

1. Please discuss how state and local victim services professionals might assist you with local environmental crime victims.

A: Unfortunately, most States' victim services do not yet have funds available to provide services to victims of environmental crimes. The EPA emergency victim fund program is similar to the FBI emergency victim fund program. The EPA National Victim Witness Coordinator (NVWC) works with the victims directly to determine if there are any state or local resources available to them. When there are no such resources, then the NVWC works with the victims directly to provide them with assistance using the EPA emergency funds when appropriate.

These are last resort funds and there are limited purposes for how they can be used. For example, EPA can use the funds to provide temporary housing for victims while their home is being cleaned after an illegal asbestos removal, because it would be considered part of crime scene clean up.

2. Will you be sending out the slides from this event?

A: Yes. The slides are available as an attachment where you accessed these Q&As. You can also access the recording of the event at <https://www.epa.gov/enforcement/criminal-enforcement>.

3. May we receive and share these slides with our listserves?

A: Yes, please share the presentation and the link to the event video.

4. Are victims of retaliation from associated companies in the form of criminal activity included in this assistance program? For example, a company being held accountable for polluting local waters, which retaliates against a community member speaking out against them via racial slurs, property damage, and gunfire as a means to scare them.

A. Title 18 of the U.S. Code, Chapter 73 provides several authorities for prosecuting the obstruction of justice including tampering with witnesses, victims, and informants (18 U.S.C. § 1512) or retaliating (18 U.S.C. § 1513) against the same. Aside from criminal charges, prosecutors may also seek protective orders from a court (18 U.S.C. § 1514) to stop or prevent harassment.

5. How do you manage expectations of the use of evidence in the criminal prosecutions and restitution through this program and the potential civil suits and associated statutes of limitations?

A: The statute of limitations for most federal offenses, including environmental crimes, is 5 years. A federal criminal investigation could take several years. Assuming a case is indicted within the statute of limitations, the court then sets a discovery schedule, which can usually include a trial date. Even then, the case could take several months, or over a year, to get to trial.

Private civil action statutes of limitations can be shorter than 5 years in many states. However, a separate civil action can take several years, even longer than a federal criminal case, because discovery in a civil action can take several years.

In a federal criminal investigation, well before a case is charged, agents will advise victims to save evidence of costs from harm incurred as a result of criminal conduct. Examples include invoices and receipts for medical treatment, funeral expenses if necessary, and property damage. During the criminal investigation, the government may obtain materials by grand jury subpoena.

Victims will in all likelihood receive the same instruction from plaintiffs' counsel in a potential civil suit. Further, civil counsel for plaintiffs may be willing to provide their investigative or discovery information to federal prosecutors.

Further, in accordance with the CVRA, prosecutors are obligated to accord the right to victims to be treated with fairness and with respect for the victim's dignity and privacy. 18 U.S.C. § 3771(a)(8). Therefore, the government will make best efforts to ensure that personally identifiable information (PII) and other sensitive information is not shared with the defense or the public, including filing documents that are redacted or under seal with the court.

6. If the statute of limitations for a criminal prosecution has passed, so there can't be a prosecution or even a civil claim, is the person still a victim that fits under your umbrella and can the person get some kind of help.

A: We are not aware of a case where services were provided to victims under the Victim Rights and Restitution Act (VRRRA), 34 U.S.C. 20141, when it is determined a case cannot be brought due to the statute of limitations running or a declination. An agency's obligations to victims generally end when an investigation or prosecution is concluded.

7. How do you deal with generational impact. For instance, children who are born after their parents' exposure to a dangerous substance that are born with medical conditions from birth.

A: To our knowledge, we have not encountered this situation. We would have to examine the facts on a case-by-case basis to determine the availability of VRRRA services and how CVRA rights would apply.

8. Do communities, perhaps incorporated towns or cities, ever stand in for victims when the harm is distributed across a wide area? I was thinking about how you would address victim rights for folks who were minimally harmed individually by a chemical release, but whose community suffered an evacuation or other event.

A: Actual victim status is an individual right, not a community right. However, the government can still make arguments and presentations for categories of individual victims suffering similar harm. Further, community groups could submit victim impact statements that include sentencing recommendations. With regard to evacuation costs for individuals, individual victims could seek restitution for those costs. This would be addressed on a case-by-case basis. Additionally, in the early stages of the investigation of a case, victims may seek some emergency relief through EPA's emergency victim funds.

9. Exactly how does the Government factor in impacts on Environmental Justice communities in deciding whether to proceed criminally or civilly? Is this calculus changing in specific ways in the new administration?

A: Many of the environmental criminal investigations also occur in communities with environmental justice issues, as do civil environmental cases brought by EPA and DOJ. For example, some cases involve facilities in heavily industrialized areas that are surrounded by fence line communities which are disproportionately populated with low-income or minority residents. In these cases, additional types of outreach and support may be necessary to ensure victims in these communities are able to participate in the criminal justice process, effectively exercise their rights, and access services. The EPA and DOJ evaluate the needs of each community and the merits of a criminal prosecution on a case-by-case basis.

10. During Mr. Burnett's presentation, he mentioned specialized training for investigators and prosecutors. Could you provide more details about that training?

A: The training Mr. Burnett was referring to is *Trauma Informed Victim Interview* (TIVI) training. The training is designed to ensure law enforcement agency personnel interacting with environmental crime victims and witnesses are communicating with them in a trauma-informed manner to ensure the most effective communications. To date, TIVI training has included 55

investigators and 112 non-agents (attorneys, victim witness staff). Additional sessions of the course are will be offered.

In addition, training through ENRD and its colleagues at the DOJ is available on identifying financial resources controlled by defendants that could be available for restitution purposes.

For information on available training, please feel free to contact Mike Burnett at Burnett.Michael@epa.gov. In addition, please feel free to contact the DOJ Environmental Crimes Section Victim Witness Coordinator, Angela Green, Angela.green@usdoj.gov.

11. Do you prosecute cases against companies that claim a government immunity defense, i.e. a subcontractor for the Department of Defense who may have used pollutants that were subsequently banned.

A: An immunity defense to a criminal prosecution is not available to a private contractor. Further, regarding a substance that was legal but is later banned by law, the legal usage of the substance when it was legal probably cannot be the basis for a criminal charge. There are concerns with the retroactive application of criminal laws to conduct that was legal at the time (*i.e., ex post facto*) under the U.S. constitution.

12. Large companies have insurance to cover losses from injury and environment liability and would file claims to cover those costs. Could we somehow contact insurance company in a preemptive manner to inform them about potential injured individuals to leave open for claims or to somehow set aside funds to address their claims?

A: The government's obligations under the CVRA are to see that the victims are accorded restitution "as provided in law." 18 U.S.C. § 3771(a)(6). We are not aware of any statutory, regulatory or policy source that allows prosecutors to contact private entities for the purpose of leaving open their funding mechanisms or request/recommend that funds be set aside to address insurance claims of victims. Further, the restitution sought for victims in an environmental crimes case is for harm caused by criminal conduct. It is well settled in the common law that it is contrary to public policy to provide insurance against liability that arises from intentional torts and intentional criminal acts. However, case law indicates that while intentional criminal acts shall not be insured, public policy does not necessarily prohibit coverage for negligent criminal acts.

13. Please have someone address both how you figure out and claim in court documents (with affidavits, doctors, statisticians, actuaries?) restitution for each of the many individual victims of environmental crimes, and how you go about enforcing that the restitution is paid to each individual victim. Big restitution recoveries by town or large entities and provision of symbolic restitution projects to improve or beautify a town does nothing for the individuals who have been damaged, which was the rationale for the Bernard Madoff case restitution monitor.

A: Community restitution is very narrowly defined. Restitution is an individual right. This question raises some interesting concerns. For one, it highlights the importance of documenting victims' harm, especially in environmental crimes cases. As mentioned, it can be years, if ever, before exposure to a contaminant manifests as a disease but the exposure itself is harm. Any evidence of exposure to contaminants is crucial when seeking restitution in environmental crime cases. Evidence may also include impacts of the exposure to a victim's property, such as dead vegetation, debris on windows, and other physical evidence of contamination.

As for enforcing a restitution order, it is no different than non-environmental cases – going to court to have the order enforced.