

# PUBLICATION

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## DOJ Outlines Environmental Enforcement Priorities

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Last week, on the fortieth anniversary of Earth Day, the United States Department of Justice highlighted the accomplishments of its Environment & Natural Resources Division (ENRD or Division) during fiscal year 2009 by issuing the Division's *Summary of Litigation Accomplishments (Summary)*. The *Summary* features enforcement cases won or resolved by the Division where civil penalties were imposed, corrective measures were required or criminal convictions were obtained. The *Summary* also indicates where the ENRD has focused its enforcement efforts and where they are likely to continue applying resources:

**Municipal Sewage Collection Systems.** In fiscal year 2009, the ENRD finished eight Clean Water Act cases involving municipal sewage collection systems. These enforcement actions were resolved by the municipality committing to substantial facility upgrades. For example, the cities of Nashville and Louisville entered into consent degrees requiring each municipality to invest \$400 million to upgrade their individual municipal sewer systems.

**Petroleum Refineries.** Over the past nine years the Division has addressed petroleum refinery air emissions through enforcement actions. In fiscal year 2009, the Division completed two cases under its "civil petroleum refinery initiative," that are being settled on terms requiring the refineries to install air pollution controls and to undertake projects that mitigate the effects of excess emissions.

**Cement Industry.** A newer initiative by the Division in fiscal year 2009 was civil enforcement actions against cement manufacturers operating cement kilns. The Division is resolving these cases by requiring new emission limits for nitrogen oxide, sulfur dioxide and carbon monoxide, in addition to the payment of civil penalties.

**Coal-Fired Electric Power Generating Plants.** According to the ENRD, as of the end of fiscal year 2009 the Division has completed 18 enforcement cases under the Clean Air Act against operators of coal-fired electric power generating plants. The ENRD claims that these cases involve aging facilities where pollution control upgrades have been insufficient, and so they are requiring the plants to install "state-of-the-art pollution controls." The Division is closing these enforcement matters by obtaining commitments from plant operators to reduce plant emissions of sulfur dioxide and nitrogen oxide.

**Vessels.** For several years, water pollution by ships at sea has been an area of highest criminal enforcement by the Department of Justice. Fiscal year 2009 was no exception, with the Division pursuing and obtaining criminal convictions against corporate officers and managers of shipping companies. Several of the cases included the making of false entries in the vessel's oil record book to hide impermissible discharges. The *Summary* emphasizes the Division's success in obtaining corporate convictions under the theory of respondeat superior, where the entity is held liable for the wrongful acts of its employees.

**Environmental Obligations of Bankrupt Entities.** The Division continues its aggressive enforcement in bankruptcy proceedings of environmental liabilities owing by the bankrupt estate. The ENRD highlights one particular success in the *Summary* by detailing the bankruptcy proceeding involving Asarco, LLC, a producer of copper and nonferrous metal. The Asarco bankruptcy yielded \$1.79 billion for a hazardous waste cleanup.

For a more in-depth analysis of the *Summary* or for more general information on how the DOJ's environmental enforcement policies may affect you, please contact your Baker Donelson attorney.