

# U.S. Department of Justice



ENRD



ENRD

**FY 2017**  
**PERFORMANCE BUDGET**  
**CONGRESSIONAL SUBMISSION**

## Table of Contents

	Page No.
<b>I. Overview</b>	<b>2</b>
<b>II. Summary of Program Changes</b>	<b>9</b>
<b>III. Appropriations Language and Analysis of Appropriations Language</b>	<b>N/A</b>
<b>IV. Decision Unit Justification</b>	<b>10</b>
A. Environment and Natural Resources Division	
1. Program Description	<b>10</b>
2. Performance Tables	<b>25</b>
3. Performance, Resources, and Strategies	<b>28</b>
<b>V. Program Increases by Item</b>	
A. Improving Environmental Enforcement in Indian Country	<b>36</b>
B. Enhancing the Safety of America's Workforce	<b>40</b>
C. Ensuring the Welfare of Animals in the United States	<b>44</b>
<b>VI. Program Offsets by Item</b>	<b>N/A</b>
<b>VII. Exhibits</b>	
A. Organization Chart	
B. Summary of Requirements	
C. FY 2017 Program Increases/Offsets by Decision Unit	
D. Resources by DOJ Strategic Goal/Objective	
E. Justification for Technical and Base Adjustments	
F. Crosswalk of 2015 Availability	
G. Crosswalk of 2016 Availability	
H. Summary of Reimbursable Resources	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Changes	
K. Summary of Requirements by Object Class	

*Cover photo by DOJ/ENRD employee Jeffrey Bank - Oxbow Bend outlook over the Snake River in Grand Teton National Park*

*Photos are from photo galleries maintained by the U.S. Fish and Wildlife Service:*

<https://www.flickr.com/photos/usfwhq/galleries>

*Text boxes are from the Department of Justice and the U.S. Fish and Wildlife Service websites:*

<http://www.justice.gov/enrd/wildlife-trafficking>; <http://www.fws.gov/international/wildlife-trafficking/>

## **I. Overview of the Environment and Natural Resources Division**

### **A. Introduction:**

*Environment and Natural Resources Division (ENRD) Mission:* The Environment and Natural Resources Division is a core litigating component of the U.S. Department of Justice. Founded more than a century ago, it has built a distinguished record of legal excellence. The Division functions as the Nation's environmental and natural resources lawyer, representing virtually every federal agency in the United States, and its territories and possessions, in civil and criminal cases that arise under more than 150 federal statutes. Key client agencies of the Division include the U.S. Environmental Protection Agency (EPA), the U.S. Department of the Interior, the U.S. Army Corps of Engineers, the U.S. Department of Commerce, the U.S. Department of Agriculture, the U.S. Department of Homeland Security, the U.S. Department of Energy and the U.S. Department of Defense, among others. The Division's litigation docket is comprised of nearly 7,000 active cases and matters.

The Division is organized into nine litigating sections (Appellate; Environmental Crimes; Environmental Defense; Environmental Enforcement; Indian Resources; Land Acquisition; Law and Policy; Natural Resources; and Wildlife and Marine Resources), and an Executive Office that provides administrative support. ENRD has a staff of approximately 635, more than 445 of whom are attorneys.

The Division is guided by its core mission and goals, which include:

- Enforcing the nation's bedrock environmental laws that protect air, land, and water for all Americans;
- Vigorously representing the United States in federal trial and appellate courts, including by defending EPA's rulemaking authority and effectively advancing other agencies' missions and priorities;
- Protecting the public fisc and defending the interests of the United States;
- Advancing Environmental Justice through all of the Division's work and promoting and defending Tribal sovereignty, treaty rights, Tribal natural resources, and the environment in Indian country;
- Providing effective stewardship of the nation's public lands, natural resources and animals, including fighting for the survival of the world's most protected and iconic species and marine resources, and working across the government and the globe to end the illegal trade in wildlife.

To accomplish its mission and to achieve its goals **in FY 2017, ENRD is requesting a total of \$122,561,000 including 550 positions (379 attorneys), and 533 Full-Time Equivalents (FTE)**. ENRD also has 115 reimbursable FTE.

All communities deserve clean air, water and land in the places where they live, work, play and learn. The Division strives to ensure that all communities are protected from environmental harms, including those low-income, minority and tribal communities that too frequently live in areas overburdened by pollution. ENRD pursues the goals of Environmental Justice by ensuring

that everyone enjoys the benefit of a fair and even-handed application of the nation's environmental laws, and affected communities have a meaningful opportunity for input in the consideration of appropriate remedies for violations of the law.

ENRD also litigates to protect the Nation's public lands and resources, ensuring that these lands are protected and the Treasury collects the royalties and payments owed to the United States. The Division also litigates to protect almost 60 million acres of land, and accompanying natural resources, that the United States holds in trust for tribes and their members.

ENRD's work furthers the Department's strategic goals to prevent crime and enforce federal laws, defend the interests of the United States, promote national security, and ensure the fair administration of justice at the federal, state, local, and tribal levels. Most importantly, the Division's efforts result in significant public health and other direct benefits to the American people through the reduction of pollution across the Nation and the protection of important natural resources.

Every day, the Division works with client agencies, U.S. Attorneys' Offices, and state, local and tribal governments, to enforce federal environmental, natural resources, and wildlife laws. It also defends federal agency actions and rules when they are challenged in the courts, working to keep the Nation's air, water and land free of pollution, advancing military preparedness and national security, promoting the nation's energy independence, and supporting other important missions of our agency clients. The Division acquires land for purposes ranging from national parks to national security, protects tribal lands and natural resources, and works to fulfill the United States' trust obligations to Indian tribes and their members.

ENRD performs its work with the constant understanding that our operations are funded by limited taxpayer dollars. Over the past few years, as described below, we have taken deliberate steps to reduce costs and limit resource expenditures. We take our role as responsible custodians of the public fisc very seriously; and we are proud of the short and long-term cost saving measures and efficiencies we have implemented to date.

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.justice.gov/02organizations/bpp.htm>.



Wildlife trafficking is a serious crime that undermines security across nations and fuels instability. The poaching of protected species and illegal trade in wildlife are pushing iconic species, such as pangolins, rhinos, and tigers, to the brink of extinction, robbing people not only of their natural heritage, but also economic opportunities. White Rhino, Photo by the USFWS

## **B. Issues, Outcomes, and Strategies:**

As the Nation's chief environmental and public lands litigator, ENRD primarily supports the Justice Department's Strategic Goal Two: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law.

The Division initiates and pursues legal action to enforce federal pollution abatement laws and obtain compliance with environmental protection and conservation statutes. ENRD also represents the United States in all matters concerning protection, use, and development of the nation's natural resources and public lands. The Division defends suits challenging all of the foregoing laws, and fulfills the federal government's responsibility to litigate on behalf of Indian tribes and individual Indians. ENRD's legal efforts protect the federal fisc, reduce harmful discharges into the air, water, and land, enable clean-up of contaminated waste sites, and ensure proper disposal of solid and hazardous waste.

In affirmative litigation, ENRD obtains redress for past violations harming the environment, ensures that violators of criminal statutes are appropriately punished, establishes credible deterrents against future violations of these laws, recoups federal funds spent to abate environmental contamination, and obtains money to restore or replace natural resources damaged by oil spills or the release of other hazardous substances into the environment. ENRD also ensures that the federal government receives appropriate royalties and income from activities on public lands and waters.

By prosecuting environmental criminals, ENRD spurs improvements in industry practice and greater environmental compliance. Additionally, the Division obtains penalties and fines against violators, thereby removing the economic benefits of non-compliance and leveling the playing field so that companies complying with environmental laws do not suffer competitive disadvantages.

In defensive litigation, ENRD represents the United States in challenges to federal environmental and conservation programs and all matters concerning the protection, use, and development of the nation's public lands and natural resources. ENRD faces a growing workload in a wide variety of natural resource areas, including litigation over water quality and watersheds, the management of public lands and natural resources, endangered species and sensitive habitats, and land acquisition and exchanges. The Division is increasingly called upon to defend Department of Defense training and operations necessary for military readiness and national defense.

## **C. Performance Challenges:**

### **External Challenges**

The Division has limited control over the filing of defensive cases, which make up over half of our workload. Court schedules and deadlines drive the pace of work and attorney time devoted to these cases. ENRD's defensive caseload is expected to continue to increase in FY 2016 and FY 2017 as a result of numerous external factors.

- The Division faces a huge influx of litigation under a 19th Century federal statute, commonly known as "**R.S. 2477**," which "recognized" the "right of way for the construction of highways over public lands, not reserved for public uses." The largest component of this docket is defensive litigation under the Quiet Title Act, 28 U.S.C. § 2409a, in which ENRD defends against claims, mostly by western states and counties, to R.S. 2477 rights-of-way on lands owned by the United States and managed by federal agencies. Since 2011, our R.S. 2477 case load has grown from 12 cases covering 114 roads, to more than 45 cases – most of which are in Utah, but also involve lands in Alaska, California, Idaho, Nevada, New Mexico, North Dakota, and Washington – covering over 12,000 roads. This caseload involves extensive discovery, 'ancient' historical facts, significant motion practice, and *de novo* trials.
- **Flooding Takings Litigation:** The Division is currently defending a large number of suits brought by property owners who contend that actions by the United States have caused flooding of their properties for which they are entitled to just compensation under the Fifth Amendment including a 30,000 member putative class action seeking \$50 billion due to flooding in the aftermath of Hurricane Katrina, and four putative class actions involving thousands of landowners along the Mississippi and Missouri whose properties were flooded in 2011 and seek billions of dollars in compensation. The cases are tremendously complex, requiring extensive use of expert witnesses to determine the cause, extent and damages resulting from such flooding. As a result of recent adverse Supreme Court precedent and changes in climactic conditions, we can anticipate a significant increase in such cases over the next several years.
- The Division currently represents the United States, specifically the Department of Interior and the Department of Treasury, in 21 pending **Tribal Trust** cases in various federal district courts and the United States Court of Federal Claims, in which cases 35 tribes or Indian plaintiffs demand "full and complete" historical trust accountings and damages for financial injury resulting from the government's alleged mismanagement of the plaintiffs' trust funds and non-monetary assets. The plaintiffs' damage claims exceed \$1.5 billion. In FY 2016, the Division faces trial in at least four cases. These cases will require substantial resources in order to conduct or complete extensive fact and expert discovery related to claims for alleged mismanagement of not only numerous tribal trust or individual Indian money accounts but also extensive non-monetary tribal trust resources between 1946 and the present. The damages sought by the plaintiffs in the cases going to trial exceed \$1 billion.
- ENRD supports the defense and security missions of the Department of Defense and the Department of Homeland Security. From defending environmental challenges to critical training programs that ensure military preparedness, to acquiring strategic lands needed to fulfill the government's military and homeland security missions, ENRD makes a unique and important contribution to defense and national security while ensuring compliance with the country's environmental laws. The Division expects its **Military**

**Readiness Docket** – to include litigation to defend training missions and strategic initiatives, expand military infrastructure, and defend chemical weapons demilitarization – to continue into FY 2016 and FY 2017.

- The Division continues to deal with a dramatic expansion of its **Rails-to-Trails litigation**, in which property owners along railroad corridors allege a taking of their property interests in violation of the Fifth Amendment as a result of the operation of the National Trails System Act (“Trails Act”). The courts have held that the Trails Act precludes abandonment of the corridors under state law, and results in the conversion of the railroad line into thousands of miles of recreational trails throughout the United States, which are also “railbanked” for possible future railroad reactivation. The Division presently defends approximately 120 such suits, involving many thousands of properties, with estimated aggregate claims in the hundreds of millions of dollars. These cases present considerable legal challenges, as recent court precedent has been generally unfavorable to the United States. These cases also present considerable resource challenges, since each property conveyance and each property valuation must be individually analyzed. The number of hours the Division devotes to these cases has more than tripled in the past few years and the portion of the Division’s expert witness funds being applied to these cases has increased several-fold. Given the complexity of the cases and the ongoing conversions of railroad corridors into recreational trails, we expect to see a continued increase of this litigation for many years to come.
- The Division also handles several types of litigation over water allocation, including **water rights litigation** on behalf of every federal agency with water-dependent facilities, programs, or land management responsibilities. In the coming year, ENRD anticipates increasing demands on resources from a growing load of water rights cases. As a result of the drought that afflicted most of the western United States, we anticipate increased litigation over scarce water resources. In particular, we expect growth in the litigation of voluminous proceedings known as "general stream adjudications," in which courts – mostly state courts in the western United States – adjudicate the rights of all the water users in a river basin. The Division’s staff within the Natural Resources Section dedicated to general stream adjudications across the West is generally smaller than the staff employed by each of the western states alone, and these cases – which often involve thousands of parties, tens of thousands of claims and objections, and take decades for discovery, pretrial litigation and trial – already place significant demands on our section resources.



Illegal wildlife trade is estimated to be a multibillion-dollar business involving the unlawful harvest of and trade in live animals and plants or parts and products derived from them. Wildlife is traded as skins, leather goods or souvenirs; as food or traditional medicine; as pets, and in many other forms. Illegal wildlife trade runs the gamut from illegal logging of protected forests to supply the demand for exotic woods, to the illegal fishing of endangered marine life for food, and the poaching of elephants to supply the demand for ivory. Mountain Lion, Photo by the USFWS

The Division is also deeply engaged in a number of continuing and prospective affirmative cases and matters. While the Division's resources are already stretched, ENRD's affirmative enforcement caseload will likely continue to increase in FY 2016 and FY 2017 as a result of numerous external factors.

On January 4, 2016, the Division, on behalf of the Environmental Protection Agency (EPA), filed a civil complaint against **Volkswagen AG, Audi AG, Volkswagen Group of America Inc., Volkswagen Group of America Chattanooga Operations LLC, Porsche AG and Porsche Cars North America Inc. (collectively referred to as Volkswagen)**. The complaint alleges that nearly 600,000 model year 2009-2016 diesel engine vehicles sold in the United States are equipped with illegal "defeat devices" that impair their emission control systems during normal driving conditions and cause emissions to substantially exceed EPA's standards for nitrogen oxide (NOx). The defeat devices consist of software that detects whether the vehicle is operating on the road or undergoing prescribed test procedures, and utilizes the vehicles' emissions controls accordingly. The complaint includes four claims for relief, including that Volkswagen violated the Clean Air Act by selling, introducing into commerce, or importing into the United States motor vehicles that are designed differently from what Volkswagen had stated in applications for certification to EPA and the California Air Resources Board (CARB), and manufacturing, selling, offering to sell or installing the defeat devices. The Clean Air Act requires vehicle manufacturers to certify to EPA that their products will meet applicable federal emission standards to control air pollution. Motor vehicles equipped with illegal defeat devices cannot be certified.

NOx pollution contributes to harmful ground-level ozone and fine particulate matter. These pollutants are linked with asthma and other serious respiratory illnesses. Exposure to ozone and particulate matter is also associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly and people with pre-existing respiratory disease are particularly at risk of health effects from exposure to these pollutants. Recent studies indicate that the direct health effects of NOx are worse than previously understood, including respiratory problems, damage to lung tissue and premature death.

The complaint seeks injunctive relief and the assessment of civil penalties. The United States expects the case to be transferred to the related multi-district litigation in the Northern District of California for coordinated pretrial proceedings. The United States' investigation is ongoing, in close coordination with the California Air Resources Board (CARB.) EPA and CARB have been in active discussion with Volkswagen about potential remedies and recalls to address the noncompliance, and those discussions are ongoing.

ENRD also expects to continue to receive complex **civil and criminal environmental enforcement referrals from EPA** under the Clean Water Act and Clean Air Act in FY 2016 and FY 2017.

### **Internal Challenges**

With the introduction of new technologies and new requirements in the legal industry – such as e-filing, on-line document repositories, electronic trials, extranet docketing systems, and electronic discovery – we are in constant need of ensuring our workforce has the expertise and

access to software, hardware and systems to keep pace. ENRD continues to refresh aging hardware, develop and implement required tracking systems, and comply with Department security mandates. One initiative that will pose particular IT challenges for ENRD is the Data Center Transformation Initiative (DCTI). This consolidation effort will impact every aspect of ENRD's IT operations including budget, design, staffing, maintenance and operations.

#### **D. Environmental Accountability**

The Division maintains a "Greening the Government" initiative in response to Executive Order 13423 (January 24, 2007), which requires all federal agencies to meet benchmarks for reductions in energy usage, water consumption, paper usage, solid waste generation, and other areas. Among other things, through the Executive Order, government agencies were directed to reduce energy consumption by 30 percent by 2015.

ENRD continues to lead the Department in green building initiatives. The Division works hard to keep energy usage low. PHB, where ENRD is the primary tenant, received an Energy Star certification in 2014 and strives to continue to meet the environmental standards necessary to continue the LEED certification received in 2012.

The Environment Division's Information Technology (IT) staff is keenly aware of its environmental responsibilities, buying energy efficient hardware before Energy Star became a Federal government mandate. To maximize energy efficiency, our virtual server infrastructure was recently expanded to our COOP site and field offices (reducing the count of physical servers by 40 percent). In addition, the Division purchased servers with an energy-saving technology that exceeds EPA's Energy Star requirements. Together, these purchases have reduced the Division's power requirements and heat output by over 50 percent. ENRD continues to make further improvements in consolidation and virtualization every year and is working towards the goals specified in the Data Center Transformation Initiative (DCTI) guidelines.

#### **E. Achieving Cost Savings and Efficiencies**

The Division has demonstrated a commitment to achieve cost savings and has attained impressive measurable results. In the area of litigation support, ENRD has been innovative and forward-thinking with its cost-effective, in-house litigation support computer lab, which provides a wide range of services, such as scanning, OCR-processing, e-Discovery/data processing, email threading, and database creation and Web hosting. In FY 2015, the Division recognized savings of over \$12 million, compared to what the in-house services provided would have cost if outsourced to a contractor/vendor.

Striving to continue employing technological solutions, ENRD will implement cost-effective alternatives such as videoconferencing and web-based applications for meetings. We continue to push the use of on-line travel reservations, as opposed to using agent assisted booking services, leading to additional cost savings.

## II. Summary of Program Changes

Initiative	Description				Page
		Pos.	FTE	Dollars (\$000)	
Enhancing the Safety of America's Workforce	Enhance Division's enforcement of worker protection statutes	6	3	\$1,000	p. 36
Ensuring the Welfare of Animals in the United States	Implement Division's new authorities enforcing animal welfare statutes	3	2	\$1,000	p. 40
Improving Environmental Enforcement in Indian Country	Develop and litigate cases to address environmental violations in Indian Country	4	2	\$1,500	p. 44



On February 11, 2015, the Presidential Task Force on Wildlife Trafficking issued the [Implementation Plan](#) for the *National Strategy for Combating Wildlife Trafficking* that President Obama released on February 11, 2014. The Task Force, which is led by the Departments of State, Justice, and the Interior, and includes 14 additional federal departments and agencies, is charged with developing a government-wide strategy for fighting poaching and other wildlife trafficking. Wildlife trafficking has become an international crisis that threatens security, hinders sustainable economic development, and undermines the rule of law. The illicit trade in wildlife is decimating many species worldwide and threatens iconic species such as rhinoceroses, elephants, and tigers with extinction. Photo Credit: Ivory tusks confiscated by the Fish and Wildlife Service, USFWS

### III. Appropriations Language and Analysis of Appropriations Language

Please refer to the General Legal Activities Consolidated Justifications.

#### IV. Decision Unit Justification

<b>Environment and Natural Resources Division -</b>	<b>Direct Pos.</b>	<b>Estimate FTE</b>	<b>Amount (\$000)</b>
2015 Enacted	537	526	110,077
2016 Enacted	537	526	110,512
Adjustments to Base and Technical Adjustments			8,549
2017 Current Services	537	526	119,061
2017 Program Increases	13	7	3,500
2017 Program Offsets	0	0	0
2017 Request	550	533	122,561
<b>Total Change 2016-2017</b>	<b>13</b>	<b>7</b>	<b>12,049</b>

<b>Information Technology Breakout (of Decision Unit Total)</b>	<b>Direct Pos.</b>	<b>Estimate FTE</b>	<b>Amount (\$000)</b>
2015 Enacted	18	18	5,107
2016 Enacted	18	18	5,479
Adjustments to Base and Technical Adjustments	0	0	-239
2017 Current Services	18	18	5,258
2017 Program Increases	0	0	0
2017 Program Offsets	0	0	0
2017 Request	18	18	5,258
<b>Total Change 2016-2017</b>	<b>0</b>	<b>0</b>	<b>-239</b>

#### 1. Program Description

As stated in the Department of Justice Strategic Plan, ENRD works to:

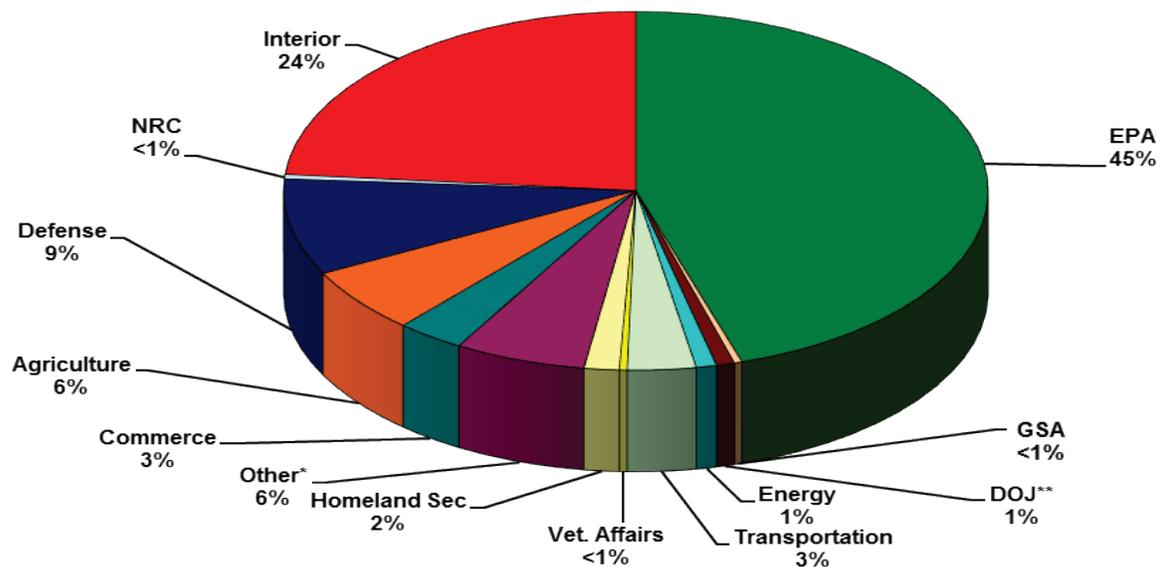
- Pursue cases against those who violate laws that protect public health, the environment, and natural resources;
- Investigate and prosecute environmental crimes, including both pollution and wildlife violations;
- Defend against suits challenging federal statutes, regulations, and agency actions;
- Develop constructive partnerships with other federal agencies, state and local governments, and interested parties to maximize environmental compliance and stewardship of natural resources;

- Act in accordance with United States trust responsibilities to Indian tribes and individual Indians in litigation involving the interests of Indians. The United States holds close to 60 million acres of land and associated natural resources in trust for tribes and has a duty to litigate to protect this land and resources.

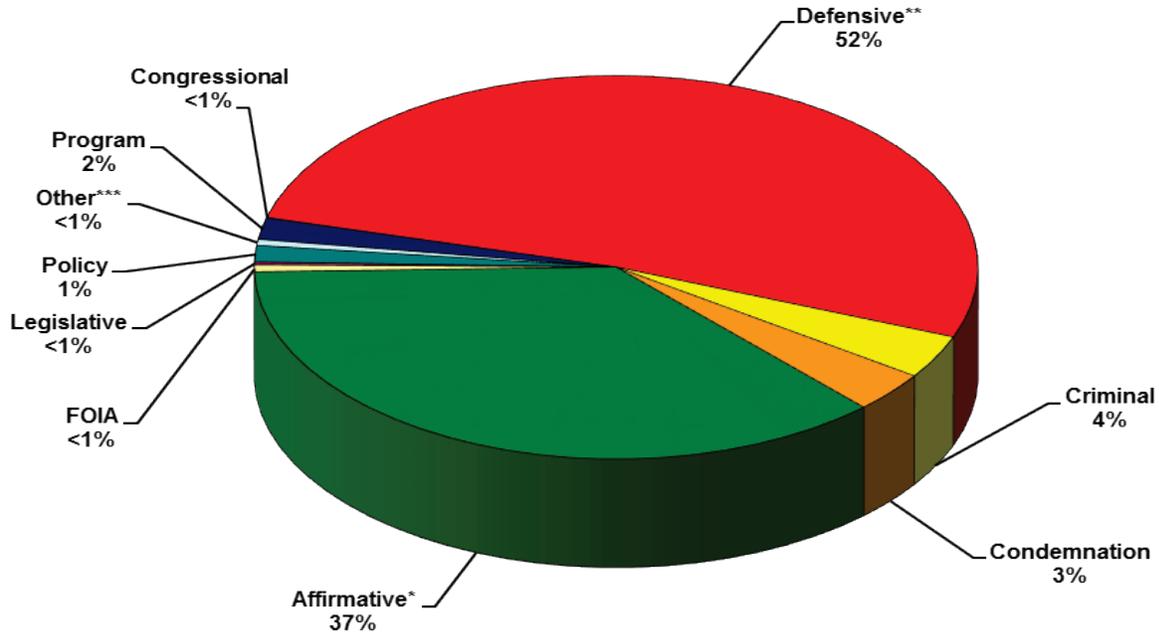
The Division focuses on both civil and criminal litigation regarding the defense and enforcement of environmental and natural resources laws and regulations, and represents many federal agencies in litigation (e.g., the Environmental Protection Agency, and the Departments of Agriculture, the Interior, Defense, and Homeland Security).

As the nation’s chief environmental litigator, ENRD strives to obtain compliance with environmental and conservation statutes. To this end, we seek to obtain redress of past violations that have harmed the environment, establish credible deterrence against future violations of these laws, recoup federal funds spent to abate environmental contamination, and obtain money to restore or replace natural resources damaged through oil spills or the release of other hazardous substances. The Division ensures illegal emissions are eliminated, leaks and hazardous wastes are cleaned up, and drinking water is safe. Our actions, in conjunction with the work of our client agencies, enhance the quality of the environment in the United States and the health and safety of its citizens.

**ENRD’s Cases/Matters Pending by Client Agency (FY 2015)**



**ENRD's Cases/Matters Pending by Case Type (FY 2015)**



Civil litigating activities include cases where ENRD defends the United States in a broad range of litigation and enforces the nation's environmental and natural resources laws. Nearly one-half of the Division's cases are defensive or non-discretionary in nature. They include claims alleging noncompliance with federal, state and local pollution control and natural resources laws. Civil litigating activities also involve the defense and enforcement of environmental statutes such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Air Act (CAA), the Clean Water Act (CWA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA).

The Division defends Fifth Amendment takings claims brought against the United States alleging that federal actions have resulted in the taking of private property without payment of just compensation, thereby requiring the United States to strike a balance between the interests of property owners, the needs of society, and the public fisc. ENRD also brings eminent domain cases to acquire land for congressionally authorized purposes ranging from national defense to conservation and preservation. Furthermore, the Division assists in fulfillment of the United States trust responsibilities to Indian Tribes. ENRD is heavily involved in defending lawsuits alleging the United States has breached trust responsibilities to Tribes by mismanaging Tribal resources and failing to properly administer accounts that receive revenues from economic activity on Tribal lands. The effectiveness of our defensive litigation is measured by the percentage of cases successfully resolved and savings to the federal fisc.

Criminal litigating activities focus on identifying and prosecuting violators of laws protecting wildlife, the environment, and public health. These cases involve fraud in the environmental testing industry, smuggling of protected species, exploitation and abuse of marine resources through illegal commercial fishing, and related criminal activity. ENRD enforces criminal statutes that punish those who pollute the nation's air and water; illegally store, transport and dispose of hazardous wastes; illegally transport hazardous materials; unlawfully deal in ozone-depleting substances; and lie to officials to cover up illegal conduct. The effectiveness of criminal litigation is measured by the percentage of cases successfully resolved. ENRD's case outcome performance results are included in the Performance and Resources Table contained in this submission.



Marine turtles are truly the ancient mariners of the world's oceans with ancestors dating back more than 100 million years. Seven species of marine turtles currently navigate the oceans. While all species require tropical, subtropical or temperate oceanic beaches for nesting, each has unique marine habitat and feeding requirements. Photo: Hawksbill Sea Turtle, USFWS

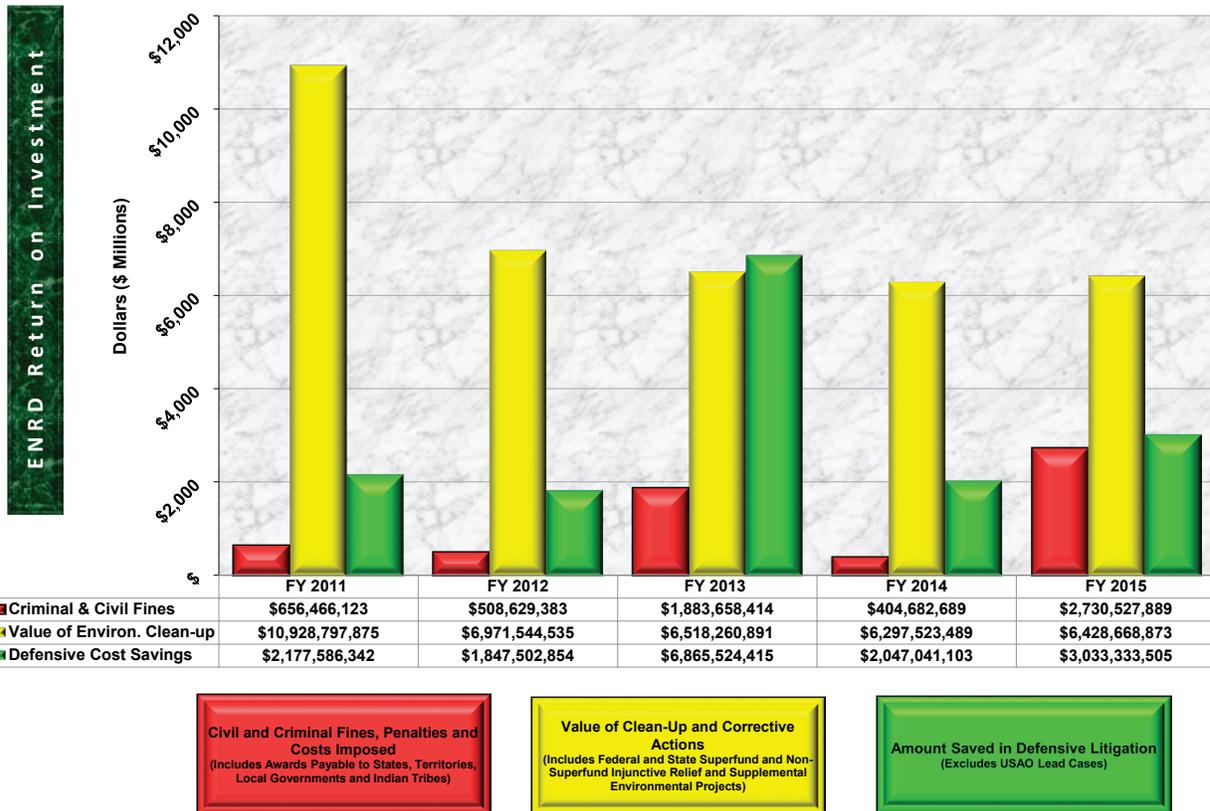
## ACCOMPLISHMENTS

---

In **FY 2015**, ENRD successfully litigated 864 cases while working on a total of 6,729 cases, matters, and appeals. The Division recorded more than \$2.7 billion in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief (i.e., clean-up work and pollution prevention actions by private parties) obtained in FY 2015 exceeded \$6.4 billion. ENRD's defensive litigation efforts avoided costs (claims) of over \$3.0 billion in FY 2015. The Division achieved a favorable outcome in 95 percent of cases resolved in FY 2015.

**In sum, ENRD continues to be a valuable investment of taxpayer dollars as the number of dollars returned to the Treasury exceeds ENRD's annual appropriation many times over.**

---



Below are some notable successes from the Division’s civil and criminal litigation dockets during FY 2015.

### Civil Cases (Both Affirmative and Defensive)

- **Deepwater Horizon Oil Spill**

In 2015, the United States and the five Gulf states (Alabama, Florida, Louisiana, Mississippi and Texas) reached a settlement to resolve civil claims against BP arising from the April 20, 2010 Macondo well blowout and the massive oil spill that followed in the Gulf of Mexico. This global settlement resolves the governments’ civil claims under the Clean Water Act and natural resources damage claims under the Oil Pollution Act, as well as remaining economic damage claims of the five states and local governments. Taken together this global resolution of civil claims is worth more than \$20 billion, and is the largest such settlement with a single entity in the Department’s history.

Under the terms of a proposed consent decree lodged in October 2015 in federal court in New Orleans, BP must pay the following:

- a \$5.5 billion federal Clean Water Act penalty, plus interest, 80 percent of which will go to restoration efforts in the Gulf region pursuant to a Deepwater-specific statute, the RESTORE Act. This is the largest civil penalty in the history of environmental law.

- \$8.1 billion in natural resource damages, this includes \$1 billion BP already committed to pay for early restoration, for joint use by the federal and state trustees in restoring injured resources. BP will also pay up to an additional \$700 million, some of which is in the form of accrued interest, specifically to address any later-discovered natural resource conditions that were unknown at the time of the agreement and to assist in adaptive management needs. The natural resource damages money will fund Gulf restoration projects that will be selected by the federal and state trustees to meet five different restoration goals and 13 restoration project categories. These include restoration focusing on supporting habitats such as coastal wetlands, but also provide for specific resource types, such as marine mammals, fish and water column invertebrates, sturgeon, submerged aquatic vegetation, oysters, sea turtles, birds and lost recreational use, among others.
- \$600 million for other claims, including claims for reimbursement of federal and state natural resource damage assessment costs and other unreimbursed federal expenses and to resolve a False Claims Act investigation due to this incident.

The payments will be made over time and are backed by parent company guarantees from BP Corporation North America Inc. and BP P.L.C. Additionally, BP has entered into separate agreements to pay \$4.9 billion to the five Gulf states and up to a total of \$1 billion to several hundred local governmental bodies to settle claims for economic damages they have suffered as a result of the spill.

Finalization of the proposed decree is subject to consideration of numerous comments submitted by the public concerning the decree, as well as a judicial determination of whether the settlement is appropriate under applicable law.

Also during 2015, the district court completed trial of the U.S. claim for civil penalty against Anadarko, a company that owned 25% of the Macondo well but that did not operate, as a legal matter, either the Deepwater Horizon or the well. After considering evidence under the law applicable to such a penalty assessment, the District Court imposed a penalty of \$ 159.5 million.

In prior years, some of the parties accountable under federal law for this disaster have resolved claims with the United States for portions of that responsibility:

- In 2012, MOEX Offshore 2007 LLC, which had a 10 percent stake in the well, agreed to settle its liability for the Deepwater Horizon oil spill in a settlement with the United States valued at \$90 million. Approximately \$45 million of the \$90 million settlement was dedicated to directly benefit the Gulf in the form of penalties, as well as coastal and habitat protection projects.
- In 2013, Transocean, which owned and operated the Deepwater Horizon, paid a penalty of \$1 billion plus interest to resolve their civil liability under the Clean Water Act and also agreed to implement comprehensive changes in how they operate their drilling vessels in the Gulf of Mexico. At the same time, Transocean resolved its criminal

liability for the spill through a \$400 million plea agreement with the Department's Deepwater Horizon Task Force; that agreement included a criminal fine and remedial payments that should further both Gulf restoration and research on measures to make drilling safer both in the Gulf and around the world.

- In 2013, BP Exploration and Production, the majority owner of and an operator of the Macondo Well, pleaded guilty to illegal conduct leading to and after the disaster.criminal violations of the Clean Water Act and felony manslaughter charges. It resolved Clean Water Act violations and felony manslaughter charges through a \$4 billion plea agreement comprised of criminal fines, penalties, and restitution including \$2.4 billion in remedial payments that, like Transocean companies' payments, should further both Gulf restoration and research measures relating to drilling.



NOAA and USFWS supported a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) shark and ray workshop hosted by Colombia in November 2014, where representatives from over 20 countries learned new techniques for monitoring and controlling the trade of protected shark species.  
Photo: Whitetip Shark, USFWS

- ***Tribal Trust Cases***

The extraordinarily complex and multifaceted Tribal Trust cases command a large portion of ENRD's time and resources. The Division represents the United States, principally the Interior and Treasury Departments, in 21 pending cases in which 35 tribes or Indian plaintiffs demand "full and complete" historical trust accountings, monetary compensation for various breaches and mismanagement of trust, and trust reform measures relating to the United States' management of the plaintiffs' trust funds and trust lands, as well as the non-monetary resources (such as timber, oil, gas, coal, agricultural, range, easements, and rights of way) on those lands. Many of the pending cases are in settlement negotiations, while others are in varying stages of trial preparation; others are conducting trial preparation and settlement discussions simultaneously. The Division has enjoyed success since Fiscal Year 2011 by negotiating and reaching settlements with 86 tribes in 57 cases, while also conducting active litigation, including a full-blown trial, in several other cases. It has done so by balancing its duties to defend client programs with a commitment to make whole any tribe or Indian plaintiff that has suffered financial injury as a result of any trust fund or trust resource management practices.

- ***Advancing Environmental Justice***

Under a \$12 million settlement with the United States and the state of New York, **Tonawanda Coke Corp.** will pay \$2.75 million in civil penalties, spend approximately \$7.9 million to reduce air pollution and enhance air and water quality and spend an additional \$1.3 million for environmental projects in the area of Tonawanda, New York, including the Niagara River and

Lake Ontario. The company must improve its processes, operations and monitoring for coke oven gas leaks, assess key equipment, repair or replace equipment, install new pollution controls and take many additional measures under a prescribed schedule. The settlement also requires Tonawanda Coke to pay a \$1.75 million civil penalty to the United States to resolve violations of the Clean Air Act, the Clean Water Act and the Emergency Planning and Community Right-to-know Act, and pay a \$1 million civil penalty to the state of New York, which is a co-plaintiff with the United States. In addition to the state penalty, Tonawanda Coke will pay another \$1 million to fund projects that will benefit the environment and the residents of Tonawanda.

Coke is used in the steel-mill and foundry industries in the steel-making process. The company's violations of the Clean Air Act resulted in releases of coke oven gas, which contains benzene and other harmful chemicals. Tonawanda failed to install air pollution controls on its coke ovens, failed to properly monitor equipment for coke oven gas leaks, failed to conduct required annual maintenance inspections of emission controls and proper operations and maintenance and failed to complete multiple required reports among other violations. For years, people living in the low-income community near the plant were forced to breathe air TCC had caused to be contaminated with benzene and particulates. Exposure to benzene and other hazardous air pollutants found in coke oven gas can significantly harm human health and excessive exposure to benzene is a known cause of cancer.

Tonawanda Coke's Clean Water Act violations include discharging wastewater containing cyanide, ammonia, naphthalene, and other prohibited pollutants to the Niagara River. Holding tanks were allowed to decay, pipes to leak and spill containment structures to become ineffective. Tonawanda Coke's illegal discharges and other Clean Water Act violations threatened human health and the ecology and economy of the Niagara River and Lake Ontario.

In another significant environmental justice case, the Division reached a settlement with **Marathon Petroleum Corporation** to resolve alleged Clean Air Act fuel quality emissions standards and record keeping, sampling and testing requirements violations at ten facilities. Marathon is required to take steps to reduce harmful air pollution emissions at facilities in three states. These violations may have resulted in excess emissions of air pollutants from motor vehicles, which can pose threats to public health and the environment. Marathon self-reported many of these issues to EPA. The company will spend over \$2.8 million on pollution controls to reduce emissions of volatile organic compounds on 14 fuel storage tanks at its distribution terminals in Indiana, Kentucky and Ohio. Volatile organic compounds are one of the primary constituents of smog and react in sunlight to form ground-level ozone. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation and congestion and can worsen bronchitis, emphysema and asthma. Children, the elderly and people who have lung diseases such as asthma are particularly prone to these problems. Marathon will also pay a \$2.9 million civil penalty and retire 5.5 billion sulfur credits, which have a current market value of \$200,000. Sulfur credits are generated when a refiner produces gasoline that contains less sulfur than the federal sulfur standard. These credits can be sold to other refiners that may be unable to meet the standard.

Marathon is required to use innovative pollutant detection technology during the implementation of the environmental mitigation projects. Marathon will use an infrared gas-imaging camera to inspect the fuel storage tanks in order to identify potential defects that may cause excessive

emissions. If defects are found, Marathon will conduct up-close inspections and perform repairs where necessary. EPA's Next Generation Compliance Strategy promotes advanced emissions and pollutant detection technology so that regulated entities, the government and the public can more easily see pollutant discharges, environmental conditions and noncompliance. Many of the facilities where the pollution controls will be installed are located in areas that may present environmental justice concerns.

- ***Clean Air Act Litigation***

The Division and EPA reached an historic settlement with the automakers **Hyundai and Kia** that will resolve alleged Clean Air Act violations based on their sale of close to 1.2 million vehicles that will emit approximately 4.75 million metric tons of greenhouse gases in excess of what the automakers certified to EPA. The automakers will pay a \$100 million civil penalty, **the largest in Clean Air Act history**, to resolve violations concerning the testing and certification of vehicles sold in America and spend approximately \$50 million on measures to prevent any future violations. Hyundai and Kia will also forfeit 4.75 million previously claimed greenhouse gas emission credits, estimated to be worth over \$200 million. Automakers earn greenhouse gas emissions credits for building vehicles with lower emissions than required by law. These credits can be used to offset emissions from less fuel efficient vehicle models or sold or traded to other automakers for the same purpose. The greenhouse gas emissions that the forfeited credits would have allowed are equal to the emissions from powering more than 433,000 homes for a year. To reduce the likelihood of future vehicle greenhouse gas emission miscalculations, Hyundai and Kia have agreed to reorganize their emissions certification group, revise test protocols, improve management of test data and enhance employee training before they conduct emissions testing to certify their model year 2017 vehicles. In the meantime, Hyundai and Kia must audit their fleets for model years 2015 and 2016 to ensure that vehicles sold to the public conform to the description and data provided to EPA.



In the past decade, wildlife trafficking – the poaching or other taking of protected or managed species and the illegal trade in wildlife and their related parts and products – has escalated into an international crisis. Wildlife trafficking is both a critical conservation concern and a threat to global security with significant effects on the national interests of the United States and the interests of our partners around the world. Photo: White Rhinoceros, USFWS

- ***Clean Water Act Litigation***

The Division, EPA and the state of California reached a settlement requiring the **Lehigh cement plant** near Cupertino, California, to reduce toxic discharges of selenium and other metals to Permanente Creek, a tributary of San Francisco Bay. The company, owned by Hanson Permanente Cement Inc. and operated by Lehigh Southwest Cement Co., will spend more than \$5 million to install wastewater treatment and make other facility improvements to prevent future violations. The company will also pay \$2.55 million in civil penalties. The settlement addresses Lehigh's and Hanson's violations of the Clean Water Act. The Cupertino facility routinely discharged excessive selenium into Permanente Creek in violation of Lehigh's permits

from at least 2009 to 2014. The plant's discharges routinely exceeded standards for total suspended solids, total dissolved solids, turbidity, and pH and in some cases exceeded standards for mercury, hexavalent chromium, nickel and thallium. Since at least 2009 to 2014, the limestone mine and cement plant discharged millions of gallons daily of quarry process water and storm-water polluted with thousands of pounds of sediment and hundreds of pounds of selenium and other toxic metals, to Permanente Creek, in violation of the federal Clean Water Act. Lehigh must construct an advanced wastewater treatment system to significantly reduce its selenium and other metals discharges. Lehigh already installed an interim treatment system and a permanent system will be completed by 2017. Lehigh will make other facility improvements to remove sediment from its storm-water runoff, spending more than \$5 million overall to come into compliance.

Selenium is a naturally occurring element in limestone and other rock formations. When discharged at high concentrations to waterways, selenium becomes toxic to fish and other aquatic life and to birds and other animals that consume selenium-contaminated aquatic organisms. Permanente Creek, to which the Lehigh cement facility discharges, is listed as "impaired" for selenium under the Clean Water Act. Permanente Creek provides important habitat for red-legged frogs, a species listed as threatened under the Endangered Species Act.

- ***ENRD's Bankruptcy Docket***

A historic settlement reached with Anadarko Petroleum Corp. and Kerr-McGee has gone into effect, allowing funds to be disbursed for cleanups across the country. The settlement resolves fraudulent conveyance claims brought by the United States and the Anadarko Litigation Trust, the trust against Anadarko Petroleum Corporation and its affiliates, the defendants, in the bankruptcy of Tronox Inc. and its subsidiaries. Pursuant to the settlement agreement, the defendants paid \$5.15 billion, plus interest, to the trust. The trust is expected to distribute more than \$4.4 billion to the United States, state governments, the Navajo nation and four environmental response trusts created in the bankruptcy to clean up contaminated property. An estimated more than \$600 million will be paid to a trust created to pay tort victims. The settlement constitutes the largest payment for the clean-up of environmental contamination ever obtained in a lawsuit brought by the Department of Justice.

U.S. District Judge Katherine B. Forrest, in approving the settlement, noted that the case arises from a "series of transactions by the Kerr-McGee Corp. that resulted in the spin-off of Tronox, which Kerr-McGee left saddled with the massive environmental and tort liabilities it had accumulated over the course of decades of operating in the chemical, mining, and oil and gas industries, but without sufficient assets with which to address these liabilities." For this reason, both the United States and the Tronox estate, now represented by the trust, brought fraudulent conveyance claims against the defendants.

- ***Wetlands Protection***

Three subsidiaries of North Carolina-based **Duke Energy Corporation**, the largest utility in the United States, pleaded guilty to nine criminal violations of the Clean Water Act at several of its North Carolina facilities and agreed to pay a \$68 million criminal fine and spend \$34 million on

environmental projects and land conservation to benefit rivers and wetlands in North Carolina and Virginia. Four of the charges are the direct result of the massive coal ash spill from the Dan River steam station into the Dan River near Eden, North Carolina, in February 2014. The remaining violations were discovered as the scope of the investigation broadened based on allegations of historical violations at the companies' other facilities. The utility is alleged to have failed to maintain equipment at the Dan River and Cape Fear facilities and discharged coal ash and/or coal ash wastewater from impoundments at the Dan River, Asheville, Lee and Riverbend facilities.

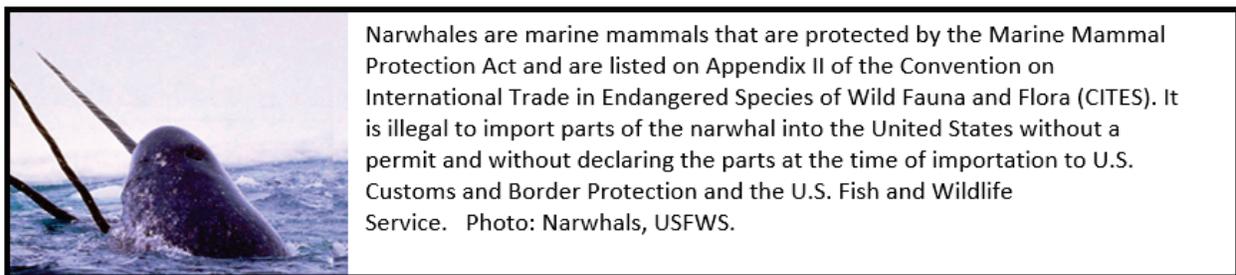
Duke Energy Business Services LLC, Duke Energy Carolinas LLC and Duke Energy Progress Inc. will pay a \$68 million criminal fine and a total \$24 million community service payment to the National Fish and Wildlife Foundation for the benefit of the riparian environment and ecosystems of North Carolina and Virginia. The companies will also provide \$10 million to an authorized wetlands mitigation bank for the purchase of wetlands or riparian lands to offset the long-term environmental impacts of its coal ash basins. In addition, they will pay restitution to the federal, state and local governments that responded to the Dan River spill and be placed on a period of supervised probation for five years.

Approximately 108 million tons of coal ash are currently held in coal ash basins owned and operated by Duke in North Carolina. Duke Energy Corporation subsidiaries also operate facilities with coal ash basins in South Carolina, Kentucky, Indiana, and Ohio.

- ***Enforcement of the Clean Water Act Through Publicly Owned Sewer Cases***

The city of **Fort Smith, Arkansas**, will spend more than \$200 million over the next 12 years on upgrades to its sewer collection and treatment system to reduce discharges of raw sewage and other pollutants into local waterways. Under a settlement filed in federal court in the Western District of Arkansas, Fort Smith will also pay a \$300,000 civil penalty and spend \$400,000 on a program to help qualified low-income residential property owners to repair or replace defective private sewer lines that connect to the city collection system. The agreement resolves alleged Clean Water Act violations related to Fort Smith's failure to properly operate and maintain its sewer collection and treatment system. Since 2004, Fort Smith has reported more than 2,000 releases of untreated sewage from its municipal sewage system, resulting in more than 119 million gallons of raw sewage flowing into local waterways, including the Arkansas River. These types of releases, known as sanitary sewer overflows, cause serious water quality and public health problems. Fort Smith also violated limits for discharges of various pollutants from its Massard and P Street wastewater treatment plants numerous times over the last decade. Many of the manholes and pump stations from which Fort Smith's sanitary sewer overflows occur are located in low-income and minority communities. To reduce sanitary sewer overflows Fort Smith will conduct a comprehensive assessment of its sewer system to identify defects and places where storm water may be entering the system. The city will also repair all sewer pipe segments and manholes that are likely to fail within the next 10 years, develop projects to improve its sewers' performance and implement a program to reduce the introduction of fats, oil and grease into its system, to reduce root intrusion, and to clean the system of debris which can cause sanitary sewer overflows. Fort Smith will also implement a program to determine whether human waste is entering and being released from the city's storm water system.

The Division continues to reach agreements with municipalities to upgrade their sewage treatment plants. EPA's Clean Water Act initiative focuses on reducing discharges from sewer overflows by obtaining cities' commitments to implement timely, affordable solutions, including the increased use of green infrastructure and other innovative approaches. Raw sewage contains pathogens that threaten public health, leading to beach closures and public advisories against fishing and swimming. This problem particularly affects older urban areas, where minority and low-income communities are often located. The United States has reached similar agreements in the past with numerous municipal entities across the country including Mobile and Jefferson County, Alabama (Birmingham); Atlanta and DeKalb County, Georgia; Knoxville and Nashville, Tennessee; Miami-Dade County, Florida; New Orleans, Louisiana; Hamilton County (Cincinnati), Ohio; Northern Kentucky Sanitation District #1; and Louisville, Kentucky.



- ***Use of Next Generation Technologies***

The Division reached a settlement with **Total Petroleum Puerto Rico Corp.** (Total Puerto Rico) to resolve Resource Conservation Recovery Act (RCRA) violations alleged at 31 gas stations in Puerto Rico and four gas stations in the U.S. Virgin Islands that contain underground storage tanks (USTs) owned by Total Puerto Rico. These USTs typically hold large quantities of gasoline and can cause significant environmental damage if allowed to leak. The company agreed to pay a \$426,000 civil penalty, implement compliance measures valued at approximately \$1 million and undertake a supplemental environmental project (SEP) consisting of a centralized monitoring system estimated to cost approximately \$600,000. Total Puerto Rico is alleged to have violated RCRA and the Puerto Rico Underground Storage Tank Control Regulations (PRUSTR) by failing to report and investigate suspected leaks, monitor for leaks; provide adequate protection against corrosion and overflows, adequately secure dispensers and lines against tampering when facilities were temporarily closed, adequately secure monitoring wells against tampering and maintain records of release detection monitoring.

The centralized monitoring component of the settlement is consistent with EPA's Next Generation advanced technology enforcement efforts. Total Puerto Rico will be able to rapidly identify and respond to actual or potential gas leaks at its gas stations with actively operating USTs, each of which will be equipped with the capability to transmit monitoring data to one central location on a 24/7/365 basis. Total Puerto Rico will install, or upgrade to, a fully automated electronic release detection monitoring system at 137 facilities with Total-owned USTs in active operation, or those acquired by Total, and will operate the systems for at least three years. This is the second judicial settlement in Puerto Rico requiring a defendant to

implement company-wide automated electronic release detection with a centralized monitoring capability. A settlement in 2011 with Chevron Puerto Rico covered over 140 gas stations for a period of five years.

### ***Criminal Cases***

---

- ***Enforcing the Laws Against Wildlife Trafficking***

Christopher Hayes, the President and owner of a Florida auction house was sentenced to 36 months in prison followed by two years of supervised release for his role in the illegal wildlife smuggling conspiracy in which he bought, sold and smuggled rhinoceros horns and objects made from rhino horn, elephant ivory and coral that were smuggled from the United States to China. Hayes' corporation, Elite Estate Buyers Inc., located in Boynton Beach, Florida must pay a \$1.5 million criminal fine to the Lacey Act reward fund, and it is banned from trading wildlife during a five year term of probation. Hayes and Elite admitted to being part of a felony conspiracy in which the company helped smugglers traffic in endangered and protected species in interstate and foreign commerce and falsified records and shipping documents related to the wildlife purchases in order to avoid the scrutiny of the Fish and Wildlife Service (FWS) and U.S. Customs and Border Protection. Elite aided foreign buyers by directing them to third-party shipping stores that were willing to send the wildlife out of the country with false paperwork. Charges were brought after Hayes purchased endangered black rhinoceros horns from an undercover special agent with the U.S. Fish & Wildlife Service.

Hayes and his company sold six endangered black rhino horns. Two of the horns were sold for \$80,500 to Ning Qiu, a Texas resident involved in smuggling the horns to China. Qiu has pleaded guilty to being part of a broader conspiracy to smuggle rhinoceros horns and items made from rhinoceros horns to Zhifei Li, the owner of an antique business in China and the ringleader of a criminal enterprise that smuggled 30 rhinoceros horns and numerous objects made from rhinoceros horn and elephant ivory worth more than \$4.5 million from the United States to China. Qiu was sentenced to serve 25 months in prison, and Li was sentenced to a prison term of 70 months. Elite and Hayes also admitted to selling items made from rhinoceros horn, elephant ivory and coral to the President of an antiques business in Canada, who they then directed to a local shipper that agreed to mail the items in Canada without required permits. That individual, Xiao Ju Guan, was sentenced to 30 months in prison.

The prosecution of Elite and Hayes is part of Operation Crash, a continuing effort by the Special Investigations Unit for the FWS' Office of Law Enforcement in coordination with the Department of Justice to detect, deter and prosecute those engaged in the illegal killing of rhinoceros and the unlawful trafficking of rhinoceros horns and elephant ivory.

- ***Lacey Act Enforcement***

A Maryland man and his Delaware based business, Harbor House Seafood, were found guilty of trafficking in \$1.2 million worth of illegally possessed oysters, creating false health and safety records, and conspiracy charges, and sentenced to serve 26 months in prison followed by three years of supervised release. The defendant was ordered to pay a \$62,500 fine and to pay New Jersey \$140,000 for the restoration of oyster beds in Delaware Bay. Harbor House was ordered

to pay a \$250,000 fine and was sentenced to five years of probation. Suppliers and co-conspirators in this case must pay total fines and forfeitures of over \$625,000, along with \$194,000 of restoration costs, and a total of 80 months in prison. For more than four years, the defendant conspired with New Jersey oystermen to cover up the overharvest and purchase of oysters from the Delaware Bay.

The Lacey Act prohibits creating or submitting false records for fish or wildlife moving in interstate commerce and also prohibits trafficking in fish or wildlife known to be illegally taken or possessed. The FDA and state health agencies require that oyster purchasers and sellers maintain accurate records of the amounts and locations of oyster harvest for all oysters they buy and sell in order to protect public health and minimize the impact of any oyster-borne outbreak of disease.

- ***Vessel Pollution Cases***

In *U.S. v Carbofin S.p.A.*, an Italian domiciled company that owned and operated the *M/T Marigola* was sentenced to pay an overall criminal penalty of \$2.75 million for violations of the Act to Prevent Pollution from Ships (APPS). A vessel like the *M/T Marigola*, must maintain an oil record book in which transfer and disposal of all oil-contaminated waste and the discharge overboard and disposal otherwise of such waste, must be fully and accurately recorded by the person or persons in charge of the operations. Oil-contaminated bilge waste can be discharged overboard if it is processed through on-board pollution prevention equipment known as the oily water separator (OWS). Waste oil and sludge can only be disposed of using an on-board incinerator or by discharging the waste to a shore-side facility, barge or tanker truck. The ship's engineers falsified the oil record book after they directed improper disposal of oily waste. \$600,000 of the penalty will be paid to the National Marine Sanctuary Foundation for the benefit of the Florida Keys National Marine Sanctuary. The funds are to be used to support research, education, and the protection and preservation of natural resources located in and adjacent to the sanctuary, including the cleanup and remediation of pollution in the sanctuary; restoration of injured resources, particularly coral reefs and seagrass beds and species dependent on those habitats.

- ***Biodiesel Fraud Prosecutions***

In *U.S v E-biofuels*, the operators of E-biofuels LLC, of Middletown, Indiana, pleaded guilty to a \$145 million biofuels fraud scheme, in which they sold over 35 million gallons of biodiesel to customers, falsely claiming that the fuel was eligible for federal renewable energy incentives. One of the defendants also pleaded guilty to a related \$58.9 million securities fraud, which victimized over 625 investors and shareholders of Imperial Petroleum, a publicly-traded company and the parent company of E-biofuels. Biodiesel is a fuel that can be used in diesel engines and that is made from renewable resources, including soybean oil and waste grease from restaurants. Under the Energy Independence and Security Act, properly manufactured biodiesel was eligible for a one dollar per gallon tax credit as well as another valuable credit called a Renewable Identification Number (RIN) that petroleum refiners and importers must comply with to satisfy their federal renewable fuel obligations. The defendants admitted that they knew that E-biofuels was fraudulently reselling biodiesel that they obtained from co-conspirators in New Jersey, which had already been used to claim biodiesel incentives. By falsely claiming to have

made it themselves in Middletown, the co-conspirators and their companies realized more than \$55 million in gross profits, at the expense of their customers and U.S. taxpayers. The defendants pleaded guilty to conspiracy, false claims against the Internal Revenue Service (IRS), wire fraud and lying to the EPA and the IRS, and face up to 20 years of imprisonment on some of the charges, as well as large fines and the requirement that they provide full restitution to the victims of this crime, which include U.S. taxpayers, truck stop companies, fuel traders and others. The co-conspirators will also have to forfeit \$7.5 million in seized funds, jewelry, artwork, cars and homes they purchased with the funds obtained through the scheme. Co-conspirators in New Jersey, who operated the companies CIMA Green and Caravan Trading Company, supplied the fuel to E-biodiesel that had already been used to claim tax credits and RINs. The co-conspirators pleaded guilty to wire fraud, lying to investigators and engaging in prohibited financial transactions, and money laundering.



The narwhale is a rarely seen arctic whale. The male of this species has a single left tusk that is a modified upper incisor. The tusk is spirally twisted, usually in a counter-clockwise direction. In a mature specimen the tusk can be from two to seven meters long. Enamel may be present at the tip of the tusk. The cementum frequently displays longitudinal cracks which follow the depressed areas of the spiral pattern. As a result, narwhal tusk cross-sections are rounded with peripheral indentations. The cementum is separated from the dentine by a clearly defined transition ring. Like killer and sperm whale teeth, the dentine can display prominent concentric rings. Photo: Narwhal tusk, USFWS.

## 2. Performance and Resources Table

<b>Decision Unit/Program: Environment &amp; Natural Resources Division</b>											
Strategic Goal 2. Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law - Objectives 2.4 Investigate and prosecute corruption, economic crimes, and transnational organized crime, and Objective 2.6 Protect the federal fisc and defend the interests of the United States											
Strategic Goal 3. Ensure and Support the Fair, Impartial, Efficient, and Transparent Administration of Justice at the Federal, State, Local, Tribal and International Levels - Objective 3.8 Strengthen the government to government relationship between tribes and the United States, improve public safety in Indian Country, and honor treaty and trust responsibilities through consistent, coordinated policies, activities, and litigation.											
		Target FY 2015		Actual FY 2015		FY 2016		Current Services Adjustments and FY 17 Program Changes		Requested (Total) FY 2017	
<b>WORKLOAD/RESOURCES 1/</b>											
<b>DIVISION TOTAL WORKLOAD</b>	<b># of Cases &amp; Matters (Active &amp; Closed)</b>	5,400		5,702		5,400				5,400	
	<b># of Cases Successfully Resolved/Success Rate</b>	83%		864 96%		83%				83%	
<b>CIVIL</b>	1. Number of cases (active & closed)	4,865		5,059		4,865				4,865	
	2. Number of matters (active & closed)	220		328		220				220	
<b>CRIMINAL</b>	3. Number of cases (active & closed)	280		267		280				280	
	4. Number of matters (active & closed)	35		48		35				35	
		<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>
<b>DIVISION RESOURCES - Total Year Costs &amp; FTE's (Appropriated only)</b>		526 [115]	\$ 110,077	540 [81]	\$ 109,814	526 [115]	\$ 110,512	7	\$ 12,049	533[115]	\$ 122,561
<b>Program Activity</b>		Target FY 2015		Actual FY 2015		FY 2016		Current Services Adjustments and FY 17 Program Changes		Requested (Total) FY 2017	
<b>PERFORMANCE/RESOURCES</b>											
<b>CIVIL</b>		<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>
	TOTAL COSTS & FTE	473	\$ 99,069	486	\$ 98,833	476	\$ 99,461	2	\$ 9,194	478	\$ 108,655
<b>OUTPUT 1/</b>		<b>Active</b>	<b>Closed</b>	<b>Active</b>	<b>Closed</b>	<b>Active</b>	<b>Closed</b>			<b>Active</b>	<b>Closed</b>
1. Number of cases active/closed		3,235	1,630	3,624	1,435	3,235	1,630			3,235	1,630
2. Number of matters active/closed		140	80	201	127	140	80			140	80
<b>OUTCOME*</b>		<b># Resolved</b>	<b>Success Rate</b>	<b># Resolved</b>	<b>Success Rate</b>	<b># Resolved</b>	<b>Success Rate</b>			<b># Resolved</b>	<b>Success Rate</b>
1. Affirmative cases successfully resolved		no estimate	85%	348	99%	no estimate	85%			no estimate	85%
2. Defensive cases successfully resolved		no estimate	75%	443	93%	no estimate	75%			no estimate	75%
<b>3. Penalties Awarded 2/*</b>		<b>Superfund</b>	<b>Non-Superfund</b>	<b>Superfund</b>	<b>Non-Superfund</b>	<b>Superfund</b>	<b>Non-Superfund</b>			<b>Superfund</b>	<b>Non-Superfund</b>
- Federal		no estimate	no estimate	\$ 1,043,041	\$ 306,059,729	no estimate	no estimate			no estimate	no estimate
- State		no estimate	no estimate	\$ 42,306,356	\$ 35,293,554	no estimate	no estimate			no estimate	no estimate
<b>4. Clean-up Costs Awarded 4/</b>				<b>\$</b>	<b>\$</b>						
- CERCLA Federal Cost Recovery 3/ 5/		no estimate	no estimate	\$ 1,768,395,064	\$ 216,189,438	no estimate	no estimate			no estimate	no estimate
- Federal Injunctive Relief		no estimate	no estimate	\$ 2,547,147,644	\$ 3,809,520,536	no estimate	no estimate			no estimate	no estimate
- CERCLA State Cost Recovery		no estimate	no estimate	\$ 172,608,605	\$ 294,275	no estimate	no estimate			no estimate	no estimate
- State Injunctive Relief		no estimate	no estimate	\$ 6,000,000	\$ -	no estimate	no estimate			no estimate	no estimate
<b>5. Supplemental Environmental Projects (SEP's) 6/</b>				<b>\$</b>	<b>\$</b>						
- Value of Federal SEP's		no estimate	no estimate	\$ 1,149,000	\$ 24,825,993	no estimate	no estimate			no estimate	no estimate
- Value of State SEP's		no estimate	no estimate	\$ -	\$ 4,581,700	no estimate	no estimate			no estimate	no estimate
<b>6. Environmental Mitigation Projects 7/</b>				<b>\$</b>	<b>\$</b>						
7. Costs Avoided (Saved the U.S. in Defense Cases) 8/		no estimate	no estimate	\$ -	\$ 3,033,333,505	no estimate	no estimate			no estimate	no estimate

## Performance and Resources Table (Cont.)

CRIMINAL	TOTAL COSTS & FTE	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		Active	Closed	Active	Closed	Active	Closed	Active	Closed	Active	Closed
		53	\$ 11,008	54	\$ 10,981	53	\$ 11,051	5	\$ 2,855	58	\$ 13,906
	<b>OUTPUT 1/</b>										
	1. Number of cases active/closed	200	80	196	71	200	80			200	80
	2. Number of matters active/closed	27	8	42	6	27	8			27	8
	<b>OUTCOME*</b>										
	1. Number of criminal cases successfully resolved	no estimate	90%	73	95%	no estimate	90%			no estimate	90%
	2. Dollars Awarded										
	- Fines 9/	no estimate	no estimate	\$ -	\$ 85,615,639	no estimate	no estimate			no estimate	no estimate
	- Restitution	no estimate	no estimate	-	62,165,417	no estimate	no estimate			no estimate	no estimate
	- Community Service Funds 10/			-	40,770,000						
	3. Criminal Environmental Compliance Plan 11/	no estimate	no estimate	\$ -	\$ 3,144,000	no estimate	no estimate			no estimate	no estimate

### **Additional Explanation for Targets, Program Changes, and Program Requests**

\* In accordance with Department guidance, estimates of performance are not projected for the noted categories.

### **Data Definition, Validation, Verification, and Limitations:**

1/ A matter is defined as "an issue requiring attorney time (i.e. congressional & legislative inquiries, Freedom of Information Act (FOIA) inquiries, notice of intent to sue, or policy issues)."

Active cases/matters are those currently being worked on as of the reporting date for the current fiscal year. Closed cases/matters are fiscal year-to-date for the reporting date. Cases and matters reported here are those that had time reported.

2/ Penalties Awarded includes: Civil & Stipulated Penalties, Natural Resource and other damages, Court Costs, Interest on dollars awarded, Attorneys' Fees, and Royalties paid in cases involving the use of U.S. mineral lands.

3/ CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Funds from the Environmental Protection Agency (EPA) used to enforce this statute are called "Superfund". Monies in the "Superfund" category replenish this fund.

4/ Cost recovery is awarded to federal & state governments for reimbursement of the clean-up of sites contaminated with hazardous substances. Injunctive relief is estimated clean-up costs for contaminated sites which are court ordered to be completed by the defendant.

5/ Includes monies paid by the Federal Government for its share of clean-up costs of Superfund sites.

6/ Supplemental Environmental Projects (SEP) are environmentally beneficial projects that defendants are ordered to perform by the court (i.e. a factory installing a device to reduce the release of pollutants into the environment)

7/ A mitigation project is actions a defendant agrees to take to remedy the harm caused by its past non-compliance.

8/ Costs Avoided is the difference between the amount for which the government is sued, and the amount actually paid to plaintiffs.

9/ Includes Special Assessments, Reimbursement of Court Costs and Attorneys' Fees, and Asset Forfeitures.

10/ Community Service Funds represents actions which benefit the environment and local community that defendants are ordered to complete in addition to any other sentence.

11/ Criminal Environmental Compliance Plans are plans that may vary in detail, usually imposed on organizational defendants as conditions of probation at sentencing, that set out various actions that defendants must undertake in an effort to bring them into and keep them in compliance.

Data Collection & Storage: The majority of the performance data submitted by ENRD are generated from the Division's Case Management System (CMS).

Data Validation and Verification: The division has instituted a formal data quality assurance program to ensure a quarterly review of the Division's docket. The case systems data are monitored by the division to maintain accuracy.

Data Limitations: Timeliness of notification by the courts.

Data does not include United States Attorney (USA) exclusive cases

**Performance Measure Table**

PERFORMANCE MEASURE TABLE										
Decision Unit: Environment and Natural Resources Division										
Strategic Objectives	Performance Report and Performance Plan Targets		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015		FY 2016	FY 2017
			Actual	Actual	Actual	Actual	Target	Actual	Target	Target
<b>2.6, 3.8</b>	<b>EFFICIENCY Measure</b>	Total dollar value awarded per \$1 of expenditures (Affirmative)	\$174	\$109	\$117	\$95	\$81	\$132	\$81	\$81
<b>2.6, 3.8</b>	<b>EFFICIENCY Measure</b>	Total dollars saved the government per \$1 of expenditures (Defensive)	\$30	\$26	\$107	\$30	\$22	\$42	\$22	\$22
<b>2.6, 3.8</b>	<b>OUTCOME Measure</b>	Civil affirmative cases successfully resolved	98%	98%	98%	99%	85%	99%	85%	85%
<b>2.6, 3.8</b>	<b>OUTCOME Measure</b>	Civil defensive cases successfully resolved	92%	92%	87%	90%	75%	93%	75%	75%
<b>2.6, 3.8</b>	<b>OUTCOME Measure</b>	Criminal cases successfully resolved	98%	98%	95%	91%	90%	95%	90%	90%
<b>2.6, 3.8</b>	<b>OUTPUT Measure</b>	Number of criminal cases (active and closed) 1/	344	313	283	265	280	267	280	280
<b>2.6, 3.8</b>	<b>OUTPUT Measure</b>	Number of criminal matters (active and closed) 1/	22	13	45	47	35	48	35	35
<b>2.6, 3.8</b>	<b>OUTPUT Measure</b>	Number of civil cases (active and closed) 1/	5,738	5,203	5,995	5,138	4,865	5,059	4,865	4,865
<b>2.6, 3.8</b>	<b>OUTPUT Measure</b>	Number of civil matters (active and closed) 1/	259	253	379	290	220	328	220	220

1/ Measure includes cases and matters with time reported.

### 3. Performance, Resources, and Strategies

The Environment and Natural Resources Division contributes to the Justice Department's Strategic Goal Two: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law. The Division focuses on both civil and criminal litigation within this strategic objective. ENRD also contributes to Strategic Goal Three: Ensure and Support the Fair, Impartial, Efficient, and Transparent Administration of Justice at the Federal, State, Local, Tribal and International Levels. The Division participated in the Department's Strategic Objective Review exercise during 2014 which was conducted in accordance with the Government Performance and Results Modernization Act of 2010. Under Strategic Objective 2.6, Protect the federal fisc and defend the interests of the United States which falls within Strategic Goal 2, the Department was determined to be making noteworthy progress. Under Strategic Objective 3.8, Strengthen the government-to-government relationship between tribes and the United States, the Department was determined to be making satisfactory progress. The results of those efforts are included on OMB's performance.gov website. An explanation of performance by litigating activity including targets and results follows.

#### Criminal Litigating Activities

##### *a. Performance Plan and Report for Outcomes*

Vigorous prosecution remains the cornerstone of the Department's integrated approach to ensuring broad-based environmental compliance. It is the goal of investigators and prosecutors to discover and prosecute criminals before they have done substantial damage to the environment (including protected species), seriously affected public health, or inflicted economic damage on consumers or law-abiding competitors. The Department's environmental protection efforts depend on a strong and credible criminal program to prosecute and deter future wrongdoing. Highly publicized prosecutions and tougher sentencing for environmental criminals are spurring improvements in industry practice and greater environmental compliance. Working together with federal, state and local law enforcement, the Department is meeting the challenges of increased referrals and more



complex criminal cases through training of agents, officers and prosecutors, outreach programs, and domestic and international cooperation.

## **I. Performance Measure - Percent of Criminal Environmental Cases Successfully Resolved**

❖ *FY 2015 Target: 90%*

❖ *FY 2015 Actual: 95%*

Discussion: In FY 2015, ENRD's Environmental Crimes Section successfully prosecuted 79 defendants, including a Tilghman Island, Maryland, fisherman for conspiring to violate the Lacey Act and defraud the United States through the illegal harvesting and sale of 185,925 pounds of striped bass. The defendant was ordered to pay \$498,000 in restitution and fined \$40,000 to the state of Maryland for the damage caused to the striped bass. From at least 2007 to 2011, the co-conspirators illegally harvested at least 185,925 pounds of striped bass from the Chesapeake Bay in violation of Maryland regulations relating to harvest method, amounts, tagging and reporting. To conceal their crimes, they falsified paperwork submitted to the state of Maryland relating to their harvests. The state in turn submits such paperwork to federal and interstate agencies responsible for setting harvest levels all along the eastern seaboard. The illegally harvested striped bass was sold to wholesalers in Maryland, New York, Pennsylvania and Delaware for a total of \$498,293. The co-conspirators pleaded guilty to their participation in the conspiracy, and were ordered to pay fines and restitution, and received sentences ranging from probation to prison.

This investigation started in February 2011 when the Maryland Department of Natural Resources found tens of thousands of pounds of striped bass snagged in illegal, anchored nets before the season officially reopened. The conspirators were seen on the water in the vicinity of the illegal nets. The subsequent investigation unveiled a wider criminal enterprise for which Hayden was sentenced today.

FY 2016/2017 Performance Plan: We have set our target at 90 percent of cases successfully litigated for FY 2016 and FY 2017. ENRD targets are generally set at an attainable performance level so that there is no incentive to ramp up prosecutions or lawsuits against insignificant targets for "easy" wins solely to meet higher targets. Such an approach would do a disservice to the public by steering litigation away from more complicated problems facing the country's environment and natural resources.

Public Benefit: The Division continues to produce successful criminal prosecutions relating to environmental statutes. These successes ensure compliance with the law and lead to specific improvements in the quality of the environment of the United States, and the health and safety of its citizens. Additionally, ENRD has had numerous successes in prosecuting vessels for illegally disposing of hazardous materials into United States waterways. These successes have improved the quality of our waterways and promoted compliance with proper disposition of hazardous materials. Also, the Division has successfully prosecuted numerous companies for violations of environmental laws which endangered their workers. Our successes lead to safer workplaces and fewer lives lost to hazardous conditions.

## II. Performance Measure - \$ Awarded in Criminal Environmental Cases

❖ *FY 2015 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*

❖ *FY 2015 Actual: \$188.6 million*

Discussion: The Division prosecuted American Pallet Recycling, L.L.C. (APR) and its former president and owner, for criminal violations of the Plant Protection Act, as a result of falsifying stamps that certified wood pallets were heat treated to prevent pest infestation, and were suitable for use in international transportation. The company and its owner will pay a fine of \$101,000. The Department of Agriculture requires the heat treatment of wood pallets used in international transactions. The requirement is to prevent parasites and plant diseases from potentially entering the United States in wood packaging materials. APR sold wood pallets to multiple other companies who used the wood pallets to transport products internationally. The purchasing companies ordered and thought they were purchasing heat treated pallets. This is the highest monetary penalty assessed for falsified use of a fraudulent mark related to wood packaging materials under the Plant Protection Act.

FY 2016/2017 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY 2016 and FY 2017 are not projected for this indicator. Many factors affect our overall performance, such as proposed legislation, judicial calendars, etc. The performance of the Division tends to reflect peaks and valleys when large cases are decided. Therefore, we do not project targets for this metric annually.

Public Benefit: The Division continues to obtain criminal fines from violators, thereby removing economic benefits of non-compliance and leveling the playing field for law-abiding companies. Our prosecutorial efforts deter others from committing crimes and promote adherence to environmental and natural resources laws and regulations. These efforts result in the reduction of hazardous materials and wildlife violations and improve the quality of the United States' waterways, airways, land, and wildlife, thereby enhancing public health and safety.



Marine turtles are also subject to manmade disasters involving the world's oceans and beaches such as oil spills. Major threats in the marine environment include legal directed fisheries for marine turtles in some countries, accidental capture in artesian gill nets, commercial trawl nets and long line fisheries. Photo: Leatherback Sea Turtle, USFWS

## **B. Strategies to Accomplish Outcomes**

The Division will continue efforts to obtain convictions and to deter environmental crimes through initiatives focused on vessel pollution, illegal timber harvesting, laboratory fraud, chlorofluorocarbon (CFC) smuggling, wildlife smuggling, transportation of hazardous materials, and worker safety. ENRD will also continue to prosecute international trafficking of protected species of fish, wildlife, and plants with a host of international treaty partners.

Illegal international trade in wildlife is second in size only to the illegal drug trade, and our criminal prosecutors work directly on these cases, as well as assist United States Attorneys Offices and share ENRD expertise nationwide with state and federal prosecutors and investigators. We will focus on interstate trafficking and poaching cases on federal lands, and seek to ensure that wildlife conservation laws are applied uniformly and enforced across the country, seeking consistency in these criminal prosecutions and a vigorous enforcement program that serves as an international role model.

ENRD has partnered with other federal agencies, such as EPA, to pursue litigation against criminal violators of our nation's environmental policies. Egregious offenders are being brought to justice daily. The Division has worked collaboratively to identify violators who pose a significant threat to public health. By prosecuting criminal violations of regulations, ENRD is forcing compliance and discouraging continued disregard for public health.

## Civil Litigating Activities

### A. Performance Plan and Report for Outcomes

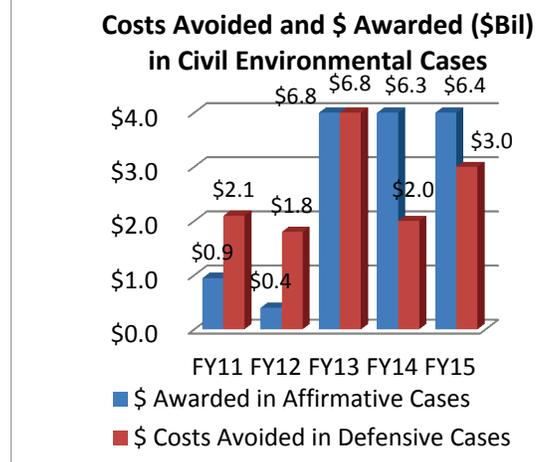
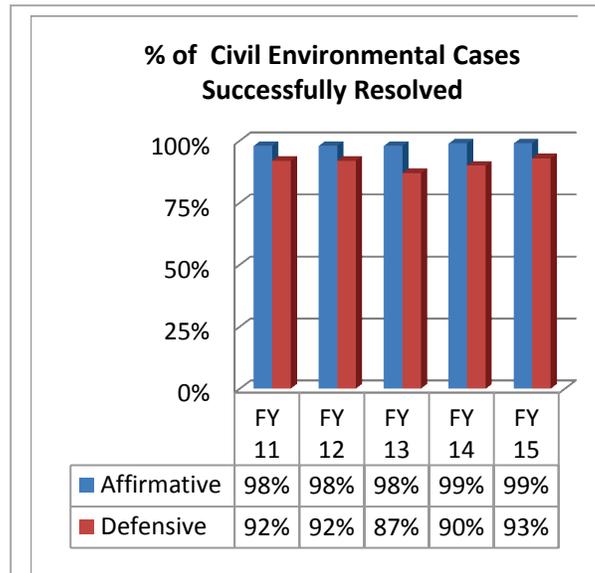
The Department enforces environmental laws to protect the health and environment of the United States and its citizens, defends environmental challenges to government programs and activities, and represents the United States in all matters concerning the protection, use, and development of the nation's natural resources and public lands, wildlife protection, Indian rights and claims, and the acquisition of federal property.

#### Performance Results

#### I. Performance Measure - Percent of Civil Environmental Cases Successfully Resolved

- ❖ **FY 2015 Target:**  
*85% Affirmative; 75% Defensive*
- ❖ **FY 2015 Actual**  
*99% Affirmative; 93% Defensive*

**Discussion:** In FY 2015, ENRD successfully litigated a number of civil cases including a Clean Air Act case settled with Continental Carbon Company. The company agreed to install pollution control technology that will significantly cut emissions of harmful air pollutants at manufacturing facilities in Alabama, Oklahoma and Texas. Continental must pay a civil penalty of \$650,000, which will be shared with Alabama and Oklahoma, and must spend \$550,000 on environmental projects to help mitigate the harmful effects of air pollution on the environment and to benefit local communities, including at least \$25,000 on energy efficiency projects in the communities near each of the three facilities. Continental manufactures carbon black, a fine carbonaceous powder used in tires, plastics, rubber, inkjet toner and cosmetics, at facilities in Phoenix City, Alabama, Ponca City, Oklahoma, and Sunray, Texas. Because the oil used to make carbon black is high in sulfur, its production creates large amounts of nitrogen oxide, sulfur dioxide and particulate matter. This settlement supports EPA's and the Justice Department's national efforts to advance environmental justice by working to protect communities such as Phoenix City and Ponca City that have been disproportionately impacted by



**Data Collection and Storage:** A majority of the performance data submitted by ENRD is generated from the Division's Case Management System (CMS).

**Data Validation and Verification:** ENRD performs a quarterly quality assurance review of the Division's docket. CMS data is constantly monitored by the Division to maintain accuracy.

**Data Limitations:** Timeliness of notification by the courts

pollution. SO<sub>2</sub> and NO<sub>x</sub> have numerous adverse effects on human health and are significant contributors to acid rain, smog and haze. These pollutants are converted in the air to particulate matter that can cause severe respiratory and cardiovascular impacts, and premature death.

In FY 2015, ENRD ensured that harmful sediments are removed from rivers, state-of-the-art pollution control devices are added to factories to provide cleaner air, sewage discharges are eliminated, and damaged land and water aquifers are restored. ENRD also worked successfully to ensure the integrity of municipal wastewater treatment systems. Each year, hundreds of billions of gallons of untreated sewage are discharged into the nation's waters from municipal wastewater treatment systems that are overwhelmed by weather conditions they are not designed to handle.

FY 2016/2017 Performance Plan: Considering our past performance, we aim to achieve litigation success rates of 85 percent Affirmative and 75 percent Defensive (average of 80 percent overall) for FY 2016 and FY 2017. ENRD's targets are set lower than the actual performance so that there is no incentive to ramp up prosecutions or lawsuits against easy targets solely to meet an "ambitious" goal. This sort of easy approach would do a disservice to the public by steering litigation away from more difficult problems facing the country's environment and natural resources. Our targets are set at demonstrably achievable levels and do not deter high performance.

Public Benefit: The success of the Department ensures the correction of pollution control deficiencies, reduction of harmful discharges into the air, water, and land, clean-up of chemical releases, abandoned waste, and proper disposal of solid and hazardous waste. In addition, the Department's enforcement efforts help ensure military preparedness, safeguard the quality of the environment in the United States, and protect the health and safety of its citizens.



Strong enforcement in the United States is critical in stopping those who kill and traffic in protected species. The Department of Justice (DOJ) works closely with federal enforcement agencies, including USFWS, the National Oceanic and Atmospheric Administration (NOAA), the Department of Homeland Security (DHS), and the U.S. Forest Service, to investigate and prosecute wildlife traffickers. Photo: Ivory confiscated by the Fish and Wildlife Service, USFWS

## II. Performance Measure - Costs Avoided and \$ Awarded in Civil Environmental Cases

- ❖ ***Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.***
- ❖ ***FY 2015 Actual: \$3.0 billion avoided; \$6.4 billion awarded***

Discussion: The Division reached a settlement with Pechiney Plastic Packaging Inc. (Pechiney), and several other companies regarding the cleanup of the Pohatcong Valley Groundwater Contamination Superfund Site in Washington Borough, Washington Township, Franklin

Township and Greenwich Township in Warren County, New Jersey. The Pohatcong site is contaminated with trichloroethylene (TCE) and perchloroethylene (PCE). Under the proposed settlement, Pechiney will have primary responsibility for cleaning up contaminated soil and groundwater at the site, connecting some residents to public water to avoid contaminated groundwater, and operating systems to capture vapors that are getting into a manufacturing facility. As a precaution, Pechiney is continuing to monitor for vapor intrusion into homes at the site. In addition, EPA will receive approximately \$29.5 million for certain past costs. Pechiney will also perform current and future cleanup work estimated to cost \$62.5 million and will pay EPA's future oversight costs. As part of the settlement, EPA will recover civil penalties from Pechiney to resolve allegations that Pechiney violated a previous EPA order by failing to make satisfactory progress on a portion of the cleanup at the site. Pechiney will pay a cash penalty of \$282,000. Pechiney will also restore and preserve approximately 60 acres of land, valued at \$1.1 million, in Warren County, through a supplemental environmental project. This land will be converted to native grassland and will become part of the Morris Canal Greenway. The land will be managed by Warren County through its existing relationship with the New Jersey Youth Corps of Phillipsburg, a "second chance" program for young adults that provides opportunities to earn a GED while providing a valuable service to the community.

The Superfund program operates on the principle that polluters should pay for the cleanups, rather than passing the costs to taxpayers. EPA searches for parties legally responsible for the contamination at sites, and it seeks to hold those parties accountable for the costs of investigations and cleanups. Under today's settlement, the parties responsible for the site are paying for or performing the cleanup work.

FY 2016/2017 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance are not projected for this indicator. There are many factors that affect our overall performance, including proposed legislation and judicial calendars. The overall performance of the Division can be affected when large cases are decided, so we do not project annually.

### **III. Efficiency Measures**

#### **1) Total Dollar Value Awarded per \$1 Expenditures [Affirmative]**

#### **2) Total Dollars Saved the Government per \$1 Expenditures [Defensive]**

❖ *FY 2015 Target: \$81 awarded; \$22 saved*

❖ *FY 2015 Actual: \$132 awarded; \$42 saved*

FY 2016/2017 Performance Plan: The Division has an exemplary record in protecting the environment, Indian rights, and the nation's natural resources, wildlife, and public lands. ENRD anticipates continued success through vigorous enforcement efforts which generally will produce settlements and significant gains for the public and the public fisc.

Public Benefit: The Division’s efforts to defend federal programs, ensure compliance with environmental and natural resource statutes, win civil penalties, recoup federal funds spent to abate environmental contamination, ensure military preparedness, and ensure the safety and security of our water supply, demonstrate that the United States’ environmental laws and regulations are being vigorously enforced. Polluters who violate these laws are not allowed to gain an unfair economic advantage over law-abiding companies. The deterrent effect of the Division’s work encourages voluntary compliance with environmental and natural resources laws, thereby improving the environment, the quality of our natural resources, and the safety and health of U.S. citizens.

## **B. Strategies to Accomplish Outcomes**

As our environment changes, so do the actions we take to preserve the health and life of those residing within the borders of the United States. Environmental groups and other interested parties challenge Administration policies every year. ENRD is responsible for defending federal agencies carrying out Administration policies every day. The Division has realized some remarkable successes to date. In an effort to continue our successful record of litigation, the Division has sought new and creative ways to utilize our limited resources. For example, ENRD has adopted a policy of “porosity,” whereby cases involving the responsibilities of different sections within ENRD can be litigated by a single attorney, rather than two or three attorneys from different sections. As such, ENRD’s porosity policy allows us to litigate cases in a manner that conserves resources, without regard to bureaucratic distinctions within the Division. This policy has also resulted in more flexibility to shift workloads between attorneys when they become overburdened. Although cross-training staff grows our workforce’s skills and abilities, it does not address long-term caseload issues.

The Division works collaboratively with client agencies towards adjudications, mediations, alternative dispute resolution (ADR), and settlements. These alternative methods of resolution are less contentious and save the government expenses associated with full-blown litigation. Water rights adjudications, reclamations, and inverse takings cases are typically handled in settlement mode versus litigation mode. Settlements often result in the most favorable outcome, and reach the largest number of people.



In December 2014, the U.S. Departments of State and Justice provided assistance to a UNODC-led workshop that resulted in the creation of the Association of Southeast Asian Nations (ASEAN) Legal Task Force for Wildlife. This new task force will develop a legal handbook, toolkit, and training course for ASEAN government officials. Photo: Black Rhinoceros, USFWS

## V. Program Increases by Item

### A. Improving Environmental Enforcement in Indian Country Initiative

<b>Item Name:</b>	<b>Improving Environmental Enforcement in Indian Country</b>
AG Funding Priorities:	Protecting vulnerable members of society
Strategic Goal:	<u>Strategic Goal III:</u> Ensure and Support the Fair, Impartial, Efficient, and Transparent Administration of Justice at the Federal, State, Local, Tribal, and International Levels.
Strategic Objective:	<u>Strategic Objective 3.8:</u> Strengthen the government-to-government relationship between tribes and the United States, improve public safety in Indian Country, and honor treaty and trust responsibilities through consistent, coordinated policies, activities, and litigation.
Budget Decision Unit(s):	Environment and Natural Resources Division
Organizational Program:	<i>Environmental Enforcement (EES)</i> <i>Indian Resources Section (IRS)</i> <i>Environmental Crimes Section (ECS)</i>
<b>Program Increase:</b>	<b>Positions <u>4</u>, Atty <u>4</u>, FTE <u>2</u>, Dollars <u>\$1,500,000</u></b>

#### Description of the Item

**ENRD is requesting \$1,500,000, including 4 attorney positions and 2 FTEs, to expand the Division's efforts to enforce environmental statutes to protect human health and the environment in Indian Country.**

Energy and other natural-resource development on Indian lands has increased substantially in the past decade and is projected to grow. With this boom have come air and water pollution and threats to human health and the environment, as well as threats to cultural resources vital to the preservation of traditional life-ways. Air-quality degradation, surface and drinking water contamination, and other strains on water resources are increasingly becoming major problems in Indian Country.

The federal environmental regulatory scheme generally relies on a dual enforcement structure with states. In most cases, a state agency is charged with policing air and water quality within the state. Our entire environmental regulatory structure contemplates a robust state enforcement authority. In Indian Country, most tribal governments have yet to achieve comparable enforcement capability. Thus, there is a gap in the United States' enforcement of

environmental laws in Indian Country. The rapid expansion of energy development on Indian lands in the last decade has strained the enforcement capacity of the federal and tribal agencies charged with protecting human health and the environment in Indian Country.

Areas of Indian Country that have seen rapid changes as a result of increased energy exploration and extraction often lack the road and pipeline infrastructure of other areas of the country. As a result, crushing loads are hauled by trucks over roads that were not designed for heavy-load traffic. Disposal facilities for hazardous and non-hazardous waste are located far from production facilities. Pollutants such as benzene, toluene, ethylbenzene, and Volatile Organic Compounds (“VOC”) are emitted into the atmosphere, and fugitive emissions of methane can be a major source of Greenhouse Gases (“GHG”). In the short term, exposure to benzene can cause short term irritation of the skin and upper respiratory tract. Long-term exposure may lead to cancer and developmental disorders. VOCs can form ground-level ozone which can cause breathing difficulties such as asthma – particularly in the elderly and children. Residents have expressed serious concerns about thousands of flares that not only release GHGs and VOCs, but also disrupt and disperse wildlife due to the sheer number of fires burning on the open prairie.

Tribal communities are also concerned about surface and drinking water quality, with the contamination of water sources used for drinking water, agriculture, fishing, recreation, and religious ceremonies. Tanker trucks frequently leak contents on roads, and, in some cases, drive to remote areas to dump their contents rather than taking them to a distant disposal facility. Radioactive filters have been illegally dumped along roadsides, in fields, and in warehouses. In some cases, the serial numbers have been scratched off, presumably to keep the filters from being traced back to the generator or transporter. The filters present a particularly attractive danger to children because they look like nets that can be used to fish or build play forts.

Energy exploration and extraction operations can require millions of gallons of water, sometimes in locales where water resources are precious. Tribal members have raised concerns that aquifers are being illegally tapped to supply water for some operators. If that is the case, the United States has an obligation to defend the tribes’ water rights from illegal depletion.

Civil and criminal enforcement efforts have been hampered by a lack of resources and the remote nature of these areas of Indian Country. The nearest federal investigators are often hours away, tribal police forces are severely understaffed, and state governments typically lack the authority to regulate environmental violations on the reservation.

### **Justification**

As the United States continues to develop its natural resources, Indian Country will continue to occupy a unique intersection of the nation’s energy, climate change, and environmental justice policies. Federal and tribal agencies alike will face serious enforcement challenges. Development of energy and other natural resources will continue to have a significant impact on tribes, tribal land, and tribal people for the foreseeable future. The current lack of fiscal resources to properly develop enforcement actions on tribal lands may ultimately lead to environmental justice questions as tribal communities bear a disproportionately negative

impact of the nation's energy policy. Tribal communities may see their land and natural resources degraded and destroyed because the tribal governments lack the capacity to create and implement effective environmental regulatory structures, and the federal government lacks the resources to enforce the federal environmental regulations already in place.

By working with EPA and other federal agencies, ENRD will provide legal and technical expertise to develop and litigate cases to address environmental violations in Indian Country. To effectively accomplish this objective, the Division estimates that it will require the services of 4 new attorneys, plus approximately \$1.1 million in funding for contract litigation support and expert consultant services. We will need to retain the services of expert consultants to assist in collecting and/or interpreting air-emission and water-quality data to develop civil and criminal cases for potential violations of the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. Specifically, we expect to hire hydrologic experts to assess the impact of water depletion and water quality degradation, to fulfill the United States' trust obligation to protect tribal water rights. And we will require extensive analytical as well as data and document management services to effectively track and manage relevant environmental violations in Indian Country.

### **Impact on Performance**

Successful ENRD enforcement of environmental laws is a critical step in achieving the Justice Department's Strategic Goal Three: Ensure and Support the Fair, Impartial, Efficient, and Transparent Administration of Justice at the Federal, State, Local, Tribal, and International Levels; and, more specifically, Strategic Objective 3.8: Strengthen the government-to-government relationship between tribes and the United States, improve public safety in Indian Country, and honor treaty and trust responsibilities through consistent coordinated policies, activities, and litigation. The Improving Environmental Enforcement in Indian Country initiative enhances a critical aspect of the Department's long-standing role in enforcing and upholding the federal laws that preserve the environment. This enhancement will further environmental law enforcement and prosecutions, addressing the threats to human health on tribal lands and leading to safer and more secure native communities. Existing performance measures will track progress for the proposed increase and will likely include a revision of targets. The requested budget enhancement supports the Attorney General's priority goal and 2017 Funding Priority to protect the most vulnerable members of society by addressing air and water pollution and threats to human health and the environment in Indian Country.

## Funding

### Base Funding

FY 2015 Enacted				FY 2016 Enacted				FY 2017 Current Services			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
0	0	0	0	0	0	0	0	0	0	0	0

### Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Attorneys (0905)	\$169	4	\$372	\$330
<b>Total Personnel</b>	<b>\$169</b>	<b>4</b>	<b>\$372</b>	<b>\$330</b>

### Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2016) (\$000)
Automated Litigation Support and Contractor Support			\$1,128	\$0
<b>Total Non- Personnel</b>			<b>\$1,128</b>	<b>\$0</b>

### Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non- Personnel (\$000)	Total (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Current Services	0	0	0	0	0	0	\$0
Increases	4	4	2	\$372	\$1,128	\$1,500	\$330
<b>Grand Total</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>\$372</b>	<b>\$1,128</b>	<b>\$1,500</b>	<b>\$330</b>

## B. Worker Protection Initiative

<b>Item Name:</b>	<b>Enhancing the Safety of America's Workforce</b>
AG Funding Priorities:	Protecting vulnerable members of society
Strategic Goal:	<u>Strategic Goal II</u> : Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law.
Strategic Objective:	<u>Strategic Objective 2.4</u> : Investigate and prosecute corruption, economic crimes, and transnational organized crime.
Budget Decision Unit(s):	Environment and Natural Resources Division
Organizational Program:	<i>Environmental Crimes Section (ECS)</i> <i>Environmental Enforcement (EES)</i> <i>Law and Policy Section (LPS)</i>
Program Increase:	<b>Positions <u>6</u>, Atty <u>3</u>, FTE <u>3</u>, Dollars <u>\$1,000,000</u></b>

### Description of the Item

**ENRD is requesting \$1,000,000, including 3 attorney positions and 3 FTEs, to support increased enforcement of worker protection statutes in partnership with the Department of Labor.**

According to the Bureau of Labor Statistics, since the U.S. economy began its recovery from the recent recession (late 2010), domestic businesses have added over 11,000,000 jobs. With the increased number of Americans in the workplace over a relatively short period of time, the potential for occupational hazards (injuries and fatalities), has increased accordingly. And as jobs continue to be created – as the economy continues to grow – the Department of Justice is committed to fairly and thoroughly upholding the Nation's important worker protection laws and ensuring every American's right to a safe workplace.

Currently, an average day in the United States is marked by 13 workplace fatalities, nearly 150 deaths from occupational diseases, and about 9,000 nonfatal injuries and illnesses. As our infrastructure ages, the number of workplace fires and explosions is rising. Our burgeoning oil and gas extraction industry has a fatality rate of 24.2 deaths for every 100,000 full-time workers – higher than any other industry. The Occupational Safety and Health Act of 1970 ("OSH Act") provides criminal sanctions for only three types of conduct: (1) willfully violating a specific standard, rule, or order and thus causing the death of an employee; (2) giving advance notice of an inspection; and (3) making false statements in a document filed or

maintained under the Act. Each of these is a misdemeanor punishable by a fine of no more than \$10,000 and/or imprisonment for no more than 6 months.

There is a decided overlap between many of the statutes currently enforced by ENRD and worker safety as occupational safety violations often involve the mishandling of hazardous wastes, unlawful discharges of regulated toxic or harmful substances, or violations of the Risk Management Program (chemical facility regulations overseen by EPA, identical to Process Safety Management regulations overseen by OSHA). Moreover, the three major environmental statutes administered by ENRD each contain a knowing endangerment provision. Thus far, every conviction for knowing endangerment has involved criminal conduct on a work site.

Accordingly, to increase the frequency and effectiveness of criminal prosecutions of worker-safety violations, ENRD has been promoting the prosecution of other serious offenses that often occur in association with OSH Act violations – including false statements, obstruction of justice, witness tampering, conspiracy, and environmental and endangerment crimes. With penalties ranging from 5 to 20 years' incarceration, plus significant fines, these felony provisions are much more effective deterrents. In the course of developing this enforcement priority, ENRD has developed very good relations with the agency (the Department of Labor) that oversees this statute, leading to a productive partnership.

### **Justification**

The OSH Act codifies the right to a safe workplace for millions of American workers including those in many highly-regulated industries fraught with danger. Proper oversight of the OSH Act entails the development of an enforcement regime within the Environment and Natural Resources Division. This will require:

- (1) Building core competency among the Division and U.S. Attorney's Offices, enabling our attorneys to effectively litigate and offer guidance to client agencies regarding enforcement of the OSH Act and its attendant regulatory scheme. This will include:
  - Creating legal resources, including training manuals and toolkits, to assist attorneys in case development.
  - Conducting outreach to the federal legal community through briefings of the Environmental Crimes Policy Committee, legal courses at the National Advocacy Center, and other trainings.
  - Providing legal education through substantive articles in the U.S. Attorney's Bulletin, the Environmental Crimes Manual, and other resources.
  - Routinely engaging with the U.S. Attorney community and agency investigators on new legal and regulatory developments.
- (2) Building competency among Department of Labor personnel to sensitize them to enforcement options. This will involve similar steps as in (1) above for agency counsel, but will also require training inspectors and investigators at the regional level.

(3) Coordinating with the Department of Labor to offer guidance and to develop enforcement plans that will more strategically employ limited federal resources. This will include:

- Regularly meeting to discuss long-term enforcement needs and referral mechanisms under the OSH Act.
- Establishing points of contact to engage quarterly, in coordination with law enforcement partners.
- Engaging in regularized docket reviews with agency personnel to identify worker safety matters that should be further investigated.

(4) Participating in the development of policy and legislation in the worker safety arena.

(5) Handling, assisting with, and monitoring civil and criminal litigation. This will include:

- Coordinating enforcement efforts that span across multiple judicial districts.
- Partnering with federal law enforcement and the federal legal community in initial case developments, investigations, and all other litigation activities in criminal and civil enforcement cases.
- Tracking, coordinating and supervising enforcement of worker protection statutes nationwide.

These activities are all integral to the development of a long-term enforcement program in this area, but they require resources by way of new attorney hires and support staff, as well as litigation support. ENRD seeks a budget enhancement totaling \$1.0 million to create deterrence with regard to worker safety where little currently exists.

### **Impact on Performance**

Successful ENRD enforcement of worker protection laws is a critical step in achieving the Justice Department's Strategic Goal Two: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law; and, more specifically, Strategic Objective 2.4: Investigate and prosecute corruption, economic crimes, and transnational organized crime. The Division recognizes the importance of remaining vigilant when it comes to supporting and protecting vulnerable members of society such as workers and the value in enforcing laws as a means to deter behaviors that endanger them. The requested budget enhancement also supports one of the Attorney General's priority goals—protecting vulnerable Americans. Existing performance measures will track progress for the proposed increase.

## Funding

### Base Funding

FY 2015 Enacted				FY 2016 President's Budget				FY 2017 Current Services			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
0	0	0	0	0	0	0	\$0	0	0	0	\$0

### Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Attorneys (0905)	\$169	3	\$279	\$248
Paralegals (950)	\$87	2	\$99	\$82
Clerical (301/986)	\$68	1	\$37	\$30
<b>Total Personnel</b>		6	\$416	\$360

### Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Automated Litigation Support and Contractor Support			\$584	\$0
<b>Total Non- Personnel</b>			\$584	\$0

### Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non- Personnel (\$000)	Total (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Current Services	0	0	0	\$0	\$0	\$0	\$0
Increases	6	3	3	\$416	\$584	\$1,000	\$360
<b>Grand Total</b>	6	3	3	\$416	\$584	\$1,000	\$360

### C. Animal Welfare Initiative

Item Name:	<b>Ensuring the Welfare of Animals in the United States</b>
AG Funding Priorities:	Enhancing Public Safety
Strategic Goal:	<u>Strategic Goal II</u> : Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law.
Strategic Objective:	<u>Strategic Objective 2.4</u> : Investigate and prosecute corruption, economic crimes, and transnational organized crime.
Budget Decision Unit(s):	Environment and Natural Resources Division
Organizational Program:	<i>Environmental Crimes Section (ECS)</i> <i>Wildlife and Marine Resources Section (WMRS)</i> <i>Law and Policy Section (LPS)</i>
Program Increase:	<b>Positions <u>3</u>, Atty <u>2</u>, FTE <u>2</u>, Dollars <u>\$1,000,000</u></b>

#### Description of the Item

**ENRD is requesting \$1,000,000, including 2 attorney positions and 2 FTEs, to support the Division’s efforts to develop its new animal welfare enforcement program, following a recent transfer of enforcement authorities to the Division by Department leadership.**

The prevention of animal cruelty has a long history in American law, dating back to the early colonial era. At the federal level, Congress has repeatedly made clear that ensuring the humane treatment of animals – whether by a zoo, commercial breeder, horse show, laboratory, or even a slaughterhouse – is a national policy. This federal policy carries with it enforcement responsibilities, as there are a number of federal statutes that impose criminal and civil penalties for animal welfare violations. These laws include the Animal Welfare Act, 7 U.S.C. §§ 2131-2159, the Animal Fighting Venture Prohibition Act, 7 U.S.C. § 2156, 18 U.S.C. § 49, the Horse Protection Act, 15 U.S.C. §§ 1821-1831, the Humane Methods of Livestock Slaughter Act, 7 U.S.C. §§ 1902-1907, the 28-Hour Law, 49 U.S.C. § 80502, and the Animal Crush Video Prohibition Act, 18 U.S.C. § 48. Violations of these statutes are serious matters which often intersects with other law enforcement priorities. Some animal welfare offenses, such as dog-fighting, are committed by highly organized interstate criminal enterprises which attract an array of other illegal activities including drug trafficking, gun running and gang violence, all of which threaten public safety. Law enforcement agents have found young children being exposed to the brutality of animal fighting, which prompted Congress in 2014 to not only make it a crime for

anyone to attend an animal fight, but a felony to bring a minor to the fight. Although there is increasing awareness of the serious criminal nature of this blood sport, reported estimates reveal that there are over 40,000 active professional dog fighters in the United States, and that dogfighting remains a highly sophisticated and subversive crime.

Other animal welfare offenses, such as the creation and distribution of obscene “animal crush” videos, not only trigger a compelling federal interest in preventing intentional acts of extreme cruelty, but also invoke significant concerns regarding interpersonal abuse and violent offenders. Animal crush videos involve the literal torture and killing of animals on camera – acts that are universally abhorrent but remain difficult to detect and prosecute at the local level. In 2010, due to the growing underground market for the creation and sale of such videos, Congress criminalized the creation and distribution of animal crush videos, making the crime a seven-year-felony. Not surprisingly, offenders in such cases have also been deemed a danger to the community.

The issue of animal welfare enforcement also arises in more prominent and large-scale commercial settings. For example, violations of the Horse Protection Act (including deliberate injury to horses to improve their competitive gait) remain commonplace within the horse show industry. In the September 2012 Tennessee Walking Horse National Celebration – the industry’s largest annual exhibition – nearly ten percent of the horses entered were found to be in violation of the federal statute. Similarly, as a recent letter from Senators Feinstein and Durbin to the Departments of Justice and Agriculture noted, there continue to be egregious and repetitive violators under the Animal Welfare Act by airline carriers, commercial dog breeders, exhibitors, and institutional actors.

Although the problem of animal cruelty is often perceived as a diffuse local issue, the federal animal welfare laws discussed above reflect a cohesive national enforcement policy aimed at protecting vulnerable populations and promoting the integrity of the justice system. The Department has taken a leadership role in this arena. One example is our effort to combat underground dog fighting schemes. Over the last seven years, the Department has charged over 250 defendants in illegal animal fighting ventures, and in 2014 alone, DOJ pursued ten dog fighting cases and charged 49 defendants – marking a significant upswing in federal enforcement.

The Department has also made long-term structural changes to improve federal coordination and enforcement on this issue. Last year, FBI Director James Comey announced a historic change in the identification and reporting of animal cruelty crimes. For the first time, rather than being categorized as miscellaneous offenses, animal cruelty crimes will be distinctly classified in the National Incident-Based Reporting System, enabling law enforcement and others to better understand and respond to these crimes. And, in October 2014, under the leadership of Associate Attorney General Tony West, Acting Associate Attorney General Stuart Delery, and the Attorney General’s Advisory Committee, the Department revised the U.S. Attorneys’ Manual to add the six aforementioned federal animal welfare laws to the Environment and Natural Resources Division (ENRD)’s enforcement portfolio. This change was made to fill a longstanding gap in the Department’s enforcement efforts, where traditionally there was no centralized body that had responsibility for tracking and coordinating litigation, facilitating

training, and developing enforcement policy in this specialized area. The U.S. Attorneys' Offices, federal investigative agencies, and state and local law enforcement entities supported the designation of a centralized component with coordinating responsibility for animal welfare enforcement, to complement the enforcement efforts of the 94 U.S. Attorney's Offices, work closely with the Department of Agriculture and other investigatory agencies, and to develop more effective inter-district investigatory and enforcement responses.

## **Justification**

The new suite of animal welfare statutes represents a welcome but significant addition to ENRD's enforcement purview. To fully integrate this new area of authority into the long-term work of the Division, ENRD will need to accomplish a number of goals, including building capacity among the federal law enforcement and legal communities. We will have to create training programs and toolkits for our attorneys and offer guidance to client agencies regarding enforcement of the six statutes. We will conduct outreach to legal partners within the Department of Justice and at partner federal agencies through briefings of the Environmental Crimes Policy Committee, legal courses at the National Advocacy Center, and through other legal training opportunities.

ENRD will coordinate with client agencies including the Department of Agriculture's Offices of Animal and Plant Health Inspection Services ("APHIS"), General Counsel, and Inspector General, to offer guidance, assist in training of inspectors, and to develop enforcement plans that will more strategically employ limited federal resources to:

- Meet regularly with agencies to discuss long-term enforcement needs and referral mechanisms under each of the statutes.
- Train inspectors and investigators at the regional level.
- Develop interagency workgroups to create a more efficient and coordinated enforcement response, including in areas of sentencing reform, asset forfeiture, and enhancing federal and state information sharing and law enforcement relationships.

Finally, the Division will lead nationwide efforts to handle and monitor civil and criminal litigation to:

- Coordinate enforcement efforts that span across multiple judicial districts.
- Partner with U.S. Attorney's Offices and other federal legal partners in initial case developments, investigations, and all other litigation activities in criminal and civil enforcement cases.
- Support client agency activities through the enforcement of administrative investigatory authorities, administrative and civil penalties, and injunctions when necessary.

These activities are all integral to the development of a long-term enforcement program in this area, but they require resources by way of new attorney positions and support staff, as well as the services of experts and other litigation support costs. ENRD seeks a budget

enhancement of \$1.0 million to implement the new authorities and to best deter and enforce violations of these important federal statutes.

### **Impact on Performance**

Successful ENRD enforcement of animal protection laws is a critical step in achieving the Justice Department's Strategic Goal Two: Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People; and, more specifically, Strategic Objective 2.4: Investigate and prosecute corruption, economic crimes, and transnational organized crime. The addition of several federal animal welfare laws to ENRD's enforcement portfolio was made to fill a longstanding gap in the Department's enforcement efforts, where traditionally there was no centralized body that had responsibility for tracking and coordinating litigation, facilitating training, and developing enforcement policy in this specialized area. Some animal welfare offenses, such as dog-fighting, are committed by highly organized interstate criminal enterprises which attract an array of other illegal activities including drug trafficking, gun running and gang violence, all of which threaten public safety. This initiative also supports the Attorney General's 2017 Funding Priority of enhancing public safety. Existing performance measures will track progress for the proposed increase.

## Funding

### Base Funding

FY 2015 Enacted				FY 2016 President's Budget				FY 2017 Current Services			
Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)
0	0	0	0	0	0	0	\$0	0	0	0	\$0

### Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Attorneys (0905)	\$169	2	\$186	\$165
Paralegals (950)	\$87	1	\$50	\$41
<b>Total Personnel</b>		3	\$236	\$206

### Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2016) (\$000)
Automated Litigation Support and Contractor Support			\$764	\$0
<b>Total Non-Personnel</b>			\$764	\$0

### Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Current Services	0	0	0	\$0	\$0	\$0	\$0
Increases	3	2	2	\$236	\$764	\$1,000	\$206
<b>Grand Total</b>	3	2	2	\$236	\$764	\$1,000	\$206