



## U.S. Department of Justice

Office of Tribal Justice

Room 2318, RFK Main Justice Building  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

(202) 514-8812  
FAX (202) 514-9078

Dear Tribal Leader:

We are pleased to invite you to Nation-to-Nation Tribal consultations with the Department of Justice's Offices of Tribal Justice (OTJ) and Environmental Justice (OEJ) on a proposed policy relating to the Department's Tribal environmental justice (EJ) work. The Department's work intersects with Tribes in a number of ways, including through litigating to protect Tribal lands, resources, and treaty and reserved rights, advancing public safety in Indian country, and supporting Tribal capacity through funding and grant opportunities. The proposed policy aims to improve the Department's ability to support Tribes on EJ issues impacting Tribes and American Indian/Alaska Native communities. A framing paper outlining issues for discussion and a draft Tribal Environmental Justice policy accompany this letter. Additionally, in accordance with E.O. 14096 the Department has been working on an EJ Strategic Plan, an overview of the draft Plan accompanies this letter.

Please note that the Tribal consultation will be closed to the press to protect confidential information that may be discussed during the sessions. We look forward to speaking with you at one or more of the following sessions:

Date	Time	Location	Notes
June 5, 2024	1-3 pm Eastern	Harrah's Cherokee Casino Resort 777 Casino Dr, Cherokee, NC 28719	National Congress of American Indians Mid-Year 2024 Annual Convention
July 11, 2024	2-4 pm Eastern	Virtual	Register at <a href="https://usdoj.webex.com/weblink/register/r6df56bfd618bd75f72360980f2652b0c">https://usdoj.webex.com/weblink/register/r6df56bfd618bd75f72360980f2652b0c</a>

We also welcome your written comments which should be submitted either by email to [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov) or by mail to Office of Tribal Justice, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001 by August 16, 2024.

We are interested in hearing from Tribal leaders generally about environmental justice as it relates to Tribes and their communities. We provide a few questions to orient the discussion but welcome additional topics during the consultations:

- How should the Department define "Tribal Environmental Justice"? What counts as Tribal EJ and what does not?
- What considerations should be taken into account when addressing Tribal EJ concerns?
- What should be the Department's role with respect to Tribal EJ issues?
- What concerns with or edits to the Draft Tribal EJ Policy does your Tribe have?

- What aspects, if any, in the Draft Policy does your Tribe think will be most beneficial? Does your Tribe anticipate any challenges regarding the Draft Policy?
- Would your Tribe prefer to see this document as a standalone document focused solely on Tribal EJ or as a portion of the larger DOJ EJ Strategic Plan under E.O. 14096?
- How is climate change impacting your Tribe and communities? How should the Department consider these impacts when crafting and implementing a Tribal EJ policy?
- How should the Department incorporate Indigenous Knowledge into its Tribal EJ work? What factors should be included in a policy incorporating Indigenous Knowledge into the Department's Tribal EJ work?

If you have any questions regarding this Tribal Consultation series, please contact OTJ at [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov), or by phone at 202-514-8812. We look forward to your participation in these important Nation-to-Nation consultation sessions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daron Carreiro".

Daron Carreiro  
Acting Director  
Office of Tribal Justice

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**Consultation Question:** How should the Department address the intersection of environmental justice and Tribal justice concerns, including any tension with the concepts of Tribal sovereignty and self-governance? What role should the Department play in addressing environmental justice as it relates to Tribes?

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**BACKGROUND:**

The Department of Justice (“Department” or “DOJ”) has taken on a larger role in environmental justice (EJ) in recent years, culminating in the creation of the Office of Environmental Justice within the Environment and Natural Resources Division (ENRD) and the promulgation of various EJ policies, including the [Comprehensive Environmental Justice Enforcement Strategy](#) (CEJES). These efforts flow, in part, from Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (2021).

DOJ’s CEJES recognizes that Tribal communities face unique potential environmental justice impacts including, but not limited to, damage or potential injury to cultural and sacred sites and resources, impacts to fisheries and traditional hunting and gathering areas, impacts or impairments to treaty and reserved rights, and impacts to water and land resources on or needed to support Tribal homelands or associated rights. Among other things, the CEJES calls for the Department to issue an annual report, the [first of which](#) was recently released. The CEJES and the first CEJES Report included sections focused on Tribal environmental justice; however, this remains a new area of focus for the Department. As such, the Department is working to develop a unified approach to Tribal EJ matters, including a clear Department-wide definition of Tribal EJ.

Over the last couple years, the Department hosted several outreach efforts to better understand the various issues facing federally recognized Tribes and how the Department could best work with Tribes to address the impacts of climate change and other environmental issues facing Tribes. The Department’s Office of Tribal Justice (OTJ) and ENRD held a listening session in 2022 to seek initial Tribal input on how the Department could better help Tribes secure and protect water and treaty rights. The listening session was followed by a series of summits across the country to expand upon what was heard at the listening session and better understand regional differences in the issues Tribes are experiencing. The Department will host additional summits in 2024. Notable issues such as trespass, illegal hunting and gathering, water rights concerns, and many others were brought to the attention of the Department. Furthermore, through these convenings, it became clear that an updated policy, informed by Tribal consultation, would assist the Department in its efforts to address EJ issues impacting Tribes and American Indian/Alaska Native communities; however, this must be done in a way that is responsive to and respectful of Tribal sovereignty and self-governance.

The Administration has shown a continued focus on EJ, most recently Executive Order 14096, *Revitalizing Our Nation’s Commitment to Environmental Justice for All* (2023) which call on agencies to develop EJ Strategic Plans. DOJ has been working on our own EJ Strategic Plan which we look forward to implementing. We have included an overview of our draft EJ Strategic Plan for review and comment. More information on this process is available at <https://www.justice.gov/oerj/draft-environmental-justice-strategic-plan-information>. We plan to use the feedback from this consultation in our development of DOJ’s EJ Strategic Plan. One area of particular interest to DOJ is where Tribes would most like to see this policy implemented as we have considered it as a standalone document as well as a component of the larger EJ Strategic Plan.

The federal government has multiple responsibilities when it comes to Tribal EJ. While often EJ efforts may align with Tribal interests, this is not always the case and the federal government's other responsibilities that implicate Tribal interests, whether directly or indirectly, may not always align with EJ efforts. To create a framework to ensure a cohesive Departmental approach to such matters, the Department has drafted a Tribal EJ policy and is interested in Tribal comments on this policy.

### **Trust and Treaty Responsibility**

The federal government has a trust responsibility to protect and support Tribal Nations, including Tribal trust and treaty resources. The United States has a unique legal relationship with Tribes. By virtue of their status as sovereigns that pre-exist the federal Union, Tribes continue to possess "attributes of sovereignty over both their members and their territory"<sup>1</sup> that have never been ceded by treaty or extinguished by statute. For its part, the United States owes trust responsibilities to Tribes, a "relationship [that] has been described as one of the primary cornerstones of Indian law."<sup>2</sup>

In treaties, statutes, and executive orders, the Tribes have reserved or secured land, natural resources, water, and important hunting, fishing, gathering, and other rights. Typically, a Reservation was set aside for a Tribe and its members under a treaty, executive order, Assistant Secretary-Indian Affairs proclamation, or statutorily approved agreement between the Tribe and the United States.

### **Tribal Environmental Justice**

The executive branch has had a heightened focus on environmental justice concerns in recent years. E.O. 14096 defines "environmental justice" as:

the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

(i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

(ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.<sup>3</sup>

EJ issues in the Tribal context raise unique questions regarding the relationship of EJ to Tribal sovereignty and self-governance, the role of the federal trust responsibility, and the separate responsibility of the federal government to address EJ concerns of people living in Indian country, both Indian and non-

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<sup>1</sup> *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 659 (May 29, 2001) (quoting *United States v. Mazurie*, 419 U.S. 544, 557 (1975)).

<sup>2</sup> *Department of the Interior v. Klamath Water Users Protective Assn*, 532 U.S. 1, 11 (2001) (quoting Felix M. Cohen's *Handbook of Federal Indian Law* (1982 ed.) at 221) (internal quotation marks omitted). In Indian law, the term "trust responsibility" is used in two senses. In its narrow sense, it refers to specific, legally enforceable obligations to manage Tribal land, water, and other resources. In its more general sense, it refers to "the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited peoples." *United States v. Mitchell*, 463 U.S. 206, 225 (1983) (quoting *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942)).

<sup>3</sup> *Id.* Sec. 2(b).

Indian. In evaluating Tribal EJ matters, the Department must keep in mind this sovereignty and self-governance, as well as the fact that at times the sovereign decisions of a Tribe may not directly overlap with what may be seen as the expected EJ outcome in a different scenario. Tribes are best positioned to determine the needs of their communities.

It is important for there to be a clear understanding of the meaning of Tribal EJ. As the Department presently understands from the multiple Tribal outreach efforts to date, Tribal EJ is the intersection of EJ issues and the trust and treaty responsibility. Through this Tribal consultation, the Department aims to clarify its understanding and ensure alignment with the Tribes.

**QUESTIONS:**

- 1. How should the Department define “Tribal Environmental Justice”? What counts as Tribal EJ and what does not?**
- 2. What considerations should be taken into account when addressing Tribal EJ concerns?**
- 3. What should be the Department’s role with respect to Tribal EJ issues?**
- 4. What concerns with or edits to the Draft Tribal EJ Policy does your Tribe have?**
- 5. What aspects, if any, in the Draft Policy does your Tribe think will be most beneficial? Does your Tribe anticipate any challenges regarding the Draft Policy?**
- 6. Would your Tribe prefer to see this document as a standalone document focused solely on Tribal EJ or as a portion of the larger DOJ EJ Strategic Plan under E.O. 14096?**
- 7. How is climate change impacting your Tribe and communities? How should the Department consider these impacts when crafting and implementing a Tribal EJ policy?**
- 8. How should the Department incorporate Indigenous Knowledge into its Tribal EJ work? What factors should be included in a policy incorporating Indigenous Knowledge into the Department’s Tribal EJ work?**

# DOJ POLICY STATEMENT

## TRIBAL ENVIRONMENTAL JUSTICE

<b>PURPOSE:</b>	This policy implements Executive Order 12898 of February 11, 1994 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations), Executive Order 13007 of May 24, 1996 (Indian Sacred Sites), Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), Executive Order 13990 of January 20, 2021 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis), Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad), Executive Order 14057 of December 8, 2021 (Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability), Executive Order 14082 of September 12, 2022 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022), Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), Executive Order 14096 of April 21, 2023 (Revitalizing Our Nation’s Commitment to Environmental Justice for All), the Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation-to-Nation Relationships), the Presidential Memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation), and the Council on Environmental Quality, Executive Office of the President, Memorandum for Heads of Federal Departments and Agencies of November 30, 2022 (Guidance for Federal Department and Agencies on Indigenous Knowledge); and provides the Department of Justice (“Department” or “DOJ”) guidance on the considerations when address Tribal environmental justice (“EJ”) issues and the formal process through which the Department incorporates Tribal considerations when considering EJ issues.
<b>SCOPE:</b>	All Department components
<b>ORIGINATOR:</b>	Office of Tribal Justice
<b>CATEGORY:</b>	(I) Administrative, (II) Governmental and Public Relations
<b>AUTHORITY:</b>	EOS
<b>CANCELLATION:</b>	None
<b>DISTRIBUTION:</b>	TBD
<b>APPROVED BY:</b>	THIS IS A DRAFT, NOT YET APPROVED

**ACTION LOG**

Issuing Component must review its DOJ directives, at a minimum, every 5 years and make revisions as necessary. The action log records dates of approval, recertification, and cancellation, as well as major and minor revisions to this directive, and provides a brief summary of all revisions. In the event this directive is canceled, superseded, or supersedes another directive, that will also be noted in the action log.

Action	Authorized by	Date	Summary
Initial Approval	TBD	TBD	This Policy implements E.O. 12898, E.O. 13007, E.O. 13175, E.O. 13985, E.O. Order 13990, E.O. 14008, E.O. 14057, E.O. 14082, E.O. 14091, E.O. 14096, Presidential Mem. on Tribal Consultation and Strengthening Nation-to-Nation Relationships (Jan. 26, 2021), Presidential Mem. on Uniform Standards for Tribal Consultation (Nov. 30, 2022), and the CEQ, EOP Mem. for Heads of Federal Departments and Agencies re: Guidance for Federal Department and Agencies on Indigenous Knowledge (Nov. 30, 2022) and provides guidance to the Department on considerations when it addresses matters that directly or indirectly implicate Tribal environmental justice (“EJ”) issues and formalizes the process for incorporating Tribal considerations when considering EJ issues.

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## I. Purpose

The Department of Justice (Department) is issuing this Tribal Environmental Justice (Tribal EJ) Policy to communicate its commitment to Tribes and Tribal communities and to ensuring that Tribal sovereignty, Tribal treaty and reserved rights, impacts to water, land or cultural resources needed to support Tribal homelands and/or the federal trust responsibility to Tribes are considered when identifying and addressing environmental justice (EJ) concerns. This policy provides clarity for Department components on how to identify a Tribal EJ matter and creates a cohesive approach to Tribal matters that impact Tribal lands, waters, sites, and communities.

## II. Background on Department EJ Efforts

[Executive Order 14096](#), signed on April 21, 2023, defines EJ as follows:

“Environmental justice” means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

(i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

(ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.<sup>1</sup>

To promote EJ, the Department has adopted various policies<sup>2</sup> and established the Office of Environmental Justice (OEJ). These efforts have generally had the overarching goal of ensuring just treatment of historically overburdened, marginalized, and underserved communities and protecting them from harm caused by environmental crimes, pollution, and climate change.

On May 5, 2022, and pursuant to Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (January 27, 2021), the Department released its Comprehensive Environmental Justice Enforcement Strategy (CEJES).<sup>3</sup> Included within the CEJES was the following with respect to Tribal EJ:

*Pursuit of Tribal environmental justice.* Environmental justice with respect to Tribal populations must consider the unique sovereign status of federally-recognized Indian Tribes and Alaska Native Villages. Further, identification of priority enforcement cases should take into account the unique potential environmental justice impacts for Tribal communities. These include damage or potential injury to cultural and sacred sites and resources, impacts to fisheries and traditional hunting and gathering areas, impacts or impairments to treaty rights, and impacts to water and land resources on or needed to

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<sup>1</sup> *Id.* Sec.2(a)

<sup>2</sup> The Department issued its first EJ strategy in 1995 and has continued to build upon and strengthen its commitment to advance EJ for all.

<sup>3</sup> Associate Attorney General Vanita Gupta, [Memorandum for Heads of Department Components United States Attorneys: Comprehensive Environmental Justice Strategy](#) (May 2, 2022).

support Tribal homelands or associated rights. [Environment and Natural Resources Division (ENRD)], U.S. Attorneys, [Executive Office of the U.S. Attorneys], and the Office of Tribal Justice [(OTJ)] will consider developing additional mechanisms to (1) facilitate consideration of these unique issues in cases brought pursuant to this Strategy; (2) identify opportunities to work with the governments of federally recognized Tribes, including consortia of such Tribes; (3) work with other federal agencies to coordinate investigative resources and enforcement authorities; and (4) recommend ways to address and incorporate Tribal concerns into the Department's enforcement work.

This policy endeavors to build upon these strategic priorities through the development of guidance and best practices to Department components for addressing Tribal EJ concerns.

### III. Treaty and Trust Responsibility to Tribes

The federally recognized Tribes of the United States are sovereign entities pre-dating the United States. Tribes continue to possess attributes of sovereignty over both their members and their territory. Tribes exercise the right of self-governance in a variety of ways, including through law enforcement agencies, courts, health/dental clinics, schools, social services, housing authorities, transportation departments, and many more.

The federal government has a unique relationship with federally recognized Tribal Nations and interacts with Tribes directly on a Nation-to-Nation basis. As frequently held by the courts and recently reaffirmed by the President,

The United States has a unique, legally affirmed Nation-to-Nation relationship with American Indian and Alaska Native Tribal Nations, which is recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. The United States recognizes the right of Tribal governments to self-govern and supports Tribal sovereignty and self-determination. The United States also has a unique trust relationship with and responsibility to protect and support Tribal Nations.<sup>4</sup>

This Nation-to-Nation relationship has a more than 200-year history, and is built on the foundation of the United States Constitution, treaties, legislation, executive action, judicial rulings, and historical relations. Based on this precedent, the federal government has “undertaken a unique trust responsibility to protect and support Indian tribes and Indians.”<sup>5</sup> The federal government has certain responsibilities to the Tribes based on federal law, including “specific commitments made through written treaties and agreements securing peace, in exchange for which Indians have surrendered claims to vast tracts of land, which provided legal consideration for permanent, ongoing performance of Federal trust duties.”<sup>6</sup> “[T]he foregoing historic Federal-tribal relations and understandings have benefitted the people of the United States as a whole for centuries and have established enduring and enforceable Federal obligations to which the national honor has been committed.”<sup>7</sup> This relationship reflects a policy by which the federal government “has charged itself with moral obligations of the highest responsibility and trust.”<sup>8</sup>

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<sup>4</sup> [Presidential Memorandum on Uniform Standards for Tribal Consultation](#), Sec.1 (Nov. 30, 2022).

<sup>5</sup> 25 U.S.C. § 5601.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942).

#### IV. Tribal EJ

The Department recognizes that when identifying, assessing, and addressing EJ impacts to Tribes and American Indian/Alaska Native communities, Tribal sovereignty and self-governance must be thoughtfully considered and incorporated into any analysis or response. Typically, the goals of EJ focus on overburdened communities and ensuring just treatment on a more individual or community-based level. While EJ can impact individuals and communities in a similar fashion, there exists an additional responsibility to the impacted Tribal government(s) because of the federal government's trust responsibility. E.O. 14096 recognizes the need to "continue to respect Tribal sovereignty and support self-governance," and that the federal government "must recognize, honor, and respect the different cultural practices—including subsistence practices, ways of living, Indigenous Knowledge, and traditions—in communities across America."<sup>9</sup> Through this Policy, the Department provides the following definition of Tribal EJ and further elaborates on how Tribal EJ intersects with other policies and practices related to the Department's work with, for, and on behalf of Tribes.

Tribal EJ is where EJ intersects with Tribal sovereignty, Tribal treaty and reserved rights, impacts to water, land, or cultural resources needed to support Tribal homelands, and/or the federal trust responsibility to Tribes. This includes where an EJ matter impacts a treaty or trust resource either directly or indirectly. As elaborated below, while Tribes maintain rights within their Tribal lands, many Tribes also have rights to certain resources and sites outside of their Tribal lands. To provide uniformity on how the Department considers these issues, this policy provides a three-step process to identifying and addressing Tribal EJ: components should 1) determine whether the matter is EJ by applying the above definition of EJ, as informed by applicable Department or component policy, 2) utilize the below method and resources for determining whether there are Tribal implications, and 3) determine the appropriate level of engagement with Tribes once a matter has been identified as implicating Tribal EJ.

##### *a. Determining whether Tribal EJ is implicated by a matter*

This policy provides a process to assist components in identifying Tribal EJ matters. As articulated above, components should consider both direct and indirect implications on Tribes. Each component is responsible for determining if a matter for which the component is responsible is a Tribal EJ matter. When the Department is presented with a matter that meets the definition of EJ within this policy or other Department policy and there is reason to suspect it has Tribal implications, the lead component will make an initial determination as to whether the matter is a Tribal EJ matter under this policy. Upon a lead component's determination that a matter is designated as EJ as described above, there is a presumption that the designated EJ matter is a Tribal EJ matter when either of the following circumstances are present: the designated EJ matter (1) occurs on or directly adjacent to Tribal lands or (2) impacts Tribal interests on Tribal historical homelands, including sacred sites, cultural resources, or treaty or trust protected resources, regardless of where the Tribe is presently located. The matter will remain a Tribal EJ matter unless and until the Tribe formally refutes the determination.

In determining whether the above presumption applies or whether a matter otherwise implicates Tribal EJ, the lead component should consider:

1. Which Tribes are in the area where the matter is being contemplated;
2. Proximity to Tribal lands and resources, both natural and cultural;
3. Which Tribes historically were located in the location where the matter is being contemplated;

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<sup>9</sup> E.O. 14096 Sec.1.

4. Outreach to local Tribes;
5. Outreach to local U.S. Attorneys Offices, OTJ, ENRD (specifically, but not limited to Indian Resources Section [IRS] and OEJ);
6. Department of Interior, Bureau of Indian Affairs' (BIA) [U.S. Domestic Sovereign Nations: Land Areas of Federally-Recognized Tribes map](#);
7. BIA's [Tribal Leaders Directory](#);
8. [Tribal Treaties Database](#);
9. The Environmental Protection Agency's [Environmental Justice Screening and Mapping Tool](#);
10. The Executive Office of the President, Office of Science and Technology Policy, Council on Environmental Quality (CEQ) [Climate and Economic Justice Screening Tool](#); and
11. Indigenous Knowledge (IK) as well as other sources of information as accounted for in Department policy.

Components are encouraged to coordinate with OTJ and ENRD (specifically IRS and OEJ) in making such determinations. For a matter to be a Tribal EJ matter, it must both meet the definition of EJ *and* have Tribal implications as described above. Where the component has determined that a matter is a Tribal EJ matter the component will bring it to the attention of OTJ and ENRD.

*b. Tribal EJ matters requiring Tribal Consultation*

Executive Order 13175 (E.O. 13175) articulates the requirement that agencies conduct Tribal Consultation where “regulations, legislative comments or proposed legislation, and other policy statements or actions . . .” “have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.”<sup>10</sup> E.O. 13175 requires agencies to develop a Tribal Consultation process, which the Department has done in the Department’s Policy Statement – Tribal Consultation, DOJ Policy Statement 0300.01 (0300.01). OTJ is the component authorized by Congress to oversee Tribal Consultation of the Department.<sup>11</sup> This is further reflected in the Department’s regulations.<sup>12</sup> As such, the discretion regarding Tribal Consultation is vested in OTJ through both the Tribal Law and Order Act and Department regulation.

According to DOJ Policy Statement 0300.01, Tribal Consultation is “the formal process through which the Department of Justice seeks Tribal input regarding the development of new or amended policies, regulations, and legislative actions initiated by the Department.”<sup>13</sup> For the purposes of this policy the Department incorporated the definition of “policies” as set forth in 0300.01(II):

The term “policies” includes: (1) regulations or regulatory policies; (2) proposed legislation; (3) decisions regarding the establishment of Federal standards; and (4) other policies for which the Department determines Consultation is appropriate and practicable.

Where a Tribal EJ matter is a policy as defined by 0300.01 it presumptively has Tribal implications as defined in E.O. 13175 and 0300.01. Thus, Tribal Consultation will be required where the Tribal EJ matter involves a “policy” as defined by 0300.01(II).<sup>14</sup>

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<sup>10</sup> *Id.* Sec.1(a).

<sup>11</sup> 25 U.S.C. § 3665a(c)(3) (Tribal Law and Order Act).

<sup>12</sup> 28 C.F.R. § 0.134.

<sup>13</sup> 0300.01(I).

<sup>14</sup> While this policy may trigger the requirements of 0300.01, it in no way negates any requirements in 0300.01. This is meant to compliment and expand upon 0300.01, not undermine it.

*c. Tribal EJ matters which do not require Tribal Consultation*

DOJ's Tribal Consultation Policy Statement, 0300.01, specifies that certain Departmental activities are not "policies" subject to Tribal Consultation requirements. The following four categories of Departmental activities do not require Tribal Consultation: (1) investigations, (2) anticipated or active litigation, (3) settlement negotiations, and (4) individual grants or contracts. However, while Tribal Consultation may not be required in these instances, Department components are encouraged to engage in ongoing communication with Tribes to the extent practicable and permitted by law and Department policy.<sup>15</sup> Furthermore, consideration of Tribal equities may still be required in such situations because any applicable treaty and trust responsibilities remain a federal obligation, regardless of whether Tribal Consultation is required. Treaties are federal law, and like other federal laws concerning Tribes, they must be adhered to in all federal action. Given this responsibility and because Tribes are best positioned to articulate the impacts on their own communities, communication and coordination with impacted Tribes is highly recommended in these situations, where practicable. Furthermore, given the interconnectedness of Indian law precedent, Department components are encouraged to be open to and considerate of impacts to other Tribes who may be indirectly impacted by the precedent resulting from Department litigation. Nevertheless, Departmental decisions in these situations remain discretionary to the maximum extent of the law. Department components should contact OTJ with any questions regarding Tribal Consultation and whether it is required for a particular matter.

*d. Inclusion of IK in Tribal EJ*

Indigenous Knowledge (IK)<sup>16</sup> as well as other information sources as accounted for in Department policy, should be considered when addressing a Tribal EJ matter. CEQ and the White House Office of Science and Technology Policy (OSTP) provided guidance to help agencies understand what the term Indigenous Knowledge means:

Indigenous Knowledge is a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, cultural, and spiritual systems. Indigenous Knowledge can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. Indigenous Knowledge is developed by Indigenous Peoples including, but not limited to, Tribal Nations, Native Americans, Alaska Natives, and Native Hawaiians. Each Tribe or Indigenous community has its own place-based body of knowledge that may overlap with that of other Tribes.

Indigenous Knowledge is based in ethical foundations often grounded in social, spiritual, cultural, and natural systems that are frequently intertwined and inseparable, offering a holistic perspective. Indigenous Knowledge is inherently heterogeneous due to the cultural, geographic, and socioeconomic differences from which it is derived, and is

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<sup>15</sup> Any meeting held in accordance with this policy should be conducted in such a way as to ensure all statutory secrecy and confidentiality requirements, DOJ policies, and ethics policies are complied with and that related investigations are not compromised.

<sup>16</sup> The Department acknowledges that different terms are at times used such as Traditional Ecological Knowledge, Traditional Knowledge, Indigenous Traditional Knowledge, Native Science, and related terms. The application of IK within this document is intended to include such terms.

shaped by the Indigenous Peoples' understanding of their history and the surrounding environment. Indigenous Knowledge is unique to each group of Indigenous Peoples and each may elect to utilize different terminology or express it in different ways. Indigenous Knowledge is deeply connected to the Indigenous Peoples holding that knowledge.<sup>17</sup>

Tribes and Indigenous Peoples are often the first to observe or anticipate changes to the environment due to pollutants, climate change, or other impacts. This information can be helpful in assessing potential impacts and discovering potential environmental violations and injustices.

It is important to remember that IK is often unique and specific to a Tribe or Indigenous People. As such, the Department often lacks the expertise to apply IK, thus engagement with Tribal Nations and Indigenous Peoples is critical when considering IK. Components are encouraged to reach out to OTJ for assistance in determining the proper engagement method for a particular situation. The Department seeks to never go into such collaboration assuming that IK will be provided; rather, it is for the Tribal Nation and Indigenous People to determine if and how IK can inform Department actions. It is also vital that application of IK is done in a culturally sensitive manner that respects Tribal sovereignty, achieves mutually beneficial outcomes, and to the extent possible respects the privacy of IK. The Department has disclosure obligations, and to the extent the privacy of IK cannot be protected from disclosure, the Department will inform the applicable Tribal Nation or Indigenous People prior to discussing IK. Department components are encouraged to discuss this with their Freedom of Information Act representative to ensure practices align with disclosure obligations. Where further guidance for the application of IK is necessary or components require examples of other agencies using IK, Department components should look to the [OSTP-CEQ IK Memo](#).

Furthermore, Department components should make efforts to engage with Tribes to inquire if there are appropriate ways to incorporate IK in the Department's analysis and determination of how to proceed on a Tribal EJ matter, including, where appropriate, in litigation involving Tribal EJ matters. While litigation decisions have a level of discretion that differs from other such policy matters, when the issue involves a Tribal EJ matter, at least one element in the decision should involve a serious contemplation of the Tribal EJ implications. Additionally, it is highly recommended that a meeting with the impacted Tribes is held to, at a minimum, hear the concerns of the Tribes.

Department components shall require those working with IK to be trained on Tribal sovereignty and the unique cultural history and traditions of the Tribe(s) with which they work, as well as how to respectfully include IK in decision-making. Department components are encouraged to reach out to OTJ with questions regarding IK, training, or any other questions or concerns which arise from this Policy.

## **V. Annual Tribal Consultation**

To account for the everchanging environment and emerging environmental concerns, the Department, through OTJ, will hold at a minimum one virtual EJ Tribal Consultation annually to gain insight into new Tribal EJ issues and ensure the Department has the information necessary from Tribal leaders to identify Tribal EJ matters. These Tribal Consultations will begin the first full calendar year after enactment of this Policy. This Tribal Consultation is intended to be in addition to any targeted EJ Tribal Consultations or outreach which may arise under this or other policies. This annual Tribal Consultation and any other Tribal Consultation under this policy will comply with the Tribal Consultation Guiding Principles in 0300.01.

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<sup>17</sup> [Memorandum for Heads of Federal Departments and Agencies re: Guidance for Federal Departments and Agencies on Indigenous Knowledge](#) (Nov. 30, 2022) (OSTP-CEQ IK Memo).

## VI. Guiding Principles

The following Guiding Principles will be considered in Department decision-making regarding Tribal EJ.

### *a. EJ*

1. Department components must prioritize cases that will reduce public health and environmental harms to overburdened and underserved communities.
2. Department components must make strategic use of all available legal tools to address EJ concerns.
3. Department components must ensure meaningful engagement with impacted communities.

### *b. Treaty and Trust Responsibility*

4. Tribes are sovereigns pre-dating the formation of the United States and continue to possess attributes of this sovereignty.
5. Many Tribes entered into treaties with the federal government. These treaties and other sources of federal law entitle Tribes to certain protected rights. The treaties have the weight of federal law and must be respected as such.
6. The United States has a trust responsibility to Tribes, which guides and limits the Federal Government in dealings with Indian Tribes and must be front of mind when addressing Tribal EJ matters.

### *c. Tribal EJ*

7. Tribal EJ is the intersection of the treaty and trust responsibility to Tribes and the EJ responsibilities to the general public.
8. Treaty and trust responsibilities are separate from EJ responsibilities to the general public and while the interests may at times align, this should not be the assumption.
9. The Department seeks to be responsive to the EJ concerns of Tribes.
10. The Department works to understand definitions of human health and the environment from the perspective of federally recognized tribes.
11. Department components will consider developing additional mechanisms to facilitate consideration of the unique issues in Tribal EJ matters.
12. The Department will seek to work with other federal agencies to coordinate investigative resources and enforcement authorities where appropriate.
13. The Department will consider ways to address and incorporate Tribal concerns into the Department's enforcement work.

### *d. IK*

14. The Department encourages, as appropriate and to the extent practicable and permitted by law, the integration of IK into the Department's policy and decision-making processes, to understand and address EJ concerns and facilitate program implementation.
15. The Tribal Nations and Indigenous People are the experts on IK, and it should only ever be applied in coordination with the Tribal Nation or Indigenous People and only in a way which is mutually beneficial.

16. When it comes to IK, it is up to Tribal Nations and Indigenous people on how and when it should be applied.
17. The privacy of IK and related sensitive information should be maintained to the furthest extent that the Department is able given the Department's disclosure obligations. To the extent that it cannot be kept private, this must be transparently disclosed prior to the Department obtaining access to any IK.

*e. Tribal Consultation*

Where Tribal Consultation is required under this policy, the following Guiding Principles will be used.

18. Consultation will involve timely, adequate notice to the appropriate parties.
19. Consultation will be accessible to and convenient for Tribal participants.
20. Consultation will be a meaningful part of the Department's decision-making process and involve appropriate participants.
21. Consultation will be conducted through a transparent and accountable process.

## **VII. Definitions**

The following terms are defined for the purposes of this Policy:

*Components* - Component All Offices, Divisions, Bureaus, and Boards identified in 28 C.F.R. § 0.1, as well as the Department of Justice, Office of the Inspector General.

*Environmental Justice* – has the meaning set forth in E.O. 14096:

“Environmental justice” means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

- (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
- (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

*Federally Recognized Tribe, Tribe, or Tribal Nation* - an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C.479a.

*Indigenous Knowledge* - a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. It is ultimately up to a Tribe to determine for itself what is considered Indigenous Knowledge, and the Department is not currently positioned to provide a comprehensive definition, as such, the above definition is meant only as a guide.



*Indigenous Peoples* - Native Americans, Alaska Natives, Native Hawaiians, Pacific Islanders, and Indigenous Peoples whose ancestors have occupied what is now known as the United States since time immemorial including members of Tribal Nations.

*Matter* - a situation or subject that is being dealt with or considered by the Department. This includes both “policies” under 0300.01 as well as those Department activities excluded from the definition of “policies” in 0300.01.

*Overburdened communities* - communities or populations, including low-income communities, communities of color, Tribal communities, and Indigenous communities, in the United States that potentially experience disproportionate environmental harms and risks as a result of greater vulnerability to environmental hazards.

*Policies* – has the meaning used in 0300.01:

The term "policies" includes: (1) regulations or regulatory policies; (2) proposed legislation; (3) decisions regarding the establishment of Federal standards; and (4) other policies for which the Department determines Consultation is appropriate and practicable. The term "policies" does not include matters that are the subject of investigation, anticipated or active litigation, or settlement negotiations. It also does not include individual grants or contracts.

*Sacred Sites* - as defined in Executive Order 13007, any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

*Tribal lands* - (1) any land located within the boundaries of an Indian reservation, pueblo, or rancharia; (2) any land not located within the boundaries of an Indian reservation, pueblo, or rancharia, the title to which is held in trust by the United States for the benefit of an Indian tribe or an individual Indian; by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or by a dependent Indian community; (3) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land; (4) any land located in a census tract in which the majority of residents are Natives (as defined in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b))); and (5) any land located in a census tract in which the majority of residents are persons who are enrolled members of a federally recognized Tribe or village.

## **VIII. Judicial Review**

This Policy Statement is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable in equity or at law by a party against the Department or any person.

Please contact the Office of Tribal Justice at [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov) or (202)514-8812 for further information on any of the processes established in this Policy Statement.



# THE U.S. DEPARTMENT OF JUSTICE OFFICE OF ENVIRONMENTAL JUSTICE

## DRAFT ENVIRONMENTAL JUSTICE STRATEGIC PLAN

### Overview

As directed by [Executive Order 14096](#), “Revitalizing Our Nation’s Commitment to Environmental Justice for All,” the U.S. Department of Justice (DOJ) is required to publish an Environmental Justice Strategic Plan (the “Plan”) outlining its vision, goals, priority actions, and metrics to address and advance environmental justice. The Plan must be posted online and submitted to the Council on Environmental Quality, a division of the Executive Office of the President, by October 2024.

DOJ has identified four draft goals with associated objectives that are summarized below:

#### **Goal 1: Prioritize cases and make strategic use of the Department’s legal tools.**

- a. Prioritize cases that will reduce public health and environmental harms
- b. Pursue full range of remedies available under the law

#### **Goal 2: Meaningfully engage with impacted communities and expand efforts to communicate environmental justice efforts.**

- a. Track DOJ’s progress through increased reporting
- b. Increase community outreach, public participation, and increase awareness of DOJ and its environmental justice initiatives

#### **Goal 3: Increase education and collaboration within and outside of DOJ.**

- a. Continue development of EJ-related training for DOJ staff
- b. Expand efforts to collaborate with federal, state, local, Tribal, and territorial partners

#### **Goal 4: Assess and evaluate environmental justice in DOJ’s climate adaptation efforts, including management of its procurement and real property.**

- a. Ensure DOJ considers environmental justice in the management and operation of the agency

### Public Comment Opportunities

DOJ seeks your input on several questions.

1. What additional goals and objectives should DOJ consider in its Plan?
2. How can DOJ improve its outreach and engagement efforts with communities about environmental justice?
3. What information and resources should DOJ provide to communities to clarify its environmental justice efforts?
4. What topics and considerations should DOJ include for staff training on environmental justice?
5. What organizations in your area should DOJ add to its environmental justice listserv?

All written comments must be submitted or postmarked by **Monday, July 8, 2024**.

Comments may be submitted in the following ways:

Online survey	<a href="http://www.justice.gov/oej">www.justice.gov/oej</a>
E-mail	<a href="mailto:oej@usdoj.gov">oej@usdoj.gov</a>
Postal mail	Office of Environmental Justice U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

DOJ is a federal agency that is dedicated to upholding the rule of law, keeping our country safe, and protecting civil rights.

To learn more, visit [www.doj.gov](http://www.doj.gov).



# EL DEPARTAMENTO DE JUSTICIA DE LOS EE. UU.

## BORRADOR DEL PLAN ESTRATÉGICO DE JUSTICIA AMBIENTAL

### Reseña general

Según lo exige la [Orden Ejecutiva 14096](#), “Revitalizing Our Nation’s Commitment to Environmental Justice for All [Revitalización del Compromiso de Nuestra Nación con la Justicia Ambiental para Todos]” se requiere que el Departamento de Justicia de los EE. UU. (DOJ, por sus siglas en inglés) publique un Plan Estratégico de Justicia Ambiental (el “Plan”) señalando su visión, sus metas, acciones prioritarias y medidas para abordar y promover la justicia ambiental. El Plan debe publicarse en línea y presentarse al Consejo de Calidad Ambiental, una división de la Oficina Ejecutiva del Presidente, a más tardar en octubre de 2024.

El DOJ ha identificado cuatro metas preliminares con sus objetivos asociados, que se resumen a continuación:

#### Meta 1: Priorizar los casos y hacer uso estratégico de las herramientas jurídicas del Departamento.

- a. Priorizar los casos que reducirán daños a la salud pública y el medioambiente
- b. Perseguir una gama amplia de los remedios disponibles conforme a la ley

#### Meta 2: Participar de manera integral con las comunidades afectadas y ampliar los esfuerzos de comunicación sobre los esfuerzos pro justicia ambiental.

- a. Dar seguimiento al progreso del DOJ por medio de mayor rendición de informes
- b. Aumentar el alcance comunitario, la participación del público e incrementar la conciencia sobre el DOJ y sus iniciativas de justicia ambiental

#### Meta 3: Aumentar la educación y la colaboración dentro y fuera del DOJ.

- a. Continuar desarrollando capacitación relacionada con justicia ambiental para el personal del DOJ
- b. Ampliar los esfuerzos de colaboración con socios federales, estatales, tribales y territoriales

#### Meta 4: Valorar y evaluar la justicia ambiental en los esfuerzos de adaptación climática del DOJ, incluso la gestión de sus adquisiciones y bienes inmuebles.

- a. Garantizar que el DOJ tome en cuenta la justicia ambiental en la gestión y operación de la agencia

### Oportunidades para comentarios del público

El Departamento de Justicia (DOJ, por sus siglas en inglés) solicita sus opiniones en relación con varias preguntas.

1. ¿Qué metas y objetivos adicionales debería el DOJ tomar en consideración en su Plan?
2. ¿Cómo puede el DOJ mejorar sus esfuerzos de alcance y participación comunitaria en materia de justicia ambiental?
3. ¿Qué información y recursos debería el DOJ proporcionar a las comunidades a fin de aclarar sus esfuerzos de justicia ambiental?
4. ¿Qué temas y consideraciones debería el DOJ incluir para fines de capacitación de personal sobre justicia ambiental?
5. ¿Qué organizaciones en su área debería el DOJ agregar a su servidor automático de listas de correo (listserv) de justicia ambiental?

Todos los comentarios deben presentarse por escrito a más tardar o tener matasello del **lunes, 8 de julio de 2024**.

Los comentarios pueden presentarse de las siguientes maneras:

Encuesta en línea [www.justice.gov/oej](http://www.justice.gov/oej)

Correo electrónico [oej@usdoj.gov](mailto:oej@usdoj.gov)

Correo postal

Office of  
Environmental Justice  
U.S. DOJ – ENRD  
P.O. Box 7611  
Washington, D.C.  
20044-7611

El DOJ es una agencia federal que se dedica a defender el estado de derecho, mantener seguro a nuestro país y proteger los derechos civiles. Para conocer más, visite [www.doj.gov](http://www.doj.gov).