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# A New Intersection: Environmental Crimes and Victims' Rights

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**A**t approximately 1:20 on the afternoon of March 23, 2005, an explosion occurred during the startup of an isomerization unit at the BP Texas City refinery, killing fifteen people and injuring one hundred and seventy others. In the aftermath of this tragic incident, thousands of civil lawsuits were filed against BP for both personal injuries and property damages. In addition to the civil suits, a federal criminal investigation commenced as a result of the explosion. After an extensive investigation conducted jointly by the U.S. Attorney's Office in Houston and the U.S. Department of Justice's Environmental Crimes Section, BP and the federal government reached a negotiated resolution on October 24, 2007. BP agreed to plead guilty to a felony violation of the Clean Air Act (CAA) and pay a \$50 million criminal fine.

Typical of most corporate white collar plea agreements, the resulting settlement was achieved only after genuine and open discussions and meetings about the facts and circumstances of the case. Although both parties believed they reached an appropriate disposition—including the largest criminal fine ever assessed for a CAA violation—the crime victims concluded otherwise and argued that they were denied a seat at the table.

In October 2004, five months prior to the BP explosion, the president signed into law the Crime Victims' Rights Act (CVRA). The CVRA was intended to empower crime victims and give them an expanded, and more clearly defined, role in the criminal justice system. The CVRA provides victims with specific rights, "but unlike previous reforms, the CVRA gives crime victims direct standing to vindicate their procedural and substantive rights in criminal cases independently of prosecutors . . . and also imposes on the judiciary an affirmative obligation to 'ensure' that those rights are 'afforded.'" *U.S. v. Turner*, 367 F. Supp. 2d 319, 322 (E.D.N.Y. 2005).

Many of the relatively few judicial decisions analyzing the CVRA over the past four years have arisen in the context of drug, fraud, and murder cases, involving a discrete universe of victims. The assertion of rights under the CVRA by the victims of the BP explosion revealed the significant impact the

CVRA could have on prosecution of environmental crimes in the future. The BP case also highlighted how the crime victims, all of whom are also plaintiffs, used their rights under the CVRA to gain a tactical advantage in their civil lawsuits. Building on the BP decision, this article will explore the CVRA and its potential impact on the prosecution and settlement of major environmental crimes.

## *The Crime Victims' Rights Act*

The CVRA codifies rights that already exist in the Federal Rules of Criminal Procedure. Under Rule 32, any victim of a crime of violence or sexual abuse who is present at sentencing must be allowed to speak or submit any information about the sentence to the court before the sentence is imposed. Fed. R. Crim. P. 32(i)(4)(B). The CVRA extends the rights under Rule 32 to the victim of any federal crime, not just one of violence or sexual abuse. Specifically, the CVRA gives crime victims the following substantive rights: (1) the right to be reasonably protected from the accused; (2) the right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused; (3) the right not to be excluded from any such public court proceeding, unless the court after receiving clear and convincing evidence determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) the reasonable right to confer with the attorney for the government in the case; (6) the right to full and timely restitution as provided in law; (7) the right to proceedings free from unreasonable delay; and (8) the right to be treated with fairness and with respect for his or her dignity and privacy. 18 U.S.C. § 3771(a). If relief sought under the CVRA is denied by the district court, the CVRA allows crime victims to petition for a writ of mandamus from the court of appeals and requires the appellate court to "take up and decide such application forthwith within 72 hours after the petition has been filed." *Id.* § 3771(d)(3).

The CVRA provides that a violation of a victim's rights will not provide grounds for a new trial and allows a victim's motion to re-open a plea or sentence only when (1) the victim has asserted the right to be heard before or during the

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proceeding at issue and such right was denied; (2) the victim petitions the court of appeals for a writ of mandamus within ten days of the district court's denial; and (3) in the case of a plea, the accused has not pled to the highest offense charged. *Id.* § 3771(d)(5).

The CVRA contains limitations, including the notion of “reasonableness,” attached to many of the enumerated rights, although the limited case law suggests that the government, district courts, and crime victims may not agree on how “reasonableness” should be defined. Despite these limitations, the assertion of CVRA rights by victims of the BP explosion proves that the statute has the potential to dramatically change the manner in which environmental crimes are prosecuted and the ability of prosecutors and defendants to resolve such charges through plea agreements.

### ***The BP Case***

After a two-year criminal investigation of the events related to the explosion, BP agreed to plead guilty to a knowing violation of the CAA's risk management plan provisions, which was, according to the parties, the highest offense that could be charged. Gov't's Response to Victims' Joint Memo. in Opposition of Plea Agreement at 23, *United States v. BP Prods. N. Am.*, 2008 WL 501321 (S.D. Tex. Feb. 21, 2008). Under the agreement, BP was required to pay a \$50 million fine and serve three years of probation. *Id.* As a condition of probation, BP was required to implement numerous process safety and environmental improvements at its Texas City Refinery, at significant cost to BP. *Id.*

Prior to signing the plea agreement—in fact, before any charging instrument was filed—the government filed an *ex parte* motion informing the court of the ongoing plea negotiations between the government and BP and requesting “an order outlining the procedures to be followed” under the CVRA. *BP Prods. N. Am.*, 2008 WL 501321 at \*1. The government's motion referenced the large number of victims and explained that consultation with the victims prior to reaching a plea agreement was impracticable. The government also asserted that informing the victims of a possible settlement would result in extensive and prejudicial media coverage, which would jeopardize both the plea agreement itself and, in the event the plea deal fell through, the fairness of the trial. *Id.* at \*1–2. The government recognized that the CVRA gave victims a “reasonable right to confer with the attorney for the Government,” but referred to the CVRA provision requiring the court to “fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings” in the event that the “number of crime victims makes it impracticable to accord all of the crime victims the rights” enumerated in the Act. *Id.* at 2; 18 U.S.C. § 3771(d)(2).

In a sealed order issued the same day as the government's *ex parte* motion, the district court agreed with the government that notifying the victims prior to public announcement of the plea agreement would be impracticable because of the number

of victims and the possibility of prejudicial media coverage. The court also accepted the government's justification for delaying notification despite the victims' rights under the CVRA to confer with the government's attorney and ordered that the government provide “reasonable notice to all identifiable victims and afford the victims of the rights set forth in the CVRA prior to actual entry of the guilty pleas”—but only after the parties had executed the plea agreement. *Id.*

Within a week, the plea agreement was signed by the United States and BP, and a day later the settlement was announced at a press conference. Following the press conference, the United States began to notify victims through an informational Web site and telephone hotline as well as multiple mailed notices. Additionally, the government made available a victim-witness coordinator for the U.S. Attorney's Office and established a procedure by which victims could submit “victim impact statements” to the court. The government and BP subsequently filed a joint motion asking the court to waive the presentence investigation and report (PSR) typically required under the Federal Rules of Criminal Procedure, noting that BP's ability to pay the fine was not at issue.

A week before the hearing on the proposed plea, twelve victims from the explosion requested that the court reject the proposed plea agreement or, in the alternative, require the preparation of a PSR and postpone a decision on whether to accept the plea agreement. Nine other victims filed a similar motion three days later. The victims claimed that the plea agreement was too lenient (i.e., the fine was too low) and that they were intentionally kept in the dark with respect to the status of the negotiations and the resulting agreement. The district court held that the victims could submit statements and supporting information opposing the proposed plea agreement. By the time of a February 4, 2008, hearing, one hundred and thirty-four individuals had filed victim impact statements with the court; ten individuals—those present who wanted to speak—gave oral statements at the hearing.

In a detailed opinion, the district court rejected the victims' allegations that their rights under the CVRA were violated, in part because the victims had been provided an opportunity to address the court with respect to their views about the validity of the agreement. 2008 WL 501321 at \*7–22. The victims then promptly petitioned the Fifth Circuit for a writ of mandamus. In order to satisfy the CVRA's 72-hour time limit, the Fifth Circuit granted the mandamus petition in part by ordering the district court “to take no further action to effect the plea agreement” pending further order from the appellate court. *In re Dean*, 527 F.3d 391, 393 (5th Cir. 2008).

On May 7, 2008, the Fifth Circuit held that the government violated the victims' rights under the CVRA, but nonetheless denied the victims' request for mandamus relief, holding that, “for prudential reasons,” a writ of mandamus would not be appropriate under the circumstances. *Id.* at 394. The court of appeals supported its holding by pointing out that the victims were ultimately notified of the agreement and “were allowed substantial and meaningful participation at the February 4 hearing.” *Id.* at 395. Accordingly, the appellate

court reasoned, the district court “has the benefit of the views of the victims who chose to participate at the hearing or by their various filings.” *Id.* at 396. The appellate court concluded by noting its “confiden[ce] . . . that the conscientious district court will fully consider the victims’ objections and concerns in deciding whether the plea agreement should be accepted.” *Id.*

### **Designation of “Victims” under the CVRA**

The potential impact of the CVRA on criminal environmental prosecutions and settlement agreements turns on the definition of “victim” under the statute. The Act defines a “crime victim” as “a person directly and proximately harmed as a result of the commission of a federal offense or an offense in the District of Columbia.” 18 U.S.C. § 3771(e). In the case of a crime victim who is a minor, incompetent, or incapacitated, the legal guardians of the victim may assert the victim’s rights under the CVRA; similarly, the representatives of a deceased crime victim’s estate, as well as family members “or any other persons appointed as suitable by the court, may assume” the victim’s rights. *Id.* While some crimes, such as murder or fraud, clearly have a “direct and proximate” effect on an easily identifiable victim, discerning who the “victim” is in an environmental crime case poses a greater obstacle—an obstacle not contemplated by the statute itself.

A recent case in Corpus Christi, Texas, demonstrates the significant impact that the CVRA will have on sentencing in an environmental crimes prosecution. On June 27, 2007, CITGO Petroleum Corporation and CITGO Refining and Chemicals Company L.P. (CITGO) were convicted of two felony counts for operating two tanks as oil/water separators without the required emission control equipment in violation of the CAA. *U.S. v. CITGO*, Crim. No. CR-06-563 (S.D. Tex. June 27, 2007) (*CITGO*). At trial, witnesses testified that emissions from the tanks could be detected in the facility’s surrounding communities in the form of a foul-smelling odor. In preparation for sentencing, and to meet its obligations under the CVRA, the government held community meetings a few months after CITGO’s conviction to determine who may have been victims of the refiner’s illegal conduct. In fact, the government acknowledged that “it has an affirmative duty to advocate on behalf of these crime victims who were exposed to these emission events.” Gov’t’s Memo. in Support of a Finding That the Representative Victim/Witnesses are Crime Victims Pursuant to the CVRA at 4.

In such a case, will every resident who could smell the odors in the surrounding area of the refinery be a “victim” under the CVRA with respect to the CAA criminal violation, or will some additional injury be required? Moreover, if some of the residents are victims under the statute, how far will that status extend? If the resident belongs to an environmental justice group, will that organization have victim status?

In *CITGO*, the government argued that the district court had to determine whether, by a preponderance of the evidence, CITGO’s illegal operation of the tanks resulted in

emissions that caused direct or proximate harm to any person or persons living, working, or visiting in the neighborhoods surrounding the refinery. As a result, almost one year after CITGO’s conviction, a nine-day presentencing hearing was held to determine whether the odor events traced to the tanks were the direct and proximate cause of the health effects suffered by the victims. As of this writing, the district court has not yet set a sentencing date and the parties have filed additional briefs on the causation issue (i.e., whether CITGO’s conduct was the direct and proximate cause of the harm suffered by the victims). An important lesson from *CITGO* is that the CVRA will most likely add another tier of litigation on the back end of the prosecution, similar to the sentencing phase in a death penalty case. Thus, an unintended consequence of the CVRA may be a significant delay in proceeding to sentencing and final resolution of the criminal matter.

In some situations, such as fraud cases, courts readily confer victim status on everyone defrauded by a defendant, even when there are “tens of thousands” of individuals entitled to assert rights under the CVRA. *In re W.R. Huff Asset Mgmt. Co., LLC*, 409 F.3d 555, 559 (2d Cir. 2005); see also *Turner, supra*, 367 F. Supp. 2d at 327. However, where the harm from the defendant’s crime is not so obvious or direct, courts have been conservative in their interpretation of the CVRA’s definition of “victim.” The Tenth Circuit recently considered whether the parents of a decedent were “victims” where the criminal defendant had illegally sold a handgun to a juvenile who, months later, used the gun on a shooting rampage that resulted in the deaths of five people, including the petitioners’ daughter, at a shopping center. *In re Antrobus*, 519 F.3d 1123 (10th Cir. 2008). In evaluating the mandamus petition, the court of appeals employed an analysis similar to that used to determine proximate cause in a tort context, weighing such factors as foreseeability and independent, intervening causes. *Id.* at 1126–27. The court of appeals ultimately determined that the parents of the daughter who was killed were *not* victims within the meaning of the CVRA where the district court had found that the seller of the handgun in question was unaware of the murderer’s intentions when he sold the gun, and the murderer was an adult when he actually used the gun several months after the purchase. *Id.*

In *United States v. Sharp*, 463 F. Supp. 2d 556, 566–67 (E.D. Va. 2006), the district court employed a proximate cause analysis in holding that the former domestic partner of a marijuana user was not a victim of a marijuana dealer even if she could prove that she suffered abuse at the hands of the marijuana user while he was high on marijuana purchased from the defendant. In reaching this conclusion, the district court looked at whether the harm resulted from “specific conduct underlying the elements” of the crime charged—in that case, conspiracy to possess with intent to distribute marijuana. *Id.* at 564. The district court observed that the alleged physical and emotional injury suffered by the victim at the hands of her partner “neither assisted [the dealer-defendant] in the commission of his federal offense, nor was it an essential element necessary for the accomplishment of his criminal acts.” *Id.*

Despite the fact that the defendant pled guilty to conspiring to distribute marijuana, the court held that “linking this fact to [the petitioner’s] abuse is too attenuated, either temporally or factually, to confer ‘victim’ status on [the petitioner].” *Id.* at 566.

Analyzing the CITGO CAA violation scenario described above in the context of the existing case law suggests that all residents who claim that they were adversely affected by the emission releases from CITGO’s refinery would likely have victim status under the CVRA. Interestingly, the district court allowed the government to present testimony of selected victims whose experiences and health effects were representative of others in the community. The CVRA expressly allows a district court to set a “reasonable procedure” in a case where there could be hundreds or thousands of potential crime victims. 18 U.S.C. § 3771(d)(2). However, the environmental group of which a resident was a member would probably be too removed from the initial violation to merit victim status; any harm to the group would likely be too attenuated to support designating the group as a “victim” entitled to assert rights under the CVRA.

The issue of temporal proximity raised by the *Sharp* court could further complicate the “victim” determination in the environmental crimes context. While some environmental violations, such as those to which BP pled guilty, have catastrophic effects that are felt immediately, other criminal environmental violations have impacts that might not be felt until long after the conclusion of a federal investigation and prosecution. Imagine that a CWA permit holder released pollutants into a navigable water that serves as a source of drinking water for a community. Imagine further that, over time, the release leads to the development of chronic diseases in the populations using or drinking the contaminated water. The federal government, however, prosecutes the criminal action for the violation to a conclusion before anyone manifests an illness from the exposure. If individuals do not know, or are not able to demonstrate, that they have been harmed, they may not be able to establish victim status under the CVRA.

Beyond the threshold issue of whether individuals affected by an environmental crime will know that they are victims under the CVRA (and therefore entitled to certain rights) is the issue of how the district court will know who the victims are. The CVRA requires that in any court proceeding involving an offense against a crime victim the court “ensure that the crime victim is afforded” the Act’s eight enumerated rights. 18 U.S.C. § 3771(b). How are courts to do this in a situation where the environmental crime has occurred but some of its impacts are not yet felt? Even when the harm is complete, identification of victims poses a logistical problem for courts seeking to comply with the CVRA’s mandate. One magistrate judge suggested a “proactive” approach that “would require courts to provide an avenue for victims to identify themselves directly, and, once so identified . . . to do more than simply rely on the prosecutor to provide notice of such court proceedings by taking steps to provide such notice it-

self.” *Turner*, 367 F. Supp. 2d at 324. However, while the same judge stated that such a “systematic approach to the implementation of the CVRA may be inevitable,” the judge added, “it is also, of course, beyond my authority.” *Id.* Complicating matters is the fact that a single environmental violation has the potential to injure a large number of people, and criminal environmental violations have the potential to cause harm on an even greater scale because these crimes are often committed intentionally and under the cover of darkness.

### ***Reasonable Right to Confer***

Given this potential for hundreds and even thousands of “victims” in the environmental crimes context, the most problematic among the CVRA’s provisions—at least in terms of reaching efficient and fair settlements—may be the Act’s guarantee of a victim’s “reasonable right to confer.” There is little case law on what this right entails, particularly in the context of a plea agreement.

In *Sharp*, the district court rejected the would-be victim’s claim that the government had denied her the reasonable right to confer, noting that “certain documents filed under seal . . . reveal an extensive and ongoing communication” between the would-be victim and the government. 463 F. Supp. 2d at 568, n. 20. In considering a CVRA claim in the context of a fraud case with “tens of thousands” of victims, the Second Circuit found no CVRA violation where the petitioners offered no evidence showing that they asked the government to confer with them and were subsequently rejected by the government. *Huff*, 409 F.3d at 564. The court of appeals observed that “[n]othing in the CVRA requires the Government to seek approval from crime victims before negotiating or entering into a settlement agreement.” *Id.* Similarly, in *United States v. Turner*, the District Court for the Eastern District of New York observed that “some proactive steps seem to be required” under the CVRA but that “the statute just as clearly does not, in most circumstances, require courts to adopt every conceivable procedure that might protect the exercise of victims’ rights.” 367 F. Supp. 2d at 323.

The District Court for the District of Utah interpreted the right broadly, quoting from the congressional floor debate to support its assertion that the right to confer is not limited to particular proceedings but instead is “‘intended to be expansive,’ and applies broadly to any critical stage or disposition of the case.” *United States v. Heaton*, 458 F. Supp. 2d 1271, 1273 (D. Utah 2006).

If every victim in a large-scale environmental case were given unfettered access to the government’s attorney at every stage of the case, criminal prosecutions could be significantly delayed, and the government’s resources stretched thin. Fortunately, the Act itself limits the right by use of the word “reasonable.” Taken together with the CVRA’s multiple crime victim provision, which allows the court to “fashion a reasonable procedure” to protect victims’ rights under the Act, the basic logistical problem can be avoided.

The right to confer also implicates prosecutorial discre-

tion. Though the CVRA states that “[n]othing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction,” 18 U.S.C. § 3771(d)(6), it is not clear how far the government must go to satisfy this right. What kind of access to the government does the Act contemplate? How much insight into victims’ opinions and preferences is sufficient? Moreover, how should the government proceed when a victim seeks to confer prior to the guilt or sentencing phase of the case, when an ongoing federal criminal investigation may preclude the government from disclosing certain information? Finally, how should the government balance the need to confer with victims against the very real possibility that such conference may frustrate a plea agreement and ultimately prejudice a trial?

All of these issues arose in the BP case, many directly raised by the government in its original *ex parte* motion and in its response to the victims’ joint memorandum opposing the proposed plea agreement. In particular, in its reply to the victims’ memorandum, the government stressed the different burdens of proof in the civil lawsuits brought by the victims and the federal criminal prosecution and noted different standards regarding disclosure of information in the two forums. In the context of the BP case, should the government have held periodic “town hall” meetings with the crime victims to discuss the status of the plea negotiations? For example, suppose during the course of the settlement negotiations, BP made an initial settlement offer and disclosed certain facts with respect to how it would defend itself at trial. Is the government required to disclose the settlement figure and communications to the crime victims? If the government did disclose confidential communications made during the plea negotiations, would such disclosure violate Rule 11 of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence? The district court in the BP case noted that “plea bargaining has long been recognized as an essential component of the administration of justice. ‘Properly administered, it is to be encouraged.’ *Santobello v. New York*, 404 U.S. 257, 260, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971). ‘If such a policy is to be fostered, it is essential that plea negotiations remain confidential to the parties if they are unsuccessful.’ *United States v. Verdoorn*, 528 F.2d 103, 107 (8th Cir. 1976).” *United States v. BP Prods. N. Am.*, 2008 WL 501321 (S.D. Tex. Feb. 21, 2008). Not surprisingly, such disclosure could have significant negative consequences for the company, in particular, getting a preview of BP’s potential defenses. Ultimately, if this is the type of disclosure that is required by the CVRA, a company will be more guarded during negotiations in fear that the information it discloses may find its way through victims to the mainstream media.

The Fifth Circuit found a violation of the victims’ rights under the CVRA as a result of the government’s decision to consult the victims after the agreement had been executed rather than during the plea negotiation process. However, this result is of limited use in determining what constitutes the reasonable right to confer; it is quite possible that had the

government afforded the victims such prior notice the right to confer would have been observed even if the victims had no impact on the terms of the agreement.

### ***The Right to Be Reasonably Heard***

Another controversial provision of the CVRA guarantees victims “the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.” 18 U.S.C. § 3771(a)(4). The phrase “reasonably heard” raises two issues, the resolution of which could have major implications in environmental criminal prosecutions and other cases involving a large number of victims. First, by use of the term “reasonably,” the right to be heard is not an absolute right but one that may be limited by the district court. Second, considerable debate surrounds the meaning of “heard.” Specifically, does “heard” refer to the victim’s right to speak in open court or to simply make an opinion known to the court through a written statement? If the CVRA is read to give *all* victims a mandatory right to speak at any public proceeding described in the statute, the sentencing phase of environmental crimes could be extended significantly in environmental cases with multiple victims should they all seek to exercise the “right.”

The Third and Ninth Circuits have held that the right to be heard confers on the victim a right to *speak* at any proceeding described in this provision of the CVRA. *United States v. Vampire Nation*, 451 F.3d 189, 197 n. 4 (3d Cir. 2006); *Kenna v. United States Dist. Court for the Cent. Dist. of Cal.*, 435 F.3d 1011 (9th Cir. 2006). In *United States v. Degenhardt*, 405 F. Supp. 2d 1341, 1349, 1351 (D. Utah 2005), the district court held that the “right to be reasonably heard” not only refers to a right to speak in open court but also to the fact that the right is “mandatory” and not subject to the discretion of the court. The district court explained that the word “reasonably” referred to certain situations where a victim would be unable to speak for reasons independent of the court’s discretion, e.g., “if the victim is incarcerated on unrelated matters at the time of the proceedings or if a victim cannot afford to travel to a courthouse.” *Id.* at 1346. The *Degenhardt* opinion goes so far as to say that “the CVRA commands that victims should be treated equally with the defendant, defense counsel, and the prosecutor.” *Id.* at 1348.

### ***A Changing Environmental Crimes Prosecution Landscape***

Despite the CVRA’s statement that “[i]n no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter,” 18 U.S.C. § 3771(d)(3), the BP case makes clear that CVRA claims in an environmental crimes case can extend proceedings by far longer than five days. All parties seem to have satisfied the CVRA’s deadlines: the victims filed their petition for mandamus within ten days of the district court’s order, and the appellate court acted on the petition within the 72-hour time frame. However, the Fifth Circuit’s final decision denying the writ of mandamus was not issued for another six weeks,

and the district court did not take any further action until more than two months after that. Some of the delay may have to do with uncertainty regarding how to apply the relatively new CVRA in a case with so many victims; more experience with the statute should reduce the delays. To a certain extent, though, delay will be inevitable in environmental criminal cases with many victims who assert the CVRA in either opposing a plea agreement or advocating their rights during the sentencing phase of the trial. The government and the court may do everything in their power to ensure that the victims are all heard and their CVRA rights observed, avoiding the need for a mandamus petition, but, if they do so, they will be extending the entire criminal prosecution process.

In an ideal world, this extended consultation with and hearing from victims would inform the government's attorney and result in a plea agreement that would not only satisfy the prosecutor but also be proportionate to the harm inflicted on the victims. However, the type of CVRA outcome feared by the government in the BP case could be more likely, particularly in the case of large-scale environmental crimes that have

already generated a great deal of press coverage and negative public opinion. In such a situation, where a large number of victims are given notification of and access to complex and fragile negotiations, negative publicity may combine with a drawn-out timetable to thwart a plea agreement. In the context of prosecutions for environmental crimes, this would be a great loss to society as a whole. It would risk not only the guaranteed, if limited, victory for the government, but also the resources saved by avoiding litigation and the benefits of supplemental environmental projects that often accompany such settlements.

Moreover, *CITGO* reveals that the CVRA will most likely lead to further litigation during the sentencing phase of the prosecution over who is a "crime victim." Under either scenario, however, the CVRA has extended the length of time in which an environmental prosecution can be brought to a conclusion, whether by plea agreement or sentencing. The CVRA is reshaping the environmental crimes prosecution landscape, and all involved in the criminal process must now consider strategically the CVRA's impact at the very outset of the case. 🌳