



**UNITED STATES  
DEPARTMENT OF JUSTICE**

**2014 IMPLEMENTATION PROGRESS REPORT  
ON ENVIRONMENTAL JUSTICE**

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## Foreword

I am delighted to present the Department of Justice’s 2014 Annual Implementation Progress Report on Environmental Justice. This is the Department’s fourth annual report issued since 2012 to describe the work and achievements of the Department of Justice in carrying out Executive Order 12898 – *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the 2011 Memorandum of Understanding on Environmental Justice and Executive Order 12898, and the Department’s Environmental Justice Strategy.

On December 3, 2014, Attorney General Eric Holder announced the release of the Department’s updated Environmental Justice Strategy and Guidance on Environmental Justice during his remarks at the White House Tribal Nations Conference. The updated Strategy and Guidance are available on the Department’s Environmental Justice webpage

<http://www.justice.gov/ej>.

As Attorney General Holder stated, the Strategy and Guidance outline “how we will work to use existing environmental and civil-rights laws to help ensure that all communities, regardless of their income or



AG Holder at 2014 White House Tribal Nations Conference Courtesy of U.S. Dept. of the Interior

demographics, are protected from environmental harm.” The Attorney General has distributed the Department’s updated Strategy and Guidance to the heads of all DOJ components and U.S. Attorneys’ Offices to ensure that DOJ personnel are aware of and adhering to all applicable requirements of the Department’s Strategy and Guidance, and Executive Order 12898.

The Department initially issued its Strategy and Guidance documents in 1995 to implement its commitment to environmental justice following the issuance of Executive Order 12898 in 1994. In light of the significant steps the Department has taken since then to ensure

that environmental justice principles inform the way we perform our work and lead to meaningful results in communities, the Strategy and Guidance documents were updated in 2014 to ensure they reflect our current approach to addressing environmental justice. In addition, the Department was able to be responsive to previous public comments requesting that we update and reissue the Strategy and Guidance. Some of the revisions to the Strategy and Guidance are discussed in Part One of this report. The Department will periodically examine the Strategy and Guidance for potential revisions and welcomes the public's input on these documents.

In addition to updating its environmental justice Strategy and Guidance, the Department continued to take significant steps in 2014 to implement those documents in ways that make a real difference in overburdened communities. A few of the Department's recent accomplishments are highlighted here:

- Community outreach is one of the key principles upon which the environmental justice movement is founded. Outreach gives communities a meaningful opportunity to have input into environmental decision-making that could affect them and helps us to better understand their concerns. The mediation and conciliation expertise of the Department's Community Relations Service (CRS) continues to be a vital resource in the Department's efforts to facilitate meaningful participation in environmental decisions by communities. For example, CRS' assistance with case-specific outreach by the Environment and Natural Resources Division has helped make a notable difference in certain communities. The outreach the Department conducts in specific cases remains an important and effective way for us to engage communities in decisions regarding appropriate remedies to resolve violations of law.
- Interagency collaboration is another crucial element to successfully addressing the environmental justice issues that communities face. The Department remains an active member of the Federal Interagency Working Group on Environmental Justice (EJ IWG), created by Executive Order 12898. The EJ IWG facilitates coordination among Federal agencies to guide, support, and enhance Federal environmental justice and community-based activities. As chair of the Title VI Committee of the EJ IWG, the Department continues to identify ways to improve interagency coordination and information sharing among federal civil rights staff and the public.
- Results achieved through the Department's casework continue to make a significant difference in disproportionately burdened communities. For example, in 2014 the Environment and Natural Resources Division and the U.S. Attorney's Offices, working with their client-agency partners, successfully resolved numerous cases brought under the Clean Air Act to eliminate sources of air pollution impacting low-income and minority communities; negotiated settlements to achieve the cleanup of residential properties in low-income and minority neighborhoods; and successfully pursued lawsuits to help restore tribal lands. In civil actions under the Clean Water Act against cities such as Columbia, South Carolina, the Department continued to push to incorporate stronger community participation provisions into settlements that require cities to address their inadequate or deteriorating sewer systems. This report

provides numerous examples of how the Department has achieved positive results for communities through its litigation and casework.

As the Attorney General noted in his speech at the White House Tribal Nations Conference, the Department remains committed to ensuring that all communities – regardless of income or demographics – are protected from environmental harm. During the twenty years since Executive Order 12898 was issued, there have been significant accomplishments by community leaders, Federal, state, local, and tribal governments, and others to advance this important work. Yet, there is more work to be done. Low-income, minority, and tribal Americans are still often disproportionately burdened with pollution, resulting in disproportionate health problems, greater obstacles to economic growth, and a lower quality of life. The Department will continue to play a vital role in making environmental justice a reality for all Americans. We welcome your input on the Department’s environmental justice activities, strategy, and guidance as we move forward.

Stuart F. Delery  
Acting Associate Attorney General

## **Introduction**

The Department of Justice was one of 17 Federal agencies and White House offices that signed a Memorandum of Understanding on Environmental Justice (MOU) in August 2011. Building upon Executive Order 12898 – the federal government’s first statement of an environmental justice policy – the MOU represents the federal government’s renewed commitment to environmental justice. The MOU promotes interagency collaboration and public access to information about agency work on environmental justice, and specifically required each agency to publish an environmental justice strategy, provide an opportunity for public input on those strategies, and produce annual implementation progress reports.

In 2014, the Department achieved significant results for the American people as it continued to implement its Environmental Justice Strategy, Executive Order 12898, and the MOU. The sections of this report briefly highlight the Department’s progress toward the goal of achieving environmental justice and protecting communities and individuals from environmental harm. All Americans deserve to live, work, play, and learn in places that have clean air, water, and land. However, even twenty years after Executive Order 12898 was signed, the burdens of pollution often still fall disproportionately on low-income, minority, and Native Americans. 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. The Department is deeply committed to ensuring that the goals and principles of environmental justice are part of our mission and appropriately integrated into our work. We continue to achieve meaningful environmental justice results and to work on many fronts to help make environmental justice a reality.

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

## **Part One: Interagency Collaboration**

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

The EJ IWG, established by Executive Order 12898, celebrated its 20th anniversary in February 2014. Chaired by EPA and the White House Council on Environmental Quality (CEQ), the formation of the EJ IWG highlights the importance of Federal agencies working collaboratively to address environmental justice concerns. The EJ IWG works to facilitate the active involvement of all Federal agencies in implementing Executive Order 12898 by minimizing and mitigating disproportionate negative impacts on overburdened communities and fostering environmental, public health, and economic benefits for all Americans.

Through its work with the EJ IWG, the Department has assumed a leadership role in ensuring a coordinated Federal response to environmental justice issues. Representatives from the Department's Environment and Natural Resources Division (ENRD) and Civil Rights Division (CRT) regularly participate in EJ IWG senior staff-level meetings and identify ways the Department can support and further the EJ IWG's work. Senior leadership in ENRD and CRT attended several EJ IWG meetings in 2014. On November 18, 2014, EPA Chief of Staff Gwendolyn Keyes Fleming hosted a special meeting of the EJ IWG senior leadership team and agency chiefs of staff. The meeting provided an opportunity to strengthen coordination on interagency environmental justice projects and activities throughout the respective federal agencies. It also provided an overview of EPA Administrator Gina McCarthy's Cabinet-level meeting on Environmental Justice, tentatively scheduled to occur in 2015.



ENRD Acting Assistant Attorney General hosting December 2014 EJ IWG meeting

### **Implementing the Interagency Memorandum on Environmental Justice**

In 2011, the Department of Justice joined 16 other Federal agencies and White House offices in signing the MOU. The Department played an important leadership role in the conception and development of the MOU and continues to play an important role in its implementation. The MOU identifies four focus areas for the EJ IWG as agencies implement their environmental justice strategies: (1) implementation of the National Environmental Policy Act (NEPA); (2) implementation of Title VI of the Civil Rights Act of 1964, as amended (Title VI); (3) addressing impacts from climate change; and (4) addressing impacts from commercial transportation and supporting infrastructure (often referred to as "goods movement").

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

- *EJ IWG NEPA Committee*

Over the past year, the Department’s Environment and Natural Resources Division, through its Natural Resources Section (NRS), continued its active participation on 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 assure 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 determine the environmental consequences of their proposed actions for the dual goals of informed agency decision-making and informed public participation. Additionally, NEPA gives communities the opportunity to access public information on and participate in the agency decision-making process for Federal actions. The Presidential Memorandum accompanying Executive Order 12898 underscores the importance of procedures under NEPA to “focus Federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice.”

The NEPA Committee meets monthly to discuss environmental justice issues in the NEPA context, and to promote inter-agency cooperation and information sharing on incorporation of environmental justice principles into NEPA decision making. Since it was established in May 2012 by the EJ IWG, the committee has employed a robust and innovative process to fulfill its purpose. Co-chairs of the Committee and Subcommittees are from the Department of Justice, EPA, the U.S. Department of Transportation, and the U.S. Department of Health and Human Services, while working groups are chaired by EPA, the U.S. Department of Agriculture-Animal and Plant Health Inspection Service, and the Department of Energy. Further, there has been active participation on the committee by seven additional Federal agencies.

In addition to actively participating in the regular monthly meetings, NRS has continued to work with the two NEPA sub-committees, the Education Sub-Committee and the Community of Practice (COP) Sub-Committee. NRS co-chairs the Education Sub-Committee. Over the past year, the Education Sub-Committee continued its work on a National Training Product on Environmental Justice and NEPA that will serve as a resource for federal agencies to train NEPA practitioners on best practices for incorporating environmental justice into the NEPA process. The Education Sub-Committee has incorporated a wide cross-section of information and practices from across federal agencies and solicited several rounds of comments from the agency representatives to help improve the National Training Product. They are expecting to finalize the training product in the coming year.

The National Training Product is a companion to a document entitled “Promising Practices on EJ Methodologies in NEPA Reviews” being developed by the NEPA COP Sub-Committee. The document will provide NEPA practitioners with a set of methodologies to use in incorporating environmental justice principles into agency NEPA analyses. NRS actively participates in the COP Sub-Committee and provided significant

input regarding the suggested practices and principles that are being incorporated into the methodologies document. The COP Sub-Committee also expects to finalize the set of methodologies in the coming year.

The NEPA Committee is working collaboratively to address complex environmental justice issues in a timely manner. Ultimately, the NEPA Committee intends its efforts to provide the groundwork for a renewed and dynamic process to advance environmental justice principles through NEPA implementation.

- ***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. In 2014, the EJ IWG launched its Title VI webpage. Under the leadership of the Department, the development of this webpage furthers the goal of ensuring consistent enforcement of Title VI across the Federal family and encouraging the use of this critical enforcement tool to address environmental justice issues. ENRD has participated regularly in the Title VI Committee.

- ***Climate Change***

On June 25, 2013, President Obama announced his plan to cut carbon pollution and prepare the United States for the impacts of climate change. The President's Climate Action Plan calls upon Federal agencies to "continue to identify innovative ways to help our most vulnerable communities prepare for and recover from impacts of climate change." This focus on building capacity in low-income, minority, and tribal communities for climate adaptation comes from a number of policy mandates from both the White House and individual agency leadership. For example, Executive Order 13653 – *Preparing the United States for the Impacts of Climate Change* – signed by President Obama on November 1, 2013, called for the Federal government to build on recent progress and pursue new strategies to improve the nation's preparedness and resilience. Executive Order 13653 states that "adaptation measures should focus on helping the most vulnerable people and places reduce their exposure and sensitivity to climate change and improve their capacity to predict, prepare for, and avoid adverse impacts." ENRD represents the Department of Justice on the multi-agency Council on Climate Preparedness and Resilience, which was established under Section 6 of Executive Order 13653.

The Department's Justice Management Division (JMD) has taken the lead in coordinating climate change preparedness planning for the Department. In this role, representatives from JMD have worked closely with a wide range of stakeholders at the Department in climate adaptation planning. Those stakeholders include ENRD; Bureau of Alcohol, Tobacco, Firearms and Explosives; Federal Bureau of Investigation; Drug Enforcement Administration; Federal Bureau of Prisons; U.S. Marshals Service; and Continuity Program Managers. In 2014, JMD presented the Department's Climate Change Adaptation Plan, to be submitted to the White House Council on Environmental

Quality as part of the DOJ 2014 Strategic Sustainability Performance Plan and implemented throughout DOJ in fiscal year 2014 and beyond. DOJ, along with other Federal agencies, is required to comply with the climate resiliency directives under Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (2009) and Executive Order 13653. In accordance with these requirements, the Department's Climate Change Adaptation Plan presents DOJ's climate change policy framework, summarizes the results of the agency's high-level vulnerability analysis, describes the overall process envisioned for preparedness planning and evaluation, and identifies specific actions for increasing climate resilience.

In implementing its Climate Change Adaptation Plan, the Department will, among other things, consider how climate adaptation strategies may impact environmental justice issues. DOJ will identify (1) where existing environmental justice problems under DOJ's jurisdiction increase a population's vulnerability to a particular climate-related hazard; (2) how existing environmental justice problems under DOJ's jurisdiction could be exacerbated by climate change; and (3) how DOJ's response to climate-related risk may cause an environmental justice issue itself (e.g., relocation of critical infrastructure from a floodplain to a minority community could exacerbate the environmental and health related threats the community already faces) or how DOJ's response may help address an environmental justice issue that already exists. In 2014, representatives from ENRD and JMD's Facilities and Administrative Services Staff met to discuss the Department's climate adaptation goals as they relate to environmental justice.

- ***Annual Reporting***

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

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

As part of its increased community outreach efforts, the Department made its Environmental Justice Strategy and its Environmental Justice Guidance available to the public on September 30, 2011. The documents were initially prepared in 1995 to implement the Department's commitments following the issuance of Executive Order 12898 on February 11, 1994. Prior to posting the Strategy and Guidance online in 2011, the Department's internal Environmental Justice Workgroup, chaired by the Associate Attorney General's Office, re-evaluated the documents in light of the 2011 Memorandum of Understanding on Environmental Justice and Executive Order 12898. At that time the Department determined that the Strategy and Guidance continued to fully reflect the goals and commitments of the Department of Justice.

The Department continued to solicit comments on the Strategy and Guidance and received two sets of public comments in 2012. In light of the comments, the Department reviewed the Strategy and Guidance again prior to releasing its 2012 Environmental

Justice Implementation and Progress Report. As explained in the 2012 report (<http://www.justice.gov/ej/doj-ej-impl-prog-2012.pdf>), the Department concluded that the Strategy and Guidance continued to reflect the Department's commitment to make environmental justice part of its mission by using the tools at its disposal to ensure all communities benefit from a fair and even handed application of the law.

While much of the 1995 documents remained timely and applicable, the Department chose to update and reissue the Strategy and Guidance in 2014 to ensure they reflect our enhanced approach to addressing environmental justice in a way that makes a meaningful difference in overburdened communities. Updating the documents also allowed the Department to be responsive to public comments it received in 2012.

Some of the changes to the Strategy and Guidance are noted here. First, the documents provide a clearer explanation of the internal operating structure the Department has established regarding environmental justice. The structure includes a Director of Environmental Justice in the Office of the Associate Attorney General, a Senior Advisory Council chaired by the Associate Attorney General, an Environmental Justice Working Group chaired by the Director of Environmental Justice, and Environmental Justice Coordinators (see Strategy Section III.A). The Strategy clarifies that in addition to receiving briefings from the components that are on the Senior Advisory Council, the Associate Attorney General may request a report or briefing from any DOJ component (see Strategy Section III.B.2). In addition, the Director of Environmental Justice may instruct any component that is not represented on the Senior Advisory Council and Working Group to designate an Environmental Justice Coordinator for their component (see Strategy Section III.A.4).

Second, the Environmental Justice Strategy was updated to reflect the addition of the following three components to the Department's Environmental Justice Senior Advisory Council and Environmental Justice Working Group (see Strategy Sections III.A.2 and III.A.3):

- Access to Justice Initiative (ATJ)

Established in 2010, ATJ works to help the criminal and civil justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. The Initiative's staff works within the Department, across Federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers. ATJ is guided by three principles: 1) Promoting Accessibility — eliminating barriers that prevent people from understanding and exercising their rights; 2) Ensuring Fairness — delivering fair and just outcomes for all parties, including those facing financial and other disadvantages; and 3) Increasing Efficiency — delivering fair and just outcomes effectively, without waste or duplication.

- Office of Legal Policy (OLP)

The mission of OLP is to develop and implement the Department's significant policy initiatives, handle special projects that implicate the interests of multiple Department components, coordinate with other interested Department components and other Executive Branch agencies, and serve as the primary policy advisor to the Attorney General and the Deputy Attorney General. It also reviews and coordinates all regulations promulgated by the Department and all of its components. OLP frequently works on civil rights and access to justice issues.

- Office of Tribal Justice (OTJ)

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

Third, the Strategy and Guidance were revised, where appropriate, to replace the phrase "federally recognized tribes" with language that encompasses American Indians, Alaska Natives, and Native Hawaiians (see Strategy Section III.B.10.b and Guidance Sections II and IV.C). The change in terminology better reflects the breadth of circumstance under which environmental justice concerns may arise.

Finally, the Guidance includes updated examples of potential "Environmental Justice Matters" to assist DOJ employees as they implement the Department's Environmental Justice Strategy (see Guidance Section IV.C.2). While the Department's Guidance continues to include a range of factors to consider and examples of potential environmental justice matters, it does not attempt to provide an exhaustive list. As noted in the Department's 2012 Implementation Progress Report on Environmental Justice (at page 22), the Department will continue to incorporate any emerging legal or scientific issues into its training and other efforts, as appropriate, to increase its staff's awareness of environmental justice issues.

### **Increasing Communication and Awareness Across Federal Agencies**

The Department also continued to collaborate directly with other Federal agencies to increase the dialogue on and awareness of environmental justice issues. A cross-agency group of career attorneys that ENRD, along with EPA's Office of General Counsel, organized in fiscal year 2011 to discuss legal issues regarding environmental justice, remained an important vehicle to increase communication and awareness. In fiscal year 2014, the group (known as "Law Leaders on Environmental Justice") continued to serve as an important forum for open dialogue, continuing education, and informal counseling among the Federal agencies on issues such as environmental justice legal training.

The Department assisted other Federal agencies in providing environmental justice training to their staff. For example, in September 2014, the Department participated in a three-day environmental conference hosted by U.S. Department of Agriculture (USDA) Office of General Counsel. Nearly an entire day of the conference was devoted to environmental justice issues. ENRD's Environmental Justice Coordinator participated in a panel discussion on environmental justice along with EPA's Director of the Office of Environmental Justice and USDA's Deputy Under Secretaries for Natural Resources and Environment and for Rural Development. Several attorneys from ENRD's Natural Resources Section also participated on panels for the conference, and a number of other NRS attorneys attended. NRS presented training on environmental justice issues in NEPA litigation, which was attended by USDA and its various sub-agencies. The conference also focused on issues in Indian country. ENRD's Acting Assistant Attorney General, Sam Hirsch, and Department of the Interior's Assistant Secretary for Indian Affairs, Kevin Washburn, spoke on Indian country issues from the perspective of the Department of Justice and the Department of Interior. Afterwards, ENRD's Senior Council for Indian Affairs moderated a panel discussion on Indian country issues. The panel included the Director of the Justice Department's Office of Tribal Justice, the Chief of ENRD's Indian Resources Section, the Acting Chief of ENRD's Appellate Section, and USDA's Director of Tribal Relations.

ENRD's Environmental Crimes Section (ECS) provided training to criminal environmental investigators at the Federal Law Enforcement Training Center. The training, organized by the EPA Criminal Investigation Division and attended by state investigators from throughout the country, addressed identifying cases that raise environmental justice issues and appropriate steps to take during case investigation, prosecution, and resolution. The Environmental Crimes Section also coordinated with the EPA to provide a presentation on environmental justice at the March 2014 meeting of the Environmental Crimes Policy Committee. The EPA presentation focused on implementation of environmental justice principles by its Office of Criminal Enforcement, Forensics and Training, including identification of such cases, notification to prosecutors, and a review of the distribution of environmental justice cases across the EPA regions.

ENRD's Land Acquisition Section (LAS) attorneys, appraisers and support staff participated in training on Federal agencies' pre-litigation responsibilities to assist landowners affected by eminent domain under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. § 4601 *et seq.* LAS is committed to incorporating the principles underlying environmental justice into its condemnation work, ensuring equal access to justice and meaningful due process when private property is taken for public use by eminent domain. Greater familiarity with Federal agencies' decision-making processes – when project-wide environmental justice concerns must be addressed – enables LAS to better advise agencies preparing to refer property acquisitions for condemnation.

The Department has been committed to improving interagency coordination as a necessary tool for effectively responding to environmental justice concerns. The Civil Rights Division provides guidance and resources to Federal agencies to enhance collaborative efforts in the enforcement of Title VI of the Civil Rights Act of 1964. The new Civil Rights Division newsletter, *Title VI Civil Rights News @FCS*, highlights agencies' enforcement of Title VI. The

newsletter serves to promote the efforts of agencies to strengthen civil rights enforcement in all areas, including those affecting the environment and human health. Several agencies resolved complaints of discrimination that raised environmental justice issues in 2014.

### **Participating in Community and Other Outreach**

The Department has continued to help the EJ IWG fulfill one of its critical responsibilities under EO 12898 – holding public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice.

On September 4, 2014, the EJ IWG held a public meeting in Bismarck, North Dakota for tribes and indigenous communities. The purpose of the meeting was to facilitate an interactive discussion and create a supportive environment for exploring how the Federal government can strengthen interagency collaboration on environmental justice and work effectively with tribes and indigenous communities experiencing environmental justice issues. Attorneys from ENRD and representatives from ten other Federal agencies participated in a facilitated dialogue with tribal leaders, tribal environmental program personnel, indigenous community groups, students, and community stakeholders. There were approximately 69 attendees which included representatives from 14 different tribes. EPA has posted a summary of the meeting at <http://www.epa.gov/compliance/environmentaljustice/resources/publications/interagency/iwg-2014-09-04-meeting-summary.pdf>.



2014 EJ IWG Public Meeting for Tribes and Indigenous Communities in Bismarck, N.D.

The Department will continue to work with the EJ IWG to conduct listening sessions with communities to evaluate, among other things, the effectiveness of agency environmental justice strategies and seek recommendations on how agency efforts can be improved. Through these sessions we gain valuable feedback directly from communities that often helps us improve how we integrate environmental justice principles into our work. We look forward to continuing our participation in them.

In addition to the community outreach conducted with the EJ IWG and in the context of specific cases, the Department utilizes other forums to hear from stakeholder communities. For example, ENRD representatives attended the February 2014 and October 2014 EPA National Environmental Justice Advisory Council public meetings held in Denver, Colorado and Arlington, Virginia, respectively. These meetings afford communities the opportunity to comment on environmental justice issues of concern to them.

## Part Two: Environmental Justice Accomplishments

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

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



This section of the Department's 2014 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 increased its efforts to improve government-wide enforcement of Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. The Division is charged with ensuring that all federal agencies consistently and effectively enforce Title VI and other civil rights statutes and Executive Orders that prohibit discrimination in

federally conducted and assisted programs and activities. In July 2014, the Acting Assistant Attorney General announced a new coordination initiative, noting several critical activities the Division will be taking to better assist agencies (Mem. from Acting Assistant Attorney General,



President Johnson signing Title VI in 1964.

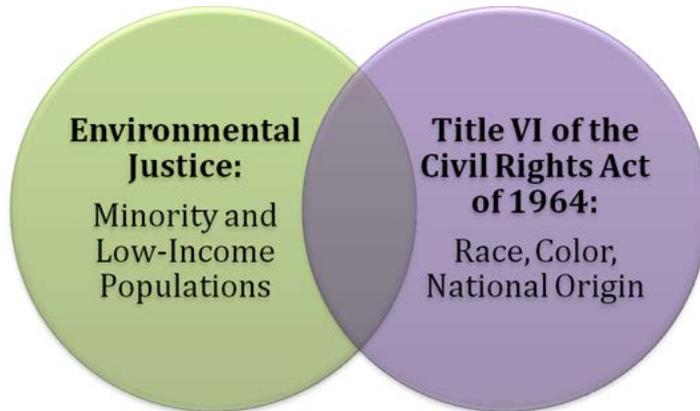
The 50th Anniversary of the Civil Rights Act of 1964 and Announcement of New Governmentwide Title VI Coordination Initiative,

[http://www.justice.gov/crt/about/cor/Pubs/7\\_24\\_14\\_Coordination\\_Memo\\_50th\\_Anniv.pdf](http://www.justice.gov/crt/about/cor/Pubs/7_24_14_Coordination_Memo_50th_Anniv.pdf)). The Division also launched its new Title VI training for federal civil rights staff. The training includes a segment on environmental justice and articulates the ability of agencies that fund activities that affect human health and the environment to use their Title VI compliance efforts to achieve the goals of Executive Order 12898.

The Division also began publishing a quarterly newsletter, *Title VI Civil Rights News @FCS*. The newsletter is produced by the Federal Coordination and Compliance Section, which is responsible for ensuring consistent enforcement of Title VI across the federal government. The newsletter covers the latest developments in Title VI policy, settlements and resolutions, and agency outreach. It is available to federal staff and the public through [www.govdelivery.com](http://www.govdelivery.com).

The Division plans to launch its revised Title VI manual in 2015. The update will provide detailed guidance to agencies analyzing, among other issues, discriminatory treatment

and discriminatory effects under Title VI. Over time, the areas covered by the manual will expand to address the application of Title VI in a range of areas, including environmental justice, transportation equity, and school discipline.



The Civil Rights Division also continued its outreach to the public in 2014. The Division moderated a panel on federal Title VI complaints during the annual Environmental Justice Conference and Training Program held in Washington, D.C. Additionally, the Division held listening sessions to learn about various civil rights issues of concern from stakeholders.

A significant part of the Civil Rights Division's environmental justice work is providing targeted technical assistance to agencies that receive complaints alleging Title VI violations in programs that effect the environment and human health. Our work with the EPA, the Department of Transportation, and the Department of Health and Human Services has led to meaningful resolutions of discrimination claims. The Division assisted these agencies on matters involving intentional discrimination as well as discriminatory effects. Additionally, we reviewed findings by consultants to determine whether their analysis was consistent with the law.

In 2015, the Division looks forward to engaging agencies on matters related to discrimination in the provision of municipal services, emergency management, and access to federal benefits.

## **Environmental Issues**

The Department remains committed to the strong enforcement of our nation's environmental and natural resources laws. This work is principally handled by ENRD. The Division was founded in 1909 and is led by Assistant Attorney General John C. Cruden. The Division is organized into nine Sections and an Executive Office. It is principally located in Washington, D.C., with offices in Denver, Colorado and San Francisco, California.

ENRD's core mission includes:

- Enforcement of civil and criminal environmental laws to ensure clean air, water, land and other resources for the protection of human health and the environment for all Americans;
- Vigorous defense of environmental, wildlife and natural resources laws and agency actions;
- Effective representation of the United States in matters concerning the stewardship of our public lands and natural resources;
- Vigilant protection of tribal sovereignty, tribal lands and resources, and tribal treaty rights; and
- Protection of the public fisc.

Ensuring that environmental justice is considered in all aspects of our work remains a core mission of ENRD. ENRD strives to ensure that all Americans are protected from environmental harms – regardless of their income status, race, or ethnicity. ENRD continues to work closely with U.S. Attorneys' Offices and in concert with other Federal agencies to ensure that affected communities have a meaningful opportunity for involvement in environmental decision-making that affects them, including the consideration of appropriate remedies for violations of the law. Highlighted below are some of the steps the Department has taken in 2014 to make environmental justice a more routine and fully integrated part of its work and that of its client agencies.

### **Conducting Outreach on Environmental Justice Issues**

The Department of Justice, including ENRD, the Office of Tribal Justice, and U.S. Attorneys' Offices, continues to engage in an unprecedented level of community outreach to ensure that the Department understands and is responding to community concerns. This has taken many forms, including community meetings and visits by senior Department officials, participation in EJ IWG listening sessions and community calls, participation in environmental justice conferences, and outreach in conjunction with cases in litigation. ENRD and U.S. Attorneys' Offices have worked with other components in the Department, Federal agency partners, and community representatives to organize direct outreach. For instance, the following are examples of outreach conducted to tribes:

- The Department’s Office of Tribal Justice has been involved in environmental matters in several different areas, including in Idaho with the Nez Perce Tribe and in South Dakota with the Cheyenne River Sioux Tribe where tribal members raised concerns about megaloads traveling through their reservations. In addition, OTJ was involved with tribal meetings regarding Acoma Pueblo mining and water issues, Navajo uranium mining and Cheyenne River Sioux concerns about flooding. OTJ participates in the Department’s Environmental Justice Working Group and facilitates tribal meetings as requested.
- Tracy Toulou, Director of OTJ, and Sam Hirsch, ENRD Principal Deputy Assistant Attorney General, co-chair the Department’s Indian Civil Litigation and Policy Working Group, along with South Dakota’s U.S. Attorney Brendon Johnson. As part of those monthly meetings, environmental justice issues and cases are staffed with civil attorneys within the Department.
- OTJ was also involved with the December 2014 White House Tribal Nations Conference, where listening sessions included various environmental justice issues. OTJ is also part of the Department’s delegation to the White House Council on Native American Affairs, formed by President Obama in July of 2013. Protecting tribal lands, environments and natural resources is one of the four primary missions of the Council and there are various working groups dealing with those issues.

Attorney General Holder, and other Department senior staff, spoke about environmental justice on a number of occasions. Examples include:

- July 24, 2014 “Civil and Criminal Environmental Enforcement Update” panel at the “At the Forefront: An Insider’s Perspective on Environmental Enforcement and Litigation” program sponsored by the ABA Section of Litigation’s Environmental Litigation Committee – Ellen Mahan, Deputy Chief in ENRD’s Environmental Enforcement Section spoke about environmental justice.
- July 29, 2014 environmental justice panel at the National Bar Association conference in Atlanta, Georgia – Quentin Pair, ENRD Trial Attorney, and Daria Neal, Deputy Section Chief for the Federal Coordination and Compliance Section of the Civil Rights Division, participated on the panel. Cynthia Ferguson, ENRD’s Environmental Justice Coordinator, also attended the panel discussion.
- September 2014 meeting with U.S. Attorneys – Bruce Gelber, ENRD Deputy Assistant Attorney General, discussed environmental justice issues.
- December 3, 2014 White House Tribal Nations Conference – Attorney General Holder spoke about environmental justice during his remarks.

### **Training and Increasing Awareness**

During 2014, ENRD remained committed to increasing awareness and understanding of environmental justice issues among its attorneys and staff. For example, in October, ENRD provided an overview of environmental justice at its annual training for new attorneys entering the Division through the Attorney General's Honor Program, which also included new experienced-attorney hires. The Division also held brown-bag sessions for interns during the year to discuss the Department's environmental justice efforts.

In addition to Division-wide training, ENRD's Sections provided training regarding environmental justice in the context of each Section's work. For example, at the 2014 Environmental Enforcement Section retreat, attorneys from the Section gave a presentation on environmental justice and enforcement issues in Indian country. The Natural Resources Section, one of ENRD's defensive sections, continued to ensure that its staff is aware of and adept at identifying environmental justice issues and integrating environmental justice principles into the defense of agency actions. In 2014, NRS met its commitment to provide annual training on environmental justice by developing and presenting a three day "Natural Resources Law for Litigators" course at the National Advocacy Center that included a session on environmental justice issues in NEPA litigation. The majority of the Natural Resources Section's attorneys attended the course, as well as a number of Assistant U.S. Attorneys from around the country. In addition to its internal training, NRS engaged in cross-training with other components and agencies. NRS provided a training session for the Federal Coordination and Compliance Section of the Civil Rights Division (FCS) covering an overview of NEPA litigation and areas of overlap with Title VI of the Civil Rights Act of 1964, which included a discussion of environmental justice issues. In return, FCS conducted a training session at NRS' Section Retreat, providing an overview of civil rights litigation issues including a discussion of environmental justice and Title VI.

### **Integrating Environmental Justice Principles into ENRD Litigation and Outcomes**

Through enforcement of the nation's environmental and natural resources laws, ENRD's Environmental Enforcement and Environmental Crimes Sections and the U.S. Attorneys' Offices seek to ensure that all communities enjoy the benefit of a fair and even-handed application of the law, and have a meaningful opportunity for input in the consideration of appropriate remedies for violations of the law.

The Department's commitment to making a visible difference in overburdened communities continues to be demonstrated through its litigation results. The following cases concluded by ENRD and the U.S. Attorney's Offices, in coordination with our agency partners, provide a few examples of how the Department's efforts furthered the principles of environmental justice in 2014:

- On October 16, 2014, the United States lodged a consent decree in *United States v. Metal Dynamics Detroit LLC* (E.D. Mich.) that will resolve violations of the Clean Air Act at defendant's scrap metal recycling facility in Detroit, Michigan. The Metal Dynamics facility is located in an area with environmental justice concerns. During the negotiations, the

United States, with the assistance of the Department of Justice Community Relations Service and the Michigan Department of Environmental Quality, conducted community outreach regarding the alleged violations, potential remedies, and possible supplemental environmental projects (SEPs). Under the proposed consent decree, Metal Dynamics will implement a Clean Air Act compliance program at its facility to eliminate the harmful release of chlorofluorocarbons (CFCs) and modify its torch cutting of metals to keep harmful particulate emissions at or below legal limits. Metal Dynamics will also pay a civil penalty of \$110,000 and implement two SEPs valued at \$400,000. The first SEP is an Intact Appliance Pilot Program, which will provide education and economic incentives to scrap metal suppliers in an effort to prevent the venting of CFC-containing gases to the atmosphere from appliances. The second SEP is a Torch Cutting Opacity Reduction Program, which will consist of the purchase and use of a portable particulate matter (PM) control device. This SEP has the potential for advancing the development of technology and practices to reduce PM at non-stack sources, and thus improve the air quality at Metal Dynamics, in the facility's vicinity, and at similar sources if the technology proves successful.

- In *United States, et al., v. Atlantic Richfield Company, et al.* (N.D. Ind.), the court entered a remedial design/remedial action consent decree for the U.S. Smelter & Lead Refinery (“USS Lead”) Superfund Site on October 28, 2014. This case involves the cleanup of lead and arsenic contamination in the soils of residential properties in East Chicago. With this consent decree EPA will be cleaning up two zones in the USS Lead site. One of the zones is the site of housing administered by the East Chicago Housing Authority for qualifying low-income residents. The residents are primarily African-American and Hispanic American. The other zone involves a working-class neighborhood. EPA did extensive outreach to the communities in developing and selecting the remedy for this site.



EPA map showing OU1, the residential area of the USS Lead site. An agreement has been reached on cleanup work in Zones 1 and 3. Work in Zone 2 will be done under a separate agreement.

- On May 21, 2014, the District of South Carolina entered a consent decree in *United States and State of South Carolina, by and through the Department of Health and Environmental Control v. City of Columbia* (D.S.C.), a Clean Water Act sanitary sewer overflow (SSO) case. The case team implemented extensive outreach in this case which involved the efforts of DOJ, EPA, and the South Carolina Department of Health and Environmental Control (DHEC) working jointly with the City of Columbia. Columbia wished to conduct its own outreach to its citizens. It compiled a list of 143 neighborhood, environmental, and civic groups. The list substantially overlapped with a list that DHEC generated of approximately sixty representatives of environmental groups, neighborhood associations, and churches. The City then created a survey, with input from DOJ and EPA, asking these citizens about their experiences with sanitary sewer overflows, views on several SEP ideas, and ideas for ways to reduce SSOs. The survey received 51 responses.

The majority of respondents supported restoration of stream banks to reduce flooding. DOJ and EPA also directly contacted eight community organizations and individuals who had been identified as representing minority and/or low-income neighborhoods. Two of these contacts identified specific stream segments as the cause of flooding in their neighborhoods. Ultimately, the City agreed to spend \$1 million on a SEP to restore segments of three streams in areas with environmental justice concerns, two of which were areas identified by the citizens: the lower and middle reach of Rocky Branch; a segment of Smith Branch; and a segment of Gills Creek.

The successful community outreach in this case helped direct the parties' attention to environmental justice considerations that might otherwise have been overlooked. Those considerations were easily incorporated into appropriate SEPs and should have a tangible, positive impact on several low-income, minority neighborhoods.

Additionally, the consent decree contains more robust public participation provisions than SSO consent decrees have traditionally contained. For the first time in an SSO consent decree, the City will set up automatic e-mail notification to all interested parties prior to each deliverable being submitted to EPA and DHEC. Typically, a defendant municipality places deliverables at the public library and posts them on its website, but interested parties must proactively check these locations for updates. For key deliverables, the City will have a formal 30-day comment period. The City will also post submitted and approved copies of deliverables on its website so the public can track the City's progress in complying with the consent decree. These changes will increase public awareness of the City's proposals and priorities for sewer work in communities.

- As part of the settlement reached in *United States v. Flint Hills Resources Port Arthur, LLC* (E.D. Tex.), the defendant agreed to cut harmful air pollution in an overburdened community in Port Arthur, Texas. Under the consent decree, lodged on March 20, 2014, Flint Hills Resources agreed to implement innovative technologies to control harmful air pollution from industrial flares and leaking equipment at the company's chemical plant in Port Arthur, Texas. This settlement is part of EPA's national effort to advance environmental justice by protecting communities such as Port Arthur that have been disproportionately impacted by

pollution. Once fully implemented, EPA estimates that the settlement will reduce emissions of volatile organic compounds (VOCs), including benzene and other hazardous air pollutants (HAPs), by an estimated 1,880 tons per year, and will reduce emissions of greenhouse gases by approximately 69,000 tons per year.

The settlement requires Flint Hills to operate state-of-the-art equipment to recover and recycle waste gases and to ensure that gases sent to flares are burned with 98 percent efficiency. The company has spent approximately \$16 million to implement these required controls on industrial flares. When the agreement is fully implemented, the company estimates it will spend \$28 million to reduce “fugitive” pollutant emissions that may leak from valves, pumps, and other equipment. The company must monitor leaks more frequently, implement more aggressive repair practices, adopt innovative new practices designed to prevent leaks and replace valves with new “low emissions” valves or use packing material to reduce leaks.

To further mitigate pollution impacting the community, the company will spend \$2 million on a diesel retrofit or replacement project that is estimated to reduce nitrogen oxides and particulate matter by a combined 85 tons, in addition to 39 tons of carbon monoxide, over the next 15 years. The company will also spend \$350,000 to purchase and install technologies to reduce energy demand in low-income homes.

As part of this settlement, Flint Hills has agreed to make its fence line monitoring data available online to the public. For the past several years, Flint Hills has operated a system to monitor the ambient levels of the hazardous air pollutants benzene and 1,3-butadiene at the boundaries of the facility, also known as the “fence line.” The company has used the information collected to identify and reduce potential pollutant sources for communities living near the facility.

- On November 6, 2014, the United States lodged a consent decree in *United States and Louisiana Department of Environmental Quality v. PCS Nitrogen Fertilizer, L.P., AA Sulfuric, Inc., and White Springs Agricultural Chemicals, Inc.* (M.D. La.). In the settlement three subsidiaries of the Potash Corporation of Saskatchewan (PCS), the world’s largest fertilizer producer, will take steps to reduce harmful air emissions at eight U.S. production plants. The settlement resolves claims that these PCS subsidiaries violated the Clean Air Act when they modified facilities in ways that released excess sulfur dioxide into surrounding communities.

The settlement requires PCS Nitrogen Fertilizer, AA Sulfuric Inc., and White Springs Agricultural Chemicals Inc. to install, upgrade and operate state-of-the-art pollution reduction measures, as well as install emissions monitors at eight sulfuric acid plants at facilities in Geismar, Louisiana (one plant), White Springs, Florida (four plants), and Aurora, North Carolina (three plants). The three companies will spend an estimated \$50 million on these measures, and will pay a \$1.3 million civil penalty.

The settlement also includes a SEP, estimated to cost between \$2.5 and \$4 million, to protect the community around a PCS Nitrogen nitric acid plant in Geismar, Louisiana, and requires

PCS Nitrogen to install and operate equipment to reduce emissions of nitrogen oxide and ammonia. This project is part of EPA's commitment to advancing environmental justice by reducing the disproportionate environmental impacts on communities near industrial facilities – in this instance, by reducing fine particulates that can aggravate respiratory disease.

The pollution reductions achieved by the Nitric Acid SEP will provide important public health and environmental benefits. EPA identified the area surrounding the Geismar facility as a community with environmental justice concerns. The area is also in marginal non-attainment with EPA's 8-hour ozone air quality standard. Environmental justice concerns exist in this area, in part, because of high risk indicators for respiratory hazards, as well as for cancer. Since ammonia is a toxic lung irritant, reducing ammonia emissions directly addresses these hazards. In addition, since nitrogen oxides (NOx) is a precursor to ozone formation, the SEP's NOx reductions will further the prospect of returning the area to attainment with the Clean Air Act's ozone National Ambient Air Quality Standards.

Sulfur dioxide, the predominant pollutant emitted from sulfuric acid plants, has numerous adverse effects on human health and is a significant contributor to acid rain, smog and haze. Sulfur dioxide—along with nitrogen oxide—is converted in the air to particulate matter that can cause severe respiratory and cardiovascular impacts, and premature death.

EPA expects the actions that the companies have agreed to take will reduce harmful emissions by over 13,090 tons per year, which includes approximately 12,600 tons per year of sulfur dioxide, 430 tons per year of ammonia and 60 tons per year of nitrogen oxide. In the future, the companies can also retire plants to comply with the settlement.

This settlement is part of EPA's national enforcement initiative to control harmful emissions from large sources of pollution, which includes acid production plants, under the Clean Air Act's Prevention of Significant Deterioration requirements.

- On May 28, 2014, the court approved the settlement in *United States, State of Alabama on behalf of the Alabama Department of Environmental Management, and Oklahoma Department of Environmental Quality v. El Dorado Chemical Co. ("EDCC") Cherokee Nitrogen Co. ("CNC"), and Pryor Chemical Co. ("PCC")* (W.D. Okla.) which will benefit low-income and minority populations. Through this settlement, LSB Industries Inc. (LSB), the largest merchant manufacturer of concentrated nitric acid in North America, and four of its subsidiaries have agreed to reduce harmful emissions of NOx by meeting emission limits that are among the lowest for the industry in the nation at plants in Alabama, Arkansas, Oklahoma, and Texas.

EPA estimates that the measures required by the settlement will reduce NOx emissions by more than 800 tons per year, directly benefitting surrounding communities, which include low-income and minority populations living near the Arkansas and Texas plants.

The companies estimate that it will cost between \$6.3 and \$11.7 million to implement the measures required by the settlement. LSB and its four nitric acid producing subsidiaries will

also pay a total penalty of \$725,000 to resolve alleged violations of the Clean Air Act and applicable Oklahoma state law. In addition to paying the penalty, the companies must continuously monitor emissions and make any necessary operational improvements such as installing new pollution controls or upgrading current controls to meet the new NOx limits.

The settlement applies to the 10 nitric acid manufacturing plants owned or operated by the following Oklahoma City-based LSB subsidiaries: El Dorado Chemical Co., in El Dorado, Ark. (four plants); Cherokee Nitrogen Co. in Cherokee, Ala. (two plants); El Dorado Nitrogen Co. in Pryor, Okla. (three plants); and El Dorado Nitrogen Co. in Baytown, Texas (one plant). The complaint, filed concurrently with the settlement, alleges that the Cherokee, El Dorado and Pryor subsidiaries constructed or made modifications to their plants that resulted in increased emissions of NOx without first obtaining pre-construction permits and installing pollution controls. The complaint does not allege any violations regarding the Texas facility.

The companies have also agreed to spend \$150,000 to remediate and reforest ten acres of land with acidified soils located near El Dorado, Arkansas. NOx emissions, such as those from nitric acid plants, can contribute to soil acidification. The project will help to minimize erosion, reduce stormwater runoff, improve habitat for wildlife and capture carbon dioxide, a greenhouse gas.

- Residents of a low-income community near a coke plant in Tonawanda, New York will breathe cleaner air because of the results achieved in *United States v. Tonawanda Coke Corp., et al.* (W.D.N.Y.). Defendant Tonawanda Coke Corporation (TCC) is a merchant by-product coke facility located in Tonawanda, New York. Coke is used in the steel-mill and foundry industries in the steel-making process. Defendant Mark Kamholz was TCC's Environmental Manager.

For approximately 19 years, TCC operated a coke oven gas emission source without the required Clean Air Act (CAA) permit. This gas contained several chemical compounds, including benzene, which is a carcinogen. Prior to an EPA inspection in April 2009, Kamholz had instructed another employee to conceal the operation of this unpermitted source from inspectors. TCC also operated its quench towers without baffles in violation of the CAA permit it did have for the towers. Baffles were required to reduce the amount of particulate matter that escaped into the atmosphere during coke processing. TCC also illegally recycled hazardous waste without a permit issued pursuant to the Resource Conservation and Recovery Act (RCRA), and without appropriate safeguards to prevent releases into the environment.

After a five-week trial in 2013, a jury convicted TCC and Kamholz on multiple counts. The company was convicted on eleven CAA violations that took place over a five year period, and three RCRA violations that took place over a 19 year period. The jury found Kamholz guilty of eleven counts of violating the CAA, one count of obstruction of justice, and three counts of violating RCRA.

For years, people living in the low-income community near the plant were forced to breathe air TCC had caused to be contaminated with benzene and particulates. Prior to sentencing, community members submitted 128 impact statements under the Crime Victims' Rights Act.

On March 19, 2014, TCC was sentenced to pay a \$12.5 million fine and make a \$12.2 million community service payment. The company was placed on a five-year term of probation during which it is to make its community service payment. This money will be used to fund an epidemiological study and an air and soil study to help determine the extent of health and environmental impacts of the coke facility on the Tonawanda community. The environmental manager Mark Kamholz was sentenced to serve one year incarceration, followed by one year of supervised release. He also will pay a \$20,000 fine and perform 100 hours of community service.



Storage tank with coal tar sludge

- Residents of a low-income area of Pawtucket, Rhode Island are safer because of the results achieved in *United States v. Roberts Chemical* (D.R.I.). In August 2014, the defendant Roberts Chemical pled guilty to a Risk Management Plan (RMP) violation of the Clean Air Act. The RMP provisions of the Clean Air Act require facilities storing extremely hazardous materials above a threshold amount to have in place a plan which includes: (1) a hazard assessment, including an evaluation of worst-case and alternative accidental releases; (2) a prevention program that includes safety precautions and maintenance, monitoring, and employee training measures; and (3) an emergency response program. It is a 5-year felony to store regulated chemicals without an RMP in place.

Roberts was in the business of storing, distributing and repackaging chemicals, some of which were designated as extremely hazardous. In particular, EPA inspections determined that Roberts was storing ethyl ether, a highly flammable chemical, at amounts three times the threshold amount. Worse, the storage facility was aging, decrepit, and located in a densely

populated city (Pawtucket) in a low-income area packed with residences, nursing homes, and schools.

Roberts was sentenced to five years of probation, a \$200,000 fine, and was ordered to publish an apology to the public in the Providence Journal. As a result of the investigation, Roberts moved to a newer facility just over the border in Massachusetts, and is now compliant with Clean Air Act RMP requirements. The result in this case should serve as a significant deterrent to future violations by the chemical distribution industry.

The case was investigated by EPA's Criminal Investigation Division and was prosecuted by the U.S. Attorney's Office for the District of Rhode Island.

- *United States v. Coventry Wrecking* (D.R.I.), prosecuted under Section 1001 of Title 18, U.S. Code, for false statements, was in essence a Clean Air Act asbestos case involving the demolition of a site located in a lower-middle income section of Coventry, a former mill town. Coventry Wrecking demolished an old K-Mart and produced to regulators fabricated inspection reports that falsely represented that the facility had been inspected and found negative for the presence of asbestos. This was not the case, as a later inspection was able to detect asbestos containing material at a nearby related site. This demolition posed a threat to workers and others exposed to airborne particles, including the community where the site was located.

After Coventry Wrecking plead guilty to one count of violating Section 1001, on October 28, 2013, the judge sentenced the defendant to five years of probation and a \$10,000 fine.

- Land on the Wind River Indian Reservation that was lost due to illegal dike construction will be restored as a result of the enforcement action in *United States v. John Hubenka and LeClair Irrigation District* (D. Wyo.). In 2004, John Hubenka was prosecuted under the Clean Water Act for the construction of several dikes in the Wind River. At the location where the dikes were built, the Wind River separated Hubenka's land on the north from the Wind River Indian Reservation to the south, which is located in a low-income area. The dikes altered the flow of the river, causing it to go more deeply into the Reservation, carving out an area exceeding 300 acres of tribal property. Following his conviction, Hubenka was sentenced to probation and was ordered, as a condition of his probation, to remove the dikes and restore the riverbed under the supervision of the Environmental Protection Agency. Hubenka was later released from probation without removing the dikes.

In 2010, the United States filed a civil action against Hubenka, seeking a penalty and an order compelling him to remove the dikes and restore the site, which included tribal trust land. The Eastern Shoshone and Northern Arapahoe Tribes intervened as plaintiffs. Hubenka's employer, LeClair Irrigation District (LeClair), was later joined as a defendant. After a bench trial, the court found in favor of the United States and the Tribes. On October 22, 2014, the court ordered Hubenka and LeClair to immediately remove the dikes, restore the river's flow pattern, and restore the surrounding floodplain ecology. The court ordered that lands lost to the Tribes as a result of dike construction must be restored. The court imposed a \$350,000 penalty against Hubenka and a \$250,000 penalty against LeClair. All of

LeClair's penalty, and most of Hubenka's penalty, will be remitted upon completion of restoration. The case was jointly handled by the Department of Justice Environment and Natural Resources Division and the U.S. Attorney's Office for the District of Wyoming.

- In *United States v. Vaughn and Anytime Septic* (D. Mont.), Mr. Vaughn was prosecuted for illegally disposing of septage waste on property within the Flathead Indian Reservation located in northwest Montana. The Reservation is home to the Confederated Salish and Kootenai Tribes, a low-income community. In 2009, the Montana Department of Environmental Quality (MDEQ) issued a cease and desist order to Anytime Septic and its owner, James Lee Vaughn. Vaughn was required to stop operating because he did not identify an approved land application site for disposal of septage waste. Vaughn's records, and an investigation by EPA's Criminal Investigation Division, revealed that Vaughn disposed of waste ten different times, on property within the Flathead Indian Reservation, after receiving the cease and desist order from the MDEQ. During the execution of an administrative warrant at Vaughn's residence in 2011, Vaughn could not produce records required to be maintained under EPA regulations. Investigators photographed illegally disposed septage waste on Vaughn's property. While MDEQ regulators executed the administrative warrant, Vaughn went into a different room and deleted computer files of septage business records. Vaughn was charged with multiple felony Clean Water Act violations relating to improper disposal of septage waste. Vaughn entered into a plea agreement, and pleaded guilty to the felony Clean Water Act charges in September, 2014. Vaughn's sentencing is pending. The case was handled by the U.S. Attorney's Office for the District of Montana.



View northeastward across Hungry Horse Reservoir onto the Flathead Range, Montana

In 2014, ENRD's Indian Resources Section and Wildlife and Marine Resources Section handled numerous environmental matters that benefitted Indian tribes. For example:

- Attorneys in the Wildlife and Marine Resources Section helped the Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs") protect its off-reservation treaty hunting rights. Section attorneys met on the Warm Springs reservation with representatives from the Warm Springs Tribal Council and the State of Oregon to discuss whether the Tribe's off-reservation treaty rights were relinquished in the 1865 Huntington Treaty. With input from Section attorneys, the Tribe and the State reached a short-term agreement for the 2014 hunting season. In short, the Tribe will regulate its own off-reservation hunting through its own regulations, and tribal members will have more hunting opportunities than they had prior to the execution of the agreement. As part of the 2014 agreement, the parties stipulated to continue working toward a long-term agreement. As a result, WMRS attorneys have attended a number of mediation sessions to facilitate a long-term resolution between the Tribe and the State.
- The Indian Resources Section successfully defended the reservation boundaries of the Omaha Tribe of Nebraska in *Smith v. Parker* (D. Neb.). The Village of Pender, Nebraska, and Pender business owners, sued the Tribe claiming that an 1882 Congressional Act diminished the western part of the Omaha Reservation, removing over 50,000 acres from the Reservation. After extensive expert discovery and litigation in tribal court, the Omaha Tribal Court held that the 1882 Act did not result in diminishment. The United States filed an *amicus curiae* brief before the tribal court. Following the tribal court ruling, the district court ordered the parties to file cross motions for summary judgment. At that time, the State of Nebraska intervened on behalf of the plaintiffs, and the United States intervened on behalf of the Tribe to defend the Reservation boundaries.

On February 13, 2014, the district court granted summary judgment in favor of both the United States and the Omaha Tribe, holding that the 1882 Act did not diminish the boundaries of the Omaha Reservation. The court analyzed the text of the 1882 Act, its legislative history and circumstances surrounding passage, and the subsequent treatment and demographic history of the disputed area, concluding that none of it demonstrated the requisite clear congressional intent necessary to alter the boundaries of the Reservation. The case was appealed to the Eighth Circuit, which affirmed the district court's decision on December 19, 2014.

The U.S. Attorney's Office supported the district court litigation and ENRD's efforts to defend the Reservation boundaries. In addition, EPA had long taken the position that the area in dispute remained within the boundaries of the Reservation, and the favorable district court determination affirmed the ability of EPA to issue needed permits and to ensure protection of the environment on Reservation lands.

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 our 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 outside of the traditional litigation context.

Three recent examples of this aspect of ENRD's environmental justice effort are described below:

- In *Milwaukee Inner-City Congregations Allied for Hope v. Gottlieb* (W.D. Wis.), ENRD represented the Department of Transportation to defend an infrastructure project that would upgrade and provide additional capacity on the "Zoo Interchange" in western Milwaukee County. The Zoo Interchange is a key link in the local, state, and national transportation network. Milwaukee community-based organizations brought a challenge under NEPA, including a claim that the agency violated NEPA by failing to comply with Title VI of the 1964 Civil Rights Act. The district court found that NEPA does not itself require compliance with any other laws and does not provide an avenue through which the plaintiffs may seek compliance with Title VI or the agency's Title VI disparate impact regulations. ENRD later entered into mediation with plaintiffs, two local community groups, and federal and state agencies involved to address concerns of affected low income and minority communities. Through those efforts, ENRD was able to achieve a settlement that provided a number of important improvements in public transportation access and mitigation of traffic congestion in affected communities, while still allowing this important modernization and expansion project to move forward.



Artist rendering of the Milwaukee Zoo Interchange

- In a number of related cases, *Crenshaw Subway Coalition v. Los Angeles County Metropolitan Transportation Authority*; *515/555 Flower Associates, LLC v. Federal Transit Administration* (“FTA”); *Today’s IV, Inc. v. FTA*; *Japanese Village LLC v. FTA*; *Beverly Hills Unified School District v. FTA*; and *The City of Beverly Hills v. FTA* (C.D. Cal.), ENRD continued its intensive collaboration with the Los Angeles County Metropolitan Transportation Authority (LACMTA) to defend challenges to three public rail transit projects to expand the public transit rail network in Los Angeles County. The projects will greatly expand light rail transit into the minority and low-income Crenshaw community in south Los Angeles while providing closer access to LAX, and decreasing traffic congestion in and around communities throughout the Los Angeles basin. In the *Japanese Village* litigation, private landowners sued, in part, to prevent the light rail from tunneling under its property. The FTA initially planned to open a street in the heart of Los Angeles’s Little Tokyo community, but it decided to relocate the tunnel to plaintiffs’ private property to reduce environmental justice impacts of the project on the Little Tokyo community. NRS successfully defended the FTA’s decision to relocate the tunnel to plaintiffs’ property.
- In *Friends of De Reef Park v. National Park Service* (D.S.C.), a case containing no environmental justice claims but having environmental justice implications, ENRD actively worked with the National Park Service to address an affected minority community’s concerns about the Park Service’s decision to approve a proposal to allow the City of Charleston, South Carolina to transfer the functions of a park in a historically significant, Civil Rights era, African-American neighborhood to another site over a mile away and to allow residential redevelopment of the original park. The plaintiff, a community organization that was formed to preserve the original park, brought the action against the Park Service and the South Carolina Parks Department in 2013 seeking declaratory and injunctive relief, alleging violations of the Land and Water Conservation Fund Act, NEPA, and the National Historic Preservation Act (NHPA), and complaining that the Park Service’s decision was taken without adequate public notice and opportunity for community input. After discussions with the plaintiff and the other parties, ENRD filed a motion for a voluntary remand to allow the Park Service to conduct additional NEPA and National Historic Preservation Act analyses, with opportunity for public notice and comment.



DeReef Park

Courtesy of Charleston Parks Conservancy™

## 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. The following are examples of these services provided by CRS:

- During negotiations in the *United States v. Metal Dynamics Detroit LLC* case noted above in the Environmental Issues section of this report, the Community Relations Service helped ENRD attorneys conduct community outreach regarding the alleged Clean Air Act violations at the defendant’s scrap metal recycling facility in Detroit, Michigan, potential remedies, and possible environmental projects. CRS provided conciliation services and facilitated a community dialogue to encourage and engage community partners. The United States successfully concluded negotiations and on October 16, 2014, ENRD lodged a consent decree that will resolve the violations.
- In 2014, CRS worked in collaboration with ENRD attorneys to provide technical assistance to a low-income minority community impacted by an environmental issue in Dearborn, Michigan. Among other things, CRS assisted with securing an appropriate meeting location and translator for a community outreach event held in Dearborn.



December 2014 EJ IWG meeting at the Department of Justice