The U.S. Department of Justice (DOJ) recently announced its Environmental Justice (EJ) Enforcement Strategy, which not only provides a roadmap for the Justice Department’s civil and criminal enforcement, but also revives supplemental environmental projects (SEPs), a popular tool used in settling federal enforcement actions.

Created pursuant to Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, the Enforcement Strategy directs DOJ attorneys to: (1) prioritize cases that will reduce public health and environmental harms to overburdened and underserved communities; (2) use available tools to address EJ concerns; (3) engage with impacted communities; and (4) be transparent about EJ efforts.
Relatedly, the DOJ issued an Interim Final Rule that restores the use of SEPs – environmentally beneficial projects such as restoration work, public awareness campaigns, or pollution prevention efforts – that companies can volunteer to undertake as part of their settlements for alleged violations, often in exchange for lower penalties.

The Trump administration severely limited the use of SEPs, to the dismay of many in the regulated community who favored the projects both as a way of lowering their fines and to perform projects that benefit communities in which they conduct business. Indeed, experts favor SEPs as an effective way to provide tangible environmental and public health benefits to impacted communities and to speed up settlement negotiations.

SEPs will be implemented pursuant to 2022 SEP Guidelines, which understandably require a nexus between the project and the alleged federal law violation, but which also require the execution of any settlement before an admission or finding of liability in favor of the United States.

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