

**Memorandum of Understanding on Advancing Environmental Justice through
Enforcement and Compliance Assurance Efforts in Disproportionately Impacted
Communities between the**

**United States Environmental Protection Agency Region 8
and the
Colorado Department of Public Health and Environment**



March 8, 2022

Memorandum of Understanding on Advancing Environmental Justice through Enforcement and Compliance Assurance Efforts in Disproportionately Impacted Communities between the United States Environmental Protection Agency Region 8 and the Colorado Department of Public Health and Environment

I. Purpose

The purpose of this Memorandum of Understanding (MOU) between the U.S. Environmental Protection Agency Region 8 (U.S. EPA Region 8) and the Colorado Department of Public Health & Environment (CDPHE) (collectively, “the Parties”) is to advance environmental justice through enforcement and compliance assurance efforts in and affecting communities disproportionately impacted by pollution and/or historically marginalized, overburdened, and underserved communities.

The mission of the U.S. EPA is to protect human health and the environment. U.S. EPA Region 8 is responsible for implementation and oversight of U.S. EPA programs in Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, and 28 federally recognized tribes.

The mission of CDPHE is to advance Colorado’s health and protect the places where Coloradans live, learn, work, and play. CDPHE’s vision is a healthy and sustainable Colorado where current and future generations thrive. The department serves Coloradans by providing public health and environmental protection services that promote healthy people in healthy places. CDPHE pursues its mission through broad-based health and environmental protection programs, including programs managed in its Air Pollution Control Division, Hazardous Materials and Waste Management Division, and Water Quality Control Division (collectively, “Environmental Divisions”).

The Parties share the goal of promoting environmental justice and enhancing enforcement and compliance assurance efforts in and affecting disproportionately impacted communities. The legislative declaration of Colorado’s Environmental Justice Act (House Bill 21-1266) provides that “state action to correct environmental injustice is imperative, and state policy can and should improve public health and the environment and improve the overall well-being of all communities.” The Colorado Environmental Justice Act further explains that “efforts to right past wrongs and move toward environmental justice must focus on disproportionately impacted communities and the voices of their residents.”

To achieve this shared vision, U.S. EPA Region 8 and CDPHE will strive to be more accountable and responsive to compliance concerns in and affecting disproportionately impacted communities. The Parties intend to use data from Colorado’s EnviroScreen tool, EPA’s EJScreen

tool, in addition to other information available to the Parties, to identify disproportionately impacted communities and the environmental and climate harms that affect them, and to coordinate the Parties' enforcement and compliance work accordingly.

This MOU describes the Parties' partnership related to enforcement, inspections, compliance assistance, communication, community engagement, and training to improve environmental health outcomes in disproportionately impacted communities. The Parties intend to carry out these activities and to engage community members as we advance the Parties' shared goals of reducing pollution burdens, increasing environmental compliance, and improving public health outcomes in disproportionately impacted communities.

II. Program Planning and Evaluation

The Parties intend to collaborate on an annual workplan to devise strategies and activities conducted pursuant to this MOU and an annual accomplishment report to highlight collective achievements realized under this MOU, including metrics, to the extent feasible, to track and report progress. Collaboration may include individual CDPHE environmental programs meeting with their EPA Region 8 counterparts to share ideas and plans for how each agency can use available resources to target inspection and enforcement activities in disproportionately impacted communities in order to maximize collective efforts.

III. Activities

Together, the Parties intend to collaborate on the following activities:

A. Strategic Targeting of Inspections

U.S. EPA Region 8 and CDPHE's Environmental Divisions currently conduct inspections in and affecting disproportionately impacted communities under numerous environmental statutes. The Parties intend to ensure that disproportionately impacted communities are priority areas for compliance inspections to reduce pollution burdens, increase environmental compliance, and improve public health outcomes in these communities.

The Parties also recognize that CDPHE is required to conduct certain types of inspections at specific frequencies and locations under various environmental statutes and pre-existing agreements with EPA. This MOU does not alter or affect CDPHE's obligations to conduct statutorily required inspections.

B. Enforcement

The Parties currently conduct enforcement actions under numerous environmental statutes to address alleged non-compliance in disproportionately impacted communities. The Parties intend to collaboratively maximize the Parties' enforcement efforts for the purpose of reducing pollution burdens, increasing environmental compliance, and improving public health outcomes in these communities. In furtherance of this objective, we intend to pursue strategies such as:

- Enhancing coordination of enforcement responses, including joint judicial enforcement actions where appropriate; and
- Exploring ways to incorporate remedies with tangible benefits for communities affected by environmental violations into enforcement actions

C. Community Engagement

The Parties intend to increase their efforts to engage with disproportionately impacted communities to empower these communities and to ensure that the Parties' targeting of compliance and enforcement resources, development of enforcement responses and remedies, and compliance-related activities are fully informed by the knowledge and lived experiences of these communities.

In furtherance of this objective, we intend to pursue strategies such as:

- Increasing transparency with communities by sharing information about the Parties' compliance and enforcement efforts at the appropriate time;
- Soliciting input from communities on the issues that most affect them;
- Using data derived from complaints or tips from members of the public to help prioritize the Parties' enforcement and compliance assistance work; and
- Collaborating on periodic staff trainings on best practices for community engagement

IV. Limitations

This MOU is a voluntary agreement that expresses the good-faith intentions of the Parties. It is not intended to be legally binding and does not exempt either of the Parties or any other person from any applicable legal requirements. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against U.S. EPA Region 8 or CDPHE, their officers or employees, or any other person. This MOU does not apply to any person outside of the Parties.

CDPHE and EPA intend to work collaboratively to advance environmental justice through enforcement and compliance activities across environmental media (air, water, and soil). However, this MOU does not create any new authorities or enhance any existing authorities, including oversight authority for EPA over CDPHE activities in areas where CDPHE regulates with or without delegated authority from EPA.

All activities undertaken pursuant to this MOU are subject to the availability of appropriated funds, personnel, and other resources of each party. Nothing in this MOU obligates either party to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or to incur other financial obligations that would be inconsistent with its budget priorities. All costs that may arise from activities covered by, mentioned in, or pursuant to this MOU will be assumed by the party that incurs them, unless otherwise expressly agreed in a future written arrangement in accordance with applicable laws. Except as provided in a separate written agreement between the parties, each party agrees not to submit and waives any claim for compensation for services rendered to the other in connection with any activities it carries out in furtherance of this MOU. This MOU does not exempt CDPHE from U.S. EPA policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

Nothing in this MOU constitutes an endorsement by any party of the activities, products, or services of any party to this agreement, or any other party. The official seals of the U.S. EPA and CDPHE, displayed on the cover page of this MOU, may only be used for official U.S. EPA Region 8 and CDPHE purposes, respectively, including identifying U.S. EPA Region 8 and CDPHE as parties to this MOU.

V. Sharing of Information

The Parties recognize that the additional collaboration contemplated in this MOU will necessitate the sharing of information between the Parties. The Parties agree to consult one another before releasing to a third party any information shared by the other Party as a result of increased collaboration that is undertaken to further the purposes of this MOU. The Parties agree that they will consider the need for separate agreements regarding information sharing and the protection of confidential and privileged documents, as authorized under the Colorado Open Records Act, section 25-72-200 *et seq.*, C.R.S. and the Freedom of Information Act, 5 U.S.C. section 552 *et seq.* The non-existence of separate agreements, however, shall not be dispositive of whether a privilege exists with respect to information shared between the Parties as a result of increased coordination under this MOU.

VI. Authorities

U.S. EPA Region 8's participation in this MOU is guided by Executive Order 12898.

CDPHE's participation in this MOU is guided by The Environmental Justice Act, Colorado House Bill 21-1266, Section 2, and CDPHE Proclamation Declaring Racism A Public Health Crisis.

VII. Commencement/Duration/Modification/Termination

This MOU will remain in effect for five years from the signing date. It may be extended or modified through the mutual written consent of the Parties at any time. Either party may terminate its participation in this MOU by providing written notice to the undersigned or their successor 30 days before the desired termination date.

The termination of this MOU will not affect activities initiated while this MOU is in effect, unless a party expressly states otherwise. A party that intends to terminate a previously initiated activity should endeavor to reach an understanding with the other party concerning such termination.

VIII. Approval

Representatives of the U.S. EPA Region 8 and the CDPHE sign below on March 8, 2022, in recognition of the Parties' intention to move forward with these collaborative efforts.

KC Becker, Regional Administrator
United States Environmental Protection Agency, Region 8

Jill Hunsaker Ryan, MPH
Executive Director
Colorado Department of Public Health & Environment