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Memorandum

File No.

To: Andy Lester

From: James T. Price 

Re: American Bar Association Section of Litigation, Environmental and Energy Litigation
Committee: Current Developments in Environmental Compliance and Enforcement Workshop

Date: March 28, 2017

The American Bar Association Section of Litigation, Environmental and Energy Litigation Committee, is holding a workshop in Washington, D.C., on May 18 on the latest developments in environmental compliance, enforcement, and litigation. We want to invite EPA Administrator Scott Pruitt to be our keynote speaker.

This is a successful annual program. The program brochure for this workshop in 2015 is attached.

A presentation at this workshop would be an opportunity for Administrator Pruitt to deliver his message about the direction of today's EPA to an interested and influential audience of leading lawyers in environmental law nationally and to do so in the District with staff nearby and without significant travel. In these workshops in the past, leaders of EPA and the Department of Justice have announced new initiatives and areas of emphasis. For example, John Cruden, former DOJ Assistant Attorney General for the Environment and Natural Resources Division, has used this program in previous years to release public statements about DOJ's initiatives contemporaneously with his speech. These received attention in the environmental press and thus broadened the reach of his messages. Attached is an example from 2015.

In terms of scheduling Administrator Pruitt's remarks, we are looking at approximately one hour in the early- to mid-afternoon of May 18. An hour would include introductions and wrap-up remarks. Administrator Pruitt could take questions if he wanted, which could be handled extemporaneously from the floor or by written questions submitted in advance. We can be flexible on scheduling, both in terms of the time slot for Administrator Pruitt's remarks and their length.

The Environmental and Energy Litigation Committee of the ABA Section of Litigation is one of the nation's leading organizations of environmental lawyers. The committee focuses on compliance, enforcement, and litigation of environmental laws nationwide and in the states. This group has a track record of presenting high-quality programs with leading state and federal regulators and environmental practitioners. These programs are attended by lawyers from around the country who represent clients on cutting-edge issues before EPA and DOJ.

We would be honored if Administrator Pruitt would consider this request and speak to our group, sharing his thoughts about the current direction and initiatives of EPA. .

JTP/tjh

WA 9444231.1



2015

Program

Brochure

Regional CLE Workshop

At the Forefront of Environmental Litigation

Morgan, Lewis & Bockius, LLP
2020 K Street, NW, 11th Floor
Washington, D.C.
July 23, 2015

Presented by the ABA Section of Litigation Environmental Litigation Committee



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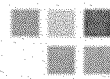
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
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Program Agenda

Speakers from EPA and DOJ will discuss recent developments and new initiatives in environmental compliance and regulatory enforcement.

Registration

12:30 pm – 1:00 pm

We ask that everyone plan to arrive early to allow the program to start promptly at 1:00 pm.

Introduction and Welcome

Environmental Litigation Committee Co-Chairs:

1:00 pm – 1:15 pm

Speakers: **Meaghan G. Boyd**, Alston & Bird LLP, Atlanta, GA; **Kevin J. Bruno**, Blank Rome LLP, New York, NY; **Ronald J. Tenpas**, Morgan Lewis & Bockius LLP, Washington, D.C.

U.S. Environmental Enforcement Initiatives and Developments

1:15 pm – 2:15 pm

With offices across the United States, the Environmental and Natural Resources Division is the nation's environmental lawyer, and the largest environmental law firm in the country. The Division, which is organized into ten sections, has primary responsibilities for litigation as well as appellate and policy work on behalf of the United States regarding: (1) prevention and clean-up of pollution; (2) environmental challenges to federal programs and activities; (3) stewardship of public lands and natural resources; (4) property acquisition for federal needs; (5) wildlife protection; and (6) Indian rights and claims. During his presentation, Mr. Cruden will describe recent initiatives, successes and developments, and future programs in these and other substantive areas.

Speaker: **John Cruden**, (AAG)U.S. Department of Justice, Washington, D.C.

Program Agenda

Effective Use of ADR In Environmental Administrative Proceedings

2:15 pm – 3:15 pm

The use of alternative dispute resolution (ADR) to facilitate the settlement of legal actions before the administrative tribunals of US EPA is becoming increasingly common. Both the Environmental Appeals Board and Office of Administrative Law Judges have established rules that strongly encourage the use of mediation to support the resolution of filed actions and have dedicated judicial staff to service as mediators. Recent ADR cases highlight the benefits for all litigating parties and the need for environmental counsel to obtain competence in mediation advocacy skills. This interactive session, conducted by the former EPA Senior ADR Specialist and senior jurists of EAB and OALJ will provide an overview of the ADR process in administrative cases with a focus on what counsel can expect when mediating the resolution of both enforcement and proactive actions. The session will use hypothetical case scenarios based on real-life mediations to explore and discuss tips for counsel on how to effectively advocate within an administrative mediation and maximize the strategic advantages of working with an EAB or OALJ mediator.

Moderator: **David Batson**, AlterEcho

Panelists: **Hon. Leslye Fraser**, Environmental Appeals Judge, U.S. Environmental Protection Agency, Environmental Appeals Board;

Hon. Barbara Gunning, Administrative Law Judge, U.S. Environmental Protection Agency, Office of Administrative Law Judges

3:15 pm – 3:30 pm

Break

Program Agenda

Next Generation Compliance And Enforcement Trends / Techniques

3:30 pm – 4:30 pm

Assistant Administrator Cynthia Giles leads EPA's efforts to enforce our nation's environmental laws and advance environmental justice. Giles has committed EPA's Office of Enforcement and Compliance Assurance to three goals that she will explain and discuss during her presentation, as follows: (1) Tough civil and criminal enforcement for violations that threaten communities and the environment, with a particular emphasis on addressing the problems of communities overburdened with pollution; (2) Next-Generation Compliance: achieve greater compliance and reduce pollution using advanced monitoring and information technologies; and (3) Strong EPA/state/tribal environmental protection: work together toward shared environmental goals.

Speaker: **Cynthia Giles**, U.S. Environmental Protection Agency

Department of Justice Perspectives on Civil and Criminal Enforcement Issues

4:30 pm – 5:30 pm

The Environmental Enforcement Section (EES) and the Environmental Crimes Section (ECS) within the Environment and Natural Resources Division of the U.S. Department of Justice are charged with the civil and criminal enforcement of our Nation's pollution laws, respectively. Both Sections have nationwide enforcement authority and actively litigate cases in almost every judicial district in the country. As such, they are in a position to see enforcement trends and priorities as they are developed by both the Department of Justice and the agencies charged with implementing and enforcing laws designed to protect the environment. This session, which will include the Chief of EES, Senior Trial Attorney of ECS, and Assistant Chief of ECS will focus on environmental enforcement activities and patterns. The panel will examine the types of violations brought to them for enforcement by a variety of agencies, including aging infrastructure, hydrofracking, E-waste, other enforcement priorities, scope of relief sought, and mitigation, as well as the intersection of the civil and criminal programs in the context of parallel proceedings and global settlements.

Moderator: **Kris Dighe**, U.S. Department of Justice, Washington, D.C.

Panelists: **Jennifer Whitfield**, U.S. Department of Justice, Washington, D.C.; **Ben Fisherow**, U.S. Department of Justice, Washington, D.C.

5:30 pm – 6:30 pm

Networking Reception

Organizers and Chairs

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ABA Section of Litigation, Environmental Litigation

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General Information

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To register online, visit:

<http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=203164950>

or return the Registration Form on the following page with your payment (checks only) to:

Kristen McCann
American Bar Association
321 N. Clark St.
Chicago, IL 60654

Please register by July 16, 2015 to reserve your spot.

Requests for refunds must be made in writing and received no later than July 16, 2015, in the ABA Section of Litigation office. Please email your request to the Program Associate. There will be a \$10 administrative fee deducted from the refund. Cancellations received after July 16, 2015 will not be refunded; however, the Section will gladly accept substitutions for those unable to attend.

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Tuition Assistance:

A limited number of scholarships to defray registration fees may be available for government employees, public interest lawyers employed with nonprofits, academics, and law students, as well as unemployed attorneys. For more information, please contact: Kristen McCann at (312) 988-5662.

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A limited amount of scholarships are available for this program. For more information, please contact: Kristen McCann at (312) 988-5662.

Registration Information

\$60.00	Section of Litigation members
\$75.00	Non-Section members
\$20.00	Governmental Attorneys
\$25.00	Law Students

Pre-registration deadline is July 16, 2015. Checks for attendance and course materials should be made payable to the AMERICAN BAR ASSOCIATION (credit cards for online registration only).

- I will attend the meeting and my check for \$_____.00 is enclosed.
- I am unable to attend the meeting, but please send the course materials to the above address, at a cost of \$35.00, a check for which is enclosed.

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**ASSISTANT ATTORNEY GENERAL JOHN C. CRUDEN DELIVERS REMARKS TO
THE AMERICAN BAR ASSOCIATION'S SECTION OF LITIGATION WORKSHOP**

Remarks as prepared for delivery

WASHINGTON, D.C.

Thank you very much, it is a great pleasure to be here. I have spoken before to the ABA Litigation Section and it is always a great pleasure to speak to this important audience. And, I appreciate the title of this workshop: "At the Forefront of Environmental Litigation" as I do believe that describes the work of the Department of Justice.

I returned to the Department of Justice as Assistant Attorney General of the Environment and Natural Resources Division (ENRD) in January. When I first arrived at the Department of Justice in 1991, I was the chief of the Environmental Enforcement Section. A lot has happened since that time. I am reminded of the famous NASA probe Voyager, which was launched in 1977 and had reached the planet Neptune in 1990. That year, the Voyager 1 spacecraft looked back and snapped the first-ever pictures of the planets from its perch. This "family portrait" captured Neptune, Uranus, Saturn, Jupiter, Earth and Venus. The late Carl Sagan, a member of the Voyager imaging team at the time, had the idea of pointing the spacecraft back toward Earth for a last look. The title of his 1994 book, *Pale Blue Dot*, refers to the image of Earth in this series. Sagan wrote, "That's here. That's home. That's us. On it everyone you love, everyone you know, everyone you ever heard of, every human being who ever was, lived out their lives." This quote and the stunning photos of Pluto last week from the New Horizons space probe help provide perspective on our work as environmental litigators.

With that in mind, I will try to discuss how we at ENRD do our environmental enforcement work at the local, state and international levels.

I am going to focus on what we have been doing in 2015 as that has been an extraordinarily productive time in our history, with significant impacts in virtually every area of our practice. We at the Department of Justice feel that our enforcement work has significantly ramped up and the amount of press coverage, the increase in joint enforcement actions with states and our work with a whole range of federal agencies has been significant. And, I want to focus attention on our joint enforcement with states, like we are doing in Deepwater Horizon and a personnel announcement I made just this week, creating a new position in the department, a Counselor for State and Local matters.

Let me start with what the world heard on July 3 when we announced an agreement in principle with BP concerning the Deepwater Horizon oil spill. Although I am under a strict confidentiality order that governs the terms of that non-binding agreement, the court did make public the monetary terms. In summary, BP has pledged at least \$18.7 billion to resolve federal, state and local claims. The Department of Justice, in announcing the agreement in principle, stated that—if approved by the court, the settlement would be the largest settlement with a single entity in our history. I had the honor of leading that negotiating team, but it is a classic example of multi-state, multi-federal agency joint action. To give you some idea of scale, the Exxon-Valdez settlement, which I also approved in 1991, was collectively for about \$1 billion which covered both civil and criminal penalties. *The Washington Post*, commenting on the BP agreement, spoke of “jaw-dropping” numbers.

While BP is vitally important, it is only one example of a real surge in the vital enforcement work we are doing. I am going to break up my discussion of our work this year into three categories: First, I will discuss cases primarily with significance at the local level, impacting local communities. Second, I will talk about cases that seek broader, company-wide relief or involve efforts at the state or regional level. Third, cases that raise international issues as we are often cooperating with other nations’ governments or international entities such as Interpol.

In each of these three categories, the Department of Justice leverages resources through partnering with others. These themes also advance goals that I have established for the division. Finally, I will try to summarize how this enforcement surge has had real on-the-ground environment and health benefits.

But first let’s set the stage. ENRD brings cases against individuals and companies that are in violation of our nation’s civil and criminal pollution control and wildlife protection laws. And while these laws are national in scope, the work that we do ranges from enforcing pollution violations at individual sites to prosecuting international wildlife trafficking networks. The division has a large workforce of over 600 people. The vast majority of our staff is located in Washington, DC. The geographic scope and diversity of our work requires close collaboration with federal and state partners across the country and internationally. In our enforcement effort we are partnering with such agencies as the Environmental Protection Agency (EPA), the Coast Guard, the FBI, the Fish and Wildlife Service (FWS), NOAA, the Department of Agriculture and the Corps of Engineers. Through this collaboration, we are able to leverage resources to achieve results that advance priorities of the Administration and federal agencies.

I. LOCAL COMMUNITIES

The first goal I established for ENRD this year is to vigorously enforce the nation’s bedrock environmental laws that protect air, land and water for all Americans and advance environmental justice. Illustrating our efforts on this goal is our work at the community level. Turning first to our cases involving local communities, we rely on local partners both to bring environmental concerns to the public eye and to help identify remedies that are appropriate for the affected community. At the Tonawanda Coke facility in western New York, for example, the

company's violations of the Clean Air Act resulted in releases of a substance known as coke oven gas. Coke oven gas contains benzene and other harmful chemicals. Contact with these chemicals can significantly harm human health. Excessive exposure to benzene can cause cancer. For approximately 19 years, people living in the low-income community near the facility were forced to breathe contaminated air. However, the community did its own air toxic monitoring, which revealed high levels of pollution. These citizens' diligent efforts helped build the enforcement action that the United States and state of New York brought to protect the community.

Indeed, further investigation revealed that the Tonawanda Coke facility had also failed to report that it manufactured benzene and ammonia in quantities that exceeded the 25,000 pound per year threshold that the company had reported under the Emergency Planning and Community Right-to-Know Act. In addition, Clean Water Act violations at the facility included the discharge of wastewater and other prohibited pollutants into the nearby Niagara River.

As a result of the civil agreement, I was proud to announce this May in a press conference that Tonawanda Coke will pay \$12 million in civil penalties, facility improvements and environmental projects to benefit the community. Specifically, the agreement requires Tonawanda Coke to pay \$2.75 million in civil penalties, spend approximately \$7.9 million to reduce air pollution and enhance air and water quality and spend an additional \$1.3 million for environmental projects in the area.

And this brings me to the issue of what we call "parallel proceedings." The Tonawanda Coke civil settlement followed a successful criminal action. That criminal action resulted in one of the largest fines ever levied in an air pollution case involving a federal criminal trial. After a five-week criminal trial, the company was sentenced in March 2014 to pay a \$12.5 million fine, make a \$12.2 million community service payment and serve a five-year term of probation. The community service payment will fund a study to determine the extent of health and environmental impacts of the coke facility on the Tonawanda community. Before sentencing in the criminal matter, community members submitted over one hundred impact statements under the Crime Victims' Rights Act.

Together, the civil settlement and criminal action permitted those living near the Tonawanda facility to finally receive the protections they deserve.

In other cases we have secured important ecological benefits for local communities in California. In April of this year, for example, we reached a settlement with Lehigh Southwest Cement Company and Hanson Permanente. The Lehigh settlement requires the company to remove selenium and other toxic substances from Permanente Creek, which feeds into San Francisco Bay. Permanente Creek provides recreational opportunities. It is also important habitat for ecologically important species such as the red-legged frog. FWS has listed this species as threatened under the Endangered Species Act. Many scientists believe it was the subject of Mark Twain's 1865 short story, *The Celebrated Jumping Frog of Calaveras County*.

The EPA Regional Administrator, California's Deputy Attorney General, and I jointly announced the settlement, which addresses violations of the Clean Water Act stemming from the

discharge of millions of gallons daily of quarry process water and polluted stormwater. As a result of the settlement, the company will spend more than \$5 million to install wastewater treatment and make other facility improvements to prevent future violations. The company will also pay \$2.55 million in civil penalties.

But here is what I want you to think about today. In resolving that case, ENRD relied on EPA and the state of California's Regional Water Board. But other groups' actions were also involved. The Sierra Club, for example, pursued its own separate Clean Water Act claims under the Act's citizen suit provision. And members of the surrounding communities and local organizations brought national attention to the issue through their sustained advocacy efforts. This is in reality how enforcement actions typically play out, with a number of different individuals and entities involved.

Our work at the local level also reflects the Administration's commitment to environmental justice. Last year marked the 20th anniversary of the Presidential Executive Order on "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." This historic document requires each federal agency to make achieving Environmental Justice (EJ) part of its mission by addressing the disproportionate adverse human health and environmental effects of its programs and policies in these communities. At ENRD, promoting environmental justice and enforcing environmental laws are primary goals for me. We will seek protection for all communities from environmental harms by ensuring that the law is applied even-handedly in our cases. And we resolve our cases in the interest of affected communities by making sure they have a voice in remedies that affect the places in which they live and work.

In April, for example, ENRD and co-plaintiff Mississippi reached a settlement with Cal-Maine Foods Inc., one of the nation's largest egg producers. The settlement resolves Clean Water Act violations in Edwards, Mississippi, at a concentrated animal feeding operation housing more than two million chickens. The company discharged pollutants into a creek without permit authorization and also illegally applied nitrogen-laden wastewater in violation of its permit.

The facility is located in a community disproportionately affected by pollution. Nearly half of the households have an annual income of less than \$25,000. Like the Tonawanda Coke and Lehigh actions, this suit ensured that a large company conducts itself as a good neighbor in its community. Under the settlement, the facility will comply with its discharge permit, significantly reducing nutrient pollution from nitrogen and phosphorus. Excess nitrogen and phosphorus in our waters causes algae to grow faster than ecosystems can handle. Large growths of algae are called algal blooms and they can severely reduce or eliminate oxygen in the water, leading to illnesses in fish and the death of large numbers of fish. Nutrient pollution in ground water – which millions of people in the U.S. use as their drinking water source – can be harmful, even at low levels. Infants are vulnerable to a nitrogen-based compound called nitrates in drinking water. The company will additionally make improvements to its data collection and reporting methods. The penalty will be divided between the U.S. and Mississippi. This case illustrates how the division implements Department of Justice's Environment Justice policy, but

also a theme I will touch on in the next section of my talk, that is, coordination with state governments.

A prime example of this is in the context of our suits involving the operation of municipal sewer collection and treatment systems. At the beginning of 2015, we announced a settlement with the city of Fort Smith, Arkansas. Under the agreement, the city agreed to pay a civil penalty and spend more than \$200 million over 12 years to upgrade its sewer collection and treatment systems to reduce discharges of raw sewage and other pollutants into local waterways. Importantly, also as part of the settlement, the city will implement a program to help qualified low-income residential property owners to repair or replace defective sewer lines that connect to the city collection system. And in May, the Mayor of the District of Columbia, the EPA Regional Administrator (Region 3) and I announced changes to the D.C. sewer upgrade consent decree that will integrate green technology into the district plan to eliminate sewer overflow and promote jobs.

Our commitment to environmental justice in local communities extends to Native American lands. Last month, we announced a Clean Air Act settlement which will reduce damaging pollution from the Four Corners Power Plant located on the Navajo Nation. The settlement requires significant upgrades to the plant's sulfur dioxide, SO₂, nitrogen oxide, NO_x, pollution controls estimated to cost the co-owners of the facility approximately \$160 million and payment of a civil penalty of \$1.5 million. SO₂ and NO_x have numerous adverse effects on human health – including severe respiratory and cardiovascular impacts. They contribute to the formation of acid rain, which acidifies lakes and streams. This, in turn, (1) reduces fish population numbers and can completely eliminate fish species from waterbodies, (2) contributes to damage of spruce and other tree species at high elevations and (3) accelerates the decay of building materials, including irreplaceable buildings and statues that are part of our nation's cultural heritage. They also cause smog, which contains ozone, a pollutant that can inflame and damage the lining of human lungs and aggravate asthma. It can also increase susceptibility to respiratory illnesses, such as pneumonia and bronchitis. Children are at the highest risk, but adults who are active outdoors are also considered a sensitive group because of their higher levels of exposure than the general population.

The settlement also requires \$6.7 million for three health and environmental mitigation projects benefiting tribal members residing near the plant. The first is a project to replace local residents' appliances with more energy-efficient heating systems. The second is for residential weatherization projects that will decrease energy use. A third project will establish a Health Care Project trust fund to pay for certain medical expenses for tribal residents nearby the plant suffering from respiratory issues.

As with some of the other cases I have highlighted, this suit benefited from invaluable participation from local groups, including the Navajo group Diné CARE – Citizens Against Ruining our Environment, To'Nizhoni Ani and the National Parks Conservation Association, all co-plaintiffs in the case.

II. STATE, REGIONAL AND INDUSTRY-WIDE IMPACTS OF THE DIVISION'S WORK

The second level that I would like to highlight is the state and regional level.

At this level, ENRD seeks to leverage resources by turning violations at one or a few facilities into broader, company – or industry-wide solutions. The division also collaborates and creates partnerships with states and furthers broader federal government priorities, for example EPA initiatives.

One example of how this plays out is one of the two cases I announced on Earth Day: Noble Energy, Inc. Noble, an oil and gas exploration and production company based in Houston, Texas, agreed to settle our claims that it failed to adequately design, size, operate and maintain certain vapor control systems on its controlled condensate storage tanks. These discrepancies had resulted in emissions of volatile organic compounds (VOCs). VOCs are a key component of smog.

Under the settlement, Noble will spend an estimated \$60 million on system upgrades, monitoring and inspections to reduce emissions, in addition to \$4.5 million to fund environmental mitigation projects, \$4 million on supplemental environmental projects and a \$4.95 million civil penalty. The case arose from a joint EPA and Colorado investigation that found significant VOC emissions coming from storage tanks, primarily due to undersized vapor control systems. Noble has agreed to evaluate vapor control system designs, significantly reduce VOC emissions and provide reports to the public. These reports will give other companies the opportunity to learn and apply this information to emissions estimates and vapor control system designs. Using advanced monitoring technologies, Noble will be better able to detect air pollution problems in real time and properly operate and maintain pollution control equipment.

Why is this settlement significant? Because it is a first-of-its-kind settlement that takes a basin-wide, systematic approach to addressing oil and gas emissions. The settlement highlights how states and the federal government can collaborate to address air pollution from a significant sector in a commonsense way. It will also help spur development of advanced pollution control technologies that will become available to the entire industry. In addition, this settlement highlights the “Next Generation” initiative that EPA, under Assistant Administrator Cynthia Giles’ leadership, has developed to use cutting edge technology and advanced computer forensics to dramatically advance environmental law enforcement now and in the future. ENRD supports EPA in this innovative initiative.

The other case I announced on Earth Day this year was an enforcement partnership with the state of Arkansas. ExxonMobil Pipeline Co. and Mobil Pipeline Co. (ExxonMobil) agreed to settle claims by the United States and the state of Arkansas stemming from the Pegasus Pipeline oil spill in Mayflower, Arkansas. The spill occurred after a pipeline, carrying Canadian heavy crude oil from Illinois to Texas, ruptured. The spilled oil contaminated homes and yards before entering a nearby creek, wetlands and Lake Conway. Some residents were ordered to evacuate their homes and remained displaced for an extended period of time. The spill volume has been estimated at approximately 134,000 gallons.

The settlement includes civil penalties to fund an environmental project and corrective measures to resolve alleged violations of the Clean Water Act and state environmental laws. Arkansas was a co-plaintiff. Crucially, while the spill was localized to one community, the injunctive relief that ExxonMobil agreed to was company-wide. Under the settlement, ExxonMobil will pay \$3.19 million in civil penalties and take steps to address pipeline safety issues and its spill response capability by providing additional training to its first responders. In addition, ExxonMobil will pay \$1 million in state civil penalties, \$600,000 for a project to improve water quality at Lake Conway and \$280,000 to the Arkansas Attorney General's Office for the state's litigation costs. This agreement is an excellent example of federal and state cooperation. It will benefit public health and the environment for years to come.

Another example of our work at the state/regional level is our enforcement case involving Total Petroleum Puerto Rico Corporation. That case concerned Resource Conservation Recovery Act violations alleged at 31 gas stations. Our complaint alleged that the company, among other things, failed to report and monitor for leaks, investigate suspected leaks, protect against corrosion and overflows and maintain records of release detection monitoring. Leaking underground petroleum tanks are a serious problem because they can contaminate groundwater with pollutants such as benzene.

We structured the settlement to achieve a comprehensive solution, improving leak detection company-wide by installing advanced electronic release detection monitoring equipment at over 125 gas stations across Puerto Rico. This is the second judicial settlement in Puerto Rico requiring a defendant to implement company-wide automated electronic release detection with a centralized monitoring capability. Together, over 250 stations in that commonwealth will become equipped with electronic release detection equipment and centralized monitoring.

Fourth, with the states of Alabama and Oklahoma, we recently settled Clean Air Act claims against Houston-based Continental Carbon Co. Continental manufactures carbon black, a fine powder used in tires, plastics, rubber, inkjet toner and cosmetics. It has facilities in Phenix City, Alabama, Ponca City, Oklahoma, and Sunray, Texas. Because the oil used to make carbon black is high in sulfur, its production creates large amounts of SO₂ and NO_x. Once emitted, natural chemical processes in the atmosphere convert SO₂ and NO_x into particulate matter, which in turn can cause severe respiratory and cardiovascular impacts and premature death. The result of our enforcement case is a settlement that will reduce harmful emissions by over 6,000 tons per year of SO₂ and nearly 1,600 tons per year of NO_x. The pollution reductions will be achieved through the installation, upgrade and operation of state-of-the-art pollution control devices designed to reduce emissions and protect public health.

This case illustrates how the state and federal governments can cooperate to reduce dangerous pollution into the air that we all breathe. The settlement requires Continental to pay a civil penalty that will be shared with the co-plaintiff states. It additionally shows how the Department of Justice is implementing ENRD environmental goals by protecting communities, which have been disproportionately impacted by pollution. Under the agreement, Continental will spend \$550,000 on environmental projects to help mitigate the harmful effects of air

pollution and benefit local communities, including financing energy efficiency projects in the communities near each of its three facilities.

Fifth, in May three subsidiaries of North Carolina-based Duke Energy Corp., the largest utility in the United States, pleaded guilty to nine criminal violations of the Clean Water Act. It also agreed to pay a \$68 million criminal fine and spend \$34 million on environmental projects and land conservation to benefit rivers and wetlands in North Carolina and Virginia. Four of the charges resulted from the massive coal ash spill into the Dan River in February 2014. Coal ash contains contaminants like mercury, cadmium and arsenic. Without proper management, these contaminants can pollute waterways, ground water, drinking water and the air. The government discovered the remaining violations as the scope of the investigation broadened based on allegations of historical violations at the companies' other facilities. The alleged violations included unlawfully failing to maintain equipment at two of their facilities and unlawfully discharging coal ash and/or coal ash wastewater from impoundments at three of their facilities.

Why is this significant? The defendants own and operate coal ash basins holding approximately 108 million tons of coal ash in North Carolina. But they also operate facilities with coal ash basins in South Carolina, Kentucky, Indiana and Ohio. Duke's subsidiaries, operating 18 facilities in five states, including 14 in North Carolina, will be required to develop and implement nationwide and statewide environmental compliance programs.

This case highlights a key federal-state partnership and how ENRD leverages cases to ensure broader, company-wide and regional effects whenever possible. The EPA Criminal Investigation Division, Region Four and the Office of Inspector General; IRS Criminal Investigation office; and North Carolina State Bureau of Investigation with assistance from the FBI and the Department of Defense Criminal Investigative Service conducted the investigations. The Acting Director of the North Carolina State Bureau of Investigation stated that "[t]his type of collaboration is critical to ensuring a thorough and intensive review on cases such as this."

In short, as you can see, environmental enforcement often involves close collaboration between the United States and state governments. Partnering in enforcement cases sends a strong message about the importance to federal and state governments of pollution control statutes and their enforcement. Both EPA and the Department of Justice have a policy of sharing penalties with states when we are partners. When ENRD decides to file a civil judicial action, we often additionally provide notice to state and invite a state to join the action.

III. IMPACTS AT THE GLOBAL LEVEL

The third level of impact is our international efforts. We cooperate closely with the State Department, Department of Homeland Security, Coast Guard, Fish and Wildlife (DOI), Interpol and other countries' governments to enforce federal environmental laws and international environmental agreements.

A. Wildlife Trafficking

One area of increased attention and more litigation for the division has been wide ranging efforts to stem wildlife trafficking. International wildlife traffickers respect no international borders. So it is essential that the United States coordinates with foreign governments to stop this cross-border crime. With estimated annual revenues of \$10 billion or more, wildlife trafficking is one of the most profitable types of transnational organized crime, behind only drugs, counterfeiting and human trafficking. Organized criminal syndicates and militant groups have become increasingly involved. In the past decade, wildlife trafficking has escalated into an international crisis. Illegal trade at this scale threatens security, hinders sustainable economic development and undermines the rule of law.

This year I became co-chair of the Presidential Task Force on Wildlife Trafficking, which leads a coordinated, government-wide effort to stop poaching and other wildlife trafficking. The Task Force includes the Departments of Treasury, Defense, Agriculture, Commerce, Transportation and Homeland Security, as well as the U.S. Agency for International Development and seven other federal departments and agencies.

The Task Force agencies have been working in coordination to implement the National Strategy for Combatting Wildlife Trafficking since its issuance and in February the Task Force released an Implementation Plan that builds upon the Strategy. The Implementation Plan provides a robust, focused reaffirmation of the nation's commitment to stopping wildlife trafficking and sets out specific steps to achieve each of three key strategic priorities: (1) strengthening domestic and international law enforcement to curb the illegal flow of wildlife, (2) reducing the demand for illegally traded wildlife and (3) building global cooperation and public/private partnerships to support the fight against wildlife trafficking.

In March, I had the privilege of leading the U.S. delegation to the international Conference on the Illegal Wildlife Trade in Botswana. Representatives from more than 30 nations gathered to follow up on commitments to reduce illegal wildlife trade. The joint participation of the U.S. Departments of Justice, State and the Interior at these conferences demonstrates the "whole of government" approach taken in the Strategy, which we are pleased to see other nations beginning to adopt as well. It was a true honor to speak on behalf of the United States about our ongoing efforts to combat wildlife trafficking through the Strategy and the newly released Implementation Plan. While in Botswana, I participated in the second African Elephant Summit, which focused on international efforts to implement 14 "urgent measures" to stop the illegal slaughter of elephants for their ivory.

Let me be clear. This illegal trade is decimating species across the globe, including elephants, rhinoceroses, sharks and tigers. When I testified before Congress this year on illegal wildlife trafficking, I advised the members of the House Foreign Affairs Committee that such iconic species as rhinoceroses, elephants, great apes, totoaba, sea turtles and tigers are facing extinction in our lifetime if we do not act now. If you can imagine the diminished world that would result if these powerful and iconic species are permitted to go extinct, you can see why this is such an important initiative for us. The department, principally through ENRD, has long been a leader in the fight against illegal wildlife trafficking. Together with U.S. Attorneys' Offices across the country and partner federal agencies – such as FWS and NOAA – ENRD's Environmental Crimes Section prosecutes international wildlife trafficking crimes. The Crimes

Section primarily operates under the Endangered Species Act and the Lacey Act. It also prosecutes related crimes such as smuggling, money laundering and conspiracy. ENRD has successfully prosecuted numerous cases involving trafficking of rhinoceros horns, elephant ivory, South African leopard, Asian and African tortoises and reptiles and many other protected wildlife species.

One prominent example of how the Department of Justice is involved in this effort is “Operation Crash,” an ongoing multi-agency effort to detect, deter and prosecute those engaged in the illegal killing of rhinoceros and the illegal trafficking of endangered rhinoceros horns. Thus far, the initiative has resulted in 26 arrests and 18 convictions.

One example of Operation Crash is *United States v. Xiao Ju Guan*. There, an individual known as Tony Guan, a Canadian antiques dealer, and co-conspirators smuggled into Canada more than \$500,000 worth of rhino horns and sculptures made from elephant ivory and coral from various U.S. auction houses. They did so by driving them across the border or having packages mailed directly to Canada with false paperwork and without the required declaration or permits. In March of this year, Guan was sentenced to 30 months’ imprisonment and required to forfeit a variety of wildlife items made from elephant ivory and coral seized during a search of his business.

Yet another example is *United States v. Andrew Zarauskas*. In January 2015, Andrew Zarauskas was sentenced to 33 months in prison for unlawful trafficking of narwhal tusks and teeth. The narwhal is a medium-sized toothed whale that possesses a large “tusk” from a protruding canine tooth. It lives year-round in Arctic waters around Greenland, Canada and Russia. Some medieval Europeans believed narwhal tusks to be the horns from the legendary unicorn. Narwhals are listed as “threatened” under the Endangered Species Act and are covered by the Convention on International Trade in Endangered Species of Wild Fauna and Flora. It is illegal to import narwhal parts into the United States without a permit and without declaring the parts at the time of importation.

B. Vessel Pollution

Another key area where we work is combatting vessel pollution. The division’s Vessel Pollution Initiative addresses intentional acts of pollution from ocean-going vessels, including discharges of oil and garbage and the deliberate falsification of official ship records designed to conceal illegal pollution. These events often occur in international waters. Criminal penalties imposed in these vessel pollution cases totaled more than \$344 million in fines and more than 27 years of confinement.

For example, I would like to highlight U.S. criminal prosecutions under the Act to Prevent Pollution from Ships, or APPS, which implements the International Convention for the Prevention of Pollution from Ships, or MARPOL. Countries negotiated MARPOL to minimize pollution of the oceans and seas, including releases of garbage, sewage and oil and air pollution. Our work in this area has resulted in cases against key segments of the commercial maritime industry. Defendants in these cases have included owners or operators of cruise ships, container ships, oil and chemical tankers and bulk cargo vessels. The APPS requires vessels to maintain a

record known as an oil record book in which all transfers and disposals of oil-contaminated waste, including the discharge overboard of such waste, must be fully and accurately recorded.

One recent example, in *United States v. Carbofin SPA et al.*, in March the U.S. District Court for the Middle District of Florida sentenced the defendant to pay a \$2.15 million fine and make a \$600,000 community service payment to the National Marine Sanctuary Foundation. Carbofin previously pleaded guilty to three APPS violations. Carbofin had maintained a false oil record book that failed to record illegal overboard discharges of oily wastes in 2013 and 2014. While conducting a routine inspection in April 2014, crew members provided Coast Guard inspectors with cell phone video of a black hose being used to discharge oily bilge waste directly overboard. After examining valves and finding oily residue on the hose, the inspectors confirmed that the hose had been used to bypass pollution prevention equipment and to discharge wastes overboard.

ENRD has accomplished these results in these wildlife trafficking and vessel pollution cases by collaborating with new and existing local, state and international partners. They illustrate how the resolution of these cases will provide real benefits for the public and natural environment.

IV. CHANGES IN PERSONNEL AND PENALTIES SHARED WITH STATES

Finally, I want to draw your attention to a press release that the Department of Justice recently issued on a new personnel action. This Monday, I announced the creation of a new position designed to facilitate ENRD's work with state and local government attorneys. We designed the newly created role of Counselor for State and Local Matters to facilitate the joint efforts by the division and its environmental partners in state and local governments. The Counselor for State and Local Matters will work with the National Association of Attorneys General, the Environmental Conference of States and individual attorneys in state and local governments working on environment and natural resource matters. One important function of the counselor will be to increase collaboration with our state and local partners to achieve shared environmental enforcement goals. Such collaboration may range from developing and implementing joint training to serving as a resource for state and local counterparts on issues of shared concern. The counselor also will advise and assist the division regarding litigation, legislation and policy matters affecting state and local governments.

Maintaining and improving this coordination is critical to our success. Just this year, ENRD has already filed 13 cases with state parties – some of which I have discussed. ENRD has entered into settlements in six such cases. Those six cases have resulted in over \$2.1 million in penalties going to state co-plaintiffs. These cases are: *United States v. Allan Myers, Inc.* (\$81,250 to state); *United States v. Noble Energy, Inc.* (\$1.475 million to Colorado); *United States v. Continental Carbon Company* (\$19,500 to state); *United States v. Barrick Goldstrike Mines, Inc.* (\$98,000 to state); *United States v. Cal-Maine* (\$237,500 to Mississippi) and *United States and State of Nevada v. Newmont USA Ltd.* (\$197,500 to state). Additionally, over \$2.2 million will go to New York and California upon court approval of two pending consent decrees in *United States v. Tonawanda Coke Corporation* (\$1 million to New York); and *United States v. Lehigh Southwest Cement Company and Hanson Permanente* (\$1,275,000 to California).

In conclusion, ENRD's efforts bring about concrete results at the local, state and international levels. You have seen how in the Tonawanda Coke, Lehigh Southwest Cement, and similar cases, ENRD's enforcement work has impacts on local communities. I have talked about how in cases such as the Noble Energy and Total Petroleum matters, we often seek and achieve broader, company-wide relief and successfully coordinate our efforts with governments at the state or regional level. Third, I have spoken about cases involving a Canadian antiques dealer, a German company and an Italian-domiciled entity and others that raise international issues where our efforts require extensive international cooperation. We have seen how across all three categories, the Department of Justice leverages resources by partnering with others and advances Administration priorities.

Thank you again for having me here today.

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