



**DEPARTMENT OF JUSTICE
2011 IMPLEMENTATION PROGRESS REPORT
ON ENVIRONMENTAL JUSTICE**

Foreword

I am pleased to present the Department of Justice's 2011 Annual Implementation Progress Report on Environmental Justice. This report details the work and achievements of the Department of Justice in carrying out its Environmental Justice Strategy and Executive Order 12898.

The goal of environmental justice is to provide all Americans – regardless of their race, ethnicity, or income status – full protection under the nation's environmental, civil rights, and health laws. The Department is deeply committed to this goal. We recognize that low-income, minority, and Native American communities are often disproportionately burdened with pollution, resulting in health problems, greater obstacles to economic growth, and a lower quality of life. As this report demonstrates, we have achieved meaningful results for these, and all, Americans, and are building a strong foundation to ensure that we achieve even greater results in the years to come.

To highlight just a few of the Department's accomplishments:

- The challenge of addressing environmental justice issues can only be met if federal agencies work together. To further this goal, the Department played a key role in developing the interagency Memorandum of Understanding on Environmental Justice and Executive Order 12898 (MOU), which was signed by seventeen federal agencies. The MOU will enhance interagency collaboration and increase public access to information about agency work on environmental justice. The Department also plays an active, ongoing role in the Interagency Working Group on Environmental Justice.
- A core principle of environmental justice is that communities should be able to participate meaningfully in environmental decision making that may affect them. To this end, the Department has engaged communities around the nation on environmental issues to an unprecedented degree. Representatives from the Environment and Natural Resources Division, the Civil Rights Division, and U.S. Attorneys' Offices have met with communities affected by pollution, as well as environmental justice advocates and other stakeholders. The Department's Community Relations Service facilitated meaningful participation in environmental decision making through mediation and conciliation for

community leaders and state and local officials. In August 2011, the Department launched a public website dedicated to environmental justice.

- The Department has achieved meaningful results for communities in its cases. For example, the Department brought cases nationwide to improve aging municipal wastewater and stormwater collection and treatment facilities, as well as to ensure compliance with the Clean Air Act by coal-fired power plants. Settlements in these cases have not only improved public health and the environment for the entire affected community, but also addressed the impacts of violations on disproportionately burdened communities. Many more examples of how the Department's litigation and negotiation work has directly furthered the principles of environmental justice are discussed in this report.

The Department has fully embraced the goals of environmental justice. Every American deserves clean air, water, and land in the places where they live, work, play, and learn. We have made significant strides in achieving these goals, but work remains, and our efforts continue. We will continue to ensure that we are coordinating effectively with other federal agencies on these issues. We will continue to engage communities, business and industry, and state, local, and tribal governments in this effort. And we will continue to integrate environmental justice considerations into the daily work of the Department. As we move forward, we welcome your input on the Department's environmental justice activities.

Thomas J. Perrelli
Associate Attorney General

Introduction

In August 2011, the Department of Justice signed, along with sixteen other federal agencies, a Memorandum of Understanding on Environmental Justice and Executive Order 12898 (MOU). This MOU, which the Department played a key role in developing, builds upon the foundation laid by Executive Order 12898 – the federal government’s first statement of an environmental justice policy – and embodies the 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 requires each agency to publish an environmental justice strategy, to ensure that there exists an opportunity for public input on those strategies, and to produce annual implementation progress reports.

This report – the Department’s first annual implementation progress report – details the work and achievements of the Department in the implementation of its Environmental Justice Strategy and Executive Order 12898. The Department is deeply committed to the goal of Executive Order 12898, and is working on many fronts to ensure that environmental justice goals and principles are fully integrated into the mission of the Department. The burden of pollution often falls disproportionately on low-income and minority communities. Sources of pollution are frequently located in or near these areas, and such communities have often expressed a concern that they do not have sufficient say in the decisions that affect their health and livelihood. These communities, like all American communities, deserve to breathe clean air, drink clean water, and be free from exposure to hazardous waste and toxic substances. Indeed, the essence of environmental justice is not special treatment, but equal treatment. The same is true for tribal communities. The principles of environmental justice can help tribes tackle the unique challenges that pollution poses for tribal culture, land use, and subsistence rights.

This report is divided into two sections. First, we describe the Department’s collaboration with other agencies on environmental justice issues. Working primarily through the Interagency Working Group on Environmental Justice (IWG), the Department is acting to an unprecedented degree with other agencies to promote a coordinated federal response on environmental justice issues. Second, we provide a summary of selected accomplishments related to environmental justice. These include both increased community outreach regarding our litigation work and tangible results for communities.

As part of our effort to increase community outreach, the Department shared its Environmental Justice Strategy and its Environmental Justice Guidance with the public on September 30, 2011. These documents were initially prepared to implement the Department’s commitments following the issuance of Executive Order 12898 on February 11, 1994. The Department carefully re-evaluated its Strategy and Guidance in light of the MOU, and believes that this Strategy and Guidance continue to fully reflect the goals and commitments of the Department of Justice. We have solicited comments on the Strategy and Guidance through the Department’s environmental justice public website (www.justice.gov/ej), as well as through the Environmental Protection Agency’s (EPA) IWG website and IWG conference calls with environmental justice advocates and community leaders. The Department received one set of comments after this report was prepared for publication, and will review these comments and respond separately. Public input on these documents is always welcome.

Part One: Interagency Collaboration

Participation in the Interagency Working Group on Environmental Justice

One of the cornerstone achievements of Executive Order 12898 was the creation of the IWG. The IWG is chaired by EPA and is charged with providing guidance to federal agencies on environmental justice issues, coordinating the development of agency environmental justice strategies, coordinating research, data collection, and analysis, holding public meetings, and developing interagency model projects on environmental justice. The creation of the IWG underscores the importance of working collaboratively within the federal government to address environmental justice issues.

The Department is an active participant in the IWG. In September 2010, Attorney General Holder attended the first Principal-level meeting of the IWG in over a decade, where he emphasized the Department's commitment "to addressing environmental justice concerns through aggressive enforcement of federal environmental laws in every community." This meeting was followed by the December 15, 2010 White House Forum on Environmental Justice, which was attended by Attorney General Eric Holder and Assistant Attorneys General (AAGs) Ignacia Moreno and Thomas Perez. The Attorney General reiterated his personal commitment to environmental justice, and stated that "the Justice Department has integrated our environmental justice goals into all of our enforcement efforts and comprehensive strategic plans."

The IWG meets regularly at a senior staff level, and representatives from the Department's Environment and Natural Resources Division (ENRD) and Civil Rights Division (CRT) attend all of these meetings and identify how the Department can support and further the IWG's work. One example of the Department's extensive involvement in the IWG this year was the development and execution of the interagency MOU. The MOU adopts a charter for the IWG, incorporates several new agencies into the IWG, requires the publication of agency environmental justice strategies, and requires annual implementation progress reports. The MOU was signed by seventeen federal agencies, including several that had not previously been active participants in the IWG.

Although the MOU was the product of the efforts of many federal agencies, the Department played a significant leadership role in its conception and development. The Department believes that the MOU will provide a strong and lasting foundation for continued coordinated federal efforts to address environmental justice issues.

Increasing Dialogue and Awareness Among Federal Agencies

The Department has also been working directly with its federal agency partners to further the dialogue on and awareness of environmental justice issues. ENRD, working with EPA's Office of General Counsel, organized a group of career attorneys from agencies across the federal government to discuss legal issues that arise with respect to environmental justice. The open dialogue and informal counseling fostered by this effort improves each agency's ability to

understand not only how to implement environmental justice initiatives but also how to respond to environmental justice concerns within the boundaries of existing law.

Department attorneys have also assisted in training staff of other agencies regarding environmental justice issues. This past year, the Department participated in training sessions for personnel from the Department of Energy and the Department of the Interior.

Participation in Community Outreach

The IWG has organized numerous listening sessions in communities around the United States. These sessions provide community members, federal, state, tribal, and local governments, businesses, academics, and other interested parties the opportunity to hear about federal initiatives and speak directly to federal agency representatives about environmental issues that affect them. These meetings are often held in conjunction with other environmental and public health related meetings to maximize the opportunities for reaching a broad spectrum of stakeholders.

The Department has been an active participant in many of these sessions. Department representatives participated in sessions in New Orleans, Louisiana; Brooklyn, New York; Richmond, California; and Washington, D.C. The Department also participated in sessions focused on tribal interests in Anchorage, Alaska and Tulsa, Oklahoma. These sessions allow the Department to hear first-hand from community members about how our work is affecting them and how we might do better. The Department gains valuable feedback from these sessions, and looks forward to continuing our participation in the coming year.

In addition, the Department has worked directly with our federal agency partners, as well as state and local officials and community representatives to organize direct outreach to many communities in the last year. For example:

- In July 2011, AAG Moreno, ENRD and CRT senior staff, U.S. Attorney (USA) Paul Fishman, EPA Assistant Administrator Cynthia Giles, and other EPA officials toured sites in Newark, New Jersey and met with environmental and community organizations to discuss joint efforts to address environmental challenges and enforce environmental laws, and in particular efforts to achieve environmental justice. AAG Moreno, USA Fishman, and other federal officials saw firsthand the Superfund site and other sites of environmental concern in the Ironbound neighborhood.
- Also in July 2011, AAG Moreno joined U.S. Attorney Joyce Vance, FBI Special Agent in Charge Patrick Maley, and EPA Regional Administrator Gwen Keyes Fleming in Birmingham, Alabama to listen to concerns from residents and community groups about the Black Warrior River basin and environmental justice issues. The listening session was held in Ensley, a Birmingham neighborhood that borders Village Creek, a tributary of the Black Warrior River. The Black Warrior River provides drinking water for much of northern Alabama and was recently listed as one of America's Most Endangered Rivers.

- In December 2010, AAGs Moreno and Perez, U.S. Attorney Sally Quillian Yates, and EPA officials participated in a listening session with communities in the Atlanta area.
- The Department has also conducted substantial outreach to tribal communities on environmental issues. For example, in September 2010, AAG Moreno, U.S. Attorney Mike Cotter, U.S. Attorney Brendan Johnson, and many other U.S. Attorneys from around the country met for a listening session with Montana tribes. Department attorneys from ENRD and the U.S. Attorneys' Offices continue to follow up on comments and concerns received from the tribes at this session. AAG Moreno also met with Navajo officials in Arizona to discuss environmental and natural resource issues of concern to that tribe.
- In July 2011, the Department held the Joint Native American Issues Subcommittee and Attorney General's Advisory Committee meeting in South Dakota, and tribes from that state discussed their public safety, environmental, and other concerns with the Department's senior leadership.
- In February 2011, AAG Moreno and ENRD staff joined U.S. Attorney Michael Cotter and Montana Attorney General Steve Bullock in Helena, Montana to attend the Joint Environmental Enforcement Training. Representatives from EPA, the Montana Department of Environmental Quality, ENRD's Environmental Crimes Section, and the Montana U.S. Attorney's Office provided training on environmental enforcement actions to state, local and tribal law enforcement officers, and environmental inspectors and regulators.
- In September of 2011, AAG Moreno and U.S. Attorney Michael Cotter attended the North Dakota United States Attorney's Office's Environmental Enforcement Training Conference in Bismarck, North Dakota. At this conference, AAG Moreno and U.S. Attorney Timothy Purdon, along with representatives from EPA, provided training on environmental enforcement actions to federal, state, local and tribal law enforcement officers, and environmental investigators. There was significant participation in the conference by members of the Three Affiliated Tribes of the Ft. Berthold Reservation. The Ft. Berthold Reservation lies at the heart of the Bakken oil fields in northwest North Dakota.
- In November 2011, EPA Region 4 hosted a Strategic Planning Meeting in Atlanta co-led by EPA, AAG Moreno and USA Joyce Vance, and attended by the 20 U. S. Attorneys within EPA's Region 4 – which covers North Carolina, South Carolina, Kentucky, Tennessee, Alabama, Florida, Mississippi, and Georgia – to discuss challenges to enforcement of environmental laws, as well as ensuring that communities will not be burdened disproportionately by environmental and/or health hazards.
- In January 2012, AAG Moreno, U.S. Attorney James Santelle, and U.S. Attorney Michael Cotter held meetings with other federal officials and state officials to discuss environmental and natural resource issues within the Eastern District of Wisconsin.

Part Two: Environmental Justice Accomplishments

The Department has reinvigorated efforts to consider environmental justice in our work. The Department's internal Environmental Justice Workgroup, which is chaired by the Associate's Office, has been reconstituted. This Workgroup has reviewed and reaffirmed the Department's Environmental Justice Strategy and Environmental Justice Guidance documents.

In September 2011, the Department launched its environmental justice public website, www.justice.gov/ej. This site has information about Department policies, case resolution, and contact information for the public. The site also provides the public access to view and comment on the Department's Environmental Justice Strategy and Environmental Justice Guidance.

All affected components of the Department are working to increase awareness of environmental justice and environmental enforcement issues among their staff. For example, in December 2010, ENRD and CRT jointly hosted a Town Hall discussion on environmental justice. This session, which was well-attended by attorneys and staff, provided an overview to environmental justice principles and gave attorneys an opportunity to discuss how these principles apply to the varied work of the Department. Through the work of the Environmental Issues Subcommittee (chaired by U.S. Attorney Mike Cotter) of the Attorney General's Advisory Committee, the Department is also actively working to increase awareness in U.S. Attorneys' Offices around the country regarding environmental justice issues.

The remainder of this 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's accomplishments in these areas are already substantial; however, we recognize that there is much more to be done. The Department will continue to seek out ways to promote environmental justice in all that we do. Taken together, this ongoing commitment and these achievements provide a valuable foundation for future environmental justice work across the Department.

Civil Rights Issues

The Department is committed to upholding the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. The majority of the Department's work in this area is conducted by CRT, which enforces federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status, and national origin. CRT was created in 1957 through the enactment of the Civil Rights Act of 1957, and is currently led by AAG Perez. The Division's work is carried out by eleven sections and is based in Washington, D.C.

CRT's key tool in environmental justice enforcement is Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the ground of race, color, or national origin by recipients of federal financial assistance. Executive Order 12250, "Leadership and Coordination of Nondiscrimination Laws," gives the Department authority to ensure consistent and effective enforcement of Title VI across all federal agencies. The Attorney General has delegated that

authority to CRT, and it is the key function of the Federal Coordination and Compliance Section (FCS).

FCS ensures that all federal agencies consistently and effectively enforce civil rights statutes and Executive Orders that prohibit discrimination in federally conducted and assisted programs and activities. Under Executive Order 12250, FCS coordinates the enforcement by federal agencies of Title VI; Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally assisted education programs; and other similar statutes that prohibit discrimination on the basis of race, color, national origin, sex, or religion in federally assisted programs.

While each federal funding agency has the ultimate responsibility for resolving their Title VI administrative complaints, CRT is charged with ensuring consistent enforcement of Title VI throughout the government. To that end, the Division is pursuing a number of important ongoing activities in the environmental justice context:

- CRT is working closely with EPA to strengthen its Title VI program and its Office of Civil Rights by providing technical assistance regarding best practices in agency complaint-processing and investigation techniques.
- In 2010, CRT monitored disaster response efforts in the Gulf to ensure that non-discrimination obligations were being met. In particular, the Title VI non-discrimination mandate requires equal language access for limited English proficient (LEP) individuals. The Division worked with the federal government's response team to make sure that critical information was transmitted to LEP communities affected by the Gulf oil spill.
- CRT is also collaborating with the Department of Homeland Security and other agencies to ensure that non-discrimination obligations, including language access, are met in disaster planning, response, and recovery.
- CRT provides general technical assistance to various federal agencies on matters affecting health, environment, and safety. This includes assistance on legal issues that arise during an agency's investigation or compliance review of a funding recipient. Additionally, the Division frequently connects communities with the appropriate agency staff qualified to address environmental justice concerns.
- To the extent any agency funds programs and activities that impact the environment or human health, there is the potential for a Title VI complaint to raise environmental justice issues. For example, a vast majority of EPA's Title VI complaints involve discrimination in environmental enforcement and permitting; transportation projects are often at the heart of Title VI complaints to the Department of Transportation because of their impact on the environment of minority communities; and the Department of Health and Human Services often provides municipalities with funds to support basic services such as water, sewer, sidewalks, and storm water management. Many communities of color still struggle with obtaining access to these services and file Title VI complaints to address

discriminatory access to benefits. The Division's assistance to these and other agencies helps to ensure that funding recipients comply with non-discrimination statutes.

- Additionally, CRT leads the recently formed Title VI Committee of the IWG. This committee is focused on agency collaboration to address discrimination in federally funded programs and activities that affect the environment and human health. The Division is uniquely positioned to lead this committee because of its Title VI coordination authority.
- During Fiscal Years 2010 and 2011, CRT engaged in several outreach activities in the environmental justice context. In June 2010, CRT and ENRD jointly met with environmental justice advocates to discuss the Department's activities to address disproportionate pollution burdens, and to learn of recommendations for improving the Department's environmental justice efforts. In December 2010, both Divisions also traveled to Atlanta, Georgia to meet with regional advocates, the Regional Administrator for EPA Region 4, and the U.S. Attorney to discuss enforcement issues unique to that region. And in May 2011, AAG Perez traveled to Jackson, Mississippi to meet with civil rights advocacy organizations including groups focused on discriminatory environmental protection. These outreach meetings highlighted the need to improve Title VI enforcement across the federal government and therefore increase coordination and assistance by CRT.
- For Fiscal Year 2012, CRT – through the Title VI Committee of the IWG – will post materials on the IWG's website to assist agencies with their Title VI enforcement and to provide communities with information on submitting complaints to the appropriate agency. In addition, the Division will launch a new Federal Interagency Working Group on Title VI, and anticipates increased coordination among agencies whose programs impact the environment and human health. The Division will continue to meet with environmental justice advocates, facilitate meetings between advocates and other federal agencies, and assist agencies in strengthening their enforcement and compliance efforts. Finally, when appropriate, the Division will utilize the Fair Housing Act, and any other civil rights statute it is charged to enforce, to challenge unlawful discriminatory conduct that impacts the environment and health of communities.

Environmental Issues

The Department is also 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 currently led by AAG Moreno. The Division is organized into nine litigating sections, and is principally located in Washington, D.C., with field offices located in Denver, Colorado; Sacramento, California; San Francisco, California; Seattle, Washington; Boston, Massachusetts; and Anchorage, Alaska.

ENRD's core mission includes:

- Strong 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; and
- Vigilant protection of tribal sovereignty, tribal lands and resources, and tribal treaty rights.

In all of these activities, ENRD strives to ensure that all communities are protected from environmental harms, including low-income and minority communities that too frequently live in areas with particularly acute environmental problems. ENRD works 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. To this end, the Division has taken a number of significant steps to better integrate environmental justice considerations into its work and that of its client agencies.

To ensure that the Department understands and is responding to community concerns, ENRD and U.S. Attorneys' Offices have undertaken an unprecedented level of community outreach over the last year. This has taken many forms, including community visits by ENRD and U.S. Attorneys' Offices, participation in IWG listening sessions (both described above), participation in environmental justice conferences, and outreach in conjunction with specific cases in litigation. In addition to the numerous outreach events described above, the Department has participated in the following events:

- ENRD senior staff has travelled to Alaska, Arizona, Montana, New Mexico, Oklahoma, South Dakota, and Washington State to speak directly to tribal leaders and tribal communities.
- AAG Moreno and other ENRD senior staff have spoken about environmental justice at several major events such as the Environmental Justice in America Conference, the White House Environmental Justice Forum, the Federal Bar Association conference, and D.C. Bar events.
- ENRD and U.S. Attorneys' Offices are also facilitating ongoing outreach in local communities. For example, attorneys from ENRD's Environmental Crimes Section have worked with U.S. Attorneys' Offices to develop environmental crimes task forces, comprised of federal, state, and local officials. As part of this effort, representatives of community and environmental organizations are invited to address meetings of task

forces and speak about problems in their communities. These discussions have provided prosecutors and agents new information and insight into challenges communities face as a result of environmental issues.

- ENRD has also conducted outreach to the corporate community regarding environmental justice. In December 2010, AAG Moreno spoke with the Corporate Environmental Enforcement Council about the need for corporations to consider environmental justice in their operations, particularly in enforcement and compliance matters. Together with Cynthia Giles, EPA's Assistant Administrator for Enforcement and Compliance Assurance, AAG Moreno also met with representatives from the Business Network for Environmental Justice in October 2011 to discuss opportunities for corporate engagement with communities. Additionally, in February 2011, then-Deputy Assistant Attorney General Patrice Simms spoke to DRI, an association of defense attorneys and in-house counsel, about the role of environmental justice in ENRD's enforcement efforts and its relationship to industry. ENRD is actively working with EPA in an ongoing effort to host additional meetings in order to foster a dialogue with the corporate community on these important matters.

Training and Awareness

ENRD has also taken substantial steps to increase awareness and understanding of environmental justice issues among its attorneys and staff. For example:

- In 2010, ENRD formed an internal workgroup with representatives from all litigating sections to consider how to better incorporate environmental justice into the work of the Division. This group has provided training and training materials to attorneys throughout the Division, created an internal intranet site as a resource for Division attorneys, and coordinated with other Department components and federal agencies regarding environmental justice issues.
- Within ENRD, the workgroup and individual sections have held training and discussion sessions on environmental justice for attorneys and staff. As a result, awareness of environmental justice principles and issues has greatly increased. ENRD is in the process of implementing plans for additional training to help Division attorneys identify and address environmental justice issues that arise in their work.
- Attorneys from ENRD's Environmental Crimes Section wrote and published an article entitled: "Environmental Justice in the Context of Environmental Crimes," in the July 2011 issue of the USA Bulletin, which is circulated throughout the Department. The July issue was devoted entirely to environmental crimes.

Integration of Environmental Justice Principles into Litigation and Outcomes

Division-wide, ENRD has sought ways to integrate environmental justice principles into its work. In its affirmative work to enforce the nation's landmark environmental laws – the Clean Water and Clean Air Acts, the Superfund, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act, among others – it is vigorously enforcing the law because strong enforcement helps all communities. Indeed, Congress enacted these laws to protect all the American people from harmful pollution in their air, water, and land.

In addition, ENRD's Environmental Enforcement Section (EES) has identified ways to address the needs of communities that have been disproportionately impacted by pollution. There are two specific ways that ENRD is already doing this. First, the Division is engaging with communities directly affected by its enforcement litigation at an earlier stage. Talking to the community about a particular case allows Division attorneys to hear the community's concerns and provides an opportunity to see if those concerns can be addressed through the Division's enforcement action. This outreach can help develop facts, determine the scope and the degree of violations, identify witnesses, and pinpoint harms. This can also give Division attorneys the information needed to craft remedies that provide the most meaningful, immediate and appropriate relief.

Second, ENRD is seeking creative solutions that will have a positive and discernible outcome in affected communities. Information learned through the outreach process can help enable the Division to negotiate a resolution to a case that better serves the needs of the community, or where, if necessary, to demand an effective and meaningful remedy from the court. For example, in reaching a settlement, community input may help the Division decide whether to look to traditional methods – like injunctive relief – or non-traditional methods – such as supplemental environmental projects – to achieve the desired outcome.

ENRD is already seeing the benefits of these efforts pay off in our litigation results. Some examples of recent EES litigation that have furthered the principles or goals of environmental justice include:

- The resolution of Clean Air Act violations in *United States v. Massachusetts Bay Transportation Authority, et al.* (D. Mass.) will benefit residents of disadvantaged communities in Eastern Massachusetts by reducing harmful emissions from MBTA's idling commuter trains. The settlement requires MBTA to supply commuter trains with electric auxiliary power in order to prevent idling during layovers and to mitigate past violations by installing auxiliary engines that emit less pollution on fourteen commuter locomotives. In addition, MBTA will perform a Supplemental Environmental Project, which involves switching to cleaner burning, ultra-low sulfur diesel fuel in advance of the deadline set by state law.
- The consent decree resolving Clean Water Act violations in *United States v. DeKalb County, Georgia* (N.D. Ga.) not only eliminates sanitary sewer overflows, it also establishes a stream debris and trash cleanup Supplemental Environmental Project (SEP) for parts of three streams. The SEP is valued at \$600,000, and under it, the County is

required both to use low-income and minority status as a criteria in selecting areas to clean and to conduct community outreach.

- As part of a comprehensive settlement to address the untreated sewage deposited into the Cleveland area waterways and Lake Erie, communities will benefit directly from construction projects and be able to participate publicly in infrastructure proposals. Under the settlement reached in *United States v. Northeast Ohio Regional Sewer District* (N.D. Ohio), the Sewer District (NEORS) will spend \$3 billion to install pollution controls, including seven tunnel systems. NEORS has arranged its construction schedule so that the first tunnels to be completed, the Euclid Creek and Dugway Storage Tunnels, will benefit underserved communities. NEORS will also spend at least \$42 million on green infrastructure projects that will help address sewage overflows, a majority of which occur in the City of Cleveland, where most of the minority and low-income residents live. NEORS will be able to propose larger uses of green infrastructure in exchange for reductions in traditional infrastructure projects. As a part of this process, NEORS will collaborate with local community groups, including those representing minority and low-income neighborhoods, in selecting the locations and types of green infrastructure projects to propose.
- In *United States v. Northern Indiana Public Service Co.* (N.D. Ind.), NIPSCO agreed to spend approximately \$600 million to install pollution control equipment at three of its four coal-fired power plants (it will shut down the fourth plant), spend \$9.5 million on mitigation projects, and pay \$3.5 million in civil penalties. These measures will reduce the nitrogen oxide emissions by 18,000 tons and sulfur dioxide emissions by 46,000 tons. The decrease in harmful pollutants will benefit the communities located near NIPSCO facilities, including communities disproportionately affected by environmental risks and vulnerable populations, including children.
- The health of tribal residents of the Spokane Indian Reservation will be protected by the settlement reached in *United States v. Newmont USA Limited and Dawn Mining Co., LLC* (E.D. Wash.). The mining companies in this case agreed to the cleanup of the Midnite Mine Superfund site, located on the Spokane Indian Reservation in Northeastern Washington. This cleanup will help control radioactive mine waste and protect nearby waters from acid mine drainage. Although the Tribe is not a party to the settlement, it will support EPA in overseeing the work.
- The consent decree in *United States v. Orval Kent Food Co., Inc.* (D. Kan.) resolved Clean Water Act violations by Orval Kent, a food processing company that overloaded the local wastewater treatment system with millions of gallons of industrial wastewater from its Baxter Springs plant. The wastewater polluted the Spring River, which runs from Kansas into Oklahoma and is used by downstream communities, including the Eastern Shawnee Tribe of Oklahoma, for fishing and recreation. Under the settlement, Orval will not only pay a civil penalty of \$390,000 and monitor future discharges, but also spend at least \$32,500 on a project to re-stock fish in or near the Spring River. The re-stocking project was designed in consultation with the Tribe.

- The homes of many economically disadvantaged residents of Jersey City will now be connected to the city’s sewer system as a result of the consent decree in *United States v. Jersey City Municipal Utilities Authority* (D.N.J.). The agreement requires the Authority to pay a \$375,000 penalty and invest more than \$52 million in repairs and upgrades to the combined sewer system; it also includes a Supplemental Environmental Project, requiring the Authority to invest \$550,000 in the replacement of illegal “common sewers” with direct sewer connections and in the process ensure better wastewater collection and disposal. Thus, the settlement will improve access to sewage removal for low-income communities and reduce the city’s combined sewer overflow, which contains untreated human and industrial waste, toxic materials, and debris.
- The St. Louis sewer system is the fourth largest in the country and the consent decree entered in *U.S. v. Metropolitan St. Louis Sewer District* (E.D. Mo.) comprehensively addresses the city’s illegal overflows and untreated sewage. Numerous parts of the settlement will address concerns in low-income and minority communities. First, the city will invest at least \$100 million in green infrastructure to revitalize vacant or abandoned properties in disadvantaged communities. Second, the city will spend \$230 million on a “Cityshed” mitigation program to reduce flooding and \$30 million on enhanced pipe lining, both of which will be focused on disadvantaged communities. Third, the city will spend \$1.6 million on a Supplemental Environmental Project that will provide low-income residents the opportunity to close their septic tanks and connect to the public sewer. These significant environmental justice achievements are in addition to the \$4.7 billion the city agreed to spend on repairs and upgrades.
- Settlement of an enforcement action against Kansas City requires the city to spend \$2.5 billion over the next 25 years to make major, long-needed improvements to its sewage collection and treatment systems. The agreement in *United States v. City of Kansas City, Missouri* (W.D. Mo.) will improve public health and the environment across the city, but it also includes three aspects of relief that are tailored to address the impacts of the violations on disproportionately burdened communities. First, Kansas City’s sewer system is in greatest need of repair in the city’s urban core. Decaying sewer lines and other problems cause sewage to back up into the basements of homes in this vulnerable part of the city. The settlement addresses this problem by prioritizing sewer rehabilitation projects in the urban core. Second, the settlement requires the city to take early action to reduce overflows of untreated sewage into the Blue River, which runs through the urban core. Third, the city will spend \$1.6 million to implement a voluntary sewer connection and septic tank closure program. This program will provide funding to encourage and assist low-income residents to close their septic tanks and connect to the public sewer. All three aspects of the settlement were the product of community outreach. Representatives from the city and EPA met with community groups, organizers, and individuals to learn about local problems and needs. These meetings helped us shape the settlement to advance the principles of environmental justice.

ENRD’s Environmental Crimes Section (ECS) has prosecuted cases that benefit environmental justice communities. For example:

- ECS and the U.S. Attorney's Office for the District of Rhode Island prosecuted the case of *United States v. Southern Union Company* (D.R.I.), which involved the improper storage of mercury at a Rhode Island facility. In September 2004, vandals broke into the mercury storage building and took several containers of liquid mercury. Some of the containers shattered, causing mercury to be spilled around the facility's grounds. The mercury was discovered in a vacant building in a neighborhood frequented by vandals and homeless people and some ten to twenty pounds were taken to the nearby Lawn Terrace Apartments in Pawtucket, Rhode Island, home to many low-income, minority, and immigrant families. Fifty-five households had to be evacuated for two months. On October 15, 2008, after a three-week jury trial, Southern Union Company was convicted of one Resource Conservation and Recovery Act (RCRA) storage violation. The company was sentenced in October 2009 to pay a \$6 million fine and \$12 million in payments to community initiatives. In a case handled by ENRD's Appellate Section, the First Circuit affirmed the conviction and sentence on December 22, 2010. On November 28, 2011, Southern Union's petition for *writ of certiorari* was granted on the issue of whether the sentence exceeded the district court's authority under the Supreme Court's ruling in *Apprendi v. New Jersey*.
- In the case of *United States v. Citgo Petroleum Corporation* (S.D. Tex.), CITGO Petroleum Corporation (CITGO Petroleum) and CITGO Refining and Chemicals Company (CITGO Refining) operated two open top tanks, each the size of a football field and filled with oily wastewater, without installing the proper emission controls. The companies knew years before the two tanks went into operation that the upstream oil-water separators did not adequately remove oil prior to its placement in the tanks. During an unannounced inspection in March 2002, environmental inspectors found approximately 4.5 million gallons of oil in the two open top tanks exposed to the atmosphere. The refinery is surrounded by two residential communities with significant minority populations. These communities were subjected to emissions from the plant over several years. Adult and child residents complained about odor and acute adverse health effects such as difficulty breathing, coughing, sore throat, and eye irritation. On June 27, 2007, a jury convicted CITGO Petroleum and CITGO Refining of two Clean Air Act violations. CITGO Refining also was convicted of violating the Migratory Bird Treaty Act. Since that time, ECS has engaged in outreach to members of the affected communities, which included two community meetings/listening sessions to learn about how residents had been affected by Citgo's illegal benzene emissions. Pursuant to the Crime Victim's Rights Act, ENRD brought to the court's attention the communities that lived in the area of CITGO and the harmful impacts of the benzene emissions on the members of those communities.

More than half of ENRD's work consists of defending the environmental or natural resource actions of federal agencies. ENRD is working to ensure that environmental justice principles are considered in our handling of these cases as well. Two examples of this aspect of ENRD's environmental justice effort include:

- ENRD's Wildlife and Marine Resources Section (WMRS) helped defend a Fish and Wildlife Service (FWS) action that protected tribal cultural interests. FWS had issued a

biological opinion under the Endangered Species Act (ESA) governing Bureau of Reclamation (Reclamation) operations of the Glen Canyon Dam in Arizona to minimize effects on the ESA-listed humpback chub. One conservation measure in the biological opinion called for the implementation of measures to eliminate nonnative fish species that predate and compete with the chub. Subsequently, the Zuni Tribe notified Reclamation that it strongly objected to killing fish within their culturally sacred areas of the Colorado River. Once notified, WMRS attorneys worked with FWS and Reclamation to develop a defensible plan for deferring the scheduled nonnative fish removal trips in response to the concerns expressed by the Zuni Tribe. When that plan was implemented, an environmental group filed a motion for an injunction seeking to compel Reclamation to undertake the nonnative control measures. We successfully defended Reclamation's decision with the court denying the motion. The court also noted that Reclamation was acting reasonably to balance the need to ameliorate the threat posed by nonnative fish, while being mindful of tribal concerns.

- ENRD'S Natural Resources Section successfully resolved, through settlement, the case of *Conejos County Clean Water, Inc. v. United States Department of Energy* (D. Colo.), in which the plaintiffs challenged the Department of Energy's (DOE) use of a truck-to-train transfer facility near Antonito, Colorado, to transfer environmental waste from flat-bed trucks to rail cars for shipment to Utah. The transfer facility is located on the edge of Antonito, a small community in Conejos County, a majority Hispanic farming and ranching community with a median house-hold income of \$27,744 – less than half the national average. Under the settlement, DOE agreed not to utilize the Antonito transfer facility for the shipment of environmental waste materials unless and until it completes an environmental analysis under the National Environmental Policy Act (NEPA). In addition, DOE agreed not to rely on a categorical exclusion to satisfy NEPA and to provide public notice and opportunity to comment.
- *Barrio De Colores v. U.S. Customs and Border Protection* is an action brought under the National Environmental Policy Act by Barrio De Colores, an association of Hispanic residents in the City of Laredo, Texas. The association challenged the U.S. Customs and Border Protection's (CBP's) environmental assessment for removal and control of Carrizo cane within a 16.1 mile corridor along the Rio Grande River using herbicides, including aerial spraying by helicopter. Among other claims, Barrio De Colores alleged that CBP failed to adequately notify the public in both English and Spanish of their right to participate in the environmental review process. As part of the settlement agreement disposing of the case, CBP agreed to discontinue aerial spraying and to limit a burn and herbicide method of removal to designated sites only, with public notice in local newspapers in English and Spanish. In addition, CBP agreed to make particular commitments for any additional cane control and removal outside of the 16.1-mile corridor for the next five years. These commitments include holding a scoping meeting, providing a 45-day comment period on draft environmental analyses, and providing a Spanish version of the executive summary of any draft analysis. The agency also agreed to hold a meeting with Barrio De Colores to provide information about the project in English and Spanish. This meeting was held on July 7, 2010 in the Barrio De Colores neighborhood and was considered to be a success by both Barrio De Colores and CBP.

Mediation and Conciliation Assistance

The Department's Community Relations Service (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 during the last fiscal year.

- CRS facilitated discussions between an Indian Tribe and a County Conservancy District that prevented potentially harmful excavation activities at a tribal burial ground site. During the discussions, the parties exchanged detailed information about the site, including archeological reports, as well as information related to the identification of excavation sites, service road placement, identification by the archaeologist of possible artifacts at the site, and protective measures for petroglyphs. The Tribe, the County Conservancy District, and the archaeologist also jointly visited the proposed excavation site. There, they agreed to protect petroglyphs and update the archaeologist's report. Additionally, the Tribe was given access to the initial reservoir report, and the District considered a recommendation to hire a Tribal Liaison to be on site during excavation.
- In response to a report that a predominantly African American community in Illinois was disproportionately experiencing the burdens of pollution, CRS helped mediate the conflict between community members and government officials. CRS provided technical assistance in arranging a meeting by preparing logistics, securing a neutral meeting location, and reaching out to community partners; during the meeting CRS helped facilitate dialogue.
- CRS worked closely with community members and government officials in Louisiana to resolve allegations of disparate treatment during the recovery effort following an oil spill. By employing its mediation and conciliation strategies, CRS helped ease tensions, which were already heightened in the area due to similar allegations in the aftermath of Hurricane Katrina. More specifically, CRS facilitated discussions at separate formal mediation sessions where parties addressed concerns. For example, one predominantly African American community alleged that there had been a lack of attention to the cleaning of one of its freshwater fishing areas. In addition, CRS conducted a community dialogue forum between African American community members, law enforcement officials, and city officials. This forum resulted in an agreement with law enforcement that it would receive CRS's Law Enforcement Mediation training and *Responding to Allegations of Racial Profiling* training. Finally, CRS provided technical assistance to help state, parish, and city officials with capacity building projects focused on improving relationships with Vietnamese, Latino, African American, and American Indian communities.