

# United States Senate

July 11, 2022

The Honorable Merrick B. Garland  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Garland,

We write in support of the Department of Justice's (DOJ) Interim Final Rule restoring the use of supplemental environmental projects (SEPs) as part of environmental enforcement settlements, and to outline our recommendations for ways to improve the SEPs program to advance our shared environmental and restorative justice goals.

Enforcement of the nation's bedrock environmental laws is essential to protecting fenceline communities, especially communities of color, low-income communities, and tribal communities. Under your leadership, we believe that the DOJ and the Environmental Protection Agency (EPA) can rebuild what it means to enforce environmental laws in a manner that provides tangible benefits to the communities harmed by the violations. This is especially necessary as our communities continue to grapple with the effects of the pandemic, which has disproportionately harmed the same communities who face overexposure to toxic air, water, and chemical pollution.

One way that the DOJ can reinvigorate effective enforcement of environmental laws is to robustly engage fenceline communities and community-driven remedies as part of settlement agreements. DOJ has long used SEPs, also known as community service projects in criminal cases, to address the consequences of environmental harm and pollution when settling cases involving environmental violations. The reason the previous SEPs program was so successful was because companies unlawfully polluting would contribute to future projects that directly supported the communities harmed by the company's past violations. Examples of successful SEPs include setting up health clinics, expanding community air monitoring or school air filters, providing mobile asthma vans, funding equitable home buy-outs, and more.

In order to improve the SEPs program in your Final Rule, we encourage you to:

- **Improve community engagement in SEP development and implementation:** Early and robust community engagement is necessary to develop meaningful SEPs. The DOJ should work with EPA to update and enhance its 2015 SEPs guidance and draw on the Biden-Harris Administration's commitment to center environmental justice communities.
- **Work with the EPA and communities to develop SEPs before they are needed:** The scoping for potential SEPs should occur before individual violations occur in order to identify remediation and prevention priorities for the communities harmed by the noncompliance. This scoping work would ensure that communities are able to provide

input early in the process, rather than at the eleventh hour after violations have been committed and unlawful pollution has occurred, sometimes for years. For example, disadvantaged communities in California's San Joaquin Valley breathe some of the worst air in the country. Under an enhanced SEPs policy, we would encourage the DOJ and EPA to work with these communities to develop potential SEPs that remedy this injustice before they enforce, for example, a *Clean Air Act* case in their communities. DOJ and EPA could work with communities throughout the country to develop "SEP banks" of projects that serve community needs so the agencies are ready to expeditiously implement relevant SEPs when a violation occurs and DOJ settles an enforcement case, as EPA Regions 1 and 6 have done previously.

- **Improve public engagement mechanisms:** Traditional public comment mechanisms through the Federal Register are simply inadequate to meet community needs. For example, some tribal communities do not speak or use written English and can be left out of public engagement during the often complex and opaque government process. We encourage the DOJ and EPA to re-imagine how to engage with diverse communities throughout both the compliance and enforcement process.

Thank you for your consideration of our views. We are grateful for the Administration's efforts to advance environmental justice and improve enforcement of our environmental laws, and we look forward to continuing our work together to ensure that the SEPs program can be used more effectively to advanced our shared goals.

Sincerely,



Alex Padilla  
United States Senator



Tammy Duckworth  
United States Senator



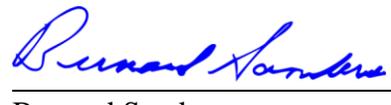
Sheldon Whitehouse  
United States Senator



Dianne Feinstein  
United States Senator



Amy Klobuchar  
United States Senator

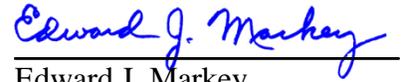


Bernard Sanders  
United States Senator



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Cory A. Booker  
United States Senator



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Edward J. Markey  
United States Senator



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Jeffrey A. Merkley  
United States Senator

CC: The Honorable Michael Regan, Administrator, U.S. Environmental Protection Agency