

DOJ Touts Environmental Enforcement Accomplishments and Priorities in Recently Released Accomplishments Report

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The United States Department of Justice, Environment & Natural Resources Division (ENRD), recently released its Accomplishment Report for FY 2021. This report “highlights ENRD’s strong enforcement of our nation’s environmental and natural resources laws, efforts to advance environmental justice and role in our nation’s response to the climate crisis.”^[1]

For the period from October 2020 to September 30, 2021, DOJ touted securing more than US\$1.5 B in fines, penalties, and costs recovered, plus injunctive relief valued at US\$5.1B.^[2] Assistant Attorney General Todd Kim noted that the environmental enforcement was prioritized on two key issues for the Biden Administration—efforts to combat climate change and boost environmental justice. To combat climate change, ENRD “protected natural resources from the effects of climate change by defending flood control projects, cracking down on those who unlawfully fill wetlands, prosecuting traffickers in illegally harvested timber, and more.”^[3] For environmental justice, ENRD “went to court and won meaningful remedies from polluters who imperiled overburdened communities in the Nation’s heartland, in a heavily industrialized part of Louisiana, in downtown New York City.”^[4]

Other notable enforcement actions from FY 2021 included:

- In *United States v. Equistar Chemicals, LP* (S.D. Tex.), DOJ reached a settlement over air pollution from flaring at six petrochemical manufacturing facilities in Texas and Iowa. ENRD claims full implementation of the settlement will reduce emission of more than 90,000 tons per year of carbon dioxide, methane, and ethane. In addition to requiring pollution controls, the settlement provides for fence-line emissions-monitoring to detect benzene that may impact the local communities.
- DOJ concluded a number of cases against manufacturers and sellers of illegal aftermarket hardware parts and software (referred to as “defeat devices”) that allow vehicle owners to remove or disable factory-installed emission controls, resulting in excess emission of nitrogen oxide and other pollutants. The cases include *United States v. Gear Box Z, Inc.* (D. Ariz.); *United States v. Advanced Flow Engineering, Inc.* (C.D. Cal.); and *United States v. Xtreme Diesel Performance, LLC* (D.N.J.).
- DOJ reached a settlement with Summit Midstream Partners, LLC, and related entities, to resolve claims stemming from a discharge from Summit’s North Dakota pipeline of 29 million gallons of “produced water” (a waste product of hydraulic fracturing) to land, groundwater, and more than 30 miles of tributaries of the Missouri River. In the civil

component of companion civil and criminal settlements, the company agreed to pay a US\$20M penalty. *United States v. Summit Midstream Partners, LLC* (D.N.D.).

- Under a settlement in *United States v. Home Depot, U.S.A.*, (N.D. Ga.), Home Depot agreed to pay a US\$20.75M penalty for violations of the Toxic Substances Control Act in connection with renovations across the country. The company also agreed to implement a comprehensive, corporate-wide program to ensure that the contractors it hires are certified and trained to use lead-safe work practices. As discussed in a prior alert, EPA has similarly announced it will more broadly interpret TSCA's lead-safe practices rule to hold property management companies (PMCs) liable for retained contractors who renovate or repair the pre-1978 properties, as well.
- Daimler AG reached a settlement with DOJ, after allegedly installing defeat devices in more than 250,000 vehicles sold. Daimler agreed to an US\$875M civil penalty, a recall and repair of affected vehicles, and a project to offset excess emissions. *United States v. Daimler AG and Mercedes-Benz USA, LLC* (consolidated with *California v. Daimler AG and Mercedes-Benz USA, LLC*) (D.D.C).
- DOJ reached a settlement with Montrose Chemical Corp. of California and other responsible companies. The defendants will pay US\$77.6M to clean up a plume of contamination in groundwater at the Montrose Superfund site in Los Angeles County, California, reimburse government response costs, and investigate potential contamination in a stormwater pathway leading away from the site. The settlements resolve active litigation in a case that has been pending for over 30 years, addressing Montrose's historic operation of the United States' largest manufacturing plant for the now-banned pesticide DDT. *United States v. Montrose Chemical Corp.* (C.D. Cal.).

For further information or questions on environmental enforcement actions and trends by the Department of Justice or Environmental Protection Agency, contact Jonathan D. Brightbill* (Partner, White Collar, Regulatory Defense & Investigations, Environmental Litigation), or Jennie Roualet (Associate, White Collar, Regulatory Defense & Investigations).

*Jonathan D. Brightbill served at the U.S. Department of Justice, Environment & Natural Resources Division, from 2017 to 2021, including as Acting Assistant Attorney General responsible for certain matters noted above.

^[1] Press Release, *Justice Department's Environment and Natural Resources Division Releases Accomplishments Report for Fiscal Year 2021* (April 22, 2022), <https://www.justice.gov/opa/pr/justice-departments-environment-and-natural-resources-division-releases-accomplishments>.

^[2] United States Department of Justice Environment & Natural Resources Division, *ENRD Accomplishments Report Fiscal Year 2021*, (April 22, 2022), <https://www.justice.gov/opa/press-release/file/1496301/download>.

^[3] *Id.*

^[4] *Id.*

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