

## U.S. Department of Justice and U.S. Environmental Protection Agency Launch Enhanced Environmental Justice Strategy

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Environmental justice is one of the hottest topics in the environmental world. The New Jersey Department of Environmental Protection (NJDEP) recently rolled out its long-awaited proposed environmental justice regulations,<sup>1</sup> and the U.S. Department of Justice (DOJ) and the U.S. Environmental Protection Agency (EPA) have now announced their joint allocation of agency resources to significantly bolster the federal government's environmental justice policy. Environmental justice is here to stay in New Jersey and under the Biden administration. Regulated entities must remain cognizant of these policy shifts and be proactive in preparing for their impacts on enforcement discretion, permit applications, and other aspects of agency oversight.

### The Joint DOJ/EPA Environmental Justice Policy

At a press hearing on May 5, DOJ and EPA announced their expanded environmental justice policy, including the Comprehensive Environmental Justice Strategy ("EJ Enforcement Strategy"). U.S. Attorney General Merrick Garland and EPA Administrator Michael Regan presented several agency actions designed to further promote environmental justice.<sup>2</sup> The enforcement prong of the policy will prioritize violations of environmental laws in underserved communities that have been historically marginalized and overburdened, also known as "Overburdened and Underserved Communities."

The new federal environmental justice policy has three components:

**First:** Issuance and implementation of the details of the EJ Enforcement Strategy. The EJ Enforcement Strategy was developed pursuant to Executive Order 14008, *Tackling the Climate Crisis at Home*

and *Abroad*, and is detailed in an [internal DOJ memorandum](#). As the memorandum explains, the EJ Enforcement Strategy is based on four principles that will guide DOJ enforcement discretion:

1. Prioritize cases that will reduce public health and environmental burdens to Overburdened and Underserved Communities
2. Make strategic use of all available legal tools to address environmental justice
3. Ensure meaningful engagement with impacted communities
4. Promote transparency on environmental justice enforcement and results

In many ways, these principles mirror the policy goals driving the NJDEP's environmental justice initiative. The focus is on avoiding and reducing impacts from environmental and public health harms and encouraging public engagement in communities with existing, significant environmental burdens.

**Second:** Establishment of the Office of Environmental Justice (OEJ) within the Environmental Natural Resources Division of DOJ.<sup>3</sup> OEJ will (a) convene a committee to ensure the EJ Enforcement Strategy is being implemented and (b) support environmental justice investigations. It will also be charged with developing guidance and providing leadership and recommendations on furthering DOJ's and EPA's overall environmental justice policies.<sup>4</sup>

**Third:** *Issuance of an Interim Final Rule* restoring the viability of supplemental environmental projects (SEPs) in DOJ settlements. The resurrection of SEPs is perhaps the most significant part of the new DOJ/EPA policy. Until the Trump administration, SEPs were long a popular tool in settling federal environmental

<sup>1</sup> For more information on NJDEP's environmental justice rule proposal, see Lowenstein's recent [Client Alert](#).

<sup>2</sup> <https://www.justice.gov/ag/page/file/1499236/download>.

<sup>3</sup> <https://www.justice.gov/ag/page/file/1499236/download>.

<sup>4</sup> <https://www.justice.gov/asg/page/file/1499286/download>, at p. 2.

enforcement matters. But in March 2020, through a series of administrative actions that started in 2017, DOJ officials were prohibited from entering into any settlement that included SEPs. The Interim Final Rule rescinds that prohibition. So long as the rule remains in place, regulated entities can negotiate SEPs in resolving alleged violations. This could be a positive development for impacted communities, as SEPs provide a concrete benefit by channeling money into actual environmental work,<sup>5</sup> as opposed to administrative penalties, which are often deposited directly into government coffers.

## Conclusion

Unlike the NJDEP's newly proposed regulations, the federal government's EJ Enforcement Strategy lacks precision. For instance, in implementing the strategy, it is unclear how DOJ and EPA will (a) define terms like "Overburdened and Underserved Communities" and "environmental and public health burdens"; (b)

measure a disproportionate impact; (c) determine which enforcement actions are most likely to reduce environmental burdens; and (d) encourage public participation. Under the EJ Enforcement Strategy, OEJ must work with EPA and other federal agencies to these open issues. For now, regulated entities with facilities in suspected Overburdened and Underserved Communities must be aware of this new enforcement paradigm and prepare for the likelihood that environmental justice will be a component of prospective enforcement actions. The best option is, of course, to avoid enforcement actions altogether.

For any questions on the federal environmental justice initiative or environmental justice in general, please contact the authors of this article.

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<sup>5</sup> <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>.

## Contacts

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