UNITED STATES
DEPARTMENT OF JUSTICE

2015 IMPLEMENTATION PROGRESS REPORT ON ENVIRONMENTAL JUSTICE

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U.S. Department of Justice

Foreword

It is a pleasure to share the Department of Justice's 2015 Annual Implementation Progress Report on Environmental Justice with you. This is the Department's fifth annual report issued since 2012 to describe the work and achievements of the Department of Justice in carrying out Executive Order 12898 – *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the 2011 Memorandum of Understanding on Environmental Justice and Executive Order 12898, and the Department's Environmental Justice Strategy.

The Department continued to take meaningful steps in 2015 to implement its Environmental Justice Strategy and Guidance in ways that make a difference in communities facing environmental injustice. I want to highlight just a few:

- Community outreach is a core tenet of environmental justice. Effective outreach gives communities the opportunity to voice their concerns about environmental decision-making that could affect them and helps us to better understand those concerns. The Community Relations Service (CRS), the Department's "peacemaker", continues to use its mediation and conciliation expertise to help communities participate in environmental decisions. CRS has also worked to raise awareness among Environmental Justice and Civil Rights advocates about its expertise and mission.

- Interagency collaboration is essential to helping communities address the environmental justice challenges they face. The Department remains an active member of the Federal Interagency Working Group on Environmental Justice (EJ IWG), created by Executive Order 12898. The EJ IWG facilitates coordination among Federal agencies to guide, support, and enhance Federal environmental justice and community-based activities. In addition to continuing to chair the Title VI Committee of the EJ IWG, the Department now also co-chairs the EJ IWG Public Participation Committee, Strategy and Implementation Progress Committee, and the newly formed Native Americans/Indigenous Peoples Committee.

- Through its casework, the Department continues to obtain results that positively impact communities disproportionately burdened by pollution. For example, in 2015 the Environment and Natural Resources Division and the U.S. Attorney's Offices, working with their client-agency partners, successfully resolved numerous Clean Air Act cases that will reduce harmful air pollution in low-income minority and tribal communities, as well as a number of Clean Water Act cases that will reduce low-income and minority communities' exposure to harmful untreated raw sewage from inadequate or deteriorating sewer systems. In addition, through criminal actions under the Clean Water Act, the Department held accountable those who endangered the drinking water supply of vulnerable low-income communities, and required that those responsible take steps to address the impacts of their illegal actions.

- In October 2015, Attorney General Loretta Lynch, joined by five of our Federal agency partners, announced a historic $20 billion civil settlement with BP that will begin environmental restoration efforts in the Gulf of Mexico region to repair the damage done by the BP oil spill. Those restoration efforts will benefit communities throughout the Gulf region, including many disadvantaged communities that were devastated by the Deepwater Horizon tragedy – one of the largest environmental disasters in the nation's history. This report includes many other examples of how the Department has achieved positive results for communities through its litigation and casework.

DOJ Attorney General Lynch announces BP settlement

These are impressive accomplishments indeed, but we cannot rest on our past successes. Along with the achievements of countless other champions of environmental justice, those successes instill us with the hope of what is possible as we continue to drive towards the vision of environmental justice for all Americans. Today there are still many low-income, minority, and tribal Americans that lack basic necessities that others may take for granted, such as access to clean safe water, clean air to breathe, land that is safe to live and play on, and healthy food sources. Communities are still struggling to overcome the disproportionate health problems, greater obstacles to economic growth, and lower quality of life that result from the disproportionate burdens of pollution. The Department remains vigilant in its efforts to make environmental justice a reality for all communities – regardless of demographics or income. As Attorney General Lynch said in her remarks at the Department's Environment and Natural Resources Division awards ceremony on September 3, 2015, "we recommit ourselves to advancing the cause of environmental justice." We welcome your input on the Department's environmental justice activities, strategy, and guidance as we move forward.

William J. Baer
Acting Associate Attorney General

Introduction

As one of the17 Federal agencies and White House offices that signed a Memorandum of Understanding on Environmental Justice (MOU) in August 2011, the Department of Justice helps lead the Federal government's efforts to make environmental justice a reality for all Americans. Building upon Executive Order 12898 – the federal government's first statement of an environmental justice policy – the MOU represents the federal government's renewed commitment to environmental justice. The MOU promotes interagency collaboration and public access to information about agency work on environmental justice, and specifically required each agency to publish an environmental justice strategy, provide an opportunity for public input on those strategies, and produce annual implementation progress reports.

In 2015, the Department achieved significant results for the American people as it continued to implement its Environmental Justice Strategy, Executive Order 12898, and the MOU. The sections of this report briefly highlight the Department's progress toward the goal of achieving environmental justice and protecting communities and individuals from environmental harm. All Americans deserve to live, work, play, and learn in places that have clean air, water, and land. Environmental justice means that all Americans are afforded fair treatment and full protection under the nation's laws, including environmental, civil rights, and health and safety laws. In addition, every American should have the opportunity to participate meaningfully in the decision-making processes that affect their environment. However, the burdens of pollution often still fall disproportionately on low-income, minority, and Native Americans who do not have that meaningful opportunity to be heard. The Department remains deeply committed to ensuring that the goals and principles of environmental justice are part of our mission and appropriately integrated into our work. We continue to achieve meaningful environmental justice results and to work on many fronts to help make environmental justice a reality.

This report is divided into two sections. First, we describe the Department's continued interagency collaboration on environmental justice issues. Working primarily through the Interagency Working Group on Environmental Justice (EJ IWG), the Department is acting with other agencies to promote a coordinated Federal response on environmental justice issues. The Department also continued to focus efforts on increasing community outreach in our casework and securing tangible results for affected communities. Second, we summarize selected accomplishments of the Department to further environmental justice and make a real difference to communities through its litigation and casework.

Part One: Interagency Collaboration

Actively Participating in the Interagency Working Group on Environmental Justice (EJ IWG)

The EJ IWG, established by Executive Order 12898, is chaired by the U.S Environmental Protection Agency (EPA) and the White House Council on Environmental Quality (CEQ), and highlights the importance of Federal agencies working collaboratively to address environmental justice concerns. The EJ IWG works to facilitate the active involvement of all Federal agencies in implementing Executive Order 12898 by minimizing and mitigating disproportionate negative impacts on overburdened communities and fostering environmental, public health, and economic benefits for all Americans. The EJ IWG provides a forum for Federal agencies collectively to advance environmental justice principles. It works as a Federal family to assist communities in building capacity to promote and implement innovative and comprehensive solutions to address environmental justice concerns.

Through its work with the EJ IWG, the Department has assumed a leadership role in ensuring a coordinated Federal response to environmental justice issues. Representatives from the Department's Environment and Natural Resources Division (ENRD) and Civil Rights Division (CRT) regularly participate in EJ IWG senior staff-level meetings and identify ways the Department can support and further the EJ IWG's work. On May 27, 2015, EPA Administrator Gina McCarthy and former EPA Chief of Staff Gwendolyn Keyes Fleming hosted a Cabinet-level meeting of the EJ IWG. The Department's Deputy Attorney General Sally Yates and senior leadership from ENRD and CRT attended the meeting.

DOJ Deputy Attorney General Yates at May 27, 2015 EJ IWG Cabinet-level meeting.

Implementing the Interagency Memorandum on Environmental Justice

In 2011, the Department of Justice joined 16 other Federal agencies and White House offices in signing the MOU. The Department played an important leadership role in the development of the MOU and continues to play an important role in its implementation. The MOU identifies four focus areas for the EJ IWG as agencies implement their environmental justice strategies: (1) implementation of the National Environmental Policy Act (NEPA); (2) implementation of Title VI of the Civil Rights Act of 1964, as amended (Title VI); (3) addressing impacts from climate change; and (4) addressing impacts from commercial transportation and supporting infrastructure (often referred to as "goods movement"). The Charter to the MOU was updated in 2015 and now includes a governance structure and a requirement for agency senior leadership to meet twice a year to discuss agency collaboration efforts and commitments that will help further efforts to achieve environmental justice.

The EJ IWG governance structure identifies the following permanent EJ IWG committees:

- Public Participation,
- Regional Interagency Working Groups,
- Strategy and Implementation Progress Reports, and
- Title VI of the Civil Rights Act of 1964.

Consistent with the Presidential Memorandum issued with Executive Order 12898, and based on public recommendations, every three years the EJ IWG also determines if there are additional focus areas for Federal agencies to consider and address. During fiscal years 2016 – 2018, the EJ IWG will maintain the following additional committees to address five focus areas:

- Native Americans/Indigenous Peoples,
- Rural Communities,
- Impacts from Climate Change,
- Impacts From Commercial Transportation (Goods Movement), and
- National Environmental Policy Act (NEPA).

ENRD AAG Cruden at May 27, 2015 EJ IWG meeting

The Department was instrumental in establishing the newly formed Native Americans/ Indigenous Peoples Committee in 2015, which it co-chairs. The Department now also co-chairs the Public Participation and the Strategy and Implementation Progress Committees.

The Department continues to make significant progress in fulfilling its own obligations under the MOU and furthering the efforts of the EJ IWG:

- ***EJ IWG Title VI Committee***

  The Title VI Committee, chaired by the Department's Civil Rights Division, acts as a resource to help agencies connect their civil rights enforcement responsibilities with their efforts to achieve environmental justice. ENRD regularly participates in the Title VI Committee. In 2015, the Committee led a session of the annual National Environmental Justice Conference and Training Program in Washington, D.C. focusing on agency efforts to address environmental justice issues through their Title VI civil rights programs. The conference participants were predominately Federal government staff; however numerous advocacy groups and community representatives also attended. Additionally, the Committee contributed to the EJ IWG Framework for Collaboration FY2016 – 2018, setting several goals for the committee including issuing and posting on the EJ IWG webpage, a memorandum to Federal funding recipients on how Title VI applies to federally funded activities that have an impact on the environment and human health.

- ***EJ IWG NEPA Committee***

  During 2015, the Department's Environment and Natural Resources Division, through its Natural Resources Section (NRS), continued its active participation on the EJ IWG's

NEPA Committee, which is dedicated to cross-agency education and coordination to foster the incorporation of environmental justice principles into decision making through the NEPA process. NEPA requires Federal agencies, before they act, to determine the environmental consequences of their proposed actions for the dual goals of informed agency decision-making and informed public participation. Additionally, NEPA gives communities the opportunity to access public information on and participate in the agency decision-making process for Federal actions. The Presidential Memorandum accompanying Executive Order 12898 underscores the importance of procedures under NEPA to "focus Federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice."

Co-chairs of the Committee and Subcommittees are from the Department of Justice, EPA, the U.S. Department of Transportation, and the U.S. Department of Health and Human Services, while working groups are chaired by EPA, the U.S. Department of Agriculture-Animal and Plant Health Inspection Service, and the Department of Energy. Further, there has been active participation on the committee by seven additional Federal agencies.

In addition to actively participating in the regular monthly meetings, NRS has continued to work closely with the two NEPA sub-committees, the Education Sub-Committee and the Community of Practice (COP) Sub-Committee. In particular, it provided significant input in the development of a report entitled "Promising Practices on EJ Methodologies in NEPA Reviews," that will be issued by the NEPA COP Sub-Committee. The report provides a framework for meaningful engagement, development and selection of alternatives, and identification of minority and low-income populations in the context of NEPA reviews. The NEPA Committee has also completed a training module as a companion to the Promising Practices report.

- ***Climate Change***

As noted in President Obama's June 2013 Climate Action Plan, climate change is one of the greatest challenges of our time. Executive Order 13653 – *Preparing the United States for the Impacts of Climate Change* (November 1, 2013) – points out that communities, natural resources, ecosystems, economies, and public health across the Nation are already being affected by the impacts of climate change. Those impacts can include "an increase in prolonged periods of excessively high temperatures, more heavy downpours, an increase in wildfires, more severe droughts, permafrost thawing, ocean acidification, and sea-level rise." Low-income, minority, and tribal communities that are already dealing with economic or health-related challenges often face the most significant impacts of climate change.

On August 3, 2015, President Obama and EPA announced the Clean Power Plan as a historic and important step in reducing carbon pollution from power plants that takes real action on climate change. ENRD is presently defending EPA's Clean Power Plan, which is the subject of numerous challenges in the U.S. Court of Appeals for the D.C. Circuit.

- ***Annual Reporting***

  As required by the MOU, beginning in February 2012 and each year thereafter, the Department has issued its annual Implementation Progress Report on Environmental Justice. Each report details the actions taken and results achieved by the Department to further the goals of environmental justice during the preceding year.

- ***Environmental Justice Strategy and Guidance***

  The Department updated and reissued its Environmental Justice Strategy and Guidance in December 2014 to reflect the Department's current approach to addressing environmental justice in a way that leads to results for overburdened communities. One of those changes directs each of the Department's components that are members of the DOJ Environmental Justice Working Group to prepare its own environmental justice strategy. The Working Group is coordinating with those components to complete the strategies in 2016.

Increasing Communication and Awareness Among Federal Agencies

The Department continues to collaborate with other Federal agencies to foster dialogue on and enhance awareness of environmental justice issues. In October 2015, ENRD Assistant Attorney General Cruden held a briefing for Federal agency General Counsels to increase awareness of the breadth of the Environment Division's work, including its environmental justice efforts. In addition, the cross-agency group of career attorneys that ENRD, along with EPA's Office of General Counsel, organized in 2011 to discuss legal issues regarding environmental justice, remained an effective vehicle for promoting communication and awareness. During fiscal year 2015, the group (known as "Law Leaders on Environmental Justice") continued to serve as an important forum for open dialogue, continuing education, and informal counseling among the Federal agencies on issues such as environmental justice legal training. The group met at the Department of Justice in July 2015 to discuss the interplay between NEPA and environmental justice and to review the draft "Promising Practices for EJ Methodologies in NEPA Reviews" document developed by the NEPA Committee of the EJ IWG. ENRD's Natural Resources Section and others from the NEPA Committee briefed the group on the document. Assistant Attorney General Cruden and several attorneys in the Environment Division attended the meeting.

ENRD's Natural Resources Section also provided training to the Chief Counsel's Office of the Federal Highway Administration regarding environmental justice issues in NEPA litigation. ENRD's Environmental Defense Section discussed the Division's environmental justice efforts at a Department of Homeland Security Environmental Law Practice Meeting in November 2015.

In 2015, ENRD's Environmental Crimes Section (ECS) provided training to criminal environmental investigators. At training programs sponsored by the Southern Environmental Enforcement Network, environmental justice principles were taught to state and local

environmental investigators and regulators from throughout the country. The training included how to identify cases that raise environmental justice issues and what steps to take during case investigation, prosecution, and resolution. ECS also continued to coordinate with EPA's Office of Criminal Enforcement, Forensics and Training, working on priorities, case assessment, and interaction with EPA Regional EJ coordinators. The ECS EJ Coordinator held regular meetings with EPA personnel assigned to handle EJ matters.

The Department's Environmental Crimes Policy Committee – a group of senior attorneys from ECS, experienced Assistant United States Attorneys and representatives of Federal investigative agencies – included environmental justice issues at its annual meeting in September 2015. Members of the Attorney General Advisory Committee's Environmental Issues Working Group also attended this meeting. Environmental justice topics focused on conduct, actions, or issues that may involve a disproportionate and adverse environmental or human health effect on an identifiable community and included discussions of the Migrant and Seasonal Agricultural Worker Protection Act and the Occupational Safety and Health Act and their relationship to environmental matters.

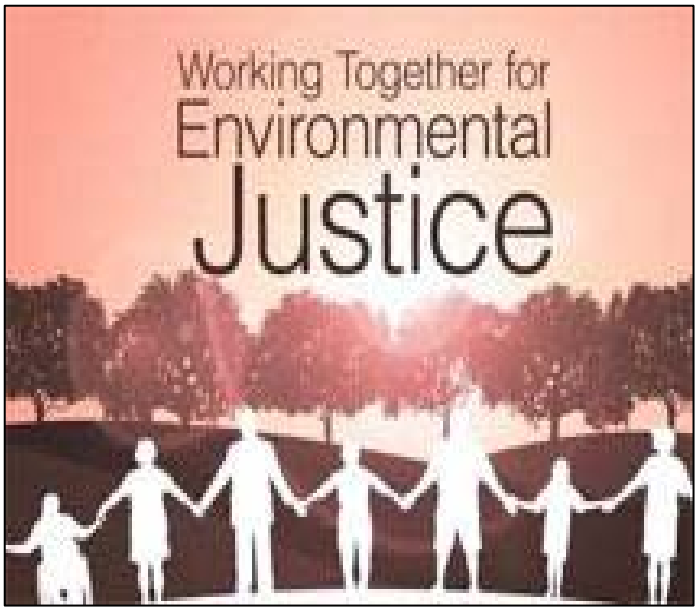
The Department's Civil Rights Division participated in the inaugural National Civil Rights Conference – "21st Century Civil Rights: Integrity. Integration. Innovation. Initiative." – sponsored by the U.S. Environmental Protection Agency and the U.S. Department of Agriculture in November 2015. The conference provided a collaborative forum for Federal civil rights professionals to receive training, share best practices, and explore cross-cutting issues in enforcement and compliance. It was co-hosted by a coalition of federal departments and agencies. Deputy Chiefs from the Federal Coordination and Compliance Section and Educational Opportunities Section of the Civil Rights Division were part of a panel discussion during the "Investigating Discriminatory Impact Claims" workshop, along with a representative from the Federal Transit Administration of the U.S. Department of Transportation. A Deputy Chief from the Federal Coordination and Compliance Section was also a panelist at the Environmental Justice session, which included representatives from U.S. Department of Agriculture, U.S. Environmental Protection Agency, and U.S. Department of Energy, as well as Howard University School of Law Associate Professor of Law Patrice Simms.

The Department's Civil Rights Division also assisted other Federal agencies in providing environmental justice training to their staff in 2015. For example, in May, the Division's Federal Coordination and Compliance Section presented at the Department of Energy's Environmental Attorneys' Training.

Participating in Community and Other Outreach

The Department has continued to help the EJ IWG fulfill one of its critical responsibilities under Executive Order 12898 – holding public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Department helped plan and participate in webinars the EJ IWG held to seek public comment on the draft EJ IWG Framework for Collaboration for FY 2016-2018. The Department's Environment and Natural Resources Division also now co-chairs the EJ IWG Public Participation Committee along with EPA. The Department will continue to work with the EJ IWG to conduct outreach to communities and facilitate public engagement with the EJ IWG.

In addition to the community outreach conducted with the EJ IWG and in the context of specific cases, the Department utilizes other forums to hear from stakeholder communities. For example, an ENRD representative attended the September 2015 EPA National Environmental Justice Advisory Council public meeting held in Arlington, Virginia. These meetings afford communities the opportunity to comment on environmental justice issues of concern to them.



EPA Image

Part Two: Environmental Justice Accomplishments

The Department's internal Environmental Justice Workgroup continues to lead efforts to integrate the principles of environmental justice into the Department's work. The Workgroup is chaired by the Office of the Associate Attorney General and coordinates among the relevant DOJ components to implement Executive Order 12898 and DOJ's Environmental Justice Strategy and Guidance.

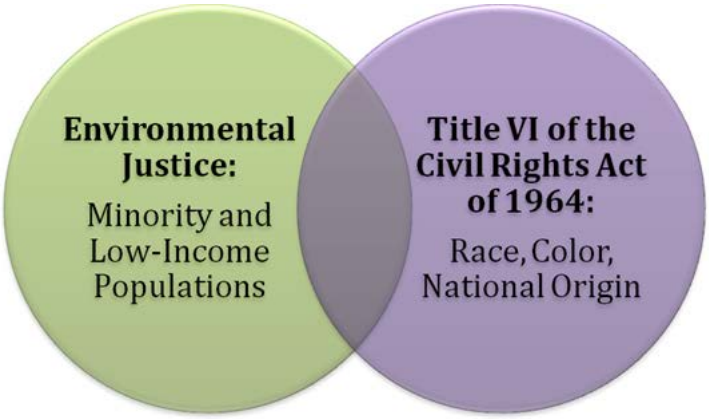
The Department's environmental justice public website (www.justice.gov/ej), launched in September 2011, provides information about DOJ policies, case resolutions, and contact information as well as access to view and comment on the Department's Environmental Justice Strategy and Guidance. The Department has also made its Annual Implementation Progress Reports available on the website.

DOJ EJ Website

This section of the Department's 2015 report focuses on three areas of the Department's work as it relates to environmental justice: (1) civil rights issues; (2) environmental issues; and (3) mediation and conciliation assistance. The Department has continued to achieve significant results, but there is still more to accomplish in our efforts to promote environmental justice in all our work. The Department remains committed to ensuring that environmental justice will be a key part of the Department's mission into the future.

Civil Rights Issues

The Civil Rights Division continues its concerted efforts to improve government-wide enforcement of Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance. The Division is charged with ensuring that all Federal agencies consistently and effectively enforce Title VI and other civil rights statutes and Executive Orders that prohibit discrimination in federally conducted and assisted programs and activities.



The Division actively supports the enforcement work of agencies investigating civil rights complaints that raise environmental justice issues. Our technical assistance to agencies such as the Department of Transportation and the Environmental Protection Agency and our interagency coordination work related to complaint investigations have resulted in improved interagency collaboration on individual investigations as well as in identifying opportunities for agencies to increase their capacity by engaging with their sister agencies. Additionally, the Division regularly participates in training sponsored by other Federal agencies to discuss the role of Title VI in responding to environmental justice concerns.

In 2015, the Division offered a new Title VI training program, which includes a segment on environmental justice, and continued its publication of the quarterly newsletter, *Title VI Civil Rights News @FCS*. The Spring 2015 issue focused on environmental justice and highlighted agencies' Title VI enforcement in environmental justice matters. The Summer 2015 issue recognized the 10th anniversary of Hurricanes Katrina and Rita and the importance of ensuring nondiscrimination in every phase of emergency management. The Division reminded Federal agencies that recipients of Federal financial assistance who are engaged in disaster preparedness, response, mitigation and recovery activities must comply with Title VI when engaged in those efforts. The newsletters are available to Federal staff and the public through www.govdelivery.com.

Within DOJ, the Division held a listening session with ENRD in September 2015 to hear concerns from environmental justice advocates and to identify areas for interagency and intra-agency collaboration that can increase accessibility of resources to communities. The Division and ENRD continue to facilitate open communication between our staff as well as our respective Division leadership to identify environmental justice matters that implicate the interests of both offices.

Environmental Issues

The Department remains committed to the strong enforcement of our nation's environmental and natural resources laws. This work is principally handled by the Environment and Natural Resources Division, which was founded in 1909. ENRD is predominately located in Washington, D.C., with offices in Denver, Colorado and San Francisco. The Division is organized into nine Sections and an Executive Office, and is led by Assistant Attorney General John C. Cruden. He has established several priorities for the Division during his time as Assistant Attorney General. They include:

- enforcement of the nation's bedrock environmental laws that protect air, land, and water for all Americans;
- vigorous representation of the United States in Federal trial and appellate courts, including defending key agency rulemaking authority;
- protecting the public fisc and defending the interests of the United States;
- advancing environmental justice through all of the Division's work and promoting and defending tribal sovereignty, treaty obligations and the rights of Native Americans; and
- providing effective stewardship of the nation's public lands, natural resources and animals, including fighting for the survival of the world's most protected and iconic terrestrial and marine species.

ENRD remains dedicated to ensuring that all Americans are protected from environmental harms – regardless of their income status, race, or ethnicity. The Division continues to work closely with U.S. Attorneys' Offices and in concert with other Federal agencies to ensure that communities that historically have not been heard are given an adequate voice in environmental decision-making that affects them, including the consideration of appropriate remedies for violations of the law. Highlighted below are some of the steps the Department took in 2015 to advance environmental justice principles through its work and that of its client agencies.

Conducting Outreach on Environmental Justice Issues

The Department of Justice, including ENRD, the Civil Rights Division, the Office of Tribal Justice, and U.S. Attorneys' Offices, continues to engage in community outreach to ensure that the Department understands and is responding to community concerns. This has taken many forms, including community meetings and visits by senior Department officials, participation in EJ IWG community meetings and calls, participation in environmental justice conferences, and outreach in conjunction with cases. The Department has worked with other Federal agency partners, and community representatives to organize direct outreach.

For instance, the Department's Office of Tribal Justice (OTJ) participates in the Department's Environmental Justice Working Group, co-chairs the Indian Civil Litigation and Policy Working Group, and assists with the White House Tribal Nations Conference, at which

listening sessions include various environmental justice issues. OTJ is also part of the Department's delegation to the White House Council on Native America Affairs, formed by President Obama in July 2013. OTJ further facilitates tribal requests for meetings with the Department on environmental justice issues. OTJ was involved in issues surrounding the Gold King Mine spill that affected tribal members during 2015.

OTJ is the primary point of contact for the Department of Justice with federally recognized Native American tribes, and advises the Department on legal and policy matters pertaining to Native Americans. OTJ coordinates with other Federal agencies and with State, local and tribal governments on their initiatives in Indian Country, and works to promote internal uniformity of DOJ policies and litigation positions relating to Indian Country.

In addition to community outreach, Attorney General Lynch, and other Department senior staff, took the opportunity to highlight the importance of environmental justice within the Department and to raise the awareness of those outside of the Department who work in the environmental law field. Examples include:

- July 13, 2015 American University Washington College of Law Seminar – Russell Young, former ENRD Environmental Defense Section Assistant Chief, addressed mountaintop coal mining issues in a seminar course on environmental justice.

- July 23, 2015 American Bar Association's Section of Litigation Workshop – John Cruden, ENRD Assistant Attorney General, spoke about the Division's environmental justice efforts during his remarks.

- August 6, 2015 Texas Environmental Superconference – John Cruden, ENRD Assistant Attorney General, discussed environmental justice issues during his remarks.

- September 3, 2015 ENRD Awards Ceremony – Attorney General Lynch highlighted the importance of environmental justice during her remarks.

Training and Increasing Awareness

During 2015, ENRD remained committed to increasing awareness and understanding of environmental justice issues among its attorneys and staff. For example, in September, ENRD provided an overview of environmental justice at its annual training for new attorneys entering the Division through the Attorney General's Honor Program and for newly hired experienced-attorneys. The Division also held brown-bag sessions for interns during the year to discuss the Department's environmental justice efforts.

ENRD also continued to foster greater understanding of environmental justice principals within the Department of Justice. In June 2015, the Division's Environmental Crimes and Environmental Enforcement Sections gave a presentation to the new chairs of the Environmental Issues Working Group of the U.S. Attorney General's Advisory Committee. The presentation focused on the factors considered in assessing environmental justice implications, the role of the Department of Justice in achieving environmental justice, outreach and remedies in civil

enforcement cases, and the intersection of environmental justice and the Crime Victims' Rights Act.

Integrating Environmental Justice Principles into ENRD Litigation and Outcomes

The Division's work at the local level reflects the Department's commitment to environmental justice and enforcing environmental laws. Through the fair and even-handed enforcement of the nation's environmental and natural resources laws, ENRD's Environmental Enforcement and Environmental Crimes Sections and the U.S. Attorneys' Offices seek to protect communities from environmental harms. We also work to resolve our cases in the interest of affected communities by finding ways for them to have a voice in remedies and outcomes that affect the places in which they live, work, play, and worship.

The following cases concluded by ENRD and the U.S. Attorney's Offices, in coordination with our agency partners, provide a few examples of how the Department's efforts furthered the principles of environmental justice during 2015:

- On August 17, 2015, the court approved a settlement in *United States, et al. v. Arizona Public Service Co., et al.* (D.N.M.) that will reduce pollution from the Four Corners Power Plant located on the Navajo Nation near Shiprock, New Mexico. This Clean Air Act settlement requires the Arizona and New Mexico-based utility companies to install pollution control technology to reduce harmful air pollution from the Four Corners Power Plant. The required upgrades to the plant's sulfur dioxide (SO2) and nitrogen oxide (NOx) pollution controls are estimated to cost $160 million.

  EPA expects that the actions required by the settlement will reduce harmful emissions by approximately 5,540 tons per year. SO2 and NOx, two predominant pollutants emitted from power plants, have numerous adverse effects on human health and are significant contributors to acid rain, smog and haze. These pollutants form particulates that can cause severe respiratory and cardiovascular impacts and premature death.

  The settlement also requires defendants to spend $6.7 million on three types of health and environmental mitigation projects to benefit tribal members:

  (1) $3.2 million to replace or retrofit local residents' inefficient, higher-polluting wood-burning or coal-burning appliances with cleaner-burning, more energy-efficient heating systems;

  (2) $1.5 million for residential weatherization projects that will decrease energy use, such as the installation of floor, wall and attic insulation, sealing of windows and doors, duct sealing, passive solar retrofits, and testing and repair of combustion appliances; and

  (3) $2 million to establish a Health Care Project trust fund to pay for certain medical expenses for tribal residents living near the Four Corners Power Plant who suffer from respiratory ailments; the funds may be used to pay for complete medical examinations, tests, review of current medications, prescriptions, oxygen tanks and other medical equipment, and to pay for transportation to and from the hospital or doctors' offices.

Importantly, citizen groups, including Diné Citizens Against Ruining Our Environment, To' Nizhoni Ani and National Parks Conservation Association, are co-plaintiffs to the settlement. Arizona Public Service Company (APS) is the operator and primary owner of the Four Corners Plant. El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District and Tucson Electric Power Company are current co-owners of the plant and Southern California Edison Company is a former co-owner of the plant. The settlement resolves claims that the companies violated the New Source Review provisions of the Clean Air Act by unlawfully modifying the Four Corners Power Plant without obtaining required permits or installing and operating the best available air pollution control technology. This settlement is part of EPA's national enforcement initiative to control harmful emissions from large sources of pollution, which includes coal-fired power plants, under the Clean Air Act's Prevention of Significant Deterioration requirements.

Photograph of Four Corners Power Plant and Navajo Sheep Herder U.S. NARA

- Harmful air pollution emissions at facilities in three states will be reduced as a result of the settlement reached in *United States v. Marathon Petroleum Corporation, et al.* (N.D. Ohio). The settlement, approved by the court on July 2, 2015, resolves various Clean Air Act violations at ten Marathon facilities. The United States alleged that Marathon failed to comply with certain Clean Air Act fuel quality emissions standards and recordkeeping, sampling and testing requirements. These violations may have resulted in excess emissions of air pollutants from motor vehicles, which can pose threats to public health and the environment. Marathon self-reported many of these violations to EPA.

  The settlement requires Marathon to spend over $2.8 million on pollution controls to reduce emissions of volatile organic compounds from 14 fuel storage tanks at its distribution terminals that are primarily located in areas in Indiana, Kentucky and Ohio with environmental justice concerns. Marathon will install geodesic domes, fixed roofs, or secondary rim seals and deck fittings on the 14 fuel storage tanks. Marathon is also required to use innovative pollutant detection technology during the implementation of the environmental mitigation projects. Marathon will use an infrared gas-imaging camera to inspect the fuel storage tanks in order to identify potential defects that may cause excessive emissions. If defects are found, Marathon will conduct up-close inspections and perform repairs where necessary.

Marathon will pay a $2.9 million civil penalty and retire 5.5 billion sulfur credits, which have a current market value of $200,000. Sulfur credits are generated when a refiner produces gasoline that contains less sulfur than the Federal sulfur standard. These credits can be sold to other refiners that may be unable to meet the standard.

- On August 21, 2015, the court approved a settlement in *United States and Michigan Department of Environmental Quality v. AK Steel Corporation*, (E.D. Mich.), a Clean Air Act case addressing primarily particulate emissions from a large integrated steel mill in Dearborn, Michigan. The case team met with a local community group, represented by experienced environmental counsel, and solicited their input prior to finalizing the settlement. The result was a settlement that requires AK Steel to fund the installation of air filtration systems at nearby public elementary and middle schools as part of a supplemental environmental project (SEP), pay a civil penalty of $1,353,126 to the United States and the Michigan Department of Environmental Quality ("MDEQ"), and implement several measures to ensure improved compliance including: (i) an Environmental Management System ("EMS") for the facility with a third-party audit of the EMS every six months; (ii) measures to improve the performance of the Electrostatic Precipitator ("ESP") at the facility's Basic Oxygen Furnace; and (iii) a fugitive dust control system to prevent large particulate emissions into the adjacent neighborhoods.

  The United States conducted additional community outreach by hosting a community meeting at the public school across the street from the steel mill to explain the terms of the settlement and how local residents could submit comments. In advance of the meeting, the United States prepared a one page summary description of the settlement and had it translated into Spanish and Arabic. The local community has a large percentage of Arabic-speaking Americans.

- In *United States and Alabama Department of Environmental Management v. McWane, Inc.* (N.D. Ala.), the United States lodged a settlement with the court on September 1, 2015 requiring McWane to spend an estimated $2.5 million to implement an environmentally beneficial project to reduce harmful air pollution in an overburdened community near Birmingham, Alabama. As part of the settlement, McWane, a national pipe manufacturer, will complete a paint conversion project that will convert a wet spray, solvent-based pipe coating system into a powder coatings system at a facility in Trussville, Alabama, which is located near an elementary and a secondary school. The powder coating system will virtually eliminate emissions of volatile organic compounds and significantly reduce paint waste in the production process. The Trussville plant emitted approximately 9 tons of volatile organic compounds from its wet paint operations from 2011 through 2013.

  The settlement resolved historical violations under the Clean Air Act, Clean Water Act, and other environmental laws. McWane paid a civil penalty of $471,031, which was split between the United States and the State of Alabama. The settlement did not require prospective corrective actions, because McWane had already remedied the violations alleged in the complaint.

- The environmental projects required by the settlement reached in *United States v. Bayer CropScience* (W.D. Va.) will benefit a community with environmental justice concerns in Institute, West Virginia. The small community is located right outside the fence line of the Bayer CropScience facility. The United States' complaint, resolved by the settlement lodged with the court on September 21, 2015, alleged violations of Section 112(r) of the Clean Air Act in connection with a 2008 explosion that killed two workers at the facility and caused thousands of people to shelter in place for several hours.

  The settlement requires Bayer CropScience to perform the following supplemental environmental projects, which will benefit the fence line community, as well as other surrounding communities:
  - develop a system to distribute emergency alerts to mobile phones, which is expected to be particularly useful for homeowners who do not have a landline;
  - provide emergency response equipment to eight fire departments and two police departments to be used in response to emergencies such as chemical releases; all but two of these fire departments responded to the 2008 explosion, and are expected to respond to any other major incident potentially impacting the community;
  - fund chemical cleanouts at local high schools and ensure that they have appropriate protective equipment;
  - provide shelter-in-place training for local public schools; and
  - build a $3 million sump expansion to prevent spills of industrial wastewater to the river adjacent to the facility (and the community).

MIC day tank blast shield post-incident U.S. Chemical Safety Board

- ENRD's Environmental Enforcement Section and the U.S. Attorney's Office for the District of New Jersey supported EPA in reaching administrative settlements in the *Port Newark/Port Elizabeth Diesel-Truck Idling* matter, as announced by EPA on July 23, 2015. This matter involved diesel-truck idling at three marine terminals located at Port Newark/Port Elizabeth in Newark and Elizabeth, New Jersey. Newark, New Jersey is the home of the Ironbound community, a large working-class multi-ethnic neighborhood with environmental justice concerns. Alleged diesel-truck idling at the port, in excess of federally approved state regulatory limits, has resulted in excess emissions of harmful air pollutants from diesel exhaust, particularly smog forming pollutants such as nitrogen oxides and volatile organic compounds.

EPA reached administrative agreements with four parties, the Port Authority of New York and New Jersey (the Port Authority), APM Terminals of North America (APM Terminals), Maher Terminals, and Port Newark Container Terminals (PNCT). Under its agreement, the Port Authority will provide funding for truck owner-operators to replace their old trucks serving the port with newer, less-polluting trucks, and will place anti-idling signs on port roadways. The Port Authority will also provide funding up to $1.5 million (if approved by its Board of Commissioners) for terminal operators who connect their cargo handling equipment to alternative sources of power such as electricity. In addition, the Port Authority will assist the truck operators to create a system to manage truck traffic to further reduce air pollution.

Shipping containers at the terminal at Port Elizabeth, New Jersey
NOAA

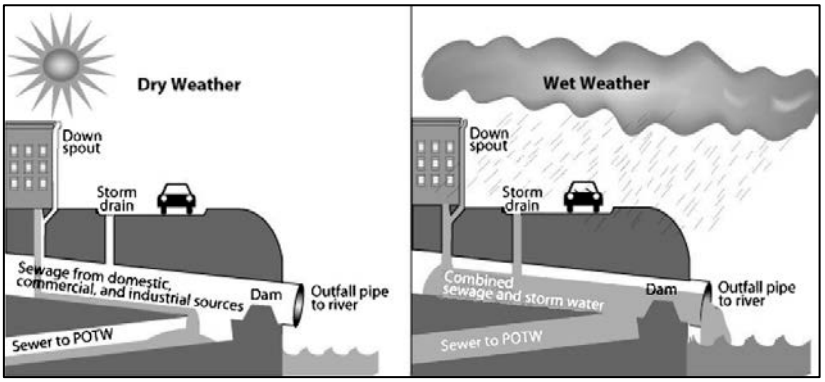
Under their agreements, APM Terminals, Maher Terminals, and PNCT will provide anti-idling instructions at gate entrances, install anti-idling signs, and undertake a variety of additional driver education efforts to reduce idling. The terminal operators also will provide a total of $600,000 to the City of Newark, to be used to pay for green infrastructure projects in areas that are most impacted by air pollution from port operations. These projects may include vegetative barriers, plantings, and landscaping. The Newark metropolitan area has unhealthy air that does not meet air quality standards for smog. Smog and diesel exhaust particles pose serious health risks, including aggravating the symptoms of asthma and other respiratory problems.

- The agreement reached in *In the Matter of: Reichhold, LLC* (San Gabriel Valley Area 2 Superfund Site) (C.D. Cal.) will benefit minority and low-income residents of Azusa, California. On March 26, 2015, the Department of Justice approved a Prospective Purchaser Agreement (PPA) with Reichhold, LLC for the purchase of a chemical manufacturing business on 8.8 acres in Azusa, California. The property is part of the San Gabriel Valley Area 2 Superfund Site, Baldwin Park, California, Operable Unit and is located in a community with environmental justice concerns – where approximately 79 percent of the population is Latino, and 35 percent of the population lives below two times the federal poverty level. The property was part of the bankrupt estate of Reichhold Inc. The purchaser, Reichhold, LLC, is paying $800,000 to an EPA special account to fund future response actions at the site. Additionally, the sale will retain 22 jobs, prevent blight in an industrial area and prevent the abandonment and potential deterioration of a facility containing substantial amounts of hazardous substances.

- The Clean Water Act settlement in *United States, et al. v. Delaware County Regional Water Quality Control Authority* (DELCORA) (E.D. Pa.), once fully implemented, will help reduce the direct exposure of low-income and minority populations in the Philadelphia service area

to raw sewage and other contaminants resulting from combined sewer overflows (CSOs). DELCORA's wastewater facilities serve approximately 500,000 people in the greater Philadelphia area, including many low-income communities. The violations involved DELCORA's failure to develop a Long Term Control Plan (LTCP) to manage its CSOs. The citizens of Chester, Pennsylvania have historically borne a disproportionate share of the negative environmental consequences from DELCORA's combined sewer overflows.

The settlement, approved by the court on November 13, 2015, addresses longstanding problems with DELCORA's combined sewer system, which when inundated with stormwater, discharges raw sewage, industrial waste, nitrogen, phosphorus and polluted stormwater into Chester Creek, Ridley Creek, and the Delaware River. According to DELCORA, the volume of combined sewage that overflows from the system is approximately 739 million gallons annually.



Combined Sewer Overflow (CSO) diagram EPA Image

Exposure to raw sewage can cause adverse health effects ranging in severity from mild gastroenteritis, causing stomach cramps and diarrhea, to life-threatening ailments such as cholera, dysentery, infectious hepatitis and severe gastroenteritis. Exposure to untreated sewage, therefore, presents a serious health risk to those who may come into contact with it. Groups facing greater risks include children, the elderly, immune-compromised groups and pregnant women.

The settlement requires DELCORA to develop and implement a Long Term Control Plan to control combined sewer overflows. To address the environmental justice concerns, DELCORA is required to submit to EPA a Public Participation Plan that describes how the LTCP process will: (i) address the impact of DELCORA's CSOs and LTCP on populations with environmental justice concerns, (ii) seek input from communities that may have historically borne a disproportionate share of the negative environmental consequences resulting from DELCORA's CSOs, and (iii) ensure that the LTCP and selected combined sewer overflow Control Measures will not impose a disproportionate share of negative environmental consequences on such communities in the future. Therefore, an opportunity to address historical environmental justice issues is built into the Long Term Control Plan process. Moreover, the Long Term Control Plan itself is subject to EPA oversight and approval.

Based on information submitted by DELCORA, EPA estimates that the Authority could spend as much as $200 million to implement an overflow control plan that complies with the terms of the Clean Water Act. Once the specific pollution control measures are selected and approved, the settlement requires DELCORA to implement the plan as quickly as possible, with a 20-year deadline from when the settlement is filed in court to complete the necessary controls. DELCORA is also required to pay a $1.375 million penalty for prior violations, to be split between the United States and the Commonwealth of Pennsylvania, a co-plaintiff in this case.

In addition, to further prevent citizen exposure to untreated sewage, the settlement requires DELCORA to notify the public of CSO discharges using a visual notification system, including warning lights and flags at CSO outfalls, where a sewer empties into local waterways.

- Under the settlement lodged with the court on September 15, 2015 in *United States v. Puerto Rico Aqueduct and Sewer Authority* (PRASA) (D.P.R.), PRASA has agreed to make major upgrades, improve inspections and cleaning of existing facilities within the Puerto Nuevo system and continue improvements to its sanitary sewer systems island-wide. These upgrades are necessary to reduce the public's exposure to serious health risks posed by untreated sewage.

  The Puerto Nuevo sewer system serves the municipalities of San Juan, Trujillo Alto, and portions of Bayamón, Guaynabo and Carolina. PRASA's violations include releases of untreated sewage and other pollutants into waterways in the San Juan area including San Juan Bay, Condado Lagoon, Martín Peña Canal and the Atlantic Ocean. These releases have been in violation of PRASA's National Pollutant Discharge Elimination System (NPDES) permits and the Clean Water Act. PRASA also violated its NPDES permit by failing to report discharges in the Puerto Nuevo collection system and by failing to meet effluent limitations and operations and maintenance obligations at numerous facilities island-wide.

  Under the agreement, PRASA will spend approximately $1.5 billion to make necessary improvements. PRASA will undertake a comprehensive operation and maintenance program in the Puerto Nuevo sanitary sewer system, including conducting a comprehensive analysis of the system to determine whether subsequent investments must be made to ensure the system is brought into legal compliance and to conduct immediate repairs at specific areas of concern.

  In order to minimize the occurrence of combined sewer overflows and work toward the elimination of sanitary sewer overflows and unauthorized releases, EPA has identified specific areas of concern within the Puerto Nuevo Regional Wastewater Treatment Plant Sewer System that require interim measures to be taken while the sewer system is being assessed and repaired. Four of the areas are areas with environmental justice concerns: PR-47 (José De Diego Street), Barrio Obrero Rexach Avenue, Hipódromo Residential Development, and Villa Kennedy Housing Development.

PRASA has also agreed to invest $120 million to construct sanitary sewers that will serve communities surrounding the Martín Peña Canal, a project that will benefit approximately 20,000 people. For decades, the Martín Peña communities have struggled with poverty and environmental degradation. This project, which will begin after other infrastructure improvements near the canal are completed, will greatly reduce the amount of untreated sewage and other contaminants entering the canal.

The settlement also requires PRASA to convene community meetings in areas affected by discharges that occur in two consecutive weeks, or "continuous overflows," within two weeks of PRASA's knowledge of the continuous overflows. At these community meetings, PRASA will inform the affected residents of conditions that are causing continuous overflows, actions PRASA is taking to address those overflows, and the expected date to eliminate the overflows.

This settlement will update, replace and supersede three existing consent decrees between the United States and PRASA. In recognition of the financial conditions in Puerto Rico, the U.S. government waived the payment of civil penalties associated with violations alleged in the complaint filed. In recognition of PRASA's financial challenges, many of the provisions of the agreement have been tailored to focus on the most critical problems first, giving more time to address the less critical problems.

- On April 6, 2015, the court approved a settlement in *United States and the State of Arkansas v. City of Fort Smith, Arkansas* (W.D. Ark.) that will substantially reduce the number of raw sewage discharges into local waterways and help assure that the citizens of Fort Smith are not exposed to the harmful organic matter, bacteria, viruses, parasites, toxics, and metals found in untreated sewage. The settlement resolved alleged Clean Water Act violations related to Fort Smith's failure to properly operate and maintain its sewer collection and treatment system. Since 2004, Fort Smith had reported more than 2,000 releases of untreated sewage from its municipal sewage system, resulting in more than 119 million gallons of raw sewage flowing into local waterways, including the Arkansas River. These types of releases, known as sanitary sewer overflows (SSOs), cause serious water quality and public health problems. Many of the manholes and pump stations from which Fort Smith's sanitary sewer overflows occur are located in low-income and minority communities. Fort Smith also violated limits for discharges of various pollutants from its Massard and P Street wastewater treatment plants numerous times over the last decade.

Sanitary Sewer Overflow (SSO) EPA photo

The city of Fort Smith will pay a $300,000 civil penalty and spend more than $200 million over the next 12 years on upgrades to its sewage collection and treatment system to reduce discharges of raw sewage and other pollutants into local waterways. To reduce sanitary sewer overflows Fort Smith will conduct a comprehensive assessment of its sewer system to identify defects and places where stormwater may be entering the system. The city will also

repair all sewer pipe segments and manholes that are likely to fail within the next ten years; develop projects to improve its sewers' performance; and implement a program to reduce the introduction of fats, oil and grease into its system, to reduce root intrusion, and to clean the system of debris which can cause sanitary sewer overflows. Fort Smith will also implement a program to determine whether human waste is entering and being released from the city's stormwater system.

In prioritizing the order of the sewer investigations that will occur before repairs are made to defective sewers, the city of Fort Smith will need to consider several factors – including whether a service area is in a low-income area. A key factor will be inflow/infiltration rates – the rates at which water other than sanitary wastewater is entering the sewer system. The older downtown areas where the inflow/infiltration rates tend to be higher, also tend to be the areas where lower-income residents live, particularly minority families.

Importantly, as part of the settlement the city will implement a program to help low-income residential property owners repair or replace defective private sewer lines that connect to the city's collection system.

- On June 30, 2015, the court approved a Clean Water Act settlement in *United States and the State of Mississippi v. Cal-Maine Foods, Inc.* (S.D. Miss.) to bring Cal-Maine Foods, Inc. into compliance with state and federal laws and cut nutrient pollution discharges into area waterways. The United States, in coordination with its state partner Mississippi, negotiated the settlement which resolves Clean Water Act violations at Cal-Maine's Edwards, Mississippi concentrated animal feeding operation housing more than two million chickens. The company discharged pollutants into a creek without permit authorization and also illegally applied nitrogen-laden wastewater in violation of its permit. The facility is located in a community disproportionately affected by pollution. Nearly half of the households have an annual income of less than $25,000.

  Under the settlement, the facility will comply with its discharge permit, significantly reducing nutrient pollution from nitrogen and phosphorus, and improve environmental data collection and reporting practices. Once the pollution controls required by the settlement are implemented, EPA estimates Cal-Maine will cut discharges of nitrogen by 89,000 pounds and phosphorous by 20,000 pounds per year. EPA estimates it will cost Cal-Maine approximately $418,000 to implement the settlement requirements and bring the Edwards, Mississippi, facility into compliance with state and federal clean water laws.

  Under the settlement, Cal-Maine is already developing and implementing procedures for its egg production and land application areas to achieve compliance with its permit, an employee training policy and improved recordkeeping and reporting practices. The procedures were submitted to and reviewed and approved by EPA and Mississippi officials during the course of settlement negotiations. Cal-Maine has begun implementing these measures and must comply with all the terms of the settlement by April 30, 2016. Cal-Maine was also required to pay a $475,000 penalty to be divided evenly between the United States and Mississippi.

- In *United States v. Southern California Plating Company* (S.D. Cal.), Southern California Plating Company ("SoCal Plating"), a metal finishing company located in Logan Heights, California, and its owner, Paul Hummell, admitted illegally storing hazardous waste and unlawfully discharging the waste into the sewer system. SoCal Plating's metal finishing operations generated a number of wastewater streams, including spent corrosive cleaning and process baths, and rinse waters which were corrosive and contaminated with toxic heavy metals. SoCal Plating admitted that its employees discharged into the City of San Diego sewer system industrial wastewater which contained zinc and nickel in excess of its permit limits.

Filter cake with hazardous waste label

In pleading guilty in 2015, SoCal Plating agreed to pay a $50,000 fine and restitution of $8,266 to the San Diego Department of Environmental Health Services and $28,130 to the City of San Diego Industrial Waste Control Program for costs associated with monitoring the firm's discharge and disposal of its wastewaters. Wastewater containing heavy metals such as those generated by metal finishers is required to be treated prior to discharge to the sewer system in order to avoid compromising the treatment works or passing through to the receiving waters. Heavy metals in high concentrations can damage the digesters at the sewage treatment plants, causing them to operate less efficiently.

Cases such as this help prevent degradation of our natural resources and safeguard the health of American communities, particularly overburdened minority communities like Logan Heights, from the illegal discharge of industrial materials.

- In May 2015, three subsidiaries of Duke Energy Corporation pleaded guilty to nine misdemeanor counts under the Clean Water Act for years of negligent management of coal ash impoundments at their coal-fired power plants. Although the *United States v. Duke Energy Business Services, LLC, et al.* (E.D.N.C.) case stemmed primarily from the February 2014 spill of coal ash from Duke Energy Carolina LLC's Dan River Steam Station into the Dan River, it also encompassed allegations at Duke Energy facilities across North Carolina. The defendants entered into plea agreements requiring them to pay a combined $102 million in monetary penalties, including $68.2 million in criminal fines, $24 million in community service payments, and $10 million in wetlands mitigation. They must also adopt and adhere to nationwide and state environmental compliance plans and fund a court-appointed monitor. The parent corporation entered into a guaranty agreement to ensure that funds are available to meet the requirements of the plea agreements.

ENRD AAG Cruden and U.S. Attorneys announce Duke Energy plea agreements

One of Duke Energy's North Carolina facilities, the L.V. Sutton Steam Station owned and operated by Duke Energy Progress, Inc., is located near the community of Flemington, just outside Wilmington, North Carolina. Flemington, a small low-income neighborhood, has had a history of water-quality problems with its drinking water supply, dating back to contamination from a landfill in 1978. New supply wells constructed after 1978 are located down-gradient from the Sutton facility's coal ash impoundments. In 2013, the local public utility determined that contaminants, including boron, from the coal ash impoundments at Sutton were entering the drinking water supply. Duke Energy Progress had previously entered into an agreement with the public utility to share costs for extending a municipal water line to the Flemington community. While not included as one of the charges in the criminal information, as part of the plea agreement, Duke Energy Progress agreed to pay the public utility "for all costs, whenever incurred, associated with the extension of the Flemington water line, which was necessary to ensure that the community had clean drinking water."

The plea agreements also contain provisions designed to address the impacts of the defendants' conduct on communities throughout North Carolina. Those provisions include:

- A Claims Process, administered by the court-appointed monitor, for communities whose drinking water has been adversely affected by increased discharges of bromide from "scrubber" technologies installed at Duke Energy facilities, and

- Community Service Payments, administered by the National Fish and Wildlife Foundation, for efforts to benefit, preserve, restore, and improve water resources in affected areas of North Carolina and Virginia through projects involving monitoring, study, restoration, and preservation of fish, wildlife, and plant resources; monitoring, study, clean-up, remediation, sampling, and analysis of pollution and other threats to the riparian environment and ecosystem; research, study, planning, repair, maintenance, education, and public outreach relating to the riparian environment and ecosystem; environmental education and training relating to the protection and preservation of riparian resources; and the protection and support of public drinking water systems.

Basin area after coal ash spill

- In 2015 in the Southern District of West Virginia, Freedom Industries, Inc., and six former officials were charged and pleaded guilty to various Federal crimes related to the January 2014 Elk River chemical spill in Charleston, West Virginia. The charges included violations of the Clean Water Act and discharging refuse matter in violation of the Federal Refuse Act. Freedom's environmental consultant and tank farm plant manager were charged separately with violating the Clean Water Act.

  The January 2014 Elk River chemical spill affected the water supply of more than 300,000 people in the Charleston, West Virginia area. A leaking chemical silo at Freedom Industries released an estimated 10,000 gallons of 4-methylcyclohexane methanol (MCHM) into the Elk River, forcing West Virginia's governor to issue an order that residents in nine counties not use their tap water. Freedom's executives failed to conduct proper inspections of the tank containing MCHM; failed to develop and implement a spill prevention, control and countermeasures plan; failed to develop and implement a stormwater pollution prevention plan and groundwater protection plan; and failed to properly maintain the containment area surrounding the tanks at the facility and to make necessary repairs to ensure the containment area would hold a chemical spill. The *United States v. Freedom Industries Inc., et al.* (S.D. W. Va.) case, which was investigated by the Federal Bureau of Investigation and the Environmental Protection Agency Criminal Investigation Division and prosecuted by the West Virginia Southern U.S. Attorney's Office, shows the government's commitment to environmental justice for low-

Site where chemical was spilled into the river

income and vulnerable residents of Charleston, West Virginia whose water supply was affected by this chemical spill.

- In *United States v. Gattarello, et al.*, (N.D. Ohio), defendant Christopher Gattarello was found guilty in March 2015 of violating the Clean Air Act by failing to remove asbestos prior to demolishing a factory, and failing to remove garbage from the factory. Gattarello owned and controlled several municipal garbage-hauling businesses in the greater Cleveland, Ohio area. In 2011, Gattarello leased a 570,000 square-foot former factory facility located near many homes and a school in an area with a minority population. It was determined that the facility contained asbestos. Gattarello stated that he intended to use the facility to recycle paper and cardboard waste. Over several months, more garbage, paper and cardboard were delivered to the facility than could be handled. To fix this problem, Gattarello moved the waste inside until the facility was full. In 2012, Gattarello moved from leasing to purchasing the facility with the intent to demolish it and sell any metal removed as scrap. His company filed a notice with the city of Cleveland which stated that the facility had no asbestos. This notice was rejected by the city, and demolition was ordered not to take place. Despite this, Gattarello ordered demolition of the facility. Asbestos fibers were released into the environment during demolition. Debris accumulated outside the facility from the demolition and asbestos in the piles were exposed to the wind and elements. This case, which was handled by the U.S. Attorney's Office for the Northern District of Ohio following an investigation by the Federal Bureau of Investigation, the United States and Ohio Environmental Protection Agencies, the Ohio Bureau of Criminal Investigation and the Internal Revenue Service, demonstrates the government's commitment to protecting communities from air containing hazardous waste and industrial pollutants.

Dry Asbestos

- In July 2015, the United States Attorney's Office for the District of Puerto Rico, indicted AIREKO Construction Co. for failing to comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP) as a result of illegally removing asbestos during the renovation of the ninth floor of the Minillas North Tower in May 2012. AIREKO violated NESHAP by failing to: (1) adequately wet the asbestos during the removal; (2) have a properly trained supervisor on site during the removal; (3) properly place the asbestos in leak tight bags; (4) properly label the asbestos containing waste material; (5) properly dispose of the asbestos containing material at an authorized land fill; and (6) notify immediately the appropriate government agency of the release of a reportable quantity of a hazard substance-asbestos.

  This case, captioned *United States v. Kenneth M. Baez-Alers, AIREKO Construction Co. and Edgardo Albino* (D.P.R.), highlights several important Department of Justice priorities

including, environmental justice, protecting workers from occupational hazards, and holding individuals accountable for their illegal activity. The indictment shows the importance of protecting workers who take on the dangerous task of asbestos removal. This worker population disproportionately faces greater risks than other workers to illness due to asbestos exposure. Proper training and supervision of the removal and disposal of this material in an environmentally responsible manner are essential to protect this community of workers. Furthermore, the case shows the government's commitment to individual accountability when prosecuting corporations. The failure to notify charge focused on the conduct of corporate officials who discovered the release of asbestos, and who failed to make the appropriate notifications. As a result, Edgardo Albino, Vice-President of Operations and Executive Owner of AIREKO, was charged with failing to notify immediately the appropriate government agency of the release of a reportable quantity of a hazard substance – asbestos. The case was investigated by EPA and prosecuted by ENRD's Environmental Crimes Section and the United States Attorney's Office for the District of Puerto Rico with assistance from EPA Criminal Enforcement Counsel.

- On September 11, 2015, in *United States v. Moses* (W.D. Wash.) Shane Moses, a member of the Tulalip Tribes, was sentenced to 111 days in prison and two years of supervised release for clubbing two bald eagles to death, and then attempting to sell them. Moses was crabbing on Tulalip Bay in December 2013 when he saw two injured bald eagles in the water. Moses clubbed both eagles in the head and fractured their skulls. He put the eagles in a bucket, returned to shore and asked an acquaintance to drive him to a taxidermist's where he hoped to be paid for the dead eagles. Moses was charged with violating the Lacey Act which makes it illegal to traffick in "illegal" wildlife, fish, and plants. Members of the Tulalip Tribal Police became aware of the transportation of the dead eagles and stopped Moses. One eagle had already died and the other had to be euthanized due to Moses' actions. Eagles are not only a symbol of the United States of America, but they are sacred to the members of Native-American Tribes in the state of Washington.

Bald Eagle

Restoration for the Gulf of Mexico Region

***United States, et al. v. BP Exploration & Production, et al.* (MDL 2179, E.D. La.) (Deepwater Horizon Wellhead) - Settlement with BP**

In 2015, a historic settlement was reached in the *Deepwater Horizon/BP Oil Spill* case that will launch an unprecedented environmental restoration program in the Gulf of Mexico region. The restoration efforts will directly benefit hundreds of coastal communities in the Gulf region who were devastated by the Deepwater Horizon tragedy – one of the largest environmental disasters in the nation's history.

The case involved a large oil spill in the Gulf of Mexico that began with the explosion of the drilling rig Deepwater Horizon on April 20, 2010. Oil flowed for three months, and impacted the coasts of the States of Louisiana, Mississippi, Alabama, Florida, and Texas. Commercial fisheries were closed, fish and other wildlife were killed, and recreational use of the fisheries and shorelines were suspended. Many of the people who fish or otherwise rely on the natural resources of the Gulf are minorities, immigrants, or have limited income. Notably, there are large communities of Vietnamese fisher folk in Louisiana and Mississippi, and a substantial portion of residents of the Gulf States are African-American.

Deepwater Horizon offshore drilling unit on fire 2010 U.S. Coast Guard

A Consent Decree containing the terms of the settlement was lodged with the Federal court in the Eastern District of Louisiana on October 5, 2015. The Consent Decree resolves civil claims against BP arising from the April 20 explosion and the massive oil spill that followed. This global settlement resolves the United States' civil penalty claims under the Clean Water Act, and the United States and State natural resources damage claims under the Oil Pollution Act, as well as economic damage claims of the five Gulf States and local governments.

The Department put the Consent Decree out for public comment. During the comment period, the Department took the unprecedented step of holding a series of eight public meetings in the affected areas to receive written and oral comments. Meetings were held in Houma, Louisiana; Long Beach, Mississippi; New Orleans, Louisiana; Mobile, Alabama;

Pensacola, Florida; St. Petersburg, Florida; Galveston, Texas; and Washington, DC. The Department also prepared a 3-page "Fact Sheet," and had that Fact Sheet translated into Vietnamese. A Vietnamese translator was available for the meetings in Louisiana and Mississippi.

Under the Consent Decree BP must pay $5.5 billion for violating the Federal Clean Water Act – the largest civil penalty in the history of environmental law. These payments will be distributed under the framework established in the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The RESTORE Act directs about eighty percent of the $5.5 billion civil penalty ($4.4 billion) to environmental and economic stimulus projects that will benefit the Gulf of Mexico region.

Additionally, BP will pay about $8 billion to be used to restore the injured natural resources, such as fish, birds, and wildlife habitat including the open ocean and the shorelines. Some of the natural resource money will be specifically used to replace lost recreational opportunities. It is anticipated that the affected communities with environmental justice concerns will be actively involved in the vetting and selection of these projects.

Approximately $600 million will be paid for other claims, including claims for reimbursement of Federal and State natural resource damage assessment costs and other unreimbursed Federal expenses and to resolve a False Claims Act investigation into this incident.

Additionally, BP has entered into separate agreements to pay $4.9 billion to the five Gulf States and up to a total of $1 billion to several hundred local governmental bodies to settle claims for economic damages they have suffered as a result of the spill.

Dark brown oil in marsh seen during an overflight on May 18, 2010 NOAA

Oiled Pelicans Louisiana GOHSEP

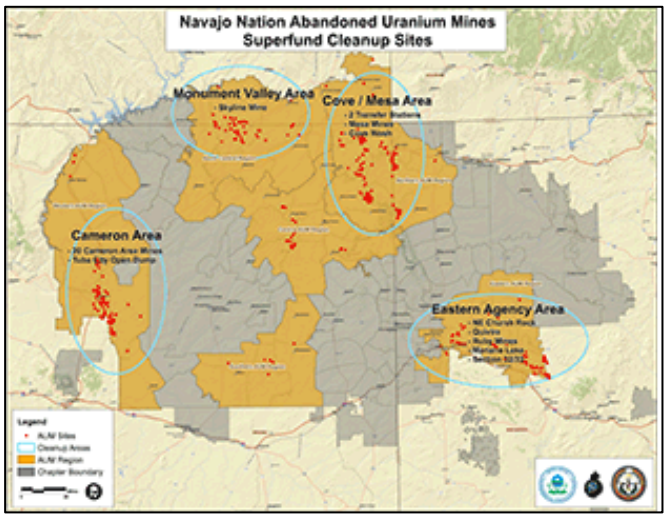
In addition to its affirmative actions to enforce the environmental and natural resource protection laws, more than half of ENRD's work consists of defending the environmental or natural resources actions of Federal agencies. The Division has worked to incorporate the principles of environmental justice into the handling of these cases as well. ENRD works closely with agencies to identify defensive cases that present environmental justice concerns, even where the complaint may not clearly assert a specific claim that the agency failed to address environmental justice issues adequately. More broadly, in the context of litigation, the Division actively evaluates the depth of the agency's analysis and handling of environmental justice issues as well as the completeness of the decision-making effort in addressing environmental justice concerns. Indeed, rather than merely defending agency analysis of environmental justice issues and decision-making, ENRD implements the environmental justice Executive Order by proactively looking for ways to address concerns of environmental justice communities both inside and outside of the traditional litigation context.

A recent example of this aspect of ENRD's environmental justice effort is described below:

> On May 1, 2015, the Department of Justice announced that the United States will pay $13.2 million for cleanup evaluations of 16 abandoned uranium mines across Navajo Nation lands. Abandoned uranium mines on Navajo lands is one of the most severe environmental justice problems in Indian Country. Land near Navajo homes, roads, grazing lands and cultural areas has been contaminated by abandoned mines.
>
> The Navajo Nation encompasses more than 27,000 square miles in the Four Corners area of Arizona, New Mexico, and Utah. The unique geology of the region makes the Navajo Nation rich in uranium, a radioactive ore in high demand after the development of atomic power and weapons at the close of World War II. Approximately four million tons of uranium ore were extracted during mining operations within the Navajo Nation from 1944 to 1986. The Federal government, through the Atomic Energy Commission (AEC), was the sole purchaser of uranium until 1966, when commercial sales of uranium began. The AEC continued to purchase ore until 1970. The last uranium mine on the Navajo Nation shut down in 1986. Many Navajo people worked in and near the mines, often living and raising families in close proximity to the mines and mills. In November 2013, the Attorney General of the Navajo Nation sent a letter to the Assistant Attorney General of ENRD articulating alleged claims under the Comprehensive Environmental Response, Compensation, and Liability Act against the United States pertaining to hundreds of abandoned uranium mines on the Navajo Nation.
>
> Since 2008, a number of Federal agencies have been collaborating to address uranium contamination on the Navajo Nation, investing more than $100 million to address such abandoned mines. As part of the Justice Department's increased focus on environmental and health concerns in Indian Country, a highly collaborative team of attorneys from the Environmental Defense and Environmental Environment Sections, in partnership with the Environmental Protection Agency, the Department of the Interior, and the Department of Energy, worked diligently with their Navajo counterparts to reach an important settlement announced on May 1, 2015. This settlement resolves the claims of the Navajo Nation pertaining to costs of evaluations at 16 priority mines for which no viable responsible private

party has been identified. Priority mines are those that pose the most significant hazards. The United States placed $13.2 million into an environmental response trust to fund the evaluations. As such, the settlement agreement puts these mines, many near Navajo communities, on the path to cleanup.

Furthermore, the Environment and Natural Resources Division continues to work in collaboration with its sister Federal agencies to address the legacy of uranium mining on Navajo lands.



Navajo Nation Abandoned Uranium Mines Map EPA Image

Mediation and Conciliation Assistance

The Community Relations Service (CRS) is the Department's "peacemaker" for community conflicts and tensions arising from differences of race, color, and national origin. Created by the Civil Rights Act of 1964, CRS is a specialized Federal mediation and conciliation service available to community leaders and organizations and state and local officials to help resolve and prevent community tension associated with allegations of discrimination on the basis of race, color, or national origin. CRS also works with communities to employ strategies to prevent and respond to alleged violent hate crimes committed on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion or disability. Through mediation, conciliation, technical assistance, and training, CRS offers services that can enable community members to participate meaningfully in environmental decision-making that may affect them. CRS continues to work alongside the Environmental and Natural Resources Division on pending cases.

CRS also serves as a valuable resource in non-case related matters and works to raise public awareness about the services they provide. On September 11, 2015, the Civil Rights Division and the Environment and Natural Resources Division met with Civil Rights and Environmental Justice advocacy organizations and public interest law groups to discuss environmental justice and Title VI issues. The Civil Rights Division Federal Coordination and Compliance Section (FCS) organized this meeting in response to a request from these groups. Out of this conversation arose a desire from attendees to learn more about the work of CRS.

CRS joined FCS in an informational meeting with advocates to explain what CRS is and what it does, and share information about CRS' mission and jurisdiction in relation to matters that involve environmental justice concerns. The meeting included Earthjustice; Rhode Island Legal Services and Environmental Justice League of Rhode Island; Lawyers' Committee for Civil Rights; Social Justice Consultancy; Conservation Law Foundation; New Jersey Environmental Justice Alliance; Public Interest Law Center of Philadelphia; Center on Race, Poverty, and the Environment; Human Synergy Works; Texas Low Income Housing Information Services; and the New Mexico Environmental Law Center.

“Injustice anywhere is a threat to justice everywhere.”

Martin Luther King, Jr.