

July 11, 2022

Robert Hinchman
Office of Legal Policy
U.S. Department of Justice
Room 4252 RFK Building
950 Pennsylvania Avenue NW
Washington, DC 20530

RE: DOJ-OAG-2022-0001

Dear Mr. Hinchman,

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to provide feedback on the Department of Justice’s guidelines concerning third party receipt of payments under environmental settlements, which was noticed in the Federal Register on May 10, 2022. NACAA is the national, non-partisan, nonprofit association of 155 air pollution control agencies including 31 states, the District of Columbia, 116 metropolitan areas, and five territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country.

In 2017, the Attorney General issued a memorandum prohibiting Department attorneys from “enter[ing] into any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal matter, that directs or provides for a payment or loan to any non-governmental person or entity that is not a party to the dispute”. In December 2020, these were included in DOJ regulations as 28 CFR 50.28 (85 Fed. Reg. 81409). The May 10, 2022 proposed action would revoke this prohibition.

NACAA supports the use of supplemental environmental agreements. Recommendation 5h in NACAA’s January 15, 2021 Transition Letter to the Biden Harris Administration¹ reads: “Under a series of policy memoranda, [DOJ] has ended the inclusion of supplemental environmental projects (SEPs) in settlement agreements with EPA. EPA and DOJ should reconsider this policy and reinstate the option of using SEPs as a way to harness clean air benefits via civil penalty mitigation. SEPs have proven to be a powerful mechanism for providing needed resources to

¹ Available online at: <https://www.4cleanair.org/wp-content/uploads/NACAA2021PresidentialTransitionDocument-01152021.pdf>

communities overburdened by air pollution resulting from noncompliance with environmental laws.”

As such NACAA supports the proposed guidelines reinstating the use of SEPs. We thank you for this opportunity to provide input and if you have any questions, please contact Miles Keogh, NACAA’s Executive Director, at mkeogh@4cleanair.org or (571) 970-6795.

Sincerely,



Michael G. Dowd
Virginia
Co-Chair
NACAA Enforcement Committee



Richard A. Stedman
Monterey, California
Co-Chair
NACAA Enforcement Committee