ASTSWMO Environmental Justice Plenary

Sonya Sasseville, Office of Resource Conservation & Recovery

Helena Healy, Office of Site Remediation Enforcement

August 23rd, 2022

Environmental Justice in RCRA Programs

Sonya Sasseville, Office of Resource Conservation & Recovery

August 23rd, 2022

ORCR EJ OVERVIEW

Our Work Through an Environmental Justice Lens

- Administration Priority
- Legal and Policy Framework

ORCR Initiatives

- Proactive and Meaningful Approaches
- EJ Action Plan

Partnering with States

- A Common Goal
- Financial Assistance

ENVIRONMENTAL JUSTICE AS A PRIORITY

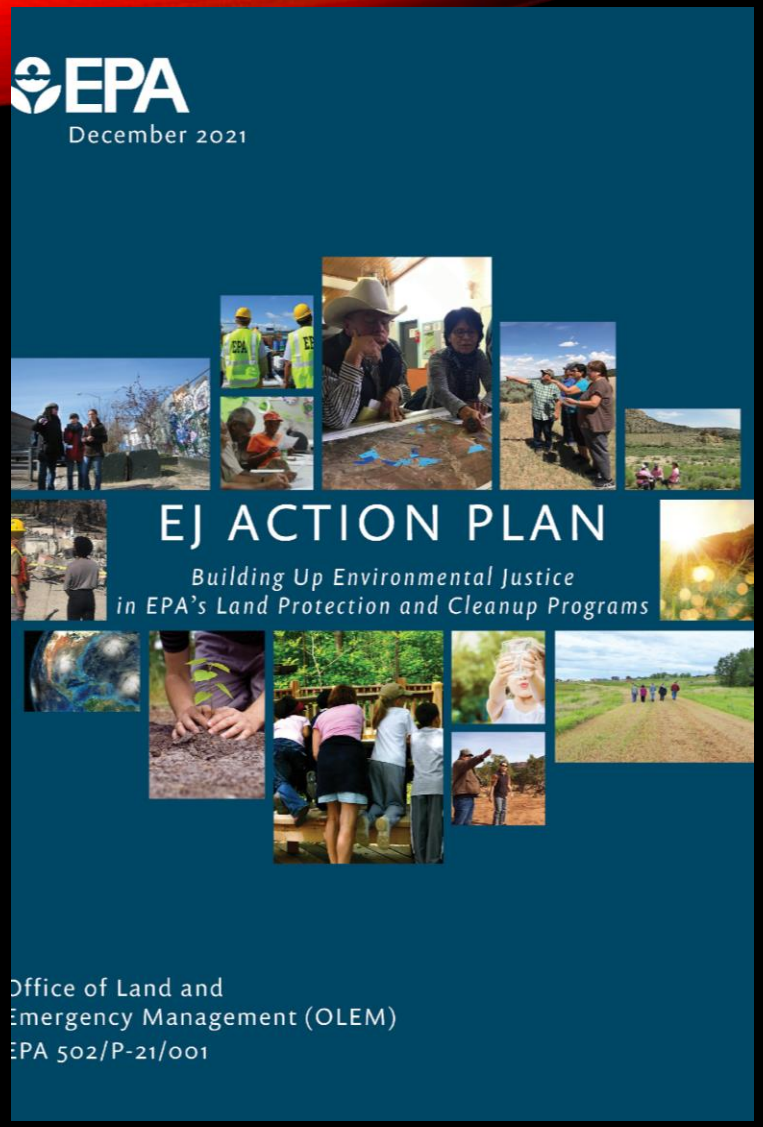
Environmental Justice (EJ) is the **fair treatment and meaningful involvement of all people** regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

LEGAL AND POLICY FRAMEWORK

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (incl. Justice 40 Initiative in Sec. 223)
- Title VI of the Civil Rights Act of 1964

PROACTIVE AND MEANINGFUL APPROACHES

- Public Participation Manual
- Public Participation Plans
- Translation Services
- Delivery Mechanisms
- Risk Assessments and Cumulative Risk Considerations
- Impact Analysis on Subsistence Practices



OLEM'S EJ ACTION PLAN

- There are four sections of the plan, each with projects related to one of four actions:
- Strengthening Compliance
- Incorporating EJ Considerations
- Improving Community Engagement
- Aligning with Justice 40

PROJECT 1.1 GOOD GOVERNANCE

- Develops a Good Governance process so that communities with concerns outside of RCRA's authority have the tools to connect, discuss, and follow up with appropriate parties
- Creates a referral directory of multi-media points of contacts, a "Best Practices" document, and a referral decision tree
- Supports a holistic understanding of community needs and cumulative risk to clarify future project planning efforts

PROJECT 2.1 RCRA TREATMENT STORAGE AND DISPOSAL FACILITIES (TSDFS) UNIVERSE ANALYSIS AND MAPPING

- Understanding facility location, demographic and environmental factors better supports fair treatment and meaningful involvement of appropriate stakeholders
- EPA will:
  - Map the universe of RCRA Corrective Action and permitted treatment, storage and disposal facilities (TSDFs)
  - Perform an initial nationwide EJ analysis of these facilities, using EJSCREEN indicators

PROJECT 2.3 NATIONAL RECYCLING STRATEGY AND BIPARTISAN INFRASTRUCTURE LAW GRANT PROGRAMS

SWIFR and RE&O grants will target the following underserved communities:

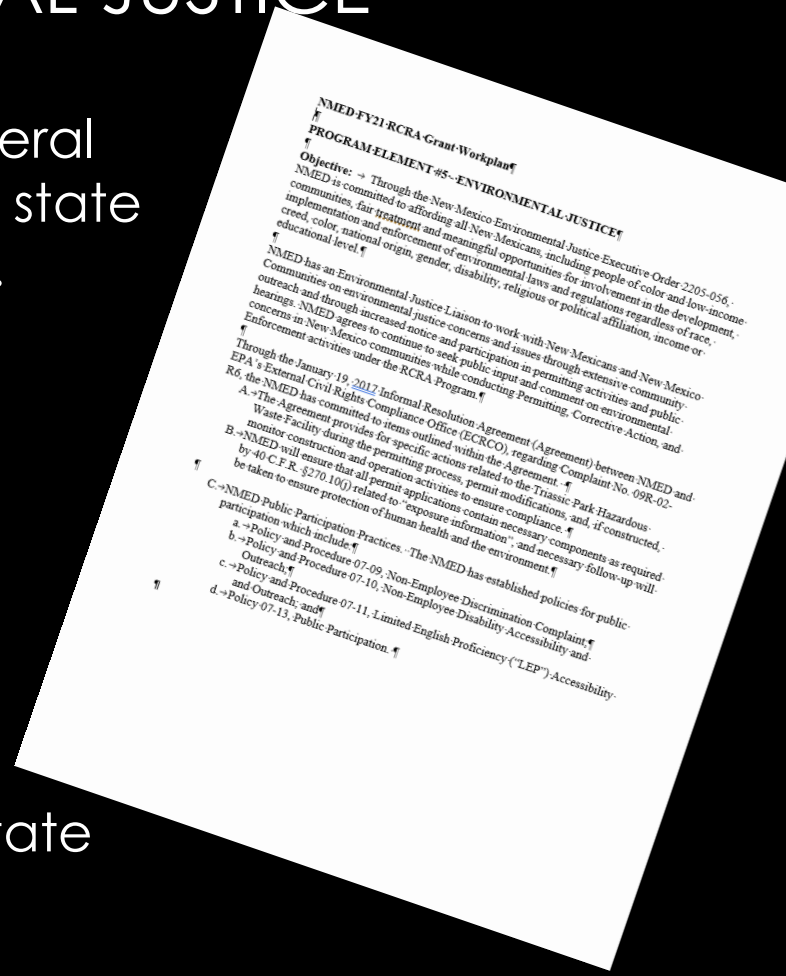
- Tribal governments;
- Eligible entities located in a U.S. territory;
- Eligible entities as found in EPA's EJ Screen located in one of these areas:
  - A low-income area at or above the 90th percentile;
  - Linguistically isolated households at or above the 90th percentile;
  - An area with unemployment at or above the 90th percentile; or
- Eligible entities located in a Census Defined Rural Community with limited access to post-consumer materials management markets.

PROJECT 3.2 RCRA COMMUNITY OF PRACTICE FOR ENVIRONMENTAL JUSTICE

- Establishes a forum to hold regular discussions regarding emerging EJ issues and analyze the state of the practice and its implementation
- Allows for exchange of ideas among HQ, Regions, and states on integrating environmental justice considerations into our respective efforts, including permitting and cleanups

PROJECT 4.2: EXPLORE THE POTENTIAL OF REVISING RCRA HAZARDOUS WASTE STATE GRANT TERMS AND CONDITIONS TO BETTER PRIORITIZE AND SUPPORT STATE ACTIVITIES TO ADDRESS ENVIRONMENTAL JUSTICE

- National workgroup consisting of regional staff from several different RCRA programmatic areas, including HQ staff, state program managers, EJ experts, and state grant experts.
- Charged with developing proposed grant terms & conditions, focusing on state actions and commitments that support EPA EJ priorities and goals.
- EPA's FY 22-26 Strategic Plan includes a Long-Term Performance Goal to require EJ commitments in state grant workplans.



NMED·FY21·RCRA·Grant·Workplan¶

PROGRAM·ELEMENT·#5:··ENVIRONMENTAL·JUSTICE¶

Objective: → Through the New·Mexico·Environmental·Justice·Executive·Order·2205-056, NMED is committed to affording all New·Mexicans, including people of color and low-income communities, fair treatment and meaningful opportunities for involvement in the development, implementation and enforcement of environmental laws and regulations regardless of race, creed, color, national origin, gender, disability, religious or political affiliation, income or educational level.¶

NMED has an Environmental Justice Liaison to work with New Mexicans and New Mexico Communities on environmental justice concerns and issues through extensive community outreach and through increased notice and participation in permitting activities and public hearings. NMED agrees to continue to seek public input and comment on environmental concerns in New Mexico communities while conducting Permitting, Corrective Action, and Enforcement activities under the RCRA Program.¶

Through the January 19, 2017 Informal Resolution Agreement (Agreement) between NMED and EPA's External Civil Rights Compliance Office (ECRCO), regarding Complaint No. 09R-02-R6, the NMED has committed to items outlined within the Agreement. ¶

A.→The Agreement provides for specific actions related to the Triassic Park Hazardous Waste Facility during the permitting process, permit modifications, and, if constructed, monitor construction and operation activities to ensure compliance.¶

B.→NMED will ensure that all permit applications contain necessary components as required by 40 C.F.R. §270.10(j) related to "exposure information", and necessary follow-up will be taken to ensure protection of human health and the environment.¶

C.→NMED Public Participation Practices. The NMED has established policies for public participation which include:¶

a.→Policy and Procedure 07-09, Non-Employee Discrimination Complaint,¶

b.→Policy and Procedure 07-10, Non-Employee Disability Accessibility and Outreach,¶

c.→Policy and Procedure 07-11, Limited English Proficiency ("LEP") Accessibility and Outreach; and¶

d.→Policy 07-13, Public Participation.¶

¶

PARTNERING WITH STATES

Working Together on Common Goals

- Accessibility of Technical Materials
- Community Inclusion in Decision-making
- Risk Communication Roles and Responsibilities
- Addressing additional considerations to ensure protective permits and cleanups for vulnerable communities

Financial Assistance

- Prioritization of Communities with EJ Concerns
- Civil rights laws create independent obligations for recipients of EPA financial assistance

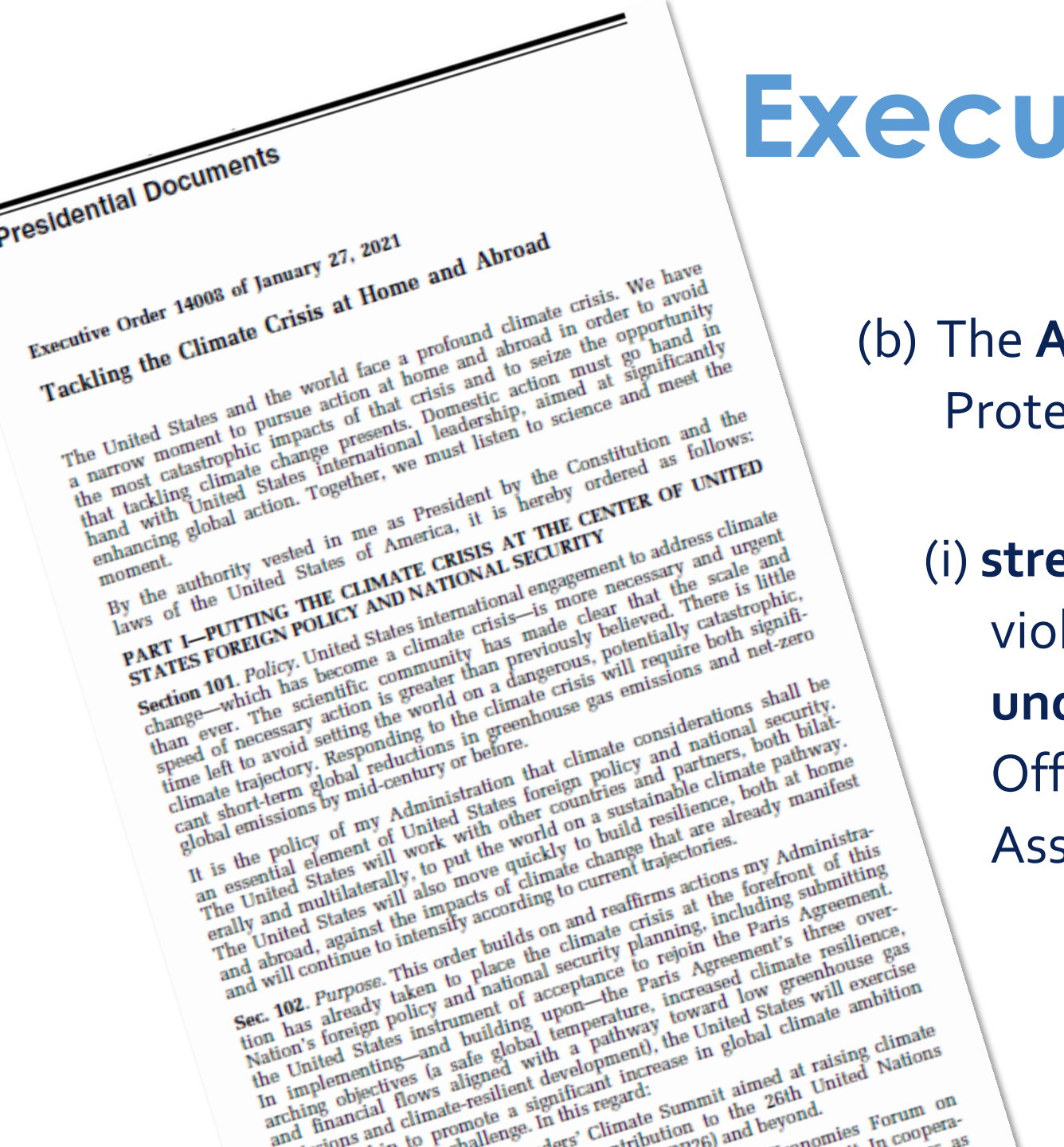
ORCR FINAL THOUGHTS

- Expectations are high for EPA as well as for our Co-regulators
- Working together we can make a difference in moving toward our shared Environmental Justice Goals
- States can participate as members of the Community of Practice and interaction with regional partners.
- Contact ORCR for more information at Sasseville.Sonya@epa.gov or
- King.Toshia@epa.gov

Enforcement
and
Environmental Justice

Helena Healy
Office of Site Remediation Enforcement
August 23, 2022

What is driving EPA's Environmental Justice Efforts?


Presidential Documents

Executive Order 14008 of January 27, 2021

Tackling the Climate Crisis at Home and Abroad

The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action. Together, we must listen to science and meet the moment.

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART I—PUTTING THE CLIMATE CRISIS AT THE CENTER OF UNITED STATES FOREIGN POLICY AND NATIONAL SECURITY

Section 101. *Policy*. United States international engagement to address climate change—which has become a climate crisis—is more necessary and urgent than ever. The scientific community has made clear that the scale and speed of necessary action is greater than previously believed. There is little time left to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory. Responding to the climate crisis will require both significant short-term global reductions in greenhouse gas emissions and net-zero global emissions by mid-century or before.

It is the policy of my Administration that climate considerations shall be an essential element of United States foreign policy and national security. The United States will work with other countries and partners, both bilaterally and multilaterally, to put the world on a sustainable climate pathway. The United States will also move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories.

Sec. 102. *Purpose*. This order builds on and reaffirms actions my Administration has already taken to place the climate crisis at the forefront of this Nation's foreign policy and national security planning, including submitting the United States instrument of acceptance to rejoin the Paris Agreement. In implementing—and building upon—the Paris Agreement's three overarching objectives (a safe global temperature, increased climate resilience, and financial flows aligned with a pathway toward low greenhouse gas ...ions and climate-resilient development), the United States will exercise ...to promote a significant increase in global climate ambition ...allenge. In this regard:

...ders' Climate Summit aimed at raising climate ...ntribution to the 26th United Nations ...026) and beyond.

...nomies Forum on ...In coopera- ...as

Executive Order 14008

(b) The **Administrator** of the Environmental Protection Agency shall

(i) **strengthen enforcement** of environmental violations with disproportionate **impact on underserved communities** through the Office of Enforcement and Compliance Assurance; and

"I am directing my leadership team … to work with staff in their offices and the Office of Environmental Justice to identify **ways to ensure** that the country's environmental laws—and the policies implemented under them—**deliver benefits to all individuals and communities**. Specifically …

> ***"Strengthen enforcement of violations of cornerstone environmental statutes and civil rights laws in communities overburdened by pollution."***

Message from EPA Administrator Michael S. Regan
4/7/2021

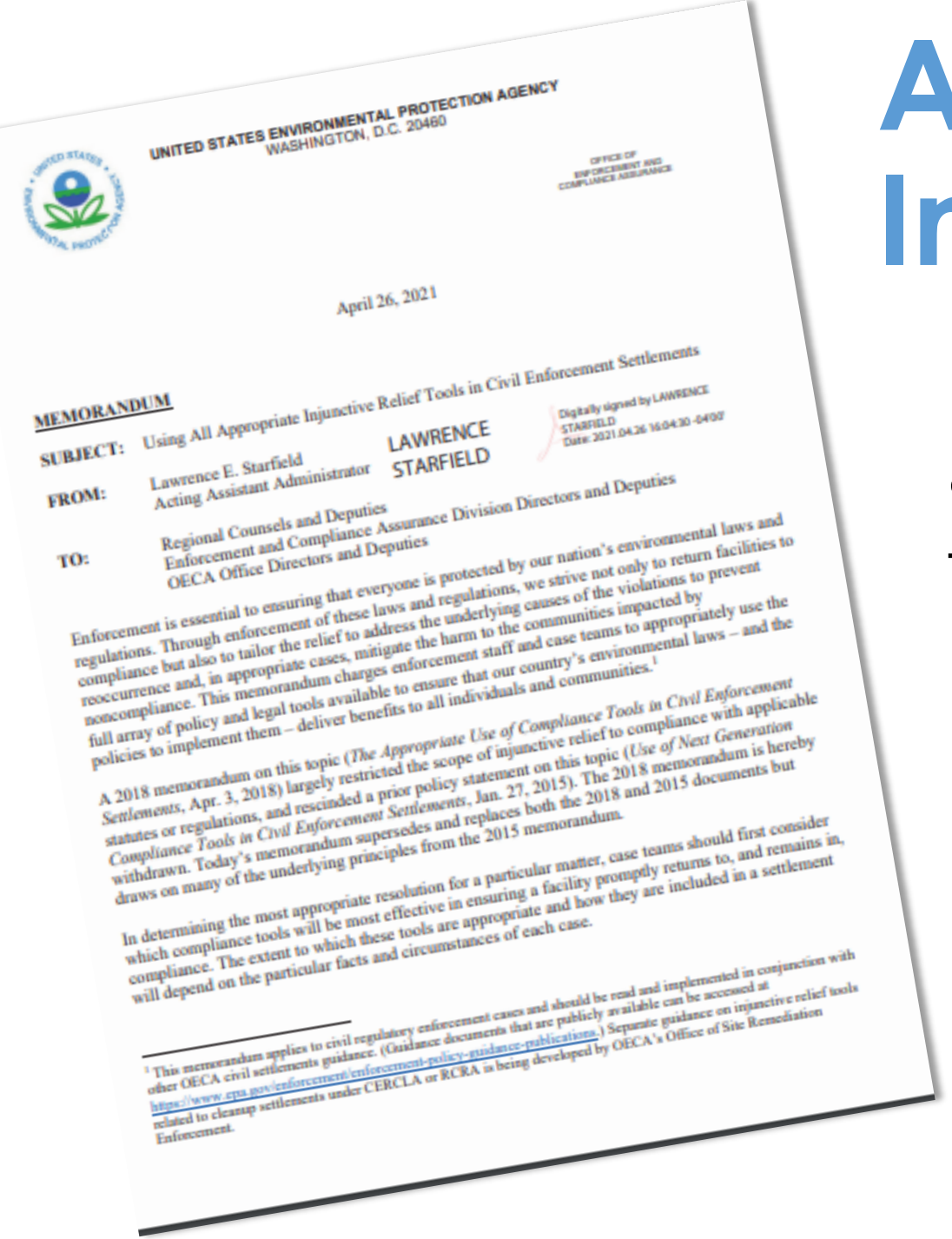
OECA'S EJ Directives

4/26/2021: Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements

4/30/2021: Strengthening Enforcement in Communities with Environmental Justice Concerns

6/21/2021: Strengthening Environmental Justice Through Criminal Enforcement

7/1/2021: Strengthening Environmental Justice Through Cleanup Enforcement Actions



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

April 26, 2021

MEMORANDUM

SUBJECT: Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements

FROM: Lawrence E. Starfield
Acting Assistant Administrator

LAWRENCE STARFIELD
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Date: 2021.04.26 16:04:30 -04'00'

TO: Regional Counsels and Deputies
Enforcement and Compliance Assurance Division Directors and Deputies
OECA Office Directors and Deputies

Enforcement is essential to ensuring that everyone is protected by our nation's environmental laws and regulations. Through enforcement of these laws and regulations, we strive not only to return facilities to compliance but also to tailor the relief to address the underlying causes of the violations to prevent reoccurrence and, in appropriate cases, mitigate the harm to the communities impacted by noncompliance. This memorandum charges enforcement staff and case teams to appropriately use the full array of policy and legal tools available to ensure that our country's environmental laws – and the policies to implement them – deliver benefits to all individuals and communities.[1]

A 2018 memorandum on this topic (*The Appropriate Use of Compliance Tools in Civil Enforcement Settlements*, Apr. 3, 2018) largely restricted the scope of injunctive relief to compliance with applicable statutes or regulations, and rescinded a prior policy statement on this topic (*Use of Next Generation Compliance Tools in Civil Enforcement Settlements*, Jan. 27, 2015). The 2018 memorandum is hereby withdrawn. Today's memorandum supersedes and replaces both the 2018 and 2015 documents but draws on many of the underlying principles from the 2015 memorandum.

In determining the most appropriate resolution for a particular matter, case teams should first consider which compliance tools will be most effective in ensuring a facility promptly returns to, and remains in, compliance. The extent to which these tools are appropriate and how they are included in a settlement will depend on the particular facts and circumstances of each case.

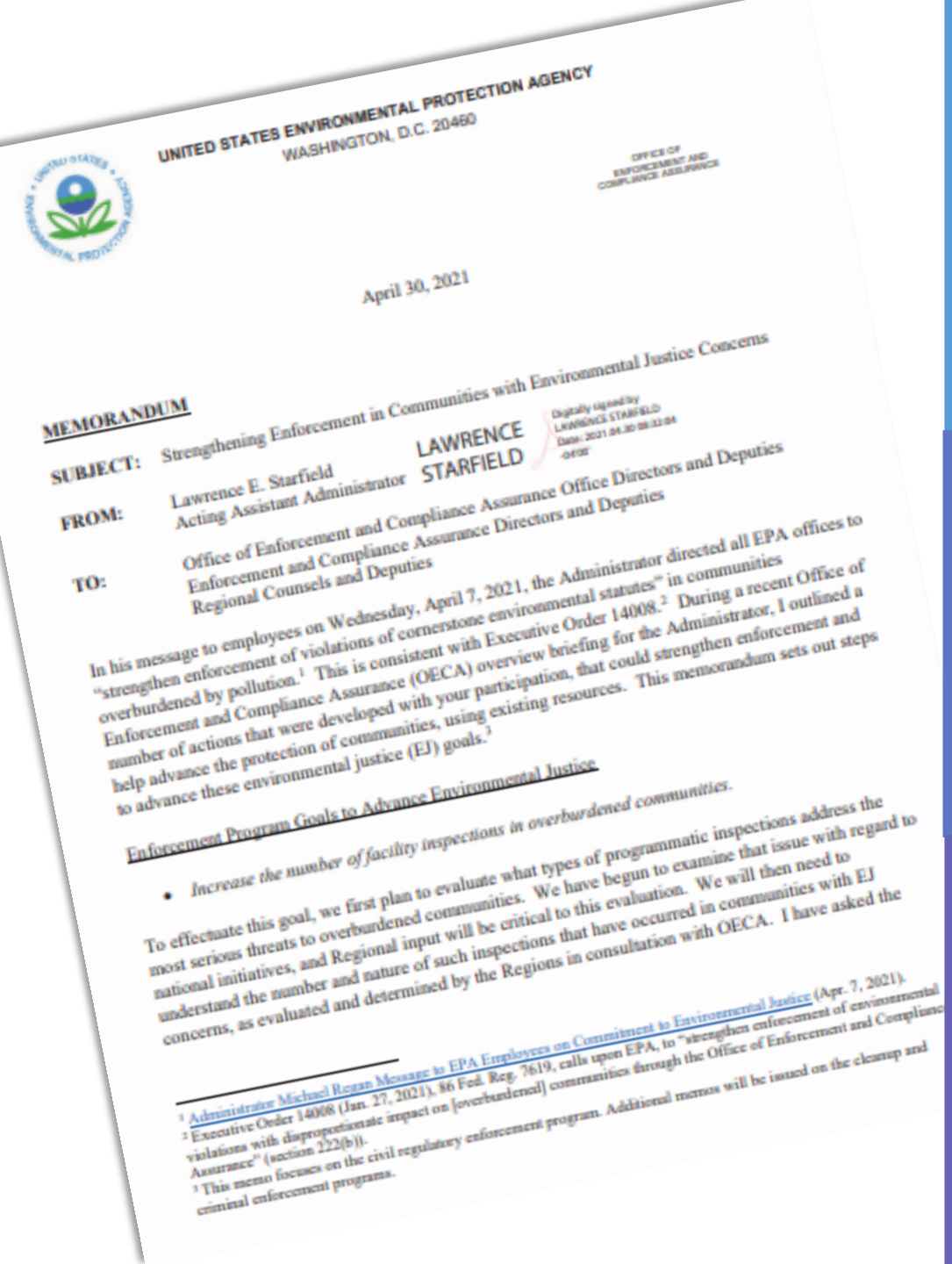
[1] This memorandum applies to civil regulatory enforcement cases and should be read and implemented in conjunction with other OECA civil settlements guidance. (Guidance documents that are publicly available can be accessed at https://www.epa.gov/enforcement/enforcement-policy-guidance-publications.) Separate guidance on injunctive relief tools related to cleanup settlements under CERCLA or RCRA is being developed by OECA's Office of Site Remediation Enforcement.

All Appropriate Injunctive Relief Tools

Directs staff to use the full array of policy and legal tools available to deliver benefits to all individuals and communities

Examples:

- Third party verification
- Electronic reporting
- Settlement provisions that include mitigation for past harm



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

April 30, 2021

MEMORANDUM

SUBJECT: Strengthening Enforcement in Communities with Environmental Justice Concerns

FROM: Lawrence E. Starfield
Acting Assistant Administrator

LAWRENCE STARFIELD

Digitally signed by LAWRENCE STARFIELD
Date: 2021.04.30 08:32:04 -04'00'

TO: Office of Enforcement and Compliance Assurance Office Directors and Deputies
Enforcement and Compliance Assurance Directors and Deputies
Regional Counsels and Deputies

In his message to employees on Wednesday, April 7, 2021, the Administrator directed all EPA offices to "strengthen enforcement of violations of cornerstone environmental statutes" in communities overburdened by pollution.[1] This is consistent with Executive Order 14008.[2] During a recent Office of Enforcement and Compliance Assurance (OECA) overview briefing for the Administrator, I outlined a number of actions that were developed with your participation, that could strengthen enforcement and help advance the protection of communities, using existing resources. This memorandum sets out steps to advance these environmental justice (EJ) goals.[3]

Enforcement Program Goals to Advance Environmental Justice

- *Increase the number of facility inspections in overburdened communities.*

To effectuate this goal, we first plan to evaluate what types of programmatic inspections address the most serious threats to overburdened communities. We have begun to examine that issue with regard to national initiatives, and Regional input will be critical to this evaluation. We will then need to understand the number and nature of such inspections that have occurred in communities with EJ concerns, as evaluated and determined by the Regions in consultation with OECA. I have asked the

[1] Administrator Michael Regan Message to EPA Employees on Commitment to Environmental Justice (Apr. 7, 2021).
[2] Executive Order 14008 (Jan. 27, 2021), 86 Fed. Reg. 7619, calls upon EPA, to "strengthen enforcement of environmental violations with disproportionate impact on [overburdened] communities through the Office of Enforcement and Compliance Assurance" (section 222(b)).
[3] This memo focuses on the civil regulatory enforcement program. Additional memos will be issued on the cleanup and criminal enforcement programs.

Increase

Increase the number of inspections in overburdened communities

Resolve

Resolve noncompliance through remedies with tangible benefits for communities

Engage

Increase engagement with communities about enforcement cases that most directly impact them

Administrator's Journey to Justice Tour

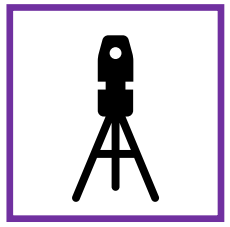
https://youtu.be/lYOen4Ni7Pg

November 2021: Mississippi, Louisiana, Texas

https://www.youtube.com/watch?v=jId7EXumin4

July 2022: Puerto Rico

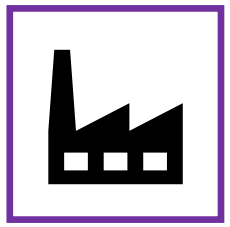
Pollution Accountability Team



Deploy air pollution **monitoring equipment** in the sky and on the ground

Boots-on-the-ground **inspectors** conducting unannounced inspections

Share findings with communities



Hold facilities **accountable** for violations

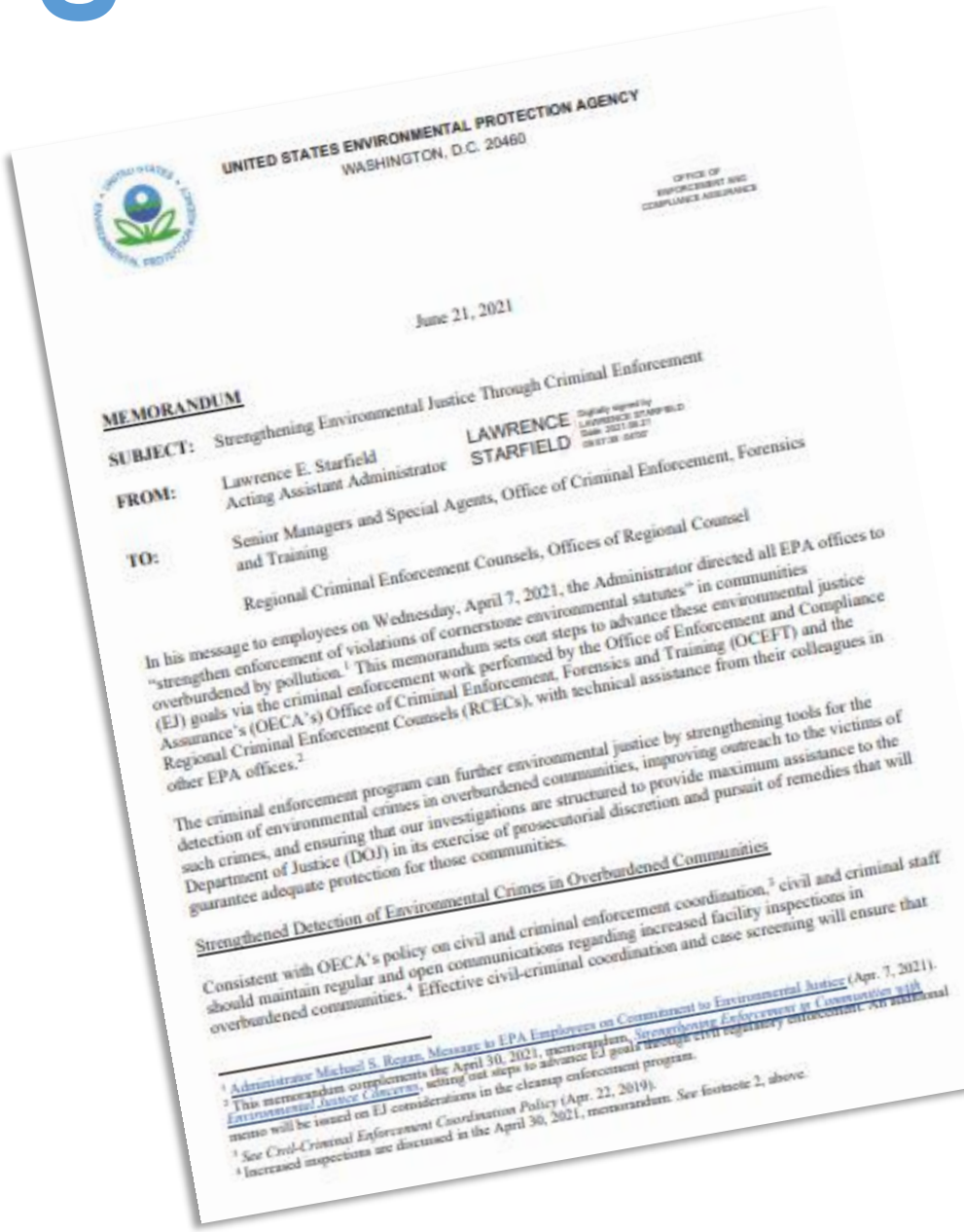
Strengthening EJ through Criminal Enforcement

Strengthen detection of **environmental crimes** in overburdened communities

Improve outreach to **crime victims**

Enhance **remedies** sought in criminal cases

Nearly **30%** of the defendants charged in 2021 committed crimes that **impacted** communities with EJ concerns



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 21, 2021

MEMORANDUM

SUBJECT: Strengthening Environmental Justice Through Criminal Enforcement

FROM: Lawrence E. Starfield
Acting Assistant Administrator

TO: Senior Managers and Special Agents, Office of Criminal Enforcement, Forensics and Training
Regional Criminal Enforcement Counsels, Offices of Regional Counsel

In his message to employees on Wednesday, April 7, 2021, the Administrator directed all EPA offices to "strengthen enforcement of violations of cornerstone environmental statutes" in communities overburdened by pollution.[1] This memorandum sets out steps to advance these environmental justice (EJ) goals via the criminal enforcement work performed by the Office of Enforcement and Compliance Assurance's (OECA's) Office of Criminal Enforcement, Forensics and Training (OCEFT) and the Regional Criminal Enforcement Counsels (RCECs), with technical assistance from their colleagues in other EPA offices.[2]

The criminal enforcement program can further environmental justice by strengthening tools for the detection of environmental crimes in overburdened communities, improving outreach to the victims of such crimes, and ensuring that our investigations are structured to provide maximum assistance to the Department of Justice (DOJ) in its exercise of prosecutorial discretion and pursuit of remedies that will guarantee adequate protection for those communities.

Strengthened Detection of Environmental Crimes in Overburdened Communities

Consistent with OECA's policy on civil and criminal enforcement coordination,[3] civil and criminal staff should maintain regular and open communications regarding increased facility inspections in overburdened communities.[4] Effective civil-criminal coordination and case screening will ensure that

[1] Administrator Michael S. Regan, Message to EPA Employees on Commitment to Environmental Justice (Apr. 7, 2021).
[2] This memorandum complements the April 30, 2021, memorandum, Strengthening Enforcement in Communities with Environmental Justice Concerns, setting out steps to advance EJ goals through civil regulatory enforcement. An additional memo will be issued on EJ considerations in the cleanup enforcement program.
[3] See Civil-Criminal Enforcement Coordination Policy (Apr. 22, 2019).
[4] Increased inspections are discussed in the April 30, 2021, memorandum. See footnote 2, above.

Strengthening EJ through Cleanup Enforcement Actions

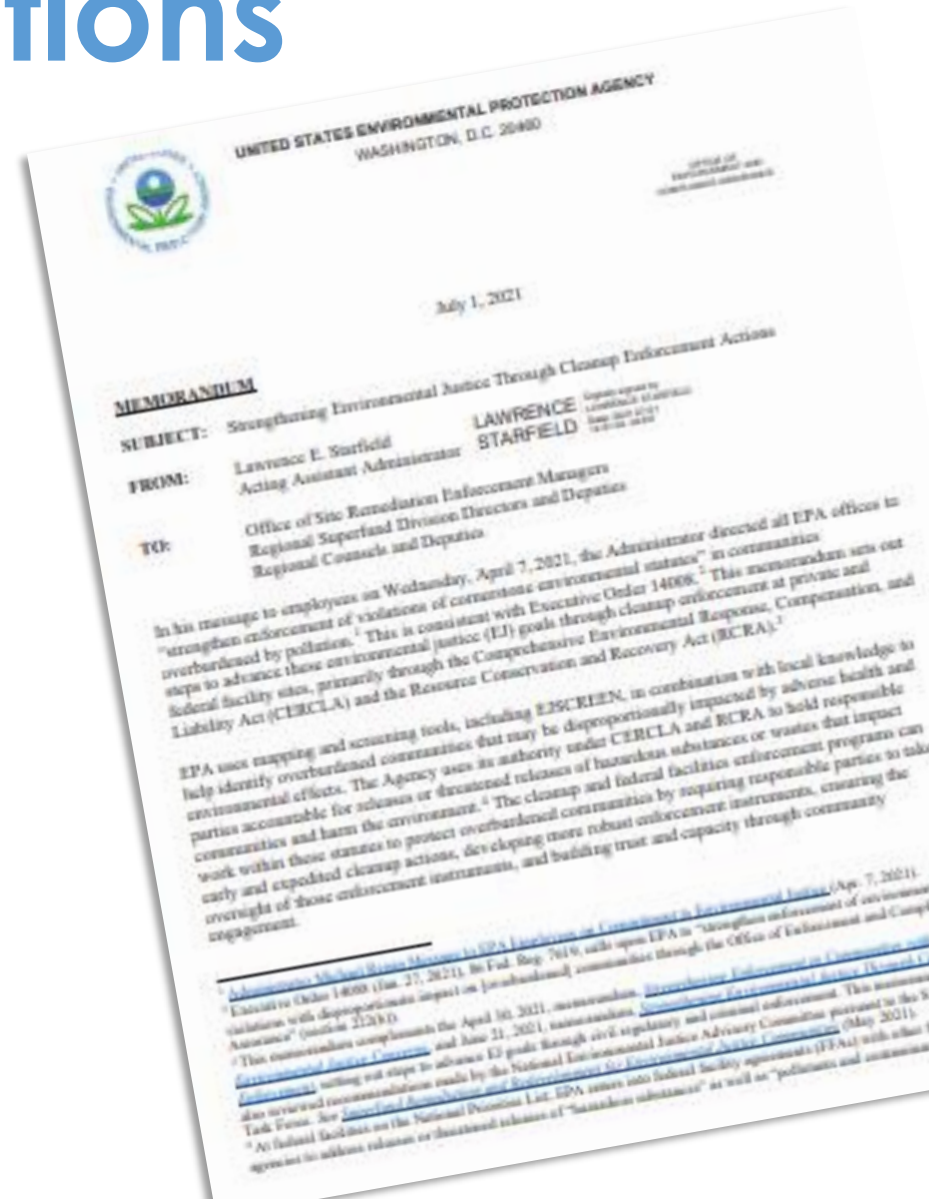
Require PRPs to take **early cleanup actions** to address the most urgent risks to human health

Expedite cleanups in overburdened communities

Develop more robust **enforcement instruments**

Increase **oversight** of PRP cleanup work

Build **trust and capacity** through community engagement



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 1, 2021

MEMORANDUM

SUBJECT: Strengthening Environmental Justice Through Cleanup Enforcement Actions

FROM: Lawrence E. Starfield
Acting Assistant Administrator
LAWRENCE STARFIELD

TO: Office of Site Remediation Enforcement Managers
Regional Superfund Division Directors and Deputies
Regional Counsels and Deputies

In his message to employees on Wednesday, April 7, 2021, the Administrator directed all EPA offices to "strengthen enforcement of violations of cornerstone environmental statutes" in communities overburdened by pollution.[1] This is consistent with Executive Order 14008.[2] This memorandum sets out steps to advance these environmental justice (EJ) goals through cleanup enforcement at private and federal facility sites, primarily through the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).[3]

EPA uses mapping and screening tools, including EJSCREEN, in combination with local knowledge to help identify overburdened communities that may be disproportionally impacted by adverse health and environmental effects. The Agency uses its authority under CERCLA and RCRA to hold responsible parties accountable for releases or threatened releases of hazardous substances or wastes that impact communities and harm the environment.[4] The cleanup and federal facilities enforcement programs can work within these statutes to protect overburdened communities by requiring responsible parties to take early and expedited cleanup actions, developing more robust enforcement instruments, ensuring the oversight of those enforcement instruments, and building trust and capacity through community engagement.

Office of Site Remediation Enforcement EJ Strategy

Conduct **early actions** to address urgent risks affecting overburdened communities with high levels of exposure to hazardous substances or wastes

Update **model documents** to incorporate EJ principles

Provide more **civil enforcement** information

Seek **community input** on remedies and provide information on settlement progress

Implementation: **Revised Model Prospective Purchaser Agreement (PPA)**

Recently revised model PPA for removal actions includes **EJ elements**

Community Involvement Plans will be developed as appropriate to ensure community voices are heard

Possible **mitigation activities** could be included to address site-specific community concerns (e.g., dust, noise, and traffic)

Cleanup can **facilitate reuse** of the land and provide benefits to local communities (e.g., commercial and residential redevelopment, added tax revenues, creation of jobs, habitat restoration, and improvements to recreational areas)

Examples of Early Action

Emergency Clean Air Act Orders in the **Virgin Islands** (Limetree) and **South Carolina** (New Indy)

Emergency Safe Drinking Water Act orders to public water systems in Cahokia Heights, **IL**; Clarksburg **WV**; Jackson, **MS**; Benton Harbor, **MI**; and in **Indian Country**

Hazardous Waste Imminent & Substantial Endangerment orders in Gadsden, **AL** (Techtrix) and **Georgia** (TAV Holdings)

Identifying Communities with EJ Concerns: EJSCREEN

EPA's EJScreen website
https://www.epa.gov/ejscreen

Combines **environmental** and **demographic** factors

Does **not label** EJ communities

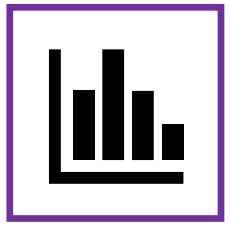
Starting point for EJ considerations

Results should be **verified** on the ground

Identifying Communities with EJ Concerns: Other sources

Observations by inspectors

Information from community groups



Environmental data not considered by EJSCREEN

EPA tips and complaints system

Collaboration Between Enforcement and Program Work

Strengthen compliance through good government **referral lists**

Incorporate EJ considerations by **mapping** the RCRA TSDF universe with EJSCREEN

Consider EJ in **risk assessments** by documenting current best practices

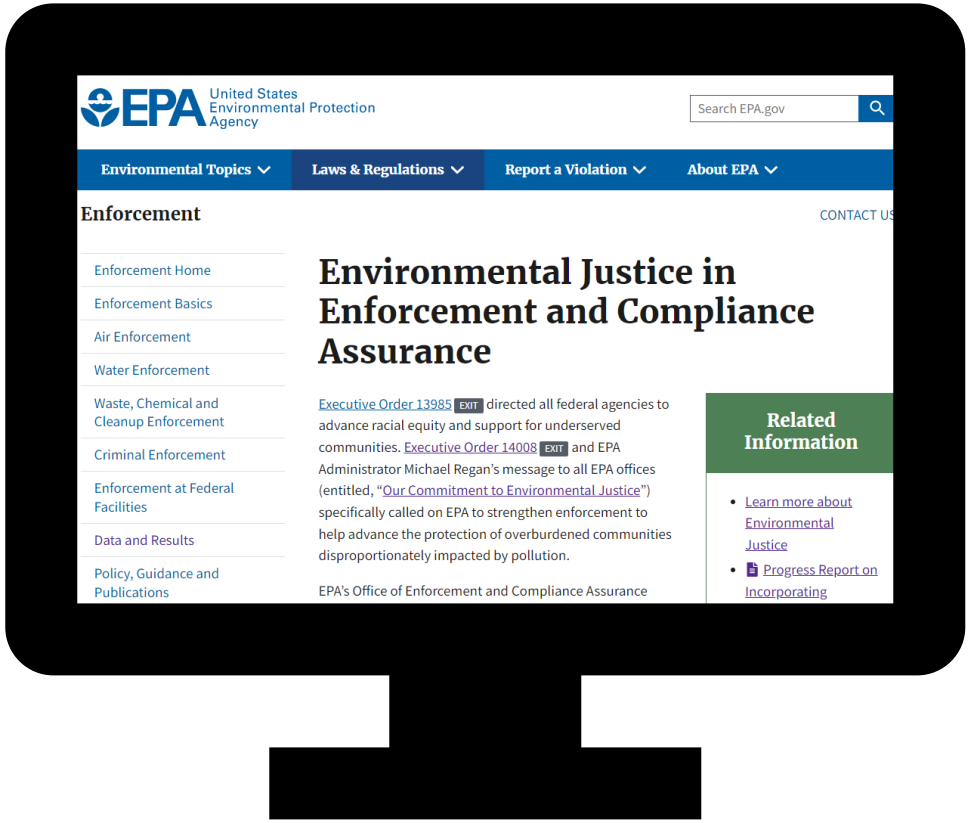
Encourage **collaboration** through a RCRA EJ Community of Practice

EJ is a shared goal with Co-Regulators

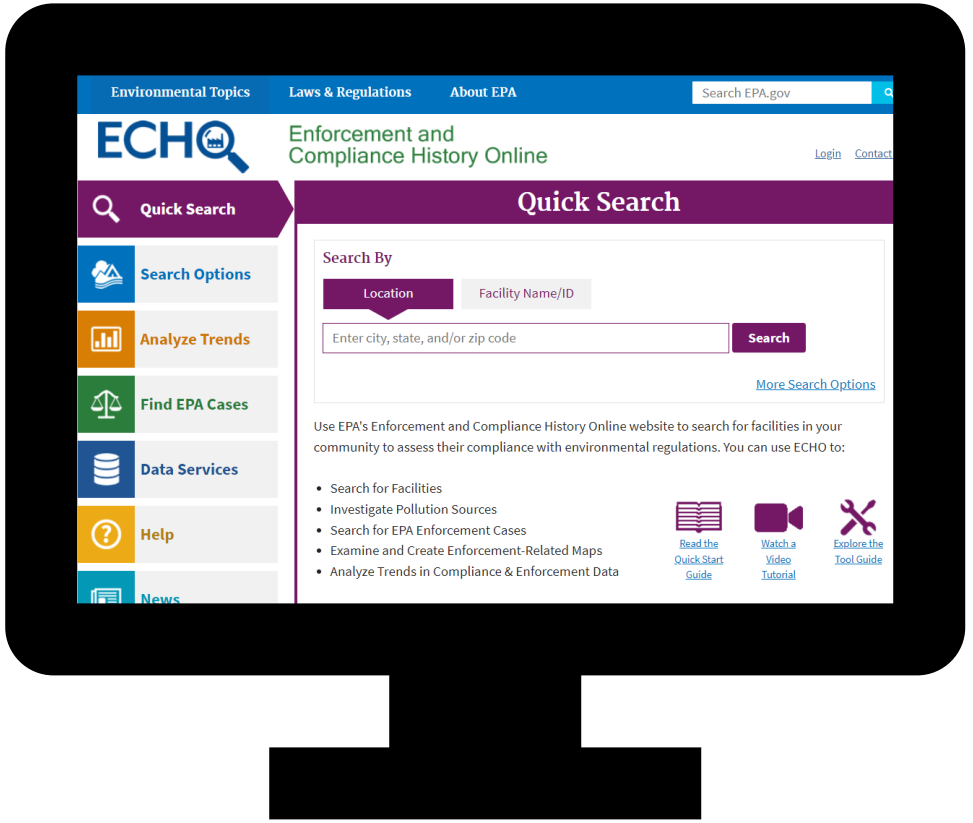
"We should continue to conduct **joint planning** with states and other co-regulators … to perform our enforcement and compliance work in partnership with them. However, if … a community's health may be impacted by noncompliance, and our co-regulator is not taking timely or appropriate action, we should not hesitate to step in and take necessary action."

Larry Starfield, Acting Assistant Administrator
Office of Environmental Compliance Assistance

Additional resources



Environmental Justice in Enforcement and Compliance Assurance website:
https://www.epa.gov/enforcement/environmental-justice-enforcement-and-compliance-assurance



Enforcement and Compliance History Online (ECHO)
https://echo.epa.gov/