

UNITED STATES
DEPARTMENT OF JUSTICE



2016 Implementation Progress Report on
Environmental Justice

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U.S. Department of Justice

Forward

This is the second year that I have had the pleasure of sharing the Department of Justice's Annual Implementation Progress Report on Environmental Justice with you. This report highlights our 2016 activities and is the Department's sixth annual report describing 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.

At the Department, achieving environmental justice is more than an initiative, strategy, or executive order directive; it is a mindset – a way of thinking – that is an inherent part of our mission. The women and men of the Department are entrusted with the duty to ensure fair and impartial administration of justice for all Americans. Over the last several years the Department has taken significant steps to ensure that the principals of environmental justice are appropriately integrated into the ways in which we fulfill our mission. The Department, working with other key environmental justice stakeholders, has achieved impressive results. Those achievements demonstrate the meaningful steps we have taken to implement our Environmental Justice Strategy and Guidance to make a difference in communities with environmental justice concerns.

Our Mission Statement

To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

<https://www.justice.gov/about>

I want to highlight a few of our 2016 accomplishments:

- *We worked with agency partners to prevent discrimination.* Interagency collaboration is essential to help address environmental justice concerns. The Department's Civil Rights Division lead an interagency effort to develop joint agency [guidance](#) for recipients of federal financial assistance regarding the application of Title VI of the Civil Rights Act of 1964 in emergency and disaster management. The guidance, issued by the Departments of Justice, Homeland Security, Health and Human Services, Housing and Urban Development, and Transportation in August, also provides examples of promising practices that recipients of federal financial assistance can take in advance of emergencies and disasters, to ensure Title VI compliance. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
- *We helped communities build capacity.* Meaningful community engagement is an important tenet of environmental justice. The Community Relations Service (CRS), the Department's "peacemaker", continues to use its mediation and conciliation expertise to help communities participate in environmental decisions. For example, CRS facilitated a dialogue with African American, Hispanic, and Arab American community groups in Southwest Detroit, Michigan, involving allegations of environmental justice health hazard concerns based on race. CRS helped the groups form a working group task force and facilitated numerous dialogues with the task force to identify issues, build consensus, and prioritize issues. Through the creation of the task force, CRS built capacity within the community to work on environmental air pollution concerns identified by the community.
- *We achieved results that benefited communities.* The Department's casework continues to make a difference in communities disproportionately burdened by pollution. For example, in 2016 the Environment and Natural Resources Division and the U.S. Attorney's Offices, working with their client-agency partners, successfully resolved a number of Clean Air Act cases that will reduce harmful air pollution in low-income minority communities, as well as require a company that uses hazardous chemicals to take action to prevent and minimize the consequences of accidental releases. In addition, through criminal actions under the Clean Air Act, the Department held accountable those who endangered vulnerable low-income or minority workers and communities by violating asbestos work practice standards, and required that those responsible take steps to address the impacts of the violations.

Additional examples of the Department's efforts to help make environmental justice a reality for all communities are summarized in this report. While we accomplished a great deal in 2016, there is still work to be done. The burdens of polluted environments are still borne disproportionately by minority and low-income communities. Consequently, those communities often struggle to overcome disproportionate health problems, greater obstacles to economic growth, and a lower quality of life. The quality of a community's environment – their air, water, and soil – should not vary because of their race, color, national origin or income level. Everyone deserves a healthy and safe environment in which to live, work, play, learn, and worship. The Department remains committed to ensuring that the fair and impartial administration of justice for all Americans includes environmental justice. We welcome your input on the Department's environmental justice activities, strategy, and guidance as we continue to pursue this important mission.

William J. Baer

Acting Associate Attorney General



DOJ Acting Associate Attorney General William Baer and other DOJ leadership attend EJ IWG Aug. 29, 2016 Meeting

Introduction

No one deserves to live, work, play, worship, or learn in a place that is polluted or unsafe. Clean safe water, air, and land are basic necessities – not luxuries – that every American should enjoy regardless of their income status or race. However, the burdens of pollution still often fall disproportionately on low-income, minority, and Native American communities who do not have a meaningful opportunity to voice their concerns. 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. Furthermore, every American should have the opportunity to participate meaningfully in the decision-making processes that affect their environment.

Achieving environmental justice is an important part of the mission of the Department of Justice. We remain steadfast in our commitment to pursue the goals and principles of environmental justice through the implementation of our Environmental Justice Strategy and Executive Order 12898. In 2016, the Department achieved meaningful results for communities and continued to work on a variety of fronts to help make environmental justice a reality for all communities.

This report provides a brief overview of some of the Department’s efforts during 2016 to further the goals of environmental justice. In part one of the report we describe the Department’s continued interagency collaboration on environmental justice issues. Working primarily through the Interagency Working Group on Environmental Justice, 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 community engagement and securing tangible results for affected communities. In the second half of the report we summarize selected accomplishments of the Department that illustrate the tangible results that have been achieved through its litigation and work to further environmental justice and make a real difference to communities.

Part One: Interagency Collaboration





August 29, 2016 EJ IWG Principals Meeting convened by EPA Administrator McCarthy

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

In 2016, the U.S Environmental Protection Agency (EPA) and the White House Council on Environmental Quality (CEQ) co-lead the efforts of the EJ IWG, which was established by Executive Order 12898. The [Federal Interagency Working Group on Environmental Justice](#) (EJ IWG) is comprised of 17 federal agencies and White House offices working together to advance environmental justice principles across the federal government, engage and support local communities in addressing environmental and human health impacts, and promote and implement comprehensive solutions and opportunities to address environmental justice concerns.

For example, to advance environmental justice principles across the federal government, the EJ IWG has developed important tools such as the 2016 “Promising Practices for EJ Methodologies in NEPA Reviews” report. Developed with the support of over 100 federal agency staff, this report is a compilation of methodologies gleaned from current agency best practices that provides clear and flexible approaches for agencies as they consider environmental justice in National Environmental Policy Act (NEPA) reviews. The Promising Practices report does not establish new or legally binding requirements, but instead gives agencies a way to compare and improve their methodologies for robust consideration of impacts to low-income and minority populations now and in the future by applying proven methods established in federal NEPA practice.

The EJ IWG also engages and supports local groups working to create healthy and sustainable communities by bringing together key stakeholders from communities; educational institutions; and federal, state, local and tribal governments to address critical environmental justice issues. For example, the EJ IWG’s College/Underserved Community Partnership Program (CUPP) promotes interagency collaboration and

community engagement with local colleges and universities. CUPP provides opportunities for government agencies to partner with local colleges and universities to address environmental justice concerns and provide free technical assistance to communities. For instance, Savannah State University is working with the Coastal Commission of Georgia to assist students in small cities, such as Riceboro and Midway, to develop designs for sustainable buildings and improvements to water infrastructure systems.

The Brownfields to Healthfields (“B2H”) approach is another inventive strategy the EJ IWG is using to foster collaborations that promote healthy, equitable, sustainable and resilient communities for overburdened and underserved populations, with a special focus on rural communities. The B2H strategy improves the health, economic and environmental vitality in overburdened and underserved populations. It remediates and transforms brownfields (contaminated property) into uses that increase access to health care, recreation, healthy foods, renewable resources, education and jobs. EPA defines a brownfield as “a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” See <https://www.epa.gov/brownfields/brownfield-overview-and-definition>. For example, in Central Appalachia the University of Pikeville (Pikeville, Kentucky) leveraged health, environmental, and economic resources to establish a health center on a former brownfields site in the Big Sandy Area Development District.

The Department of Justice, through its work with the EJ IWG, continues to play a leadership role in ensuring a coordinated federal response to environmental justice issues. Representatives from the Environment and Natural Resources Division (ENRD) and the 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 August 29, 2016, EPA Administrator Gina McCarthy hosted a Cabinet-level meeting of the EJ IWG. The Department’s Acting Associate Attorney General William Baer, ENRD Assistant Attorney General John Cruden, and CRT Deputy Assistant Attorney General Eve Hill attended the meeting along with additional representatives from ENRD, CRT, and the Executive Office of the U.S. Attorneys.

Implementing the Interagency Memorandum on Environmental Justice

The Department of Justice, along with 16 other federal agencies and White House offices, signed a Memorandum of Understanding on Environmental Justice (MOU) in August 2011. The Department's leadership was key in helping the agencies develop the MOU, which builds upon the ground work laid by Executive Order 12898. The MOU promotes effective and efficient interagency collaboration and public access to information about federal agency environmental justice efforts. Specifically, each signing agency agreed to publish an environmental justice strategy and give the public an opportunity to provide input on those strategies, and to publish annual implementation progress reports. 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, updated in 2015, 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, during fiscal years 2016 – 2018, the EJ IWG is maintaining 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).

In 2016, the Department continued to play an important role in the implementation of the MOU. The Department chairs the Title VI Committee and co-chairs the Native Americans/ Indigenous Peoples Committee, the Public Participation Committee, and the Strategy and Implementation Progress Committee. The Department also actively participated in other committees such as the NEPA Committee and the Regional Interagency Working Groups (RIWG) Committee. The RIWG Committee developed a very successful “Access & Awareness Webinar Series,” a monthly event that gives the public access to the EJ IWG and increases community awareness of federal agency environmental justice strategies and holistic community-based solutions to address environmental justice issues.

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. On March 11, 2016, Civil Rights Division staff and members of the Environmental Justice Interagency Working Group’s Title VI subcommittee presented a workshop entitled “Title VI of the Civil Rights Act: Strengthening Title VI Enforcement Related to Environmental Justice Issues.” This interactive workshop provided participants with an overview of Title VI; its application to environmental justice issues; and information on how to file an administrative complaint with a federal agency and how such complaints are processed. Participants had the opportunity to dialogue with representatives from multiple federal civil rights agencies (the U.S. Department of Housing and Urban Development, U.S. Environmental Protection Agency, U.S. Department of Transportation, and U.S. Department of Agriculture), who discussed their Title VI enforcement and compliance activities. Representatives from community organizations and various federal agencies attended the workshop.

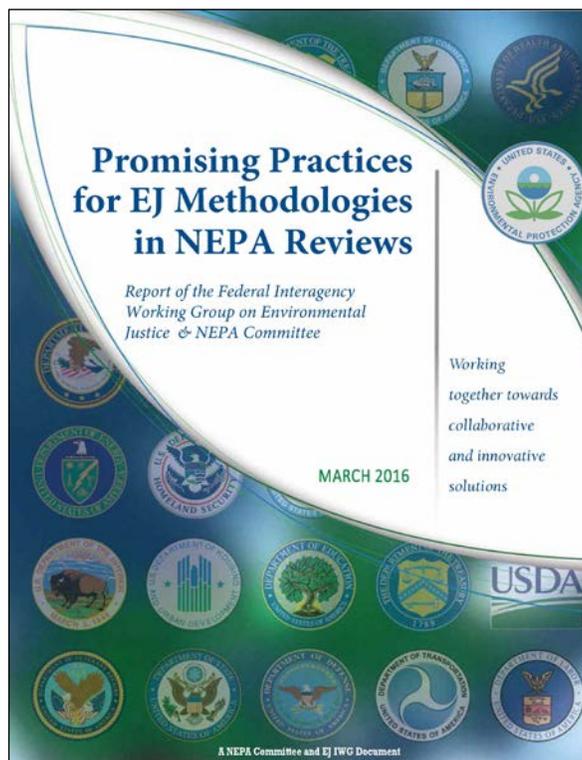
The committee also coordinated a listening session with environmental justice advocates focused on Title VI enforcement and the broader EJ IWG. The advocates highlighted the need for complainants to be informed of potential resolutions and given an opportunity to offer recommendations, and emphasized the need for collaboration among agencies.

EJ IWG NEPA Committee

The Department’s Environment and Natural Resources Division, through its Natural Resources Section (NRS), continues to be a vital member of the NEPA Committee of the EJ IWG, 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 is designed for federal agencies to carry out their programs to ensure that all communities and people across this nation are afforded an opportunity to live in a safe and healthy environment. NEPA requires federal agencies, before they act, to assess 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.”

In 2016, NRS’ work with the NEPA Committee was principally through two Subcommittees: the Education and Community of Practice (COP) Subcommittees. In March 2016, the EJ IWG released the NEPA Committee’s report on “Promising Practices for EJ Methodologies in NEPA Reviews.” A copy of the report is available at <https://www.epa.gov/environmentaljustice/ej-iwg-promising-practices-ej-methodologies-nepa-reviews>. The report provides a framework for meaningful engagement, developing and selecting alternatives, and identifying minority and low-income populations. NRS helped ensure that the report was disseminated within DOJ and also assisted the NEPA Committee in various presentations to federal agencies to promote further awareness and use of the Promising Practices report. The NEPA Committee’s Education Subcommittee is also working to finalize a National Training Product as a companion to the Promising Practices report.



Cover page of *Promising Practices* document

Increasing Communication and Awareness Among Federal Agencies

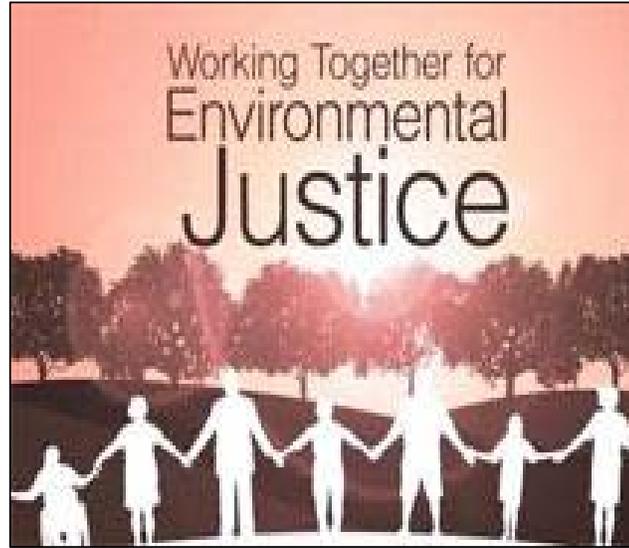
The Department continues to collaborate directly with other federal agencies to increase the dialogue on and awareness of environmental justice issues. For example:

- ENRD Senior Litigation Counsel for EJ Cynthia Ferguson and Civil Rights Division Federal Coordination and Compliance Section Deputy Section Chief Daria Neal met with staff from the U.S. Department of Agriculture's Office of General Counsel and other parts of the agency to discuss environmental justice efforts on May 11, 2016.
- ENRD Natural Resources Section and Environmental Crimes Section EJ coordinators Cindy Huber and Kris Dighe made a presentation to EPA's Office of General Counsel staff regarding EJ issues in litigation on June 30, 2016.
- ENRD Natural Resources Section EJ coordinator Cindy Huber participated in a panel discussion on EJ and NEPA at the Department of the Interior in July 2016.
- ENRD Natural Resources Section EJ coordinator Cindy Huber presented during the environmental justice session of the Department of Energy's training for environmental attorneys on July 20, 2016.
- ENRD Natural Resources Section EJ coordinator Cindy Huber participated in a panel discussion on *Emerging Issues - NEPA & Environmental Justice* at the Department of Energy's Making Connections: Environmental Justice & NEPA training on November 1, 2016.

In addition, the "Law Leaders on Environmental Justice", a cross-agency group of career attorneys that ENRD and EPA's Office of General Counsel established five years ago to discuss legal issues regarding environmental justice, continued to be an important vehicle for communication and raising issues. During 2016, the group was an important forum for open dialogue, continuing education, and informal counseling among the federal agencies on topics such as EPA's environmental justice mapping and screening tool known as [EJSCREEN](#).

Participating in Community and Other Outreach

Community engagement is an important part of the EJ IWG’s responsibilities under Executive Order 12898, which directs the working group to “hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice.” Sec. 5-5(d). As a co-chair, along with EPA, of the EJ IWG Public Participation Committee, the Department’s Environment and Natural Resources Division continues to work with the EJ IWG to facilitate community engagement. The Public Participation Committee strives to ensure that the public has access to the EJ IWG so that communities can share information that raises awareness, seek multi-agency support of holistic community-based solutions to address environmental justice issues, and share success stories that will benefit others. For example, in 2016 a number of EJ IWG meetings included presentations by community activists and EJ advocates.



EPA Image

The Department continues to utilize a variety of other forums to hear from communities about their concerns. For example, in 2016 ENRD’s Senior Litigation Counsel for EJ attended both of the EPA National Environmental Justice Advisory Council face-to-face public meetings – one in March in Gulfport, Mississippi and the other in October in Arlington, Virginia. At the October meeting the Department’s Civil Rights Division participated in a panel presentation discussing the work of the EJ IWG. These meetings also included other presentations and open public comment sessions that allowed communities to discuss environmental justice issues that affect or are of concern to them.

Accomplishments that Advanced Environmental Justice

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.

In September 2011, the Department launched its environmental justice website (www.justice.gov/ej) to provide the public with information about DOJ policies, case resolutions, and contacts, as well as a way to view and submit comments on the Department's Environmental Justice Strategy and Guidance. The Department's Annual Implementation Progress Reports are also available on the website. As required by the 2011 Memorandum of Understanding on Environmental Justice, the Department began posting its annual reports in 2012.



DOJ EJ Website

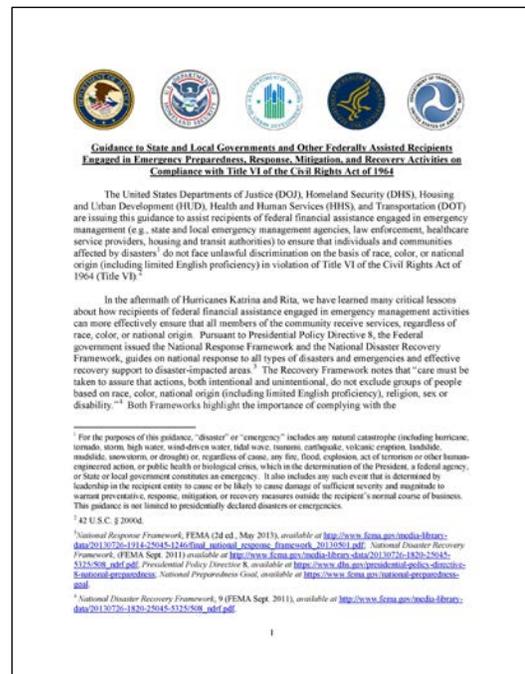
This section of the Department's 2016 report focuses on three areas of the Department's work as it relates to environmental justice: (1) civil rights issues; (2) environmental issues; and (3) mediation and conciliation assistance. The Department has continued to achieve significant results, but there 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 has been steadfast in its effort to address environmental justice issues through improving government-wide enforcement of Title VI of the Civil Rights Act of 1964 and implementing regulations. 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.

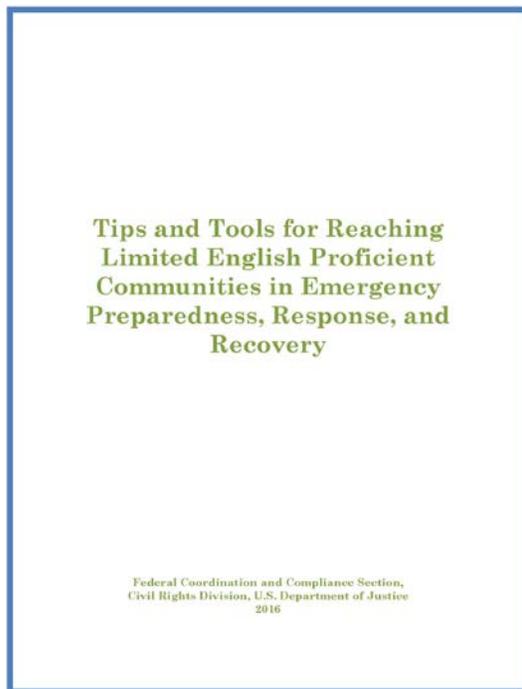
In August, the Departments of Justice, Homeland Security, Health and Human Services, Housing and Urban Development, and Transportation issued joint agency technical assistance, [Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964](#), to recipients of federal financial assistance.

The technical assistance provides an overview of the application of Title VI in emergency and disaster management and examples of promising practices that recipients of federal financial assistance can take now, in advance of emergencies and disasters, to ensure Title VI compliance. Notably, the guidance emphasizes that Title VI obligations and protections cannot be waived during emergencies and disasters. Although every emergency or disaster situation will be different and pose its own set of unique challenges, effective planning can help avoid Title VI violations. The guidance highlights that preparation for exigent circumstances, including addressing meaningful access to services and benefits by limited English proficient communities can often make all the difference in preserving the lives of first-responders and the people they help.

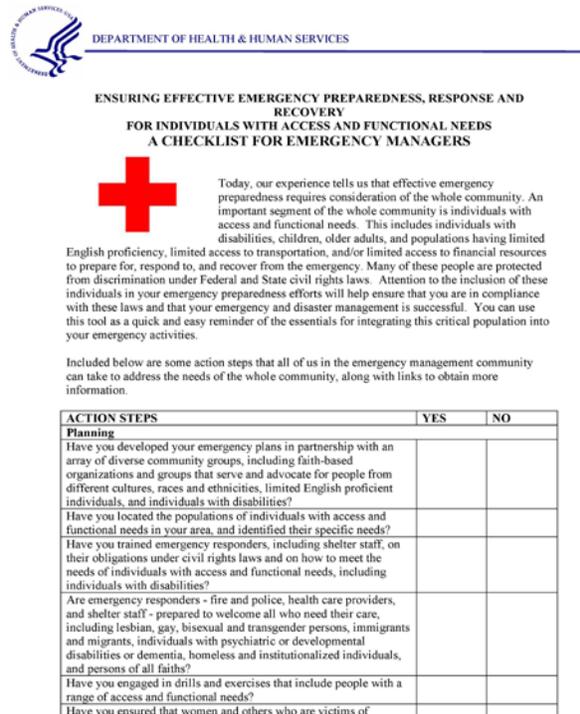


Cover page of joint guidance

Two new resources to assist recipients of federal financial assistance also accompany the guidance: the Department of Justice’s [*Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response and Recovery*](#) and the Department of Health and Human Services’ [*Checklist for Recipients of Federal Financial Assistance*](#), which facilitates the integration of the whole community into emergency-related activities.



Cover page of DOJ Tips and Tools

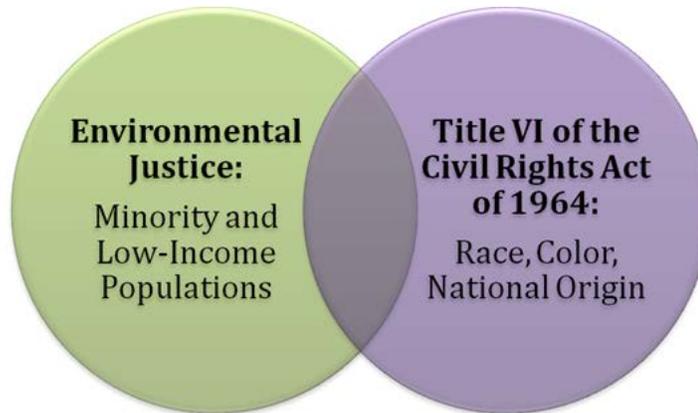


First page of HHS Checklist

In addition, the Division continued to provide technical assistance on Title VI through, for example:

- Updating the Title VI Legal Manual. Updated sections cover key concepts under Title VI, including legislative history of Title VI, the role of DOJ, and the scope of Title VI coverage. DOJ issued the Title VI Legal Manual, pursuant to its mandate under Executive Order 12250, to ensure the consistent and effective enforcement of Title VI and related statutes. Publication of the Title VI Legal Manual is a part of DOJ’s ongoing initiative to strengthen Title VI enforcement government-wide.
- Regular publication of its newsletter, Title VI Civil Rights News @FCS, and its work with the various federal agencies that fund programs and activities affecting the environment and human health to support robust sharing and compliance activities across the government.

- Filing a brief setting forth the interests of the United States in *Drayton v. McIntosh County, Georgia*, No. 2:16-CV-5 (S.D. Ga.). The Plaintiffs, who include members of the Gullah Geechee community of Sapelo Island, brought a lawsuit alleging violations of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act. Plaintiffs allege that the Defendants denied them numerous services for decades such as safe water, sewer service, trash removal, and paved roads available to the predominantly white mainland residents of McIntosh County, because of their race. DOJ addressed challenges to the Title VI and Fair Housing Act claims, and concurrently filed a second brief and motion to intervene addressing the Americans with Disabilities Act claims.



Environmental Issues

The Department remains firm in its commitment 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 field offices in Denver 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 established the following priorities for the Division during his time as Assistant Attorney General:

- 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 steadfast in its commitment to enforce the nation's environmental laws to protect all Americans from environmental harms – regardless of their income status, race, or ethnicity. The Division works closely with U.S. Attorneys' Offices and in concert with our Federal agency partners to find meaningful ways to engage with communities that historically have not been given an adequate voice in environmental decision-making that affects them. Highlighted below are some of the steps the Department took in 2016 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, and U.S. Attorneys' Offices, continues to engage in community outreach to ensure that the Department understands and is responding to community concerns. The Department approaches outreach in a variety of ways to allow for the flexibility necessary to employ methods that are appropriate for the circumstances. This has included, for example, 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.

In addition to community outreach, ENRD Assistant Attorney General Cruden and other Department senior staff, took the opportunity to highlight the importance of environmental justice to audiences inside and outside the Department to raise awareness. Examples include:

- January 19, 2016 “Rule of Law and the Environment: Rights, Resources and Governance” Symposium – John Cruden, ENRD Assistant Attorney General, discussed the importance of the Division’s work to promote and encourage environmental justice during his remarks at this event organized by the Rule of Law Collaborative of the University of South Carolina and the Woodrow Wilson Center.
- April 29, 2016 Environmental Compliance and Enforcement Session at the World Environmental Law Congress in Brazil – John Cruden, ENRD Assistant Attorney General, noted that advancing environmental justice through all of the Division’s work was one of his priorities for the Division.
- May 18, 2016 Brown Bag Lunch with representatives from Eastern High School – Cynthia Ferguson, ENRD’s Senior Litigation Counsel for EJ, discussed the Department’s environmental justice efforts.
- July 19, 2016 Environmental Justice Seminar sponsored by the National Bar Association (NBA)’s Environmental, Energy & Public Utilities Section – Cynthia Ferguson, ENRD’s Senior Litigation Counsel for EJ, participated in a panel discussion at the NBA’s 91st Annual Convention in St. Louis, MO.
- October 31, 2016 Georgetown Law School seminar class – Cynthia Ferguson, ENRD’s Senior Litigation Counsel for EJ, spoke to a group of students about the the Division’s environmental justice efforts.

Training and Increasing Awareness

The Department remained committed to increasing awareness and understanding of environmental justice issues among its attorneys and staff. For example, in September 2016, 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 newly hired experienced-attorneys. ENRD's Natural Resources Section provided training on EJ and NEPA litigation for its attorneys during the year. The Division has also been working with the Executive Office for United States Attorneys to provide the Department's 93 Offices of the U.S. Attorneys with useful and easily accessible information regarding environmental justice.

Integrating Environmental Justice Principles into Litigation and Outcomes

The work of ENRD and the U.S. Attorneys' Offices at the local level reflects the Department's commitment to environmental justice and enforcing environmental laws that protect human health and the air, land, and water for all Americans. By evenhandedly enforcing the nation's environmental and natural resources laws, ENRD's Environmental Enforcement and Environmental Crimes Sections and the U.S. Attorneys' Offices strive to protect communities from environmental harms.

During 2016, ENRD and the U.S. Attorney's Offices, in coordination with agency partners, resolved a number of environmental cases that illustrate how the Department continues to integrate the principles of environmental justice into its work:

United States v. Detroit Diesel Corp.

School children and low-income populations will breathe cleaner air as a result of the settlement reached in *United States v. Detroit Diesel Corp.* (D.D.C). The settlement, lodged with the court on October 6, 2016, resolves alleged violations of the Clean Air Act by Detroit Diesel for selling heavy-duty diesel engines that were not certified by EPA and did not meet applicable emission standards. Under the settlement, Detroit Diesel will spend \$14.5 million on projects to reduce nitrogen oxide and other pollutants, including replacing high-polluting diesel school buses and locomotive engines with models that meet current emissions standards. Detroit Diesel will also pay a \$14 million civil penalty.



EPA photo

The United States' complaint, filed along with the settlement, alleges that Detroit Diesel violated the Clean Air Act by introducing into commerce 7,786 heavy-duty diesel engines for use in trucks and buses in model year 2010 without a valid EPA-issued certificate of conformity demonstrating conformance with Clean Air Act standards to control nitrogen oxide (NOx) emissions. The complaint also alleges that the engines did not conform to emission standards applicable to model year 2010 engines.

To mitigate the harm posed by the alleged violations, the school bus and locomotive replacement projects required by the settlement will reduce ambient air levels of nitrogen oxide and other pollutants. EPA will approve where the projects are to be

performed, based on various criteria, including whether the area already does not meet Clean Air Act standards and whether the area includes low-income communities. In addition, the school bus program will improve air quality inside school buses by reducing exposure to diesel exhaust. Diesel exhaust poses a lung cancer hazard for humans and can cause non-cancer respiratory effects such as asthma.

Detroit Diesel is also required to post data and information about the clean diesel projects on a public website.

United States v. J.S.B. Industries, Inc., John P. Anderson, as Trustee of 130 Crescent Ave. Realty Trust, and JMG Andover Street Realty

First responders serving communities in Chelsea and Lawrence, Massachusetts will receive needed emergency response equipment as a result of the settlement DOJ and EPA reached with the wholesale bakery and distribution company in *United States v. J.S.B. Industries, Inc., et al.* (D. Mass.). JSB operates both the Chelsea and Lawrence bakery facilities; the Trust and JMG are their respective owners. The settlement, approved by the court on August 17, 2016, resolved violations relating to the handling and release of anhydrous ammonia and the use of sulfuric acid at the two wholesale bakeries.

The violations alleged include failure to comply with the requirements of the Clean Air Act under which facilities that use hazardous chemicals must, among other things, take action to prevent accidental releases and take steps to minimize the consequences of any accidental releases that occur. Additional violations include a failure to comply with chemical reporting requirements of the Emergency Planning and Community Right-to-Know Act and chemical release notification requirements of the Comprehensive Environmental Response, Compensation, and Liability Act.

The Chelsea and Lawrence bakeries are in densely populated, urban neighborhoods, in close proximity to residences and other businesses. At JSB's Chelsea facility, approximately 2,000 pounds of anhydrous ammonia was accidentally released from a refrigeration system in April 2009. Anhydrous ammonia is an extremely hazardous chemical that is corrosive to skin, eyes, and lungs, can be immediately dangerous to life and health, and under certain conditions, is flammable and explosive. The release triggered a shelter-in-place order by local authorities and exposed two firefighters to anhydrous ammonia, one of whom was hospitalized for medical treatment.



Under the settlement, the defendants will pay a civil penalty of \$156,000. Defendants must also perform a supplemental environmental project (SEP) valued at \$119,000. The SEP requires the defendants to provide emergency response equipment to fire departments serving Chelsea and Lawrence, both of which are low-income and minority communities with environmental justice concerns. The equipment will help these communities better protect their residents

and workers by improving their emergency preparedness and ability to effectively respond to the release of hazardous chemicals. In addition to performing the SEP, before DOJ lodged the settlement with the court, defendants switched their refrigeration system from anhydrous ammonia to less hazardous liquid nitrogen, at a cost of over \$300,000.

United States v. Marathon Petroleum Company

Harmful air pollution emissions at facilities in five states will be reduced as a result of the agreement reached in *United States v. Marathon Petroleum Company* (E.D. Mich.). On June 9, 2016, the Department of Justice and EPA announced a settlement with Ohio-based Marathon Petroleum Company that will reduce air pollution from the company's petroleum refineries in five states. When fully implemented, the agreement is expected to reduce harmful air pollutants like VOCs (Volatile Organic Compounds), sulfur dioxide, and nitrogen oxides by approximately 1,037 tons per year. The amended consent decree builds on a 2012 consent decree in which Marathon agreed to reduce air pollution from flares by generating less waste gas and by installing equipment designed to make flares burn more efficiently. The 2012 settlement reduced emissions of VOCs and SO₂ by over 5,200 tons per year.

Under the amended consent decree, Marathon will install seven Flare Gas Recovery Systems at an estimated cost of \$319 million at its refineries in Canton, Ohio; Catlettsburg, Kentucky; Detroit, Michigan; Garyville, Louisiana; and Robinson, Illinois. Marathon will also spend \$15.55 million on projects to reduce air pollution at three of the facilities. Marathon will shut down a flare at the fence line of its Detroit refinery at a cost of approximately \$6 million and reduce NO_x emissions at its Canton and Garyville refineries at a cost of approximately \$9.55 million. Marathon also paid a civil penalty of \$326,500 to the United States.

By installing advanced pollution controls at its refineries, Marathon will help reduce emissions that can disproportionately affect low-income and vulnerable populations, including children. In particular, the improvements at the Detroit refinery further the Department's and EPA's efforts to advance environmental justice in communities like southwest Detroit.

United States, State of Indiana, Michigan Department of Environmental Quality, and State of Illinois v. U.S. Steel Corporation

Under the settlement reached in *United States, et al. v. U.S. Steel Corporation* (N.D. Ind.), U.S. Steel, a major global iron and steel manufacturer, agreed to curtail significant pollution from its three Midwest plants in Gary, Indiana; Ecorse, Michigan; and Granite City, Illinois – helping to improve the air quality of all residents in the region. The company will also perform seven supplemental environmental projects (SEPs) designed to protect human health and the environment in three communities with environmental justice concerns located in the vicinity of U.S. Steel's three facilities. The SEPs will cost approximately \$1.9 million and include a project to remove lighting fixtures containing toxic chemicals in public schools. In addition, U.S. Steel will expend \$800,000 for an

environmentally beneficial project to remove contaminated transformers at its Gary and Ecorse facilities and pay a \$2.2 million civil penalty.

The agreement is memorialized in a consent decree lodged in federal district court in the Northern District of Indiana on November 22, 2016. The settlement, announced by the United States, together with the states of Indiana and Illinois and the Michigan Department of Environmental Quality, resolves Clean Air Act litigation initiated against U.S. Steel by the United States and the three states in August 2012.

Under the consent decree, U.S. Steel will immediately repair, and later replace, a bell top on a blast furnace used for making molten iron at its Great Lakes Works facility in Ecorse. The bell top, through which raw materials are placed inside the furnace, has a worn seal that is causing increased emissions of hazardous pollutants and particulate matter. The new bell top is designed to eliminate those increased emissions. U.S. Steel will also implement improvements (following a third-party study) at its Great Lakes Works' steel-making shop to further reduce harmful emissions. At its Gary Works facility, U.S. Steel will repair a large opening in a metal shell that surrounds a blast furnace. The repair will eliminate excess emissions from that furnace.

Since 2008, U.S. Steel has worked with the state of Illinois to improve its environmental compliance at the Granite City Works facility, including installation of a new baghouse to control particulate matter and rebuilding its Electro-Static Precipitator. Under the consent decree, which resolves not only joint federal/state claims but also claims brought separately by the state of Illinois, U.S. Steel agrees to maintain the effective operation of its pollution control equipment and continue the work practices that have resulted in improved environmental compliance.

Many children in southwest Detroit, Ecorse and Gary communities attend schools that are lit by fluorescent ballasts that may contain polychlorinated biphenyls (PCBs). As previously noted, the settlement includes a joint federal/state SEP in which U.S. Steel will remove and properly dispose of such PCB-contaminated ballasts and replace them with non-toxic, energy-efficient lighting. U.S. Steel will also conduct another SEP to install vegetative buffers composed of trees, bushes and shrubs on public lands near high-traffic roadways in Southwest Detroit. Such buffers are intended to reduce the transport of particulate matter emissions from heavily trafficked areas and thus improve downwind air quality.



EPA photo of fluorescent light ballast that sparked a fire at a southern California school in 1999

In addition, U.S. Steel will purchase a new street sweeper, equipped with enhanced collection capability, for use by the city of Granite City to reduce dust emissions. Other SEPs that U.S. Steel has agreed to undertake include the removal and proper disposal of waste tires that have been dumped at locations in Gary, replacement of some

exterior doors in Granite City public schools with energy-efficient doors and creation of a greenway and transit bike trail within Granite City.

United States v. S.H. Bell Company

The community surrounding the S.H. Bell Company facility in southeast Chicago, Illinois will benefit from the settlement reached in *United States v. S.H. Bell Company* (N.D. Ill.). S.H. Bell owns and operates a bulk material storage facility in southeast Chicago that receives material by truck, rail, and barge. It handles and stores large outdoor piles of metals and other materials at the facility. S.H. Bell unloads and stores bulk material until it is loaded after being purchased. Occasionally, the facility also processes the material by crushing or screening out larger pieces of material. The facility handles large quantities of materials that can create dust and particulate matter that can escape the property boundaries and affect the surrounding community. Particulate matter, especially fine particulates, contains microscopic solids or liquid droplets, which can get deep into the lungs and cause serious health problems.

The facility is located directly across the street from homes in a community with environmental justice concerns. The residences in this low-income minority community are as close as a few feet from the facility's boundaries. A local community advocacy group contacted EPA with concerns about metallic dust in the surrounding community. EPA then joined the group on a drive around the area where they were able to see the residences and their proximity to the facility. EPA issued an information request to S.H. Bell under Section 114 of the Clean Air Act requiring the company to, among other things, install fence-line air monitors to measure particulate matter escaping into the community. After the company failed to comply, ENRD on behalf of EPA filed a complaint against the company on August 9, 2016.

The parties negotiated a Stipulated Settlement and Final Consent Order resolving the civil claims for the violations alleged in the complaint. The settlement, approved by the court on December 6, 2016, requires S.H. Bell to install air monitors to measure particulate matter at the facility's property lines and pay a \$100,000 civil penalty. The company also agreed to continue to utilize and/or install, as appropriate, certain dust control measures, plans, and/or programs.

Litigating the Volkswagen "Defeat Devices" Matter

On January 4, 2016, the Environment and Natural Resources Division, on behalf of EPA, filed a civil complaint in the Eastern District of Michigan against Volkswagen AG, Audi AG, Volkswagen Group of America Inc., Volkswagen Group of America Chattanooga Operations LLC, Porsche AG and Porsche Cars North America Inc. (collectively referred to as Volkswagen). The complaint alleges that nearly 600,000 diesel engine vehicles had illegal defeat devices installed that impair their emission

control systems and cause emissions to exceed EPA's standards, resulting in harmful nitrogen oxide (NOx) air pollution.

The illegal software device detects when the car is being tested for compliance with EPA or California emissions standards and turns on full emissions controls only during that testing process. During normal driving conditions, the software renders certain emission control systems inoperative, greatly increasing emissions. Use of the defeat device results in cars that meet emissions standards in the laboratory, but emit harmful NOx at levels up to 40 times EPA-compliant levels during normal on-road driving conditions.



Emissions testing laboratory

EPA photo

The complaint further alleges that Volkswagen violated the Clean Air Act by selling, introducing into commerce, or importing into the United States motor vehicles that are designed differently from what Volkswagen had stated in applications for certification to EPA and the California Air Resources Board (CARB).

Volkswagen to Spend Up to \$14.7 Billion to Settle Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Vehicles

In two related settlements announced on June 28, 2016, one with the United States and the State of California, and one with the U.S. Federal Trade Commission (FTC), Volkswagen agreed to spend up to \$14.7 billion to settle allegations of cheating emissions tests and deceiving customers for nearly 10 years. Volkswagen will offer consumers a buyback and lease termination for nearly 500,000 model year 2009-2015 2.0 liter diesel vehicles sold or leased in the U.S., and spend up to \$10.03 billion to compensate consumers under the program. In addition, the companies will spend \$4.7 billion to mitigate the pollution from these cars and invest in green vehicle technology.

The settlements partially resolved allegations by EPA, as well as the California Attorney General's Office and CARB under the Clean Air Act, California Health and Safety Code, and California's Unfair Competition Laws, relating to the vehicles' use of "defeat devices" to cheat emissions tests. The settlements also resolved claims by the FTC that Volkswagen violated the FTC Act through the deceptive and unfair advertising and sale of its "clean diesel" vehicles. The settlements did not resolve pending claims for civil penalties or any claims concerning 3.0 liter diesel vehicles. Nor did they address any potential criminal liability.

The settlements use the authorities of both the EPA and the FTC as part of a coordinated plan that gets the high-polluting Volkswagen diesels off the road, makes the environment whole, and compensates consumers.

Volkswagen is required to offer owners of any affected vehicle the option to have the company buy back the car and to offer lessees a lease cancellation at no cost.

Volkswagen may also propose an emissions modification plan to EPA and CARB, and if approved, may also offer owners and lessees the option of having their vehicles modified to substantially reduce emissions in lieu of a buyback. Under the U.S./California settlement, Volkswagen must achieve an overall recall rate of at least 85% of affected 2.0 liter vehicles under these programs or pay additional sums into the mitigation trust fund. The FTC order requires Volkswagen to compensate consumers who elect either of these options. Volkswagen must set aside and could spend up to \$10.03 billion to pay consumers in connection with the buy back, lease termination, and emissions modification compensation program.

The settlement of the company's Clean Air Act violations also requires Volkswagen to pay \$2.7 billion to fund projects across the country that will reduce emissions of NO_x where the 2.0 liter vehicles were, are or will be operated. Volkswagen will place the funds into a mitigation trust over three years, which will be administered by an independent trustee. Beneficiaries, which may include states, Puerto Rico, the District of Columbia, and Indian tribes, may obtain funds for designated NO_x reduction projects upon application to the Trustee. Funding for the designated projects is expected to fully mitigate the NO_x these 2.0 liter vehicles have and will emit in excess of EPA and California standards.

The emissions reduction program will help reduce NO_x pollution that contributes to the formation of harmful smog and soot, exposure to which is linked to a number of respiratory- and cardiovascular-related health effects as well as premature death. Children, older adults, people who are active outdoors (including outdoor workers), and people with heart or lung disease are particularly at risk for health effects related to smog or soot exposure. NO₂ formed by NO_x emissions can aggravate respiratory diseases, particularly asthma, and may also contribute to asthma development in children.

The Clean Air Act settlement also requires Volkswagen to invest \$2 billion toward improving infrastructure, access and education to support and advance zero emission vehicles. The investments will be made over 10 years, with \$1.2 billion directed toward a national EPA-approved investment plan and \$800 million directed toward a California-specific investment plan that will be approved by CARB. As part of developing the national plan, Volkswagen will solicit and consider input from interested states, cities, Indian tribes and federal agencies. This investment is intended to address the adverse environmental impacts from consumers' purchases of the 2.0 liter vehicles, which the governments contend were purchased under the mistaken belief that they were lower emitting vehicles.

The FTC settlement includes injunctive provisions to protect consumers from deceptive claims in the future. These provisions prohibit Volkswagen from making any misrepresentations that would deceive consumers about the environmental benefits or

value of its vehicles or services, and the order specifically bans VW from employing any device that could be used to cheat on emissions tests.

Volkswagen to Recall 83,000 3.0 Liter Diesel Vehicles and Fund Mitigation Projects to Settle Allegations of Cheating Emissions Tests on Volkswagen, Audi and Porsche Vehicles

In a second partial settlement announced by ENRD, EPA, and the State of California on December 20, 2016, Volkswagen agreed to recall 83,000 model year 2009 through 2016 3.0 liter diesel vehicles sold or leased in the U.S. that are alleged to be equipped with “defeat devices” to cheat emissions tests, in violation of the Clean Air Act and California law. The provisions of the settlement are contained in a proposed consent decree filed in the U.S. District Court for the Northern District of California, as part of the multi-district litigation.

For the older vehicles, Volkswagen is required to offer to buy back the vehicles or terminate leases, and must also offer an emissions modification to substantially reduce emissions if one is proposed by Volkswagen and approved by regulators. For the newer vehicles, if Volkswagen demonstrates it can make the vehicles compliant with the certified exhaust emission standards, it will have to fix the vehicles and will not be required to buy the vehicles back. Volkswagen is also required to spend \$225 million to fund projects that will reduce emissions of NOx.

The partial settlement did not resolve any pending claims for civil penalties, nor did it address any potential criminal liability. The settlement also did not resolve any consumer claims, claims by the Federal Trade Commission or claims by individual owners or lessees who may have asserted claims in the ongoing multidistrict litigation. The state of California has secured a separate resolution for the 3.0 liter violations that addresses issues specific to vehicles and consumers in California.

The settlement requires Volkswagen to pay \$225 million to fund projects across the country that will reduce emissions of NOx where the 3.0 liter vehicles were, are or will be operated. This funding is intended to fully mitigate the past and future NOx emissions from the 3.0 liter vehicles. That money will be placed in the same mitigation trust to be established under the partial settlement for the 2L vehicles. This \$225 million is in addition to the \$2.7 billion that Volkswagen is required to pay into that trust under the prior settlement. The mitigation trust will be administered by an independent trustee. Beneficiaries, which may include states, Puerto Rico, the District of Columbia and Indian tribes, may obtain funds for designated NOx reduction projects upon application to the trustee.

The emissions reduction program will help reduce NOx pollution that contributes to the formation of harmful smog and soot, exposure to which is linked to a number of respiratory- and cardiovascular-related health effects as well as premature death. Children, older adults, people who are active outdoors (including outdoor workers) and people with heart or lung disease are particularly at risk for health effects related to smog

or soot exposure. NO₂ formed by NO_x emissions can aggravate respiratory diseases, particularly asthma, and may also contribute to asthma development in children.

United States v. The New York Racing Association, Inc.

The communities near the Aqueduct Racetrack (Aqueduct) in Queens, New York will benefit from the settlement the United States Attorney's Office for the Eastern District of New York reached with the New York Racing Association, Inc. (NYRA), the operator of the racetrack. The consent decree, lodged on September 30, 2016 in *United States v. The New York Racing Association, Inc.* (E.D.N.Y.), resolves the NYRA's violation of the Clean Water Act. Under EPA's regulations, Aqueduct is a concentrated animal feeding operation (CAFO). A CAFO is a facility where animals are kept and raised in confined areas for a total of 45 days or more in any 12-month period and feed is brought to the animals rather than the animals grazing or otherwise feeding in pastures, fields, or on range land.

CAFOs generate significant volumes of animal waste which, if improperly managed, can result in environmental and human health risks such as water quality impairment, fish kills, algal blooms, contamination of drinking water sources, and transmission of disease-causing bacteria and parasites associated with food and waterborne diseases. During the racing season Aqueduct housed up to 450 horses. In 2013 and 2014 alone, NYRA generated and discharged an estimated 1.26 million gallons per year of polluted wastewater to storm sewer systems. The discharges from Aqueduct ultimately flow to the Hawtree and Bergen Basins, tributaries located within the eastern portion of Jamaica Bay. Eastern Jamaica Bay and associated tributaries are currently designated by the New York State Department of Environmental Conservation as impaired due to ammonia, nitrogen, oil/grease, and pathogens.



Aqueduct Racetrack in Ozone Park

The communities potentially impacted by the violations are located in the immediate area of the facility in Queens, as well as the areas immediately around the discharge point. These includes the Ozone Park, Howard Beach and Hamilton Beach neighborhoods, which are predominantly minority communities.

Under the consent decree, NYRA will implement measures to eliminate discharges to the storm sewers and ensure that all polluted wastewater from Aqueduct Racetrack flows to sanitary sewers. The settlement includes interim and long term measures, including (1) designation of an employee who is responsible for ensuring that there are no discharges of polluted wastewaters into storm drains; (2) implementation of procedures applicable to employees to ensure that no polluted wastewater discharges occur; (3) installation and operation of a telemetry monitoring system in the manholes that will alert employees of any dry weather flows in the storm sewers; and (4) weekly inspections. The settlement also requires NYRA to implement horse washing procedures

and to implement a public website that makes inspection results and information about NYRA's compliance available to the public. The consent decree also requires NYRA to pay \$150,000 as a civil penalty.

In addition, the consent decree requires NYRA to implement a supplemental environmental project to reduce storm water runoff impacts. NYRA will plant 62 trees at the nearby NYRA Belmont Racetrack which will (1) capture storm water enabling some of it to evaporate back to the atmosphere rather than reach the ground; (2) mitigate the effect of heavy storm events (i.e., large amounts of runoff) by intercepting and slowing the rate at which storm water reaches the ground; (3) break up the soil to allow the soil to become more permeable and able to absorb greater amounts of storm water; and (4) abate soil erosion. The trees will also provide wildlife habitat and reduce urban "heat island" effects.

United States v. Mitchell, et al.

In *United States v. Mitchell, et al.* (D. Del.), the United States Attorney's Office in Delaware charged employees of the International Petroleum Corporation of Delaware ("IPC") with conspiring to violate the Clean Water Act. The IPC facility is located in an area with low-income and minority populations with environmental justice concerns. From 1992 through December 2012, IPC owned and operated a facility in Wilmington, Delaware which processed used oil and hydrocarbon-containing waste water and then sold the reprocessed petroleum to various companies for reuse. The facility's petroleum processing activities generated waste water, which IPC treated at the waste water treatment portion of the facility prior to discharging it into a septic sewer along South Market Street. IPC was issued a National Pollutant Discharge Elimination System ("NPDES") permit which governed the types and concentrations of pollutants IPC could discharge into the City of Wilmington's sewer system.

From September 1992 through February 2011, Ricky Mitchell a former IPC Plant Manager conspired with other IPC employees to tamper with and render inaccurate samples and monitoring devices related to IPC's waste water discharges into Wilmington's sewer system. Such tampering artificially concealed the true concentrations of metal compounds and VOCs (Volatile Organic Compounds), such as MTBE (Methyl Tert-Butyl Ether) and BTEX (Benzene, Toluene, Ethylbenzene and Xylene), all limited by IPC's NPDES permit. The tampering activity coincided with a period during which the City of Wilmington detected explosive levels of VOCs in its sewer system adjacent to IPC's facility. This posed a significant risk to the public and to those Wilmington public works employees and contractors working in the sewer line adjacent to IPC's facility.

On January 6, 2016, Mitchell, waived indictment and pled guilty to a two-count Information, which includes a charge of conspiracy to violate the Clean Water Act by tampering with monitoring devices and methods, all in violation of 18 U. S. C. 371. Mitchell is pending sentencing. On April 14, 2016, John J. Lowery, III, a former IPC Acting Plant Manager, was charged by Indictment, which similarly includes a charge of

conspiracy to violate the Clean Water Act by tampering with monitoring devices and methods. Defendant Lowery is pending trial. The investigation is continuing.

United States v. Anastasios Kolokouris

In June, 2016, Anastasios “Taso” Kolokouris (Kolokouris) was sentenced to two-years-probation, 150 hours of community service, ordered to pay restitution, and fined \$15,000 for violating the Clean Air Act asbestos work practice standards. Kolokouris owned a warehouse in Rochester, New York located directly adjacent to residential homes in a predominantly low-income minority community. There was also a school bus stop directly outside the main gate of the warehouse.

Acting on a complaint in December 2011, the New York State Department of Labor, Asbestos Control Bureau inspected the warehouse. Upon arrival, the inspector observed people, including a 16 year old child, working in a large dumpster next to a loading dock. The inspector observed large quantities of white fibrous material, later confirmed to be asbestos, in and around the dumpster. He also noted that the people working in the dumpster did not have proper personal protective equipment, and that there were no asbestos warning signs on the dumpster. Kolokouris never provided any of the workers with proper masks, protective suits, or other personal protective equipment. Instead, Kolokouris only gave them simple dust masks. The workers did not have any asbestos training or experience.



Workers cleaning asbestos from dumpster

When the Asbestos Control Bureau inspector made contact with the workers, they called Kolokouris to tell him about the inspection. However, the defendant told the workers not to speak with the inspector, and directed them to leave the area and lock the gate, which they did. While on site, however, the inspector took samples of the white fibrous material from in and around the dumpster. A lab later confirmed these samples to contain high levels of friable asbestos. Further investigation resulted in the seizure of more than 90 bags of dry, friable asbestos from inside the warehouse.

During the investigation, workers were interviewed and indicated that they knew Kolokouris from working for him at other odd jobs. They reported that the defendant told them he would pay cash to remove asbestos from the dumpster, because the container company would not remove it while it was full of asbestos. The *United States v. Anastasios Kolokouris* (W.D.N.Y.) case was investigated by the U.S. EPA Criminal Investigation Division, the N.Y. State Department of Environmental Conservation Police Bureau of Environmental Crimes Investigation, the N.Y. State Department of Labor Asbestos Control Bureau, and the City of Rochester Police Department.

United States v. Cherry Way, Inc.

In the Eastern District of Louisiana, Elaine Chiu and her company, Cheery Way, Inc., were sentenced on July 13, 2016, to five years of probation, a \$500,000 fine, and \$162,520 in restitution to workers for medical monitoring costs for violating notification requirements under the Clean Air Act. Most of the workers were unskilled low-income laborers from the Pierre Part, Louisiana area. Chiu and her company were hired to demolish the Mississippi Queen Riverboat which had asbestos material in its walls and ceiling tiles. Chiu and the agents at Cheery Way were aware of the asbestos. Despite this knowledge, Chiu and her agents knowingly failed to notify and report to the Louisiana Department of Environmental Quality at least ten days prior to the start of the demolition as required by the Clean Air Act.



Asbestos found on ship

They also did not inform the inexperienced demolition contractor they hired that asbestos sampling had been performed. Agents of Cheery Way merely told the contractor that the riverboat “might” have asbestos. The inexperienced demolition contractor told Chiu and Cheery Way that he did not believe the vessel contained any asbestos. As a result, workers were not required to take any precautions against the release of asbestos and had their health placed at risk.

After receiving a tip about the worksite, the Louisiana Department of Environmental Quality issued the site a Notice of Deficiency and work was stopped. The site was thereafter remediated by another of Chiu’s companies at a cost of \$245,248. During their five-year term of probation, Chiu and Cheery Way are prohibited from participating in any capacity in the construction, demolition, or renovation business anywhere in the United States.

The *United States v. Cheery Way, Inc.* (E.D. La.) case was investigated by the U.S. EPA Criminal Investigation Division and the Louisiana Department of Environmental Quality.

United States v. James Powers

On September 7, 2016, James Powers pleaded guilty to violating the Clean Air Act for improperly removing asbestos from the historic Friendship House located in Washington, D.C. The workers hired to perform the work were low-income men of color who road from Georgia to D.C. in a van with the contractor, and had no means of returning there without his assistance. They were exposed to airborne asbestos for two months as a result of the defendant’s conduct.

The Friendship House is located in the Capital Hill area and close to residential properties. An asbestos survey of the property documented that there was asbestos throughout the property, including in the floor tiles, wall board and pipe insulation. Despite knowing about the asbestos in the building, Powers hired a general contractor who had no training, certification, or experience in asbestos abatement, to conduct interior demolition and renovation of the building. In the written agreement for services with the contractor, Powers specifically excluded a provision addressing the removal of asbestos from the property. Because there was no asbestos notification, the contractor conducted the interior demolition to the property without any asbestos abatement having occurred as required under the Clean Air Act. Powers also contracted with a waste disposal company to haul away the construction debris. Powers failed to inform the waste disposal company that the construction debris contained asbestos. The debris was also not taken to a site qualified to receive asbestos waste.



Friendship House

Over the course of the project, the workers disturbed substantial quantities of asbestos, thus exposing themselves to a substantial risk of serious illness later in life. Asbestos, a once-popular fireproofing insulation, is now known to cause lung cancer, asbestosis and mesothelioma in people who inhale the fibers released when asbestos is disturbed. Congress has determined that there is no safe level of exposure to asbestos. The Clean Air Act requires that renovation in asbestos-containing properties follow specific protocols designed to safely remove asbestos from the property prior to any renovation or demolition activity, so as not to expose workers to the risk of deadly respiratory diseases.

The *United States v. James Powers* (D.D.C.) case was investigated by the U.S. EPA Criminal Investigation Division and the Department of Transportation and prosecuted by the U.S. Attorney's Office for the District of Columbia and the Environmental Crimes Section of the Environment and Natural Resources Division.

United States v. Chem-Solv Inc.

In September 2016, Chem-Solv, formerly known as Chemicals and Solvents Inc., was sentenced for illegally storing hazardous waste and for transporting hazardous waste from its facility located in a low-income area of Roanoke, Virginia to another facility. As part of its sentence and as a result of a plea agreement, Chem-Solv agreed to pay a \$1 million criminal fine. The improper transportation was based on a spill of several hundred gallons of ferric chloride – a hazardous substance – on the Chem-Solv facility in Roanoke in June 2012. Some of the ferric chloride flowed from the Chem-Solv facility onto an adjoining property both before, and during, the cleanup. Chem-Solv employed a waste transportation company to transport the waste to a disposal facility. Chem-Solv was aware of the hazardous nature of ferric chloride, but did not properly test the waste and instructed the transporter to transport the waste as non-hazardous, without the required placards and manifests.



Ferric Chloride spill

Also, in December 2013, Chem-Solv was storing numerous containers of chemical waste on its facility that should have been disposed of properly. After receiving advanced notice of an EPA-inspection, Chem-Solv directed its employees to load three trailers with the chemical waste in an attempt to prevent EPA inspectors from discovering it. Two of the three trailers were taken offsite. The third trailer, which was not road worthy, was stored on the Chem-Solv property for almost a year and its contents were discovered by law enforcement officers on Nov. 19, 2014, while executing a search warrant. That trailer was found to contain hazardous waste that Chem-Solv did not have a permit to store at its facility.

In addition to the \$1 million criminal fine, Chem-Solv agreed to pay a \$250,000 community service payment. \$76,000 of this community service payment was used to repair and update a small aging private water supply system which services the Timber Ridge community which consists of elderly low income residents who did not have the financial resources to repair the water system. Chem-Solv was also ordered to serve five years' probation, during which time it must develop and implement an environmental compliance plan and be subjected to yearly independent environmental audits.

The *United States v. Chem-Solv Inc.* (W.D. Va.) case was investigated by the U.S. EPA Criminal Investigation Division and the U.S. Department of Transportation Office of Inspector General, with assistance from the Roanoke Fire-EMS Department, the Virginia Department of Environmental Quality, Roanoke City Police Department, and other members of the Blue Ridge Environmental Task Force.

Integrating Environmental Justice into Other Cases

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.

Recent examples of this aspect of ENRD's environmental justice efforts are described below:

Second Phase of Work to Address Abandoned Uranium Mines on the Navajo Nation

On July 15, 2016, the Department of Justice announced a settlement agreement with the Navajo Nation, under which the United States will provide funding necessary to continue clean-up work at abandoned uranium mines on the Navajo Nation. Specifically, the United States will fund environmental response trusts to clean up 16 priority abandoned uranium mines located across the Navajo Nation. The agreement also provides for evaluations of 30 more abandoned uranium mines, and for studies of two abandoned uranium mines to determine if groundwater or surface waters have been affected by those mines. The legacy of uranium mining 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 work to be conducted is subject to the joint oversight and approval of the Navajo Nation Environmental Protection Agency and the United States Environmental Protection Agency (EPA). The United States previously provided \$13.2 million for evaluations at the 16 priority mines in a "Phase 1" settlement executed in 2015. This "Phase 2" settlement agreement is the next step to ensure cleanup of abandoned mines posing the most significant risks to people's health. It also starts the evaluations of additional mines for cleanup in the future.

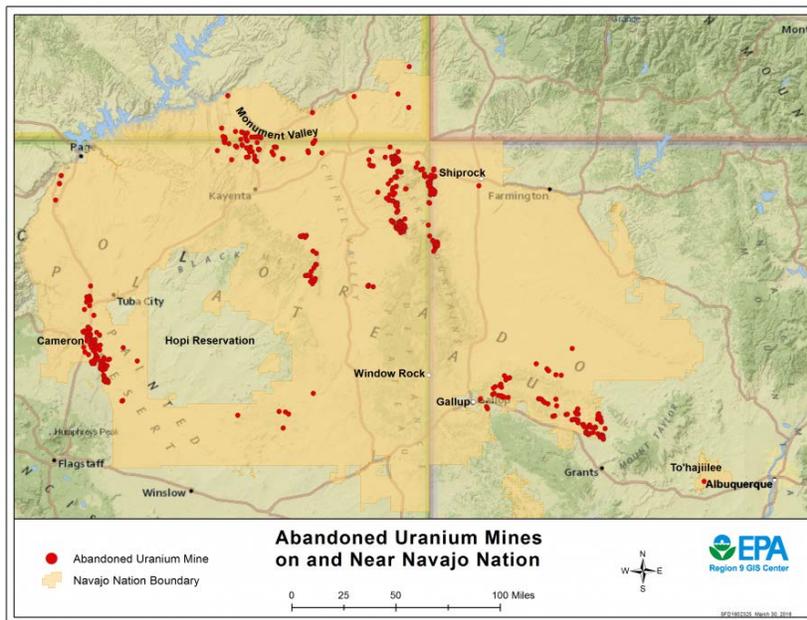
The Navajo Nation encompasses more than 27,000 square miles within Utah, New Mexico and Arizona in the Four Corners area. The unique geology of the region makes the Navajo Nation rich in uranium, a radioactive ore in high demand after the development of atomic power and weapons at the close of World 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.

Since 2008, federal agencies including EPA, the Department of Energy, the Bureau of Indian Affairs, the Department of the Interior, the Nuclear Regulatory Commission and the Indian Health Service have collaborated to address uranium contamination on the Navajo Nation. The federal government has invested more than \$100 million to address abandoned uranium mines on Navajo lands.

EPA has also compiled a list of 46 “priority mines” for cleanup and performed stabilization or cleanup work at 9 mines. Further, EPA work cleaning up mines has generated 94 jobs for Navajo workers.

This settlement agreement resolves the claims of the Navajo Nation pertaining to costs of engineering evaluations and cost analyses, and cleanups, at the 16 priority mines for which no viable responsible private party has been identified, as well as the costs of evaluations at another 30 such mines, two water studies, and modest costs for pre-assessment of natural resources damages. In April 2014, the Justice Department and EPA announced in a separate matter that approximately \$985 million of a multi-billion dollar settlement of litigation against subsidiaries of Anadarko Petroleum Corp. will be paid to EPA to fund the clean-up of approximately 50 abandoned uranium mines in and around the Navajo Nation, where radioactive waste remains from Kerr-McGee mining operations. EPA commenced field work with the proceeds from that settlement earlier in 2016.



Navajo Nation Abandoned Uranium Mines Map

EPA Image

American Rivers v. U.S. Army Corps of Eng'rs

ENRD negotiated a settlement that will help improve the passage of fish on the White River in western Washington that are culturally important to the Muckleshoot and Puyallup Indian tribes. In *American Rivers v. U.S. Army Corps of Eng'rs* (W.D. Wa.), plaintiff challenged the U.S. Army Corps of Engineers' operation and maintenance of Mud

Mountain Dam, located on the White River in western Washington, and a fish passage facility located six miles downstream of the dam. Mud Mountain Dam was built in the 1940s on the White River by the Corps for flood control. The plaintiff alleged that the existing barrier and fish trap are inadequate to allow fish passage and cause "take" of Endangered Species Act-listed salmon and steelhead. The term "take" means to harass, harm,



Mud Mountain Dam, WA (Fish Passage Facility)

US Army Corps of Engineers

pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The river's salmon and steelhead are central to the culture of the Muckleshoot and Puyallup Indian tribes. The settlement includes a commitment from the Corps to improve the fish passage facility.

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 assist the Environmental and Natural Resources Division as needed on pending cases.

CRS also serves as a valuable resource in non-case related matters. For example, beginning in January 2016, CRS facilitated a dialogue with African American, Hispanic, and Arab American community groups in Southwest Detroit, Michigan, involving allegations of environmental justice health hazard concerns based on race. Over a nine month period, CRS assisted in the formation of a working group task force and facilitated numerous dialogues with the task force to identify issues, build consensus, and prioritize issues. Conflicting community members’ schedules delayed progress; however CRS helped continue dialogue through shuttle diplomacy. By August 2016, a Memorandum of Understanding formalizing the task force’s action plan and a Proclamation were finalized and signed by the parties. In addition, the community drafted and signed a Proclamation recognizing and supporting Pollution Prevention Week. Through the creation of the task force, CRS built capacity within the community to move forward to work on the environmental air pollution concerns as outlined in the Memorandum of Understanding.



“Injustice anywhere is a threat to justice everywhere.”

Martin Luther King, Jr.

