

DEPARTMENT OF JUSTICE GUIDANCE CONCERNING ENVIRONMENTAL JUSTICE

Authority:	Executive Order No. 12898 (59 Fed. Reg. 7629 (Feb. 16, 1994))	
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I. INTRODUCTION

In fulfillment of President Clinton's 1994 Executive Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* ("Executive Order"), Attorney General Janet Reno in 1995 issued an Environmental Justice Strategy ("Strategy") to promote enforcement of civil rights, health, and environmental statutes, and ensure greater public participation in decisions affecting human health and the environment. Concurrently, Attorney General Reno issued the Department of Justice Guidance Concerning Environmental Justice ("Guidance") to assist Department employees in carrying out their obligations under the Strategy and Executive Order. This revised Guidance provides a framework for coordination on environmental justice, procedures for identifying environmental justice issues, and illustrative examples.

As a result of the public's concern regarding the quality of the physical environment, the Federal and state governments have enacted legislation to safeguard the environment and protect the health and safety of the public. Through government enforcement of those laws, the people of the United States have made considerable progress toward the goal of a clean, safe, and healthy environment for all Americans.

Nonetheless, there has long been an awareness that the burdens of a polluted environment are borne disproportionately by members of minority and low-income communities. Studies have found a strong correlation between income or racial demographics and the location of environmental hazards. In the wake of these studies, a growing number of citizens began to examine the causes and effects of this distribution of environmental burdens and to advocate policies that will either cease or reduce such environmental hazards, if possible, or distribute such burdens more fairly. That movement came to be identified by the term "environmental justice." In the course of the public debate regarding the cause or causes of this disproportionate burden, it became clear that there is a perception in affected communities that Federal agencies may have contributed to prolonging the disparities by underenforcing laws in some communities, or by failing to take other remedial steps. The Department of Justice is committed to addressing these concerns.

II. EXECUTIVE ORDER NO. 12898 AND MEMORANDUM OF UNDERSTANDING ON ENVIRONMENTAL JUSTICE

President Clinton signed Executive Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, on February 11, 1994. 59 Fed. Reg. 7629 (Feb. 16, 1994). The Executive Order is available at <http://www.justice.gov/ej/resources.html>.

President Clinton explained that Federal agencies have the responsibility to promote “nondiscrimination in Federal programs substantially affecting human health and the environment.” Accordingly, agencies must implement actions to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations and on American Indians, Alaska Natives, and Native Hawaiians. *See* Executive Order No. 12898, §§ 1-101, 6-606, 59 Fed. Reg. at 7629, 7632.

Executive Order No. 12898 does not create a new legal remedy. The Order directs Federal agencies to establish procedures and take actions that make achieving environmental justice part of their basic mission.

In a Memorandum issued contemporaneously with the Order, the President “underscore[d] certain provisions of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment.” The Memorandum offers the National Environmental Policy Act (NEPA) and Title VI of the Civil Rights Act of 1964 as examples of existing laws that can be used to address environmental justice issues. The Memorandum further directs agencies to take “appropriate and necessary steps to ensure” that existing laws are implemented to redress disproportionate environmental harms.

Consistent with the Executive Order, the Department of Justice will consider how provisions of the Nation’s existing environmental, civil rights, civil, and criminal laws may be used to reduce environmental contamination in all communities by ensuring that those communities most at risk of environmental harms are protected by enforcement of these laws and by applying these laws to diminish disproportionate burdens. The Department’s mission continues to be guided by a commitment to provide equal protection of the laws to all citizens.

In August 2011, the Department, along with 16 other Federal agencies, signed an interagency Memorandum of Understanding on Environmental Justice and Executive Order 12898 (“MOU”). The MOU is available at: <http://epa.gov/compliance/ej/resources/publications/interagency/ej-mou-2011-08.pdf>.

The MOU builds upon the foundation laid by Executive Order 12898 and embodies the government’s renewed commitment to environmental justice. The Executive Order directed the Department of Justice, as well as all other designated agencies, to develop an agency-wide environmental justice strategy. The MOU specifically requires each agency to publish its environmental justice strategy, to ensure that there exists an opportunity for public input on those

strategies, and to publish annual implementation progress reports. The MOU also promotes interagency collaboration and public access to information about agency work on environmental justice.

III. DEPARTMENT GOALS

The Department is committed to the following goals for achieving environmental justice:

- A.** Protect environmental quality and human health in all communities;
- B.** Use environmental, civil rights, criminal, and civil laws to achieve fair environmental protection;
- C.** Promote and protect community members' rights to participate meaningfully in environmental decision-making that may affect them;
- D.** Analyze data that will assist the Department in law enforcement, mediation, and counseling efforts involving environmental justice matters; and
- E.** Promote full and fair enforcement of the laws, increase opportunity for access to environmental benefits, and minimize activities that result in a disproportionate distribution of environmental burdens.

IV. IMPLEMENTATION

A. COORDINATION

Coordination among and within the relevant Department components is a fundamental aspect of successfully implementing the Executive Order. Coordination allows for an exchange of legal expertise and knowledge of varied methods of problem solving and provides an internal forum for consultation. The Office of the Associate Attorney General will be responsible for coordinating the Department's handling of environmental justice matters.

The Office of the Associate Attorney General shall appoint a Director of Environmental Justice who will chair the Department's Environmental Justice Working Group ("Working Group"). The Working Group shall be comprised of the following Divisions, Bureaus, and Offices that have designated persons responsible for coordinating environmental justice litigation or matters within their respective components: the Environment and Natural Resources, Civil Rights, and Civil Divisions; the Federal Bureau of Investigation; the Federal Bureau of Prisons; the Community Relations Service; the Access to Justice Initiative; the Office of Legal Policy; the Office of Tribal Justice; and the United States Attorneys' Offices represented by one or more members from the Attorney General's Advisory Committee, Environmental Issues Working Group, and/or Native American Issues Subcommittee, and/or other U.S. Attorney

designee as appointed by the Executive Office for the United States Attorneys. All designated coordinators, on behalf of the component head, will:

1. Consult and assist Department attorneys and other personnel in identifying environmental justice matters;
2. Monitor the docket to ensure full compliance with the Executive Order;
3. Brief principals and ensure that they are informed of all significant matters and approve of all significant policy documents distributed within the Department on environmental justice;
4. Coordinate with other Department of Justice components where appropriate to ensure that the Department maintains consistent positions, including litigation positions, whether the Department is enforcing or defending laws or Federal actions; and
5. Submit annual reports and attend periodic coordination meetings chaired by the Director of Environmental Justice in the Office of the Associate Attorney General.

B. RESPONDING TO INQUIRIES

The Department, through the Office of the Associate Attorney General or the appropriate component(s), will respond to inquiries concerning environmental justice, Executive Order No. 12898, and this Guidance. Anyone who wishes to consult with Department coordinators on these topics should transmit a query via e-mail to the following address: ejstrategy@usdoj.gov.

Inquiries also may be submitted by mail to the following address:

Office of the Associate Attorney General
Department of Justice, Main Justice Bldg.
Attention: Director of Environmental Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

C. IDENTIFICATION OF ENVIRONMENTAL JUSTICE MATTERS

For purposes of the Justice Department, an “environmental justice” matter is any civil or criminal matter where the conduct or action at issue may involve a disproportionate and adverse environmental or human health effect on an identifiable low-income, minority, tribal, or indigenous population or community in the United States. The term “indigenous population or community” encompasses American Indians, Alaska Natives, and Native Hawaiians.

The ultimate determination whether a particular matter raises an environmental justice issue will depend on an evaluation of the totality of the circumstances. However, there are a number of factors that should be considered in determining whether any individual situation raises such an issue:

1. FACTORS TO BE CONSIDERED

- a. Whether individuals, certain neighborhoods, or tribal or indigenous populations suffer disproportionately adverse health or environmental effects from pollution or other environmental hazards;
- b. Whether individuals, certain neighborhoods, or tribal or indigenous populations suffer disproportionate risks or exposure to environmental hazards, or suffer disproportionately from the effects of past underenforcement of Federal or state health or environmental laws;
- c. Whether individuals, certain neighborhoods, or tribal or indigenous populations have had an equal opportunity for meaningful involvement, as provided by law, in governmental decision-making relating to the distribution of environmental benefits or burdens. Such decision-making might involve permit processing and compliance activities.

While it is important to avoid overly narrow conceptions of possible environmental justice situations, the mere presence of environmental hazards in a particular community does not in and of itself mean that an environmental justice problem is present or, if one is present, that the problem is addressable through enforcement or application of existing laws. Additional factors must be considered, such as the accumulation of a number of environmental hazards in an affected area because of the lack of public participation by the community, lack of adequate protection under the laws designed to protect health and the environment, or unusual vulnerability of the community to such hazards.

Thus, each environmental justice matter must be assessed on a case-by-case basis. Listed below are examples of fact situations that have presented environmental justice issues:

2. EXAMPLES OF ENVIRONMENTAL JUSTICE MATTERS

Examples of environmental justice matters are presented here. Additional examples can be found in the Department's *Implementation Progress Report on Environmental Justice*, which is published annually on the Department of Justice's Environmental Justice website at <http://www.justice.gov/ej/resources.html>.

a. Environment and Natural Resources Division (ENRD) and United States Attorneys' Offices (USAOs)

1) **Contaminated drinking water.**

The Department settled a Safe Drinking Water Act and Clean Water Act case that provided relief to the residents of a small town with a predominately minority and low-income population. Although the town was supposed to provide water and sewer service for approximately 2,500 residential, commercial, and industrial entities in the surrounding area, the town was chronically out of compliance with the Safe Drinking Water Act and the Clean Water Act. The utilities were in a deplorable state of repair and the town was unable to take steps necessary to bring its utilities into compliance. The condition of the utilities posed a significant risk to public health. As part of the settlement, a nearby city agreed to assume control of the sewer and drinking water utilities and to perform work necessary to bring the utilities into compliance.

In another case, the Department successfully prosecuted an individual under the Safe Drinking Water Act for failing to record residual chlorine values and turbidity levels of the surface drinking water supply serving low-income residents of an Indian reservation and a town, and for making false reports to the state environmental agency. The defendant was responsible for injecting chlorine into the drinking water to maintain a drinkable water supply based upon the residual chlorine values.

2) **Municipal wastewater and stormwater overflows.**

During negotiations to resolve violations of the Clean Water Act in connection with municipal wastewater and stormwater collection and treatment systems in several major cities, the Department and the Environmental Protection Agency conducted outreach to low-income and minority communities regarding the potential remedies to address the violations. Based in part on feedback from these communities, settlements in these cases required cities to prioritize injunctive relief at specific areas with environmental justice concerns that had historically experienced a large number of sewer overflows. In addition, some of these settlements also required cities to expend funds on supplemental environmental projects to fix defective or leaking private laterals (the connection

from a home to the city's sewer system) in low-income communities served by the city's sewer system.

- 3) **Discrimination and participation.** Plaintiffs from a predominantly minority community filed suit against the Department of Transportation alleging both Title VI and National Environmental Policy Act violations. The government's activities involved the development of an Environmental Impact Statement for placement of a highway through a low-income, minority community. Following discussions with plaintiffs' counsel, this suit settled on terms acceptable to both plaintiffs and the United States.
- 4) **Protection of tribal lands.** The Department successfully prosecuted a Federal trespass action against irrigation districts that had wrongfully discharged their wastewaters onto tribal trust lands.
- 5) **Polluted air.** A refinery surrounded by two residential communities with significant minority populations operated two open top tanks (each the size of a football field) filled with oily wastewater without installing the proper emission controls. Years before the two tanks went into operation the companies knew that emission control equipment was required. These communities were exposed to benzene and other emissions from the plant over a number of years. Adult and child residents complained about odor and acute adverse health effects such as difficulty breathing, coughing, sore throats, and eye irritation. After a jury convicted the defendants of two Clean Air Act violations, they were sentenced to pay the maximum fine.
- 6) **Polluted land and groundwater.** A dry cleaning operation disposed of perchloroethylene ("PCE") resulting in a PCE-contaminated groundwater plume that extended under 298 residential, 8 condominium, and 179 commercial properties in a low-income community. The associated PCE vapors caused residential indoor air contamination. The Environmental Protection Agency performed a time-critical removal action to address the contamination. The Department filed a successful cost recovery action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

7) **Natural resource damages.** Federal, state, and tribal natural resource trustees determined that hazardous substances were released for decades by three industries located adjacent to an Indian reservation. These hazardous substances adversely impacted the surrounding environment and contaminated the tribal community, degrading natural resources used for traditional cultural practices. Settlement funds were spent on ecological restoration projects, including restoration or enhancement of wetlands, streambanks, native grasslands, bird nesting and roosting habitat, fish habitat and fish passage, and acquisition of unique habitat under threat of development. These projects benefit tribal cultural practices that depend on these restored natural resources. The tribe also received a portion of the CERCLA natural resource damages settlement to support traditional cultural practices, including an apprenticeship program to promote tribal language and traditional teachings, youth outdoor education programs and horticultural programs for medicine, healing, and nutrition.

8) **Beneficial Federal Transit Administration rail projects.** The Department worked with city and county transportation agencies to successfully defend a major rail transit project linking an outlying area with downtown in a large jurisdiction. In addition to easing severe traffic congestion and alleviating air pollution, the project will provide significant transit benefits to minority and disadvantaged communities located in the outlying area.

In another case, the Department collaborated extensively with a county metropolitan transportation authority to defend challenges to three public rail transit projects to expand the public transit rail network in the county. The projects will greatly expand light rail transit into the minority and low-income community while providing easier access to an airport and decreasing traffic congestion in and around communities throughout the area.

b. Civil Rights Division (CRT)

1) **Storm and sewage disposal systems.** Residents in a predominantly African American section of a city alleged that the city's storm sewer system did not provide adequate protection from flooding compared to storm and sewer

drainage systems in predominantly white parts of the city, in possible violation of the Fair Housing Act and Title VI of the Civil Rights Act of 1964.

- 2) **Siting a landfill.** A minority community filed a complaint with EPA, alleging that when a recipient of Federal funds decided to site a landfill adjacent to their community, such action violated Title VI of the Civil Rights Act. The Division provided technical assistance to EPA during its investigation pursuant to the Division's authority under Executive Order 12250.
- 3) **Climate adaptation and resiliency.** As state and local governments receive Federal funds to address the effects of climate change, those funded programs and activities must comply with the U.S. Constitution, Title VI of the Civil Rights Act of 1964, and all applicable antidiscrimination statutes. The Division's work to ensure consistent enforcement of Title VI includes working with other Federal agencies to ensure federally funded climate programs comply with the law.

c. Civil Division (CIV)

- 1) **Radiation exposure.** The Civil Division administers the Radiation Compensation Program, a program which compensates on-site participants, residents living downwind of radiation sources, and uranium-mine employees and their descendants for the burdens they have borne for the Nation as a result of nuclear tests and uranium mining. Many of the recipients of compensation are members of federally recognized Indian tribes.

d. Community Relations Service (CRS)

- 1) **Clean-up of Superfund site.** CRS has been involved in mediating disputes between the EPA, city managers, and residents of a minority community over the clean-up of a Superfund site.
- 2) **Hydraulic fracturing.** CRS's services were requested to help tribal community members identify immediate issues and concerns surrounding the challenges of oil and natural gas extraction activities, including the growing use of hydraulic fracturing.

D. RESPONDING TO ENVIRONMENTAL JUSTICE MATTERS

1. PROCEDURES FOR ATTORNEYS

Attorneys will take the following steps to identify and address environmental justice matters:

- a. Be alert to factors indicating a possible environmental justice issue as a case develops, and consider requesting additional information from the referring agency as needed when the agency referral or complaint does not, on its face, indicate that the case is one involving an environmental justice matter.
- b. Contact the designated environmental justice coordinator in the Division or in the United States Attorney's Office (or in the Executive Office for United States Attorneys) for further consultation on actions that can be taken when environmental justice concerns have been identified.
- c. Report environmental justice matters on your docket sheets when identified, which may occur when opening the case, during the pendency of the case, or when closing the case. The Department encourages all relevant components to maintain an appropriate system for tracking and assessing cases that raise environmental justice concerns. The systems should facilitate the identification and tracking of cases that may raise environmental justice concerns as early as possible.
- d. Consult with the referring agency and/or with your environmental justice coordinator if you have any questions or need more information concerning remedial or other actions to be taken.
- e. Consider using available databases to obtain relevant demographic data.
- f. Consider alternatives to litigation. Where resolution of a matter might be achieved without litigation, attorneys should consider alternative dispute resolution or remedial solutions intended to directly benefit affected communities.

In this regard, the Department of Justice's Community Relations Service plays an important role in resolving conflicts arising from perceived environmental discrimination. CRS is the only Department of Justice component specifically tasked to prevent and resolve community conflicts arising from actions, policies, and practices perceived to be discriminatory on the basis of race, color, or national origin. *See* 42 U.S.C. § 2000g-1. Attorneys may contact CRS to inquire about its services in resolving conflicts.

- g. Advise and counsel client agencies and state, local, and tribal governments. Department of Justice attorneys who work with agency clients during investigations or litigation, or in their capacity as legal advisers, should counsel agencies on environmental justice issues relevant to their respective agency programs and policies. The Department should also look for ways to assist state, local, and tribal governments in their efforts to achieve environmental justice.
- h. Attend educational and training programs provided by the Department on environmental justice. All Department employees are encouraged to take steps to ensure that the Department satisfies the directives contained in Executive Order No. 12898, the MOU, and this Guidance. To facilitate this process, the Department will conduct training programs and provide materials to Department attorneys and professional staff on the subject of environmental justice.

2. ADDITIONAL DEPARTMENT RESPONSES

- a. Legislative and regulatory review
Department attorneys and staff who review legislative and regulatory initiatives should evaluate such initiatives for their consistency with, and efficacy in enhancing, environmental justice.
- b. Title VI Program Evaluation
Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in all federally assisted programs. 42 U.S.C. § 2000d *et seq.* Most agencies that provide Federal assistance subject to Title VI have regulations implementing Title VI. *See, e.g.,* 28 C.F.R. §§ 42.101-.112 (governing Justice Department components' implementation of Title VI). These regulations apply not only to intentional discrimination, but also to policies and practices that have a discriminatory effect.

As part of the review mandated by the Executive Order, attorneys and staff reviewing agency efforts to comply with Title VI should evaluate the programs to eliminate policies and practices that may be neutral on their face but discriminatory in their effect. A more detailed review of the Title VI enforcement obligations of the Department of Justice is provided in the July 2013 Four Year Title VI Report: The Civil Rights Division's Efforts to Protect Against Race, Color, and National Origin Discrimination by Recipients of Federal Funds. The report can be found at http://www.justice.gov/crt/about/cor/4yr_report.pdf.

c. Amicus Curiae

To support the policy and goals of the Executive Order, the Department also may file amicus curiae briefs in cases that raise environmental justice issues. Where appropriate, attorneys should advise client agencies that the Department will consider recommendations to file amicus curiae briefs.

d. Investigations

Department employees responsible for investigations relating to civil and criminal enforcement should consider environmental justice issues consistent with this Guidance and the Department's Environmental Justice Strategy.

e. Protection for Federally Recognized Tribes

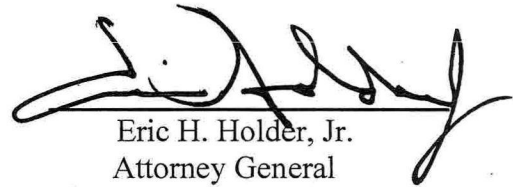
The Federal government has special responsibilities involving federally recognized Indian tribes. Department attorneys litigating environmental justice cases affecting such tribes will confront additional issues involving the relationship between the Department of Justice, the Department of the Interior, and tribal nations.

Environmental justice matters involving Indian issues should be referred to the appropriate section in the Environment and Natural Resources Division and to the Division's environmental justice coordinator so that these matters can be properly coordinated with the Office of Tribal Justice as necessary and with other appropriate components within the Department, and with the Department of the Interior.

V. JUDICIAL REVIEW AND ENFORCEMENT

This Guidance is intended only to improve the internal management of the Department of Justice. It shall not be deemed to create any right, benefit, or trust obligation, either substantive or procedural, enforceable by any person or entity in any court against the United States, its agencies, its officers, or any other person. Consequently, neither this Guidance nor the deliberative processes or products resulting from implementation of the Guidance shall be treated as establishing standards or criteria that constitute any basis for review of the actions of the Department of Justice or any other agency. The Department's compliance with this Guidance shall not be justiciable in any proceeding for judicial review of agency action.

Dec. 3, 2014
Date



Eric H. Holder, Jr.
Attorney General