

DEPARTMENT OF JUSTICE Environmental Justice Strategy

I. INTRODUCTION

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 Order instructs each Federal agency to "make achieving environmental justice part of its mission." Id. § 1-101. The Order also sets forth procedural and substantive requirements each agency must satisfy by specified dates. See id. § 1-103(b)-(f).

The Executive Order directs the Department of Justice, as well as all other agencies, to develop agency-wide environmental justice strategies as a core part of this obligation. Id. § 1-103(a)-(g). The Attorney General has determined that the Office of the Associate Attorney General shall be responsible for ensuring that the Department of Justice meets its obligations to develop and implement an environmental justice strategy. The Order requires that the Department of Justice's strategy address, "as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities" on minority and low-income communities, id. § 1-101, by promoting the equal enforcement of civil rights, health, and environmental statutes; by ensuring greater public participation in decisions affecting human health and the environment; by improving research and data collection involving human health and the environment; and, by identifying differential patterns of consumption of natural resources. Id. § 1-103(a)(1)-(4).

This environmental justice strategy is submitted in fulfillment of the Executive Order's directive.

II. THE DEPARTMENT OF JUSTICE'S STRATEGY AT A GLANCE

A. LAW ENFORCEMENT

The Department of Justice will:

- 1. Develop an enforcement strategy to help ensure that all communities and persons across this nation live in a safe and healthful environment and that law enforcement responds as fully as possible to the real risks to human health and the environment that they face. This effort will be carried out in conjunction with client agencies and will involve the filing of environmental, civil rights, and criminal cases by the Environment and Natural Resources, the Civil Rights, and the Civil Divisions, and the United States Attorneys' Offices.**
- 2. Promote the use of Title VI of the 1964 Civil Rights Act by continuing to review agency oversight of compliance and to cooperate with the Environmental Protection Agency's Office of Civil Rights in efforts to expedite investigations and enforcement of civil rights claims.**

B. MEDIATION, ADVICE, COUNSEL, AND OUTREACH

The Department of Justice will:

- 1. Mediate disputes related to environmental justice matters through the Community Relations Service. Where appropriate, the Department's litigating components and the United States Attorneys' Offices will develop mediated resolutions to environmental disputes.**
- 2. Advise client agencies of their obligations in light of the Executive Order.**
- 3. Counsel and assist state and local governments to coordinate their actions with those of the Federal government to further the goals of the Executive Order.**
- 4. Work with communities so that enforcement actions and other programs, activities, and policies respond as directly as possible to actual environmental risks and concerns.**

C. EDUCATION AND TRAINING

The Department will continue to provide Department-wide education and training on environmental justice issues, and has:

1. Drafted Attorney General Guidance on environmental justice.
2. Begun to produce an instructional environmental justice video.
3. Provided Department-wide briefings.

III. SPECIFIC COMPONENTS OF THE DEPARTMENT OF JUSTICE PLAN

A. OPERATING STRUCTURE

The Department of Justice has established an Environmental Justice Working Group comprised of attorneys and professional staff drawn from throughout the Department and coordinated by a Director of Environmental Justice in the Office of the Associate Attorney General.¹ The Director coordinates issues which arise in the ongoing work of Justice components responsible for cases that raise environmental justice issues. This coordination allows the Department to ensure consistency in policy, maximize limited resources, and better use expertise and experience.

Responsibility for virtually all substantive work remains in the Divisions, and Working Group members continue to answer to their Divisions. The Working Group members meet periodically to discuss environmental justice issues, including those which may involve more than one component.

In addition, the Working Group receives input from line attorneys within the Department's components. For example, the Environment and Natural Resources Division has organized a group of attorneys who meet regularly to discuss environmental justice issues. Similar

¹ The EJ Working Group consists of attorneys and other personnel from the Offices of the Deputy Attorney General and Associate Attorney General; the Civil Rights, Environment and Natural Resources, and Civil Divisions; the Offices of the United States Attorneys; the Federal Bureau of Investigation; the Federal Bureau of Prisons; and the Community Relations Service.

groups have been established in the Civil and Civil Rights Divisions and through the Executive Office of United States Attorneys. These component-based groups provide comments from line attorneys experienced in the day-to-day litigation of environmental claims, which are transmitted to the Working Group through each component's representatives.

In addition to staff, the environmental justice coordination in the Department includes a Senior Advisory Council consisting of component heads or their designees who have staff members on the Working Group.² The purpose of the Council is to advise the Director and to recommend Department policy and Department-wide initiatives on environmental justice to the Attorney General, the Deputy Attorney General, and the Associate Attorney General.

B. PROGRAMMATIC COMPONENTS

1. Guidance

The Department has issued *Department of Justice Guidance Concerning Environmental Justice* for Department personnel, which includes provisions for identifying, tracking, and addressing environmental justice matters.

2. Investigations

In addition, the Department will work with the Environmental Protection Agency and in conjunction with United States Attorneys to develop a list of environmental justice enforcement priorities and an enforcement strategy for addressing these priorities.

3. Referral Guidance

The Department will draft referral guidelines to assist client agencies in referring environmental justice cases.

4. Assess Cases and Available Legal Resources

² The components represented on the Senior Advisory Council are the Environment and Natural Resources, Civil Rights, and Civil Divisions; the Federal Bureau of Investigation; the Bureau of Prisons; the Executive Office of United States Attorneys through the Environmental Subcommittee of the Attorney General's Advisory Council; and the Community Relations Service. The Deputy Attorney General and the Associate Attorney General may choose to be members of the Senior Advisory Council.

The Department has been performing a review of cases, programs, and policies that may raise environmental justice issues. In addition, the Department is assessing the law applicable in cases that raise environmental justice concerns, including environmental, criminal, and civil rights statutes and constitutional provisions. This review will be ongoing.

5. **Litigation Activities**

The Department of Justice can assist in achieving environmental justice as it brings and defends cases that raise environmental justice matters.

The Department's litigating components and United States Attorneys' Offices are currently conducting investigations with other agencies that may result in cases raising environmental justice issues.

The Department will consider intervening in pending litigation or filing amicus curiae briefs to serve the interests of client agencies and the purposes of the Executive Order.

Where environmental justice questions arise in cases that the Department is defending, attorneys will consult their environmental justice coordinators³ who will be responsible for coordinating with other Divisions on appropriate action.

The Department will use the Community Relations Service to act as a liaison between government, regulated industry, community groups, and other affected interests, and to provide mediation and alternative dispute resolution services, where appropriate, to further the goals of the Executive Order.

6. **Federal Bureau of Investigation ("FBI")**

The FBI is committed to developing high-quality investigations of environmental crimes without regard to the socio-economic status of the victims or perpetrators. Because the Bureau's resources are limited, the FBI will continue to develop Environmental Crimes Task Forces which combine the

³ Divisions, Bureaus, and Offices have appointed environmental justice coordinators who are responsible for coordinating environmental justice litigation activities within their respective components. Assistant Attorneys General have appointed additional coordinators within each section as deemed appropriate.

investigative resources of federal, state, and municipal governments and target the most significant threats to our nation's health and natural resources, which are:

- a. Knowing Endangerment
Any individual or business that knowingly handles hazardous waste and pollutants in ways that put the health of their workers and/or neighbors at unreasonable risk is the FBI's highest priority.
- b. Repeat Offenders
Subjects who have a pattern of flagrant violations suggesting that they have made an economic decision that it is cheaper to pay the civil fines associated with violations of the law rather than make the improvements necessary to conform to the law will be targeted for criminal investigation.
- c. Federal Facilities/Public Lands
Investigations involving government agencies or environmental crimes occurring on government facilities or public lands are uniquely federal in nature and also will be a priority.
- d. Organized Crime
Organized crime elements have exerted control over the waste hauling and treatment industries in several areas of the country. Any criminal activity involving organized crime continues to be an FBI priority.
- e. Catastrophic Events
Avoidable environmental incidents that have a devastating impact on an entire community also receive FBI attention.

7. Education

The Department will provide general training and education about what environmental justice means, the contexts in which environmental justice problems may arise, and the ways in which recognition of potential environmental justice matters may affect the work of Justice Department employees and clients.

In particular, the Department will:

- a. Continue to distribute the Department's Guidance and the Executive Order to all relevant Department personnel;
- b. Use an instructional video produced for Department line attorneys and relevant units in the Bureau of Prisons and the Federal Bureau of Investigation. The video and the Department Guidance provide an overview of the scope of environmental justice and detailed procedures for identifying and reporting such issues;
- c. Continue to encourage employees in the Civil Rights Division, the Environment and Natural Resources Division, and Federal agencies that have responsibilities for environmental matters, such as the Environmental Protection Agency and the Department of Agriculture, to continue to consult with one another regarding environmental justice;
- d. Educate environmental attorneys about criminal, civil, and civil rights laws and educate civil, criminal, and civil rights attorneys about environmental laws to the extent necessary for them to identify and effectively address environmental justice problems;
- e. Continue to promote the use of an environmental justice e-mail "hotline" which will enable line attorneys and other Department staff to seek information and guidance on environmental justice issues;
- f. Plan joint education and training actions, where appropriate, with state legal offices;
- g. Work with the Legal Education Institute and the Environmental Protection Agency to develop a Continuing Legal Education course on environmental justice; and
- h. Incorporate environmental justice into training programs for Honors Graduate attorneys.

8. Data Assessment

The Department will establish a central repository for assessment and docketing of cases raising environmental justice matters. In addition, the Department will investigate the

possibility of using publicly available computerized information systems.

9. Counsel and Advice

a. Within the Federal Government

Department of Justice attorneys will continue to counsel agencies, in conjunction with the agencies' general counsels' offices, on environmental justice concerns that may arise in the development and implementation of programs and policies.

In particular, the Department will coordinate with other agencies in evaluating agency enforcement of Title VI within their own statutory and regulatory frameworks. For example, the Department has detailed a senior Civil Rights Division attorney experienced in Title VI law to the EPA's Office of Civil Rights to work with EPA attorneys on developing Title VI enforcement cases in the environmental justice content.

b. Outside the Federal Government

The Department will assist state and local governments and federally recognized tribes in their efforts to achieve environmental justice. The Community Relations Service, in appropriate situations, will help facilitate a working relationship between parties involved in environmental justice issues, including regulated industry, tribal, state, and local decisionmakers, and minority or low-income communities.

10. Conference on Environmental Justice

The Department of Justice will co-sponsor an environmental justice conference in late April or May, 1995, for federal employees working on civil rights and environmental issues relating to environmental justice.

11. Promote Participation

Each relevant component of the Department will consider ways to promote participation by all segments of the community in decisionmaking processes that affect health and the environment. Approaches for promoting participation include developing an environmental justice internship for law students or college students, and publishing this Department strategy

document in Spanish. The Department will ensure that such efforts serve important and permissible governmental goals, consistent with applicable legal standards.

12. **Outreach**

On May 19, 1994, Department representatives met with approximately forty individuals with grassroots, business, legal, economic, and scientific interests in environmental justice. The group discussed the range of opportunities available to the Department for achieving compliance with the President's Executive Order. In addition, on February 8, 1995, Department representatives met with representatives from the Business Network for Environmental Justice to discuss the members' views and questions on environmental justice.

The Department will continue to work with the EPA and the White House to inform Congress about the details of the Executive Order and the actions of the Department of Justice to comply with it.

The Department recognizes that communications between the Federal government and communities must be simple and direct. The Department will design its communication efforts with the goal of maximizing community understanding of, and participation in, environmental justice matters.

The Department will work with EPA to develop a pilot program to promote communication between communities and federal officials about lawsuits filed in those communities.

13. **Federal Bureau of Prisons**

The Bureau is working to ensure that its activities are consistent with the President's mandate. For example, the Bureau has revised its siting procedures to include consideration of environmental justice in its environmental impact statements under NEPA.

14. **The Community Relations Service**

The Community Relations Service has designated environmental justice contacts in each of its Regions and has directed those coordinators to work with EPA and other federal agencies on environmental justice matters when appropriate.

15. **Office of Legal Counsel**

The Office of Legal Counsel will provide legal advice, as requested, to ensure that the Department's environmental justice actions are undertaken in a manner consistent with constitutional and statutory provisions. The Office of Legal Counsel also will provide drafting assistance to the Department should the Department seek additional legislative authorization to support its efforts to enhance environmental justice.

16. **Monitor Legislation**

The Department will continue to monitor proposed legislation for environmental justice implications.