



## NELC serves intent to sue over clean air violations

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AK Steel's facility in Dearborn, Mich. NELC has served AK Steel a notice of this facility's violations of the Clean Air Act.

DEARBORN, Mich.—On March 3, NELC announced that it had served AK Steel, one of Michigan's most notorious polluters, with a detailed Notice of Violation of the federal Clean Air Act. The notice, which NELC attorneys filed in partnership with attorneys from the Great Lakes Environmental Law Center on behalf of the Sierra Club and Environment Michigan, is a statutory prerequisite to the filing of a lawsuit to address thousands of pollution exceedances from AK Steel's Dearborn, Michigan, facility.

Located just outside of Detroit, Dearborn is home to a large immigrant population, with one of the highest concentrations of Arab Americans in the United States. One hundred and fifty thousand people live within three miles of AK Steel Dearborn Works, which has long been out of com-

pliance with emission limits for lead, manganese, and small particulate matter. The facility is located within two miles of a residential mosque and directly across the railroad yard from the local elementary and middle schools.

Children learn and play in the shadows of this facility, yet they are particularly susceptible to the neurotoxic effects of the lead and manganese it pumps into the air above them. Teachers report wiping soot from the plant off of the tables, windowsills, and walls inside their classrooms, and a middle school coach has to clean particulate matter off his shoes after spending an afternoon on the athletic field. In surrounding neighborhoods, asthma, which is associated with particulate matter exposure, is a frequent occurrence, as are other air-related health issues.

Local activists have been calling on AK Steel to take stronger action to protect the Dearborn community for years. However, despite receiving repeated violation notices—sometimes as many as four per month—the steel plant has made few improvements. NELC's legal action aims to remedy the situation and compel AK Steel to become the "community partner" it has claimed to be in promotional materials.

"Students deserve to learn in environments free from heavy pollution," says Eman Ahmen, a local educator. "We just want AK Steel to be a good neighbor. The public health of local students, teachers, and staff depend on it."



# Federal judge hits Exxon—again—with record-setting penalty

HOUSTON—For the second time in this long-running legal battle, a federal judge in Houston has ordered ExxonMobil Corporation to pay a record-setting penalty for its history of illegal air pollution.

The amount, \$14.25 million, ranks as the largest civil penalty ever imposed in a citizen-initiated lawsuit to enforce the Clean Air Act.

In an opinion issued on March 2, 2021, U.S. District Court Judge David Hittner found that the plaintiffs in the case, Environment Texas and the Sierra Club, had proven at trial that 3,651 instances of illegal flaring and unauthorized releases of pollutants from Exxon’s Baytown, Texas, refinery and chemical plant complex caused or contributed to smoke, chemical odors, flames, allergy-like symptoms, and respiratory impacts that were “fairly traceable” to

injuries suffered by members of the groups living in the area.

These new, more detailed findings represent another major defeat in the case for Exxon and its scorched-earth legal strategy.

“Exxon has been fighting this case for 11 years, refusing to take responsibility for spewing 10 million pounds of illegal pollution into Texas communities, but we will see this through and hold this polluter accountable,” said NELC senior attorney Josh Kratka.

The new ruling came following a remand of the case back to the district court from the federal Fifth Circuit Court of Appeals.

Last July, a three-judge Fifth Circuit panel rejected most of the arguments Exxon had made in its appeal of the

original \$19.95 million penalty imposed in this case.

But the appellate court nonetheless sent the case back to Judge Hittner to determine just how many of the 16,386 Clean Air Act violations proven at trial could be directly tied to the harms identified in testimony by Sierra Club and Environment Texas members who live or work near the sprawling 3,400-acre facility.

Such a determination, ruled the appellate court, was necessary to confirm that the groups had “standing” under the U.S. Constitution to bring suit for Exxon’s violations.

In addition to finding that thousands of those violations were “capable of causing” the plaintiffs’ injuries, Judge Hittner flatly rejected Exxon’s “act of God” defense, finding that Exxon itself was responsible for the vast amounts of pollution released during the facility’s “startup” and “shutdown” around Hurricane Ike in 2008.

In enhancing his penalty assessment by 10 percent over and above the amount by which Exxon had profited by failing to prevent its violations, Judge Hittner pointed to the fact that, even looking only at the scaled-down number of “fairly traceable” violations, Exxon had still committed an average of more than one violation every single day from October 2005 through September 2013.

The case now heads back to the Fifth Circuit for further review.

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A federal judge in Houston has again ordered ExxonMobil Corporation to pay a record-setting penalty for its history of illegal air pollution from its facility in Baytown, Texas.

# Sustainable farming fund produces innovative approaches to reducing agricultural pollution

JACKSONVILLE, Fla.—Created as part of the settlement of a Clean Water Act lawsuit brought by NELC attorneys against a Pilgrim’s Pride chicken processing plant (see page 4), the Sustainable Farming Fund (SFF) has been helping Florida farmers rethink their relationship with the aquatic environment.

The SFF, administered by the Institute for Water and Environmental Resilience at Stetson University, has awarded 28 grants designed to help farmers reduce their “nutrient footprint” on adjacent waterways. On Feb. 15, the SFF filed its final report with the U.S. District Court for the Middle District of Florida. Although they are still preliminary, the results are encouraging.

The \$1.3 million fund was designed to help local farmers operate more sustainably, with the hope that at least some of the lessons learned would be applicable to the wider agricultural community. The SFF particularly targeted small family farms with slim profit margins, as they are often unable to acquire the necessary equipment or labor to try new techniques.

Farms most frequently used SFF grants to implement rotational cattle practices, no-till planting, and cover crops. Rotational practices involve building fences and moving water troughs so cattle can graze in different pastures, thus reducing the impact on any one area. No-till planting avoids the soil disruption inherent to tilling, thereby conserving water, preventing erosion, and improving soil health. Cover crops planted during a cash crop’s off-season, or between rows of crops, decrease erosion, water evaporation, and nutrient leaching. SFF grantees often implemented these methods alongside



Rotational cattle practices, such as moving water troughs so cattle can graze in different pastures, are some of the techniques farmers can use to minimize their environmental impact.

other nutrient-reduction techniques, such as precision fertilization and side dressing.

#### Additional highlights:

- Three projects involved educational components: a set of cover crop sample farms, a demonstration of targeted fertilizer application, and a project at a local high school.
- One farm completely converted from intensive row crops (a fertilizer-intensive method that can cause erosion and leaching) to a cow and calf pasture operation, significantly decreasing its water consumption and fertilizer application.
- Two farms dedicated a portion of their land to conservation easements, which will protect rural land from future development and its associated environmental costs.
- One dairy farm built a large free-stall barn to enable the control and treatment of waste from its dairy cows, significantly reducing nutrient leaching from manure.

Based on scientific literature regarding cover crops, one farm estimated that it could reduce nitrogen leaching by 700,000 pounds per year, while another

calculated that it could decrease fertilizer application by 100 pounds per acre. Some farms report 20-33 percent decreases in fertilizer application after implementing precision fertilization and rotational farming. This represents hundreds of pounds of annual fertilizer reductions for each farm. These results suggest that the SFF will be a force for positive changes in farming practices, both in the Suwannee River region and nationwide.

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## Pilgrim's Pride settlement a boon to sustainable farming

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The Suwannee River is a critical resource for North and Central Florida.

JACKSONVILLE, Fla.—Three years ago, NELC attorneys won a major victory in a Clean Water Act lawsuit against one of the world's largest chicken producers, Pilgrim's Pride. The lawsuit involved pollutant discharges to the Suwannee River, a waterway of critical ecological and economic importance to Florida.

The Suwannee is made up of 185 freshwater springs that provide an invaluable water source for Florida wildlife, residents, tourists, and agricultural producers. Poor pollution management practices (such as those targeted in the Pilgrim's Pride lawsuit) directly contaminate the waterway, but nutrient overload from agricultural runoff is also a major threat to the river. For this reason, our settlement of the lawsuit not only required pollution reduction from Pilgrim's Pride, but also allocated \$1.3 million of the \$1.43 million penalty paid by the company to the creation of a Sustainable Farming Fund to promote sustainable farming and enhanced conservation of the Suwannee River.

NELC recently received the 2018-2021 Final Report of the Sustainable Farming Fund, and the encouraging results of the projects made possible by that Fund are summarized on page 3.

### About NELC

The National Environmental Law Center (NELC) is a nonprofit research and litigation center. With the support of our members, we are dedicated to enforcing anti-pollution laws and promoting long-term solutions to the nation's pressing environmental problems. Visit us online at [www.nelconline.org](http://www.nelconline.org), call us at (800) 841-7299, or email [nelc@nelconline.org](mailto:nelc@nelconline.org).

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