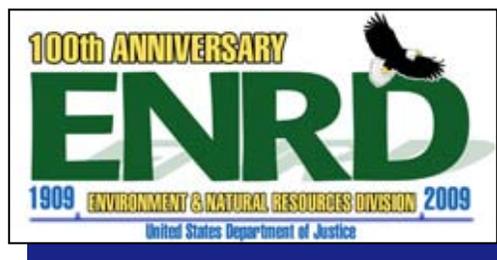


U.S. Department of Justice



Environment & Natural Resources Division



Celebrating 100 years in FY 2010 on November 16, 2009

FY 2010

PERFORMANCE BUDGET

CONGRESSIONAL SUBMISSION

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I. Overview of the Environment & Natural Resources Division

A. Introduction:

Environment and Natural Resources Division (ENRD) Mission: ENRD's mandate is to enforce civil and criminal environmental laws and programs protecting the health and environment of the United States and to defend suits challenging those laws and programs. To accomplish this mission in FY 2010, the Division is requesting a total of \$109,785,000, including 459 General Legal Activities (GLA) funded positions, and 507 Full-Time Equivalents (FTE). ENRD seeks a budget increase in FY 2010 of \$4,200,000, which includes funding for 14 positions, (10 attorneys), 8 FTE, and \$1,996,000 for litigation support.

The additional resources requested in ENRD's FY 2010 Budget are needed to: (1) effectively defend the United States in the high-profile, high-stakes Indian Tribal Trust litigation; (2) expand and enhance the Division's civil enforcement Clean Air Act and Clean Water Act cases; and (3) support the Division's criminal environmental prosecution efforts.

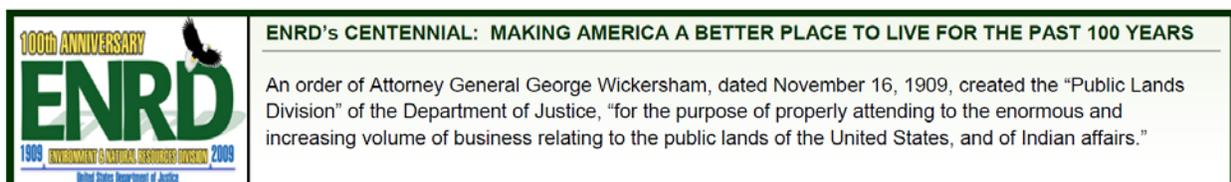
More details appear on page 5, Summary of Program Changes Section, and page 31, Program Increases by Item Section, contained in this submission.

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: ([https://www.usdoj.gov/jmd/2010justification/.](https://www.usdoj.gov/jmd/2010justification/))

B. Issues, Outcomes, and Strategies:

As the Nation's chief environmental litigator, ENRD supports the Justice Department's Strategic Goal Two: Enforce Federal Laws and Represent the Rights and Interests of the American People, and Strategic Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

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 successes 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 vigorously prosecuting environmental criminals, ENRD spurs improvements in industry practice and greater environmental compliance. Additionally, the Division obtains civil 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 to military readiness and national defense.

Additionally, ENRD continues to defend the federal government in lawsuits alleging the United States has breached its trust responsibilities to Indian Tribes by failing to provide “full and complete” historical accountings of tribal trust funds and non-monetary trust resources, failing to administer properly tribal accounts that receive revenues from economic activity on Tribal lands, and failing to manage properly tribal non-monetary trust resources. There are currently 99 pending Tribal Trust cases filed by 121 Tribes in various U.S. District Courts (44 cases), in the Court of Federal Claims (50 cases), and pending in the Federal Circuit (5 cases). For these Tribal Trust cases, regardless of litigation posture, the Division is obligated to identify, locate, review, scan, manage, and produce over 400 million pages of documents relevant to Tribal Trust fund accounts, resources, and assets. The Tribal Trust litigation will continue in full force for the foreseeable future, with six trials expected to occur in FY 2010.

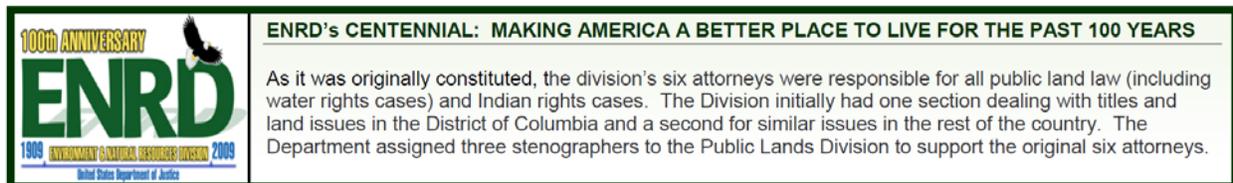
C. Full Program Costs:

The Division is one single Decision Unit. Its operations include both criminal and civil litigating activities directly related to the strategic goals and objectives of the Department of Justice. The methodology used to allocate expenses is based on the percentage of hours worked on criminal and civil cases. These percentages are then used to allocate the expenses of the Division into the two areas of criminal and civil litigating activities. These two areas of execution correlate directly to Strategic Objective 2.7 under the Departmental Strategic Goal Two: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

D. Performance Challenges:

External Challenges

The Division has limited control over the filing of defensive cases, which make up the majority 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 increase in FY 2010 as a result of numerous factors.



- In FY 2010, the Division anticipates that six **Tribal Trust** cases will go to trial. Additionally, we expect that the cases will continue to mature into more advanced stages of litigation, requiring extensive resources to acquire, review and produce documents, to take and defend depositions, and to respond to the discovery demands of over 100 Indian tribes.
- ENRD expects that **Climate Change litigation** will continue to permeate our docket in FY 2010 and beyond. Climate Change litigation has already required substantial division resources in recent years. The litigation thus far has been primarily defensive in nature under the Clean Air Act (CAA), the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA). Allegations that client agencies have failed to consider (or inadequately considered) greenhouse gas emissions or climate change impacts are increasingly being made in challenges to agency decision making under these statutes. We expect the scope and breadth of Climate Change litigation to expand in FY 2010.
- The Environment and Natural Resources Division continues to devote significant resources to condemnation proceedings along the U.S. border with Mexico, related to the **Secure Border Initiative** (SBI). In order to build the Southwest border fence, ENRD's Land Acquisition Section has been exercising the government's eminent domain powers (under the Fifth Amendment of the Constitution) to acquire hundreds of miles of privately-owned property on behalf of the Department of Homeland Security and the Army Corps of Engineers. We continue to file and litigate condemnation cases, which will proceed into FY 2010 and beyond. Valuation litigation is the most resource intensive stage of these actions, and we have only just begun that process. This demanding project will inevitably continue to be a large part of ENRD's docket for the foreseeable future.
- ENRD supports the defense and security missions of its sister agencies in 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 mission, ENRD makes a unique and important contribution to defense and national security while ensuring robust 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 and expand in FY 2010.

- Beginning in late FY 2009, Indian and other **federal water rights adjudications** currently stayed for settlement negotiations are expected to resume. Water rights litigation primarily in the Western United States consumes a significant portion of the annual workload of ENRD's Natural Resources Section and Indian Resources Section.

The Division also will be responsible for handling cases that arise from the Administration's focus in other environment arenas, such as white collar environmental crimes. Prosecution of white collar crimes and corporate fraud continues to be an important objective for the Department; and casework involving the prosecution of corporations and corporate executives may impose a greater-than-expected workload demand on the Environment Division in FY 2010 and beyond. ENRD realized a number of legal victories in the area of white collar environmental crimes in FY 2008 (described in the Accomplishments section of this Performance Budget), and we foresee more investigative and litigative activity in the immediate future.

ENRD must devote the majority of its appropriated resources to defensive work on behalf of federal agencies. When making decisions as to which cases merit funding, the Division must proceed, first and foremost, with such non-delegable, non-discretionary defensive litigation. The provision of additional resources for ENRD's Tribal Trust initiative; and for the Division's civil and criminal enforcement initiatives, will assist the Division in allocating resources to work on matters responsive to different aspects of Strategic Goal 2.7.

Internal Challenges

ENRD's overwhelming internal challenge is to ensure sufficient attorney FTEs and dollars to carry out the increasing demands of our defensive workload. ENRD will continue to face other internal challenges related to the effort of balancing available personnel and resources against workload demands.

Another challenge involves maintaining adequate information technology resources for our workforce. Like other litigating components, ENRD must provide computer resources for our attorneys that meet the changing, increasingly technological demands of the legal industry. With the introduction of new technologies and new requirements – such as e-filing, on-line document repositories, electronic trials, extranet docketing systems, etc. – we need to continually provide our workforce with the necessary hardware and systems to accommodate these business process challenges.

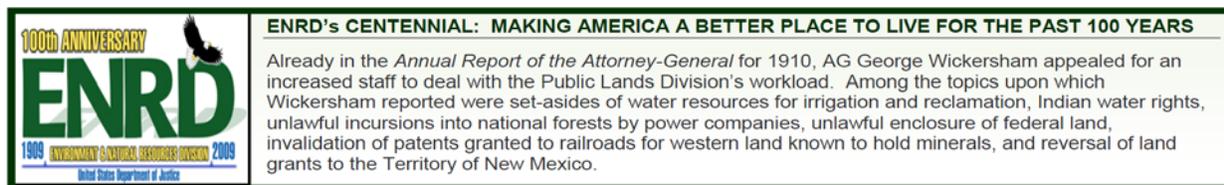
One of the most significant information technology system challenges which will confront ENRD in FY 2010 is expected to be the Department's Litigation Case Management System (LCMS). LCMS is a shared case management system for the Executive Office of United States Attorneys, the 93 United States Attorneys Offices, the Civil Division, the Civil Rights Division, the Environment and Natural Resources Division, the Criminal Division, the Tax Division, and the Antitrust Division. This new, unified system is intended to provide accurate, timely, and

useful data for all end users and managers across the seven Department of Justice litigating divisions. Implementation of LCMS is expected to be an expensive and time-consuming initiative in FY 2010. Based on information provided by DOJ's Office of the Chief Information Officer (LCMS PMO), ENRD will be required to contribute significant sums of money and personnel resources in FY 2010 and subsequent years in order to implement and administer this required system. The required expenditures will pay for software license fees and ENRD's share of the costs of the Justice Data Center (JDC), LCMS PMO, and contractor support services. We expect to incur significant additional costs in FY 2010 in the conversion and testing of data and reports from our old case management system to the new case management system. This sizeable endeavor will require the effort and attention of existing government employees as well as the specialized expertise and supplemental labor of industry consultants and/or contractor resources.

ENRD expects to encounter additional significant internal challenges while developing and implementing other Department-mandated information technology systems in FY 2010. The Division expects to participate in a conversion from DOJ's old automated inventory system, ARGIS, to a new web-based system offered by the Department. Additionally, ENRD expects to begin planning, development and testing of the Department's Unified Financial Management System (UFMS) in FY 2010. All of these systems, which represent purposeful investments in the Department's future, and which are expected to result in significant efficiencies and cost savings in the long term, will require sizable human and monetary resource investments in the short term. Throughout FY 2010 we will devote government employee resources as well as contract personnel to LCMS, UFMS, the new DOJ inventory system and other required IT systems development and implementation projects.

With the requested resources for FY 2010, ENRD believes it can accommodate its foreseeable internal and external challenges. Without additional resources, the Division will be poorly positioned to defend federal financial interests in the Tribal Trust litigation, and in other important civil and criminal environmental program areas.

To access the Exhibit 300 submission for ENRD and other DOJ components, please go to: ([http://www.usdoj.gov/jmd/2010justification/exhibit300/.](http://www.usdoj.gov/jmd/2010justification/exhibit300/))



II. Summary of Program Changes

Tribal Trust Litigation

The Division requests additional resources to defend the United States adequately against claims that the Government has: (1) failed to provide a transactional accounting; (2) failed to manage trust funds properly; and (3) failed to manage Tribal natural resources properly. As of April

2009, 94 Tribal Trust cases have been filed by 121 Tribes in various U.S. District Courts and in the Court of Federal Claims, and 5 cases are on appeal in the Federal Circuit. Litigation efforts for this initiative are directly linked with the Department’s Strategic Goal Two, Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction. Therefore, the Division requests an increase of \$3,300,000 for the Tribal Trust litigation as indicated below:

Strategic Goal	Item	Pos.	Atty.	FTE	Personnel	Litigation Support	Total Request
2.7	Tribal Trust Litigation	10	7	5	\$1,561,096	\$1,738,904	\$3,300,000

Protecting America’s Health By Cleaning Up The Nation’s Air And Water (Civil Environmental Enforcement)

The Division requests additional resources to protect America’s health by bringing civil environmental enforcement actions under the Clean Air Act (CAA) and Clean Water Act (CWA). ENRD is actively engaged in enforcement actions against coal-fired power plants, which pollute the nation’s air, as well as stationary and marine enterprises, which illegally discharge pollutants into America’s waterways. The Division has achieved notable success in affirmative civil enforcement litigation; however, we have not been able to adequately evaluate every referral from EPA and other client agencies due to resource constraints. Funding of this initiative is intended to address the logjam of referrals. Litigation efforts for this initiative are directly linked with the Department’s Strategic Goal Two, Objective 2.7. Therefore, the Division requests an increase of \$650,000 for this civil environmental enforcement initiative as indicated below:

Strategic Goal	Item	Pos.	Atty.	FTE	Personnel	Litigation Support	Total Request
2.7	Protecting America’s Health By Cleaning Up The Nation’s Air And Water (Civil Environmental Enforcement)	3	2	2	\$458,928	\$191,072	\$650,000

Vigorously Prosecuting Violations of The Nation’s Environmental Laws (Criminal Environmental Enforcement)

The Division requests additional resources to prosecute criminal violations of the Nation’s environmental laws. Through this initiative, ENRD will be able to enhance its efforts in several key areas: targeting environmental offenders whose actions endanger American workers; protecting the world’s oceans from waste oil dumping by foreign and domestic vessels; and applying new wildlife protection tools to punish illegal trade, especially in forest products. These criminal environmental initiatives are executed in concert with corollary civil counterparts within ENRD, as criminal investigations often uncover a basis for civil enforcement, and civil

enforcement actions regularly unearth potential criminal activity. Litigation efforts for this initiative are directly linked with the Department's Strategic Goal Two, Objective 2.7. Therefore, the Division requests an increase of \$250,000 for this criminal environmental enforcement initiative as indicated below:

Strategic Goal	Item	Pos.	Atty.	FTE	Personnel	Litigation Support	Total Request
2.7	Vigorously Prosecuting Violations of The Nation's Environmental Laws (<i>Criminal Environmental Enforcement</i>)	1	1	1	\$184,312	\$65,688	\$250,000

IV. Decision Unit Justification

A. Environment and Natural Resources Division

<i>FY 2010 Request Summary</i>	Perm. Pos.	FTE	Amount (\$000)
2008 Enacted with Rescissions	445	499	\$ 99,365
2008 Enacted with Rescissions and Supplementals	445	499	99,365
2009 Enacted	445	499	103,093
Adjustments to Base and Technical Adjustments	-	-	2,492
2010 Current Services	445	499	105,585
2010 Program Increases	14	8	4,200
2010 Request	459	507	109,785
Total Change 2009-2010	-	-	\$ 6,692

1. Program Description

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

- Investigate and prosecute environmental crimes, including both wildlife and pollution violations;
- Pursue cases against those who violate laws that protect public health, the environment, and natural resources;
- Defend U.S. interests against suits challenging statutes 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 Division focuses on both civil and criminal litigation regarding the defense and enforcement of environmental laws and regulations. The Division serves as the nation's environmental litigator and represents many federal agencies in environmental litigation (e.g., the Environmental Protection Agency, Department of Agriculture, Department of the Interior, Department of Defense, and Department of 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 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.

Civil litigating activities include cases where ENRD defends the United States in a broad range of environmental litigation and enforces the nation's environmental laws. The majority 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 resource 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 taking 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 prosecutes 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 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 natural 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 percent of cases successfully resolved and savings to the federal fisc. These results can be seen in the Performance and Resources Table contained in this submission.

Criminal litigating activities focus on identifying and prosecuting violators of laws protecting wildlife, the environment, and public health. These cases involve issues such as 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 designed to 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. These results can also be seen in the Performance and Resources Table contained in this submission.



ACCOMPLISHMENTS

In FY 2008, ENRD successfully litigated 888 cases while working on a total of 4,726 cases, matters and appeals. We recorded over \$765 million in civil and criminal fines, penalties, and costs recovered, a 101% increase over FY 2007. The estimated value of federal injunctive relief (i.e., clean-up work and pollution prevention actions by private parties) as a result of cases litigated by ENRD in FY 2008 was \$9.3 billion. Through our defensive litigation efforts in FY 2008, we avoided costs (claims) of over \$3.1 billion.

The Environment and Natural Resources Division received 1,266 new cases and matters in FY 2008, nearly 150 more than in FY 2007. We filed 1,315 cases in FY 2008, also a modest increase over FY 2007. ENRD achieved a favorable outcome in 97 percent of cases resolved. Below are notable successes from the Division's civil and criminal litigation dockets.

Civil Cases

- ***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 in 99 cases brought by more than 120 Indian tribes demanding accountings and damages, and alleging breach of trust and other claims relating to funds and non-monetary assets (such as timber rights, oil and gas rights, grazing, mining, and other interests) on some 45 million acres of land. Many of these cases are in settlement negotiations and others are in the early stages of pre-trial preparation. The Division has enjoyed success in the past fiscal year in formally (i.e., via Alternative Dispute Resolution [ADR] proceedings) and informally engaging with the tribes on their claims and has fairly balanced its duties to defend client programs with an obligation to make whole any tribes wronged by asset management practices. The Division has settled a handful of these cases, had others dismissed on procedural grounds, and is prepared to proceed with discovery and go to trial in yet others.

- ***Ensuring the Nation's Security and Providing for the Military's Readiness***

In FY 2008, the Division represented the Navy in several cases that challenge the Navy's ability to use sonar in training exercises. These high-profile cases are critically important to the nation's

security and military readiness. At each stage of litigation in *NRDC v. Department of the Navy*, the Division obtained relief allowing the Navy to proceed with training exercises off the coast of Southern California. In a case challenging sonar use worldwide, a settlement very favorable to the Navy was reached.

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

Through its aggressive national enforcement program, ENRD continued to protect the nation's waterways by ensuring the integrity of municipal wastewater treatment systems. The Division lodged a consent decree with the City of San Diego, resolving our CWA action against the city stemming from unlawful discharges of sewage from its sewer system. Two previous decrees required the city to undertake interim measures at an estimated cost of \$274 million. The third and final consent decree will require the city to continue to undertake capital projects and perform operations and maintenance through 2013, at a cost of an additional \$1 billion, to prevent future spills of sewage from its system.

The Division also achieved an interim settlement with the City and County of Honolulu (CCH) that will correct the most significant problems in Honolulu's wastewater collection system. Under the terms of the consent decree, CCH will implement \$300 million in projects. The United States and the State of Hawaii are continuing to work with CCH to resolve its remaining wastewater collection and treatment problems.

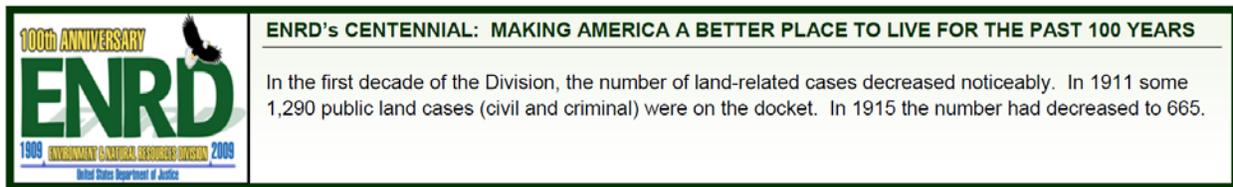
- ***Controlling Contaminated Storm Water Run-off From Construction Companies***

The Division fought for cleaner water by enforcing Clean Water Act (CWA) provisions governing discharge of storm water, which contains pollutants such as suspended solids, lead, and copper. ENRD achieved settlements with four of the largest home builders in the country: Centex, KB Home, Pulte, and Richmond. Together, they agreed to pay \$4.2 million in civil penalties and to implement compliance programs at construction sites in 34 states and the District of Columbia that will prevent 1.2 billion pounds of sediment from polluting our waterways each year. Home Depot settled its storm water violations, agreeing to pay a \$1.3 million civil penalty for violations at more than 30 construction sites in 28 states where its stores were being built. Home Depot also agreed to implement a nationwide compliance program with several St. Louis-area developers. Republic Services agreed to construct and operate a comprehensive remedy for the Sunrise Mountain Landfill in Nevada and to pay a \$1 million penalty to resolve violations of the CWA. The remedy will be designed to withstand a 200-year storm and is expected to cost \$36 million. Upon completion, it will prevent the release of more than 14 million pounds of contaminants annually, including storm water pollutants.

- ***Clean Air Act Power Plants Cases***

During the past year, ENRD continued to successfully litigate Clean Air Act (CAA) claims against operators of coal-fired electric power generating plants. The violations arose from companies engaging in major life extension projects on aging facilities without installing required state of the art pollution controls, resulting in tens of millions of tons of excess air pollution that has adversely affected the health of the elderly, the young, and asthma sufferers,

degraded forests, damaged waterways, and contaminated reservoirs. This past year, the Division achieved the largest environmental settlement in history when the court entered the final consent decree in *United States v. American Electric Power (AEP)*, resolving claims under the CAA's new source review/prevention of significant deterioration provisions. Under the decree's terms, AEP will install and operate \$4.7 billion worth of air pollution controls on 16 coal-fired power plants. When the consent decree is fully implemented, these air pollution controls and other measures will reduce air pollution by 813,000 tons every year compared with pre-settlement emissions, making this the largest reduction in air pollution achieved by any single settlement. AEP also paid a \$15 million civil penalty and will spend \$60 million on projects to mitigate the adverse effects of its past excess emissions. An unprecedented coalition of 8 states and 13 citizen groups joined the United States in the settlement.



- ***Addressing Air Pollution From Oil Refineries***

The Division also made progress in its national initiative to combat CAA violations within the petroleum refining industry by obtaining a consent decree with Sinclair Oil. With this settlement, the Division's petroleum refinery enforcement initiative has produced settlements or other court orders that have addressed more than 96 individual refineries and 87% of the nation's refining capacity, and will reduce air pollutants by more than 331,000 tons a year. Sinclair Oil agreed to spend more than \$72 million for new and upgraded pollution controls to reduce air pollution from its 3 refineries. Under the terms of the consent decree, Sinclair will reduce annual NO_x and SO₂ emissions by 1,100 tons and 4,600 tons, respectively. Sinclair also agreed to pay a civil penalty of \$2.45 million and spend \$150,000 on supplemental environmental projects as part of the settlement.

- ***Reducing Air and Water Pollution at Other Diverse Facilities.***

The Division improved the nation's air and water quality by concluding regulatory enforcement actions against a variety of other facilities in diverse industries. In total, the Division obtained recoveries valued at more than \$8.7 billion in injunctive relief; more than \$105 million in civil penalties; and \$25.4 million in supplemental environmental projects. One significant case was *United States v. Massey Energy Co.* In *Massey*, the Division obtained the largest civil penalty ever levied against a company for wastewater discharge permit violations when Massey agreed to pay a \$20 million civil penalty. Massey, the fourth largest coal company in the United States, also agreed to take additional measures at its facilities nationwide to prevent an estimated 380 million pounds of sediment and other pollutants from entering the nation's waters each year. These compliance measures are unprecedented in the coal mining industry.

- ***Protecting the Public Against Vinyl Chloride***

The Division has begun taking enforcement actions against manufacturers of vinyl chloride, which EPA has classified as a Group A human carcinogen. Exposure to the chemical has been linked to adverse human health effects, including liver cancer, other liver ailments, and neurological disorders. In *United States v Georgia Gulf (GG)*, the court entered a consent decree resolving claims under five statutes, including the CWA, CAA, and the Resource Conservation and Recovery Act (RCRA), arising out of violations at GG's facility in Aberdeen, Mississippi, a plant that manufactures PVC from vinyl chloride monomer. GG will pay a civil penalty of \$610,000 and perform injunctive relief valued at \$2.9 million.

- ***Enhancing Pipeline Safety***

The Division obtained a judgment on the merits following a five-week bench trial in *United States v. Apex Oil Co.* In entering judgment for the United States, the court directed Apex to perform substantial injunctive relief valued at more than \$150 million. Apex had owned and operated a refinery and associated pipelines and sewers in Hartford, Illinois, from which releases of gasoline and other petroleum-based substances had contributed to a substantial subsurface plume of petroleum-based substances.

The Division secured additional relief in *United States v. Magellan Pipeline Co.* when the court entered a consent decree addressing 11 oil spills from Magellan's pipelines and other facilities. The consent decree requires Magellan to perform comprehensive injunctive relief valued at approximately \$6.5 million to prevent future spills and to pay a civil penalty in the amount of \$5.3 million.

- ***Enforcement Under Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "the Superfund Act")***

In FY 2008, the Environment and Natural Resources Division secured the commitment of responsible parties to clean up additional hazardous waste sites, at costs estimated in excess of \$542 million, and recovered approximately \$420 million for the Superfund to help finance future cleanups.

Examples of some of the major Superfund cases resolved by the Division this year include: *United States v. Atl. Richfield Company* (the company agreed to pay \$187 million to finance major cleanup along 120 miles of the Clark Fork River and other areas in southwestern Montana, with \$103.7 million being available for remedial actions, \$7.6 million to reimburse federal government for past costs, and \$3.35 million for the federal government's natural resource damages (NRD)); and *United States v. City of Jacksonville* (the city agreed to clean up two Superfund sites at an estimated cost of \$94 million).

- ***Enforcing Superfund Clean-up Obligations in Bankruptcy Cases***

The Division achieved notable success in several proceedings including *United States v. W.R. Grace & Co.* In *Grace*, the Division recovered \$252.7 million, the highest sum in the history of

the Superfund program, in reimbursement of the United States' costs in connection with the cleanup of asbestos contamination in Libby, Montana. The action settled a bankruptcy claim brought by the federal government to recover money for past and future costs of cleanup of contaminated schools, homes, and businesses in Libby.

In *United States v. Apache Energy & Minerals Co.*, the court entered two consent decrees resolving three defendants' Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability at the California Gulch Superfund Site in Leadville, Colorado. The first, with Asarco LLC, resolves the United States' allowed unsecured claim in the Asarco bankruptcy proceeding by requiring the payment of \$9.3 million for response costs, and \$10 million for Natural Resource Damages (NRD). The second, with Newmont USA Limited and Resurrection Mining Company, requires the defendants to pay \$8.5 million in response costs and \$10.5 million for NRD, and to pay future oversight costs. Newmont and Resurrection are additionally required to undertake work to address the discharge of acid mine drainage at the site, at an estimated cost of \$93 million.

In one of the most challenging bankruptcy proceedings, *In re: Asarco LLC*, the United States has continued to litigate and reach settlements on our claims for clean-up work and NRD at more than 50 sites, and is engaged in mediation in an effort to reach agreement on a plan of reorganization for the company. Asarco LLC, and its predecessor companies, operated in the mining, milling, and smelting industries for over 100 years. This left a legacy of environmental contamination in over 16 states. The bankruptcy, which was filed in 2005, is the largest environmental bankruptcy in history both in terms of the number of sites where Asarco is liable (approximately 80) and the total amount of Asarco's liability at those sites. The environmental claims and liabilities asserted against Asarco in the bankruptcy by the United States and the states exceed \$2 billion.



- ***Defending the Constitutionality of the Superfund Law***

In addition to its enforcement actions to secure the cleanup of hazardous waste sites, the Division has also successfully defended lawsuits aimed at interfering with cleanup actions by EPA and other federal agencies. For example, in *Goodrich Corp. v. EPA*, Goodrich brought a complaint alleging that EPA has engaged in an unconstitutional "pattern and practice" of issuing unilateral administrative orders under CERCLA. In 2007, the court held that the statutory regime on its face satisfies due process requirements; however, the court initially allowed Goodrich to file an amended complaint challenging EPA's "pattern and practice" of administering the statute. In December 2007, the court dismissed the due process claim against EPA with prejudice, concluding that Section 113(h) of CERCLA deprived the court of subject matter jurisdiction over Goodrich's "pattern and practice" due process claim.

- ***Defending Fish and Wildlife Service's Endangered Species Act Listing/Critical Habitat Program***

The Endangered Species Act (ESA) requires either the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), depending on the species, to determine whether a species should be listed as endangered or threatened under a set of five criteria and to designate critical habitat for listed species. In FY 2008, we had notable success defending such determinations. In *Arizona Cattle Growers' Ass'n v. Kempthorne*, the court upheld the FWS designation of critical habitat for the Mexican spotted owl against a variety of challenges. In *Marincovich v. Lautenbacher*, the court agreed with the Division that the factual and scientific determinations supporting the NMFS listing of the Lower Columbia River Coho were rational and entitled to deference. The Division prevailed in *Home Builders v. FWS*, where the court upheld the FWS listing of the central California population of tiger salamander, concluding, among other points, that there was a rational connection between the threats to the species and the determination that it should be listed as threatened and that the Service had properly considered historical habitat loss. In *Defenders of Wildlife v. Kempthorne*, the court determined that the FWS decision not to list the Florida black bear because existing regulatory mechanisms were adequate was reasonable and supported by the administrative record in the case. Finally, in *Sierra Forest Products v. Kempthorne*, the court upheld the FWS determination that listing the West Coast distinct population of the Pacific fisher was warranted, but precluded by higher priority listing actions.

- ***Protecting the Nation's Wetlands***

The Division obtained a number of favorable settlements in enforcement actions to protect the nation's waters and wetlands from illegal fill. In *United States v. Johnson*, the Division sued an Arizona land developer and a contractor for violations of the CWA in bulldozing, filling, and diverting approximately five miles of the lower Santa Cruz River and a major tributary, the Los Robles Wash, without a permit from the Army Corps of Engineers. We negotiated a consent decree which, when entered, will require the defendants to pay a combined \$1.25 million civil penalty, one of the largest penalties in the Environmental Protection Agency's (EPA) history under Section 404 of the CWA, which protects against the unauthorized filling of federally protected waterways.

The Division also negotiated a favorable settlement of *United States v. Sea Bay Development Corp.*, resolving allegations that the defendants discharged, dredged or filled material into wetlands at an approximately 1,560-acre property in Chesapeake, Virginia, without a permit. Under several consent decrees, the defendants will pay civil penalties totaling \$100,000. The consent decree with the site owner requires comprehensive restoration and mitigation on approximately 873 acres of the wetlands, which will be preserved in perpetuity under a conservation easement or deed restriction.

- ***Restoring the Florida Everglades***

The Division continued to contribute to the restoration and protection of the Everglades ecosystem – including the 1.3 million-acre Everglades National Park, the largest and most

important subtropical wilderness in North America – by acquiring lands within Everglades National Park and the Big Cypress National Preserve, as well as lands critical to the Army Corps of Engineers' project to improve water deliveries in the area.

Criminal Cases

- *Vessel Pollution Cases*

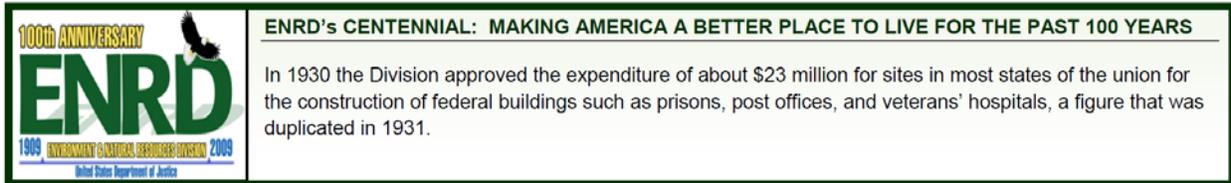
The Vessel Pollution Initiative is an ongoing, concentrated effort to detect, deter, and prosecute those who illegally discharge pollutants from ships into the oceans, coastal waters and inland waterways. The Division continues to have great success prosecuting deliberate violations. Over the past 10 years, the criminal penalties imposed in vessel pollution cases have totaled more than \$200 million and responsible shipboard officers and shore-side officials have been sentenced to more than 17 years of incarceration. The initiative has resulted in a number of important criminal prosecutions of key segments of the commercial maritime industry, including cruise ships, container ships, tank vessels, and bulk cargo vessels.

The Division's appeal of *United States v. Jho* obtained the first appellate ruling on the scope of federal jurisdiction to prosecute log book offenses and the meaning of the duty to maintain them under the Act to Prevent Pollution from Ships (APPS). The indictment charged the defendants with the failure to "maintain" oil record books for the M/T Pacific Ruby, a foreign-flagged oil tanker that delivered petroleum products to ports along the United States' Gulf Coast; and alleged that the defendants failed to record unlawful discharges of petroleum-contaminated wastewater that occurred at sea. The Fifth Circuit reversed the district court's dismissal of the indictment, holding that the regulatory duty to "maintain" the record books is not limited to the duty to make correct entries when discharges occur, but includes the obligation to "ensure that [the record book] is accurate . . . upon entering the ports of navigable waters of the United States." The court further determined that there are no principles of international law that prevent the United States from prosecuting entry of U.S. ports with inaccurate record books as violations of domestic law in port; and that various articles of the United Nations Convention on the Law of the Sea were inapplicable to violations of domestic law committed in port.

In *United States v. Nat'l Navigation Co.* (NNC), the defendant, an Egyptian shipping operator, pled guilty to 15 felonies involving conduct aboard six vessels in NNC's fleet, including APPS and making false statements to federal officials. NNC was sentenced to pay a total penalty of \$7.25 million – the largest ever in the Pacific Northwest for a case involving the falsification of ship logs to conceal deliberate pollution from ships. Of this amount, \$2,025,000 will go toward funding community service projects. The company was also required to implement a comprehensive environmental compliance plan (ECP).

In *United States v. Mark Humphries*, the defendant was convicted for violating APPS, obstruction of an agency proceeding, and two false statement violations. Humphries was sentenced to serve six months' incarceration followed by a two-year term of probation. Humphries was a former chief engineer for the M/V Tanabata, a vessel managed by Pacific Gulf Marine (PGM). In 2007, PGM was sentenced to pay a \$1 million fine, make a community service payment of \$500,000, complete a 3-year term of probation, and implement an ECP.

Guilty pleas or convictions were also reached in four additional cases involving vessel operators and crew members in *United States v. B. Navi Ship Mgmt. Services.*; *United States v. Reederei Karl Schlueter*; *United States v. Pacific Operators Offshore*; and *United States v. Ionia Mgmt. S.A.* These defendants were sentenced to pay a total of \$7.55 million in fines and \$700,000 in community service, with each individual serving a term of probation for crimes including APPS violations, false statements, obstruction of justice, and violations of the Outer Continental Shelf Lands Act.



- ***Safeguarding Our Nation's Groundwater from Hazardous Waste Pollution***

In *United States v. Dennis Pridemore*, the defendant, the former president and manager of Hydromex Inc., was charged with having illegally stored and disposed of hazardous waste including heavy metals cadmium, chromium, and lead that he had been paid to recycle into marketable products. Pridemore admitted that instead of doing so, he buried the wastes in trenches and produced faulty products that leached heavy metals into the surrounding soil and groundwater. He created false documents making it appear to regulators that he had customers for the products he claimed to be making and selling. Pridemore pled guilty to committing four RCRA violations, and to making two false statements. He was sentenced to serve 41 months' incarceration followed by a 3-year term of probation.

- ***Protecting the Environment, Public Health, and Worker Safety***

In the *United States v. W.R. Grace & Co*, the Division obtained critical victories in several interlocutory appeals to the Ninth Circuit that will allow this important CAA case to go trial in early 2009. The company, and several of its officers, stand charged with conspiracy and substantive violations of the CAA for knowingly endangering the lives of workers at its vermiculite mine and of residents in the nearby town of Libby, Montana. The district court had entered a series of pre-trial rulings, in particular on the substantive elements of the CAA violations that would have gutted the government's case.

- ***Safeguarding Our Fragile Ecosystem on the North Slope of Alaska***

In *United States v. British Petroleum Exploration (Alaska), Inc. (BPXA)*, the corporate defendant failed to heed the many warning signs of imminent internal corrosion of oil transit lines that a reasonable operator should have recognized. This failure resulted in more than 200,000 gallons of crude oil on the North Slope spreading over two acres of tundra. BPXA's failure to allocate sufficient resources, due to cost-cutting measures, led to the failure of a section of the oil transit line which had not been inspected for eight years. BPXA pled guilty to a CWA violation for the

largest-ever spill of crude oil on the north slope of Alaska. BPXA was sentenced to pay a \$20 million fine, followed by a 3-year term of probation. Four million dollars will be used for research in support of the arctic environment in the State of Alaska on the North Slope, and \$4 million in restitution will be paid to the State of Alaska. A second spill involving approximately 1,000 gallons of oil, which led to the shutdown of Prudhoe Bay oil production on the eastern side of the field, was also covered by the plea agreement.

- ***Safeguarding Aquatic Life and Water Quality in and Around the Gulf of Mexico***

In *United States v. Citgo Petroleum Group*, the defendant, who operated a Louisiana refinery, failed to maintain two storm water tanks and to build a planned third tank, which led to the discharge of 53,000 barrels of oil to the Calcasieu Estuary. The illegal discharge overran the company's storm water system resulting in limited commercial transportation on the waterways for approximately 10 days. Citgo pled guilty to a negligent violation of the CWA and was sentenced to pay a \$13 million fine, the largest fine for a misdemeanor CWA violation. Additionally, the company implemented an ECP to ensure the estuary is protected from this kind of spill in the future.

In *United States v. Rowan Cos.*, the corporate defendant operated and cleaned offshore drilling rigs, creating substantial amounts of waste from routine maintenance and sandblasting operations, including hydraulic oil, chemicals, paint, and other materials that were dumped directly into the Gulf of Mexico. Rowan pled guilty to three felonies and was sentenced to pay a \$7 million dollar criminal fine along with \$2 million in community service payments. In addition, the company will add an environmental division and implement an ECP to contain debris from future sandblasting operations. Nine supervisory employees of Rowan pled guilty and were fined and sentenced to terms of probation for their roles related to Rowan's violations.

- ***Enforcing the Laws Protecting Wildlife***

In *United States v. Esteban Lopez Estrada*, the Division achieved notable success in the investigation and prosecution of four wildlife smuggling rings – two based in Mexico and two in China – engaged in illegal trafficking in endangered or otherwise protected sea turtles and other protected species, and products made from their parts. The defendants bought and sold exotic leathers, including sea turtle, caiman, ostrich and lizard skins, and manufactured boots and belts from the skins to sell to customers in the United States. Other sea turtle parts were used to manufacture and sell guitar picks and violin bows. The investigation, known as "Operation Central," was a long-term undercover investigation run out of a store front in Denver, Colorado. Thus far, seven defendants have pled guilty to charges including conspiracy, smuggling, and money laundering and have been sentenced to a total of 107 months of incarceration. Four indicted defendants remain at large.



2. Performance and Resources Table

Performance and Resources Table (\$000's)											
Decision Unit/Program: Environment & Natural Resources Division - Consolidated Summary											
DOJ Strategic Goal/Objective: Strategic Goal II - Enforce Federal Laws and Represent the Rights and Interests of the American People. Objectives 2.7											
WORKLOAD/RESOURCES 1/		Final Target		Actual*		Projected		Changes		Requested (Total)	
		FY 2008		FY 2008		FY 2009 Enacted		Current Services Adjustments and FY 2010 Program Change		FY 2010 Request	
DIVISION TOTAL WORKLOAD	# of Cases & Matters (Active & Closed)	5,779		6,840		5,729		175		5,904	
	# of Cases Successfully Resolved/Success Rate	83%		88%		83%				83%	
CIVIL	1. Number of cases (active & closed)	4,962		5,843		4,959		175		5,134	
	2. Number of matters (active & closed)	421		537		377		0		377	
CRIMINAL	3. Number of cases (active & closed)	374		425		373		0		373	
	4. Number of matters (active & closed)	22		35		20		0		20	
DIVISION RESOURCES - Total Year Costs & FTE's (Reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total.)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		495	\$ 99,365	495	\$ 99,365	499	\$ 103,093	8	\$ 6,692	507	\$ 109,785
		[184]	[24,900]	[184]	[26,151]	[184]	[25,600]			[184]	[25,600]

Program Activity	PERFORMANCE/RESOURCES	FY 2008		FY 2008		FY 2009 Enacted		Current Services Adjustments and FY 2010 Program Change		FY 2010 Request	
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
CIVIL	TOTAL COSTS & FTE	445	\$ 89,234	445	\$ 89,234	449	\$ 92,584	7	\$ 6,193	456	\$ 98,777
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed	Active	Closed	Active	Closed
	1. Number of cases active/closed	3,346	1,616	4,176	1,667	3,343	1,616	175		3,518	1,616
	2. Number of matters active/closed	237	184	243	294	193	184			193	184
	EFFICIENCY MEASURES										
	1. Total Dollar Value Awarded per \$1 of Expenditures (Affirmative)		\$ 77		\$ 157		\$ 78				\$ 79
	2. Total Dollars Saved the Government per \$1 of Expenditures (Defensive)		\$ 18		\$ 51		\$ 19				\$ 20
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Affirmative cases successfully resolved	no estimate	85%	327	99%	no estimate	85%	no estimate	no estimate	no estimate	85%
	2. Defensive cases successfully resolved	no estimate	75%	451	95%	no estimate	75%	no estimate	no estimate	no estimate	75%
	3. Penalties Awarded 2/ *	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund			Superfund 3/	Non-Superfund
	- Federal	no estimate	no estimate	9,397,338	133,288,690	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- State	no estimate	no estimate	77,940,692	13,952,120	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	4. Clean-up Costs Awarded 4/			0	0						
	- CERCLA Federal Cost Recovery 5/	no estimate	no estimate	420,074,354	23,818,873	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Federal Injunctive Relief	no estimate	no estimate	541,990,679	8,712,731,889	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- CERCLA State Cost Recovery	no estimate	no estimate	19,280,100	-	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- State Injunctive Relief	no estimate	no estimate	-	24,000,000	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	5. Supplemental Environmental Projects (SEP's) 6/			0	0						
	- Value of Federal SEP's	no estimate	no estimate	18,671	25,925,563	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Value of State SEP's	no estimate	no estimate	-	5,260,000	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	6. Costs Avoided (Saved the U.S. in Defense Cases) 7/	no estimate	no estimate	\$ -	\$ 3,138,206,223	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate

Performance and Resources Table (Cont.)

Program Activity	PERFORMANCE/RESOURCES	FY 2008		FY 2008		FY 2009 Enacted		Current Services Adjustments and FY 2010 Program Change		FY 2010 Request	
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
CRIMINAL	TOTAL COSTS & FTE	50	\$ 10,131	50	\$ 10,131	50	\$ 10,509	1	\$ 499	51	\$ 11,008
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed	Active	Closed	Active	Closed
	1. Number of cases active/closed	254	120	287	138	253	120			253	120
	2. Number of matters active/closed	20	2	33	2	18	2			18	2
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Number of criminal cases successfully resolved	no estimate	90%	110	95%	no estimate	90%	no estimate	no estimate	no estimate	90%
	2. Dollars Awarded	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund			Superfund 3/	Non-Superfund
	- Fines 8/	no estimate	no estimate	\$ -	\$ 51,994,118	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Restitution	no estimate	no estimate	-	8,702,904	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Community Service Funds 9/	no estimate	no estimate	\$ -	\$ 7,367,500	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate

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.

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 f

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

5/ Monies paid by the Federal Government for its share of clean-up costs of Superfund sites have been excluded.

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

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

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

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

Additional Explanation for Targets, Program Changes, and Program Requests

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

Performance Measure Table

PERFORMANCE MEASURE TABLE												
Decision Unit: Environment and Natural Resources Division												
FY 2001 through FY 2002 includes EOUSA statistics; FY 2003 through FY 2010 are ENRD only.												
Performance Report and Performance Plan Targets		FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008		FY 2009	FY 2010
		Actual	Target	Actual	Target							
EFFICIENCY Measure	Total dollar value awarded per \$1 of expenditures (Affirmative)			\$58*	\$87	\$171	\$75	\$117	\$77	\$157	\$78	\$79
EFFICIENCY Measure	Total dollars saved the government per \$1 of expenditures (Defensive)				\$16*	\$15	\$14	\$25	\$18	\$51	\$19	\$20
OUTCOME Measure	Civil affirmative cases successfully resolved	93%	94%	97%	96%	95%	97%	97%	85%	99%	85%	85%
OUTCOME Measure	Civil defensive cases successfully resolved	92%	89%	91%	95%	92%	93%	92%	75%	95%	75%	75%
OUTCOME Measure	Criminal cases successfully resolved	85%	91%	96%	95%	90%	94%	94%	90%	95%	90%	90%

* Represents baseline amounts for the respective efficiency measure.

3. Performance, Resources, and Strategies

The Environment and Natural Resources Division contributes to 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 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction. The Division focuses on both civil and criminal litigation within this strategic objective. An explanation by litigating activity follows.

Criminal Litigating Activities

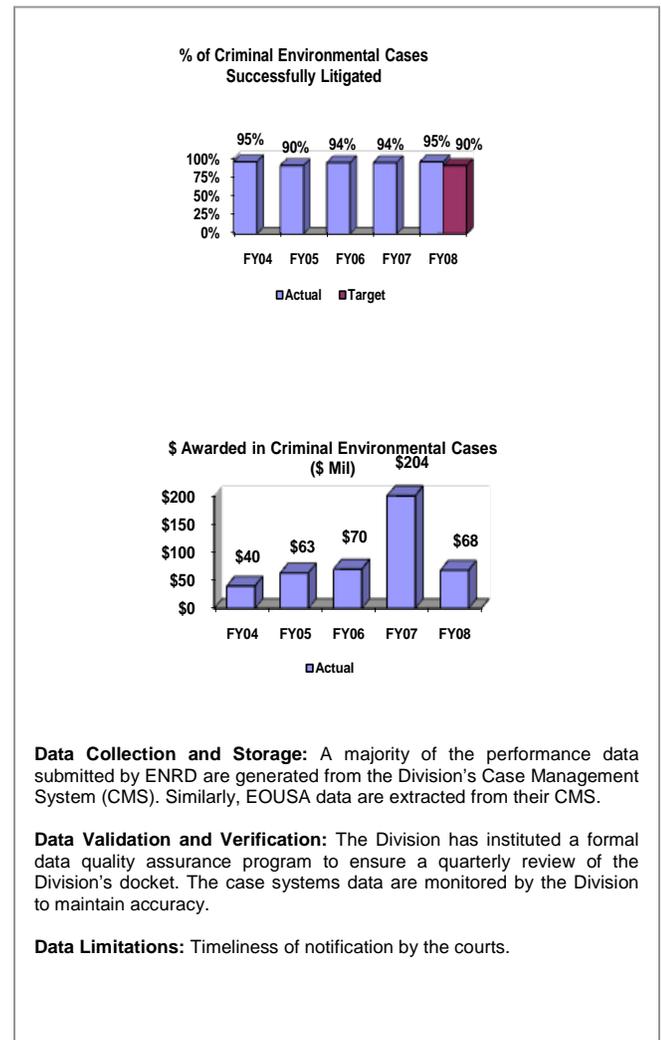
A. *Performance Plan and Report for Outcomes*

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.

Performance Results

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

- ❖ *FY 2008 Target: 90%*
- ❖ *FY 2008 Actual: 95%*
- ❖ *FY 2008 ENRD Resources Expended: \$10.1 million*



Discussion: FY 2008 proved to be a very strong year for criminal enforcement in ENRD's Environmental Crimes Section (ECS). Through the end of the fiscal year, the Environmental Crimes Section successfully prosecuted 109 defendants, achieving a 95% success rate, and imposing criminal fines and penalties totaling over \$68 million. The Division's many successes include several vessel pollution cases and criminal prosecutions of federal wildlife laws.

FY 2008 Performance Plan Evaluation: Based on the end-of-the-fiscal-year performance data, we exceeded our original goal by 5 percent for FY 2008.

FY 2009/2010 Performance Plan: We have set our target at 90 percent of cases successfully litigated in FY 2009 and FY 2010. ENRD targets are set lower than the actual performance 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. The past eight years of data demonstrates that our targets, set at achievable levels, have not deterred high performance as shown in the actual successes.

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 2008 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*
- ❖ *FY 2008 Actual: \$68.06 million*

Discussion: Successes in FY 2008 include a number of Vessel Pollution cases, wildlife prosecutions, and criminal violations of both the Clean Air Act (CAA) and Clean Water Act (CWA). Both the depth and breadth of successes in the area of criminal monetary impositions in FY 2008 was particularly impressive. In the Vessel Pollution cases alone, ENRD cases were responsible for over \$40 million in federal criminal penalties. In plea agreements announced in October 2007, British Petroleum agreed to pay \$50 million in criminal fines for Clean Air Act violations relating to a catastrophic explosion that killed 15 employees and injured at least 170 others, as well as \$12 million in criminal fines, \$4 million in community service payments, and \$4 million in restitution to the state for Clean Water Act violations relating to pipeline leaks onto the tundra and into a frozen lake in Alaska.

FY 2009/2010 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY 2009 and FY 2010 are not projected for this indicator. Many factors affect our overall performance, such as proposed legislation, judicial calendars, etc. The performance of the Division also tends to realize spikes and valleys when large cases are decided. Therefore, we do not project annually, but our goal is to improve overall performance over a 5-year span.

Public Benefit: The Division continues to obtain criminal fines from violators, thereby removing economic benefits of non-compliance and leveling the playing field for companies that comply with environmental laws. Additionally, our prosecution efforts deter others from committing crimes and promote adherence to environmental and natural resource laws and regulations. These efforts result in the reduction of hazardous materials and wildlife violations thereby improving the quality of the United States' waterways, airways, land, and wildlife resulting in improved public health and safety.

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.

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 both 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 the United States' position 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.

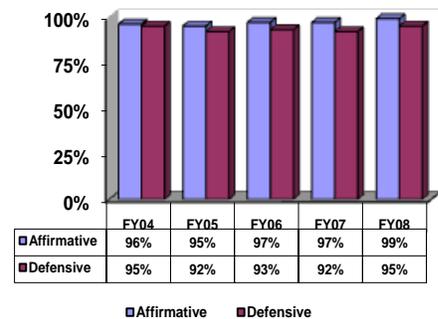
Performance Results

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

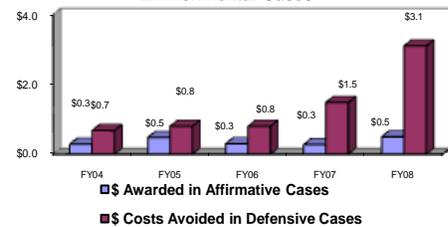
- ❖ **FY 2008 Target:**
85% Affirmative; 75% Defensive
- ❖ **FY 2008 Actual:**
99% Affirmative; 95% Defensive
- ❖ **FY 2008 ENRD Resources Expended:**
\$89.2 million

Discussion: In FY 2008, the Division obtained over \$9.3 billion in injunctive relief, through litigation or judicially approved consent decrees, that will ensure 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.

% of Civil Environmental Cases Successfully Resolved



Cost Avoided and \$ Awarded (\$Bil) in Civil Environmental Cases



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: The Division has instituted a formal data quality assurance program to ensure a quarterly review of the Division's docket. The systems data is constantly being monitored by the Division to maintain accuracy.

Data Limitations: Timeliness of notification by the courts

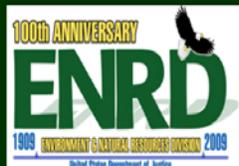
ENRD also worked successfully to ensure the integrity of municipal wastewater treatment systems. Each year, hundreds of billions of gallons of untreated sewage are discharged into the nation's waters from municipal wastewater treatment systems that are overwhelmed by weather conditions they are not adequate to handle. This year, the Division reached settlements with several cities – including two of the largest settlements ever reached, encompassing Indianapolis and the Pittsburgh region – that will collectively provide for more than \$4 billion in expenditures to bring these systems into compliance with the Clean Water Act. These settlements will ultimately reduce the volume of untreated sewage discharges by tens of billions of gallons. The Division also protected the nation's waters and wetlands from illegal fill through favorable settlements of Clean Water Act enforcement actions.

FY 2008 Performance Plan: Based on end of year performance data, we exceeded our Affirmative and Defensive goals by 14 percent and 20 percent, respectively.

FY 2009/2010 Performance Plan: Considering our past performance, we aim to reach 85 percent Affirmative and 75 percent Defensive (average of 80%) as our rates of cases successfully litigated for FY 2009 and FY 2010. 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. The past eight years of data demonstrates that our targets, set at achievable levels, have not deterred the high performance as shown in the actual successes.

The successes delineated in the "Accomplishments" section of this document demonstrate the Division's effectiveness at defending the nation's environmental laws. By minimally receiving full base funding in FY 2010, ENRD hopes to maintain our success rates while effectively defending the United States. If ENRD cannot offer a strong defense, the Executive Branch's ability to enforce regulatory compliance or defend policy challenges may be seriously impaired. For example, the Division's efforts in the realm of Indian Tribal Trust litigation have been successful to date. However, if ENRD is forced to fully litigate these cases with limited resources, the resulting impact would be delays in resolution and unnecessary expense against the federal coffers.

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.

 <p>100th ANNIVERSARY ENRD 1909 ENVIRONMENT & NATURAL RESOURCES DIVISION 2009 United States Department of Justice</p>	<p>ENRD's CENTENNIAL: MAKING AMERICA A BETTER PLACE TO LIVE FOR THE PAST 100 YEARS</p> <p>In the late 1950s, the Division's activity in water-related cases increased. In 1958 some 104 water-related cases were pending, and the docket remained at approximately the same level throughout the 1960s. In his report for 1966, Assistant Attorney General Edwin L. Weisl, Jr. noted that such cases normally were complex and moved slowly through the system; that year, some 15 new cases were opened and 18 were resolved, leaving 114 pending at the end of the year.</p>
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II. Performance Measure - Costs Avoided and \$ Awarded in Civil Environmental Cases

- ❖ ***FY 2008 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.***
- ❖ ***FY 2008 Actual: \$3.138 billion avoided; \$542 million awarded***

Discussion: The Division enjoyed unprecedented civil litigation successes, concerning cases seeking civil penalties and other monetary recoveries, during FY 2008. During the past fiscal year, the Division continued to successfully litigate Clean Air Act (CAA) claims against operators of coal-fired electric power generating plants. These types of violations, litigated out of ENRD's Environmental Enforcement Section (EES), arise from companies engaging in major life extension projects on their facilities without installing required state of the art pollution controls. The resulting tens of millions of tons of excess air pollution has adversely affected human health, degraded forests, damaged waterways, and contaminated reservoirs.

This year, the Division achieved the largest environmental settlement in history when the court entered the final consent decree in *United States v. American Electric Power (AEP)*, resolving claims under the CAA's new source review/prevention of significant deterioration provisions. Under the decree's terms, AEP will install and operate \$4.7 billion worth of air pollution controls on 16 coal-fired power plants. When the consent decree is fully implemented, these air pollution controls and other measures will reduce air pollution by 813,000 tons every year compared with pre-settlement emissions, making this the largest reduction in air pollution achieved by any single settlement. AEP also paid a \$15 million civil penalty and will spend \$60 million on projects to mitigate the adverse effects of its past excess emissions. An unprecedented coalition of 8 states and 13 citizen groups joined the United States in the settlement.

The Division also made progress in its national initiative to combat CAA violations within the petroleum refining industry by obtaining a consent decree with Sinclair Oil. With this settlement, the Division's petroleum refinery enforcement initiative has produced settlements or other court orders that have addressed more than 96 individual refineries and 87% of the nation's refining capacity, and will reduce air pollutants by more than 331,000 tons a year. Sinclair Oil agreed to spend more than \$72 million for new and upgraded pollution controls to reduce air pollution from its 3 refineries. Under the terms of the consent decree, Sinclair will reduce annual NO_x and SO₂ emissions by 1,100 tons and 4,600 tons, respectively. Sinclair also agreed to pay a civil penalty of \$2.45 million and spend \$150,000 on supplemental environmental projects as part of the settlement.

FY 2009/2010 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY's 2009 through 2010 are not projected for this indicator. There are many factors that affect our overall performance, including proposed legislation, judicial calendars, etc. The performance of the Division tends to realize spikes and valleys when large cases are decided. Therefore, we do not project annually, but our goal is to improve overall performance in a 5-year span.

III. Efficiency Measures

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

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

❖ *FY 2008 Target: \$77 awarded; \$18 saved*

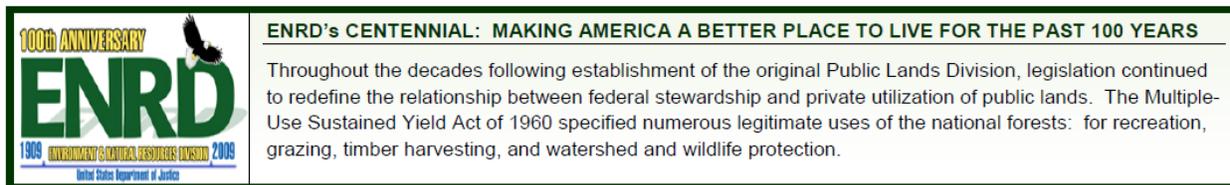
❖ *FY 2008 Actual: \$157 awarded; \$51 saved*

Discussion: The Division had a commendable FY 2008 in its efforts to secure commitments by polluters to take action to remedy their violations of the nation's environmental laws. Actions taken by the Division in Federal courts resulted in over \$9.3 billion in settlements and court ordered injunctive relief. Additionally, the Division saved the government more than \$3.1 billion in defensive litigation. These successes and the Division's enforcement work have produced significant gains for the public fisc, public health, and the environment. The Division routinely saves the American taxpayer hundreds of millions of dollars – many times the Division's annual budget.

Accordingly, in FY 2008, ENRD exceeded its ambitious performance goals of (a) total dollar value awarded per \$1 expenditure and (b) total dollars saved the government per \$1 expenditures.

FY 2009/2010 Performance Plan: Considering the exemplary record in protecting the environment, Indian rights, and the nation's natural resources, wildlife, and public lands, the Division has continued to establish ambitious targets through FY 2010. The out-year performance goals were set at approximate target levels. The Division will monitor future year performance levels and make the necessary adjustments so that targets reflect actual performance levels. The Division anticipates continued successes through vigorous enforcement 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 the environmental and natural resource laws, thereby improving the environment, the quality of our natural resources, and the safety and health of United States 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. ENRD has adopted a policy of “porosity” whereby specialized attorneys are provided an opportunity to work on cases outside of their expertise to gain perspective and depth. This policy has 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 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 have the best outcome, and reach the largest number of people. In order to continue achieving successful settlements, ENRD must remain committed to collaborative negotiations with all interested parties. If a policy shift occurs, ENRD will be forced to take a more aggressive litigation stance, which would be costly without demonstrating added value for the Federal Government.

The Division’s Environmental Enforcement Section (EES) is turning its attention to toxic air pollutants, mineral processing plant violations of RCRA, and industry practices that result in toxic emissions in violation of the Clean Air Act. EPA has been performing inspections of industries previously protected under the Bevel Amendments, but no longer exempt from the statutory requirements. To date, EPA has found 100 percent non-compliance in these inspections. Numerous resulting case referrals are expected, with ENRD prosecuting as many as our resources will allow.

C. Results of Program Assessments

During FY 2005, the Division’s program effectiveness was assessed by the Office of Management and Budget (OMB) along with five other litigating components (Antitrust, Civil Division, Criminal Division, Civil Rights Division, and Tax Division), collectively named the General Legal Activities (GLA) Program. There were no adverse findings at the end of the assessment. Moreover, the assessment disclosed that:

- The Program effectively achieves its goal of resolving cases in favor of the government. Favorable resolutions, in turn, punish and deter violations of the law; ensure the integrity of federal laws and programs; and prevent the government from losing money through unfavorable settlements or judgments.

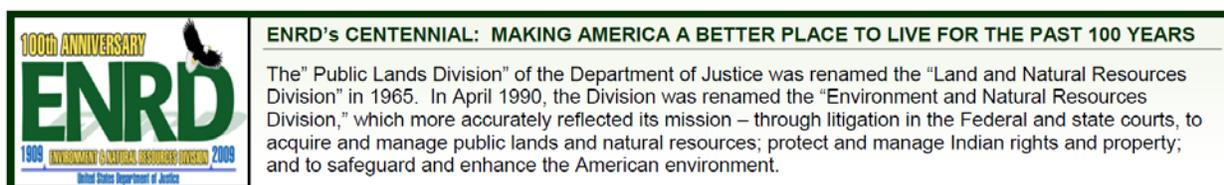
- The Program collaborates effectively with its partners, notably the U.S. Attorneys Offices. The two programs work closely to share expertise, make referrals, and designate cases for prosecution, while minimizing any overlap of responsibilities.
- The Program exhibits good management practices. This includes strong financial management, collecting and using performance information to make decisions, and holding managers accountable for program performance.

Additionally, to exhibit continual improvement of business practices, the Program will perform these follow-up actions:

- Seek regular, independent evaluations of the Program's effectiveness at resolving cases in favor of the government;
- Establish a leadership training and mentoring program to continue improving the quality of the program's management; and
- Work with the Department's Chief Information Officer to evaluate and purchase litigation software that will improve productivity and efficiency.

The recent actions initiated in FY 2008, but not yet completed are as follows:

- The Department has reached out to the Federal Consulting Group (FCG) at the Department of Treasury to find inexpensive ways to develop an independent evaluation. The FCG assists federal agencies in building an organization's program evaluation and performance measurement capacity. The FCG provided numerous suggestions, including asking local universities to review our programs. The Department will begin reaching out to universities to see if this is feasible.
- Each of the litigating components has developed a leadership training and/or mentoring program, or is in the process of developing one. Over the course of the past fiscal year, the litigating components trained 103 attorneys and 67 non-attorneys after conducting 6 training sessions. Additionally, 15 new employees are enrolled in a mentoring program.
- Development of LCMS continues towards deployment. Testing of the core application is nearing completion along with several application interfaces and operational reports. Stage 1 is on track to deploy to 4 USAOs in late 2009. Requirements definition for Stage 2 and Stage 3 will be done simultaneously to maximize the standardization between divisions and reduce the amount of stove-pipe development. Stage 2 and 3 Planning continues in the Spring 2009 with deployment targeted for 2010.



V. Program Increases by Item

A. Tribal Trust Litigation

Item Name:	Tribal Trust Litigation
Budget Decision Unit(s):	Environment and Natural Resources Division
Strategic Goal(s) & Objective(s):	<u>Strategic Goal Two, Objective 2.7</u> : Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.
Organizational Program:	<i>Natural Resources Section (NRS)</i>
Component Ranking of Item:	<u>1</u> of <u>3</u>
Program Increase:	Positions <u>10</u> , FTE <u>5</u> , Litigation Support <u>\$1.739 million</u> , Total Dollars <u>\$3,300,000</u>

JUSTIFICATION

Description of Item

ENRD is requesting 10 positions (7 attorneys, 3 paralegals), 5 FTEs, and \$3,300,000 to defend the United States in the high-profile, high-stakes Indian Tribal Trust litigation.

As of April 2009, there is a total of 99 Tribal Trust cases, filed by 121 Tribes, pending in various United States District Courts (44 cases), in the United States Court of Federal Claims (CFC) (50 cases), and in the United States Court of Appeals for the Federal Circuit (5 cases). Thus far, through successful motions practice and other means, ENRD has been able to reduce the number of Tribal Trust cases pending in federal district court and the CFC, from a historic high of 103 cases in FY 2007 to the present number of 99 cases. Further, ENRD has defeated attempts to certify one of the district court cases as class action, which, if successful, would have added about 175 additional Tribes as plaintiffs.

The Tribes assert essentially four major claims in the Tribal Trust cases: (1) failure to provide accountings of tribal trust funds; (2) failure to provide accountings of non-monetary tribal trust resources; (2) failure to manage trust funds properly; and (3) failure to manage trust resources properly.

The Government holds and manages approximately 56 million acres of land and resources in trust for the benefit of individual Indians and Tribes. Of these 56 million acres, nearly 46 million acres are held in trust specifically for Indian Tribes. On these lands, the Government manages over 100,000 leases for individual Indians and Tribes. About \$500 million per year in leasing, use permits, royalties, and interest income are collected in 1,450 tribal accounts for some 300 Tribes. In total, the Government manages annually about \$3 billion in Tribal funds. Congress has delegated most of the trust functions to the Interior Department (principally, the Bureau of Indian Affairs (BIA) and the Office of the Special Trustee for American Indians) and several custodial duties to the Treasury Department.

In the Tribal Trust cases, the Tribes allege that the Government should be ordered to prepare a “full and complete historical accounting” of the Tribes’ trust fund accounts and non-monetary trust resources and to pay damages for allegedly mismanaging them. Specifically, the Tribes claim that the Government has failed to provide an accounting of the monies that it has collected, managed, and disbursed, as well as the non-monetary trust resources that it has administered, on the Tribes’ behalf. Additionally, the Tribes claim that the Government has mismanaged the Tribes’ trust funds and non-monetary trust resources, such as timber, oil, gas, and other minerals. In the 99 cases currently pending in the trial courts, the Tribes claim that they are owed billions of dollars in damages.

The Tribal Trust cases are extraordinarily complex, both legally and factually. They involve records of economic activity conducted on Tribal lands for over 100 years. Tribal lands have been and continue to be used for a wide variety of revenue-producing activities, including grazing, farming, oil and gas development, timber harvesting, hydroelectric power generation, and minerals extraction. Similarly, Tribal funds have been and continue to be collected, deposited, transferred, disbursed, and invested. These activities generate transactional documentation, which the Government must identify, collect, manage, review, and analyze, in order to represent the Government’s interests competently in litigation, formal alternative dispute resolution (ADR) processes, or informal settlement discussions.

The Tribal Trust cases are counterparts to *Cobell v. Kempthorne*, which is a class-action lawsuit brought on behalf of 300,000-500,000 individual Indians demanding “full and complete historical accountings” of their individual Indian money (IIM) accounts. Of the 44 Tribal Trust cases that have been brought in the United States District Courts, 38 of them have been assigned to the same judge (Judge Robertson) who is presiding over *Cobell*, because they are deemed to be factually and legally similar. In *Cobell*, the previous presiding judge (Judge Lamberth) held the Secretaries of the Interior and of the Treasury, as well as other Presidential appointees, in civil contempt in 1999, in part because of agency failures to comply with court orders regarding discovery. The current judge presiding over *Cobell* has conducted two accounting trials in the past year and a half, *i.e.*, one on the adequacy of the accounting plan that Interior had promulgated for the 300,000-500,000 *Cobell* plaintiffs and the other on the amount of damages that are owed to the plaintiffs as a result of Interior’s historical inability to provide the plaintiffs with IIM accountings, as well as the present impossibility of doing so. Based on his findings of fact and conclusions of law, the judge has ruled that, among other things, it is impossible for Interior to conduct an accounting for the *Cobell* plaintiffs, with the current level of funding, resources, and commitment, and that the plaintiffs are entitled to over \$246 million in damages.

Justification

While over 70 of the current Tribal Trust cases were filed after November 2005 (the majority of them were filed in November and December 2006), 25 cases were filed in or shortly after January 2002, with several being filed in the 1979-2000 timeframe. Consequently, many of the Tribal Trust cases have reached a level of procedural maturity that requires the parties to conduct active investigatory work and discovery and evaluate the issues and claims presented by the Tribes in preparation for ongoing formal or informal settlement discussions or trial. All of these efforts require extensive attorney and support staff resources as well as litigation support. At present, we have 27 Tribal Trust cases in active litigation. The remaining cases are in formal or informal settlement discussions or on appeal. We are currently projecting that six of the cases currently pending in the CFC and U.S. District Courts will go to trial in FY 2010.

We expect that the personnel resource needs and litigation support requirements in the Tribal Trust cases will increase dramatically in FY 2010. Judge Robertson has shown himself to be intent on resolving *Cobell* and the Tribal Trust cases as expeditiously as possible. Thus far, he has acted relatively quickly and efficiently in resolving several of the Tribes' claims and disposing of the Government's defenses. Similarly, Judge Cauthron in the Western District of Oklahoma has demonstrated that she favors expedited rulings or resolutions of the Tribal Trust cases pending before her. Thus far, her rulings have been adverse to the Government, including her finding that the Tribal trust accounting and trust mismanagement claims are subject to trial and not adjudication based on the Government's administrative record. We expect the judges presiding over the other three Tribal Trust cases that are in active litigation in the two Oklahoma districts, as well as Judge Robertson and the CFC judges, to follow suit. As a result of this increased activity and projected trials, we expect that our resource needs will escalate dramatically, above and beyond the high levels already required for the cases projected to be settled.

Given this backdrop, it is imperative that the Tribal Trust cases be adequately funded, especially with respect to personnel and litigation support services, so as to minimize the risk of contempt proceedings, and – most importantly – to help ensure that the United States' interests are effectively represented. In FY 2010, all of these cases—regardless of whether they are in formal or informal settlement discussions or trial preparation—will have advanced to a stage requiring more resources and support. Between FY 2003 and FY 2008, ENRD has expended over 144,000 attorney hours – over 80 FTE in 6 years – on Tribal Trust case work. In FY 2008 alone, ENRD expended approximately 40,000 attorney hours (over 22 FTE) on these cases. Due to current staffing constraints, the Division's Natural Resources Section (NRS) has a limited number of attorneys available to work full-time on these cases. ENRD also anticipates that it will have to engage additional personnel and contractor resources to address other as yet unidentified needs in these cases in FY 2010 and beyond.

The resource needs and requirements have been made even more acute by some adverse court rulings. For example, the United States Court of Appeals for the Federal Circuit issued a decision in a recent Tribal Trust case, *Shoshone Tribe of the Wind River Reservation v. United States*, in which the Court ruled that various Congressional appropriations riders and statutes override the statute of limitations, thereby adding many decades of transactional and other

information to be examined by DOJ in order to prepare an adequate defense. This ruling substantially increases not only the potential monetary exposure to Tribal damages claims but also the burden and expense to the United States of having to research, analyze, prepare, and defend against the claims in litigation or settlement discussions, all of which is very resource-intensive work.

In order to accommodate the anticipated case requirements, based on our assessment of the anticipated FY 2010 work described above, ENRD estimates that it will need 10 additional positions (7 attorneys and 3 paralegals), at a cost of \$1.53 million, as well as \$1.74 million for litigation support services. ENRD's FY 2008 average "burn rate" for Tribal Trust litigation support services was approximately \$150,000 per month, when we mainly operated at less than optimal levels to conserve and extend our limited available funds. We conservatively anticipate that the volume of work and contractor resources required to maintain *status quo* services will remain the same or, more likely, increase in FY 2010 (relative to FY 2008). While we are concerned about adequately staffing the anticipated Tribal Trust trials in FY 2010, we will endeavor to assemble internal resources and seek assistance from our client agencies.

Litigation support is critical to the Tribal Trust cases. The cases are extremely document-intensive. For example, in the *Jicarilla Apache* case, which was in ADR discussions for six years, ENRD has acquired over 8.3 million pages of transactional and other documentation necessary to evaluate settlement terms and conditions. In 2008, the Tribe decided to terminate its participation in the ADR process and undertake active litigation. The parties are currently engaging in additional fact and expert discovery relating to the first phase of the case designated for trial. Also, in the *Osage* case, ENRD collected and produced over 8.2 million pages of documents to the Tribe in the first tranche of the case that went to lengthy trial. The second phase of the litigation is presently being prepared for trial, and, among other things, the parties are trafficking in at least 1.5 million pages of additional documents. ENRD's litigation support contractor has provided critical document and knowledge management services. The contractor maintains robust databases of imaged documents and permits the trial attorneys quick and efficient access to information. In addition, the litigation support contractor is indispensable in establishing trial-specific operations centers to assist the attorneys when the cases go to trial, which is especially important in locations outside of Washington, D.C.

It is imperative that ENRD have sufficient funding for the Tribal Trust cases. The failure to have such financial resources available may cause huge and unnecessary monetary awards at taxpayer expense, significant negative publicity, and a public loss of confidence in the Government in general, and, in particular, the Interior and Treasury Departments.

Impact on Performance (Relationship of Increase to Strategic Goals)

Successful execution of ENRD's Tribal Trust litigation responsibilities 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 2.7: *Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction*. The financial interests of the United States in these matters, and the potential impact on the American taxpayers, are in the billions of dollars. The

non-financial – both immediate and indirect – interests of the United States and the American people include the potential huge and unnecessary negative publicity and a general public loss of confidence in the Government and the many Executive Branch agencies involved in the Tribal Trust litigation (Interior, Treasury, Justice). As such, the requested budget enhancement will benefit not only ENRD and the Justice Department, but also numerous agencies outside of the Department.

ENRD must devote the majority of its appropriated resources to defensive work on behalf of federal agencies. When making decisions as to which cases merit funding, the Division must proceed, first and foremost, with such non-delegable, non-discretionary defensive litigation. The provision of additional resources for ENRD’s Tribal Trust initiative will assist the Division in responding to its increasingly onerous defensive caseload. It will also, as a result, liberate other resources to work on matters responsive to different aspects of Strategic Goal 2.7.

FUNDING

Base Funding

FY 2008 Enacted				FY 2009 Enacted				FY 2010 Request			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
22	18	18	\$1,939	22	18	22	\$1,939	32	25	27	\$5,239

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2010 Request (\$000)	FY 2011 Net Annualization (change from 2009) (\$000)
Attorney	\$184	7	\$1,290	\$686
Paralegal	\$90	3	\$271	\$171
Total Personnel		10	\$1,561	\$857

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2010 Request (\$000)	FY 2011 Net Annualization
Automated Litigation Support	N/A	N/A	\$1,739	\$0
Total Non-Personnel	N/A	N/A	\$1,739	\$0

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Expense Increases	10	7	5	\$1,561	\$1,739	\$3,300
Grand Total	10	7	5	\$1,561	\$1,739	\$3,300

V. Program Increases by Item

B. Protecting America's Health By Cleaning Up the Nation's Air and Water (Civil Environmental Enforcement)

Item Name:	Protecting America's Health By Cleaning Up the Nation's Air and Water (Civil Environmental Enforcement)
Budget Decision Unit(s):	Environment and Natural Resources Division
Strategic Goal(s) & Objective(s):	<u>Strategic Goal Two, Objective 2.7</u> : Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.
Organizational Program:	<i>Environmental Enforcement Section (EES)</i>
Component Ranking of Item:	<u>2</u> of <u>3</u>
Program Increase:	Positions <u>3</u> , FTE <u>2</u> , Litigation Support <u>\$191,000</u> , Total Dollars <u>\$650,000</u>

JUSTIFICATION

Description of Item

ENRD is requesting 3 positions (2 attorneys, 1 paralegal), 2 FTEs, and \$650,000 to promote and expand the division's civil enforcement Clean Air Act and Clean Water Act cases.

ENRD's Clean Air Act (CAA) enforcement efforts are currently exemplified, and will continue to be typified, by the Department's "Power Plants Initiative," a compilation of dozens of civil enforcement actions against coal-fired power plants for violations of the Clean Air Act.

The Power Plants family of cases continues to be one of the largest affirmative litigation initiatives in ENRD's history. The initiative consists of a group of district court enforcement actions against the owners and operators of coal-fired electric generating stations for violations of the New Source Review ("NSR") provisions of the Clean Air Act. This part of the Clean Air Act, enacted by Congress in 1977, requires that sources of air pollution that were either newly constructed or "modified" after 1977 obtain NSR permits and install state-of-the-art pollution controls.

The facilities targeted by our cases were built before 1977 and were subsequently "modified" by the utilities without seeking NSR permits or installing pollution controls. As a result, hundreds of thousands of tons of air pollutants that should have been controlled have been, and continue to be, emitted into the environment, causing harm to public health and to the environment. The power plants that we have sued include the largest coal-burning utilities in the country.

Collectively, coal-burning power plants are responsible for almost 70% of the sulfur dioxide pollution and almost 30% of the nitrogen oxide pollution from stationary sources in the entire country. Our cases seek to require the defendants to install the required pollution controls and to pay civil penalties for their past violations. As of April 2009, 15 cases have been settled, one additional settlement has been lodged pending approval by a district court, five cases are in active litigation, and several cases are in pre-filing negotiations. Significantly, the Division has received an additional seven case referrals since September 2008 which it has not been able to adequately evaluate for filing because of resource constraints. This is in addition to an existing backlog of referrals that are already in various stages of evaluation and pre-filing negotiations.

Fiscal year 2008 saw significant success in the Power Plants litigation, most notably a jury verdict partially in our favor in *U.S. v. Cinergy*, a long-running case in which we won a critical legal issue on interlocutory appeal to the Seventh Circuit Court of Appeals. The court subsequently ordered a new trial on those counts the jury ruled adversely to the United States' position. That trial is scheduled to commence in May 2009. In the interim, in February 2009, trial was held on the appropriate remedy for Cinergy's violations as found by the jury in 2008; the court has not yet issued its remedy decision. Entering FY 2009, we have negotiated consent decrees that impose civil penalties of over \$70 million. In addition to the civil penalties, we have obtained injunctive relief worth about \$11 billion, which will provide substantial continuing public health benefits in the future by removing nearly two million tons per year of pollutants from the air as pollution controls are installed on power plants under our settlement agreements.

We currently have five filed cases in active litigation (*U.S. v. Cinergy*; *U.S. v. Duke Energy*, *U.S. v. Alabama Power*, *U.S. v. Westar*, and *U.S. v. Louisiana Generating*). Two of these, *Westar* and *Louisiana Generating*, were filed in the past two months. We also have one very large case subject to a tolling agreement that expires this summer, and that is a very likely candidate for filing at that time, and several other long-referred cases in pre-filing negotiations.

The litigation involved in these cases is very complex, resource-intensive, and strongly contested by very well-financed defendants. We expect up to three Power Plants trials in FY 2009 – one on liability (*Cinergy*, part 1, and potentially *Duke*) and one on harm/remedy (*Cinergy*, part 2, depending on the outcome of the liability trial) – and we expect discovery demands to be extensive in the active cases. Specific FY 2009 trial dates have been set in *Cinergy* (May 2009, followed by a potential remedy trial soon thereafter) with *Duke* awaiting a trial schedule.

Additional support for vigorous litigation is essential to securing beneficial environmental results. This was well illustrated by the settlement in early 2008 of the case against *American Electric Power*. This very heavily litigated matter was the subject of a liability

trial in 2006 and the statistics underscore just how intensive the litigation was – 50,000 attorney hours, 6.85 million pages of documents produced in discovery, 183 depositions of fact and expert witnesses, 517 pleadings filed in court, 40 expert witnesses and scores of face-to-face meetings with many counsel held over several days. The judge held his ruling in abeyance to give the parties a final opportunity to settle. With the court's ruling imminent, we negotiated the largest environmental settlement in history - \$4 billion worth of pollution controls that will reduce 813,000 tons of pollution each year. Even though the parties never learned the court's decision, we could not have achieved that momentous settlement without trying the case effectively.

ENRD's Clean Water Act (CWA) enforcement efforts are represented, among other cases, by the Department's civil enforcement actions against the oil freighter M/V Cosco Busan.

The United States filed a judicial enforcement action relating to the oil spill that occurred in 2007 when the Hong Kong based freighter M/V Cosco Busan hit the Delta Tower of the Bay Bridge that connects the City of San Francisco to the City of Oakland. The incident ruptured the Cosco Busan's fuel tanks and caused approximately 53,000 gallons of bunker oil to be unlawfully discharged into the San Francisco Bay and the Pacific Ocean. The oil spill required the closure of approximately 50 beaches, piers, and coastal access points. Thousands of birds were killed or injured, including marbled murrelets, an endangered species. Damages were also potentially incurred by other parties, including fisherman (the San Francisco Bay was closed for fishing), crabbers (the opening of the crabbing season was postponed), boaters, marinas, restaurants, local governments, and other parties. The United States filed its action against the owner, operator, and the pilot of the Cosco Busan, on behalf of the Department of Interior, the National Oceanic and Atmospheric Administration, and the Coast Guard, and included claims under the Clean Water Act, the National Marine Sanctuaries Act, and the Park System Resource Protection Act. This spill created a great deal of Congressional and public interest and has also resulted in an ongoing criminal action in which the Cosco Busan operator and pilot have been indicted as a result of the efforts of the U.S. Attorney's Office (N.D. CA); numerous civil actions, including actions filed by the cities of San Francisco, Oakland and Richmond, the State of California Department of Transportation, the Continental insurance company; and class action lawsuits filed on behalf of fishermen and crabbers.

Our claim has numerous facets. We have asserted a claim for penalties under the Clean Water Act. The Cosco Busan discharged nearly 1,300 barrels of oil. Pursuant to the Clean Water Act, in light of the gross negligence or willful misconduct in this case, the statutory maximum civil penalty is \$4,300 per barrel or approximately \$5.5 million. We fully expect an award of at least that amount. We are working with the Torts Branch (Admiralty) to develop evidence that would maximize these potential results, and have the collateral benefit of creating a valid basis for the National Pollution Funds Center on behalf of the Oil Spill Liability Trust Fund to deny the responsible parties' expected request that they be reimbursed by the Fund for their response costs incurred to date (in excess of \$60 million), plus future costs and damages – including payments made relating to the United States' natural resource damage claim, claims made by the cities and the State, and the private claimants' class action lawsuits. Our natural resource damage claim seeks compensation for the injuries caused by the incident, such as the loss or diminution of local resources and activities, oiled shorelines, killed and injured birds, and other impacted species and habitat.

Case management in the *Cosco Busan* case, as well as similarly situated CWA/oil spill cases, is complex as the United States must coordinate with a large number of persons associated with federal and state agencies, local groups, and numerous other lawsuits pending in both federal and state courts. For example, with *Cosco Busan*, the data collected by the Trustees of the Oil Spill Liability Trust Fund is voluminous. The Trustees utilized large numbers of persons to regularly visit and document resources impacted by the spill, such as visiting and assessing potential injuries to the many miles of potentially impacted beaches and coastline. The Trustees have engaged a large number of internal experts and consultants to determine the extent of the natural resources impacted by the spill. We will continue to work with local citizens and groups to obtain information relating to the spill. We may have difficult document production issues if, for example, the defendants seek information relating to Congressional hearings.

Critical to the successful litigation of the Power Plants cases, the M/V *Cosco Busan* case, and future Clean Air Act and Clean Water Act cases, is the ability to dedicate adequate personnel and litigation support resources to assist our attorneys with various aspects of the cases. We will need extensive automated litigation support to assist with numerous tasks, such as document acquisition, compilation, review, scanning and processing of the documents into electronic databases, and conducting privilege review of government documents. In addition, to prepare for litigation we may need technical support from litigation consultants with expertise in determining injury and quantifying damages.

Impact on Performance (Relationship of Increase to Strategic Goals)

Successful execution of ENRD's Civil Enforcement CAA and CWA litigation 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 2.7: *Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction*. The interests of the United States in the Power Plants, *Cosco Busan* and other clean air and water enforcement cases is to achieve a direct and substantial improvement to public health and the environment

The personnel and litigation support requested under this civil environmental enforcement initiative will provide ENRD with the resources needed to effectively address all aspects of DOJ Strategic Objective 2.7.

FUNDING

Base Funding

FY 2008 Enacted				FY 2009 Enacted				FY 2010 Request			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
0	0	0	\$0	0	0	0	\$0	3	2	2	\$650

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2010 Request (\$000)	FY 2011 Net Annualization (change from 2009) (\$000)
Attorney	\$184	2	\$369	\$196
Paralegal	\$90	1	\$90	\$57
Total Personnel		3	\$459	\$253

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2010 Request (\$000)	FY 2011 Net Annualization
Automated Litigation Support	N/A	N/A	\$191	\$0
Total Non-Personnel	N/A	N/A	\$191	\$0

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Expense Increases	3	2	2	\$459	\$191	\$650
Grand Total	3	2	2	\$459	\$191	\$650

V. Program Increases by Item

C. Vigorously Prosecuting Violations of The Nation's Environmental Laws (Criminal Environmental Enforcement)

Item Name:	Vigorously Prosecuting Violations of The Nation's Environmental Laws (Criminal Environmental Enforcement)
Budget Decision Unit(s):	Environment and Natural Resources Division
Strategic Goal(s) & Objective(s):	<u>Strategic Goal Two, Objective 2.7</u> : Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.
Organizational Program:	<i>Environmental Crimes Section (ECS)</i>
Component Ranking of Item:	<u>3</u> of <u>3</u>
Program Increase:	Positions <u>1</u> , FTE <u>1</u> , Non-Personnel <u>\$66,000</u> , Total Dollars <u>\$250,000</u>

JUSTIFICATION

Description of Item

ENRD is requesting 1 position (1 attorney), 1 FTE, and \$250,000 to build upon the success of its criminal environmental prosecution initiatives.

Prosecution initiatives usually have two thrusts: intense casework to establish legal precedents and a track record of successful prosecutions and capacity building at U.S. Attorney's Offices (USAOs) and with investigative agencies. Both of these elements are resource intensive. The Division has successfully used initiatives in the past and, with this budget enhancement, will continue to do so, particularly in three areas: targeting environmental offenders whose actions endanger American workers; protecting the world's oceans from waste oil dumping by foreign and domestic vessels; and applying new wildlife protection tools to punish illegal trade, especially in forest products. These criminal environmental initiatives are executed in concert with corollary civil counterparts within ENRD, as criminal investigations often uncover a basis for civil enforcement, and civil enforcement actions regularly unearth potential criminal environmental violations.

Worker Endangerment. Environmental crime frequently goes hand in glove with crime that endangers America's workers. The laws that protect people beyond the fence of an industrial operation also protect those working inside. The regulatory compliance effort required to protect the environment is similar to the effort needed ensure occupational safety. Unscrupulous operators who cut corners for one usually cut corners for another. This observation, which led the Environmental Crimes Section (ECS) to develop its Worker Endangerment Initiative, has been proven through multiple successful prosecutions. These prosecutions, while resource intensive, have promoted respect for law in both areas and have had a lasting impact on both the environment and on worker safety.

Several of the Section's most significant prosecutions have arisen under this initiative. For example, in *United States v. Atlantic States, et al.*, one of several cases prosecuted against the nation's largest manufacturer of cast iron pipe, the Division won convictions against a company and four of its managers based on a far-reaching conspiracy involving violations of environmental laws, violations of worker protection regulations, and systematic deceit of the state and federal regulators responsible for enforcing those laws. The victory followed an eight-month trial—making it the longest environmental crimes case prosecuted by the Division—which required a dedicated contract paralegal and other specialized support.

The Division is presently involved in the prosecution of *W.R. Grace* and six of its executives, who are alleged to have exposed the town of Libby, Montana to asbestos from its mining operation, and then deceiving regulators and others about the dangers involved with the asbestos. The prosecution of *British Petroleum (BP)* in Houston, Texas, stems from the March 2005 explosion at BP's Texas City petroleum refinery which resulted in 15 fatalities and injured over 170 other workers. The Division presently has several other criminal matters under investigation with a worker endangerment component. These involve deaths, injuries, and/or exposure of workers to hazardous chemicals. These matters are all resource-intensive and most have attracted national media attention.

Vessel Pollution. Through the Environmental Crimes Section's Vessel Pollution Initiative, the United States is becoming the world leader in protecting Earth's oceans from illegal discharges of oil from ships. Although nearly all sea-going countries have signed on to MARPOL—the multi-lateral treaty regulating pollution at sea—many of the world's commercial fleets are barely policed by their flag states. Nevertheless, the United States has jurisdiction over vessels entering at our ports and the Division has had significant success detecting and prosecuting the sleight of hand that vessel operators use to avoid the cost of legal waste management. Typically, this involves forging the proper pollution-management documents needed enter our waters. Although a few prosecutions have been against domestic shipping companies, the bulk of the violations come from vessels flying a flag of convenience, whose cut-rate pollution control efforts undermine the competitiveness of compliant shipping companies.

Vessel pollution cases are resource intensive because the scene of the crime (the vessel) cannot be secured for more than a few days and because the witnesses (usually a crew of foreign nationals) cannot be detained beyond a few months. That posture means that much must be done very quickly at the site of the prosecution. Moreover, delays may mean that crewmembers disperse, which has led to the need to depose them abroad. Finally, translation services and

forensic review of electronic data prior to trial are particularly acute costs associated with these cases.

Illegal Timber Harvests. Globally, deforestation is a significant contributor to climate change and habitat loss. Markets in the United States for timber harvested illegally abroad drive an important part of that deforestation. Recently, Congress amended the Lacey Act to allow for criminal prosecutions where timber is harvested in violation of foreign law and is then knowingly imported into the U.S. The Division expects this new tool to allow it to target the demand for illegally harvested material as has been seen in myriad other wildlife areas, including striped bass, sea turtles, and polar bears. To successfully use this new tool, the Division must establish that the foreign harvest was illegal. As with vessel cases, these cases will require translation services, and significant foreign travel.

Discussion of Funding Increase

As alluded to above, initiatives are resource intensive because they require quick development of a stable of new cases and because their ultimate success depends on other investigative and prosecutorial offices (USAOs) carrying the work forward over time. The former drives higher litigation support needs and the latter drives higher travel and training costs. These are discussed separately.

Litigation Support. At present, the Division has 12 current open vessel prosecutions. Those prosecutions are supported by coastal USAOs around the country, but are still driven primarily through Division initiative. Special litigation costs of these cases include depositions and translation. Because most crewmembers are foreign nationals who seldom agree to stay in the United States for more than a few months, the Division has had to accept the unusual litigation cost of undertaking depositions to preserve their testimony for trial. Frequently those depositions must be translated. In one recent case involving foreign crewmembers, the Division share of those costs has already reached \$35,000. On some occasions, successful prosecution has required follow up depositions abroad, with associated travel costs. To be sure, the impact of vessel cases has also been high: one multi-district vessel pollution case resulted in fines, restitution, and required pollution prevention in excess of \$37 million. Some similar costs also develop in wildlife prosecutions, where an underlying element of the offense charged here is a violation of law in a foreign nation.

Because we try to prosecute vessel cases quickly so as to have live witnesses, post-indictment analysis of electronically stored information has increasingly been required. The return on these analyses can be great, producing evidence of both the substantive crime and, in some cases, of efforts to block an investigation. But the forensic analysis is beyond what can be handled internally at the Division, and forensic analysis by investigating agencies is often subject to backlogs that do not match our timeframe. In those situations, we must contract the needed work.

In the area of worker endangerment, litigation costs are driven by different factors, but are also high. Because both environmental and worker safety regulations are involved, these are some of the most document-intensive cases. That has caused the Division to look to contract

personnel to support some of this work. In addition, worker endangerment has led the Division into more cases involving the Crime Victims' Rights Act (CVRA). For instance, we have prosecuted a refinery explosion case involving fifteen fatalities and over 170 injuries. Under the CVRA, our prosecutors must extend specific rights to victims, including notice of case events, consultation, and the opportunity to be heard at sentencing and other case events. Most other prosecuting offices maintain a victim-witness staff for this work. Because the Division is relatively new to cases with major victim impact, it has not developed a dedicated victim witness staff to date. This enhancement seeks an attorney position that would divide his or her effort between general litigation support and victim rights. Such a person would be of great assistance in the worker endangerment context.

Capacity Building. The other major component of environmental crimes initiatives is capacity building, both domestically, and for wildlife crimes, in countries supplying U.S. demand for endangered or other illegally harvested wildlife. For worker endangerment, the Division has trained many USAO, Occupational Safety and Health Administration (OSHA), and state regulatory offices about how worker safety investigations can cross-pollinate environmental investigations and vice versa. Although the personnel needed for this training are all existing Division attorneys, there are additional travel costs, and occasional contractor personnel/consultant needs, to carry out the important work of our criminal environmental initiatives. The vessel initiative imposes similar training costs.

With respect to applying new wildlife prosecution tools, capacity building frequently means building relationships with specialized police in the countries where contraband wildlife originates. For the recent forest protection amendment to the Lacey Act, a key area is Indonesia. Indonesian hardwoods are routinely imported to the U.S. after being illegally harvested. To curb the devastating effect of the resultant deforestation, the Division plans to bring new cases against knowing importers. But each case must begin with a detected illegal harvest, which means the development of foreign partners. The Division has good relationships with many law enforcement groups in supply countries. International travel (with its relatively high costs) is the price of turning those relationships into successful prosecutions.

The proposed \$250,000 funding increase, including the assignment of one position and FTE for a victim rights attorney, would allow the division to advance several initiatives, which, based on past experience, will eventually become mainstays of environmental prosecution in USAOs throughout the country.

Impact on Performance (Relationship of Increase to Strategic Goals)

Successful execution of ENRD's prosecution initiatives is an important driver for achievement of 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 2.7: *Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.* The Division's history with respect to environmental crime has always involved initiatives. In the early days of the criminal program, those initiatives involved the nation's most basic environmental statutes. Over time, the Division's efforts have led to nationwide prosecutions under the Clean Air Act, Clean Water Act,

and Resource Conversation and Recovery Act. The Division continues to bring those cases vigorously and to assist USAOs with their own development of them. Nevertheless, the areas discussed in this request—the health of the oceans, the safety of the American worker in relationship to environmental health, and the prevention of deforestation—are areas within the jurisdiction of the Department where a large amount of criminal activity has recently been identified and where the Division’s resources are achieving great results. By supporting the Division’s work in these areas now, they are much more likely to take root in prosecutor’s offices nationwide, creating the greatest deterrent effect.

FUNDING

Base Funding

FY 2008 Enacted				FY 2009 Enacted				FY 2010 Request			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
0	0	0	\$0	0	0	0	\$0	1	1	1	\$250

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2010 Request (\$000)	FY 2011 Net Annualization (change from 2009) (\$000)
Attorney	\$184	1	\$184	\$98
Total Personnel		1	\$184	\$98

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2010 Request (\$000)	FY 2011 Net Annualization
Initiative Consultant, Translator, Contractor	N/A	N/A	\$66	\$0
Total Non-Personnel	N/A	N/A	\$66	\$0

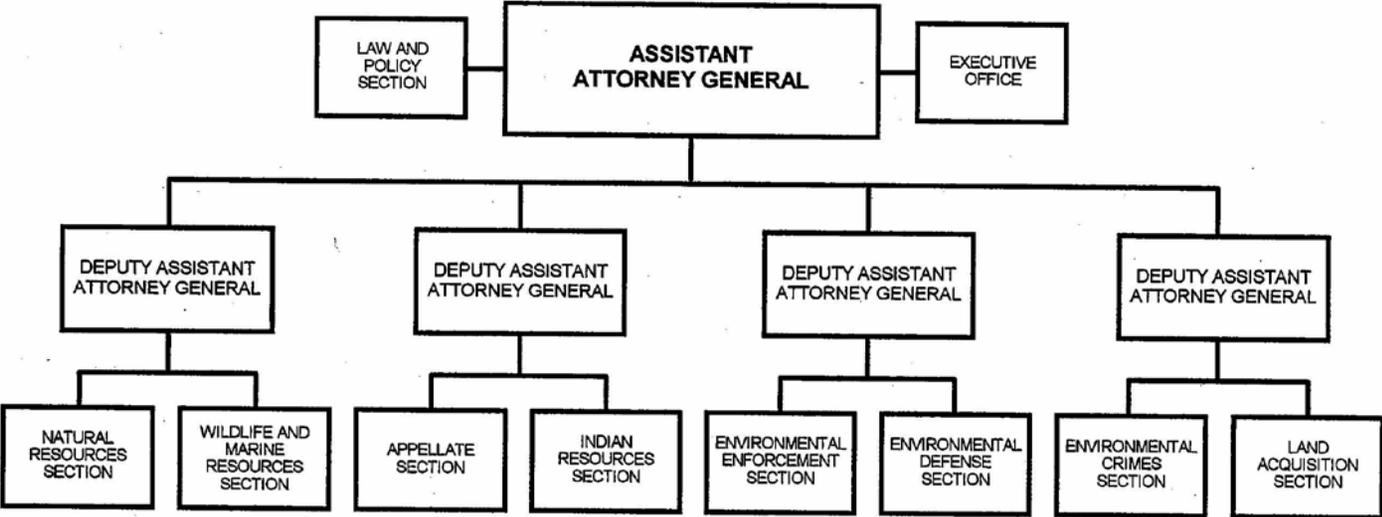
Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Expense Increases	1	1	1	\$184	\$66	\$250
Grand Total	1	1	1	\$184	\$66	\$250

VI. Exhibits

A. Organizational Chart

ENVIRONMENT AND NATURAL RESOURCES DIVISION



Approved by:  Date: 2-14-06
ALBERTO R. MORALES
Attorney General

B. Summary of Requirements

Summary of Requirements
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

	FY 2010 Request		
	Perm. Pos.	FTE	Amount
2008 Enacted (with Rescissions, direct only)	445	495	99,365
2008 Supplementals			
Total 2008 Revised Continuing Appropriations Resolution (with Rescissions)	445	495	99,365
2009 Enacted (with Rescissions, direct only)	445	499	103,093
2009 Supplementals			
Total 2009 Enacted (with Rescissions and Supplementals)	445	499	103,093
Technical Adjustments			
Restoration of 2009 Prior Year Unobligated Balance Rescission			
Adjustments to Base			
Increases:			
2010 pay raise (2.0%)			1,465
2009 pay raise annualization (3.9%)			700
Annualization of 2009 positions (FTE)			
Annualization of 2009 positions (dollars)			
Annualization of 2008 positions (dollars)			
Retirement			103
Health Insurance			21
Employees Compensation Fund			9
GSA Rent			143
DHS Security Charge			12
Postage			2
Government Printing Office (GPO)			2
WCF Rate Increase			36
Subtotal Increases	0	0	2,493
Decreases:			
Security Investigations			(1)
Subtotal Decreases	0	0	(1)
Total Adjustments to Base	0	0	2,492
Total Adjustments to Base and Technical Adjustments	0	0	2,492
2010 Current Services	445	499	105,585
Program Changes			
Tribal Trust Litigation	10	5	3,300
Protecting America's Health by Cleaning up the Nation's Air and Water	3	2	650
Vigorously Prosecuting Violations of the Nation's Environmental Laws	1	1	250
Total Program Changes	14	8	4,200
2010 Total Request	459	507	\$109,785
2009 - 2010 Total Change	14	8	6,692

B. Summary of Requirements (Cont.)

Summary of Requirements
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Estimates by budget activity	2008 Appropriation Enacted w/Rescissions and Supplementals			2009 Enacted			2010 Adjustments to Base and Technical Adjustments			2010 Current Services			2010 Increases			2010 Offsets			2010 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	407	445	89,234	407	449	92,584			2,243	407	449	94,827	13	7	3,950				420	456	98,777
Criminal Litigation	38	50	10,131	38	50	10,509			249	38	50	10,758	1	1	250				39	51	11,008
Total	445	495	\$99,365	445	499	\$103,093	0	0	\$2,492	445	499	\$105,585	14	8	\$4,200	0	0	\$0	459	507	\$109,785
Reimbursable FTE		184			184						184									184	
Total FTE		679			683			0			683			8			0			691	
Other FTE:																					
LEAP																					
Overtime																					
Total Comp. FTE		679			683			0			683			8			0			691	

**See Exhibit F for crosswalk for Enacted without rescission to Enacted with rescissions for FY 2008*

C. Program Increases/Offsets by Decision Unit

Program Increases	Location of Description by Decision Unit					Total Increases
		Pos.	Agt./Atty.	FTE	Amount	
Tribal Trust Litigation	Civil Litigation	10	7	5	3,300	3,300
Protecting America's Health by Cleaning up the Nation's Air and Water	Civil Litigation	3	2	2	650	650
Vigorously Prosecuting Violations of the Nation's Environmental Laws	Criminal Litigation	1	1	1	250	250
Total Program Increases		14	10	8	\$4,200	\$4,200

D. Resources by Department of Justice Strategic Goal and Objective

Resources by Department of Justice Strategic Goal/Objective Environment & Natural Resources Division

(Dollars in Thousands)

Strategic Goal and Strategic Objective	2008 Appropriation Enacted w/Rescissions and Supplementals		2009 Enacted		2010 Current Services		2010				2010 Request	
	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Increases		Offsets		Direct, Reimb. Other FTE	Direct Amount \$000s
							Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s		
Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People 2.1 Strengthen partnerships for safer communities and enhance the Nation's capacity to prevent, solve, and control crime 2.2 Reduce the threat, incidence, and prevalence of violent crime 2.3 Prevent, suppress, and intervene in crimes against children 2.4 Reduce the threat, trafficking, use, and related violence of illegal drugs 2.5 Combat public and corporate corruption, fraud, economic crime, and cybercrime 2.6 Uphold the civil and Constitutional rights of all Americans 2.7 Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction 2.8 Protect the integrity and ensure the effective operation of the Nation's bankruptcy system Subtotal, Goal 2	679	99,365	683	103,093	683	105,585	8	4,200			691	109,785
	679	99,365	683	103,093	683	105,585	8	4,200			691	109,785
GRAND TOTAL	679	\$99,365	683	\$103,093	683	\$105,585	8	\$4,200			691	\$109,785

E. Justification for Base Adjustments

Justification for Base Adjustments Environment & Natural Resources Division

Increases

2010 pay raise: This request provides for a proposed 2.0 percent pay raise to be effective in January of 2010 (This percentage is likely to change as the budget formulation process progresses.) This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$1,465,000, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$1,080,291 for pay and \$384,709 for benefits).

Annualization of 2009 pay raise: This pay annualization represents first quarter amounts (October through December) of the 2009 pay increase of 3.9 percent included in the 2009 President's Budget. The amount requested \$700,000, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$516,180 for pay and \$183,820 for benefits).

Retirement: Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on U.S. Department of Justice Agency estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 3 percent per year. The requested increase of \$103,000 is necessary to meet our increased retirement obligations as a result of this conversion.

Employees Compensation Fund: The \$9,000 increase reflects payments to the Department of Labor for injury benefits paid in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.

Health Insurance: Effective January 2008, this component's contribution to Federal employees' health insurance premiums increased by .6 percent. Applied against the 2009 estimate of \$3,317,000, the additional amount required is \$21,000.

General Services Administration (GSA) Rent: GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$143,000 is required to meet our commitment to GSA. The costs associated with GSA rent were derived through the use of an automated system, which uses the latest inventory data, including rate increases to be effective in FY 2010 for each building currently occupied by Department of Justice components, as well as the costs of new space to be occupied. GSA provided data on the rate increases.

E. Justification for Base Adjustments (Cont.)

DHS Security Charges: The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$12,000 is required to meet our commitment to DHS, and cost estimates were developed by DHS.

Postage: Effective May 11, 2009, the Postage Service implemented a rate increase of 4.8 percent. This percentage was applied to the 2010 estimate of \$68,000 to arrive at an increase of \$2,000.

Government Printing Office (GPO): GOP provides an estimated rate increase of 4%. This percentage was applied to the FY 2009 estimate of \$123,000 to arrive at an increase of \$2,000.

WCF Rate Increases: Components in the DC metropolitan area use and rely on the Department's Working Capital Fund (WCF) for support services including telecommunications services, computer services, finance services, as well as internet services. The WCF continues to invest in the infrastructure supporting the telecommunications services, computer services, internet services. Concurrently, several security initiatives are being implemented and additional resources are being directed to financial management in an effort to maintain a clean audit status. Funding of \$36,000 is required for this account.

Decreases

Security Investigations: The \$1,000 decrease reflects payments to the Office of Personnel Management for security reinvestigations for employees requiring security clearances.

F. Crosswalk of 2008 Availability

Crosswalk of 2008 Availability
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Decision Unit	FY 2008 Enacted Without Rescissions			Reprogrammings/ Transfers*			2008 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	407	445	89,234			139	407	445	89,373
Criminal Litigation	38	50	10,131				38	50	10,131
TOTAL	445	495	\$99,365	0	0	\$139	445	495	\$99,504
Reimbursable FTE		184						184	
Total FTE		679			0			679	
Other FTE									
LEAP								0	
Overtime								0	
Total Compensable FTE		679			0			679	

*Transfers - The \$138,806 reflects the Antitrust transfer to GLA (ENRD) for the prorated share of the tenant improvement allocation (TIA) of the Patrick Henry Building lease.

G. Crosswalk of 2009 Availability

Crosswalk of 2009 Availability
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Decision Unit	2009 Enacted			2009 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	407	449	92,584	407	449	92,584
Criminal Litigation	38	50	10,509	38	50	10,509
TOTAL	445	499	103,093	445	499	\$103,093
Reimbursable FTE		184			184	
Total FTE		683			683	
Other FTE						
LEAP					0	
Overtime					0	
Total Compensable FTE		683			683	

H. Summary of Reimbursable Resources

Summary of Reimbursable Resources
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Collections by Source	2008 Enacted			2009 Planned			2010 Request			Increase/Decrease			
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	
Department of Agriculture			256			1,640			840	0	0	(800)	
Department of Commerce			1			14			14	0	0	0	
Department of Defense			455			1,073			1,073	0	0	0	
Department of Energy			1			15			15	0	0	0	
Department of Homeland Security			1,140			2,226			2,926	0	0	700	
Department of Interior			3,039			4,720			4,820	0	0	100	
Department of Justice			4,386			5,336			5,336	0	0	0	
Department of State			29			70			70	0	0	0	
Department of Treasury			70			10			10	0	0	0	
Environmental Protection Agency			184	27,526		184	26,316		184	26,316	0	0	0
Federal Trade Commission			688			700			700	0	0	0	
Securities and Exchange Commission			2,847			3,800			3,800	0	0	0	
Others			62			80			80	0	0	0	
Budgetary Resources:	0	184	\$40,500	0	184	\$46,000	0	184	\$46,000	0	0	\$0	

I. Detail of Permanent Positions by Category

Detail of Permanent Positions by Category Environment & Natural Resources Division Salaries and Expenses

Category	2008 Enacted w/Rescissions and Supplementals		2009 Enacted		2010 Request				
	Total Authorized	Total Reimbursable	Total Authorized	Total Reimbursable	ATBs	Program Increases	Total Pr. Changes	Total Authorized	Total Reimbursable
Intelligence Series (132)	0	0	0	0	0	0	0	0	0
Personnel Management (200-299)	8	1	8	1	0	0	0	8	1
Clerical and Office Services (300-399)	55	35	55	35	0	0	0	55	35
Accounting and Budget (500-599)	7	0	7	0	0	0	0	7	0
Attorneys (905)	313	110	313	110	0	10	10	323	110
Paralegals / Other Law (900-998)	43	38	43	38	0	4	4	47	38
Information & Arts (1000-1099)	0	0	0	0	0	0	0	0	0
Business & Industry (1100-1199)	5	0	5	0	0	0	0	5	0
Library (1400-1499)	0	0	0	0	0	0	0	0	0
Equipment/Facilities Services (1600-1699)	0	0	0	0	0	0	0	0	0
Miscellaneous Inspectors Series (1802)	0	0	0	0	0	0	0	0	0
Criminal Investigative Series (1811)	0	0	0	0	0	0	0	0	0
Supply Services (2000-2099)	0	0	0	0	0	0	0	0	0
Motor Vehicle Operations (5703)	0	0	0	0	0	0	0	0	0
Information Technology Mgmt (2210)	14	0	14	0	0	0	0	14	0
Security Specialists (080)	0	0	0	0	0	0	0	0	0
Miscellaneous Operations (010-099)	0	0	0	0	0	0	0	0	0
Total	445	184	445	184	0	14	14	459	184
Headquarters (Washington, D.C.)	394	163	394	163	0	14	14	408	163
U.S. Field	51	21	51	21	0	0	0	51	21
Foreign Field	0	0	0	0	0	0	0	0	0
Total	445	184	445	184	0	14	14	459	184

* Distribution of positions among categories will vary from previously submitted schedules. The distribution has been adjusted to reflect current operations, however total appropriated and reimbursable positions have not changed.

Exhibit I

J. Financial Analysis of Program Changes

Financial Analysis of Program Changes
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

	Inc. 1		Inc. 2		Inc. 3		Program Changes	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Grades:								
GS-14	7	1,290	2	369	1	184	10	1,843
GS-9	3	271	1	90			4	361
Total positions & annual amount	10	1,561	3	459	1	184	14	2,204
Lapse (-)	(5)	(781)	(2)	(229)	(1)	(92)	(8)	(1,102)
Other personnel compensation							0	0
Total FTE & personnel compensation	5	781	2	229	1	92	8	1,102
Personnel benefits		205		60		24	0	289
Travel and transportation of persons		51		15		5	0	71
Transportation of things		4		0		0	0	4
Communication, rents, and utilities		53		16		5	0	74
Printing		4		1		0	0	6
Other services		773		773		773	0	2,318
Supplies and materials		20		6		2	0	27
Equipment		221		66		22	0	309
Total, 2010 program changes requested	5	\$2,110	2	\$1,167	1	\$924	8	\$4,200

K. Summary of Requirements by Grade

Summary of Requirements by Grade Environment & Natural Resources Division Salaries and Expenses

Grades and Salary Ranges	2008 Enacted w/Rescissions and		2009 Enacted		2010 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
SES, \$111,676 - \$168,000	18		18		18		0	
GS-15, \$110,363 - 143,471	258		258		268		10	
GS-14, \$93,822 - 121,967	29		29		29		0	
GS-13, \$79,397 - 103,220	24		24		24		0	
GS-12, \$66,767 - 86,801	19		19		19		0	
GS-11, \$55,706 - 72,421	26		26		26		0	
GS-10, 50,703 - 65,912	2		2		2		0	
GS-9, \$46,041 - 59,852	24		24		28		4	
GS-8, 41,686 - 54,194	19		19		19		0	
GS-7, \$37,640 - 48,933	17		17		17		0	
GS-6, \$33,872 - 44,032	1		1		1		0	
GS-5, \$30,386 - 39,501	1		1		1		0	
GS-4, \$27,159 - 35,303	4		4		4		0	
GS-3, \$24,194 - 31,451	3		3		3		0	
GS-2, \$22,174 - 27,901	0		0		0		0	
GS-1, \$19,722 - 24,664	0		0		0		0	
Total, appropriated positions	445		445		459		14	
Average SES Salary		165,678		\$170,814		\$174,572		
Average GS Salary		107,783		\$111,124		\$113,569		
Average GS Grade		GS-14/5		GS-14/5		GS-14/5		

L. Summary of Requirements by Object Class

Summary of Requirements by Object Class
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Object Classes	2008 Actuals		2009 Enacted		2010 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Direct FTE & personnel compensation	366	50,628	370	53,155	378	56,432	8	3,276
11.3 Other than full-time permanent	93	6,890	63	7,233	63	7,233	0	0
11.5 Total, Other personnel compensation	0	1,092	0	1,145	0	1,145	0	0
<i>Overtime</i>							0	0
<i>Other Compensation</i>							0	0
11.8 Special personal services payments		359		186		186	0	0
Total	459	58,969	433	61,720	441	64,996	8	3,276
Other Object Classes:								
12.0 Personnel benefits		14,795		15,801		16,214		413
13.0 Unemployment		12		12		12		0
21.0 Travel and transportation of persons		2,670		2,803		2,874		71
22.0 Transportation of things		323		339		342		4
23.1 GSA rent		11,193		10,683		10,826		143
23.2 Moving/Lease Expirations/Contract Parking		0		0		0		0
23.3 Comm., util., & other misc. charges		1,469		1,542		1,618		76
24.0 Printing and reproduction		82		87		94		8
25.1 Advisory and assistance services		348		605		605		0
25.2 Other services		7,080		6,958		9,323		2,365
25.3 Purchases of goods & services from Government accounts (Antennas, DHS Sec. Etc..)		1,029		1,081		1,081		0
25.4 Operation and maintenance of facilities								0
25.5 Research and development contracts								0
25.7 Operation and maintenance of equipment								0
26.0 Supplies and materials		678		712		739		27
31.0 Equipment		716		751		1,060		309
Total obligations		\$99,364		\$103,093		\$109,785	8	\$6,692
Transfer from other accounts		(139)						
Unobligated balance expiring		140						
Recoveries of prior year obligations								
Total DIRECT requirements		99,365		103,093		109,785		
Reimbursable FTE:	184		184		184			
Full-time permanent							0	0
23.1 GSA rent (Reimbursable)		2,541		2,658		1,776		(882)
25.3 DHS Security (Reimbursable)		39		41		41		(0)

Exhibit L