

CLIENT ALERT

Environmental Justice Alert: EPA Achieves Multi-Million Dollar Clean Air Settlement in Environmental Justice Showcase Community

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In March 2014, the U.S. Department of Justice (DOJ) and the U.S. Environmental Protection Agency (EPA) reached a significant environmental justice Clean Air Act Settlement with a chemical manufacturing plant located in Port Arthur, Texas, a community that EPA has identified with a disproportionately high exposure to pollution and attendant health and environmental concerns that impact a vulnerable population. Flint Hills Resources (Flint Hills) agreed to pay \$350,000 in civil penalties and to spend an estimated \$30 million to reduce fugitive pollutant emissions and on a diesel retrofit or replacement project. Flint Hills also will purchase and install technology to promote energy efficiency in low income area homes and will make its boundary (or "fence line") monitoring data available to the public.¹

Port Arthur is one of ten Environmental Showcase Communities chosen by EPA for environmental justice projects because EPA identified a vulnerable population that is disproportionately affected by industrial pollution. More than 50 percent of Port Arthur's residents are African-American and Hispanic. The city also has many chemical plants and refineries and is the site of a hazardous waste incinerator. Other Environmental Justice Showcase Communities include:

- Bridgeport, Connecticut;
- Staten Island, New York;
- Washington, D.C.;
- Jacksonville, Florida;
- Milwaukee, Wisconsin;
- Kansas City, Missouri;
- Kansas City, Kansas;
- Salt Lake City, Utah;
- Port of Los Angeles and Port of Long Beach, California; and
- Yakima, Washington.

EPA has committed to spending \$1 million in those communities over the next two years to help alleviate their environmental justice concerns.

While EPA's plans for each of those communities differ, in Port Arthur, EPA Region 6 is in the process of developing and implementing a comprehensive, cross-media project to begin to understand and address the cumulative effects of multiple environmental impacts in Port Arthur in response to requests from community-based organizations. The Flint Hills settlement also serves that goal, as the company has agreed to spend \$350,000 on an Environmental Mitigation Project to install environmentally beneficial energy efficiency technologies such as windows, doors, lighting, and appliances intended to reduce the energy demand in low income homes, with priority given to applicants who live in the Westside neighborhood of the City of Port Arthur. As a second Environmental Mitigation Project, Flint Hills will implement the City of Port Arthur Diesel Emissions

Reduction Project that will retrofit, repower, replace, or retire many of the City's diesel-engine fleet, including dump trucks and garbage trucks, on which Flint Hills is required to spend at least \$2 million.²

Cynthia Giles, Assistant Administrator for EPA's Office of Enforcement and Compliance assurance, has pledged that EPA's environmental justice enforcement efforts will not end with the Flint Hills settlement, but that "EPA will continue to focus on tough pollution controls and cutting edge technologies to reduce the burden of air pollution on Americans who need it most."³ In conjunction with the recent 20th anniversary of President Clinton's signing of Executive Order 12898 first announcing the federal government's environmental justice policy,⁴ facilities that are located in EPA's Environmental Justice Showcase Communities and other similar communities around the country may well see EPA enforcement actions driven by environmental justice concerns.

For a copy of the consent decree, click [here](#).

¹ Prior to entering into that settlement, Flint Hills also had taken numerous steps to reduce emissions from its flaring activities and to increase its compliance with the Leak Detection and Repair Requirements under the Clean Air Act.

² Although Environmental Mitigation Projects (EMPs) like the two projects included in the Flint Hills consent decree are increasingly included by EPA in Clean Air Act settlements, EPA has not issued any guidance on EMPs or formally defined what constitutes an EMP. It is therefore unclear where the agency draws its authority to require those projects as part of a Clean Air Act settlement. Notably, however, that term has been defined in other consent decrees, including the consent decree in *United States et al. v. American Electric Power Service Corp.*, Civil Action Nos. C2-99-1250, C2-05-360 (S.D. Ohio). Paragraph 23 of the agreement in that case defines "Environmental Mitigation Project" as "a project funded or implemented by Defendants as a remedial measure to mitigate alleged damage to human health or the environment, including National Parks or Wilderness Areas, claimed to have been caused by the alleged violations described in the complaints or to compensate Plaintiffs for costs necessitated as a result of the alleged damages." Moreover, although that term is not defined in the Flint Hills decree, Flint Hills certified when it signed the decree that it was not required to perform or develop the Environmental Mitigation Projects by any law or regulation or by any agreement, grant, or injunctive relief in any other action, that it was not intending to perform those projects other than in settlement of the claims in the decree, and that it will not receive reimbursement for any portion of the costs of those projects. See Consent Decree, ¶ 111, available at http://www2.epa.gov/sites/production/files/2014-03/documents/flinthills-cd_0.pdf. Any public statement made by Flint Hills referring to the Environmental Mitigation Projects must also state: "This project was undertaken in connection with the settlement of an enforcement action, *United States v. Flint Hills Resources*, taken on behalf of EPA under the Clean Air Act." *Id.* ¶ 112.

³ See News Release, Texas Chemical Plant Agrees to Cut Harmful Air Pollution in Overburdened Community, <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/d843453ee33e12df85257ca100556fd4!OpenDocument> (Mar. 20, 2014).

⁴To mark that anniversary, EPA developed Plan EJ 2014 to protect the environment and health in overburdened communities, to empower communities to take action on those issues, and to establish local, state, tribal, and federal partnership to achieve health and sustainable communities. See Plan EJ 14.

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