



Alerts

DOJ and EPA Announce Comprehensive Strategy to Hand Out Environmental Justice Nationwide

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Insights for Insurers

The grip of the "all of government" approach to sustainability continues to tighten. Via a [May 5, 2022 memorandum](#) from the Associate Attorney General of the United States, the Department of Justice (DOJ) and the U.S. Environmental Protection Agency (EPA) released a comprehensive strategy detailing how the agencies plan to secure "environmental justice" through a national environmental justice enforcement strategy. As we noted in a prior alert, federal government action in this area could signal a more expansive federal oversight of the insurance business than has been the case traditionally.

This plan comes approximately 15 months after President Biden [issued Executive Order No. 4008 Tackling the Climate Crisis at Home and Abroad](#), which 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[.]" This Strategy purports to provide 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."

The program appears to come right out of the government bureaucratic handbook. First, create a department. In this case, the Attorney General has announced that an Office of Environmental Justice will be created within the ENRD. The Office of Environmental Justice will be led by a long-time DOJ Senior Litigation Counselor, Cynthia Ferguson.

Second, fill the office with government bureaucrats.

"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 the Office of the Attorney General, the Office of the Deputy Attorney General as well as ENRD, the Civil Rights Division, the Civil Division, the Executive Office for U.S. Attorneys (EOUSA), the

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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."

"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."

Third, fund the program. In its 2023 budget, the Biden Administration requests \$1.4 million to create the Office of Environmental Justice and \$6.5 million to address climate change in environmental justice communities. It would not seem that many positive results could be expected from government actors with these modest sums. But this is likely just the beginning.

Fourth, develop protocols. In this case, protocols for assessing environmental justice impacts during investigations will be established.

"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 plan also calls for transparency regarding environmental enforcement efforts and their results.

Fifth, of course, will be enforcement and litigation.