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (January 27, 2021), the President made clear that securing environmental justice must be a key consideration in how we govern. The President instructed the Attorney General to "ensure comprehensive attention to environmental justice throughout the Department of Justice" and, more specifically, 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[.]" EO 14008, Sec. 222(c)(ii).

The Environment and Natural Resources Division (ENRD), in coordination with EPA's Office of Enforcement and Compliance Assurance (OECA), and after receiving input from other Department of Justice components, other federal agencies, and environmental justice advocates and community organizations, has developed this Environmental Justice Enforcement Strategy. This Strategy provides a roadmap for using the Justice Department's civil and criminal enforcement authorities, working with EPA and other federal partners, to advance environmental justice through timely and effective remedies for systemic environmental violations and contaminations and for injury to natural resources in underserved communities that have been historically marginalized and overburdened, including low-income communities, communities of color, and Tribal and Indigenous communities.

Building on past successes as well as lessons learned, this Strategy provides a set of principles and actions to continue our work to advance environmental justice through the enforcement of federal laws.[1] These principles and actions will ensure that the entire Justice Department is vigorously and transparently working to secure environmental justice with the full set

[1] This Strategy complements EPA actions taken in the civil, criminal, and cleanup enforcement programs in response to the directive in EO 14008 section 222(b)(i) to "strengthen enforcement of environmental violations with disproportionate impact on underserved communities." *See* Memoranda from OECA Acting Assistant Administrator Lawrence E. Starfield, *Strengthening Enforcement in Communities with Environmental Justice Concerns* (April 30, 2021); *Strengthening Environmental Justice through Criminal Enforcement* (June 21, 2021); *Strengthening Environmental Justice through Cleanup Enforcement Actions* (July 1, 2021); and *Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements* (April 26, 2021).

of legal tools at its disposal, in partnership with EPA and other federal agencies, and in communication with the communities most affected by the underlying violations of federal law.

II. Principles for Environmental Justice Enforcement

PRINCIPLE: We must prioritize cases that will reduce public health and environmental harms to overburdened and underserved communities.

There are communities around the nation that bear the effects of pollution disproportionately, resulting in greater rates of illness and death, developmental impairments in children, and a variety of economic harms. The Department—whether in DOJ-initiated investigations or working with EPA or other federal partners on referred matters—must identify those cases that will result in significant reductions in environmental and public health harms, or injury to natural resources, in overburdened and underserved communities. In appropriate cases, where enforcement of federal law can achieve meaningful relief to address these injuries, environmental violations or contamination should be addressed through litigation brought by the Department. These enforcement actions must be among the Department's top enforcement priorities. In order to accomplish this goal, we will take the following steps:

- *Environmental Justice Enforcement Steering Committee.* To help ensure these principles are implemented in practice, the Attorney General has announced that an Office of Environmental Justice will be created within the ENRD. As one of its first acts, this new office will convene a standing DOJ Environmental Justice Enforcement Steering Committee. The Steering Committee will be co-chaired by the Assistant Attorneys General of ENRD and the Civil Rights Division, or their designees. The Committee will include representatives from my Office, the Offices of the Deputy Attorney General and the Associate Attorney General, as well as ENRD, the Civil Rights Division, the Civil Division, the Executive Office for U.S. Attorneys (EOUSA), the Office of Justice Programs, the Office of Tribal Justice, the Office of Access to Justice, the Community Relations Service, the Federal Bureau of Investigation, the Department's law enforcement agencies, and other relevant components. The Committee will meet regularly to ensure coordination among the components and to provide leadership and guidance for the implementation of this Strategy, including the specific tasks outlined in this memorandum. In addition, the Steering Committee is authorized to make recommendations to Department leadership on all aspects of the Department's efforts to further environmental justice enforcement, including policy choices, budget prioritization, training needs, research and data collection, and coordination with other federal agencies and state, Tribal, territorial, and local government partners.

- *Protocols for assessing environmental justice impacts during investigations.* With assistance from the new Office of Environmental Justice within ENRD, Department components developing cases pursuant to this Strategy should work with EPA and other federal investigatory agencies to develop or enhance investigatory agencies' protocols for assessing the environmental justice impacts during investigations. Such protocols should include, at minimum, a methodology for identifying and assessing (1) any actual or threatened adverse impacts to public health or the environment from systemic environmental violations, contamination, or injury to natural resources, and (2) information concerning the affected community and potential remedies for public health or environmental harms. Each such component, in consultation with their partner investigative or referring agencies, shall identify those enforcement actions that are most likely to achieve meaningful reductions in impacts to overburdened and underserved communities, and shall prioritize those matters.

The head of each component shall institute procedures within her or his component to ensure that those matters are given priority consistent with the principles of this Strategy.

- *Designation of environmental justice coordinators in U.S. Attorneys' Offices.* U.S. Attorneys and their offices play a critical role in the successful implementation of this Strategy given the intensely local nature of most environmental justice issues. U.S. Attorneys, working with EOUSA, should coordinate, as appropriate, with ENRD, CRT, the Civil Division, and other Department components on environmental violations and related potential civil rights and civil violations in their districts. Each U.S. Attorney shall designate an environmental justice coordinator within her or his office. Further, each U.S. Attorney's Office shall consider appropriate outreach efforts to identify areas of environmental justice concern in communities within its district, and shall establish and publicize a procedure for members of the public to report environmental justice concerns within that office's jurisdiction. In addition, EOUSA shall track and report annually on environmental justice matters handled by USAOs to facilitate the successful implementation of this Strategy.

- *Pursuit of Tribal environmental justice.* Environmental justice with respect to Tribal populations must consider the unique sovereign status of federally-recognized Indian Tribes and Alaska Native Villages. Further, identification of priority enforcement cases should take into account the unique potential environmental justice impacts for Tribal communities. These include damage or potential injury to cultural and sacred sites and resources, impacts to fisheries and traditional hunting and gathering areas, impacts or impairments to treaty rights, and impacts to water and land resources on or needed to support Tribal homelands or associated rights. ENRD, U.S. Attorneys, EOUSA, and the Office of Tribal Justice will consider developing additional mechanisms to (1) facilitate consideration of these unique issues in cases brought pursuant to this Strategy; (2) identify opportunities to work with the governments of federally recognized Tribes, including consortia of such Tribes; (3) work with other federal agencies to coordinate investigative resources and enforcement authorities; and (4) recommend ways to address and incorporate Tribal concerns into the Department's enforcement work.

- *Creation of environmental enforcement task forces.* Local or regional environmental enforcement task forces, which generally include federal, state, Tribal, territorial, and local government law enforcement authorities, have proven to be an effective way of focusing and coordinating enforcement efforts. Where such a task force already exists that can assist in developing and pursuing environmental justice enforcement matters, U.S. Attorneys and other DOJ components are encouraged to participate. Where such a task force does not already exist or is inactive, U.S. Attorneys and DOJ components are encouraged to consider establishing or reinvigorating one as a tool to develop and pursue environmental justice enforcement matters, especially in districts that are likely to have a significant number of such matters.

- *Coordination with EPA Office of Enforcement and Compliance Assurance.* EPA, and in particular OECA, is a key partner in ENRD's environmental enforcement efforts, and this Strategy builds upon decades of collaboration. OECA and ENRD have shared responsibility for enforcing our nation's environmental laws, holding polluters accountable, and ensuring that responsible parties timely comply with cleanup obligations, and the two offices are jointly responsible for incorporating environmental justice considerations into all aspects of their work. ENRD will continue to collaborate closely with OECA to effectuate our shared

objective of ensuring timely and effective remedies for environmental violations and to address contamination that harms overburdened and underserved communities.

- *Coordination with other federal agencies.* In addition to EPA, other federal agencies have regulatory, enforcement, cleanup, or restoration authorities that can contribute to providing timely and effective remedies for environmental violations, contamination, and injury to natural resources. These agencies can play an important role in achieving the Administration's objective of reducing environmental and public health burdens on impacted communities. In addition to EPA, those agencies include the Department of Transportation's Pipeline and Hazardous Materials Safety Administration and Federal Aviation Administration; Department of Housing and Urban Development; U.S. Coast Guard; U.S. Army Corps of Engineers; Department of the Interior; Department of Agriculture; Department of Defense; Department of Energy; Department of Commerce; Department of Labor's Occupational Safety and Health Administration and Mine Safety and Health Administration; Food and Drug Administration; and Consumer Products Safety Commission. DOJ components are encouraged to work with their agency partners to develop procedures for improving information sharing, enhancing investigative capabilities, and coordinating on potential environmental justice enforcement actions. In addition, when counseling federal agencies that face allegations of environmental violations or cleanup obligations that may impact overburdened or underserved communities, DOJ components have a responsibility to advance environmental justice and timely remedies, and should work with those agencies to secure consideration of and adherence to Executive Order 14008, 86 Fed. Reg. 7619 (2021), Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629 (1994) and Executive Order 12088, "Federal Compliance with Pollution Control Standards," 43 Fed. Reg. 47707 (1978).

PRINCIPLE: We must make strategic use of all available legal tools to address environmental justice concerns.

The Department must consider and make effective and appropriate use of all enforcement authorities and tools that might remedy environmental violations and contamination, including tools outside of the traditional environmental statutes. These tools may include enforcement actions under the environmental protection laws, but also actions under the civil rights laws, worker safety and consumer protection statutes, and the False Claims Act. We must also consider appropriate settlement tools such as Supplemental Environmental Projects.[2] Department attorneys, whether handling civil or criminal cases, must coordinate and collaborate with each other and with agency partners to employ those authorities and resources that are most likely to achieve meaningful results for impacted communities. Collaboration with agency and community partners and effective use of available data resources can help the Department maximize its environmental justice impact. To ensure that the Department is enforcing most effectively, we will take the following steps:

- *Pursuit of timely and effective remedies in enforcement matters.* In all enforcement matters pursued under this Strategy, Department attorneys should consider the operative facts and the

[2] The Department is issuing an Interim Final Rule that, subject to new limitations set forth in a separate memorandum from the Attorney General, will restore the Department's ability to use Supplemental Environmental Projects ("SEPs") in appropriate circumstances as part of settlements with defendants who have violated federal environmental laws. *See* Memorandum from the Attorney General, Guidelines for Settlement Payments to Non Governmental Third Parties (May 5, 2022); *see also* 2015 Update to the 1998 U.S. EPA Supplemental Environmental Projects Policy (March 10, 2015).

full range of remedies available under applicable law. These include remedies that provide effective relief for the impacted community and individual victims, remedies that will penalize and deter violations (including civil and criminal fines and penalties, and incarceration), and remedies that will stop ongoing violations, secure cleanup, and ensure future compliance. In appropriate cases, these remedies can include preliminary or interim relief to prevent or minimize exposure to harmful pollution while permanent remedies are being considered, as well as permanent long-term remedies whose work schedule is phased so that communities that have borne the greatest impacts of the violations or pollution receive relief prior to communities that have borne lesser impacts.[3] In all enforcement actions taken under this Strategy, the full range of remedies considered must also include measures to reduce or offset the environmental harms that have resulted from past and ongoing violations (often referred to as "mitigation"). These may entail measures that, for example, restore or replace damaged wetlands or other impacted areas, rehabilitate degraded rivers and streams, retrofit or replace school buses or other vehicles with less polluting engines, or require changes at an industrial facility to reduce emissions below legal limits to offset harms caused by past or ongoing violations. In addition, appropriately limited Supplemental Environmental Projects in civil enforcement cases—environmentally beneficial projects that are not required by law but that a defendant agrees to undertake as part of the settlement of an enforcement action—can secure significant environmental and public health benefits for impacted communities. Relatedly, in appropriate criminal cases, community service payments can be used to mitigate and redress harms to the public, the environment, and natural resources that do not fit squarely within the bounds of restitution. Such remedies must be used in accordance with applicable Department and agency guidance.

- *Use of Title VI and other civil rights authorities.* ENRD and the Civil Rights Division (CRT) should maximize any effective synergies between the enforcement of environmental and civil rights laws to provide timely and effective remedies for environmental violations and contamination, and injury to natural resources. This will include identifying opportunities for coordinating investigative resources, sharing evidence, identifying potential exposures and violations, and identifying possible remedies. ENRD and CRT should continue to expand on their engagement with other federal agencies in this effort, such as EPA's External Civil Rights Compliance Office and the U.S. Departments of Transportation, Housing and Urban Development, and Health and Human Services. Specific to Title VI of the Civil Rights Act of 1964, CRT should consider using its authority under Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws (November 2, 1980), to ensure Title VI is consistently and effectively enforced throughout the federal government in a manner that will advance environmental justice, including by identifying and addressing race and national origin discrimination in programs and activities receiving federal financial assistance. For instance, in consultation with EPA and other federal agencies as appropriate, CRT shall consider issuing a memorandum under Executive Order 12250 that distinguishes compliance with civil rights laws from compliance with environmental laws, reiterates the obligation to comply with both, and engages relevant federal agencies in clarifying this for their recipients.

- *Consideration of Civil Division enforcement.* ENRD and the Civil Division should consider whether Civil Division (and related agency) enforcement tools can be employed to address

[3] In August 2021, EPA released a streamlined model Remedial Design/Remedial Action Statement of Work for use under the Comprehensive Environmental Response, Compensation, and Liability Act. It includes new provisions for settling parties who will be performing a cleanup to reduce the impacts on communities associated with implementation of the remedy (such as dust, traffic and noise).

adverse environmental and public health burdens on impacted communities. In coordination with the relevant agencies, this may include, for example, enforcement to address health and safety threats to impacted communities under statutes such as the Occupational Safety and Health Act, the Consumer Product Safety Act, and the Federal Food, Drug, and Cosmetic Act, and other provisions of Titles 15, 18, and 49 of the United States Code. It may also include pursuing violations of material environmental or public health-related requirements that are included in federal grants or contracts using the False Claims Act (FCA) or other Civil Division tools. The FCA, in particular, may allow the Civil Division and USAOs to use civil investigative tools to investigate potential violations of material public health-related grant or contract conditions pertaining to impacted communities, allowing the Department to share the investigative burden otherwise falling solely on the administrative agencies. ENRD could work with federal agencies at the beginning of grant and contracting processes to ensure that accompanying documentation expressly reflects, as appropriate, that compliance with environmental or public health-related obligations are material to the eligibility, award, and payment of claims under the contract or grant. The FCA also provides for treble damages, which—in the case of large grants for which materially false statements about compliance with environmental or public health-related conditions have been made—may provide significantly greater deterrence than penalties under the environmental statutes alone.

- *Development of trainings and other environmental justice materials.* ENRD and other components should develop more detailed implementation instructions and resource materials to facilitate implementation of this Strategy. In addition, the Office of Environmental Justice, with the assistance of the Steering Committee, will work with CRT, EOUSA (including their Office of Legal Education's National Advocacy Center), other parts of ENRD, and other components to assess existing training and reference materials and courses and identify training needs relating to environmental justice enforcement issues.

PRINCIPLE: We must ensure meaningful engagement with impacted communities.

Community engagement recognizes that communities should have a say in the government decisions that affect them. Furthermore, such engagement informs the Department and agency partners about violations and possible sources of evidence, as well as about harms to communities and individual victims and potential remedies. It aids Department and agency efforts to identify areas of significant environmental injustice that are of greatest concern to impacted communities. It also helps ensure the public is familiar with federal environmental laws, enforcement processes, the roles that federal, state, Tribal, territorial, and local government agencies play, the available remedies to address environmental harms, and how to report concerns about polluting activities or potential violations of law. To that end, the Department will take the following steps:

- *Increased outreach and listening sessions.* Consistent with the principles of this Strategy and the Department's implementation of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 Fed. Reg. 7009 (2021), USAOs and other Department components, with the support of the Office of Environmental Justice within ENRD, should, when appropriate, participate with agency partners in conducting general outreach to communities regarding environmental justice concerns. This includes participating in local, regional, or national listening sessions and other outreach on these issues.

- *Development of case-specific community outreach plans:* In each case initiated under this Strategy, the attorneys handling the case shall develop and implement a case-specific

community outreach plan that describes the timing and appropriate steps to take, if any, given the stage and circumstances of the case. These plans should be developed in collaboration with the investigative or referring agency where feasible. USAOs that have community outreach specialists are encouraged to make those specialists available to assist. For cases involving or affecting Tribes, Department attorneys should consider seeking assistance from the relevant USAO Tribal Liaison, designated experts in ENRD, and the Office of Tribal Justice. These outreach efforts must use communication tools that take into account language-access needs, relevant cultural practices, and what media would be most effective at reaching the particular community. No one form of community engagement will fit all situations; it is important to find ones that work.

- *Increased coordination with the Community Relations Service*: DOJ Components should also consider whether assistance from the Department's Community Relations Service (CRS) is appropriate. CRS assists communities in resolving tensions or conflicts related to alleged discriminatory practices based on race, color, or national origin. CRS also supports communities working to prevent or respond to hate incidents or hate crimes related to race, color, national origin, gender, gender identity, sexual orientation, religious, or disability status. CRS has a wealth of valuable expertise and experience regarding community engagement, mediation, and facilitated dialogue and within its jurisdictional areas can help community groups participate meaningfully in environmental decision-making that may affect them.

PRINCIPLE: We must promote transparency regarding environmental justice enforcement efforts and their results.

Communities with environmental justice concerns should be able to easily access information about filed and concluded enforcement actions and the benefits achieved as a result of the Department's actions and this Strategy. Information should be provided in culturally and language-appropriate ways and through media likely to reach communities with environmental justice concerns. Though enforcement work often warrants, and sometimes requires, elements of confidentiality, the Department can honor those interests and legal obligations while establishing a culture of transparency in this work. To hold ourselves accountable, the Department should take the following steps:

- *Development of performance standards.* We must regularly assess the effectiveness of actions taken pursuant to this Strategy and make adjustments accordingly. The DOJ Environmental Justice Enforcement Steering Committee shall develop performance standards, in consultation with our agency partners, and shall develop a process for tracking, reviewing, and evaluating progress under this Strategy. This process shall include the evaluation of the effectiveness of the Strategy in achieving timely and effective remedies and in reducing environmental and public heath burdens in overburdened and underserved communities. The Committee shall report publicly on these results in the Department's annual environmental justice report.

- *Tracking Progress.* The Office of Environmental Justice within ENRD, through the DOJ Environmental Justice Enforcement Steering Committee, is directed to develop a plan for increased transparency regarding work undertaken pursuant to this Strategy. This should include mechanisms and protocols for communicating about cases brought, judgments or settlements achieved, and remedies secured under the Strategy, as well as providing access to other appropriate information about filed and concluded enforcement actions.

- *Updating the Strategy.* The Office of Environmental Justice within ENRD, with the assistance of the Steering Committee, will also develop a process for stakeholder engagement, and solicitation of public comment and recommendations on the Strategy and its implementation. Within 90 days following the conclusion of the first year of operating under the Strategy, the office, in consultation with the Steering Committee, will submit a report to the Deputy Attorney General evaluating implementation of the Strategy and recommending adjustments to the Strategy, if appropriate.

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The Department's commitment to seeking equal justice under the law must include a commitment to reducing disproportionate adverse public health and environmental burdens borne by underserved communities, including communities of color, low-income communities, and Tribal and indigenous communities. This work is needed to enable people across the country to live in healthy, thriving communities, and to confirm that justice under the law is justice for all. Enforcement cannot redress all these harms, but can and should play its important part.

Thank you for your continued work to achieve these goals.