

# TITLE 5 ENVIRONMENTAL AND NATURAL RESOURCES DIVISION

---

<b>5-1.000</b>	<b>Policy</b>
<b>5-2.000</b>	<b>Prior Approvals</b>
<b>5-3.000</b>	<b>Organization of the Division</b>
<b>5-4.000</b>	<b>[Reserved]</b>
<b>5-5.000</b>	<b>Procedures</b>
<b>5-6.000</b>	<b>The Environmental Defense Section</b>
<b>5-7.000</b>	<b>The General Litigation Section</b>
<b>5-8.000</b>	<b>The Appellate Section</b>
<b>5-9.000</b>	<b>The Policy, Legislation and Special Litigation Section</b>
<b>5-10.000</b>	<b>The Wildlife and Marine Resources Section</b>
<b>5-11.000</b>	<b>Environmental Crimes</b>
<b>5-12.000</b>	<b>Environmental Enforcement Section</b>
<b>5-13.000</b>	<b>[Reserved]</b>
<b>5-14.000</b>	<b>The Indian Resources Section</b>
<b>5-15.000</b>	<b>Land Acquisition Section</b>

- 5-1.100 General Policy and Responsibilities**
  - 5-1.200 Litigation Involving the Environmental Protection Agency**
  - 5-1.300 Supervision and Handling of Environment and Natural Resources Division Cases -- Generally**
  - 5-1.302 Pleadings To Be Signed by the Assistant Attorney General**
  - 5-1.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases**
  - 5-1.320 Actions Not Subject to Direct Referral to United States Attorneys**
  - 5-1.321 Prior Authorization Needed to Initiate Action**
  - 5-1.322 Assignment of Actions Generally**
  - 5-1.323 Cases Assigned to United States Attorneys**
  - 5-1.324 Cases Assigned as a Joint Responsibility**
  - 5-1.325 Cases for Which the Division Is Assigned Responsibility**
  - 5-1.326 Review and Change of Case Assignments**
- 

### **5-1.100 General Policy and Responsibilities**

The Environment and Natural Resources Division, which was created in 1909, represents the United States, its agencies and officials in matters relating to environmental quality, public lands and natural resources, Indian lands and native claims, and wildlife and fishery resources. The Division's responsibilities are varied and include both enforcement and defensive work, in both criminal and civil cases. More specifically, responsibilities of the Environment and Natural Resources Division are set forth in 28 C.F.R. § 0.65.

### **5-1.200 Litigation Involving the Environmental Protection Agency**

With respect to any matter assigned to the Environment and Natural Resources Division in which the Environmental Protection Agency is a party, the Assistant Attorney General in charge of the Environment and Natural Resources Division, and such staff as he/she may specifically designate in writing, are authorized to exercise the functions and responsibilities undertaken by the Attorney General in the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency (42 Fed.Reg. 48942), except that Subpart Y of 28 C.F.R. Part 0 shall continue to govern as authority to compromise and close civil claims in such matters.

### **5-1.300 Supervision and Handling of Environment and Natural Resources Division Cases -- Generally**

All cases within the area of responsibility of the Environment and Natural Resources Division are subject to the supervision and control of the Assistant Attorney General in charge of the Environment and Natural Resources Division. As is hereinafter more fully set forth, the responsibilities for direct handling of cases are divided into four general classifications: (1) cases for which authority has been delegated to the United States Attorneys which may be directly referred to him/her by an authorized field officer or a federal department or agency, *see* USAM 5-1.310; (2) cases which are delegated to the United States Attorneys by the Assistant Attorney General of the Division for which the United States Attorneys are assigned primary responsibility, *see* USAM 5-1.323; (3) cases which the Assistant Attorney General of the

Division determines shall be the joint responsibility of the Division and the United States Attorney, *see* USAM 5-1.324; and (4) cases for which the Division retains primary responsibility, *see* USAM 5-1.325.

### **5-1.302 Pleadings To Be Signed by the Assistant Attorney General**

In all civil cases where the United States is a plaintiff, other than direct referral cases, *see* USAM 5-1.310 and specific cases or classes of cases the Assistant Attorney General exempts from this requirement, arising from matters in the litigating sections, all complaints, or agreements for entry of judgment or dismissal shall be signed, prior to filing, by the Assistant Attorney General, unless otherwise expressly delegated.

### **5-1.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases**

Actions which may be initiated by the United States Attorneys without prior authorization from the Environment and Natural Resources Division are listed in Environment and Natural Resources Division Directive No. 16-99. The pertinent portion of the amended Directive provides generally as follows:

#### **AUTHORITY TO INITIATE CASES**

#### **1. Delegation to United States Attorneys**

##### **A. Land Cases.**

(1) United States Attorneys are hereby authorized with respect to Environment and Natural Resources Division cases to act in matters concerning real property of the United States, including tribal and restricted individual Indian land, not involving new or unusual questions or questions of water rights, on behalf of any department or agency in response to a request in writing from a person authorized to make the request on behalf of the field office of that department or agency ("authorized field officer"), without prior authorization from the Environment and Natural Resources Division, in the following described cases:

(a) Actions to recover possession of or quiet title to property from tenants, squatters, trespassers, or others, and actions to enjoin trespasses;

(b) Actions to recover damages resulting from trespasses when the amount of the claim for actual damage based upon an innocent trespass does not exceed \$1,000,000, and actions to recover amounts exceeding \$1,000,000:

(i) if the actual damages are \$1,000,000 or less and applicable state law permits the recovery of multiple damages, e.g., double or treble, for either a willful or an innocent trespass; or

(ii) if the actual damages are \$1,000,000 or less, but the action is for conversion to obtain recovery of the enhanced value of property severed and removed in the trespass;

(c) Actions to collect delinquent rentals or damages for use and occupancy of not more than \$1,000,000;

(d) Actions to collect costs of forest fire suppression and other damages resulting from such fires;

(e) Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects and federal reclamation projects of not more than \$1,000,000;

(f) Actions to collect loans of money or livestock made by the United States to individual Indians without limitation on amount, including loans made by Indian tribal organizations to individual Indians if the loan agreements, notes and securities have been assigned by the tribal organizations to the United States; and

(g) Actions in which the United States is named as a party pursuant to 28 U.S.C. §§ 2410(a)(3) and (4).

(2) Before initiating proceedings pursuant to this subsection, the United States Attorney shall insure that a copy of the authorized field officer's written request has been forwarded to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

##### **B. Other Civil Environmental Cases.**

(1) United States Attorneys are authorized to act, without prior authorization from the Environment and Natural Resources Division, on behalf of the Secretary of the Army, acting through the Corps of Engineers, in response to a request in writing from an authorized field officer of the Corps of Engineers in the following civil environmental cases:

(a) Civil actions involving the filling or the deposit of dredged or fill material into, or the alteration of the channels of, the waters of the United States, in violation of section 10 of the River and Harbor Act of 1899 (33 U.S.C. § 403), or of section 404 of the Federal Water Pollution Control Act Amendments of 1972 ("Clean Water Act") (33 U.S.C. § 1344), or of both statutes;

(b) Civil actions involving the discharge of refuse into the navigable waters of the United States, and, in certain cases, their tributaries, in violation of section 13 of the River and Harbor Act of 1899 (33 U.S.C. § 407), except for *in rem* actions against vessels, which actions shall continue to be under the jurisdiction of the Civil Division.

(2) The authority set forth in subparagraphs B.(1)(a) and B.(1)(b) of this paragraph is, however, revocable on a case by case basis where, in the opinion of the Assistant Attorney General, important or novel issues of law or policy are involved. Generally speaking, direct referral cases are of a routine nature and involve statutory provisions whose interpretation is well-settled. Prior to initiating proceedings pursuant to subparagraphs B.(1)(a) or B.(1)(b) of this paragraph, the United States Attorney shall insure that a copy of the authorized field officer's written request and the litigation report has been forwarded to the Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. United States Attorneys are encouraged to consult with the Environment and Natural Resources Division on these cases.

(3) United States Attorneys are also authorized to handle the following matters without prior authorization from the Environment and Natural Resources Division:

(a) Cases brought on behalf of the United States Coast Guard in response to a written request from an authorized field officer, seeking federal clean up costs or civil penalties under section 311 of the Clean Water Act (33 U.S.C. § 1321); and Sections 1002 and 1017 of the Oil Pollution Act of 1990, 33 U.S.C. §§ 2702 and 2717, for the collection of federal clean up costs and/or the imposition of civil penalties;

(b) Miscellaneous proceedings, such as warrant requests, in assistance to agencies seeking investigative entry under section 308 of the Clean Water Act (33 U.S.C. § 1318); sections 114 or 206 of the Clean Air Act (42 U.S.C. §§ 7414, 7525); sections 3007 or 3013 of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6927, 6934); section 11 of the Toxic Substances Control Act (15 U.S.C. § 2610); or section 9 of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136g).

(c) Cases under any statute listed in USAM 5-12.100 for collection of civil penalties previously assessed by the referring agency in an administrative proceeding where the amount of the penalty does not exceed \$1 million.

(4) The authority set forth in subparagraphs B.(3)(a), B.(3)(b), and B.(3)(c) of this paragraph is, however, revocable on a case-by-case basis where, in the opinion of the Assistant Attorney General, important or novel issues of law or policy are involved. Before initiating proceedings pursuant to subparagraph B.(3)(a), B.(3)(b), or B.(3)(c), the United States Attorney shall insure that a copy of the authorized field officer's written request has been forwarded to the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

3. *Wildlife and Marine Resources Cases.* United States Attorneys are authorized to act, without prior authorization from the Environment and Natural Resources Division, on behalf of any other department or agency in response to a direct request in writing from an authorized field officer of the department or agency concerned, in the following wildlife cases:

(a) Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*;

(b) Lacey Act Amendments of 1981, 16 U.S.C. § 3371 *et seq.*, 18 U.S.C. § 42;

(c) Airborne Hunting Act, 16 U.S.C. § 742j-1;

(d) Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*;

(e) Migratory Bird Conservation Act, 16 U.S.C. §§ 715 to 715d, 715e, 715f to 715k, 715l to 715r;

- (f) Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 to 668d;
- (g) Dingell-Johnson Fish Restoration Act, 16 U.S.C. §§ 777 to 777i, 777k;
- (h) National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd, 668ee;
- (i) Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1431 *et seq.*;
- (j) Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*;
- (k) Whaling Convention Act, 16 U.S.C. § 981 *et seq.*;
- (l) Atlantic Tunas Convention Act, 16 U.S.C. § 971;
- (m) Tuna Convention Act, 16 U.S.C. § 951 *et seq.*;
- (n) Marine Mammal Protection Act, 16 U.S.C. § 1361 *et seq.*; (o) Sockeye Salmon or Pink Salmon Fishing Act, 16 U.S.C. § 776 *et seq.* [repealed];
- (p) Fur Seal Act of 1966, 16 U.S.C. § 1151 *et seq.*;
- (q) Protection of Sea Otters on the High Seas Act, 16 U.S.C. § 1171 *et seq.*;
- (r) Wild Free Roaming Horses and Burros Act, 16 U.S.C. §§ 1331 to 1340;
- (s) Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 to 667e;
- (t) Animal Damage Control Act, 7 U.S.C. § 426 *et seq.*;
- (u) Sponge Act, 16 U.S.C. § 781 *et seq.*;
- (v) Northern Pacific Halibut Act, 16 U.S.C. § 773 *et seq.*;
- (w) North Pacific Fisheries Act, 16 U.S.C. § 1021 *et seq.* [repealed];

Upon receipt of referrals of any law enforcement action under the above statutes, notice shall be given to the Wildlife and Marine Resources Section before filing or declining to file an action, as set forth in USAM 5-10.312.

United States Attorneys are not authorized to commence actions against foreign vessels or foreign fishermen under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, without prior telephonic approval from the Section. The views of the United States Attorney for a district to which a foreign vessel may be brought will be ascertained in advance of seizure by the Coast Guard. The United States Attorney should then contact the Section to discuss the complaint to be filed, release bond and inventory arrangements.

#### D. Delegated Cases.

(1) Pursuant to paragraph 10 of the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency, 42 Fed. Reg. 48942 (1977), with respect to the handling of civil litigation on behalf of the Environmental Protection Agency, all requests of the Environmental Protection Agency for litigation must be submitted by the Agency to the Assistant Attorney General, except that matters requiring an immediate temporary restraining order may be submitted by the Regional Administrators of the Environmental Protection Agency to a United States Attorney and the Assistant Attorney General. Once a case has been approved for filing, United States Attorneys are authorized, without prior approval of the Assistant Attorney General, Environment and Natural Resources Division, and subject to the limitations imposed by paragraph E below, to compromise any of the following civil cases if such a case has been delegated to the United States Attorney by the Assistant Attorney General and has been principally prosecuted by the Office of the United States Attorney:

- (a) cases under the Safe Drinking Water Act, 42 U.S.C. § 300(f) *et seq.*, and § 300h-2, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, and Section 104 (e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9604(e), where the amount of the civil penalty to be paid to the United States by a defendant, together with the cost of any Supplemental Environmental Projects (SEPs) does not exceed \$1 million and, in addition, either (i) the penalty (not including any SEPs) is equal to or greater than the economic benefit of non-compliance, or (ii) the settlement results from an inability to pay analysis as confirmed by a qualified financial analyst;

(b) cases under Sections 112 and 113 of the Clean Air Act, 42 U.S.C. §§ 7412 and 7413, for violations of the national emission standards for asbestos hazardous air pollutants;

(c) cases under Section 17(a)(1) of the Toxic Substances Control Act, 15 U.S.C. § 2616(a)(1) and Section 1018(b)(2) of The Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 1018(b)(2), for violations of the duty to disclose the presence of lead-based paint and information concerning its hazards to prospective buyers and renters of residential property;

(d) cases under Section 311 of the Clean Water Act, 33 U.S.C. § 1321, and Sections 1002 and 1017 of the Oil Pollution Act of 1990, 33 U.S.C. § 2702 and 2717, for recovery of costs expended by the United States to remove oil or hazardous substances discharged into or upon the navigable waters or adjoining shorelines, or into or upon the continuous zones or exclusive economic zones, where such costs do not exceed \$5 million, exclusive of interest, and the difference between the gross amount of the United States' claim and the proposed settlement does not exceed \$1 million.

(e) cases under any statute listed in USAM 5-12.100 to enforce requests for access to information, entry and/or inspection and samples, or for civil penalties for noncompliance with such requests.

(2) United States attorneys are not authorized to compromise claims listed above if the claim is part of lawsuit in which claims under other statutes are also included (i.e. "multi-media" cases).

#### *E. Limitations On Delegations*

(1) The authority to compromise cases, file suits, counterclaims, and cross claims, close cases, or take any other action necessary to protect the interests of the United States, delegated by paragraph B.(3), C and D. above, may not be exercised, and the matter shall be submitted for resolution to the Assistant Attorney General, Environment and Natural Resources Division, when:

(a) For any reason, the proposed action, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in the above paragraphs;

(b) Because of a novel question of law or a question of policy presented, or for any other reason, the proposed action should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General, Environment and Natural Resources Division;

(c) The agency or agencies involved are opposed to the proposed action, settlement or compromise;  
or

(d) The Assistant Attorney General, Environment and Natural Resources Division, so directs.

(2) In addition, when constitutional questions or other significant issues arise in the course of such litigation, or when an appeal is taken by any party, the Environment and Natural Resources Division must be consulted.

#### *F. Authority To Approve Federal Register Notices*

(1) Pursuant to 28 CFR § 50.7, each proposed settlement of an action to enjoin discharges of pollutants into the environment must be "lodged" with a court at least 30 days prior to "entry" in order to allow for public comment. For settlements in cases handled by United States Attorneys under paragraphs B.(3), C. and D. above, the United States Attorneys are authorized to:

(a) To approve all Federal Register Notices under 28 C.F.R. § 50.7 and under any statute enforced by the Division, and to transmit those notices to the Assistant Attorney General, Office of Legal Counsel, for publication;

(b) To determine on a case-by-case basis whether a modification to a previously entered consent decree which had previously been noticed for public comment, requires additional public comment;  
and

(c) To approve motions to enter consent decrees after public comment.

(2) However, any motion to enter a consent decree should be referred to the Assistant Attorney General, Environment and Natural Resources Division, whenever there has been a significant number of comments or where any comment raises a substantial issue that should receive the attention of the Assistant Attorney General, or where the United States Attorney is of the opinion that because of a question of law or policy presented, or for any other reason, the motion should receive the attention of the Assistant Attorney General.

### *G. Litigation Involving The Environmental Protection Agency*

All litigation involving the Environmental Protection Agency must be conducted in accordance with the 1977 Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency (including the time frames set forth in paragraphs 8, 9 and 10 of that document), and with the guidance and policies established by the Environmental Protection Agency, the Environment and Natural Resources Division and the Environmental Enforcement Section regarding litigation of civil environmental cases. The Environmental Enforcement Section will provide the United States Attorneys with copies of all pertinent guidance and policies. In addition, United States Attorneys will promptly report on the status of cases under these delegations whenever information is needed for required reports to client agencies, Congress, etc., or for docket reviews with Department and Division management or with client agencies.

### *H. Memorandum By United States Attorney Explaining Action*

For purposes of maintaining accurate information on civil environmental case filings, judgments and settlements, whenever a United States Attorney files a suit, settles a case, accepts a compromise or closes a claim pursuant to the authority delegated above, a memorandum fully explaining the basis for the action taken shall be executed and placed in the file and a copy sent to the Section Chief, Environmental Enforcement Section.

## **5-1.320 Actions Not Subject to Direct Referral to United States Attorneys**

Sections 5-1.321 through 5-1.326 discuss the actions not subject to direct referral to United States Attorneys.

### **5-1.321 Prior Authorization Needed to Initiate Action**

Actions which may not be initiated by the United States Attorneys without prior authorization from the Division are listed in USAM 5-2.000.

### **5-1.322 Assignment of Actions Generally**

All cases which are not subject to direct referral to the United States Attorneys as set forth in USAM 5-1.310 are initially referred to the Assistant Attorney General for review. Such review is assigned to the appropriate Section of the Division which then initially determines whether the case should more appropriately be: (1) assigned to the United States Attorney, *see* USAM 5-1.323, (2) designated as a case to be handled as the joint responsibility of the United States Attorney and the Division, *see* USAM 5-1.324, or (3) retained by the Division for its direct handling. *See* USAM 5-1.325. The costs of litigation and the proximity of the United States Attorney to the court result in a large percentage of cases being assigned to the United States Attorneys. However, the nature of the issue of law involved, the relative national or financial importance of the case, the precedential possibilities of the litigation, and the need for the Division to retain a cadre of staff attorneys trained in the trial of cases, are considerations in making case assignments.

### **5-1.323 Cases Assigned to United States Attorneys**

Assignment of case responsibility to the United States Attorney is always with the understanding that the Assistant Attorney General of the Division has supervisory responsibility on behalf of the Attorney General over all litigation under the jurisdiction of the Division. Where possible, the Division will promulgate categories of cases which will be assigned to the United States Attorneys; these assignments may distinguish between United States Attorneys on the basis of their experience and expertise with respect to such cases. If an assignment of any such case is made pursuant to USAM 5-1.3240 or 5-1.325, the notice of assignment to the United States Attorney will note the exception.

The United States Attorney shall be primarily responsible for all cases assigned to him/her. If he/she feels that he/she cannot accept responsibility by reason of a conflict of interest, the lack of personnel or expertise in his/her office, or other good reasons, he/she should immediately consult with the Chief of the appropriate Section to determine if some other assignment of responsibility can be made.

Regular communication should be maintained with the appropriate Section of the Division regarding the conduct of litigation assigned to the United States Attorneys, especially if any problems arise in connection with a case. The Division is organized so as to maintain considerable expertise in the particular subject matter areas under the jurisdiction of the Division and is, therefore, in a position to provide valuable assistance to the United States Attorney, including assistance in preparing pleadings and briefs as well as providing general advice on the substantive law and the handling of litigation. A copy of the final order entered in any case must be transmitted promptly to the appropriate Section of the Division.

#### **5-1.324 Cases Assigned as a Joint Responsibility**

If the appropriate Section of the Division feels that a given case should be handled as a joint responsibility of the United States Attorney and the Division, the Chief of the Section shall make the assignment initially with a written description of the expected division of work and responsibility for the case. In the event the United States Attorney involved is not satisfied with the assignment, he/she shall consult with the appropriate Section Chief to resolve the assignment and/or division of responsibility. Any remaining differences will be resolved by the Assistant Attorney General of the Division. At least three months before trial, a firm understanding will be reached between the Division and the United States Attorney on trial responsibility. Either the Division or the United States Attorney may request a change in the assignment at any time. The Division will periodically review all joint responsibility assignments with the objective that where Division assistance is no longer required the case may be assigned to the United States Attorney under USAM 5-1.323.

#### **5-1.325 Cases for Which the Division Is Assigned Responsibility**

If the appropriate Section of the Division feels that a given case should be handled by staff attorneys in the Division, the Chief of the Section will notify the United States Attorney, and the Chief of the Section and the United States Attorney will then agree upon exactly what, if any, support services the United States Attorney will provide to assist the staff attorneys in handling the litigation. Again, any differences over such case assignments and the provision of support services will be resolved by the Assistant Attorney General in charge of the Division.

#### **5-1.326 Review and Change of Case Assignments**

The assignment of case responsibility to the United States Attorney may be reviewed at any subsequent time at the request of the United States Attorney, the client agency, or the appropriate Section, and may be changed; a change of assignment will only be made, however, after consultation with the United States Attorney. As with all differences between a Section of the Division and the United States Attorney, any differences concerning assignment or handling of cases will be resolved by the Assistant Attorney General of the Division.

## 5-2.000 PRIOR APPROVALS

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-1.302	Filing complaints, stipulations, agreements for entry of judgment, or dismissals in all civil cases where the United States is a plaintiff, other than direct referral cases and specific cases or classes of cases that the Attorney General (AG) exempts from this Requirement, arising from matters in the litigating sections.	Assistant Attorney General (AAG), Environment and Natural Resources Division (ENRD)	Written approval required.
5-1.321	Indictment of certain cases involving laws within the jurisdiction of ENRD	AAG, ENRD	Written approval required. In an emergency, a telephone request is acceptable.
5-5.112	Entering into a stipulation concluding the substantive rights of the United States or consent to entry of judgment is required in all <b>nondirect referral</b> matters and in the following <b>direct referral</b> matters: Wildlife import, export, Airborne Hunting Act, Bald and Golden Eagle Protection Act, Wild Horses and Burros Act.	ENRD	

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-5.125	Filing a separate action in suits against federal agencies, or federal employees acting in their official capacity, if a basis for a counterclaim exists.	AAG, ENRD	
5-5.210	Certain claims or cases within the area of responsibility of ENRD may not be compromised, closed or dismissed.	AAG, Deputy Assistant Attorney General, (DAAG), Section Chief, or Deputy Section Chief, ENRD	<u>See</u> USAM 5-5.230
5-5.230	Accept or reject offers in compromise in land and condemnation cases in which the amount of the proposed settlement exceeds \$1,000,000.	AAG, ENRD	ENRD Directive No. 16-99 ( <u>See</u> USAM 5-1.300)
5-6.112	Initiate, other than at the request of EPA or the Army Corps of Engineers, a civil action under Sections 10 or 13 of the Rivers and Harbors Act. Exception: Temporary Restraining Orders (TROs) if there is a public health emergency.	AAG, ENRD	<u>See</u> USAM 5-6.310 and 5-6.521.
5-6.321	Initiate certain cases under the supervision of the Environmental Defense Section; and, other than at the request of EPA or the Army Corps of Engineers, initiate civil enforcement actions involving the dredging or filling or alteration of the navigable waters of the United States or their tributaries.	AAG, ENRD	33 U.S.C. §§ 1311 and 1344. <u>See</u> USAM 5-6.112 and 5-6.310

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-7.321	Initiate certain cases under the supervision of the General Litigation Section.	AAG, ENRD	Exception: <u>See</u> USAM 5-1.310; ENRD Directive No. 16-99.
5-7.600	Initiate, settle or compromise any claim or case under the supervision of the General Litigation Section, except direct referral cases.	AG	Written request required. <u>See</u> ENRD Directive No. 16-99; USAM 5-1.310 and 5-6.630
5-8.620	Settle or dismiss ENRD cases on appeal.	AAG or DAAG, ENRD, or appropriate ENRD trial section	
5-9.321	Initiate, settle or compromise certain cases under the supervision of the Policy, Legislation and Special Litigation Section.	AAG, ENRD	Written approval required. <u>See</u> USAM 5-5.230.
5-10.310	Initiate actions against foreign vessels and foreign fisherman under the Magnuson-Stevens Fishery Conservation and Management Act.	Wildlife and Marine Resources Section, ENRD	<u>See</u> 16 U.S.C. § 1801.
5-10.321	Initiate, settle or compromise certain cases under the supervision of the Wildlife and Marine Resource Section.	ENRD	Exceptions: <u>See</u> USAM 5-10.310. <u>See also</u> USAM 5-5.230
5-12.121	Amend a complaint which has been approved and signed by the AAG	Chief, Environmental Enforcement Section, ENRD	

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-14.310	Initiate cases under the supervision of the Indian Resources Section, except cases referred by a direct request from a field officer of an agency regarding : 1) Action to recover possession of property from tenants, trespassers and others, and actions to enjoin trespassers on Indian land if the damages do not exceed \$1,000,000; 2) Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects of not more than \$1,000,000; and, 3) Actions to collect damages resulting from the default on a contract to remove timber from Indian lands, providing such damages do not exceed \$1,000,000.	AAG, ENRD	Title 25, U.S.C. Authorization required under USAM 5-14.300 <u>et seq.</u> ; ENRD Directive No. 16-99.
5-15.321	Settlements of land acquisition cases in excess of \$1,000,000 or when : 1) The compromise of the claim will control or adversely influence the disposition of claims totaling in excess of \$1,000,000; and, 2) The revestment under 40 U.S.C. Sec. 285f of any land or improvements or any interests in land is involved.	ENRD	
5-15.526	Application for a citation in contempt under Rule 70, Fed. R. Civ. P., in certain environmental cases.	ENRD	

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-15.543	Altering pleadings to modify or change the estate being condemned or the description of the property.	ENRD	
5-15.544	The exclusion of property acquired by declaration of taking, or for entering into stipulations for the exclusion of property of high value.	ENRD	<u>See</u> USAM 5-15.544 Subsection A.
5-15.550	Waiver of jury trials in cases in the major-tract program.	ENRD	
5-15.600; 5-15.640	Unless the United States Attorney is given settlement authority, no cases under the jurisdiction of the Land Acquisition Section may be settled or dismissed.	AG or as delegated	<u>See</u> ENRD Directive No. 16-99; USAM 5-15.620 and 5-15.630
5-15.631; 5-15.640	Settlement of land acquisition cases otherwise authorized when: 1) Settlement exceeds \$1,000,000, or the compromise of the claim will control or adversely influence the disposition of another claim totaling more than \$1,000,000, and 2) The agencies involved oppose the proposed closing or dismissal of the case or acceptance or rejection of the offer in compromise.	AAG, ENRD	ENRD Directive No. 16-99.
5-15.650	Dismissal of condemnation cases as to any of the land included in the instructions to condemn, or to change the interest or estate to be acquired.	ENRD	



Environment and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 21, 2000

TO: Holders of United States Attorneys' Manual Title 5.

FROM: Daniel Marcus *Daniel Marcus*  
Acting Associate Attorney General 3/22/00

THROUGH: *E.H.* Eric H. Holder, Jr.  
Deputy Attorney General

RE: Redelegation of Authority to Initiate and to Compromise Environment and Natural Resources Division Cases

AFFECTS: 5-1.100, 5-2.000, 5-2.220, 5-5.230, 5-5.240

DEPT. OF JUSTICE  
MAY 22 2000  
MAIN LIBRARY

The attached revisions have been made to Chapters 1 and 2 in Title 5 of the United States Attorneys' Manual. These revisions operate prospectively to reaffirm, and in certain limited respects modify, authorities that have been redelegated to Deputy Assistant Attorneys General, Section Chiefs, and United States Attorneys in previous directives. These changes have been approved by the Environment Subcommittee of the Attorney General's Advisory Committee (AGAC). These changes were approved by the Associate Attorney General in March 1999.<sup>1/</sup>

The revisions consolidate and modify authorities contained in several Redelegation directives and existing passages of the U.S. Attorney's Manual. A summary of the significant changes follows:

1. Settlement Authority of Deputy Assistant Attorneys General: The new provisions raise the settlement authority of Deputy Assistant Attorneys General from \$500,000 to \$1,500,000, so

<sup>1/</sup> Section 0.168(b) of title 28 of the Code of Federal Regulations provides that "[re]delegations of authority . . . shall be in writing and shall be approved by the Deputy Attorney General or the Associate Attorney General, as appropriate, before taking effect." Pursuant to Order No. 1627-92 of the Attorney General, dated October 19, 1992, the Deputy Attorney General's function with respect to the Environment and Natural Resources Division under 28 C.F.R. § 0.161 (acceptance of settlement offers exceeding Assistant Attorney General authority) is now performed by the Associate Attorney General.

that they may compromise the following cases: cases against the United States when the amount to be paid by the United States does not exceed \$1,500,000; cases brought by the United States when the gross amount of the original claims does not exceed \$1,500,000; and cases brought by the United States when the gross amount of the original claim does not exceed \$10,000,000 and the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,500,000. See U.S.A.M. 5-5.220.

2. Settlement Authority of U.S. Attorneys and Section Chiefs: The revision also increases U.S. Attorneys' and Section Chiefs' settlement authority so that they may compromise the following cases: cases against the United States when the amount to be paid by the United States does not exceed \$1,000,000; cases brought by the United States when the gross amount of the original claim does not exceed \$1,000,000; and cases brought by the United States when the gross amount of the original claim does not exceed \$5,000,000 and the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,000,000. See U.S.A.M. 5-1.130; 5-5.200; 5-5.230, 5-5.240.
3. Authority of U.S. Attorneys To Handle Delegated Cases: The revision also provides that the AAG may, after approving for filing, delegate to U.S. Attorneys certain civil cases under a variety of statutes including the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, and Section 404 of CERCLA (Superfund). Historically, U.S. Attorneys' offices have not litigated these cases. The revision makes clear that once the AAG has approved such a case for filing, it may be delegated to a U.S. Attorney. This change was made after consultation with the Environment Subcommittee of AGAC. See U.S.A.M. 5-1.130.
4. Criminal Case Authority of U.S. Attorneys: The revision deletes references to the authority of U.S. Attorneys to handle criminal matters because such authority is set forth in Title 5, Chapter 11 of the U.S. Attorneys' Manual, as amended November 1997.
5. Limitations on Settlement Authority: The revision explicitly sets out limitations on the delegated authority of Deputy Assistant Attorney General, U.S. Attorneys, and Section Chiefs that were previously implicit by virtue of limitations imposed on the authority of Assistant Attorneys General by Department regulations. See 28 C.F.R. §§ 0.160(c)(3)-(5). See U.S.A.M. 5-5.240.
6. Statistics on Settlement Authority Use: For purposes of maintaining accurate statistics, exercise of the following settlement authority is to be reported by contemporaneously forwarding a copy of the signed approval memorandum to the Assistant Attorney General: (1) settlements involving more than \$300,000 with respect to Section Chiefs, (2) settlements involving more than \$200,000 with respect to United States Attorneys, and (3) all settlements with respect to Deputy Assistant Attorneys General. See U.S.A.M. 5-5.240.

- 5-1.100 General Policy and Responsibilities**
  - 5-1.200 Litigation Involving the Environmental Protection Agency**
  - 5-1.300 Supervision and Handling of Environment and Natural Resources Division Cases -- Generally**
  - 5-1.302 Pleadings To Be Signed by the Assistant Attorney General**
  - 5-1.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases**
  - 5-1.320 Actions Not Subject to Direct Referral to United States Attorneys**
  - 5-1.321 Prior Authorization Needed to Initiate Action**
  - 5-1.322 Assignment of Actions Generally**
  - 5-1.323 Cases Assigned to United States Attorneys**
  - 5-1.324 Cases Assigned as a Joint Responsibility**
  - 5-1.325 Cases for Which the Division Is Assigned Responsibility**
  - 5-1.326 Review and Change of Case Assignments**
- 

## **5-1.100**

### **General Policy and Responsibilities**

The Environment and Natural Resources Division, which was created in 1909, represents the United States, its agencies and officials in matters relating to environmental quality, public lands and natural resources, Indian lands and native claims, and wildlife and fishery resources. The Division's responsibilities are varied and include both enforcement and defensive work, in both criminal and civil cases. More specifically, responsibilities of the Environment and Natural Resources Division are set forth in 28 C.F.R. § 0.65.

## **5-1.200 Litigation Involving the Environmental Protection Agency**

With respect to any matter assigned to the Environment and Natural Resources Division in which the Environmental Protection Agency is a party, the Assistant Attorney General in charge of the Environment and Natural Resources Division, and such staff as he/she may specifically designate in writing, are authorized to exercise the functions and responsibilities undertaken by the Attorney General in the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency (42 Fed.Reg. 48942), except that Subpart Y of 28 C.F.R. Part 0 shall continue to govern as authority to compromise and close civil claims in such matters.

### **5-1.300 Supervision and Handling of Environment and Natural Resources Division Cases -- Generally**

All cases within the area of responsibility of the Environment and Natural Resources Division are subject to the supervision and control of the Assistant Attorney General in charge of the Environment and Natural Resources Division. As is hereinafter more fully set forth, the responsibilities for direct handling of cases are divided into four general classifications: (1) cases for which authority has been delegated to the United States Attorneys which may be directly referred to him/her by an authorized field officer or a federal department or agency, *see* USAM 5-1.310; (2) cases which are delegated to the United States Attorneys by the Assistant Attorney General of the Division for which the United States Attorneys are assigned primary responsibility, *see* USAM 5-1.323; (3) cases which the Assistant Attorney General of the Division determines shall be the joint responsibility of the Division and the United States Attorney, *see* USAM 5-1.324; and (4) cases for which the Division retains primary responsibility, *see* USAM 5-1.325.

### **5-1.302 Pleadings To Be Signed by the Assistant Attorney General**

In all civil cases where the United States is a plaintiff, other than direct referral cases, *see* USAM 5-1.310 and specific cases or classes of cases the Assistant Attorney General exempts from this requirement, arising from matters in the litigating sections, all complaints, or agreements for entry of judgment or dismissal shall be signed, prior to filing, by the Assistant Attorney General, unless otherwise expressly delegated.

### **5-1.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases**

Actions which may be initiated by the United States Attorneys without prior authorization from the Environment and Natural Resources Division are listed in Environment and Natural Resources Division Directive No. 16-99. The pertinent portion of the amended Directive provides generally as follows:

#### **AUTHORITY TO INITIATE CASES**

#### **1. *Delegation to United States Attorneys***

##### **A. *Land Cases.***

(1) United States Attorneys are hereby authorized with respect to Environment and Natural Resources Division cases to act in matters concerning real property of the United States, including tribal and restricted individual Indian land, not involving new or unusual questions or questions of water rights, on behalf of any department or agency in response to a request in writing from a person authorized to make the request on behalf of the field office of that department or agency ("authorized field officer"), without prior authorization from the Environment and Natural Resources Division, in the following described cases:

(a) Actions to recover possession of or quiet title to property from tenants, squatters, trespassers, or others, and actions to enjoin trespasses;

(b) Actions to recover damages resulting from trespasses when the amount of the claim for actual damage based upon an innocent trespass does not exceed \$1,000,000, and actions to recover amounts exceeding \$1,000,000:

(i) if the actual damages are \$1,000,000 or less and applicable state law permits the recovery of multiple damages, e.g., double or treble, for either a willful or an innocent trespass; or

(ii) if the actual damages are \$1,000,000 or less, but the action is for conversion to obtain recovery of the enhanced value of property severed and removed in the trespass;

- (c) Actions to collect delinquent rentals or damages for use and occupancy of not more than \$1,000,000;
- (d) Actions to collect costs of forest fire suppression and other damages resulting from such fires;
- (e) Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects and federal reclamation projects of not more than \$1,000,000;
- (f) Actions to collect loans of money or livestock made by the United States to individual Indians without limitation on amount, including loans made by Indian tribal organizations to individual Indians if the loan agreements, notes and securities have been assigned by the tribal organizations to the United States; and
- (g) Actions in which the United States is named as a party pursuant to 28 U.S.C. §§ 2410(a)(3) and (4).

(2) Before initiating proceedings pursuant to this subsection, the United States Attorney shall insure that a copy of the authorized field officer's written request has been forwarded to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

**B. Other Civil Environmental Cases.**

(1) United States Attorneys are authorized to act, without prior authorization from the Environment and Natural Resources Division, on behalf of the Secretary of the Army, acting through the Corps of Engineers, in response to a request in writing from an authorized field officer of the Corps of Engineers in the following civil environmental cases:

- (a) Civil actions involving the filling or the deposit of dredged or fill material into, or the alteration of the channels of, the waters of the United States, in violation of section 10 of the River and Harbor Act of 1899 (33 U.S.C. § 403), or of section 404 of the Federal Water Pollution Control Act Amendments of 1972 ("Clean Water Act") (33 U.S.C. § 1344), or of both statutes;
- (b) Civil actions involving the discharge of refuse into the navigable waters of the United States, and, in certain cases, their tributaries, in violation of section 13 of the River and Harbor Act of 1899 (33 U.S.C. § 407), except for *in rem* actions against vessels, which actions shall continue to be under the jurisdiction of the Civil Division.

(2) The authority set forth in subparagraphs B.(1)(a) and B.(1)(b) of this paragraph is, however, revocable on a case by case basis where, in the opinion of the Assistant Attorney General, important or novel issues of law or policy are involved. Generally speaking, direct referral cases are of a routine nature and involve statutory provisions whose interpretation is well-settled. Prior to initiating proceedings pursuant to subparagraphs B.(1)(a) or B.(1)(b) of this paragraph, the United States Attorney shall insure that a copy of the authorized field officer's written request and the litigation report has been forwarded to the Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. United States Attorneys are encouraged to consult with the Environment and Natural Resources Division on these cases.

(3) United States Attorneys are also authorized to handle the following matters without prior authorization from the Environment and Natural Resources Division:

- (a) Cases brought on behalf of the United States Coast Guard in response to a written request from an authorized field officer, seeking federal clean up costs or civil penalties under section 311 of the Clean Water Act (33 U.S.C. § 1321); and Sections 1002 and 1017 of the Oil Pollution Act of 1990, 33 U.S.C. §§ 2702 and 2717, for the collection of federal clean up costs and/or the imposition of civil penalties;

(b) Miscellaneous proceedings, such as warrant requests, in assistance to agencies seeking investigative entry under section 308 of the Clean Water Act (33 U.S.C. § 1318); sections 114 or 206 of the Clean Air Act (42 U.S.C. §§ 7414, 7525); sections 3007 or 3013 of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6927, 6934); section 11 of the Toxic Substances Control Act (15 U.S.C. § 2610); or section 9 of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136g).

(c) Cases under any statute listed in USAM 5-12.100 for collection of civil penalties previously assessed by the referring agency in an administrative proceeding where the amount of the penalty does not exceed \$1 million.

(4) The authority set forth in subparagraphs B.(3)(a), B.(3)(b), and B.(3)(c) of this paragraph is, however, revocable on a case-by-case basis where, in the opinion of the Assistant Attorney General, important or novel issues of law or policy are involved. Before initiating proceedings pursuant to subparagraph B.(3)(a), B.(3)(b), or B.(3)(c), the United States Attorney shall insure that a copy of the authorized field officer's written request has been forwarded to the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

3. *Wildlife and Marine Resources Cases.* United States Attorneys are authorized to act, without prior authorization from the Environment and Natural Resources Division, on behalf of any other department or agency in response to a direct request in writing from an authorized field officer of the department or agency concerned, in the following wildlife cases:

- (a) Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*;
- (b) Lacey Act Amendments of 1981, 16 U.S.C. § 3371 *et seq.*, 18 U.S.C. § 42;
- (c) Airborne Hunting Act, 16 U.S.C. § 742j-1;
- (d) Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*;
- (e) Migratory Bird Conservation Act, 16 U.S.C. §§ 715 to 715d, 715e, 715f to 715k, 715l to 715r;
- (f) Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 to 668d;
- (g) Dingell-Johnson Fish Restoration Act, 16 U.S.C. §§ 777 to 777i, 777k;
- (h) National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd, 668ee;
- (i) Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1431 *et seq.*;
- (j) Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*;
- (k) Whaling Convention Act, 16 U.S.C. § 981 *et seq.*;
- (l) Atlantic Tunas Convention Act, 16 U.S.C. § 971;
- (m) Tuna Convention Act, 16 U.S.C. § 951 *et seq.*;
- (n) Marine Mammal Protection Act, 16 U.S.C. § 1361 *et seq.*; (o) Sockeye Salmon or Pink Salmon Fishing Act, 16 U.S.C. § 776 *et seq.* [repealed];
- (p) Fur Seal Act of 1966, 16 U.S.C. § 1151 *et seq.*;
- (q) Protection of Sea Otters on the High Seas Act, 16 U.S.C. § 1171 *et seq.*;
- (r) Wild Free Roaming Horses and Burros Act, 16 U.S.C. §§ 1331 to 1340;
- (s) Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 to 667e;
- (t) Animal Damage Control Act, 7 U.S.C. § 426 *et seq.*;
- (u) Sponge Act, 16 U.S.C. § 781 *et seq.*;

(v) Northern Pacific Halibut Act, 16 U.S.C. § 773 *et seq.*;

(w) North Pacific Fisheries Act, 16 U.S.C. § 1021 *et seq.* [repealed];

Upon receipt of referrals of any law enforcement action under the above statutes, notice shall be given to the Wildlife and Marine Resources Section before filing or declining to file an action, as set forth in USAM 5-10.312.

United States Attorneys are not authorized to commence actions against foreign vessels or foreign fishermen under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, without prior telephonic approval from the Section. The views of the United States Attorney for a district to which a foreign vessel may be brought will be ascertained in advance of seizure by the Coast Guard. The United States Attorney should then contact the Section to discuss the complaint to be filed, release bond and inventory arrangements.

#### D. *Delegated Cases.*

(1) Pursuant to paragraph 10 of the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency, 42 Fed. Reg. 48942 (1977), with respect to the handling of civil litigation on behalf of the Environmental Protection Agency, all requests of the Environmental Protection Agency for litigation must be submitted by the Agency to the Assistant Attorney General, except that matters requiring an immediate temporary restraining order may be submitted by the Regional Administrators of the Environmental Protection Agency to a United States Attorney and the Assistant Attorney General. Once a case has been approved for filing, United States Attorneys are authorized, without prior approval of the Assistant Attorney General, Environment and Natural Resources Division, and subject to the limitations imposed by paragraph E below, to compromise any of the following civil cases if such a case has been delegated to the United States Attorney by the Assistant Attorney General and has been principally prosecuted by the Office of the United States Attorney:

(a) cases under the Safe Drinking Water Act, 42 U.S.C. § 300(f) *et seq.*, and § 300h-2, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, and Section 104 (e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9604(e), where the amount of the civil penalty to be paid to the United States by a defendant, together with the cost of any Supplemental Environmental Projects (SEPs) does not exceed \$1 million and, in addition, either (i) the penalty (not including any SEPs) is equal to or greater than the economic benefit of non-compliance, or (ii) the settlement results from an inability to pay analysis as confirmed by a qualified financial analyst;

(b) cases under Sections 112 and 113 of the Clean Air Act, 42 U.S.C. §§ 7412 and 7413, for violations of the national emission standards for asbestos hazardous air pollutants;

(c) cases under Section 17(a)(1) of the Toxic Substances Control Act, 15 U.S.C. § 2616(a)(1) and Section 1018(b)(2) of The Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 1018(b)(2), for violations of the duty to disclose the presence of lead-based paint and information concerning its hazards to prospective buyers and renters of residential property;

(d) cases under Section 311 of the Clean Water Act, 33 U.S.C. § 1321, and Sections 1002 and 1017 of the Oil Pollution Act of 1990, 33 U.S.C. § 2702 and 2717, for recovery of costs expended by the United States to remove oil or hazardous substances discharged into or upon the navigable waters or adjoining shorelines, or into or upon the continuous zones or exclusive economic zones, where such

costs do not exceed \$5 million, exclusive of interest, and the difference between the gross amount of the United States' claim and the proposed settlement does not exceed \$1 million.

(e) cases under any statute listed in USAM 5-12.100 to enforce requests for access to information, entry and/or inspection and samples, or for civil penalties for noncompliance with such requests.

(2) United States attorneys are not authorized to compromise claims listed above if the claim is part of lawsuit in which claims under other statutes are also included (i.e. "multi-media" cases).

#### *E. Limitations On Delegations*

(1) The authority to compromise cases, file suits, counterclaims, and cross claims, close cases, or take any other action necessary to protect the interests of the United States, delegated by paragraph B.(3), C and D. above, may not be exercised, and the matter shall be submitted for resolution to the Assistant Attorney General, Environment and Natural Resources Division, when:

(a) For any reason, the proposed action, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in the above paragraphs;

(b) Because of a novel question of law or a question of policy presented, or for any other reason, the proposed action should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General, Environment and Natural Resources Division;

(c) The agency or agencies involved are opposed to the proposed action, settlement or compromise; or

(d) The Assistant Attorney General, Environment and Natural Resources Division, so directs.

(2) In addition, when constitutional questions or other significant issues arise in the course of such litigation, or when an appeal is taken by any party, the Environment and Natural Resources Division must be consulted.

#### *F. Authority To Approve Federal Register Notices*

(1) Pursuant to 28 CFR § 50.7, each proposed settlement of an action to enjoin discharges of pollutants into the environment must be "lodged" with a court at least 30 days prior to "entry" in order to allow for public comment. For settlements in cases handled by United States Attorneys under paragraphs B.(3), C. and D. above, the United States Attorneys are authorized to:

(a) To approve all Federal Register Notices under 28 C.F.R. § 50.7 and under any statute enforced by the Division, and to transmit those notices to the Assistant Attorney General, Office of Legal Counsel, for publication;

(b) To determine on a case-by-case basis whether a modification to a previously entered consent decree which had previously been noticed for public comment, requires additional public comment; and

(c) To approve motions to enter consent decrees after public comment.

(2) However, any motion to enter a consent decree should be referred to the Assistant Attorney General, Environment and Natural Resources Division, whenever there has been a significant number of comments or where any comment raises a substantial issue that should receive the attention of the Assistant Attorney General, or where the United States Attorney is of the opinion that because of a question of law or policy presented, or for any other reason, the motion should receive the attention of the Assistant Attorney General.

### *G. Litigation Involving The Environmental Protection Agency*

All litigation involving the Environmental Protection Agency must be conducted in accordance with the 1977 Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency (including the time frames set forth in paragraphs 8, 9 and 10 of that document), and with the guidance and policies established by the Environmental Protection Agency, the Environment and Natural Resources Division and the Environmental Enforcement Section regarding litigation of civil environmental cases. The Environmental Enforcement Section will provide the United States Attorneys with copies of all pertinent guidance and policies. In addition, United States Attorneys will promptly report on the status of cases under these delegations whenever information is needed for required reports to client agencies, Congress, etc., or for docket reviews with Department and Division management or with client agencies.

### *H. Memorandum By United States Attorney Explaining Action*

For purposes of maintaining accurate information on civil environmental case filings, judgments and settlements, whenever a United States Attorney files a suit, settles a case, accepts a compromise or closes a claim pursuant to the authority delegated above, a memorandum fully explaining the basis for the action taken shall be executed and placed in the file and a copy sent to the Section Chief, Environmental Enforcement Section.

## **5-1.320 Actions Not Subject to Direct Referral to United States Attorneys**

Sections 5-1.321 through 5-1.326 discuss the actions not subject to direct referral to United States Attorneys.

### **5-1.321 Prior Authorization Needed to Initiate Action**

Actions which may not be initiated by the United States Attorneys without prior authorization from the Division are listed in USAM 5-2.000.

### **5-1.322 Assignment of Actions Generally**

All cases which are not subject to direct referral to the United States Attorneys as set forth in USAM 5-1.310 are initially referred to the Assistant Attorney General for review. Such review is assigned to the appropriate Section of the Division which then initially determines whether the case should more appropriately be: (1) assigned to the United States Attorney, *see* USAM 5-1.323, (2) designated as a case to be handled as the joint responsibility of the United States Attorney and the Division, *see* USAM 5-1.324, or (3) retained by the Division for its direct handling. *See* USAM 5-1.325. The costs of litigation and the proximity of the United States Attorney to the court result in a large percentage of cases being assigned to the United States Attorneys. However, the nature of the issue of law involved, the relative national or financial importance of the case, the precedential possibilities of the litigation, and the need for the Division to retain a cadre of staff attorneys trained in the trial of cases, are considerations in making case assignments.

### **5-1.323 Cases Assigned to United States Attorneys**

Assignment of case responsibility to the United States Attorney is always with the understanding that the Assistant Attorney General of the Division has supervisory responsibility on behalf of the Attorney General over all litigation under the jurisdiction of the Division. Where possible, the Division will promulgate categories of cases which will be assigned to the United States Attorneys; these assignments may distinguish between United States Attorneys on the basis of their experience and expertise with respect to such cases. If an assignment of any such case is made pursuant to USAM 5-1.3240 or 5-1.325, the notice of assignment to the United States Attorney will note the exception.

The United States Attorney shall be primarily responsible for all cases assigned to him/her. If he/she feels that he/she cannot accept responsibility by reason of a conflict of interest, the lack of personnel or expertise in his/her office, or other good reasons, he/she should immediately consult with the Chief of the appropriate Section to determine if some other assignment of responsibility can be made.

Regular communication should be maintained with the appropriate Section of the Division regarding the conduct of litigation assigned to the United States Attorneys, especially if any problems arise in connection with a case. The Division is organized so as to maintain considerable expertise in the particular subject matter areas under the jurisdiction of the Division and is, therefore, in a position to provide valuable assistance to the United States Attorney, including assistance in preparing pleadings and briefs as well as providing general advice on the substantive law and the handling of litigation. A copy of the final order entered in any case must be transmitted promptly to the appropriate Section of the Division.

### **5-1.324 Cases Assigned as a Joint Responsibility**

If the appropriate Section of the Division feels that a given case should be handled as a joint responsibility of the United States Attorney and the Division, the Chief of the Section shall make the assignment initially with a written description of the expected division of work and responsibility for the case. In the event the United States Attorney involved is not satisfied with the assignment, he/she shall consult with the appropriate Section Chief to resolve the assignment and/or division of responsibility. Any remaining differences will be resolved by the Assistant Attorney General of the Division. At least three months before trial, a firm understanding will be reached between the Division and the United States Attorney on trial responsibility. Either the Division or the United States Attorney may request a change in the assignment at any time. The Division will periodically review all joint responsibility assignments with the objective that where Division assistance is no longer required the case may be assigned to the United States Attorney under USAM 5-1.323.

### **5-1.325 Cases for Which the Division Is Assigned Responsibility**

If the appropriate Section of the Division feels that a given case should be handled by staff attorneys in the Division, the Chief of the Section will notify the United States Attorney, and the Chief of the Section and the United States Attorney will then agree upon exactly what, if any, support services the United States Attorney will provide to assist the staff attorneys in handling the litigation. Again, any differences over such case assignments and the provision of support services will be resolved by the Assistant Attorney General in charge of the Division.

### **5-1.326 Review and Change of Case Assignments**

The assignment of case responsibility to the United States Attorney may be reviewed at any subsequent time at the request of the United States Attorney, the client agency, or the appropriate Section, and may be changed; a change of assignment will only be made, however, after consultation with the United States Attorney. As with all differences between a Section of the Division and the United States Attorney, any differences concerning assignment or handling of cases will be resolved by the Assistant Attorney General of the Division.

**5-2.000  
PRIOR  
APPROVALS**

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-1.302	Filing complaints, or stipulations or agreements for entry of judgment or dismissals in all civil cases where the United States is a plaintiff, other than direct referral cases and specific cases or classes of cases the Attorney General exempts from this Requirement, arising from matters in the litigating sections.	Assistant Attorney General, Environment and Natural Resources Division	Written approval required.
5-1.321	Indictment of certain cases involving laws within the jurisdiction of the Environment Division.	AAG, Environment & Natural Resources Division	Written approval required. In an emergency, a telephone request is acceptable. See USAM 5-1.302.
5-5.112	Entering into a stipulation concluding the substantive rights of the United States or consent to entry of judgment is required in all nondirect referral matters and in the following direct referral matters: Wildlife import, export, Airborne import, export, Airborne Hunting Act, Bald and Golden Eagle Protection Act, and Wild Horses and Burros Act.	Environment and Natural Resources Division	

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-5.125	Filing a separate action in suits against federal agencies, or federal employees acting in their official capacity, if a basis for a counterclaim exists.	Assistant Attorney General, Environment and Natural Resource Division	
5-5.210	Certain claims or cases within the area of responsibility of the Environment Division may not be compromised, closed or dismissed.	Assistant Attorney General or Section Chief, Environment and Natural Resources Division	See USAM 5-5.230.
5-5.230	Accept or reject offers in compromise in land and condemnation cases in which the amount of the proposed settlement exceeds \$1,000,000.	Assistant Attorney General, Environment and Natural Resources Division	Environment and Natural Resources Resources Dir. No. 16-99.
5-6.112	Initiate, other than at the request of EPA or Army Corps, a civil action under Section 10 or Section 13 of the River and Harbors Act. Exception: TROs if a public health emergency.	Assistant Attorney General, Environment and Natural Resources Division	See USAM 5-6.310, 6.520a.
5-6.321	Initiate certain cases under the supervision of the Environmental Defense Section; and, other than at the request of EPA or Army Corps, initiate civil enforcement actions involving the dredging or filling or alteration of the navigable waters of the United States or their tributaries.	Assistant Attorney General, Environment and Natural Resources Division Natural	33 U.S.C. § 1311, 1344. See USAM 5-6.112, 5-6.310.

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-7.321	Initiate certain cases under the supervision of the General Litigation Section.	See above.	Exceptions, see USAM 5-1.310; Environment and Natural Resources Dir. No. 16-99.
5-7.600	Initiate, settle or compromise any claim or case under the supervision of the General Litigation Section, except direct referral cases.	Attorney General	Written request required. Environment and Natural Resources Dir. No. 16-99. See USAM 5-1.310; 5-7.630.
5-8.620	Settle or dismiss Environment & Natural Resources Division cases on appeal.	Assistant Attorney General, Deputy Assistant Attorney General, Environment and Natural Resources Division, or appropriate division trial section, Environment Division	
5-9.321	Initiate, settle or compromise certain cases under the supervision of the Policy, Legislation and Special Litigation Section.	Assistant Attorney General, Attorney General, Environment and Natural Resources Division	Written approval required. See USAM 5-5.230.
5-10.310	Initiate actions against foreign vessels and foreign fishermen under the Magnuson Fishery Conservation and Management Act.	Wildlife and Marine Resources Section, Environment and Natural Resources Division	See 16 U.S.C. § 1801.
5-10.321	Initiate, settle or compromise certain cases under the supervision of the Wildlife and Marine Resources Section.	Environment and Natural Resources Division	Exceptions, see USAM 5-10.310. See also USAM 5-5.230.
5-12.121	Amend a complaint which has been approved and signed by the Assistant Attorney General.	Chief, Environmental Enforcement Section, Environment and Natural Resources Division	

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-14.310	Initiate cases under the supervision of the Indian Resources Section, except cases referred by a direct request from a field officer of an agency regarding: 1) Action to recover possession of property from tenants, trespassers and others and actions to enjoin trespassers on Indian land if the damages do not exceed \$1,000,000; 2) Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects of not more than \$1,000,000; and, 3) Actions to collect damages resulting from the default on a contract to remove timber from Indian lands providing such damages do not exceed \$1,000,000.	Assistant Attorney General, Environment and Natural Resources Division	Title 25, U.S.C. Authorization required under USAM 1.300 et seq. Environment and Natural Resource Dir. No. 16-99.
5-15.321	Settlements of land acquisition cases in excess of \$1,000,000 or when: 1) The compromise of the claim will control or adversely influence the disposition of claims totaling in excess of \$1,000,000; and, 2) The revestment under 40 U.S.C. Sec. 285f of any land or improvements or any interests in land is involved.	Environment and Natural Resources Division	
5-15.526	Application for a citation in contempt under Rule 70, Fed. R. Civ. P., in certain environmental cases.	Environment and Natural Resources Division	

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
5-15.543	Altering pleadings to modify or change the estate being condemned or description of the property.	Environment and Natural Resources Division	
5-15.544	The exclusion of property acquired by declaration of taking, or for entering into stipulations for the exclusion of property of high value.	Environment and Natural Resources Division	See USAM 5-15.544, Subsection A.
5-15.550	Waiver of jury trials in cases in the major-tract program.	Environment and Natural Resources Division	
5-15.600; 640	Unless the United States Attorney is given settlement authority, no cases under the jurisdiction of the Land Acquisition Section may be settled or dismissed.	Attorney General or as delegated	Environment and Natural Resources Dir. No. 16-99. See USAM 5-15.620; 630.
5-15.631; 640	Settlement of land acquisition cases otherwise authorized when: 1) Settlement exceeds \$1,000,000 or the compromise of the claim will control or adversely influence adversely influence the disposition of another claim totaling more than \$1,000,000; and 2) The agencies involved oppose the proposed closing or dismissal of the case or acceptance or rejection of the offer in compromise.	Assistant Attorney General, Environment and Natural Resources Division	Environment and Natural Resources Dir. No. 16-99.
5-15.650	Dismissal of condemnation cases as to any of the land included in the instructions to condemn, or to change the interest or estate to be acquired.	Environment and Natural Resources Division	

# 5-3.000 ORGANIZATION OF THE DIVISION

---

## 5-3.100 General

## 5-3.200 Litigating Sections

## 5-3.300 Support Units

## 5-3.400 Organization Chart

---

### 5-3.100 General

The Division is administered by an Assistant Attorney General, who is assisted by four Deputy Assistant Attorneys General.

### 5-3.200 Litigating Sections

The litigating functions of the Division are discharged through nine sections:

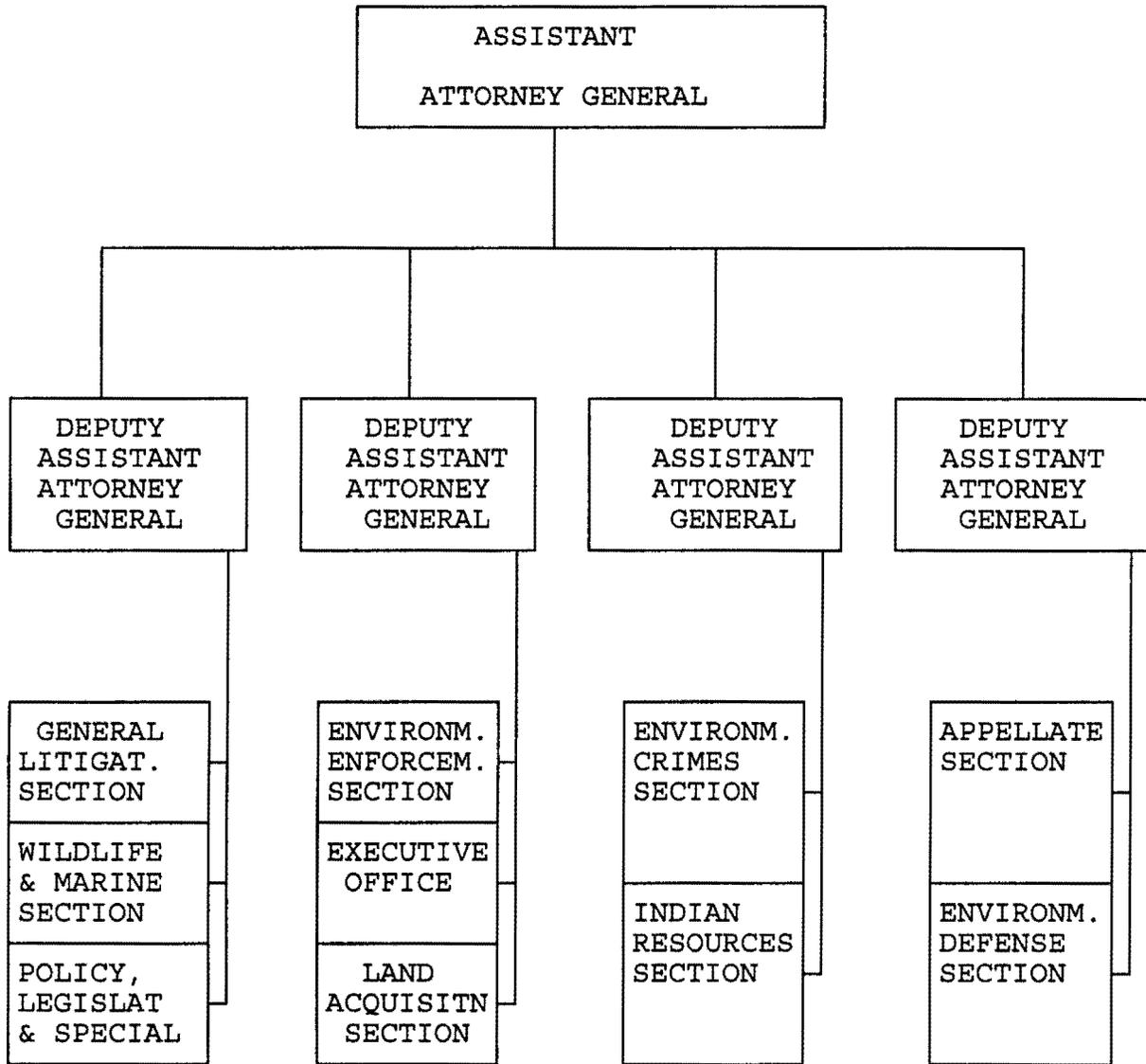
- a. The Environmental Defense Section (described in detail in USAM 5-6.000);
- b. The General Litigation Section (described in detail in USAM 5-7.000);
- c. The Appellate Section (described in detail in USAM 5-8.000);
- d. The Policy, Legislation and Special Litigation Section (described in detail in USAM 5-9.000);
- e. The Wildlife and Marine Resources Section (described in detail in USAM 5-10.000);
- f. The Environmental Crimes Section (described in detail in USAM 5-11.000);
- g. The Environmental Enforcement Section (described in detail in USAM 5-12.000);
- h. The Indian Resources Section (described in detail in USAM 5-14.000);
- i. The Land Acquisition Section (described in detail in USAM 5-15.000).

### 5-3.300 Support Units

Policy planning, legislative and special activities are assigned to the Policy, Legislation and Special Litigation Section (described in detail in USAM 5-9.000).

Other functions (including administration, information and technology, litigation support, financial management and planning, and management and planning) are assigned to the Division's Executive Office.

5-3.400 Organization Chart



## **5-4.000 STATUTES**

---

The principle statutes affecting the litigation activities of the Environment and Natural Resources Division are listed in USAM 5-6.130, 5-7.120, 5-9.120, 5-10.120, 5-11.101, 5-12.100, 5-14.120, and 5-15.201.

## **5-5.000 PROCEDURES**

---

- 5-5.100 General Procedures in District Court Litigation**
  - 5-5.111 Transmittal of Pleadings and Memoranda**
  - 5-5.112 Stipulations**
  - 5-5.113 Assistance by Other Attorneys**
  - 5-5.121 Suits Against the United States, Federal Agencies or Officials -- Appearances by United States Attorneys**
  - 5-5.122 Suits Against the United States, Federal Agencies or Officials -- Removal of State Court Actions**
  - 5-5.123 Suits Against the United States, Federal Agencies or Officials -- Sovereign Immunity Not Waivable**
  - 5-5.124 Suits Against the United States, Federal Agencies or Officials -- Service of Process on the Attorney General**
  - 5-5.125 Suits Against the United States, Federal Agencies or Officials -- Counterclaims**
  - 5-5.130 Proposed Findings of Fact and Conclusions of Law**
  - 5-5.140 Costs**
  - 5-5.151 Recording Judgments**
  - 5-5.152 Perfecting Lien of Judgments**
  - 5-5.153 Collection of Claims or Judgments**
  - 5-5.154 Execution to Enforce Collection of Judgments**
  - 5-5.155 Execution to Enforce Judgments for Possession**
  - 5-5.156 Post-Judgment Collection Efforts**
  - 5-5.161 Decisions and Appeals -- Copies of Decisions to be Forwarded to Supervising Section**
  - 5-5.162 Recommendation With Respect to Appeal**
  - 5-5.210 Settlement Authority of the Assistant Attorney General**
  - 5-5.220 Settlement Authority of Officers Within the Environment and Natural Resources Division**
  - 5-5.230 Settlement and Dismissal Authority of United States Attorneys**
  - 5-5.240 Limitations on Delegations**
- 

### **5-5.100 General Procedures in District Court Litigation**

The instructions set forth in Sections 5-5.111 *et seq.* are applicable to all cases under supervision of the Division, whether they be cases directly referred to the United States Attorney, cases for which primary responsibility has been assigned to United States Attorneys by the Assistant Attorney General, cases which

are the joint responsibility of the Division and the United States Attorneys or cases which are the primary responsibility of the Division.

### **5-5.111 Transmittal of Pleadings and Memoranda**

Except for such papers as are originally prepared in the Department and then transmitted to the United States Attorneys for filing, the United States Attorneys should submit to the appropriate Section of the Environment and Natural Resources Division in each case involving matters under the jurisdiction of the Section, one copy of the complaint, information or indictment, and one copy of all other papers filed by any party or by the court including pleadings, orders, proposed findings, judgments, opinions, briefs, memoranda, offers in compromise, plea offers, and any other instrument or record.

### **5-5.112 Stipulations**

The United States Attorney may stipulate to any fact required to be proved by the government, or to the authenticity of government records. In no case except certain direct referral matters should a United States Attorney enter into a stipulation concluding the substantive rights of the United States, or consent to entry of judgment in favor of the adverse party, without specific authority from the Environment and Natural Resources Division. Specific authority from the Environment and Natural Resources Division to enter into such stipulations, or consent to judgment, is required in all nondirect referral matters and in the following direct referral matters: Direct referral wildlife import, export, Airborne Hunting Act, Bald and Golden Eagle Protection Act, and Wild Horses and Burros Act actions.

### **5-5.113 Assistance by Other Attorneys**

United States Attorneys and their Assistants shall themselves conduct and direct all cases within the jurisdiction of this Division handled by them. There is no objection to United States Attorneys receiving assistance from attorneys connected with other offices of the government in the preparation and trial of cases, but it should be understood that such attorneys assist only, and do not conduct, direct, or control cases in which they may be interested. 28 U.S.C. §§ 509, 516 and 547. Unless designated as Special Assistant United States Attorneys, such trial attorneys are only "of counsel" to the United States Attorney; they do not control or direct the conduct of cases in which they are interested, and they may not sign pleadings or briefs on behalf of the government or its officers, employees, or agents.

### **5-5.121 Suits Against the United States, Federal Agencies or Officials -- Appearances by United States Attorneys**

Upon being served with the complaint designating the United States or a federal official or agency as a defendant, the United States Attorney shall immediately take such steps as are necessary to protect the federal interest, and shall immediately transmit copies of the complaint and other papers to the supervisory section of the Environment and Natural Resources Division. However, when time permits, no appearance should be made until instructions from the Department are obtained. If necessary, the request for instruction should be only by telephone or telefax directed to the Chief of the Section having jurisdiction over the type of action involved.

### **5-5.122 Suits Against the United States, Federal Agencies or Officials -- Removal of State Court Actions**

An action against the United States, a federal agency, or a federal official, brought in a state court, may be removed to a federal court (28 U.S.C. § 1442). The United States Attorney should seek instructions immediately as to whether an action in a state court should be removed to a federal court, and before receiving instructions, he/she should take no steps in the state court which would prevent removal.

### **5-5.123 Suits Against the United States, Federal Agencies or Officials -- Sovereign Immunity Not Waivable**

Neither the Department of Justice nor any United States Attorney may consent to suits against the United States, its officers or agents. A statute having some effects upon the doctrine of sovereign immunity is the Act of October 21, 1976, Pub.L. No. 94-574.

### **5-5.124 Suits Against the United States, Federal Agencies or Officials -- Service of Process on the Attorney General**

The Attorney General has designated the Deputy Attorney General and the Administrative Assistant to the Attorney General to accept service of pleadings and process for him/her. In the absence of specific authority from the Attorney General or his/her designees, United States Attorneys have no authority to accept such service.

### **5-5.125 Suits Against the United States, Federal Agencies or Officials -- Counterclaims**

In suits against federal agencies, or federal employees acting in their official capacity, counterclaims shall not be filed in the name of the defendants. If a basis for a counterclaim exists in such a suit, a separate action may be filed in the name of the United States, but such action may be filed only with the prior approval of the Assistant Attorney General.

### **5-5.130 Proposed Findings of Fact and Conclusions of Law**

In all actions in the federal courts tried upon the merits without a jury, care should be taken to have proper findings of fact and conclusions of law entered by the court as provided by Rule 52(a), Fed. R. Civ. P. When possible, two copies of the requests for findings should be transmitted to the section of the Environment and Natural Resources Division involved in the case for comment and discussion before filing.

### **5-5.140 Costs**

In no case may payment of costs be waived. Whenever money is accepted as full or partial payment, or in compromise, it must be applied first to court costs.

### **5-5.151 Recording Judgments**

Whenever a judgment is obtained by the United States affecting title to its property, the necessary recordation should be made promptly in accordance with the requirements of local law and the provisions of 28 U.S.C. § 1962 et seq.

### **5-5.152 Perfecting Lien of Judgments**

Whenever a judgment for money is recovered by the United States, the necessary action shall be taken in accordance with the provisions of local law to perfect and preserve the lien of the judgment upon all property of the judgment debtor in the district in which the judgment has been entered or in any other district where the property of the defendant may be found. See 28 U.S.C. §§ 1962 and 1963, and Rhea v. Smith, 274 U.S. 434 (1927).

### **5-5.153 Collection of Claims or Judgments**

Except when required by the circumstances of a particular case, no property other than money should be accepted in full or part payment of a claim, compromise, or judgment and in no event shall property other than money be accepted until all incurred court costs are paid. The procedure followed in the collection and transmittal of funds is set forth in the title to this Manual relating to the Administrative Division.

### **5-5.154 Execution to Enforce Collection of Judgments**

Whenever necessary to enforce collection of a money judgment, the United States Attorney or the field attorney should ascertain such facts as the facilities of his/her office will permit to determine whether the judgment debtor has property subject to execution and whenever necessary should invoke the aid of the field officer of the agency at whose instance the action originally was instituted. If property subject to execution is found, execution should be issued and a levy made. If no property subject to execution is found, execution should not be issued unless required by local law to perfect or protect the judgment lien or its priority, or unless the United States Attorney has reason to believe the issuance of execution will induce voluntary payment. If no distrainable property is found, the Department should be informed of the results of the investigation and the case should be held in abeyance until a determination can be made as to what further action should be taken.

### **5-5.155 Execution to Enforce Judgments for Possession**

A judgment for possession of property owned by the United States should be served upon all defendant trespassers, including those in privity with such defendants. If they fail to vacate the property in accordance with the judgment, a writ of assistance should be obtained from the clerk of the court and delivered to the U.S. Marshal for execution. When justified by unusual circumstances, an injunction may be obtained against the unlawful occupants. If they refuse to vacate the premises as required by the injunction, contempt proceedings may be instituted. Service of the injunction upon each respondent is a prerequisite to the institution of contempt proceedings.

### **5-5.156 Post-Judgment Collection Efforts**

The instructions issued by the Civil Division governing actions to be taken for the collection of judgments, set forth in Title 11, Debt Collections, are applicable to all judgments entered in favor of the United States, and reference is made to them for appropriate guidelines to be followed in collection activities to be undertaken after the entry of judgment in favor of the United States in Environment and Natural Resources Division cases. This does not enlarge the authority related to these cases beyond the limits stated in USAM 5-2.000.

### **5-5.161 Decisions and Appeals -- Copies of Decisions to be Forwarded to Supervising Section**

In cases subject to the supervision of the Environment and Natural Resources Division in which an appealable decision (either final or interlocutory) is rendered, the United States Attorney shall, by the most expeditious means, forward a copy of the decision to the Chief of the Section involved. The United States Attorney must also immediately transmit a copy of the decision to the Appellate Section of ENRD if the decision is adverse to the government's position, or if any other party to the case files a notice of appeal from the decision (whether or not the decision is adverse to the United States). Procedures for the handling of appeals are set out in USAM Title 2, APPEALS, and USAM 5-8.320 and 5-11.116.

### **5-5.162 Recommendation With Respect to Appeal**

In any case in which a United States Attorney has had lead responsibility (either by direct referral, delegation or otherwise) and in which an appealable decision (either final or interlocutory) is rendered, the United States Attorney shall proceed in accordance with the provisions of USAM 2-2.000, 5-8.320, and 5-11.116 concerning consideration of, and the procedures for, an appeal of a decision that is adverse in whole or in part to the United States.

### **5-5.210 Settlement Authority of the Assistant Attorney General**

The authority delegated by the Attorney General to the Assistant Attorney General to compromise suits is set forth in 28 C.F.R. §§ 0.016 through 0.172. As is hereinafter set forth, the Assistant Attorney General has redelegated to the Deputy Assistant Attorneys General, the Section Chiefs and Deputy Chiefs, and to the United States Attorneys, authority to compromise, close, or dismiss, certain types of cases pursuant to ENRD Directive 16-99 (Mar. 27, 1999) (see USAM 5-1.300), and supplemented by ENRD Directive 01-2 (January 18, 2001) (see USAM 5-5.220). Except for those claims expressly and specifically authorized to be compromised, closed or dismissed by the United States Attorneys, no claim or case within the area of responsibility of the Environment and Natural Resources Division may be compromised, closed or dismissed without the specific authority of the Attorney General, the Assistant Attorney General, the appropriate Section Chief or Deputy Chief. Instructions with respect to submitting proposed settlements or compromises for approval, and for authorization to dismiss cases, are set forth in USAM 5-15.600 for cases under the supervision of the Land Acquisition Section; USAM 5-14.310(C) for cases under the supervision of the Indian Resources Section; USAM 5-10.620 and 5-10.630 for cases under the supervision of the Wildlife and Marine Resources Section; and USAM 5-7.600 for cases under the supervision of the General Litigation Section.

## **5-5.220 Settlement Authority of Officers Within the Environment and Natural Resources Division**

Certain authority of the Assistant Attorney General to compromise claims has been delegated to the Deputy Assistant Attorneys General and the Chiefs and Deputy Chiefs of the various litigating sections. The most recent such delegation of authority was effected on January 18, 2001, by Environment and Natural Resources Directive No. 01-2, which supersedes and rescinds Environment and Natural Resources Division Directive No. 16-96, and supplements Directive No. 16-99. The No. 01-2 Directive provides generally as follows:

### **Section II Authority to Compromise, dismiss or close cases**

**A. Delegation to Deputy Assistant Attorney General:** Subject to the limitations imposed by USAM 5-5.240 of this section, the Deputy Assistant Attorneys General in the Environment and Natural Resources Division are hereby authorized, with respect to matters assigned to the Environment and Natural Resources Division:

(1) to accept or reject offers in compromise of claims against the United States in which the amount of the proposed settlement does not exceed \$1,500,000;

(2) to accept or reject offers relating to claims on behalf of the United States in cases in which the gross amount of the original claim does not exceed \$1,500,000;

(3) to accept or reject offers relating to claims on behalf of the United States in all cases in which the gross amount of the original claim does not exceed \$10,000,000, provided that the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,500,000.

**B. Delegation to Section Chiefs, and Deputy Section Chiefs:** Subject to the limitations imposed by USAM 5-5.240 and unless otherwise provided for in other section-specific redelegations of settlement authority, the Chiefs and Deputy Chiefs of the Appellate, Environmental Enforcement, Environmental Defense, General Litigation, Indian Resources, Land Acquisition and Wildlife and Marine Resources Sections of the Environment and Natural Resources Division are hereby authorized, with respect to matters assigned to their respective sections:

(1) to accept or reject offers in compromise of claims against the United States in which the amount of the proposed settlement does not exceed \$1,000,000;

(2) to accept or reject offers relating to claims on behalf of the United States in cases in which the gross amount of the original claim does not exceed \$1,000,000;

(3) to accept or reject offers relating to claims on behalf of the United States in all cases in which the gross amount of the original claim does not exceed \$5,000,000, provided that the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,000,000.

## **5-5.230 Settlement and Dismissal Authority of United States Attorneys**

Environment and Natural Resources Division Directive No. 16-99, as supplemented by Directive No. 01-2, authorizes United States Attorneys to compromise, close or dismiss certain cases. Pertinent portions of the Directive, as amended, provide generally as follows:

### **Delegations to United States Attorneys**

(1) Compromise of Cases in General.

Subject to the limitations set forth in paragraph D of this section and in section 0.160 of Title 28 of the Code of Federal Regulations, United States Attorneys in compromise of direct referral ENRD cases

listed in USAM 5-1.310 subparagraph 1.A., and cases that are directly referred to them by the Coast Guard in accordance with USAM 5-1.310 subparagraph B.(3)(a), are authorized, without the prior approval of the Environment and Natural Resources Division:

(a) to accept or reject offers in compromise of, or settle administratively, claims against the United States in which the amount of the proposed settlement does not exceed \$1,000,000;

(b) to accept or reject offers relating to claims on behalf of the United States in cases in which the gross amount of the original claim does not exceed \$1,000,000;

(c) to accept or reject offers relating to claims on behalf of the United States in all cases in which the gross amount of the original claim does not exceed \$5,000,000, provided that the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,000,000.

Such authority to settle claims against the United States may be exercised only with the written concurrence of a person authorized to provide such concurrence on behalf of the field office of the department or agency concerned. When the United States is a plaintiff, a United States Attorney may accept an offer without the concurrence of such a person if the acceptance is based solely upon the financial circumstances of the defendant.

## (2) Compromise of Certain Civil Environmental Cases.

Except where the U.S. Attorney has been delegated authority pursuant to USAM 5-1.300 subparagraph 1.D and as provided in 5-5.230 subparagraph(4), all offers in compromise of cases in which the Department of Justice represents the Environmental Protection Agency, or the Administrator or any other official of that Agency, shall be submitted to the Assistant Attorney General of the Environment and Natural Resources Division. Similarly, all offers in compromise of cases in which the Department of Justice represents the Secretary of the Army, acting through the Corps of Engineers pursuant to USAM 5-1.310 subparagraph B.(1), shall be submitted to the Assistant Attorney General of the Environment and Natural Resources Division.

## (3) Compromise of Condemnation Cases.

(a) Subject to the limitations imposed in USAM 5-5.240, United States Attorneys are authorized, without the prior approval of the Environment and Natural Resources Division, to accept or reject offers in compromise of condemnation proceedings in any case in which:

(i) the gross amount of the proposed settlement does not exceed \$1,000,000;

(ii) the settlement is approved in writing (the written approval to be retained in the file of the United States Attorney concerned) by the authorized field representative of the acquiring agency if the amount of the settlement exceeds the amount deposited with the declaration of taking as to the particular tract of land involved;

(iii) the amount of the settlement is compatible with the sound appraisal, or appraisals, upon which the United States would rely as evidence in the event of trial, due regard being had for probable minimum trial costs and risks; and

(iv) the case does not involve the revestment of any land or improvements or any interest, or interests, in land under the Act of October 21, 1942, 56 Stat. 797 (40 U.S.C. § 258f).

(b) When a United States Attorney has settled a condemnation proceeding under the authority conferred by USAM 5-5.230, subparagraph (3)(a), the United States Attorney shall promptly secure the entry of judgment and distribution of the award, and shall take all other steps necessary to dispose of the matter completely.

(c) The United States Attorney concerned shall immediately forward to the Department a report, in the form of a letter or memorandum, bearing the United States Attorney's signature or showing personal approval, stating the action taken and containing an adequate statement of the reasons therefor. In routine

cases, a form containing the elements of the required report may be used in lieu of a letter or memorandum. In any case, special care shall be taken to see that the report contains a statement as to what the valuation testimony of the United States would have been if the case had been tried.

(4) Compromise of CERCLA Contribution Claims.

(a) Subject to the limitations imposed in USAM 5-5.240, United States Attorneys are authorized, without prior approval of the Environment and Natural Resources Division, to accept or reject offers in compromise of CERCLA actions, 42 U.S.C. § 4321 et seq., in which the United States, or its agencies, is sued for contribution, and over which the United States Attorney has been given the lead by the Environment and Natural Resources Division, in any case in which the gross amount of the proposed settlement does not exceed \$1,000,000.

(b) The United States Attorney concerned shall immediately forward to the Department a report, in the form of a letter or memorandum, bearing the United States Attorney's signature or showing personal approval, stating the action taken and containing an adequate statement of the reasons therefor.

(5) Closing or Dismissal of Matters and Cases.

Subject to the limitations imposed in USAM 5-5.240, a direct referral matter described in USAM 5-1.310 Section 1.A may be closed without action by the United States Attorney or, if filed in court, may be dismissed by the United States Attorney, if written concurrence that the matter is without merit factually or legally is provided by a person authorized to concur on behalf of the field office of the department or agency concerned. Except for claims brought for the benefit of Indians or Indian tribes, the United States Attorney may close a claim without consulting the field office of the department or agency concerned if the claim is for money only and the United States Attorney concludes: (a) that the cost of collection under the circumstances would exceed the amount of the claim, or (b) that the claim is uncollectible. With respect to claims asserted for the benefit of individual Indians or Indian tribes, the United States Attorney may close a claim without consulting the field office of the department or agency concerned if the claim is for money only and the United States Attorney concludes that the claim is uncollectible; claims brought for the benefit of Indian individuals and tribes may not be closed merely because the cost of collection might exceed the amount of the claim.

## **5-5.240 Limitations on Delegations**

(1) The authority to compromise, close or dismiss cases delegated in USAM 5-5.220 and USAM 5-5.230, may not be exercised when:

(a) for any reason, the proposed action, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in the above sections;

(b) a novel question of law or a question of policy is presented, or for any other reason, the settlement should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General for the Environment and Natural Resources Division;

(c) the agency or agencies involved are opposed to the proposed compromise of a claim;

(d) the proposed settlement converts into a mandatory duty an otherwise discretionary authority of a department or agency to promulgate, revise, or rescind regulations;

(e) the proposed settlement commits a department or agency to expend funds that Congress has not appropriated and that have not been budgeted for the action in question, or commits a department or agency to seek particular appropriation or budget authorization;

(f) the proposed settlement otherwise limits the discretion of a department or agency to make policy or managerial decisions committed to the department or agency by Congress or by the Constitution; or

(g) the proposed settlement exceeds \$2,000,000 or 15% of the original claim, whichever is greater. In such circumstance, the Section managers must seek approval from the Associate Attorney General, through the office of the Assistant Attorney General.

(2) In addition to where specified above, for purposes of maintaining accurate statistics, exercise of the following settlement authority shall be reported by forwarding a copy of the signed approval memorandum to the Assistant Attorney General immediately after approval of (a) settlements of more than \$300,000 with respect to Section Chiefs and United States Attorneys; and (b) all settlements with respect to the Deputy Assistant Attorneys General.

**5-6.000**  
**THE ENVIRONMENTAL**  
**DEFENSE SECTION**

---

- 5-6.001 Establishment**
- 5-6.100 Area of Responsibility -- Generally**
- 5-6.111 Responsibility -- Defense of Actions Directed Against the United States, Its Agencies, and Officials**
- 5-6.112 Responsibility -- Cases Brought on Behalf of the United States**
- 5-6.120 Overlapping Section Case Responsibility**
- 5-6.121 Responsibility for Cases With New Issues or an Altered Character**
- 5-6.130 Statutes Administered**
- 5-6.200 Organization in General**
- 5-6.220 General Duties of Staff Attorneys**
- 5-6.300 Supervision and Handling of Environmental Defense Section Cases -- Requests for Instructions**
- 5-6.302 Supervision and Handling of Environmental Defense Section Cases -- Assignment of Case Responsibility**
- 5-6.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases**
- 5-6.311 Notification to Environmental Defense Section of Intention to File Actions**
- 5-6.312 Transmittal of Papers to Environmental Defense Section and Client Agencies**
- 5-6.313 Authority to Handle Direct Referral Cases Does Not Extend to Appeals**
- 5-6.321 Actions Not Subject to Direct Referral to United States Attorneys -- Prior Authorization Needed to Institute Action**
- 5-6.510 General**
- 5-6.520 Preparing Responsive Pleadings in Actions Directed Against the United States, Its Agencies or Officials**
- 5-6.521 Temporary Restraining Orders and Preliminary Injunctions**
- 5-6.522 Lis Pendens and the Recording of Judgments**
- 5-6.530 Suits Against the United States, Federal Agencies or Officials**
- 5-6.531 Suits Against the United States -- Generally**
- 5-6.532 Direct Review in the Courts of Appeals**
- 5-6.533 Citizens' Suits**
- 5-6.600 Settlement and Dismissal -- Generally**
- 5-6.611 Transmittal of Settlement Offers**

## **5-6.001 Establishment**

The Environmental Defense Section was created on July 1, 1981, as part of a Division reorganization. The predecessor section, the Pollution Control Section, was abolished on that date.

## **5-6.100 Area of Responsibility -- Generally**

The Environmental Defense Section defends, and supports and coordinates the defense of, all civil cases, matters and proceedings arising under the statutes enumerated in USAM 5-6.130 (all of which statutes are concerned with the regulation and abatement of sources of pollution or with the protection of the natural environment). The Environmental Defense Section also prosecutes, and supports the prosecution of, civil matters arising under Sections 10 and 13 of the River and Harbor Act of 1899 and Sections 301 and 404 of the Clean Water Act. The Section also engages in certain other affirmative litigation.

## **5-6.111 Responsibility -- Defense of Actions Directed Against the United States, Its Agencies, and Officials**

The Environmental Defense Section has Departmental responsibility for defending actions brought against the Administrator of the Environmental Protection Agency, and his or her subordinate officials, and against the Secretary of the Army, the Chief of Engineers of the United States Army, and their subordinate officials, challenging administrative actions which those officials have taken or failed to take under the statutes set forth in USAM 5-6.130. Such actions may take the form of (a) challenges to regulations promulgated by these officials, (b) challenges to the propriety of the issuance or denial of permits, (c) assertions that actions required by law have not been taken, (d) challenges to measures taken or not taken with regard to enforcement of the statutes listed in USAM 5-6.130, and (e) any other defensive matters relating to the agencies' activities under the statutes listed in USAM 5-6.130.

Additionally, the Environmental Defense Section has Departmental responsibility for litigation directed against any other federal agency or official alleged to have violated any duties under the statutes listed in USAM 5-6.130 and also for litigation directed at federal installations, properties, and activities charged with violating applicable discharge or emissions limitations, or other federal, state or local pollution laws.

## **5-6.112 Responsibility -- Cases Brought on Behalf of the United States**

The Environmental Defense Section also has responsibility for civil actions initiated on behalf of the United States to enforce the provisions of Sections 10 and 13 of the River and Harbor Act of 1899 and Sections 301 and 404 of the Clean Water Act, relating to unlawful filling or other unauthorized activities undertaken in waters of the United States. As a matter of policy and practice, these civil prosecutions are initiated only at the request of the Administrator of the Environmental Protection Agency or Chief of Engineers of the United States Army.

Whenever apparent violations of the above-mentioned statutes are brought to the attention of the Department of Justice by persons or agencies other than those with statutory enforcement responsibilities, the Department forwards reports of these apparent violations to cognizant enforcement officials for evaluation and referral for legal proceedings, if appropriate.

Forwarding reports of suspected violations to the appropriate agencies affords them an opportunity to resolve matters administratively. It also minimizes the government's vulnerability to a number of technical, procedural and equitable defenses. On occasion, however, an action under Section 10 or Section

13 of the River and Harbor Act may be initiated by the Environmental Defense Section or United States Attorneys, at their own instance. All such actions require the approval of the Assistant Attorney General, Environment and Natural Resources Division.

Other affirmative litigation undertaken on behalf of the agencies responsible for administering the statutes listed in USAM 5-6.130 and on behalf of agency clients having facilities subject to federal, state and local pollution control laws are initiated upon referral of the proposed action by the client agency to the Section Chief, Environmental Defense Section.

### **5-6.120 Overlapping Section Case Responsibility**

While the Environmental Defense Section is responsible for defensive actions involving the statutes listed in USAM 5-6.130 cases arise from time to time involving several different claims and defenses, only some of which lie within the cognizance of the Environmental Defense Section. The Chiefs of the appropriate Sections within the Environment and Natural Resources Division will decide between or among themselves concerning the primary assignment of such cases within the Division. The Section having primary responsibility for the case also has the responsibility to coordinate with the appropriate Section within the Division on all matters within said Section's jurisdiction. This should be accomplished by furnishing copies of pertinent pleadings and memoranda to said Section. Whenever possible, the Division attorney with the primary responsibility for the case will notify the United States Attorney of the identity of the attorney in any other Section who may be contacted with respect to matters within the expertise of that Section.

### **5-6.121 Responsibility for Cases With New Issues or an Altered Character**

Occasionally, issues involving statutes within the Environmental Defense Section's cognizance may be injected into existing litigation by way of amendment or supplemental pleadings, etc. In such events, United States Attorneys should notify the Chief of the Environmental Defense Section so that the Section can properly perform its responsibilities.

On rare occasions, the fundamental character of existing litigation may change such that issues within the cognizance of the Environmental Defense Section become the dominant issues. In such situations, the Environmental Defense Section staff attorney with advisory responsibility for the case shall notify the Section Chief who may request a transfer of Section responsibility if he/she deems it appropriate. If such issues become dominant in a case where the United States Attorney has primary responsibility, he may make a written request to the Assistant Attorney General, Environment and Natural Resources Division, to have the case transferred to the Environmental Defense Section.

On occasion private plaintiffs may assert federal common law nuisance claims as a basis for relief against the United States, its agencies and officers. Any such case should immediately be brought to the attention of the Chief, Environmental Defense Section.

### **5-6.130 Statutes Administered**

The Environmental Defense Section is responsible for conducting defensive and certain other litigation as described in USAM 5-6.100, 5-6.111 and 5-6.112, arising under the following statutes:

- A. Sections 10 and 13 of the River and Harbor Act of 1899, 33 U.S.C. §§ 403, 407;

- B. The Clean Water Act (Federal Water Pollution Control Act, as amended), 33 U.S.C. § 1251 *et seq.* (except for in rem actions against vessels, which are supervised by the Admiralty and Shipping Section of the Civil Division);
- C. The Toxic Substances Control Act of 1976, 15 U.S.C. § 2601 *et seq.*;
- D. The Safe Drinking Water Act of 1974, 42 U.S.C. § 300f *et seq.*;
- E. The Clean Air Act, 42 U.S.C. § 7401 *et seq.*;
- F. The Noise Control Act of 1972, 42 U.S.C. § 4901 *et seq.*;
- G. The Uranium Mill Tailings Radiation Control Act, 42 U.S.C. § 7133 *et seq.*;
- H. The Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*;
- I. The Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (also called the "Solid Waste Act").
- J. The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (also called "Superfund Act");
- K. Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1401 *et seq.* ("Ocean Dumping Act").

## **5-6.200 Organization in General**

The Section is administered by a Chief, a Deputy Chief, and seven Assistant Chiefs. Four Assistant Chiefs are primarily responsible for district court litigation, while one Assistant Chief is primarily responsible for appellate court litigation. In addition, there is one Assistant Chief for Policy and Legislation, and one Assistant Chief for Administration and training. The work of the Section is assigned among staff attorneys according to experience and workload. Generally speaking, all staff attorneys are involved to some extent with every aspect of the Section's work and there are no specific units or other organizational subdivisions. General information relating to the Section or cases within its supervision may be obtained by calling the Chief, Deputy Chief, or Assistant Chiefs at (202) 514-2219. Information on a specific case should be requested from the staff attorney assigned to that case. Where the staff attorney's name is unknown, the case management specialist of the Section (202) 514-3255 will furnish that information.

## **5-6.220 General Duties of Staff Attorneys**

In general, the following are the more significant duties of staff attorneys assigned to the Environmental Defense Section; (a) to handle cases authorized by statutes for direct review in appellate court; (b) to handle environmental litigation in district courts in cases of major significance when directed by the Assistant Attorney General, Environment and Natural Resources Division, pursuant to the policies set forth in USAM 5-6.300, *et seq.*; (c) to offer advice, policy guidance and trial assistance in environmental cases in the district court where the United States Attorney or designated assistant has primary responsibility for the litigation; and (e) to assume advisory responsibility with respect to environmental issues in cases falling within the cognizance of other Sections of the Environment and Natural Resources Division.

### **5-6.300 Supervision and Handling of Environmental Defense Section Cases -- Requests for Instructions**

All requests for instructions and guidance relating to the defense or prosecution of actions under the jurisdiction of the Environmental Defense Section shall be referred to the Chief of the Environmental Defense Section of the Environment and Natural Resources Division of the Department of Justice, Washington, D.C. 20530, (202) 514-2219.

### **5-6.302 Supervision and Handling of Environmental Defense Section Cases -- Assignment of Case Responsibility**

Responsibility for the handling of cases under the supervision of the Environmental Defense Section is assigned by the Chief of the Section under the provisions of USAM 5-1.323 through 5-1.325.

### **5-6.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases**

At present, the Assistant Attorney General, Environment and Natural Resources Division, has delegated to the United States Attorneys the authority to act, without prior authorization from the Environment and Natural Resources Division, on behalf of any other department or agency in response to a direct request in writing from an authorized field officer of the department or agency concerned, in the following environmental cases under the supervision of the Environmental Defense Section and Enforcement Section in certain cases:

Civil enforcement actions involving the dredging or filling or alteration of the navigable waters of the United States and their tributaries in violation of Sections 10 and 13 of the River Harbor Act of March 13, 1899 (33 U.S.C. §§ 403, 407), and in violation of Sections 301 and 404 of the Clean Water Act, 33 U.S.C. §§ 1311, 1344. This authority is, however, revocable on a case by case basis where, in the opinion of the Assistant Attorney General, important or novel issues of law or policy are involved.

Generally speaking, direct referral cases are of a routine nature and involve statutes whose interpretation is relatively well-settled. Departmental policies on cases authorized for direct referral, however, are not necessarily related to policies on case responsibility allocation. The former have been formulated in cooperation with enforcement agencies to afford them an opportunity for headquarters review of enforcement action falling within unsettled areas of the law.

### **5-6.311 Notification to Environmental Defense Section of Intention to File Actions**

Prior to filing a civil complaint in a case authorized for direct referral, the Chief, Environmental Defense Section, shall be notified of the proposed action, and shall be furnished with a copy of the written request from the authorized field officer for initiation of the action.

### **5-6.312 Transmittal of Papers to Environmental Defense Section and Client Agencies**

One copy of each letter prepared or received by a United States Attorney in a direct referral case, as well as one copy of each pleading and paper filed by any party or by the court, shall be promptly

forwarded to the Environmental Defense Section, and two copies shall be forwarded to the local officer of the referring agency (the local officer forwards one copy to his/her agency in Washington, D.C.).

### **5-6.313 Authority to Handle Direct Referral Cases Does Not Extend to Appeals**

The authorization to handle direct referral cases under the provisions of USAM 5-6.310 extends to district court proceedings only. Responsibility for appellate proceedings in all such cases remains in the Division's Appellate Section. *See* USAM 5-8.300 *et seq.* Accordingly, appeals in all such cases are governed by the procedures in USAM Title 2, Appeals.

### **5-6.321 Actions Not Subject to Direct Referral to United States Attorneys -- Prior Authorization Needed to Institute Action**

Except for cases *not* requiring prior authorization as stated in USAM 5-6.310 no case under the supervision of the Environmental Defense Section may be initiated by a United States Attorney without the prior authorization of the Assistant Attorney General, who shall sign the complaint prior to its being filed (*see* USAM 5-1.302). Additionally, United States Attorneys may not initiate upon direct referral cases arising under the statutes listed in USAM 5-6.310 where relief sought is monetary damages or civil penalties in excess of the United States Attorneys' settlement authority.

No defensive matters may be handled by the United States Attorneys on direct referral.

In cases under the supervision of this section not authorized for direct referral, in which the United States Attorney wishes to file an action in the name of the United States, a request for such authority shall be sent to the Assistant Attorney General, Environment and Natural Resources Division, attention Chief, Environmental Defense Section. Responsibility for handling such cases will be determined in accordance with the policies set forth in USAM 5-1.322 through 5-1.325.

### **5-6.510 General**

The general instructions set forth in USAM 5-1.000 *et seq.*, with respect to the handling of litigation under the jurisdiction of the Environment and Natural Resources Division apply to litigation within the cognizance of the Environmental Defense Section.

### **5-6.520 Preparing Responsive Pleadings in Actions Directed Against the United States, Its Agencies or Officials**

Whenever an action is initiated against an agency or official of the United States, the underlying factual material required for the preparation of responsive pleadings is forwarded from the headquarters of the concerned agency to the Assistant Attorney General, Environment and Natural Resources Division, by way of a litigation report. Except in unusual circumstances, agencies are required to forward a litigation report well in advance of the sixty (60) day deadline for responsive pleadings specified by Rule 12(a). If the United States Attorney has been given primary litigation responsibility, the Environmental Defense Section will request the client agency to forward a copy of the litigation report to the United States Attorney concurrently with its transmittal to the Assistant Attorney General.

There are, however, inherent delays in the customary procedure for transmitting litigation reports. Service of the complaint may be upon the agency headquarters in Washington, D.C., and it may be some

time before the local agency field office is aware of the pendency of the action. To minimize potential delays, the United States Attorney should immediately advise local agency field offices and the Chief, Environmental Defense Section, of the pendency of actions in which they may be a party or otherwise have an interest. The field offices should be provided with copies of the complaint and related documents as soon as possible so that they can initiate the preparation of a litigation report.

### **5-6.521 Temporary Restraining Orders and Preliminary Injunctions**

Occasionally, an action directed against an agency or official of the United States will involve a motion for temporary restraining order or preliminary injunction or otherwise require that action be taken on behalf of the United States well before any responsive pleadings are due. In such cases the United States Attorney should immediately notify the Chief of the Environmental Defense Section (telephone (202) 514-2219). If memoranda, affidavits or other responses must be filed prior to the agency's preparation of a litigation report, the United States Attorney should clear all legal and factual positions with the Environmental Defense Section prior to advancing them formally on behalf of the United States. It is the responsibility of the Environmental Defense Section to coordinate such positions with the agency headquarters in Washington, D.C.

### **5-6.522 Lis Pendens and the Recording of Judgments**

In civil prosecutions under Sections 10 and 13 of the River and Harbor Act and Sections 301 and 404 of the Clean Water Act seeking prohibitory or mandatory injunctive relief, complications may arise if the ownership of the property in question changes hands during the pendency of the action. Where there is a threat of transfer of ownership, the United States Attorney should consider filing a notice of the pendency of the action, or *lis pendens*. The steps necessary for the filing of such a notice are determined by the law of the particular state (*see* 28 U.S.C. § 1964).

On occasion, the final judgment in a civil prosecution under these statutes may, in effect, place a permanent burden on the property which was subject to the unauthorized activities. In order to protect the future interests of the United States, the judgment should be recorded in accordance with the requirements of local law and the provisions of 28 U.S.C. § 1962 *et seq.*

### **5-6.530 Suits Against the United States, Federal Agencies or Officials**

Sections 5-6.531 through 5-6.533 discuss suits against the United States, federal agencies or officials.

### **5-6.531 Suits Against the United States -- Generally**

Upon notification that an action has been initiated against the United States, its agencies or officials, the United States Attorney should examine the complaint and supporting documents to ascertain whether the action will involve issues within the cognizance of the Environmental Defense Section. If it appears that the Environmental Defense Section will have responsibility for the case (*see* USAM 5-6.112), the United States Attorney should promptly send a copy of the complaint and supporting documents to the Chief of the Environmental Defense Section.

If the case does not appear to be the primary responsibility of the Environmental Defense Section but appears that the Section may have advisory responsibilities, the Section Chief should be notified pursuant to USAM 5-6.120.

### **5-6.532 Direct Review in the Courts of Appeals**

Most of the statutes listed in USAM 5-6.130 authorize direct review in the appellate courts of various actions taken by the Administrator of the Environmental Protection Agency, as well as certain other federal officials; all cases involving such petitions for review that are served upon a United States Attorney should be promptly forwarded to the Chief of the Environmental Defense Section.

### **5-6.533 Citizens' Suits**

The Clean Air Act, the Clean Water Act, the Marine Protection, Research and Sanctuaries Act, the Noise Control Act, and several of the other Acts also authorize citizen suits in the United States district courts against various persons, including federal officials. Normally, a period of notice is required before such an action may be instituted. Citizens' suits must be analyzed carefully to determine the relief sought in the case, and the United States Attorney should promptly seek instructions from the Chief, Environmental Defense Section, as to the handling of the case.

### **5-6.600 Settlement and Dismissal -- Generally**

United States Attorneys are not authorized to settle or dismiss any case arising under any of the statutes listed in USAM 5-6.130. Any offer to settle or dismiss any such suit must be directed to the Chief of the Environmental Defense Section, who will take final action, or if the matter is not within the scope of his/her delegated authority, will forward the offer, with his/her own recommendation, to the Deputy Assistant Attorney General, who, in turn, will either act upon the offer, or, if necessary, refer the matter to the Assistant Attorney General. Offers to settle or compromise in direct referral cases, when transmitted to the Environmental Defense Section, should be accompanied by the recommendation of the referring client agency.

### **5-6.611 Transmittal of Settlement Offers**

Any offer to settle or dismiss an action shall be transmitted to the Chief of the Environmental Defense Section for referral to the Assistant Attorney General and for such other action as may be directed by regulation. Such offers should be accompanied by the written comments and recommendation of the referring client agency. In emergency situations, such as with settlement offers received during trial, settlement offers dealing exclusively with monetary damages or penalties may be communicated to the Chief of the Environmental Defense Section by telephone.

# 5-7.000 THE GENERAL LITIGATION SECTION

---

- 5-7.001 Establishment**
  - 5-7.100 Area of Responsibility**
  - 5-7.120 Statutes Administered**
  - 5-7.200 Organization**
  - 5-7.300 Processing and Handling Cases -- Special Provisions**
  - 5-7.310 Authority of United States Attorneys to Initiate and Defend Actions Without Prior Authorization, i.e., Direct Referral Cases**
  - 5-7.311 Actions to Recover Money to be Instituted Only Where a Judgment is Collectible**
  - 5-7.312 Authority of United States Attorneys to Defend Actions Without Prior Authorization**
  - 5-7.320 Actions Not Subject to Direct Referral to United States Attorney**
  - 5-7.321 Prior Authorization Needed to Initiate Action**
  - 5-7.500 District Court Litigation -- Generally**
  - 5-7.520 Lis Pendens**
  - 5-7.530 Judgments**
  - 5-7.600 Settlement and Dismissal of Cases -- Generally**
  - 5-7.620 Transmittal of Compromise Offer to General Litigation Section -- Recommendations With Respect to Acceptance**
  - 5-7.630 Authority of United States Attorneys to Settle or Dismiss Direct Referral Cases**
- 

## **5-7.001 Establishment**

The General Litigation Section was created by Order of June 28, 1960, consolidating the Trial Section and the Water Resources Section, as modified by the ENRD Directive 14-86 of April 28, 1986, consolidating the Indian Claims Section into it.

## **5-7.100 Area of Responsibility**

The General Litigation Section handles all pending and contemplated cases, matters and proceedings in the trial courts, assigned to the Environment and Natural Resources Division, except condemnation proceedings brought by the United States and matters specifically assigned to the Indian Resources Section, the Wildlife and Marine Resources Section, the Environmental Crimes Section, Environmental Defense Section, and the Environmental Enforcement Section.

## 5-7.120 Statutes Administered

The General Litigation Section supervises and conducts litigation arising under several different classes of statutes, described below, and also under treaties and agreements with Indians, Executive Orders, common law, and the laws of various states. The listing is not exhaustive, but illustrative, and contains the primary statutes under which litigation arises.

**A. Civil construction and operation of projects and facilities.** Chief among these statutes are: 1) the Federal-Aid Highway Act of 1958, 72 Stat. 885, as amended, 23 U.S.C. Sec. 101 *et seq.*, 2) Flood Control Act of 1938, 52 Stat. 1215, *as amended*, 33 U.S.C. Sec. 701b *et seq.*, and other civil works authorities of the U.S. Army Corps of Engineers, some of which are codified at 33 U.S.C. Sec. 540 *et seq.*; 3) Airport and Airway Development Act of 1970, 84 Stat. 220, *as amended*, 49 U.S.C. Sec. 1711 *et seq.*; Housing and Community Development Act of 1974, 88 Stat. 633, 42 U.S.C. Sec. 5301 *et seq.*

**B. National Environmental Policy Act and similar procedural and review statutes.** Regardless of the agency involved: 1) the National Environmental Policy Act of 1969, 42 U.S.C. Sec. 4321 *et seq.*; 2) the National Historic Preservation Act of 1966, as amended, 16 U.S.C. Sec. 470 *et seq.* (for all such cases, *see* USAM 5-7.300); and 3) Fish and Wildlife Coordination Act, 16 U.S.C. Secs. 661 to 666c, except sec. 666a (*see* USAM 5-10.120).

**C. Federal Land Management.** The statutes under which the Bureau of Land Management, the Forest Service, the Fish and Wildlife Service and the National Park Service administer lands and resources under their jurisdiction, excepting those matters related to wildlife management delegated to the Wildlife and Marine Resources Section (*see* USAM 5-10.100). Chief among these statutes are: 1) (Bureau of Land Management) Federal Land Policy and Management Act, 43 U.S.C. Sec. 1701 *et seq.*, Taylor Grazing Act of 1934, 43 U.S.C. Sec. 315 *et seq.*; 2) (Forest Service) "Organic Act of 1897", 16 U.S.C. Sec. 471 *et seq.*, Weeks Act of 1911 (eastern acquired lands forests), found in part at 16 U.S.C. Secs. 513 to 519, 36 Stat. 961, National Forest Management Act, 16 U.S.C. Sec. 1601 *et seq.*; 3) (Fish and Wildlife Service) National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. Secs. 668dd and 668ee; 4) (National Park Service) National Park Service Act, 16 U.S.C. Secs. 1 to 4, and the authorizing statutes for individual units of the National Park System, 16 U.S.C. Secs. 21 through 460mm, and the Historic Sites, Buildings and Antiquities Act of 1935, 16 U.S.C. Secs. 461 to 467.

**D. Mineral exploration and development.** Statutes governing mineral activity on federal lands: 1) General Mining Law of 1872, *as amended*, 30 U.S.C. Sec. 22 *et seq.*, 2) Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. Sec. 181 *et seq.*, 3) Mineral Leasing Act for Acquired Lands, 30 U.S.C. Sec. 351 *et seq.*, 4) Outer Continental Shelf Lands Act, 43 U.S.C. Sec. 1331 *et seq.*, 5) Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. Sec. 1701 *et seq.*

**E. Indian cases.** 1) Suits by Indian tribes, individuals or allottees against the United States under treaties and agreements with Indians, and in the administration of statutes governing Indian lands, Indian resources, Indian assistance programs, and actions with respect to tribal self-government, and 2) Alaska Native Claims Settlement Act, 43 U.S.C. Sec. 1601 *et seq.*

**F. Water Rights and Projects.** 1) Reclamation Act of 1902, *as amended*, 43 U.S.C. Sec. 431 *et seq.*, and other project authorizations of the Bureau of Reclamation; and 2) McCarran Act of 1952, 43 U.S.C. Sec. 666, involving adjudication of federal water rights in state courts, except for Indian water rights (*see* USAM 5-5.100).

**G. Boundaries, Quiet Title and Navigation.** 1) Quiet Title Act, *as amended*, 28 U.S.C. Sec. 2409a, including suits by states regarding navigability under the Equal Footing doctrine, 2) Sections 9 and 11 of the Rivers and Harbors Act of 1899, 33 U.S.C. Secs. 401, 404, and 3) Submerged Lands Act of 1953, 43 U.S.C. Sec. 1301 *et seq.*

**H. Other statutes of general applicability.** 1) Tucker Act, 28 U.S.C. Secs. 1346(a)(2) and 1491 (for all matters within the responsibility of the Environment and Natural Resources Division (USAM 5-1.100)), 2) Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 *et seq.*, 3) Coastal Zone Management Act, 16 U.S.C. Sec. 1415 *et seq.*, 4) Alaska National Interest Lands Conservation Act of 1980, Pub.L. No. 96-487, and 5) Wilderness Act of 1964, 16 U.S.C. Sec. 1131 *et seq.*

### **5-7.200 Organization**

The Section is administered by a Chief, a Deputy Chief, and three Assistant Chiefs. Information related to any matter in the section may be sought by calling any of these five at 202-305-0440. The work load is assigned according to experience, expertise and workload. The section has distributed to United States Attorneys' offices a listing of the expertise of section personnel. Information on a specific case should be sought from the attorney assigned. Information on case assignment is available from the docket clerk, 202-305-0489.

### **5-7.300 Processing and Handling Cases -- Special Provisions**

**A. National Historic Preservation Act.** The Department of Justice has agreed, pursuant to 16 U.S.C. Sec. 470k, to notify the Advisory Council on Historic Preservation of all cases involving the National Historic Preservation Act, 16 U.S.C. Sec. 470 *et seq.*, or regulations promulgated thereunder (36 C.F.R. Part 800). The Advisory Council will rarely be a party to the litigation, but the Council is charged, *inter alia*, with advising the President and Congress on matters relating to historic preservation and with reviewing federal, federally assisted, and federally licensed undertakings affecting cultural properties.

Many of these cases involve proposed alterations to, or demolition of, historic structures, and may originate as temporary restraining orders. It is especially important, therefore, that the Section receive early notice of these cases, so that it can then notify the Advisory Council. Accordingly, upon receipt of any complaint raising an issue under the National Historic Preservation Act, the United States Attorney's Office should call the attorney assigned to the case in the Department of Justice in Washington, D.C. who will then notify the Council. Most of the cases involving the Act or regulations are within the jurisdiction of the General Litigation Section, Environment and Natural Resources Division, 202-305-0440. In the event a request for a temporary restraining order is filed before the case is assigned to a General Litigation attorney, the Chief of that Section should be notified.

**B. Biotechnology Litigation.** Litigation involving biotechnology and its environmental implications is handled in the Environment and Natural Resources Division. Within the Division, the cases -- whether filed by complaints in the district courts or by petitions for review in the courts of appeals -- are assigned to a team of attorneys from the Division, usually from the General Litigation Section (*see* USAM 5-7.120), Environmental Defense Section (*see* USAM 5-6.130), or the Wildlife and Marine Resources Section (*see* USAM 5-10.120), as appropriate, depending on the statutes identified and claims raised. If such litigation is filed in your district, please contact the chief of any of the above-stated sections who will contact the other appropriate sections.

### **5-7.310 Authority of United States Attorneys to Initiate and Defend Actions Without Prior Authorization, i.e., Direct Referral Cases**

The authority of United States Attorneys to initiate cases under the supervision of the General Litigation Section is set forth in USAM 5-1.310.

### **5-7.311 Actions to Recover Money to be Instituted Only Where a Judgment is Collectible**

No action for the recovery of money only shall be instituted unless the referring agency supplies satisfactory proof that a judgment, if recovered, would be collectible.

### **5-7.312 Authority of United States Attorneys to Defend Actions Without Prior Authorization**

United States Attorneys are hereby authorized to act in the following matters, in response to service on the United States, without assignment of the case from the Environment and Natural Resources Division, in the following cases:

- A. Actions under 28 U.S.C. Sec. 2410 affecting property in which the United States has a lien, except where the lien is a tax lien. *See* Title 6-TAX DIVISION, USAM. *See also* Environment and Natural Resources Division Directive No. 9-68 (August 5, 1968): "Procedure for the Handling of Condemnation Actions against the United States under or purportedly under Title 28 U.S.C. Sec. 2410."
- B. Suits for judicial review of decisions of the Department of the Interior regarding the probate or estate administration of deceased Indians' interests in trust or allotted land.
- C. Actions to recover possession of, or quiet title to, property from tenants, squatters, trespassers, or others, and actions to enjoin trespasses on federal property.
- D. Actions to collect costs of Forest Fire suppression and other damages resulting from such fires.

### **5-7.320 Actions Not Subject to Direct Referral to United States Attorney**

Responsibility for the handling of cases under the supervision of the General Litigation Section is assigned by the Chief of the Section under the provisions of USAM 5-1.326.

### **5-7.321 Prior Authorization Needed to Initiate Action**

Except for cases authorized to be filed by USAM 5-1.310 no case under the supervision of the General Litigation Section may be initiated by a United States Attorney without the prior authorization of the Assistant Attorney General.

### **5-7.500 District Court Litigation -- Generally**

The general instructions set forth in USAM 5-5.100 *et seq.*, with respect to the handling of litigation apply in every respect to the litigation of the General Litigation Section. Particularly, it is of the utmost importance that complaints filed against the federal government and federal officials in matters relating to the area of responsibility of the General Litigation Section be transmitted promptly to the Chief of the Section.

### **5-7.520 Lis Pendens**

Whenever required by the nature of the case, the attorney assigned to the case shall, or assure that the agency shall, file or record a notice of the pendency of the action or lis pendens among the proper local records, except in those jurisdictions where the law is settled that the commencement of the action is notice to all persons affected.

### **5-7.530 Judgments**

United States Attorneys should note and comply with the instructions relating to the recording, collection and enforcement of judgments set forth in USAM 5-5.151 through 5-5.156.

### **5-7.600 Settlement and Dismissal of Cases -- Generally**

Except with respect to direct referral cases (discussed in USAM 5-7.630) no claim or case under the jurisdiction of the General Litigation Section may be settled or dismissed without specific or delegated authority from the Assistant Attorney General. *See* USAM 5-5.210 *et seq.*

### **5-7.620 Transmittal of Compromise Offer to General Litigation Section -- Recommendations With Respect to Acceptance**

Any offer to settle or dismiss an action shall be transmitted to the Chief of the General Litigation Section for referral to the Assistant Attorney General or for such other action as may be directed by regulation. Such offers should be accompanied by the written comments and recommendation of the referring agency and the United States Attorney. In emergency situations, such as with settlement offers received during trial, settlement offers dealing exclusively with monetary damages or penalties may be communicated to the Chief of the General Litigation Section by telephone.

The recommendation should be guided by the principles that compromise offers cannot be accepted unless (a) there is doubt as to whether judgment can be secured for an amount larger than that offered or (b) because the probable cost of collection exceeds the difference between the amount offered and the amount recoverable.

### **5-7.630 Authority of United States Attorneys to Settle or Dismiss Direct Referral Cases**

The authority of United States Attorneys to settle or dismiss direct referral cases under the supervision of the General Litigation Section is set forth in USAM 5-5.230.

# 5-8.000 THE APPELLATE SECTION

---

## **5-8.001 Establishment**

### **5-8.100 Area of Responsibility -- Generally**

### **5-8.200 Organization**

### **5-8.300 Supervision and Handling of Appellate Cases -- Generally**

### **5-8.320 Handling of Appeals by Other than Staff Attorneys**

### **5-8.500 General Procedures in Appellate Litigation**

### **5-8.600 Settlement and Dismissal of Cases on Appeal**

### **5-8.620 Authorization for United States Attorneys to Handle Settlement and Dismissal of Appeals**

### **5-8.630 Settlements Requiring Approval of Solicitor General**

---

## **5-8.001 Establishment**

The Appellate Section was created on July 12, 1937, by memorandum of that date signed by Assistant Attorney General Carl McFarland.

### **5-8.100 Area of Responsibility -- Generally**

The Appellate Section is responsible for all division cases on appeal which were handled by the Environmental Crimes Section, the Environmental Defense Section, the Environmental Enforcement Section, the General Litigation Section, the Indian Resources Section, the Land Acquisition Section and the Wildlife and Marine Resource Section in trial courts, including criminal prosecutions under the various environmental control and wildlife protection statutes. The responsibility for handling appeals of Division cases handled by United States Attorneys is determined pursuant to the provisions of USAM Title 2, Appeals.

### **5-8.200 Organization**

The Appellate Section is composed of a Chief, a Deputy Chief, two Assistant Chiefs, and those members of the professional, clerical, and stenographic staff specifically assigned to it. Seven senior attorneys are designated as counselors to, and reviewers of the work of the Section's attorneys.

### **5-8.300 Supervision and Handling of Appellate Cases -- Generally**

Except as provided for in USAM 5-8.320 staff attorneys in the Appellate Section handle all cases within the area of responsibility of that Section. The Chief of the Appellate Section is in charge of the assignment of all cases. Generally, the function of assigning cases is delegated to the Deputy Chief or an Assistant Chief. The reviewing attorney is specified at the time the case is assigned. Both the attorney

assigned the case and the reviewing attorney are then responsible for all aspects of the case. The primary attorney apprises the reviewing attorney of all developments.

### **5-8.320 Handling of Appeals by Other than Staff Attorneys**

The assignment of cases on appeal to attorneys in the Offices of United States Attorneys is determined pursuant to the provisions of USAM Title 2, APPEALS. At the conclusion of trial court proceedings, the report to the Division of the decision, either adverse or favorable to the government, in a case handled by the United States Attorney should indicate his/her preference, if any, for handling of the appeal; if the report does not indicate a preference, the Division will handle the appeal. See USAM Title 2, Appeals, 2-2.111, 2-2.000, 2-3.220. Where a United States Attorney handles the appeal, a section attorney and a reviewing attorney are assigned for assistance and necessary department coordination purposes. Because briefs must be coordinated with client agencies and interested agencies prior to filing, a draft must be provided to the section and reviewing attorneys at least ten days prior to filing.

In unusual circumstances, especially where time is of the essence (e.g., some applications for stays or injunctions pending appeal and for interlocutory appeals), arrangements for handling should be made by telephone with the Chief of the Appellate Section. See USAM Title 2, APPEALS.

### **5-8.500 General Procedures in Appellate Litigation**

Detailed instructions with respect to the handling of appeals are set forth in Title 2 of this Manual.

### **5-8.600 Settlement and Dismissal of Cases on Appeal**

Reference is made to the statement of the Division relative to settlement and dismissal of cases, (USAM 5-1.302 and 5-5.210 *et seq.*) and to the statements of the Division's trial litigation sections. See USAM 5-6.600, 5-7.600, 5-9.600, 5-10.600, 5-11.115, 5-12.600, 5-14.310 and 5-15.600.

### **5-8.620 Authorization for United States Attorneys to Handle Settlement and Dismissal of Appeals**

United States Attorneys are not authorized to settle or dismiss Environment and Natural Resources Division cases on appeal, without specific Division authority. A request for authorization to settle or dismiss division cases on appeal must be directed to the Chief of the Appellate Section, who transmits the request to the appropriate Division Trial Litigation section for action, if the matter is within that section's delegated authority. If the matter is beyond that section's delegated authority, that section forwards the request, with its own recommendation, to the Deputy Assistant Attorney General, who will act on the request or refer the matter to the Assistant Attorney General.

In a case where the Solicitor General has determined that no appeal will be prosecuted by the government and the appeal has not been docketed in the court of appeals, the Appellate Section requests the United States Attorney to dismiss the appeal in the district court. If the appeal has already been docketed in the court of appeals, the Appellate Section itself files a motion to dismiss the appeal in the court of appeals.

## **5-8.630 Settlements Requiring Approval of Solicitor General**

Special Attention is directed to 28 C.F.R. Sec. 0.163, Subpart Y, Chap. I:

### **Sec. 0.163 Approval by Solicitor General of action on compromise offers in certain cases.**

In any Supreme Court case the acceptance, recommendation of acceptance, or rejection, under Sec. 0.160 (Offers which may be accepted by Assistant Attorney General), Sec. 0.161 (Recommendations to Attorney General of acceptance of certain offers), is Sec. 0.162 (Offers which may be rejected by Assistant Attorney General), of a compromise offer by the Assistant Attorney General concerned, shall have the approval of the Solicitor General. In any case in which the Solicitor General has authorized an appeal to any other court, a compromise offer, or any other action, which would terminate the appeal, shall be accepted or acted upon by the Assistant Attorney General concerned only upon advice from the Solicitor General that the principles of law involved do not require appellate review in that case.

**5-9.000**  
**THE POLICY,**  
**LEGISLATION, AND**  
**SPECIAL LITIGATION SECTION**

---

- 5-9.001 Establishment**
  - 5-9.100 Area of Responsibility**
  - 5-9.120 Statutes Administered**
  - 5-9.200 Organization**
  - 5-9.300 Supervision and Handling of the Policy, Legislation, and Special Litigation Section Cases -- Requests for Instructions**
  - 5-9.320 Actions Not Subject to Direct Referral to United States Attorneys**
  - 5-9.321 Prior Authorization Needed to Initiate Action**
  - 5-9.500 General Procedures in District Court Litigation**
  - 5-9.600 Settlement and Dismissal of Cases**
  - 5-9.620 Transmittal of Compromise Offer to Policy Legislation, and Special Litigation Section; Recommendations With Respect to**
  - 5-9.630 Authority of United States Attorneys to Settle or Dismiss Direct Referral Cases**
- 

**5-9.001 Establishment**

The Policy, Legislation, and Special Litigation Section was created on March 16, 1979, by Environment and Natural Resources Division Directive No. 4-79.

**5-9.100 Area of Responsibility**

The Policy, Legislation, and Special Litigation Section performs policy planning for the Division including review of existing policy and programs, analysis and initiation of new policy, revision of management systems and integration of policy changes in budget submissions. This Section also drafts proposed legislation, reviews and reports on bills of interest to the Division, and develops litigation programs designed to meet new nonroutine problems. Most of the special litigation is developed when a client agency presents a legal problem of a unique nature that has not been previously dealt with in the routine program of the Division. In this regard, Policy, Legislation, and Special Litigation is also responsible for the filing of *amicus curiae* briefs in cases involving issues which affect the Environment and Natural Resources Division's areas of responsibility, unless those cases are specifically assigned to the Appellate Section. The Policy, Legislation, and Special Litigation Section also tracks citizen enforcement actions under the Clean Water Act and Clean Air Act, reviews proposed consent judgments in such actions, handles the Division's FOIA requests and congressional correspondence, and advises the Division on ethics matters.

### **5-9.120 Statutes Administered**

The Policy, Legislation, and Special Litigation Section is not limited to a specific area of statutory responsibility. Rather, the Section supervises and conducts litigation arising under numerous federal statutes, as well as under treaties and agreements with Indians, Executive Orders, regulations of the various departments and agencies, the common law, and the laws of the various States. The Policy, Legislation and Special Litigation Section has sole responsibility for litigating cases arising under the Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. App. § 2101. In addition, the Section is responsible for administering and/or conducting congressionally mandated studies and reports, such as those required by section 301(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, the Uranium Mill Tailings Radiation Control Act 1978, 42 U.S.C. §§ 2021 and 1901 *et seq.*, and the Asbestos School Hazard Detection and Control Act of 1980, 20 U.S.C. § 3601 *et seq.*

### **5-9.200 Organization**

The Section is administered by a Chief and an Assistant Chief. The work of the Section is assigned among staff attorneys according to experience and workload.

### **5-9.300 Supervision and Handling of the Policy, Legislation, and Special Litigation Section Cases -- Requests for Instructions**

All requests for instructions and guidance relating to the prosecution or defense of actions under the jurisdiction of the Policy, Legislation, and Special Litigation Section shall be referred to the Chief of the Policy, Legislation, and Special Litigation Section of the Environment and Natural Resources Division of the Department of Justice, Washington, D.C. 20530 (202-514-1442).

### **5-9.320 Actions Not Subject to Direct Referral to United States Attorneys**

Responsibility for handling of cases under the supervision of the Policy, Legislation, and Special Litigation Section is assigned by the Chief of the Section under the provisions of USAM 5-1.322 through 5-1.326.

### **5-9.321 Prior Authorization Needed to Initiate Action**

No case under the supervision of the Policy, Legislation, and Special Litigation Section may be initiated by a United States Attorney without the prior authorization of the Assistant Attorney General, who shall sign the complaint prior to its being filed. *See* USAM 5-1.302.

### **5-9.500 General Procedures in District Court Litigation**

The general instructions set forth in USAM 5-5.100 *et seq.*, with respect to handling of litigation apply in every respect to the litigation of the Policy, Legislation, and Special Litigation Section.

### **5-9.600 Settlement and Dismissal of Cases**

No claim or case under the jurisdiction of the Policy, Legislation, and Special Litigation Section may be settled or dismissed without specific or delegated authority from the Attorney General. *See* USAM 5-5.210 *et seq.*

### **5-9.620 Transmittal of Compromise Offer to Policy Legislation, and Special Litigation Section; Recommendations With Respect to**

Where compromise in a case other than a direct referral case is offered to a United States Attorney, he shall require the offeror to reduce the proposal to writing and to submit with it a cashier's or certified check, bank draft, or money order for the amount offered, drawn or endorsed unconditionally to the order of the Treasurer of the United States. Where a large sum is involved, a token deposit is acceptable. The United States Attorney then shall forward to the Department the written offer, this recommendation and the reasons therefor, and a statement of the debtor's financial status.

The recommendation should be guided by the principles that compromise offers cannot be accepted unless (a) there is doubt as to whether judgment can be secured for an amount larger than that offered in compromise, (b) there is doubt as to whether an amount larger than that offer can be collected, although a judgment has been or can be secured, or (c) the probable cost of collection exceeds the difference between the amount recoverable and the amount offered.

The financial statement need not be forwarded where the offer is recommended for acceptance solely because there is doubt as to whether judgment can be secured for an amount larger than that offered or because the probable cost of collection exceeds the difference between the amount offered and the amount recoverable.

### **5-9.630 Authority of United States Attorneys to Settle or Dismiss Direct Referral Cases**

The authority of United States Attorneys to settle or dismiss direct referral cases under the supervision of the Policy, Legislation, and Special Litigation Section is set forth in USAM 5-5.230.

**5-10.000**  
**THE WILDLIFE AND**  
**MARINE RESOURCES SECTION**

---

- 5-10.001 Establishment**
  - 5-10.100 Area of Responsibility**
  - 5-10.120 Statutes Administered**
  - 5-10.200 Organization**
  - 5-10.300 Supervision and Handling of Wildlife and Marine Resources Section Cases -- Request for Instructions**
  - 5-10.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases**
  - 5-10.312 Notice to Wildlife and Marine Resources Section of Intention to File Direct Referral Action**
  - 5-10.320 Actions Not Subject to Direct Referral to United States Attorney**
  - 5-10.321 Prior Authorization Needed to Initiate Action or Assume Defense of Action**
  - 5-10.500 General Procedures in District Court Litigation**
  - 5-10.600 Settlement and Dismissal of Cases**
  - 5-10.620 Transmittal of Compromise to Wildlife and Marine Resources Section; Recommendations With Respect to Acceptance**
  - 5-10.630 Authority of United States Attorneys to Settle or Dismiss Direct Referral Cases**
- 

**5-10.001 Establishment**

The Wildlife Section was established on November 8, 1979, by Environment and Natural Resources Division Directive No. 22-79. The Marine Resources Section was established on November 5, 1969, by Environment and Natural Resources Division Directive No. 6-691. The consolidated Wildlife and Marine Resources Section was established on June 15, 1981, by Environment and Natural Resources Division Directive No. 1.

**5-10.100 Area of Responsibility**

The Wildlife and Marine Resources Section has responsibility for prosecuting, defending, supporting, and coordinating the prosecution and defense of all civil and criminal cases, matters, and proceedings arising under the laws listed below (*see* USAM 5-10.120).

## **5-10.120 Statutes Administered**

The federal statutes giving rise to litigation handled by the Section include the following:

- A. Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*
- B. Lacey Act Amendments of 1981, 16 U.S.C. § 3371 *et seq.*, 18 U.S.C. § 42
- C. Airborne Hunting Act, 16 U.S.C. § 742j-1
- D. Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*
- E. Migratory Bird Conservation Act, 16 U.S.C. §§ 715 to 715d, 715e, 715f to 715k, 715 to 715r
- F. Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 to 668d
- G. Dingell-Johnson Fish Restoration Act, 16 U.S.C. §§ 777 to 777i, 777k
- H. National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd, 668ee
- I. Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1431 *et seq.*
- J. Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*
- K. Whaling Convention Act, 16 U.S.C. § 981 *et seq.*
- L. Atlantic Tunas Convention Act, 16 U.S.C. § 971
- M. Tuna Conventions Act, 16 U.S.C. § 951 *et seq.*
- N. Marine Mammal Protection Act, 16 U.S.C. § 1361 *et seq.*
- O. Sockeye Salmon or Pink Salmon Fishing Act, 16 U.S.C. § 776 *et seq.* [repealed]
- P. Fur Seal Act of 1966, 16 U.S.C. § 1151 *et seq.*
- Q. Protection of Sea Otters on the High Seas Act, 16 U.S.C. § 1171 *et seq.*
- R. Wild Free Roaming Horses and Burros Act, 16 U.S.C. §§ 1331 to 1340
- S. Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 to 667e
- T. Animal Damage Control Act, 7 U.S.C. § 426 *et seq.*
- U. Sponge Act, 16 U.S.C. § 781 *et seq.*
- V. Northern Pacific Halibut Act, 16 U.S.C. § 773 *et seq.*
- W. Northern Pacific Fisheries Act, 16 U.S.C. § 1021 *et seq.* [repealed]
- X. Antarctic Conservation Act, 16 U.S.C. § 2401 *et seq.*
- Y. Atlantic Salmon Convention Act, 16 U.S.C. § 3601 *et seq.*

## **5-10.200 Organization**

The section is administered by a Chief and three Assistant Chiefs. The work of the Section is assigned among staff attorneys according to experience and workload.

## **5-10.300 Supervision and Handling of Wildlife and Marine Resources** **Section Cases -- Request for Instructions**

Requests for instructions and guidance relating to the prosecution or defense or actions under the jurisdiction of the Section shall be referred to: Chief, Wildlife and Marine Resources Section, Environment and Natural Resources Division, Department of Justice, P.O. Box 7369, Ben Franklin Station, Washington, D.C. 20044-7369 (202-305-0210).

### **5-10.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases**

The general authority of United States Attorneys to initiate cases under the supervision of the Wildlife and Marine Resources Section is set forth in USAM 5-1.310. Cases which do not raise new or unusual questions of law may be initiated by the United States Attorney without prior authorization from the Section in response to a direct request in writing from an authorized field officer of the department or agency concerned.

Upon receipt of referrals of any case within the jurisdiction of the Section, notice shall be given to the Section before filing or declining to file an action, as set forth in USAM 5-10.312.

United States Attorneys are not authorized to commence actions against foreign vessels or foreign fishermen under the Magnuson Fishery Conservations and Management Act, 16 U.S.C. § 1801 *et seq.*, without prior telephonic approval from the Section. The views of the United States Attorney for a district to which a foreign vessel may be brought will be ascertained in advance of seizure by the Coast Guard. The United States Attorney should then contact the Section to discuss the complaint to be filed, release bond and inventory arrangements.

### **5-10.312 Notice to Wildlife and Marine Resources Section of Intention to File Direct Referral Action**

No later than three (3) business days prior to instituting or declining to institute a direct referral action arising under the jurisdiction of the Section, the Chief of the Section shall be notified of the proposed action, and copies of relevant documents shall be forwarded in due course. This notice and document forwarding requirement is waived when, for example, a case involves routine enforcement of the Migratory Bird Treaty Act or ordinary forfeiture proceedings not concerning wildlife or associated articles of significant value.

The notice requirement is applicable where, for example, a case involves a conspiracy to violate the import or export provisions of the Endangered Species Act, the Marine Mammal Protection Act, or the Lacey Act; a multi-jurisdictional conspiracy involving the interstate trafficking in wildlife or wildlife parts and products in violation of any federal wildlife or marine resource law; a violation of the felony provisions of the Lacey Act or the Migratory Bird Treaty Act; any litigation involving the Wild Horses and Burros Act. If there is doubt as to whether notice and document forwarding is necessary, inquiry to the Section is appropriate.

### **5-10.320 Actions Not Subject to Direct Referral to United States Attorney**

Responsibility for the handling of cases under the supervision of the Wildlife and Marine Resources Section is assigned by the Chief of the Section under the provisions of USAM 5-1.322 through 5-1.326.

### **5-10.321 Prior Authorization Needed to Initiate Action or Assume Defense of Action**

Except for cases authorized to be filed upon direct referral, (*see* USAM 5-10.310) no case under the supervision of the Wildlife and Marine Resources Section may be initiated by a United States Attorney without prior authorization (*see* USAM 5-1.302). In all cases under the supervision of the Section in which the United States, a federal agency or agency official is a defendant, the United States Attorney

shall inquire of the Section whether the assignment will be field, staff or joint. The United States Attorney shall provide notice immediately to the section when any motion for preliminary relief is filed.

### **5-10.500 General Procedures in District Court Litigation**

The general instructions set forth in USAM 5-1.100 *et seq.*, with respect to the handling of litigation, apply in every respect to the litigation of the Wildlife and Marine Resources Section. Particularly, it is of the utmost importance that complaints filed against the United States, federal agencies or federal officials in matters relating to the area of responsibility of the Wildlife and Marine Resources Section be transmitted promptly to the chief of the Section.

### **5-10.600 Settlement and Dismissal of Cases**

Except with respect to direct referral cases involving no new or unusual questions of fact or law (discussed in USAM 5-1.310, 5-5.230, and 5-5.240), no claim or case under the jurisdiction of the Wildlife and Marine Resources Section may be settled or dismissed without specific or delegated authority from the Attorney General. *See* USAM 5-5.210 *et seq.*

### **5-10.620 Transmittal of Compromise to Wildlife and Marine Resources Section; Recommendations With Respect to Acceptance**

Where compromise in a case other than a direct referral case is offered to a United States Attorney, he shall forward the offer to the Section along with his recommendation and supporting analysis.

The recommendation should be guided by the principle that a compromise offer should be declined unless it fairly reflects (a) doubt that the government position will prevail, (b) doubt that judgment can be secured for an amount larger than that offered in compromise, (c) doubt that an amount larger than that offer can be collected, although a judgment has been or can be secured, or (d) the probability that cost of collection will exceed the difference between the amount recoverable and the amount offered.

### **5-10.630 Authority of United States Attorneys to Settle or Dismiss Direct Referral Cases**

The general authority of United States Attorneys to settle or dismiss direct referral cases under the supervision of the Wildlife and Marine Resources Section is set forth in USAM 5-5.230.

Subject to the limitations imposed by this paragraph and section USAM 5-5.240, United States Attorneys are authorized, without prior approval of the Environment and Natural Resources Division, to settle all direct referral actions relating to wildlife law enforcement.

Telephonic notice shall be given to the Section prior to any such settlement or dismissal and copies of all relevant documents shall be forwarded to the Section. This notice requirement is waived in certain categories or cases discussed in USAM 5-10.312 and USAM 5-1.310.

# 5-11.000 ENVIRONMENTAL CRIMES

---

- 5-11.101 Statutes Administered
  - 5-11.102 Other Criminal Provisions
  - 5-11.103 Notice of Case Initiation
  - 5-11.104 Responsibility for Case Development and Prosecution
  - 5-11.105 Cases of National Interest
  - 5-11.106 Exchanging Case Information
  - 5-11.107 Notification of Case Resolutions
  - 5-11.108 Dismissals
  - 5-11.109 Declinations
  - 5-11.110 Staffing
  - 5-11.111 Policy-Making, Support, and Other Functions of the ENRD
  - 5-11.112 Parallel Proceedings
  - 5-11.113 Coordination with State Programs
  - 5-11.114 Individual and Corporate Defendants
  - 5-11.115 Plea Negotiations and Agreements -- "Global Settlements" -- Alternative Sentencing
  - 5-11.116 Handling of Appeals
  - 5-11.117 Notice of Appeals
  - 5-11.118 Record on Appeal
- 

## 5-11.101 Statutes Administered

Prosecutions initiated pursuant to the following statutes are deemed to be environmental crimes, and the provisions of this chapter apply to all such cases:

**Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)**, 7 U.S.C. §§ 136-136y

**Energy Supply and Environmental Coordination Act**, 15 U.S.C. §§ 791-798

**Toxic Substances Control Act (TSCA)**, 15 U.S.C. §§ 2601-2692

**Surface Mining Control and Reclamation Act**, 30 U.S.C. §§ 1201-1328

**Protection of Navigable Waters and of Harbor and River Improvements Generally, Rivers and Harbors Appropriations Act, Refuse Act**, 33 U.S.C. §§ 401-467

**Federal Water Pollution Control Act** (also known as the Clean Water Act), 33 U.S.C. §§ 1251-1387

**Marine Protection Research and Sanctuaries Act**, (also known as the Ocean Dumping Act), 33 U.S.C. §§ 1401-1445

**Deepwater Port Act**, 33 U.S.C. §§ 1501-1524

---

**Act to Prevent Pollution From Ships**, 33 U.S.C. §§ 1901-1912  
**Safe Drinking Water Act**, 42 U.S.C. §§ 300f-300j-26  
**Atomic Energy Act**, 42 U.S.C. §§ 2011-2296  
**Noise Control Act**, 42 U.S.C. §§ 4901-4918, 42 U.S.C. § 4910 (criminal provision)  
**Solid Waste Disposal Act** (including, in Subchapter III, the Resource Conservation and Recovery Act (RCRA)), 42 U.S.C. §§ 6901- 6992k  
**Clean Air Act**, 42 U.S.C. §§ 7401-7671  
**Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)**, 42 U.S.C. § 9601-9675  
**Emergency Planning and Community Right to Know Act (EPCRA)** (also known as SARA Title III), 42 U.S.C. §§ 11001-11050  
**Outer Continental Shelf Lands Act**, 43 U.S.C. §§ 1331-1356  
**Federal Hazardous Material Transportation Statute**, 49 U.S.C. §§ 5101-5127

### 5-11.102 Other Criminal Provisions

Experience has shown that cases involving violations of the federal environmental laws identified in USAM 5-11.101 also may involve violations of certain other federal statutes. Therefore, the Environmental Crimes Section is empowered to investigate and prosecute violations of additional criminal statutes when such violations arise within the context of environmental crimes. Examples of some of the statutes which may be involved in those cases include, but are not limited to, the following:

<b>Statute</b>	<b>Subject Matter</b>
18 U.S.C. § 2	Aiding and abetting
18 U.S.C. § 287	False claims
18 U.S.C. § 371	Conspiracy
18 U.S.C. § 641	Theft or conversion of public property or money
18 U.S.C. § 1001	False statement
18 U.S.C. § 1341	Mail Fraud
18 U.S.C. § 1343	Wire Fraud
18 U.S.C. § 150	Obstruction of administrative proceedings
18 U.S.C. §§ 1621-1623	Perjury

### 5-11.103 Notice of Case Initiation

The Case Initiation Report formerly described in the United States Attorneys' Manual for environmental crimes is abolished. When a United States Attorney's Office opens a case file for an environmental case or matter, the Office will inform the Environmental Crimes Section, which it may do by entering the case or matter in the Department's computerized case tracking system and identifying the case type as "environmental." If the case or matter is not identified as "environmental" in the case tracking system (for example, due to data entry limitations), the office will inform the Environmental Crimes Section by telephone or in writing. When ECS opens a case file to initiate a case or matter, the Section Chief will provide notice to the United States Attorney for the district in which the crime is alleged to have occurred and will confer with the United States Attorney's Office pursuant to USAM 5-11.104 or USAM 5-11.105.

### **5-11.104 Responsibility for Case Development and Prosecution**

Responsibility for the approval, investigation, and prosecution of environmental crimes, except in cases of national interest, normally rests with the United States Attorney's Office. With the agreement of the United States Attorney's Office, ECS may participate as a partner, as the lead, or otherwise in such cases. Cooperation and consultation between United States Attorney's Offices and ECS is encouraged, in order to make the most effective use of the Department's resources. When ECS participates in a case, there should be a clear understanding between the offices concerning the allocation of case responsibility.

### **5-11.105 Cases of National Interest**

A case is of national interest if it is a case that presents a novel issue of law (including the first case under a statute, provision, or regulation), a case with simultaneous investigations in multiple districts (unless the United States Attorney's Offices in each such district and the ECS conclude that national interests are not involved), a case with international or foreign policy implications, or an urgent or sensitive case as defined in USAM 1-10.230. In a case of national interest, the United States Attorney's Office and ECS will participate jointly as co-counsel from the initiation of the investigation through prosecution, unless otherwise agreed. A case may be identified as one of national interest by the United States Attorney's Office or the Assistant Attorney General for the ENRD.

### **5-11.106 Exchanging Case Information**

Among ECS' other responsibilities, it is a clearinghouse for information about environmental prosecutions and a source of expertise about the handling of such cases. United States Attorney's Offices are encouraged to communicate with ECS early in environmental investigations and prosecutions to benefit from ECS' information and expertise, and to provide ECS with information about successes, obstacles, and strategies that ECS may share with other prosecutors. As part of this consultation, United States Attorney's Offices are encouraged to provide ECS with advance notice of indictments. United States Attorney's Offices are encouraged to consult with ECS on indictments and other matters with sufficient lead time to allow ECS to have time to provide meaningful input. In any event, United States Attorney's Offices will provide copies of indictments or informations within two days after filing. The Attorney General expects that ECS will participate in implementing the Assistant Attorney General's responsibilities pursuant to 28 C.F.R. § 0.65 and that each United States Attorney's Office will provide information to ECS to assist it in this purpose, including responding fully and expeditiously to reasonable requests for information.

### **5-11.107 Notification of Case Resolutions**

When ECS is not participating in a case, the United States Attorney's Offices shall provide ECS with notice of case resolutions by providing ECS with copies of disposition documents (including any plea agreements) when judgment is entered, except as provided in USAM 5-11.108 and 5-11.115.

### **5-11.108 Dismissals**

In the case of dismissal of indictments, informations, or complaints in criminal cases involving violations of the statutes identified in USAM 5-11.101 except when a superseding indictment has been returned or an information or a complaint has been filed against the same defendant or when the individual defendant has died, notification of the dismissal (or, in the case of a written dismissal, a copy) shall be provided to ECS so that it is received seven days before filing.

### **5-11.109 Declinations**

When a United States Attorney's Office or ECS declines a case and writes a substantive memo to the file or to the investigative agency, either office will promptly provide a copy of the declination memo to, respectively, ECS or the United States Attorney's Office for the district in which the crime is alleged to have occurred. Nothing in USAM 5-11.104 is intended to limit ECS' authority to prosecute a case declined by a United States Attorney's Office after consultation with that office, nor shall these provisions limit the authority of a United States Attorney's Office to prosecute a case that ECS has declined for reasons that ECS advises do not involve policy considerations.

### **5-11.110 Staffing**

The appointment of Special Assistant United States Attorneys shall be approved by the United States Attorney of the relevant district and the Assistant Attorney General for the ENRD. In their approval process, the United States Attorney and the Assistant Attorney General should seek to ensure sensible and efficient use of government resources.

### **5-11.111 Policy-Making, Support, and Other Functions of the ENRD**

In addition to its litigation activities, ECS helps the ENRD fulfill its other responsibilities:

- Setting policy nationally for the prosecution of environmental crimes;
- Providing training to United States Attorney's Offices, federal investigative agencies, and others;
- Providing expertise, information, and support concerning environmental prosecutions nationally, including providing a clearinghouse of prosecution-related documents; and
- To use environmental criminal enforcement to address environmental and compliance problems, consistent with the standards of federal prosecution.

United States Attorney's Offices are encouraged to provide ECS with copies of important pleadings, briefs, search warrant applications, grand jury subpoenas, and similar case documents so that such documents can be made available to other prosecutors.

### **5-11.112 Parallel Proceedings**

Because many of the environmental statutes specifically provide for criminal, civil, and administrative sanctions (*see, e.g.*, 33 U.S.C. § 1319(a), (b), (c), and (d)), this is an area of the law especially susceptible to parallel proceedings. Such proceedings may be appropriate, for example, when in the course of the civil case the government receives evidence of deliberate violations of the law meriting criminal prosecution or when a criminal investigation uncovers evidence of an on-going violation causing environmental contamination which should be stopped quickly through an injunctive action.

Although they may be appropriate in particular circumstances, parallel proceedings must be handled carefully in order to avoid allegations of improper release of grand jury material or abuse of civil process. Therefore, in any case under any of the statutes identified in USAM 5-11.101 in which parallel proceedings arise, the United States Attorney's office shall contact the Environmental Crimes Section for the purpose of coordinating the parallel proceedings. *See also* USAM 1-12.000.

### **5-11.113 Coordination with State Programs**

Most states have environmental enforcement programs which overlap, in whole or in part, with federal programs. United States Attorneys should familiarize themselves with state environmental enforcement laws and state enforcement officials. Particular attention should be directed toward the following aspects of state-federal relations in the environmental enforcement field:

- A. State environmental enforcement agencies may be a valuable source of information on suspected violations of federal environmental statutes. United States Attorneys may be in a position to assist in apprising state officials of the nature of the local federal enforcement program and in developing methods for exchanging information on suspected violations;
- B. State authorities often possess evidentiary materials which are relevant to pending federal court proceedings. United States Attorneys should be aware of the nature and extent of the states' investigatory resources and should make provision in appropriate circumstances for the exchange of information on pending cases with state authorities;
- C. Frequently a particular activity constitutes a violation of both federal and state law. When state officials are proceeding with an environmental enforcement case which may include violations of federal law, the United States Attorney in the affected district should monitor that state activity. If it appears that all federal interests in the case will be vindicated in the state court action, action in federal court may be an unnecessary duplication of effort. On the other hand, if federal interests will not be protected completely in state court, federal proceedings may be warranted. *See also*, USAM 9-2.031 and 9-27.240.

### **5-11.114 Individual and Corporate Defendants**

- A. Congress has demonstrated its intent that individuals, as well as corporations, should be criminally prosecuted for violations of federal environmental laws, *see, e.g.*, 33 U.S.C. §§ 1319(c)(5) and 1362(5), thereby recognizing the fact that the unlawful acts or omissions of corporations actually can be traced to individual officers or employees. That Congressional intent should be given serious consideration in the development of prosecutions for violations of the statutes identified under USAM 5-11.101.1
- B. In any case against both a corporation and any of its individual employees the willingness of the offending corporation to enter a guilty plea is not a basis for dismissal as against the individual.

### **5-11.115 Plea Negotiations and Agreements -- "Global Settlements" -- Alternative Sentencing**

- A. Without the express approval of the Assistant Attorney General, Environment and Natural Resources Division, in any criminal case arising under the statutes identified in USAM 5-11.101 no plea agreement will be negotiated which compromises the right of the United States to any civil or administrative remedies under those statutes. Efforts by defendants to effect such results may arise in the context of so-called "global settlement" offers.
- B. The Assistant Attorney General for the Environment and Natural Resources Division will consider a policy for plea agreements that include "alternative sentencing," meaning a sentence other than fine, imprisonment, or restitution to specific entities for out-of-pocket expenses.

### **5-11.116 Handling of Appeals**

All appeals in criminal cases arising under the statutes identified in USAM 5-11.101 shall be handled as provided for in USAM 5-8.300 and Title 2. When a United States Attorney's Office makes a request to handle an appeal, such a request will be resolved by agreement between the United States Attorney's Office and the Chief of the Appellate Section of the Environment and Natural Resources Division. In jointly resolving such a request, the following factors among any others should be considered on a case-by-case basis and, if necessary, discussed:

- The relative advantages in this case of staffing the appeal with an Assistant United States Attorney who tried the case or with an appellate lawyer who was not involved in the trial;
- The relative advantages in this appeal of the United States Attorney's local perspective or the Environment and Natural Resources Division's national perspective;
- Whether there are issues in this appeal on which components of the government may have differing viewpoints; and
- The available resources of each office, especially relative to the briefing and argument schedule of the appeal.

Copies of any draft briefs prepared by a United States Attorney's Office on behalf of the government shall be forwarded to the Appellate Section in sufficient time to allow review, comment, and approval by the Section and the Assistant Attorney General. Copies of any draft brief prepared by the Appellate Section shall be forwarded to the United States Attorney's Office in sufficient time to allow review, comment, and approval by that office. In any appeal, copies of all other briefs by other parties shall be promptly forwarded by the United States Attorney's Office to the Appellate Section.

### **5-11.117 Notice of Appeals**

USAM 2.200 describes the manner in which United States Attorney's Offices forward notices of appeal or requests to take an appeal to the Environment and Natural Resources Division. For environmental crimes, the Division designates ECS as the unit to which such notices and requests should be sent. ECS will forward the notices and requests to the Division's Appellate Section.

### **5-11.118 Record on Appeal**

Whenever an appeal is taken in a case arising under any statute identified in USAM 5-11.101 for which the United States Attorney has taken primary trial level responsibility, and that appeal is to be handled by the Environment and Natural Resources Division, the United States Attorney is responsible for assembling and transmitting to the Environment and Natural Resources Division those items which constitute the record of the case of the trial court level.

# 5-12.000 ENVIRONMENTAL ENFORCEMENT SECTION

---

- 5-12.001 Establishment
- 5-12.002 Purpose and Functions
- 5-12.100 Area of Responsibility -- Statutes Administered
- 5-12.110 General Responsibilities
- 5-12.111 Cases Brought on Behalf of the United States
- 5-12.120 Overlapping Section Case Responsibility
- 5-12.121 Responsibility for Cases With New Issues and/or Altered Character
- 5-12.200 Organization
- 5-12.300 Supervision and Handling of Environmental Enforcement Section Cases -- Requests for Instructions
- 5-12.302 Transmittal of Papers to Environmental Enforcement Section and Client Agencies
- 5-12.311 Exigent Circumstances
- 5-12.320 Direct Referral Civil Cases Not Requiring Prior Approval by the Assistant Attorney General
- 5-12.321 Notification to Environmental Enforcement Section of Intention to File Actions
- 5-12.340 Cooperation and Coordination with Environmental Protection Agency
- 5-12.500 District Court Procedures Generally
- 5-12.520 Investigation and Administrative Processing of Violations -- Responsibility for Detecting and Investigating Violations
- 5-12.522 Transmittal of Reports of Unauthorized Activities
- 5-12.523 Coordination With State Programs
- 5-12.524 Administrative Disposition of Violations
- 5-12.530 Litigation Procedures; Draft Complaints
- 5-12.531 Lis Pendens and the Recording of Judgments
- 5-12.532 Pleadings
- 5-12.533 Trial Assistance
- 5-12.600 Settlement and Dismissal of Cases
- 5-12.611 Transmittal of Settlement Offers
- 5-12.612 Solicitations of Agency Views
- 5-12.613 Settlement Policy in Suits Brought on Behalf of the Administrator of the Environmental Protection Agency
- 5-12.620 Consent Decrees; Public Notice Policy

## **5-12.001 Establishment**

The Environmental Enforcement Section was created on September 10, 1980, by Environment and Natural Resources Division Directive No. 17-80.

## **5-12.002 Purpose and Functions**

The Environmental Enforcement Section was organized in order to provide a specialized legal staff capable of carrying out the effective civil judicial enforcement of laws relating to protection of the environment.

## **5-12.100 Area of Responsibility -- Statutes Administered**

The Environmental Enforcement Section is responsible for conducting civil enforcement litigation arising under the following statutes:

- A. Federal Water Pollution Control Act or Clean Water Act, 33 U.S.C. § 1251 *et seq.* (except for in rem actions against vessels, which are supervised by the Torts Branch (Admiralty and Shipping) of the Civil Division and except for wetlands cases under 33 U.S.C. §§ 1311(a), 1344 that are supervised by the Environmental Defense Section);
- B. Clean Air Act, 42 U.S.C. § 7401 *et seq.*;
- C. Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (also known as the Solid Waste Disposal Act);
- D. Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), 42 U.S.C. § 9601 *et seq.*;
- E. Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*;
- F. Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*;
- G. Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 135(d) *et seq.*;
- H. River and Harbor Act, 33 U.S.C. § 4401 *et seq.*, except for in rem actions against vessels and wetlands cases. *See* Federal Water Pollution Control Act;
- I. Marine Protection Research and Sanctuaries Act, 33 U.S.C. § 1401 *et seq.*;
- J. Noise Control Act, 42 U.S.C. § 4901 *et seq.*;
- K. The Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*, insofar as it relates to the civil prosecution of violations committed by a company in matters involving the licensing and operation of nuclear power plants and affecting the environment;
- L. Powerplant and Industrial Fuel Use Act of 1978 (Pub.L. No. 95-620), National Energy Conservation Policy Act (Pub.L. 95-619), and Titles I and V of the Public Utility Regulatory Policies Act of 1978 (Pub.L. No. 95-617);
- M. Uranium Mill Tailings Radiation Control Act, 42 U.S.C. § 7133 *et seq.*;
- N. Section 2 of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. § 791 *et seq.*;
- O. The Act of June 23, 1910 (33 U.S.C. § 421 *et seq.*);
- P. The Act of June 29, 1888 (33 U.S.C. § 441 *et seq.*);
- Q. Sections 3, 6, and 9 of the Act of August 30, 1961 (33 U.S.C. §§ 1002, 1005, 1008);

R. Sections 15 and 18 of the Deepwater Port Act of 1971 (33 U.S.C. § 1501 *et seq.*), insofar as a violation of the Act or the rules and regulations promulgated pursuant thereto results in environmental pollution;

S. Section 5(a)(2) of the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. § 1334(a)(2)), where the violation of a rule or regulation results in environmental pollution.

T. The Oil Pollution Control Act of 1990, 33 U.S.C. § 2701 *et seq.*

### **5-12.110 General Responsibilities**

The Environmental Enforcement Section prosecutes, supports, and coordinates the prosecution of all civil cases, matters, and proceedings arising under the statutes identified in USAM 5-12.100 or initiated under federal common law for environmental protection.

### **5-12.111 Cases Brought on Behalf of the United States**

A. The Environmental Enforcement Section has Departmental responsibility for civil matters initiated on behalf of the United States to secure the control and abatement for sources of pollution or to protect the natural environment, to the extent that such cases may arise under the statutes identified in USAM 5-12.100 or under the federal common law. As a matter of policy and practice, civil prosecutions are initiated at the request of the Administrator of the Environmental Protection Agency, the Commandant of the Coast Guard, the Chief of Engineers of the United States Army, and other government officials having statutory responsibility for the enforcement of laws designed to protect the public health, welfare, and the environment. Section 12 of the statute that authorized the Department's 1980 budget authorized the Attorney General with the concurrence of any agency or department with primary enforcement responsibility for an environmental or natural resource law to investigate any violation, and bring such actions as are necessary to enforce such laws. Except for cases initially subject to treatment as direct referrals, *see* USAM 5-1.310 the Assistant Attorney General of the Environment and Natural Resources Division must review and approve in advance the following actions in cases referred by or brought on behalf of the Environmental Protection Agency and other Federal client agencies under the statutes identified in USAM 5-1.320, *et seq.*:

1. File or amend a complaint or counterclaim;
2. File a claim or otherwise initiate process or file a counterclaim in a bankruptcy or probate matter;
3. Raise issues involving statutes administered by the EPA or other Federal agencies;
4. Compromise, close or dismiss a case; or
5. Modify or enforce a consent decree or judgment.

B. When apparent violations of the statutes identified in USAM 5-1.320 are brought to the attention of the Department of Justice by persons or agencies other than those with statutory enforcement responsibilities, the Department either forwards those reports to appropriate executive branch enforcement officials for evaluation and possible referral for legal proceedings or, in criminal cases, may itself undertake the necessary investigation and prosecution. The practice of forwarding reports of suspected violations to appropriate agencies has several potential benefits: (1) it allows the agencies to bring to bear their technical expertise to determine whether violations actually have occurred; (2) it allows the agencies to settle cases administratively in certain circumstances; and (3) it allows the agencies to apply technical and investigative resources in order to develop those cases which do have merit.

### **5-12.120 Overlapping Section Case Responsibility**

Although the Environmental Enforcement Section has the primary responsibility for actions involving the statutes identified in USAM 5-12.100 occasionally cases occur which involve those statutes along with statutes for which another section of the Department generally is responsible. In each such case, the chiefs of the respective sections will designate the section which will assume the primary responsibility. The designated section will coordinate with any other concerned section, will furnish copies of all pertinent pleadings and memoranda to that section, and will notify the United States Attorney of the names and telephone numbers of attorneys in the other sections who may be contacted for information in their areas of expertise.

### **5-12.121 Responsibility for Cases With New Issues and/or Altered Character**

A. Occasionally issues involving laws for which the Environmental Enforcement Section is responsible may be injected into existing litigation by way of amendment or supplemental pleadings or *sua sponte* by the court. The United States Attorney should not add or raise such matters without first notifying and receiving approval from the Chief of the Environmental Enforcement Section. In cases where such issues have been raised by others, the United States Attorney should immediately notify the Chief of the Environmental Enforcement Section to assure that the section can properly perform its responsibilities.

B. On other occasions, the fundamental character of existing litigation may change and environmental enforcement issues may become dominant issues. In such situations, the Environmental Enforcement Section staff attorney responsible for the case shall notify the Section Chief, who may request a transfer of section responsibility if he/she deems it appropriate. If Environmental Enforcement issues become dominant in a case in which no Environmental Enforcement Section attorney is directly involved, the United States Attorney shall notify the Environmental Enforcement Section Chief of the situation and he/she may make a written request to the Assistant Attorney General of the Environment and Natural Resources Division to have the case transferred to the Environmental Enforcement Section.

### **5-12.200 Organization**

The section is administered by a Chief, two Deputy Chiefs, and six Assistant Chiefs. Within the section, work is assigned among staff attorneys by the Assistant Chiefs, under the supervision of the Chief and Deputy Chiefs, according to experience and workload. General information relating to the Section or cases within its supervision may be obtained by calling the Chief or Assistant Chiefs at FTS (202) 514-5271 or 514-4353. Information on a specific case should be requested from the staff attorney assigned to that case. When the staff attorney's name is unknown, the docket clerk of the section (FTS (202) 514-5245 or 514-5246) may furnish that information. (Note that a quicker response to inquiries may be forthcoming if the requestor can cite a departmental file number, e.g., 90-5-1-2-40 or 62-81-2, which generally appears in the upper left-hand corner of correspondence originating from the Department.)

### **5-12.300 Supervision and Handling of Environmental Enforcement Section Cases -- Requests for Instructions**

All requests for instructions and guidance relating to the prosecution of actions under the jurisdiction of the Environmental Enforcement Section shall be referred to the Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice, P.O. Box 7611, Washington, D.C. 20044-7611, or to the section attorneys known to be handling such actions.

### **5-12.302 Transmittal of Papers to Environmental Enforcement Section and Client Agencies**

In any case arising under the statutes identified in USAM 5-12.100 one copy of each letter sent or received by a United States Attorney as well as one copy of each pleading and paper filed by any party or by the court, shall be forwarded promptly to the Environmental Enforcement Section and one copy shall be forwarded to the referring client agency.

### **5-12.311 Exigent Circumstances**

A. Whenever the United States Attorney becomes aware of a recently developed situation in his/her district not previously the subject of any report or referral, which merits a temporary restraining order or preliminary injunction, he/she should contact both the regional legal office of the client agency and the Chief of the Environmental Enforcement Section directly by telephone. An example might be the United States Attorney's learning of a company's intention to burn hazardous material in an uncontrolled incinerator thereby endangering the lives and health of those living near the incinerator. To prevent such action a temporary restraining order or a preliminary injunction may be in order.

B. Under circumstances which involve immediate threats to life or health, the Chief of the Environmental Enforcement Section may give authorization by telephone for the filing of a complaint and application for a temporary restraining order. If the Section Chief, Deputy Chief, the Assistant Chiefs, the Deputy Assistant Attorney, and the Assistant Attorney General, cannot be reached by telephone, the United States Attorney may seek a temporary restraining order to prevent threats to life or health without prior approval.

### **5-12.320 Direct Referral Civil Cases Not Requiring Prior Approval by the Assistant Attorney General**

A. The following groups of cases arising under the statutes identified in USAM 5-12.100 may be handled by the United States Attorneys as direct referrals, i.e., as not requiring specific authorization by the Assistant Attorney General of the Environment and Natural Resources Division:

1. Cases referred by the United States Coast Guard for the collection of federal clean up costs or civil penalties under 33 U.S.C. § 1321;
2. Miscellaneous proceedings, such as warrants, in assistance to agencies seeking investigative entry under the Clean Water Act, 33 U.S.C. § 1318; Clean Air Act, 42 U.S.C. §§ 7414, 7525; Resource Conservation and Recovery Act, 42 U.S.C. §§ 6927, 6934; Safe Drinking Water Act, 42 U.S.C. § 300(j) (4); Toxic Substances Control Act, 15 U.S.C. § 2610; and Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136(g); but not the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 *et seq.*

All other enforcement cases arising under these statutes identified in USAM 5-1.320 require the approval of the Assistant Attorney General before they can be filed, with the exception of warrants under CERCLA which may be approved by the Environmental Enforcement Section Chief or his/her designee.

B. The Assistant Attorney General and his/her designee retain the authority to direct that any case within the responsibility of the Environment and Natural Resources Division shall be handled in whole or in part by Division attorneys.

### **5-12.321 Notification to Environmental Enforcement Section of Intention to File Actions**

Prior to filing a civil complaint in a case authorized for direct referral, the United States Attorney shall notify the Chief of the Environmental Enforcement Section of the proposed action and shall furnish the section with a copy of the written request from the respective client agency for the initiation of the action. Thereafter, the Environmental Enforcement Section shall be furnished with copies of all pleadings filed in any direct referral case.

### **5-12.340 Cooperation and Coordination with Environmental Protection Agency**

A. Pursuant to a Memorandum of Understanding with the Environmental Protection Agency, within 60 days of receipt from the Environmental Protection Agency of a formal request to file a suit, the Chief Environmental Enforcement Section is required to decide whether an enforcement action is to be filed.

B. If a determination is made by the Section Chief not to file a complaint, he/she shall report this determination promptly to the Assistant Attorney General and, upon the approval of the determination by the Assistant Attorney General, to the official of the Environmental Protection Agency requesting the initiation of the action.

C. If a determination is made by the Chief to file an action, the complaint, signed by the Assistant Attorney General, shall be filed within 20 days of the determination to file. In the event that any United States Attorney or Environmental Enforcement Section attorney does not file such a complaint, he/she shall submit a report to the Assistant Attorney General explaining why such complaint has not been filed, and shall continue to submit such reports at two-week intervals until the complaint is filed or a decision is reached not to file the complaint.

D. If the Department of Justice fails to file a complaint within 120 days of its receipt of a request for litigation and a civil litigation report by the agency to the Attorney General, then the Administrator may request the Attorney General, to file a complaint within 30 days. Failure of the Department thereafter to file a complaint within the said 30 days may be considered by the Administrator or his/her delegate to be a failure of the Attorney General to notify the Administrator within a reasonable time that he/she will appear in litigation for purposes of Section 305 of the Clean Air Act, 42 U.S.C. § 7605; Section 506 of the Federal Water Pollution Control Act, 33 U.S.C. § 1366; or Section 1450 of the Safe Drinking Water Act, 42 U.S.C. § 300(j)(9). If such a failure occurs, attorneys of the Environmental Protection Agency may represent the Administrator without the United States Attorney or Department attorneys. However, the failure of the Attorney General to file a complaint within the time period requested by the Administrator in a case in which the Administrator requested immediate action to protect public health under §§ 311(e) and 504 of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1321(e) and 1364; Section 303 of the Clean Air Act, 42 U.S.C. § 7603; or Section 1450 of the Safe Drinking Water Act, 42 U.S.C. § 300(i), may also be considered by the Administrator to be a failure of the Attorney General to notify the Administrator under 42 U.S.C. § 7605; 33 U.S.C. § 7603; or 42 U.S.C. § 300(j)(9).

## **5-12.500 District Court Procedures Generally**

The general instructions set forth in USAM 5-1.100 *et seq.*, with respect to the handling of litigation under the jurisdiction of the Environment and Natural Resources Division apply to litigation within the responsibility of the Environmental Enforcement Section.

## **5-12.520 Investigation and Administrative Processing of Violations -- Responsibility for Detecting and Investigating Violations**

The primary responsibility for detecting and investigating suspected violations of statutes rests with the federal agencies which are charged by statute with administering those acts. After investigating reports of suspected violations, the respective agencies generally evaluate them internally under their own procedures to determine which matters merit referral to the Department of Justice for prosecution. Generally, whether it goes directly to the United States Attorney or to the Environment and Natural Resources Division, a referral will be accompanied by a litigation report describing the alleged violation and the evidence available to the agency to support a prosecution.

While primary responsibility for investigating violations of an environmental enforcement statute may reside with the agency administering the act, this does not mean that other agencies, including United States Attorneys' offices, should not have a role in this phase of enforcement. Agencies such as the Fish and Wildlife Service of the Interior Department and the National Marine Fisheries Service of the Commerce Department may have personnel in the field who can be important sources of information on suspected illegal activities. Also, some United States Attorneys' offices have employed legal technicians, whose duties include assisting the Army Corps of Engineers, Environmental Protection Agency, and Coast Guard in investigating activities proscribed by environmental statutes and preparing cases for litigation.

Because of his/her function as representative of the various federal agencies in legal matters, the United States Attorney is in a position to coordinate the investigative efforts of those agencies the violations of environmental statutes. Such coordination can result in more thorough and efficient case development with fewer resources devoted to duplicative efforts. The United States Attorneys, therefore, are encouraged to establish contact with the investigative agencies which operate within their districts, to render to them useful advice regarding sound case development, and to take a lead in creating a cooperative federal effort. The Environmental Enforcement Section is prepared to assist the United States Attorneys in establishing contact with personnel of the federal agencies who operate within the various districts.

## **5-12.522 Transmittal of Reports of Unauthorized Activities**

Notwithstanding the source, all reports of violations of environmental enforcement statutes should be referred to the enforcement agencies charged with administering the acts. There are numerous reasons for this policy. In addition to the fact that prompt referral may avert wasteful duplication of federal effort, under certain of the statutes identified in USAM 5-12.100 administrative consideration may be a prerequisite to civil enforcement. *See, e.g.*, 42 U.S.C. § 7413(a)(1). In some instances, such matters may be resolved administratively without resort to litigation.

### **5-12.523 Coordination With State Programs**

Most states have environmental enforcement programs which overlap, in whole or in part, with federal programs. United States Attorneys should familiarize themselves with state environmental enforcement laws and state enforcement officials. Frequently a particular, unauthorized activity constitutes a violation of both federal and state law. United States Attorneys should remain advised of pending state environmental enforcement prosecutions. If it appears that all federal interests in the case will be vindicated in the state court proceeding, action in federal court may be an unnecessary duplication of effort. On the other hand, if federal interests will not be protected completely in state court, federal proceedings may be warranted. A key policy question in determining the source of federal environmental enforcement proceedings is often whether the unauthorized activity would have been permitted if the violator had sought permission in advance. The regulation of federal enforcement agencies, such as that of the Army Corps of Engineers, frequently requires that a permit-applicant obtain all necessary state permits, licenses, easements, etc., before a federal permit will be issued. In some cases, the only substantive objections to an authorized activity may be those which are raised by state authorities. Federal legal proceedings therefore may be directed, in substance, toward vindicating a state interest. In certain of these cases, it might be more appropriate to defer to state prosecution. But even where legal action in federal court appears warranted, the United States Attorney will have to maintain close ties with state authorities during all stages of the litigation. Some of the statutes identified in USAM 5-12.100 *e.g.*, 33 U.S.C. § 1319(b) and 42 U.S.C. § 7413(b), specifically require that notice of any federal civil action be given immediately to appropriate state officials. At least one statute, 33 U.S.C. § 1319(e), requires that a state be made a party to any enforcement action against one of its municipalities.

### **5-12.524 Administrative Disposition of Violations**

By statute or by regulation, most environmental enforcement agencies have administrative procedures which can result in the disposition of environmental enforcement matters. Generally, United States Attorneys should defer legal action until those administrative proceedings have been completed. Court proceedings should be regarded as an adjunct to, and not substitute for the administrative process.

### **5-12.530 Litigation Procedures; Draft Complaints**

Referral packages from the environmental agencies frequently include draft complaints. In direct referral cases the United States Attorney is not bound by the form of such a draft complaint, see USAM 5-1.310 but a well drafted complaint can be helpful in expediting the initiation of an action. In order to avoid the necessity of redrafting complaints in such cases, United States Attorneys should cooperate closely with local agency counsel and advise them as to local practice and the customary local forms of complaints. In cases requiring the approval of the Assistant Attorney General, a draft complaint furnished by the client agency also may be used, or a new draft may be prepared by the Environmental Enforcement Section. Because formats vary from district to district, Environmental Enforcement Section attorneys often will seek guidance from the United States Attorney prior to drafting a complaint. Whether an agency draft is used or a new draft is generated by the Environmental Enforcement Section, once a complaint has been approved and signed by the Assistant Attorney General, it may not be altered prior to filing without the express approval of the Chief of the Environmental Enforcement Section.

### **5-12.531 Lis Pendens and the Recording of Judgments**

In civil environmental enforcement actions for prohibitory or mandatory injunctive relief, complications may arise if the ownership of the property in question changes hands during the pendency of the action. Where there is a threat of transfer of ownership, the United States Attorney should consider filing a notice of the pendency of the action, of *lis pendens*. The steps necessary for the filing of such a notice are determined by the law of the particular state. *See* 28 U.S.C. § 1964.

The final judgment in a civil environmental enforcement prosecution may, in effect, place a permanent burden on the property which was subject to the unauthorized activities. In order to protect the future interests of the United States, the judgment should be recorded in accordance with the requirements of local law and the provisions of 28 U.S.C. § 1962 *et seq.*

### **5-12.532 Pleadings**

The Environmental Enforcement Section maintains files of pleadings which have been employed successfully in past cases. Upon request to the staff attorney, United States Attorneys may obtain pertinent, sample papers or other assistance in preparing for a particular case.

### **5-12.533 Trial Assistance**

In cases in which United States Attorneys have primary litigating responsibilities, they are encouraged to request assistance in trial preparation from the Environmental Enforcement Section staff attorney assigned to a case. Section staff attorneys often are in a position to obtain legislative histories, archive materials, and technical information which is not readily available in United States Attorneys' offices. Memoranda, trial briefs, information on unreported cases, and other material relevant to environmental cases also can be obtained through the staff attorneys. Additionally, the section keeps a file on expert witnesses used in various cases and is able to procure the services of expert witnesses through the headquarters of a number of different agencies in Washington, D.C.

### **5-12.600 Settlement and Dismissal of Cases**

The United States Attorneys are authorized to compromise any case referred to them by the Coast Guard for the collection of a civil penalty imposed pursuant to 33 U.S.C. § 1321. (Checks submitted for the payment of civil penalties should be forwarded to the referring agency for disposition.) The United States Attorneys are *not* authorized to settle or dismiss any case arising under any of the statutes identified in USAM 5-12.100.

### **5-12.611 Transmittal of Settlement Offers**

Any offer to settle or dismiss an action which the United States Attorney is not authorized to compromise shall be transmitted to the Environmental Enforcement Section attorney assigned to the case for consideration and disposition at the appropriate level. Such offers should be accompanied by the written comments and recommendation of the referring United States Attorney and of the referring agency. In emergency situations, such as with settlement offers received during trial or settlement offers dealing exclusively with monetary damages or penalties, those offers may be communicated to the Chief or one of the Deputy Chiefs of the Environmental Enforcement Section by telephone.

## **5-12.612 Solicitations of Agency Views**

United States Attorneys should remain in continuing communication with the referring agency prior to and during settlement negotiations. This will insure that the proposals being discussed are compatible with agency policies and regulations and facilitate agency approval.

Additionally, agencies other than the referring agency may have statutory review responsibilities in connection with work in navigable waters. For example, the Fish and Wildlife Service has the responsibility to review, comment on, and make recommendations as to such work under the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. §§ 661 to 666. In the interests of inter-agency cooperation, the views of these agencies should at least be considered before an offer in compromise is accepted or transmitted to the Environmental Enforcement Section.

## **5-12.613 Settlement Policy in Suits Brought on Behalf of the Administrator of the Environmental Protection Agency**

Frequently, cases brought on behalf of the Administrator of the Environmental Protection Agency results in agreed judgments or consent decrees. Copies of consent decrees in previously settled cases are available from the Environmental Enforcement Section.

To assist United States Attorneys' offices in understanding the types of settlements and language in decrees which are acceptable, the following general guidance is provided:

- A. Defendants should be informed that any settlement must be approved by the Assistant Attorney General of the Environment and Natural Resources Division and by the Assistant Administrator for the Office of Enforcement and Compliance Assurance of the Environmental Protection Agency or his/her delegate, and are subject to review by them. This is a requirement of the Memorandum of Understanding with the Environmental Protection Agency.
- B. Defendants should be advised that only the Department of Justice and the attorneys specifically designated may bind the United States to any agreement.
- C. The pendency of settlement negotiations should not cause a cessation of litigating activities. Defendants in enforcement cases often are more amenable to settlements favorable to the United States when discovery and trial preparations proceed in parallel with settlement negotiations;
- D. In no civil settlement agreement will the Environment and Natural Resources Division compromise the ability of the United States to undertake criminal prosecutions in appropriate circumstances;
- E. All correspondence and other communication pertaining to the case from a defendant must come through the United States Attorney, the Environmental Enforcement Section, or client agency counsel who are assigned to assist in the litigation of the case.
- F. Defendants should be advised that the United States is bound only by the provision actually set forth in any consent decree, and that no alleged agreement, written or oral, with any client agency representative or with anyone else, which does not appear on the face of a decree, in any way alters the actual terms of that decree.

## **5-12.620 Consent Decrees; Public Notice Policy**

- A. Consent judgments in actions in which the complaint seeks to enjoin the discharge or emission of pollutants, after being approved by the Assistant Attorney General, are to be lodged with the court and made available for public inspection for a period of 30 days prior to their entry. This is required by Departmental Order No. 529-73, 38 Fed.Reg. 19029, dated July 17, 1973, 28 C.F.R. § 50.7.

B. Criminal actions, suits brought solely for the imposition of civil penalties, and actions pursuant to 33 U.S.C. § 403 for injunctive relief are not covered by this policy.

C. The purpose of the provision is to allow the public to comment and to allow the Executive Branch to receive the benefit of such input, and to allow it to withdraw or modify its consent to the decree based upon such information.

D. Whenever a proposed consent decree is lodged with the court pursuant to 28 C.F.R. § 50.7, the United States Attorney shall notify the Environmental Enforcement Section of that fact immediately, in order that the section may have notice of the proposed settlement published in the Federal Register.

E. In some instances district judges have proceeded to enter consent decrees prior to the expiration of the public notice and comment period. If this should occur, the United States Attorney must notify the Environmental Enforcement Section of that fact immediately.

F. When the public comment period has expired, the Environmental Enforcement Section will notify the United States Attorney as to whether any comments have been received by the Division and will forward such comments for filing with the court. If the Environmental Enforcement Section or the respective client agency intends to respond to any material public comments, the Environmental Enforcement Section will notify the United States Attorney of that fact.

G. After the court has approved the consent decree, the United States Attorney should provide copies of the file-stamped and court-signed decree to the Environmental Enforcement Section of the Environment and Natural Resources Division and to the appropriate regional EPA office. The mailing list for these offices is as follows:

Copies of all court-approved consent decrees on behalf of the Environmental Protection Agency should be addressed as follows:

Case Management Unit  
Environmental Enforcement Section  
Environment and Natural Resources Division  
Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

**UNITED STATES ATTORNEY OFFICES  
LOCATED IN THE FOLLOWING STATES**  
Maine, New Hampshire,  
Vermont, Mass., R.I., Conn.

**SHOULD SEND DECREES TO THE  
FOLLOWING EPA REGIONAL OFFICES**  
Regional Counsel  
EPA-Region I  
John Fitzgerald Kennedy  
Federal Bldg.  
Room 2203  
Boston, MA 02203

N.Y., N.J., P.R., Virgin  
Islands

Regional Counsel  
EPA - Region II  
290 Broadway  
New York, NY 10007

Pa., Del., Md., Va.,  
W.Va., D.C.

Regional Counsel  
EPA - Region III  
841 Chestnut Building  
Philadelphia, PA 19107

N.C., S.C., Ga., Tenn.  
Ky., Fla., Miss., Ala.

Regional Counsel  
EPA - Region IV  
345 Courtland Street, N.E.  
Atlanta, GA 30365

Ill., Ind., Ohio, Minn.,  
Wis., Mich.

Regional Counsel  
EPA - Region V  
230 South Dearborn Street  
Chicago, IL 60604

Tex., La., Okla., N.M.,  
Ark.

Regional Counsel  
EPA - Region VI  
1445 Ross Avenue  
12th Floor - Suite 1200  
Dallas, TX 75202

Kan., Mo., Iowa, Neb.

Regional Counsel  
EPA - Region VII  
726 Minnesota Avenue  
Kansas City, KN 66101

Col., Utah, Wyo., Mont.,  
N.D., S.D.

Regional Counsel  
EPA - Region VIII  
999 18th Street - Suite 50  
Denver, CO 80202-2405

Cal., Ariz., Nev., Hawaii

Regional Counsel  
EPA - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Wash., Ore., Idaho, Alaska

Regional Counsel  
EPA - Region X  
1200 Sixth Avenue  
Seattle, WA 98101

**5-13.000**  
**[RESERVED]**

**5-14.000**  
**THE INDIAN**  
**RESOURCES SECTION**

---

- 5-14.001 Establishment
  - 5-14.100 Area of Responsibility
  - 5-14.120 Statutes Administered
  - 5-14.130 Information Concerning the Conduct of Indian Litigation by the United States
  - 5-14.200 Organization
  - 5-14.300 Processing and Handling of Cases -- Requests for Representation by Individual Indians to United States Attorneys
  - 5-14.310 Authority of United States Attorneys to Initiate or Terminate Actions Without Prior Authorization
  - 5-14.400 General Procedures in District Court Litigation -- Conflicts of Interest
  - 5-14.420 Intervention
- 

**5-14.001 Establishment**

The Indian Resources Section was created on May 27, 1975, by the Environment and Natural Resources Directive No. 6-75, to conduct litigation for the United States as trustee for the United States as trustee for the protection of the resources and rights of federally recognized Indian tribes and members of such tribes.

**5-14.100 Area of Responsibility**

The Indian Resources Section conducts and supervises civil litigation on behalf of the United States both in the prosecution of suits for the benefit of Indian tribes or members of such tribes and in the defense of suits asserting the unconstitutionality of statutes designed to protect the rights of Indian tribes or their members or suits against the Department of the Interior and its officials resulting from agency action taken for the benefit of Indian tribes or their members. Lawsuits brought by Indian tribes or their members against the United States or federal officials are generally the responsibility of the General Litigation Section (*See USAM 5-7.000*). The Indian Resources Section's docket includes protection of tribal assets or jurisdiction, assertion of Indian rights to property including hunting, fishing, land, water rights and the protection of tribal sovereignty in such areas as taxation, alcoholic beverage control, law enforcement and reservation boundaries.

**5-14.120 Statutes Administered**

Most of the statutes pertaining to the trust responsibilities of the United States to Indian people are found in Title 25 of the United States Code except for matters under the Indian Civil Rights Act, 25 U.S.C. § 1302 *et seq.*, which are the responsibility of the Civil Rights Division.

The majority of Federal Indian Law, and therefore the majority of the docket of the Indian Resources Section, involves questions of federal common law.

### **5-14.130 Information Concerning the Conduct of Indian Litigation by the United States**

A useful source of information concerning the law relating to Indian litigation and the United States' role therein, is contained in Felix S. Cohen's Handbook of Indian Law (1982 ed.). Guidance concerning the role of the Department of Justice in the conduct of Indian litigation is set forth in a 1979 letter from the Attorney General to the Secretary of the Interior. A copy of the letter can be found in the ENRD Resource Manual at 59.

### **5-14.200 Organization**

The Indian Resources Section is administered by a Chief and two Assistant Chiefs. The Section has field offices in Denver and San Francisco.

### **5-14.300 Processing and Handling of Cases -- Requests for Representation by Individual Indians to United States Attorneys**

- A. 25 U.S.C. § 175 provides that the United States Attorney shall represent Indians in any lawsuit in states where there are reservations or Indian allottees. This provision "does not withdraw discretion from the Attorney General." *Shoshone-Bannock Tribes v. Reno*, 56 F.3d 1476, 1482 (D.C. Cir. 1995).
- B. When a request for representation is received by a United States Attorney, the requestor should be advised that no action can be taken until the matter is reviewed by the Department of the Interior, and its recommendation is received. The United States Attorney should refer the request to the nearest Regional Solicitor's office of the Department of the Interior with a copy to the Chief, Indian Resources Section.
- C. The United States Attorney will be advised of any recommendations from the Department of the Interior on requests under Section 175 and consulted thereon before the Chief, Indian Resources Section makes any final determination.

### **5-14.310 Authority of United States Attorneys to Initiate or Terminate Actions Without Prior Authorization**

- A. Subject to the provisions of USAM 5-1.300, United States Attorneys are authorized to act in matters concerning tribal and restricted Indian land, not involving unique or unusual questions of law or fact or matters concerning title or water rights, without prior authorization from the Land and Natural Resources Division, only in the following cases:
  - 1. Actions to recover possession of property from tenants, squatters, trespassers or others, and actions to enjoin trespasses on the land, if the actual damages based upon a trespass do not exceed \$1,000,000;

2. Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects of not more than \$1,000,000;
  3. Actions to collect damages resulting from the default on a contract to remove timber from Indian lands, providing such damages do not exceed \$1,000,000.
- B. The actions described in paragraph A, may be referred directly from the originating agency to the appropriate United States Attorney provided that the Chief, Indian Resources Section is notified immediately by receipt of a copy of the referral letter. The Indian Resources Section must be further advised in writing from the United States Attorney of any dispositive action taken on the referral including the filing of a complaint.
- C. Subject to the provisions of USAM 5-5.210, all actions described in paragraph A, referred directly to a United States Attorney may be settled or dismissed without prior approval of the Assistant Attorney General provided the Indian tribe or individual involved concurs in the disposition. All other actions may not be dismissed or settled without the approval of the Assistant Attorney General.
- D. Prior to the initiation of litigation on behalf of Indian tribes or their members or termination of such litigation, efforts should be made to consult with the individual Indians or tribes and their counsel to obtain their concurrence in the course of action proposed.

#### **5-14.400 General Procedures in District Court Litigation -- Conflicts of Interest**

In cases involving action by the United States for the benefit of Indian Tribes or their members, tension may arise between Indian interests and those of particular entities of the federal government. Guidance concerning resolution of these tensions is included in the Attorney General's letter referenced in USAM 5-14.130. When it is determined that significant tensions exist, the Chief of the Indian Resources Section should be notified.

#### **5-14.420 Intervention**

The Department of Justice generally does not oppose intervention by Indian tribes in litigation where the Department of Justice has brought suit for the benefit of tribes, or the intervention of members of Indian tribes where the Department has brought suit for the benefit of individual Indians. The Department, however, usually takes the position that such tribes or their members are not necessary parties pursuant to Federal Rule of Civil Procedure 19, where federal agency action is challenged. When the United States is defending a federal agency action, the United States generally is capable of adequately protecting the interest of a tribe, as well as other nonparties that share an interest in seeing the action upheld. Thus, in practice, cases challenging agency action usually do not require joinder of other interested parties. Where the interested nonparty is a tribe or a member of a tribe, and the underlying agency action being challenged is premised on the federal government's trust responsibility to the tribe or member of the tribe, the likelihood that the United States will adequately represent that interests is even stronger. *See Washington v. Daley*, 173 F.3d 1158, 1168 (9th Cir. 1999).

5-15.000

**LAND  
ACQUISITION SECTION**

---

- 5-15.001 Area of Responsibility
- 5-15.002 Policy Regarding Consent to Trial of Condemnation Cases by United States Magistrate
- 5-15.003 Policy Regarding Use of Alternative Dispute Resolution in Condemnation Cases
- 5-15.100 Prior Approval Requirements
- 5-15.200 Organization of Land Acquisition Section
- 5-15.201 Statutes Administered
- 5-15.300 Supervision and Handling of Land Acquisition Section Cases – Direct Referral Cases
- 5-15.320 Assignment of Case Responsibility
- 5-15.321 Category 1 Matters
- 5-15.322 Category 2 Matters
- 5-15.500 General Procedures in Land Acquisition Litigation
- 5-15.511 Rule 71A, Federal Rules of Civil Procedure
- 5-15.512 Declaration of Taking Act
- 5-15.514 Division Programs to Expedite Handling of Condemnation Cases
- 5-15.515 Transmittal of Papers to the Land Acquisition Section
- 5-15.516 Transmittal of Record
- 5-15.520 Institution of Actions -- Initial Documents Sent to United States Attorney
- 5-15.522 Preparing and Filing Complaints
- 5-15.523 Land Subject to Options or Contracts of Sale by Acquiring Agency
- 5-15.524 Notice to be Recorded in Local Land Records
- 5-15.525 Service
- 5-15.526 Possession
- 5-15.530 Title Evidence -- Purpose
- 5-15.532 Title Evidence Supplied by Acquiring Agency
- 5-15.533 Continuation of Title Evidence
- 5-15.534 Title Evidence -- Title Company Liability
- 5-15.535 Title Evidence -- Certification of Ownership
- 5-15.536 Certificates as to Parties in Possession and Mechanics' Liens
- 5-15.537 Final Title Evidence

5-15.538	Title Evidence -- Curative Materials
5-15.540	Objections to Taking -- Answer of Defendant
5-15.542	Objections to Taking -- Notice of Appearance
5-15.543	Alteration of Estate Sought to Be Condemned
5-15.544	Exclusion of Property Acquired by Declaration of Taking
5-15.545	Stipulation of Revestment
5-15.550	Determination and Payment of Just Compensation -- Right to Trial by Jury or Commission
5-15.552	Retaining Independent Appraisers
5-15.553	Disbursement of Funds Deposited in Court
5-15.554	Refund of Excess Funds Deposited
5-15.555	Refund of Balance When Owner Not Locatable
5-15.556	Reimbursement in Certain Cases for Moving, Relocation and Related Expenses
5-15.560	Post-Trial Motions -- Notification to Division of Awards
5-15.562	Motions for New Trial -- Objections to Commission's Awards
5-15.580	Judgments
5-15.581	Contents of Judgment
5-15.582	Satisfaction of Deficiency Judgments
5-15.590	Recommendation With Respect to Appeals
5-15.592	Procedure in Recommending Appeal
5-15.600	Settlement and Dismissal of Cases
5-15.611	Partial Settlements
5-15.620	Settlement Procedures
5-15.630	Authority of United States Attorneys to Settle Condemnation Cases
5-15.631	Limitations on Delegations
5-15.640	Transmittal of Compromise Offer to Land Acquisition Section -- Recommendations with Respect to Acceptance
5-15.650	Dismissal or Abandonment of Condemnation Case
5-15.964	Selection of Qualified Appraisers and Other Experts

---

## **5-15.001 Area of Responsibility**

The Land Acquisition Section is responsible for the institution and prosecution of condemnation proceedings on behalf of the United States, and for approving title to land acquired by the United States by purchase or condemnation.

## **5-15.002 Policy Regarding Consent to Trial of Condemnation Cases by United States Magistrate**

It is the policy of the Division to encourage, in appropriate cases, consent to the conduct of condemnation trials by United States Magistrates if the attorney in charge of the case determines that trial before a magistrate would be in the litigating interests of the United States. For a complete statement of this policy, see ENRD Resource Manual at 3.

## **5-15.003 Policy Regarding Use of Alternative Dispute Resolution in Condemnation Cases**

It is the policy of the Division to encourage, in appropriate cases, use of alternative dispute resolution in the conduct of litigation, including condemnations. For more information regarding ADR, consult the Office of Dispute Resolution (website at <http://www.usdoj.gov/odr>).

## **5-15.100 Prior Approval Requirements**

Prior approval requirements for the Land Acquisition Section are set forth in USAM 5-2.000.

## **5-15.200 Organization of Land Acquisition Section**

The Section is administered by a Chief and one or more Assistant Chiefs. The Section is divided into a number of units.

- A. Litigation Unit.** Attorneys assigned to the Litigation Unit litigate eminent domain cases for which responsibility is retained by the Land Acquisition Section. They also monitor and consult with responsible Assistant U.S. Attorneys on pre-trial, trial and post-trial activities in eminent domain cases where responsibility has been delegated to a U.S. Attorney's Office by the Land Acquisition Section.
- B. Title Unit.** The Title Unit prepares opinions of title for land acquired by the United States by purchase pursuant to the provisions of 40 U.S.C. § 3111.
- C. Appraisal Unit.** The Appraisal Unit is staffed by professional real estate appraisers. It reviews appraisals, settlement proposals and appraisal guidelines for cases in condemnation and provides assistance to Section attorneys and United States Attorneys in trial preparation and procedures.

## **5-15.201 Statutes Administered**

Much of the litigation of the Land Acquisition Section is conducted pursuant to the following authorities:

- A. Act of August 1, 1888, c. 728, § 1, 25 Stat. 357, *as amended*, 40 U.S.C. § 3113 (Condemnation Act);
- B. Act of February 26, 1931, c. 307, § 1, 46 Stat. 1421, 40 U.S.C. § 3114 a-f (Declaration of Taking Act);
- C. Rule 71A, Fed. R. Civ. P.;
- D. 16 D.C. Code §§ 1351-1368 (1973 ed.) (federal land acquisition in the District of Columbia);

- E. Joint Resolution of September 11, 1841, 5 Stat. 468, *as amended*, 40 U.S.C. § 3111 (Examination of Title Act).

### **5-15.300 Supervision and Handling of Land Acquisition Section Cases -- Direct Referral Cases**

Actions to acquire land may not be initiated by a United States Attorney except upon their referral to him/her by the Attorney General, through the Land Acquisition Section. In other words, land acquisition cases may not be referred directly to United States Attorneys by acquiring agencies.

### **5-15.320 Assignment of Case Responsibility**

The extent to which a United States Attorney is responsible for handling any condemnation case is determined by the Land Acquisition Section. Condemnation matters are classified into two categories, as described at USAM 5-15.321 and 5-15.322. A case may be reclassified at any time due to changed circumstances.

### **5-15.321 Category 1 Matters**

Category 1 consists of cases in which there are no actual or anticipated policy questions, peculiar appraisal problems, novel legal questions, or claimed compensation in excess of \$1,000,000. United States Attorneys will have full responsibility for Category 1 cases, subject only to:

- A. Such assistance on tactical or legal matters as they may request from the Land Acquisition Section; and
- B. Approval of the Department of Justice of any settlements in excess of \$1,000,000 or under that amount when:
  - 1. For any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of related claims totaling an amount in excess of \$1,000,000; or
  - 2. The revestment under 40 U.S.C. § 3117 of any land or improvements or any interests in land is involved, except in cases in which the landowner desires to remove buildings, trees and shrubs, crops, or fixtures attached to the realty which are not needed or desired by the government, provided that the exclusion has been approved by the local representative of the acquiring agency; or
  - 3. Because a novel issue of law or question of policy is presented, or for any other reason, the settlement offer should receive the attention of the Environment and Natural Resources Division of this Department.

The United States Attorney should send copies of court papers to the Land Acquisition Section for information, comment, and suggestions as the case proceeds, and should cooperate in the reasonable implementation of all suggestions made.

## **5-15.322 Category 2 Matters**

Category 2 consists of cases in which there are actual or anticipated policy questions, peculiar appraisal problems, novel legal questions, or claimed compensation in excess of \$1,000,000. Category 2 cases may be (1) the full responsibility of the Land Acquisition Section; (2) the joint responsibility of United States Attorneys' Offices and the Land Acquisition Section; or (3) the full responsibility of United States Attorney's Offices, subject to the consultation and reporting requirements set forth throughout USAM 5-15.000 et seq. The participation of the Land Acquisition Section may range from mere counsel and advice, on the one hand, to management of the case on the other, depending upon national interests. The provisions of USAM 5-1.324 are applicable to Category 2 matters.

## **5-15.500 General Procedures in Land Acquisition Litigation**

The instructions herein set forth deal in broad terms with general procedures peculiar to condemnation litigation.

### **5-15.511 Rule 71A, Federal Rules of Civil Procedure**

Rule 71A of the Fed.R. Civ.P. governs the procedure to be followed in all cases for the condemnation of property under the power of eminent domain. All condemnation cases must be prosecuted in strict conformity with this Rule. Rule 71A provides that the general Fed.R. of Civ.P. shall be applicable to all cases, except as otherwise provided in Rule 71A.

### **5-15.512 Declaration of Taking Act**

The Declaration of Taking Act (See 40 U.S.C. § 3114(a), (e)) authorizes the United States to acquire an interest in land immediately upon the filing of a declaration of taking with a court and the deposit in the court of the estimated compensation stated in the declaration.

United States Attorneys must comply promptly with instructions from the Land Acquisition Section for filing of a declaration of taking and the deposit of estimated just compensation pursuant to the Declaration of Taking Act (See 40 U.S.C. § 3114(a), (e)). The final judgment should contain a finding by the court of the filing of the declaration of taking and the deposit of estimated compensation, the dates thereof, and an adjudication that title to the exact extent of the estate or interest described in the declaration is vested in the United States. The judgment should also contain an order for the surrender of possession if not previously requested by the acquiring agency. The case must be prosecuted to a speedy conclusion in order to minimize the amount of interest which the government must pay on the amount of the ultimate award in excess of the deposit.

Under the Declaration of Taking Act and Rules 71A(c)(2) and (j), Fed.R. of Civ.P., the court may order that the money deposited as estimated compensation, or any part thereof, shall be paid forthwith to the rightful claimant. The purpose of the Declaration of Taking Act is, first, to give the government title to and possession of the land and to relieve the government of the burden of interest accruing on the amount of the deposit, and second, and of equal importance, to make funds available for immediate distribution to the former owner in the discretion of the court.

In furtherance of this purpose and in accordance with Rule 71A(j), Fed.R. of Civ.P., United States Attorneys are required actively to assist landowners and the court, as amici curiae, in effecting prompt distribution of funds deposited pursuant to the Declaration of Taking Act. Detailed instructions with respect to distribution are set forth in the ENRD Resource Manual at 13.

Immediately upon the filing of a declaration of taking and the deposit of estimated compensation, the landowner and other parties interested should be notified by letter, by the United States Attorney, of the deposit and the amount thereof and that government counsel will render assistance in effecting advance distribution without prejudice to the right of the landowner to claim a larger amount. A form letter with which there should be substantial conformance is found at the ENRD Resource Manual at 28.

### **5-15.514 Division Programs to Expedite Handling of Condemnation Cases**

The Division has developed a program called the "Nine-Point Program for Settlement or Trial Within a Year" as a means of expediting the handling of condemnation cases. Details with respect to this program are set forth in the ENRD Resource Manual at 2. United States Attorneys are urged to become familiar with this program and to the fullest extent possible to process land acquisition cases in their districts in this methodical way.

The Division issued a memorandum dated June 6, 1980, to all United States Attorneys, announcing the Department of Justice policy favoring consent to trial of land condemnation cases by United States Magistrates in appropriate circumstances, as defined in 28 U.S.C. § 50.11. The policy furthers the goals of the Federal Magistrates Act of 1979 (Pub.L. 96-82) and will also serve to expedite trial in appropriate circumstances. All attorneys in the United States Attorneys' offices are encouraged to seek the consent of parties to trials, either by a magistrate or by a jury presided over by a magistrate, in appropriate cases. For a detailed statement of the Division's policy in this regard, see the ENRD Resource Manual at 3.

### **5-15.515 Transmittal of Papers to the Land Acquisition Section**

The Land Acquisition Section must be informed promptly of all major steps taken in each case, such as the entry of scheduling orders, the dates of all trials and hearings and the results thereof, and the filing by the United States Attorney and any defendant of a notice of appeal or a motion for new trial. It is essential that there be strict observance of the foregoing rule.

### **5-15.516 Transmittal of Record**

The United States Attorney shall transmit to the Land Acquisition Section, at the stages of the case hereinafter designated, successive partial transcripts to be combined at the conclusion of the case into a complete transcript of record. No documents included in one transcript need be duplicated in any subsequent transcript.

A. Initial Transcript. Upon the institution of the case there shall be transmitted to the Land Acquisition Section an initial transcript, which shall contain the following documents:

1. One copy of the complaint (See ENRD Resource Manual at 24 or 25);
2. One copy of the notice of condemnation (See ENRD Resource Manual at 27);
3. If a declaration of taking is filed, one copy of the dated receipt of the clerk of the court for the money deposited as estimated compensation;
4. If an order of possession (See ENRD Resource Manual at 44) is obtained, one copy of the order;
5. One copy of any other papers filed in connection with the institution of the case.; and
6. One copy evidencing recordation of the declaration of taking and/or lis pendens in the local land records.

B. Intermediate Transcript. Upon the entry of any judgment determining just compensation there shall be transmitted to the Land Acquisition Section an intermediate transcript consisting of:

1. One copy of the judgment together with a copy of the letter of transmittal if the judgment has been transmitted with a request for payment of a deficiency amount to the local representative of the acquiring agency as authorized at USAM 5-15.582;
2. One copy of all papers of whatever nature filed in the case prior to and including the date of entry of the judgment (but excluding copies of papers included in transcripts previously transmitted to the Land Acquisition Section);
3. The evidence of title, properly continued, See USAM 5-15.533; and
4. The certificate as to parties in possession and mechanics' liens. See USAM 5-15.536.

When an intermediate transcript is transmitted to the Land Acquisition Section, the United States Attorney should state in the letter of transmittal that the transcript constitutes, or when combined with partial transcripts previously transmitted will constitute, a complete transcript of the record of the case to date. If there is no deficiency the intermediate transcript may be combined with the final transcript.

C. Final Transcript. Upon the entry of a final judgment there shall be transmitted to the Land Acquisition Section a final transcript consisting of:

1. One copy of the initial judgment, unless copies of the judgment were previously transmitted to the Land Acquisition Section with the intermediate transcript;
2. One copy of the dated receipt of the clerk of the court for any additional money deposited pursuant to a judgment determining compensation;
3. The evidence of title, properly continued as provided in USAM 5-15.533;
4. All other related papers and curative data pertinent to the proceeding, such as affidavits, deeds, disclaimers (See ENRD Resource Manual at 49), releases, etc., necessary to show resolution of each defendant's claim;
5. Evidence that distribution or retention by the court clerk for five years pursuant to 28 U.S.C. § 2042 has been ordered of all funds which have been deposited in court by the government; and
6. One copy of the final judgment vesting title in the United States.

### **5-15.520 Institution of Actions -- Initial Documents Sent to United States Attorney**

United States Attorneys will be advised when they have been authorized by the Land Acquisition Section under delegation of the Attorney General to acquire land on behalf of a federal agency. Accompanying the authorization to the United States Attorney to acquire the land will usually be the following documents:

- A. A copy of the government official's letter to the Attorney General requesting the institution of condemnation proceedings, and citing the authority for the taking;
- B. Where immediate title is required, a declaration of taking and one copy thereof, to which will be attached a description of the land to be acquired and a map showing the land;
- C. In cases where a declaration of taking is to be filed, a check for the estimated compensation, or instructions indicating how the check may be obtained; and
- D. Advice as to classification of the case and division of responsibility for the prosecution of the case between the United States Attorney and attorneys in the Land Acquisition Section. See USAM 5-15.300 et seq.

On occasion the letter of transmittal may contain special instructions which will govern procedure if at variance with anything contained herein.

## **5-15.522 Preparing and Filing Complaints**

Upon receiving the letter authorizing the initiation of an action to condemn land, the United States Attorney shall:

- A. Secure from the acquiring agency the materials described in the ENRD Resource Manual at 4.
- B. Prepare the documents described in the ENRD Resource Manual at 5; and
- C. File the complaint pursuant to the instructions in the ENRD Resource Manual at 6.

## **5-15.523 Land Subject to Options or Contracts of Sale by Acquiring Agency**

When the land involved in a condemnation case is the subject of a valid accepted option or contract of sale, executed both by the presumptive owners and by a duly authorized representative of the acquiring agency prior to the institution of the condemnation case, the accepted option or contract is binding upon the signatories thereto in the condemnation case. The accepted option or contract should be pleaded in the complaint in condemnation. The United States Attorney is authorized without the prior approval of the Attorney General to have a judgment entered in the amount of the accepted option or contract provided that the local representative of the acquiring agency has advised in writing that the land has not decreased in value due to any action of the owners since the date of the option or contract, and all special and unusual conditions and requirements of the option or contract, if any, have been performed. It is also necessary that a determination shall have been made that the optionors in the accepted option or the vendors in the contract of sale are the sole and only parties entitled to the just compensation, other than taxing authorities, lienholders and encumbrancers whose claims may be satisfied from the award.

The procedure for summary judgments under Rule 56, Fed.R. Civ.P., should be utilized in obtaining the entry of consent judgments on options and contracts of sale, but only after the expiration of the time for filing of answers or appearance by defendants, See USAM 5-15.540 and 5-15.542.

## **5-15.524 Notice to be Recorded in Local Land Records**

In connection with the institution of condemnation proceedings, a notice of the pendency of the action, sometimes called a *lis pendens*, shall be filed or recorded among the proper local records, except in any jurisdiction where the law is settled that the commencement of the action is notice to all persons affected. If more than one county or other recording jurisdiction is involved, a separate notice is necessary for each.

The steps necessary for the commencement of record notice are determined by the law of the particular state where the land is located. In some states, it may be advisable to record both a *lis pendens* **and** either the declaration of taking or (in a complaint-only case) the final judgment vesting title in the United States.

## **5-15.525 Service**

Service of the notice of condemnation must be made in accordance with Rules 4(c) and (d), Fed.R. of Civ.P. A copy of the complaint need not be served with the notice of condemnation. The Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178), as amended, is in full force and effect and is applicable to condemnation cases. The United States Attorney must investigate to determine whether any defendant who has not answered or filed an appearance is in military service with the Armed Forces or is in public Health Service on duty with the Armed Forces. The United States Attorney must comply strictly with the provisions of the Act by filing necessary affidavits and moving for the appointment of an attorney ad litem, when required.

Complete instructions with respect to service are set forth in the ENRD Resource Manual at 8.

### **5-15.526 Possession**

Where a declaration of taking has been filed, United States Attorneys must comply with instructions from the Land Acquisition Section requesting the entry of an order for the surrender of possession of property to the government. See ENRD Manual at 44. Unless the property is vacant the acquiring agency should be requested to advise that the necessary 90 days' written notice has been given of the date by which possession is required if any person lawfully occupying the property shall be required to move from a dwelling or to move his/her business or farm operation, as required by Section 301(5) of Public Law 91-646, approved January 2, 1971, 84 Stat. 1905. Notice of the entry of the order (ENRD Resource Manual at 44), and of the date provided therein for the surrender of possession are controlled by Rules 5 and 77(d), Fed.R. Civ.P. Service of a copy of the order should be made upon the person in possession of the land in accordance with Rule 5(b), Fed.R. of Civ.P., or service should be made in the manner and within the time directed by the court in the order.

If the party in possession refuses to surrender possession as provided in the order, application should be made, in accordance with Rule 70, Fed.R. Civ.P., for a writ of assistance to put the government in possession. Application for a citation in contempt under Rule 70 should not be made without the prior approval of the Land Acquisition Section.

### **5-15.530 Title Evidence -- Purpose**

Rule 71A(c), Fed.R. Civ.P., provides that there shall be named defendants in condemnation cases all persons having or claiming an interest in the property condemned whose names can be ascertained by a reasonably diligent search of the local land records, considering the character and value of the property involved and the interest or estate to be acquired. Persons having an interest in property include those owning an estate in the land (e.g., fee owner, lessee, tenant) and those having a lien or encumbrance on the land (e.g., mortgagee, taxing authority, material person, mechanic). Evidence of title must, therefore, be obtained and examined for a determination of the necessary and proper parties defendant. Persons having (or claiming) an interest in the property at the time of the commencement of record notice, *see* 5-15.524 are necessary parties and must be joined in the action as defendants. By joining as defendants all persons disclosed by the title evidence as having a possible interest in the property as of the commencement of record notice, and, in the course of proceedings, by giving those parties notice and opportunity to be heard at the trial or hearing on just compensation, due process will have been afforded and the final judgment will be *res judicata* as to those parties. If the United States secures a judgment of condemnation fixing compensation and ordering distribution to the wrong person or to fewer than all persons entitled thereto, the party having a compensable interest who was omitted from the proceedings has been denied due process and is entitled to bring an action against the United States for just compensation. The United States may thus be compelled to pay twice for the same acquisition. Where the interest of the omitted party was a matter of record but was not disclosed by the title evidence, the United States may recover its loss from the title company or abstracter up to the limit of liability. See USAM 5-15.534.

### **5-15.532 Title Evidence Supplied by Acquiring Agency**

In condemnation proceedings the necessary evidence of title is made available to the Department by the acquiring agency. Since title insurance is the most commonly used form of title evidence, it is likely that the initial or preliminary title evidence will be in the form of a title insurance commitment or binder, and the final title evidence (See USAM 5-15.533) will be in the form of a title insurance policy. However, other forms of title evidence, such as abstracts or Certificates of Title (See ENRD Resource Manual at 48), are also acceptable. Copies of recorded documents reported may accompany the commitment, or if not, may be requested. Detailed guidelines for the preparation of title evidence in land acquisitions by the United States of America are found in the *Title Standards 2001*, a copy of which may be found on the Internet at:

<http://www.usdoj.gov/enrd/title.htm>. Attention is directed to Section 7. Title Evidence for Condemnation Cases.

### **5-15.533 Continuation of Title Evidence**

The evidence of title must be continued to a date subsequent to the recordation of the lis pendens, or declaration of taking. On the basis of information, if any, disclosed by the continuation of the evidence of title and the certificate of inspection and possession (See USAM 5-15.536), any additional parties shown by the continuation to have, or who may claim to have, any interest in the estate taken must be joined as defendants in the case, and any changes in the naming of necessary and proper parties defendant must be effected. The procedure for adding, dropping, or substituting parties is by motion and order under Rules 21 and 71A(g) and (i)(3), Fed.R. Civ.P. An amended complaint need not be filed. Detailed instructions with respect to continuing title evidence are set forth in the ENRD Resource Manual at 7.

### **5-15.534 Title Evidence -- Title Company Liability**

Title evidence, in addition to being properly continued, must also comply with the Department's requirements with respect to the limitation of the title company's liability.

Generally, certificates of title (ENRD Resource Manual at 48), and title insurance policies shall not limit the liability of the title company to a sum less than 50% of the reasonable value of the property. As to acquisitions valued at more than \$100,000 the limitation of liability of the issuing title company under the certificate of title or title insurance policy may be limited to 50% of the first \$100,000 and 25% of that portion of the value in excess of that amount.

The "reasonable value of the property," in the context of condemnation proceeding, is the amount awarded as just compensation in the judgment. Where the title company has limited its liability to a sum substantially less than that permitted, an endorsement to the certificate or policy must be obtained from the title company providing for an acceptable amount of coverage. (Reasonable compliance with the requirements as to the percentage limitation of liability is all that is required.)

Recitations in the title evidence that the limitation of liability is "as per agreement," "to be agreed upon," or the like, are unsatisfactory. In such instances it will be necessary to obtain an endorsement providing adequate coverage in a stated dollar amount. Title evidence that does not state dollar amounts of coverage, but states that coverage is in "the amount of the award" or a stated percentage (not less than permitted) of the award, is acceptable.

### **5-15.535 Title Evidence -- Certification of Ownership**

It is essential that the title evidence disclose the names of the persons in whom title was vested at the time of commencement of notice. See USAM 5-15.530. This should present no problem in cases instituted by complaint only. In cases in which a declaration of taking has been filed and the declaration itself has been recorded, the continued evidence of title typically recites that title to the property as of the effective date thereof is vested in the United States of America, followed by an appropriate reference to the recordation of the declaration. However, such a recitation must also be accompanied by a statement that prior to the filing for record of the declaration title was vested in a named person or persons. An example of satisfactory wording which might appear in Schedule A of a title policy when a Declaration of Taking has been filed is as follows:

Title to the estate or interest in the land is vested in:

THE UNITED STATES OF AMERICA

### **5-15.538 Title Evidence -- Curative Materials**

When transmitting title evidence to the Land Acquisition Section as part of a final transcript of record, there should be included evidence of the disposition of any outstanding compensable interests disclosed by the evidence of title which interests are not barred by the condemnation proceedings. For example, an official receipt for the payment of ad valorem taxes should accompany title evidence disclosing unpaid taxes which were a lien on property on the date of taking.

### **5-15.540 Objections to Taking -- Answer of Defendant**

If a defendant wishes to raise an objection to the taking, he/she must answer within 20 days from receipt of notice (ENRD Resource Manual at 7), unless the time is extended. Detailed instructions with respect to responding to a challenge to the taking are set forth in the ENRD Resource Manual at 9.

### **5-15.542 Objections to Taking -- Notice of Appearance**

If a defendant does not object to the taking, but merely wishes to appear in the cause to assure notice of any future action to be taken therein, the United States Attorney may suggest that he/she file a notice of appearance.

### **5-15.543 Alteration of Estate Sought to Be Condemned**

It may occasionally be to the advantage of all concerned to modify or change the estate being condemned. The Land Acquisition Section should be informed promptly of any suggestions which either the United States Attorney or the property owners may have concerning modification, alteration, or change of the estate or description of the property to be condemned, but no alteration of the pleadings may be made except upon receipt of appropriate authorization from the Land Acquisition Section.

### **5-15.544 Revestment of Property Acquired by Declaration of Taking**

The Attorney General is authorized in any condemnation case to stipulate on behalf of the United States to revest in the landowner title to any property or any part thereof or interest therein which may have been taken by the United States by declaration of taking (40 U.S.C. § 3117). See USAM 5-15.512. The necessity for the revestment of property acquired by declaration of taking generally occurs in two classes of cases:

A. Where the estate taken is not the estate wanted. In cases in which through inadvertence or otherwise title has been taken to property or some portion thereof or an estate or interest therein not desired by the acquiring agency or found subsequently not to be needed for public use, United States Attorneys must obtain the prior authorization of the Land Acquisition Section for the revestment of property.

B. Where a former landowner wishes to remove property not needed by government. In cases in which the landowner desires to remove buildings, trees and shrubs, crops, or fixtures attached to the realty which are not needed or desired by the government, United States Attorneys are authorized to enter into stipulations for the exclusion of property without securing the approval of the Land Acquisition Section provided that the exclusion has been approved by the local representative of the acquiring agency. However, if the property is of high value, the specific approval of the Land Acquisition Section should be obtained.

### **5-15.545 Stipulation of Revestment**

The authority of United States Attorneys to enter into revestments is governed by the nature of the property to be excluded (See USAM 5-15.544), but in the event of any question, specific instructions should be obtained from the Land Acquisition Section. Detailed instructions with respect to the exclusion or dismissal of land from proceedings are set forth in the ENRD Manual at 10.

In all cases in which a stipulation is entered into for the revestment of property, the stipulation must contain either a provision fixing the amount by which the just compensation, whether already determined or to be determined, shall be reduced by reason of the exclusion, or a provision to the effect that no claim of whatever nature for just compensation will be asserted in the case or otherwise for the property excluded. If, in the opinion of the acquiring agency, the property to be revested is of no value or the exclusion will result in a savings to the government by the avoidance of demolition or removal costs, the provisions of this paragraph shall not apply.

A stipulation relating to the removal of property not needed by the government, See USAM 5-15.544, should also contain a provision limiting the time for removal by the owner of the property and providing that if the owner fails to remove the property within the prescribed time, the stipulation shall be of no force and effect.

### **5-15.550 Determination and Payment of Just Compensation -- Right to Trial by Jury or Commission**

Rule 71(h), Fed.R. Civ.P., provides that any party to a condemnation case may have a trial by a jury on the issue of just compensation by filing a demand therefor unless the court in its discretion orders that, because of the character, location or quantity of the properties to be condemned, or for other reasons in the interest of justice, the issue of just compensation should be determined by a commission of three persons appointed by the court. The rule further provides that trial of all issues shall otherwise be by the court.

In order to preserve the right to a trial by a jury or commission, a demand for a jury trial should be filed when the Land Acquisition Section requests such demand or the United States Attorney determines that it is in the interest of the United States that a jury trial should be demanded. In condemnation cases, the demand for a trial by jury should be endorsed upon the complaint in condemnation (ENRD Resource Manual at 24 or 25), and notice of the demand should be included in the notice of condemnation. See ENRD Resource Manual at 27.

United States Attorneys are authorized to waive jury trials if, in their discretion, it is in the interest of the United States to do so, except when contrary instructions are issued by the Land Acquisition Section as to a particular case.

If it is subsequently determined that the use of a commission is advisable, a motion should be made for the appointment of the commission. The motion should set forth the facts justifying the use of the commission. The order of court appointing the commission should include a finding of fact by the court as to the necessity for use of the commission. Instructions with respect to trial settings, or a hearing before a commission, are set forth in the ENRD Resource Manual at 11.

### **5-15.552 Retaining Independent Appraisers**

Following review of the appraisal submitted by the acquiring agency with the case referral and the Land Acquisition Section Appraisal Review Unit's comments regarding that appraisal, a United States Attorney may find it necessary or advisable to retain the services of an independent appraiser. Land Acquisition Section attorneys and review appraisers may be consulted for recommendation of possible candidates.

### **5-15.553 Disbursement of Funds Deposited in Court**

United States Attorneys are required to actively assist landowners and the court, as *amicus curiae*, in effecting prompt distribution of funds deposited into the registry of the court as just compensation. Copies of all orders of distribution (ENRD Resource Manual at 41) should be promptly transmitted to the Land Acquisition Section. Rule 71(j), Fed.R. Civ.P., which relates to distribution, provides that the court and attorneys shall expedite the proceedings for distribution and for the ascertainment and payment of just compensation in cases in which a deposit is made. Government counsel should obtain promptly and furnish to the court all information available as to the state of the title to the property and any liens, taxes, and encumbrances thereon. Government counsel should also assist landowners in the preparation of motions for, and orders of, distribution, See ENRD Resource Manual at 33 and 41, and affidavits for execution by the claimants in support of motions for distribution. Care should be taken to see that a proper order is entered for the payment of all taxes and assessments due and exigible at the time of vesting of title in the United States. Unless serious doubt exists as to the real ownership of the property, government counsel should not delay distribution of just compensation for any extended period for the procurement of curative material for the elimination of defects of title but should rely upon the condemnation procedure for that purpose. Instructions with respect to procedures in disbursing funds deposited in court are set forth in the ENRD Resource Manual at 13.

### **5-15.554 Refund of Excess Funds Deposited**

After a deposit has been made to the registry of the court and it becomes necessary to have a part or all of it returned to the government (because of an agreement for revestment or an over-deposit of estimated compensation), the check representing such refund must be made payable to the Treasurer of the United States and forwarded to the Land Acquisition Section for distribution to the proper agencies.

### **5-15.555 Refund of Balance When Owner Not Locatable**

When funds cannot be disbursed because the owner cannot be located, or for other reasons, an order should be sought, as promptly as the court will entertain such orders, for the refund of the undistributed balance to the Treasury of the United States at the expiration of the five-year period pursuant to 28 U.S.C. § 2042. Action pursuant to this section becomes a ministerial duty of the clerk of the court. In the event a subsequent order is entered for a redeposit of the money for the purposes of withdrawal, it will be the duty of the clerk of the court to submit the court's order directly to the audit section of the Administrative Office of the United States Courts for processing with the Treasury Department. A copy of this order should also be sent to the Land Acquisition Section so that the records of the case will be complete. Although the United States Attorneys should assist the landowners in filing the motion to redeposit the funds and advise the court with reference thereto, no further action thereon by either the United States Attorney or the Department will be required to obtain the redeposit.

### **5-15.556 Reimbursement in Certain Cases for Moving, Relocation and Related Expenses**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 requires the payment by acquiring agencies of moving, replacement, relocation and related expenses of property owners and for certain expenses incidental to the transfer of title to the United States, including reimbursement to the owner for the pro-rata portion of real property taxes paid which are allocable to the period subsequent to the date of vesting title in the United States or the effective date of possession of such real property by the United States, whichever is earlier. Section 102(a) of this Act provides as follows:

The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

And, Section 102(b) provides as follows:

Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act.

Representatives of acquiring agencies have been instructed to coordinate their activities under the authorizing statute with representatives of the Department of Justice to insure that no duplication of payment will result.

All inquiries by owners or tenants with respect to reimbursements under this statute should be referred to the local representative of the acquiring agency. No changes in existing practices and procedures in handling condemnation cases and particularly in negotiating for settlements in condemnation cases are required by this authorizing statute. However, United States Attorneys should advise the local representatives of the acquiring agency of any case in which an owner or tenant asserts a claim for expenses and other loss and damage alleged to have been incurred by such owner or tenant as a result of the moving of themselves, their families and possessions because of the acquisition of the land. This requirement for notice to representatives of the acquiring agency is particularly applicable in cases for the condemnation of the temporary use of property wherein claims may be asserted for moving costs under the rule established in *General Motors Corporation v. United States*, 323 U.S. 373 (1945).

### **5-15.560 Post-Trial Motions -- Notification to Division of Awards**

Immediately after hearing or trial, send executed Form LDN-18 together with a detailed report of the trial or hearing to the Land Acquisition Section with specific recommendations for future action. The ENRD Appellate Section will normally represent the United States on appeal.

### **5-15.562 Motions for New Trial -- Objections to Commission's Awards**

The usual course of action, when awards materially exceed the government's testimony, is to move for a new trial, where the award was made by a jury, or to object to the award made by a commission. Procedures for United States Attorneys to follow with respect to motions for new trials and objections to a commission's award are set forth in the ENRD Resource Manual at 14.

### **5-15.580 Judgments**

The United States Attorney should take care that judgments in condemnation cases include an adjudication of all issues within the jurisdiction of the court. Separate judgments on the several issues in the case should be avoided whenever possible, thus, for example, an order of distribution should be included in a judgment determining compensation. Judgments should not contain recitals of pleadings, reports of commissions or the record of prior proceedings.

### **5-15.581 Contents of Judgment**

Judgments determining compensation should contain:

- A. A finding and adjudication of the right of the United States to condemn the property involved for public use;
- B. An adjudication that title to the exact estate or interest condemned is vested in the United States if the declaration of taking procedure has been used, or, if not, an adjudication that title to the exact estate or interest will vest in the United States upon payment of the just compensation into the registry of the court and entry of an order vesting title;

- C. Confirmation of the stipulation between the government and the landowners fixing the amount of just compensation or confirmation of the verdict of the jury or the award of a commission appointed by the court to determine compensation;
- D. An accurate legal description of the property, which may be referenced to the complaint or declaration of taking;
- E. A finding and adjudication of the right of the defendants to distribution of the just compensation;
- F. Provision for the payment of interest, if any, for which the government may be legally liable;
- G. Provision for any refund of money deposited into the registry of the court to which the government may be entitled; and
- H. An adjudication of any other issue not previously ruled upon formally by the court.

### **5-15.582 Satisfaction of Deficiency Judgments**

Upon the entry of judgments fixing compensation and ordering the deposit of deficiencies, the United States Attorney shall request a check for the necessary amount from the local representative of the acquiring agency.

### **5-15.590 Recommendation With Respect to Appeals**

In any case where he/she believes substantial error has been committed, the United States Attorney shall immediately advise the Land Acquisition Section and give his/her recommendations regarding appeal.

### **5-15.592 Procedure in Recommending Appeal**

If a United States Attorney wishes to recommend that a judgment be appealed, he/she should:

- A. Send one copy of the order of the court to the Land Acquisition Section.
- B. Prepare a recommendation including a statement of the factual and legal issues involved, the rulings of the court which may be grounds for an appeal, and the reasons for his/her recommendations. The date from which the time for appeal runs should also be stated.
- C. Unless otherwise instructed, file a protective notice of appeal just prior to the expiration of the time within which such notice may be filed, but not before then. This is to allow the Department the benefit of the full period of time for appeal to study the case and reach a decision. A copy of the notice of appeal should be forwarded to the Land Acquisition Section immediately after filing.

The Department will advise the United States Attorney whether to order the transcript of testimony. Note the instructions at USAM 5-8.000 and in USAM Title 2, regarding the handling of appeals.

### **5-15.600 Settlement and Dismissal of Cases**

Except as set forth in USAM 5-15.620 no case under the jurisdiction of the Land Acquisition Section may be settled or dismissed without specific or delegated authority from the Attorney General.

## **5-15.611 Partial Settlements**

Overall settlements for all interests in a tract in a pending condemnation proceeding are much to be preferred over separate settlements for partial interests. Offers not including all interests in a tract will be approved only in exceptional cases and should be explained and justified fully.

## **5-15.620 Settlement Procedures**

Negotiations for compromise settlement should be undertaken by the United States Attorney with the cooperation of the local office of the acquiring agency. Negotiations should be initiated or entered into only after the appraisals have been thoroughly examined and found to be sound. If evaluations vary greatly, then consultations with appraisers first should be had to clarify or correct any possible misapplication of the facts or legal principles involved. If the appraisals are not satisfactory, or vary greatly, the United States Attorney should engage additional appraisers.

Settlement should never be sought for statistical purposes. Where settlement negotiations lead to an offer in any case that is deemed by the condemnation attorney to be a reasonable reflection of fair market value, in light of the pertinent appraisal reports, the risks and costs of trial and the effect of the settlement upon other pending cases, he/she is encouraged to consummate the settlement with dispatch, if it is within his/her authority to do so (See USAM 5-15.630), or to furnish the settlement offer to the Land Acquisition Section for approval (See USAM 5-15.640).

Detailed procedures with respect to settlements are set forth in the ENRD Resource Manual at 17.

## **5-15.630 Authority of United States Attorneys to Settle Condemnation Cases**

The United States Attorneys are authorized, subject to the limitations imposed in USAM 5-15.631, to accept or reject offers in compromise, without the prior approval of the Environment and Natural Resources Division, of claims against the United States for just compensation in condemnation proceedings in any case in which:

- A. The gross amount of the proposed settlement does not exceed \$1,000,000.
- B. The settlement is approved in writing (the written approval to be retained in the file of the United States Attorney concerned) by the authorized field representative of the acquiring agency if the amount of the settlement exceeds the amount deposited with the declaration of taking as to the particular tract of land involved;
- C. The amount of the settlement is compatible with the sound appraisal, or appraisals, upon which the United States would rely as evidence in the event of trial, due regard being had for probable minimum trial costs and risks; and
- D. The case does *not* involve the revestment of any land or improvements or any interest, or interests, in land under the Act of October 21, 1942, 56 Stat. 797 (40 U.S.C. § 3117).

## **5-15.631 Limitations on Delegations**

The United States Attorney's authority to settle land acquisition cases may not be exercised when:

- A. For any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims;
- B. Because a novel question of law or a question of policy is presented, or for any other reason, the offer should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General in charge of the Environment and Natural Resources Division; or

C. The agency or agencies involved are opposed to the proposed closing or dismissal of a case, or acceptance or rejection of the offer in compromise.

If any of the conditions listed above exists, the matter shall be submitted for resolution to the Assistant Attorney General, Environment and Natural Resources Division, in care of the Land Acquisition Section.

### **5-15.640 Transmittal of Compromise Offer to Land Acquisition Section -- Recommendations with Respect to Acceptance**

Every offer of compromise in a condemnation case, with the exception of those offers within the authority of the United States Attorney to accept or reject (*See* USAM 5-15.630), which the United States Attorney considers may be recommended for acceptance must be submitted to the Department for consideration and acceptance or rejection. The United States Attorney shall submit to the Land Acquisition Section with the offer in compromise:

- A. His/her recommendation;
- B. The range of the government's proposed testimony of value in event of trial;
- C. The probable range of testimony on behalf of the landowner insofar as known;
- D. All available appraisal reports; and
- E. A statement of all other factors pertinent to a determination of the advisability of accepting or rejecting the proposed settlement.

The Land Acquisition Section should be advised of the recommendation of the local representative of the acquiring agency with respect to the proposed settlement. See the ENRD Resource Manual at 43 for suggested forms of stipulation and judgment thereon. The forms for offers involving the revestment of property under 40 U.S.C. § 3117 (*See* ENRD Resource Manual at 30) must include the appraisals of the property to be revested and the appraised value of the interest to be retained by the United States.

### **5-15.650 Dismissal or Abandonment of Condemnation Case**

Condemnation cases must not be dismissed as to any of the land included in the instructions to condemn, nor may there be any change as to the interest or estate to be acquired, unless expressly authorized by the Land Acquisition Section. (*See* USAM 5-15.543 and 5-15.544.) Orders of dismissal must be entered without prejudice. In the absence of a stipulation with the property owner in which he/she waives the right to costs, the federal court may award to the owner of any right, title or interest in such real property such sum as will in the opinion of the court reimburse such owner for his/her reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceeding, if the proceeding is abandoned by the United States. *See* Section 304(a), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4654 (*See* USAM 5-15.556). The procedure for dismissal is set forth in Rule 71A(i), Federal Rules of Civil Procedure. See the ENRD Resource Manual at 31 for forms of stipulation and order.

### **5-15.964 Selection of Qualified Appraisers and Other Experts**

The selection and approval of competent, well-qualified appraisers and other experts for use at trial should be a joint effort of the litigating attorney and the Appraisal Unit. Where full cooperation is not being received from an acquiring agency in regard to the employment of experts, the matter should be referred to the Land Acquisition Section for resolution.