

DOJ Rescinds Nine Trump Environmental Policies

Publications

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On February 4, 2021, in accordance with President Biden’s Executive Order 13,990 (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis), DOJ directed its ENRD Section and Deputy Section Chiefs to withdraw nine environmental policies that were put in place by the Trump Administration. The February 4th memorandum identifies the following nine withdrawn policies:

1. “Enforcement Principles and Priorities,” January 14, 2021;
2. “Additional Recommendations on Enforcement Discretion,” January 14, 2021;
3. “Guidance Regarding Newly Promulgated Rule Restricting Third-Party Payments, 28 C.F.R. § 50.28,” January 13, 2021;
4. “Equitable Mitigation in Civil Environmental Enforcement Cases,” January 12, 2021;
5. “Civil Enforcement Discretion in Certain Clean Water Act Matters Involving Prior State Proceedings,” July 27, 2020;
6. “Supplemental Environmental Projects (“SEPs”) in Civil Settlements with Private Defendants,” March 12, 2020;
7. “Using Supplemental Environmental Projects (“SEPs”) in Settlements with State and Local Governments,” August 21, 2019;
8. “Enforcement Principles and Priorities,” March 12, 2018; and
9. “Settlement Payments to Third Parties in ENRD Cases,” January 9, 2018.

In support of rescission of these policies, DOJ’s Deputy Assistant Attorney General noted that these policies were inconsistent with longstanding DOJ policy and practice and inappropriately impeded DOJ’s exercise of its enforcement discretion. Two of the more controversial policies rescinded by

DOJ's February 4th memorandum related to the prohibition on the use of supplemental environmental projects (SEPs) in settlement agreements. Under the Trump Administration, DOJ had argued that the use of SEPS violated the Miscellaneous Receipts Act which requires that monies paid to the Government be deposited into the Treasury so that Congress could decide how the monies would be appropriated.

DOJ noted that it would continue to assess the matters addressed by the withdrawn policies and might elect to issue new guidance on these matters in the future. We will continue to track efforts by the Biden Administration the environmental policies of the Trump Administration at the *Corporate Environmental Lawyer*.

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