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Strong Civil and Criminal Enforcement Emphasized in Department of Justice's 2011 Environmental Enforcement Authorities

For the Department of Justice's ("DOJ's") civil and criminal environmental enforcement arm – the Environment and Natural Resources Division ("ENRD") – 2010 was an "extraordinarily busy year and a very successful one," according to its chief, Assistant Attorney General Ignacia Moreno. Expect 2011 to be no different. In recently presented remarks, Ms. Moreno reviewed ENRD's activities in the past year and outlined its environmental enforcement priorities for 2011.

With regard to 2010, she applauded the following environmental enforcement achievements:

- collecting \$6.5 billion in injunctive relief;
- collecting \$81 million in civil and stipulated penalties;
- securing commitments by responsible parties to perform over \$750 million worth of clean up work at contaminated sites;
- prosecuting fifty criminal cases against seventy-nine defendants; and
- in connection with those prosecutions, obtaining twenty-eight years of jail time and \$89 million in criminal penalties and restitution payments.

Turning to her 2011 enforcement priorities, Ms. Moreno discussed the following:

Deepwater Horizon: Ms. Moreno underscored that the Deepwater Horizon civil case would continue to be ENRD's primary focus. She mentioned the civil complaint that the government recently filed against nine parties involved in the spill. The government intends to hold eight of the parties liable under the Oil Pollution Act and seeks "unlimited damages." She also mentioned the well-known fact that ENRD's environmental crimes section ("ECS") is currently investigating the circumstances of the Deepwater Horizon explosion and oil spill with an eye toward bringing criminal charges.

Other criminal enforcement priorities: Under the category of criminal enforcement, Ms. Moreno mentioned that ECS would continue to prosecute worker safety, vessel pollution, and Lacey Act cases. Indeed, the only criminal prosecution Ms. Moreno spoke of during her remarks was the 2010 Lacey Act prosecution of Maryland-based seafood wholesaler [Profish Ltd](#), which concerned the illegal harvest of striped bass from the Potomac River. Ms. Moreno did not offer any other specifics on her division's future criminal enforcement plans.

Clean Air Act ("CAA") enforcement at the industry sector level: Ms. Moreno stated that ENRD and EPA plan to target for environmental enforcement of coal-fired utilities and the cement, glass, and acid industries. Ms. Moreno held out three negotiated "company wide settlements" as significant, including the government's September 2010 [settlement](#) with petroleum refiner Murphy Oil (\$1.25 million civil penalty, \$142 million commitment to install upgraded pollution control equipment, \$1.5 million supplemental environmental project). Ms. Moreno also mentioned [settlements](#) with Saint-Gobain Containers (a glass manufacturer) and Lefarge North America (a cement manufacturer). As exemplified by these settlements, Ms. Moreno indicated that the division's preferred approach will be to use an enforcement action against one of a company's facilities as an opportunity to address CAA compliance and pollution control issues at all of that company's facilities. Also with regard to CAA enforcement, Ms. Moreno stated that greenhouse gas ("GHG") rules would be enforced, but expressly declined to provide any specifics.

Clean Water Act (CWA) enforcement against municipal storm water and wastewater treatment systems: Ms. Moreno emphasized that ENRD would continue to pursue operators of deteriorated sewer systems, especially in poorer urban areas. (See also the environmental justice comments below.) She touted two 2010 settlements with sewer system authorities in [Cleveland](#) and [Kansas City](#).

Environmental justice ("EJ"): Ms. Moreno devoted a significant portion of her enforcement-related remarks to DOJ's commitment to pursuing EJ for low-income or minority populations disproportionately affected by environmental pollution. DOJ's focus on EJ is a natural complement to EPA's plan – [Plan EJ](#)

[2014](#) – to incorporate EJ considerations into enforcement, permitting, and rulemaking. Ms. Moreno said that EPA and DOJ plan to target enforcement and compliance resources on “overburdened communities.”

Hazardous waste cleanup: Ms. Moreno did not elaborate on this priority other than to cite EPA and ENRD’s efforts to remove PCBs from the [Fox River](#) in Wisconsin.

Today’s enforcement priorities will soon be reflected in tomorrow’s civil or criminal enforcement actions. The DOJ has made clear that targeted for CAA enforcement are coal-fired utilities and companies in the cement, glass, and acid industries. Cities and municipalities with aging or stressed sewer systems also must expect more CWA scrutiny from compliance/enforcement authorities. Companies whose businesses may produce what could be considered disproportionate environmental impacts on low-income or minority populations have also been singled out for increased scrutiny. And any and all companies with operations in the U.S. producing environmental impacts should be aware that the Obama Administration has made civil and criminal enforcement a “high priority.” If you have questions or concerns about how these above DOJ enforcement priorities could potentially mean increased risks for your business or municipality, please contact any of the attorneys listed below.

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