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July 20, 2024

**BY EMAIL ONLY**

Cynthia M. Ferguson  
Director  
Office of Environmental Justice  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, DC 20044-7611  
[OEJ@usdoj.gov](mailto:OEJ@usdoj.gov)

Re: Public comments on Draft Environmental Justice Strategic Plan

Dear Director Ferguson,

The Conservation Law Center, joined by the organizations listed below, (collectively “Commenters”) submit these comments on DOJ’s draft environmental justice strategic plan. Commenters appreciate your office’s draft EJ strategic plan, its virtual outreach in May, and its willingness to accept public comments on this draft.

The Department of Justice is an independent federal agency whose mission is to uphold the rule of law, keep our country safe, and protect civil rights. These are incredibly broad responsibilities. DOJ’s strategic plan to advance environmental justice and tackle the climate crisis is only one part of its effort to protect civil rights. We recognize the magnitude of DOJ’s responsibilities and appreciate any focus on environmental justice.

Our comments are written from the perspective of community groups and residents of the heavily-industrialized northern portion of Lake County, Indiana. This portion of northwestern Indiana includes communities of color beset by decades of industrial air, water, and land pollution. These communities have seen DOJ enter into several consent decrees in recent years with major industries with little noticeable change in emissions, effluent, or compliance. These industries have overshadowed the municipalities for a century. Many local residents believe that these same industries may also control state and federal agencies established to protect their health and welfare. A strategic plan alone will do little to change the public’s perception or improve environmental justice. But it is a start and we appreciate the effort. In this spirit, we offer a few reflections and recommendations on the five questions asked by DOJ/OEJ.

***1. What additional goals and objectives should the Department consider in its Plan?***

The four goals and associated objectives identified in DOJ/OEJ's draft strategic plan are broad and ambitious. Satisfying any one of these goals is a tall order and, so, adding to this list is unnecessary.

Instead, in articulating these goals, OEJ should be more candid with the public about its limitations. For example, having a goal to "prioritize cases that will reduce public health and environmental harms" is illusory for most of the work of DOJ. Much of the caseload of the Environment and Natural Resources Division ("ENRD"), the Civil Division ("CIV"), and the U.S. Attorney's Offices ("USAO") is defensive with little opportunity to prioritize cases. The civil cases filed offensively by ENRD require a referral from a federal agency outside of DOJ which sets the priorities. Aside from the Civil Rights Division ("CRT") and ENRD's Environmental Crimes Section, both small offices with significant restrictions on their jurisdiction, DOJ has a very limited ability to establish priorities in its cases. This is not meant as a criticism or a recommendation that DOJ should be setting priorities, but rather an honest reflection of DOJ's structural limitations.

Moreover, several of the listed objectives seem like existing obligations or simply matters of good governance. "Pursuing the full range of remedies" should already be an objective in civil and criminal cases filed by DOJ, whether it involves communities with environmental justice concerns or not. And "expanding efforts to collaborate" with federal, state, local, Tribal, and territorial partners is at the core of [cooperative federalism](#), a long-standing goal of the agency.

If anything, these goals and their associated objectives should better focus on the underlying causes of environmental injustice: the imbalance of knowledge and power in local communities. DOJ cannot eliminate injustices through litigation alone. Well-financed commercial interests will continue to wield over-sized influence on communities of color, low-income communities, and Tribal communities, as well as municipalities desperate for anything that promises economic development. DOJ should help ensure that the public is accurately informed about the additional environmental burdens associated with promised economic developments and avoid secretive negotiations with private entities in enforcement and compliance assurance.

***2. How can the Department improve its outreach and engagement efforts with communities about environmental justice?***

Governmental agencies, including DOJ, have an obligation to inform the public of their activities. This should not involve 'spin' or justice-washing, but candid, factual information about activities and results. This has largely been the focus of DOJ's past engagement efforts. In the future, we recommend that DOJ better engage with the public as part of its casework. In doing so, we suggest looking for guidance in Executive Order 12988. Signed in 1996 and titled

“Civil Justice Reform,” it required the Department to notify the defendant in civil litigation before filing a complaint and to make a reasonable effort to negotiate a resolution. As a result, DOJ is required to negotiate with polluting industries prior to filing a civil action. These discussions can last for months and sometimes years before a complaint is filed with or without a proposed resolution.

The Department does not need an Executive Order to implement a similar policy obligation – to make a reasonable effort to engage with the communities that are subject to the pollution resulting from the environmental violation. With appropriate, narrow exceptions, DOJ should establish a policy that requires communication with local communities subject to disproportionately adverse human health and environmental impacts on minority and low-income populations at the same time it sends a pre-filing notice to the defendant. And the litigating attorney should be responsible for ensuring that the community is involved in the negotiations to the greatest extent practical.

Of course, communities are not as easy to reach as the target of an enforcement action. Communities are diverse and have differing abilities to understand and engage in enforcement actions. They may have different views on acceptable results. But informing the community and involving them to the greatest extent possible is necessary if DOJ is to overcome the impressions left by confidential communications with environmental violators. That impression is that community groups are a pariah to federal enforcement efforts, particularly when opposing any effort to intervene. In doing so, DOJ underscores the community’s lack of power that is at the core of environmental injustice. While local residents and community groups who must be exposed to environmental crime, pollution, and climate change may not be indispensable parties pursuant to Fed. R. Civ. Proc. Rule 19, they are indispensable for maintaining trust in our government and for identifying and reaching a just result that inures to the community’s benefit.

***3. What information and resources should the Department provide to communities to clarify its environmental justice efforts?***

The types of information and resources that communities need depend upon the community and the issue. To provide general information about the Department’s environmental justice efforts or to seek input on a particular enforcement matter, virtual meetings can provide timely information without any possibility that an individual or group will derail the meeting’s focus. The listening session we attended for the draft EJ strategic plan was somewhat disorganized in hearing from attendees, but this will be improved over time with experience.

More importantly, DOJ needs to have a point of contact to answer questions and provide information with respect to specific matters. In Northwest Indiana, this would include inquiries about the status of Consent Decree compliance and Supplemental Environmental Project completion – issues that have been raised regarding the 2023 Clean Air Act settlement with BP Products North America for which the community was told nothing. The EJ coordinator at the

U.S. Attorney's Office would be a likely candidate for such a role, but they are often a busy attorney with limited contacts in the community. We recommend that DOJ revisit the role of the EJ coordinator at each USAO to determine if there is someone else who can be more proactive in developing contacts in the community to provide information and resources and to answer questions.

**4. *What topics and considerations should the Department include for staff training on environmental justice?***

DOJ is the nation's largest law office. Lawyers are trained to work with other lawyers, not the public. In order to effectively communicate with the public, DOJ should include training on how to work with the public inclusively and respectfully. Such training might focus on the role of citizens and advocacy groups in improving environmental justice and not simply language access and plain English communications.

**5. *What organizations in your area should the Department add to its environmental justice listserv?***

Indiana Statewide Organizations

Conservation Law Center [mjzoelle@iu.edu; admin@conservationlawcenter.org]

Hoosier Environmental Council [PBrooks@hecweb.org]

Indiana League of Women Voters

Sierra Club Hoosier Chapter [robyn.skuya.boss@sierraclub.org]

Northwest Indiana Organizations

Gary Advocates for Responsible Development ("GARD") [GaryGARD219@gmail.com]

Green EC [olimpia.gutierrez@gmail.com]

Just Transition Northwest Indiana [ashley@jtnwi.org; susan@jtnwi.org]

Faith in Place [christine@faithinplace.org; jalisa@faithinplace.org]

Save the Dunes [harshini@savedunes.org]

Thank you for the opportunity to comment on DOJ's draft Environmental Justice Strategic Plan. Let us know if we can be of any assistance.

Sincerely,



Michael J. Zoeller  
Senior Staff Attorney

Cynthia M. Ferguson

July 20, 2024

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Organizations joining these comments:

Faith in Place

Gary Advocates for Responsible Development

Green EC

Just Transition Northwest Indiana

Hoosier Environmental Council

Save the Dunes